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SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 3, 2018 TO JULY 9, 2018

SUPREME COURT
MANILA
2020

Prepared
by

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2020

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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EN BANC

[A.C. No. 5473. July 3, 2018]

GENE M. DOMINGO, *complainant, vs.* **ATTY. ANASTACIO E. REVILLA, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY OF FINE IMPOSED UPON THE RESPONDENT FOR VIOLATION THEREOF, REDUCED; THE COURT REFRAINS FROM IMPOSING THE ACTUAL PENALTIES IN THE PRESENCE OF MITIGATING FACTORS.— In *Arganosa-Maniego v. Salinas*, the Court observed that: [I]n several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the laws concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. Considering the foregoing, the Court finds and considers the justifications of the respondent sufficient to warrant the reduction of the fine imposed upon him.

APPEARANCES OF COUNSEL

Gumpal Ruiz Valenzuela & Associates for complainant.

R E S O L U T I O N

***PER CURIAM*:**

On January 23, 2018, the Court promulgated its decision finding respondent Anastacio E. Revilla Jr. guilty of violating the *Code of Professional Responsibility* by committing fraud against the complainant who was his client, disposing:

> **WHEREFORE**, the Court **FINDS AND DECLARES ATTY. ANASTACIO E. REVILLA, JR. GUILTY** of violating Rule 1.01 of Canon 1, Rules 15.06 and 15.07 of Canon 15, and Rule 18.03 of Canon 18 of the *Code of Professional Responsibility*, but, in view of his continuing disbarment, hereby **METES** the penalty of FINE of ₱100,000.00.
>
> The decision is **IMMEDIATELY EXECUTORY**.
>
> Let copies of this decision be furnished to: (a) the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance; (b) the Integrated Bar of the Philippines; and (c) the Office of the Bar Confidant to be appended to the respondent's personal record as a member of the Bar.
>
> **SO ORDERED.**[1]

The respondent now seeks the reduction of his fine from ₱100,000.00 to ₱50,000.00. He avers in justification that he has been in financial constraints since his disbarment handed down on December 4, 2009 in A.C. No. 7054 prior to the promulgation of the decision herein; that he has also been suffering from chronic kidney disease that necessitates dialysis treatments thrice a week; that his disbarment cost him his only source of livelihood; and that he has candidly acknowledged his ethical sins without qualification, manifesting his sincere feeling of remorse.

In *Arganosa-Maniego v. Salinas*,[2] the Court observed that:

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[1] *Rollo*, p. 422.

[2] A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531, 544-545.

[I]n several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the laws concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.

Considering the foregoing, the Court finds and considers the justifications of the respondent sufficient to warrant the reduction of the fine imposed upon him.

WHEREFORE, the Court **GRANTS** respondent Anastacio E. Revilla Jr.'s motion to reduce the penalty of fine, and, accordingly, **REDUCES** his penalty to a fine of ₱50,000.00.

SO ORDERED.

Carpio, Acting C.J., *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

Velasco, Jr., J., voted to reduce the fine to ₱10,000.00.

EN BANC

[A.C. No. 8854. July 3, 2018]

JULIETA DIMAYUGA, *complainant, vs.* **ATTY. VIVIAN G. RUBIA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; WILLFUL DISOBEDIENCE OF THE LAWFUL ORDERS OF THE COURT; FAILURE TO FILE COMMENT AS REQUIRED BY THE COURT.— We have given respondent several opportunities to file her comment and explain her side on the accusations against her since 2011 but, up to present, respondent has yet to file the required comment. This Court cannot, anymore, accept respondent's excuses for such defiance, *i.e.*, trauma, stress, and life-threatening situations, considering that she was able to file pleadings stating such explanation but still failed to file the required comment. Nothing can be concluded therefrom but that respondent's acts or inaction for that matter, were deliberate and manipulating, which unreasonably delay this Court's action on the case. These acts constitute willful disobedience of the lawful orders of this Court, which, not only works against her case as she is now deemed to have waived the filing of her comment, but more importantly is in itself a sufficient cause for suspension or disbarment pursuant to Section 27, Rule 138 of the Rules of Court. Such attitude constitutes utter disrespect to the judicial institution. "A Court's Resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively."

2. POLITICAL LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE MUST BE ESTABLISHED BY COMPLAINANT.— "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion." Corollary to this is the established rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. "The complainant has the burden of proving by substantial evidence the allegations in the complaint."

3. LEGAL ETHICS; NOTARY PUBLIC; PREPARING AND NOTARIZING A DEED OF SALE WITHIN THE PROHIBITED PERIOD TO SELL THE SUBJECT PROPERTY IS AN ACT CONSTITUTIVE OF A BLATANT DISREGARD FOR THE LAW.— [R]espondent prepared and notarized a deed of sale, covering a parcel of land, which was evidently prohibited to be sold, transferred, or conveyed under Republic Act (R.A.) No. 6657. Time and again, We have held that a lawyer's conduct ought to and must always be scrupulously observant of the law and ethics. CANON 1 of the Code of Professional Responsibility (CPR) provides that a lawyer shall uphold the Constitution, obey the laws, and promote respect for law and legal processes. Also, Rule 15.07 thereof mandates a lawyer to impress upon his client compliance with the laws and principles of fairness. Indeed, in preparing and notarizing a deed of sale within the prohibited period to sell the subject property under the law, respondent assisted, if not led, the contracting parties, who relied on her knowledge of the law being their lawyer, to an act constitutive of a blatant disregard for or defiance of the law. Moreover, respondent likewise displayed lack of respect and made a mockery of the solemnity of the oath in an Acknowledgment as her act of notarizing such illegal document entitled it full faith and credit upon its face, when it obviously does not deserve such entitlement, considering its illegality due to the prohibition above-cited.

D E C I S I O N

TIJAM, *J.*:

For Our resolution is a Complaint[1] for disciplinary action, charging Atty. Vivian G. Rubia (respondent) with gross negligence, misrepresentation, and violation of the lawyer's oath.

Julieta Dimayuga (complainant) averred in her Complaint that sometime in June 2002, she and her family engaged respondent's legal services to effect the transfer of their deceased father's property to them, which services were supposed to include preparation, notarization, and processing of the transfer

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[1] *Rollo*, pp. 1-7.

document and payment of taxes and other fees for such transfer. Respondent prepared a document denominated as Amended Extrajudicial Settlement of Estate with Waiver of Rights,[2] which they signed on June 17, 2002.[3] However, the transfer did not happen soon thereafter. Upon inquiry, her family learned that respondent paid the transfer tax only on October 25, 2007;[4] the donor's tax was paid on April 2, 2007;[5] and contrary to her representations with the complainant's family, respondent only entered the Amended Extrajudicial Settlement of Estate with Waiver of Rights with the Register of Deeds of Davao del Sur only on November 28, 2007 and re-entered on December 1, 2008. It is complainant's theory that respondent may have misappropriated the money that the family paid for her services on June 17, 2002 for her personal use, hence, the belated payment of the required taxes and fees.[6]

Complainant also alleged that in June 2003, she also sought respondent's legal services for the purchase of a real property in Digos City. However, contrary to her representation that the property shall be registered in their names after one month, the title was not transferred to them.[7] Moreover, the Deed of Absolute Sale[8] dated June 27, 2003 for the purchase of a 600-square meter parcel of land prepared by respondent, was covered by Transfer Certificate of Title (TCT) No. CARP-03000,[9] coming from Certificate of Land Ownership Award (CLOA) No. 00394433. The title was issued on February 5, 1997 and registered with the Registry of Deeds of Davao del Sur on February 6, 1997. Being a land covered by CLOA, the following limitation was stated on the face of the TCT, *viz.*:

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[2] *Id*. at 10-15.

[3] *Id*. at 3.

[4] *Id*. at 4 and 16.

[5] *Id*. at 4 and 17.

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

[7] *Id*. at 1-1A.

[8] *Id*. at 8.

[9] *Id*. at 9.

[S]ubject to the condition that it shall not be sold, transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to other qualified beneficiaries for a period of ten (10) years, x x x.[10]

Thus, on June 27, 2003, the sale of the property was still prohibited. Complainant averred that they merely relied on the ability and knowledge of respondent as lawyer, who should not have assented to the sale of the said property due to the prohibition.[11]

Hence, complainant prayed that respondent be administratively disciplined for her actions.

In a Resolution[12] dated January 31, 2011, the Court required the respondent to comment on the complaint within ten days from notice.

Respondent moved for an extension of time to file her comment,[13] which was granted by the Court in its Resolution[14] dated August 15, 2012.

However, within the period of the granted extension, respondent still failed to file the required comment. Hence, in a Resolution[15] dated July 14, 2014, the Court imposed upon respondent a fine of ₱2,000 and reiterated its order requiring respondent to file her comment.

Respondent neither paid the fine nor filed a comment. Hence, in a Resolution[16] dated January 13, 2016, the Court imposed upon respondent an increased fine of ₱4,000 and again, required respondent to file comment.

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[10] *Id*.

[11] *Id*. at 3.

[12] *Id*. at 21.

[13] *Id*. at 22-26.

[14] *Id*. at 29.

[15] *Id*. at 33-34.

[16] *Id*. at 37-38.

On April 7, 2016, respondent paid the imposed increased fine and explained that her failure to pay the original fine was because the first notice was lost. Respondent also informed the Court of her transfer of office.[17]

On June 29, 2016, the Court noted respondent's compliance. However, We reiterated Our order in the January 13, 2016 Resolution, considering that per Office of the Bar Confidant (OBC), no postal money orders were enclosed in the aforesaid compliance.[18]

In its September 19, 2016 Resolution,[19] the Court noted the OBC's Letter[20] dated July 26, 2016, stating the return to respondent of the two postal money orders for being received by the Court's cashier beyond the 90-day period from its validity. The Court also resolved to await respondent's compliance with the June 29, 2016 Resolution.

On November 14, 2016 Resolution,[21] the Court noted respondent's remittance of two postal money orders as replacement for the expired ones. Respondent still failed to file her comment, thus, the Court also required her to show cause why she should not be disciplinarily dealt with or held in contempt for such failure and, again ordered her to comply with the January 31, 2016 Resolution.

On December 27, 2016, respondent complied with the show cause order, explaining that she suffered from trauma and stress due to the previous cases filed against her and also that she had undergone life-threatening situations due to some high-profile cases that she handled, hence, her failure to file her comment.[22]

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[17] *Id*. at 39-41.

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

[19] *Id*. at 58.

[20] *Id*. at 47.

[21] *Id*. at 77.

[22] *Id*. at 64-65.

However, respondent still failed to file her comment to the Complaint. Thus, on June 28, 2017 Resolution,[23] while the Court noted her explanation, the Court again required her to file a comment in compliance with the January 31, 2011 Resolution. Despite receipt of the June 28, 2017 Resolution, respondent still failed to file the required comment.[24]

Necessarily, this Court will now act on the resolution of the Complaint.

Preliminarily, We shall address respondent's apathetic attitude towards this case, to which this Court has been very tolerant. We have given respondent several opportunities to file her comment and explain her side on the accusations against her since 2011 but, up to present, respondent has yet to file the required comment. This Court cannot, anymore, accept respondent's excuses for such defiance, *i.e.*, trauma, stress, and life-threatening situations, considering that she was able to file pleadings stating such explanation but still failed to file the required comment. Nothing can be concluded therefrom but that respondent's acts or inaction for that matter, were deliberate and manipulating, which unreasonably delay this Court's action on the case. These acts constitute willful disobedience of the lawful orders of this Court, which, not only works against her case as she is now deemed to have waived the filing of her comment, but more importantly is in itself a sufficient cause for suspension or disbarment pursuant to Section 27,[25] Rule 138 of the Rules of Court. Such attitude constitutes utter disrespect

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

[24] *Id*. at 83.

[25] Sec. 27. *Attorneys removed or suspended by Supreme Court on what grounds*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority to do so. x x x.

to the judicial institution. "A Court's Resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively."[26]

In *Sebastian v. Atty. Bajar*,[27] the Court, considered the failure to comply with the court's order, resolution, or directive as constitutive of gross misconduct and insubordination.[28]

Proceeding to the merits of the Complaint, We find that the allegations of delay in the performance of duty and misappropriation of funds were not sufficiently substantiated. "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion."[29] Corollary to this is the established rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. "The complainant has the burden of proving by substantial evidence the allegations in the complaint."[30]

In this case, complainant alleged that she and her family gave respondent ₱150,000 on June 17, 2002, inclusive of respondent's attorneys fees and the legal fees necessary for the transfer of the property. Despite that, respondent did not pay the transfer tax and donor's tax until 2007. However, there is nothing on the records, except for complainant's bare allegation, which proves that such amount was indeed given to respondent on the claimed date. Hence, We cannot judiciously rule on the alleged delay and misappropriation without relying upon assumptions, surmises, and conjectures.

What is apparent in the Complaint, however, is the fact that respondent prepared and notarized a deed of sale, covering a parcel of land, which was evidently prohibited to be sold, transferred, or conveyed under Republic Act (R.A.) No. 6657.

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[26] 559 Phil. 211, 224 (2007).

[27] 559 Phil. 211 (2007).

[28] *Id*. at 225.

[29] *Concerned Citizen v. Divina*, 676 Phil. 166, 176 (2011).

[30] *Id*.

Time and again, We have held that a lawyer's conduct ought to and must always be scrupulously observant of the law and ethics.[31] CANON 1 of the Code of Professional Responsibility (CPR) provides that a lawyer shall uphold the Constitution, obey the laws, and promote respect for law and legal processes. Also, Rule 15.07 thereof mandates a lawyer to impress upon his client compliance with the laws and principles of fairness.

Indeed, in preparing and notarizing a deed of sale within the prohibited period to sell the subject property under the law, respondent assisted, if not led, the contracting parties, who relied on her knowledge of the law being their lawyer, to an act constitutive of a blatant disregard for or defiance of the law.

Moreover, respondent likewise displayed lack of respect and made a mockery of the solemnity of the oath in an Acknowledgment as her act of notarizing such illegal document entitled it full faith and credit upon its face, when it obviously does not deserve such entitlement, considering its illegality due to the prohibition above-cited. In the case of *Caalim-Verzonilla v. Atty. Pascua*,[32] We aptly explained:

> [W]hile respondent's duty as a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation. Rule IV, Section 4 of the 2004 Rules on Notarial Practice in fact proscribes notaries public from performing any notarial act for transactions similar to the herein document of sale, to wit:
>
> SEC. 4. *Refusal to Notarize*.— A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:
>
> (a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral;

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[31] *Rural Bank of Calape, Inc. (RBCI) Bohol v. Atty. Florido*, 635 Phil. 176, 181 (2010).

[32] 674 Phil. 550 (2011).

x x x x x x x x x.[33]

It cannot be over-stressed that notarization is not an empty or meaningless routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may be commissioned to perform the same.[34]

In all, for these acts of misconduct, "the Court has sanctioned erring lawyers with suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment."[35]

Considering that this is not the first time that respondent was administratively sanctioned by this Court, We have already warned her that future infractions shall be dealt with more severely.[36] However, We are also reminded that "disbarment should not be decreed where any punishment less severe such as reprimand, fine, or suspension would accomplish the end desired."[37]

WHEREFORE, in view of the foregoing, Atty. Vivian G. Rubia is found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court, CANON 1 and Rule 15.07 of the Code of Professional Responsibility, and the Rules on Notarial Practice. Accordingly, she is **SUSPENDED** from the practice of law for three (3) years effective immediately with a **STERN WARNING** that future infractions shall be dealt with more severely. She is likewise **DISQUALIFIED** from being commissioned as a notary public for a period of three (3) years and her notarial commission, if currently existing, is hereby **REVOKED**.

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[33] *Id*. at 561.

[34] *Almazan, Sr. v. Atty. Suerte-Felipe*, 743 Phil. 131, 136-137 (2014).

[35] *Saquing v. Atty. Mora*, 535 Phil. 1, 7 (2006).

[36] In *Mondejar v. Atty. Rubia*, 528 Phil. 462, 467 (2006), respondent was found guilty of violating Rule 1.01 of CANON 1 of the CPR and thereby suspended from the practice of law for one (1) month and warned that a repetition of the same or similar acts will be dealt with more severely; In *Ceniza v. Atty. Rubia*, 617 Phil. 202 (2009), respondent was found guilty of violating Rule 18.03 and CANON 22 of the CPR and thereby suspended from the practice of law for six (6) months with a warning that similar infractions in the future will be dealt with more severely.

[37] *Saquing v. Atty. Mora*, *supra* at 8.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr., and *Gesmundo, JJ.,* concur.

EN BANC

[A.C. No. 11981. July 3, 2018]

LEAH B. TADAY, *complainant, vs.* **ATTY. DIONISIO B. APOYA, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DISBARMENT PROCEEDINGS; CASE MUST BE ESTABLISHED BY CLEAR, CONVINCING AND SATISFACTORY PROOF.—** [M]embership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.

2. ID.; 2004 RULES ON NOTARIAL PRACTICE; SIGNATORY TO A DOCUMENT MUST PERSONALLY APPEAR BEFORE THE NOTARY PUBLIC AT THE TIME OF THE NOTARIZATION.— The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document personally appeared before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or other mark in the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting on his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete. x x x Here, respondent notarized the verification and certification of non forum shopping even though complainant did not personally appear before him. Not only did he violate the 2004 Rules on Notarial Practice, he also violated Canon 1 and Rule 1.01 of the Code.

3. ID.; DISHONESTY IN CASE AT BAR; PROPER PENALTY IS DISBARMENT.— Aside from improperly notarizing a petition, respondent committed an even graver transgression by drafting a fake decision and delivering it to his client in guise of a genuine decision. x x x A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. x x x In this case, respondent committed unlawful, dishonest, immoral and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him.

APPEARANCES OF COUNSEL

Alexander M. Versoza for complainant.

D E C I S I O N

***PER CURIAM*:**

Before this Court is a Verified Complaint-Affidavit[1] filed before the Integrated Bar of the Philippines (*IBP*) against Atty. Dionisio B. Apoya, Jr. (*respondent*) for violating the Code of Professional Responsibility (*Code*) in authoring a fake decision of a court.

Sometime in 2011, Leah B. Taday (*complainant*), an overseas Filipino worker (*OFW*) staying in Norway, asked her parents in the Philippines, Virgilio and Natividad Taday, to seek legal services for the nullification of her marriage. Complainant's parents found respondent and contracted his legal services. On April 17, 2011, a Retainer Agreement[2] was executed between respondent and complainant's parents indicating that respondent's acceptance fee was ₱140,000.00, to be paid on a staggered basis.

According to complainant, respondent was informed that she was staying in Norway and respondent assured her that this would not be an issue as he can find ways to push for the resolution of the case despite her absence.

Respondent drafted a Petition for Annulment of Marriage[3] (*petition*) dated April 20, 2011, which he allegedly sent to complainant for her signature. After notarizing the petition, respondent filed it before the Regional Trial Court of Caloocan City (*RTC*). The case was then raffled to Branch 131, docketed as Civil Case No. C-22813.

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[1] *Rollo*, pp. 2-5.

[2] *Id*. at 7.

[3] *Id*. at 106-111.

On November 17, 2011, while complainant was on vacation in the Philippines[4] and after paying respondent his legal fees amounting to P14,500.00,[5] respondent delivered a Decision[6] dated November 16, 2011 which granted the annulment of complainant's marriage. The said decision was promulgated by a certain Judge Ma. Eliza Becamon-Angeles of RTC Branch 162. Complainant became suspicious as the said decision came from a different branch presided by a different judge where the case was originally filed. Complainant's family became skeptical as the said decision seemed to come too soon and was poorly crafted.

Confused with the turn of events, verifications were made to ascertain the validity of the decision. Complainant discovered that both Branch 162 and Judge Ma. Eliza Becamon-Angeles do not exist in the RTC. Frustrated with the incident, complainant, through her parents, sought the withdrawal of respondent as her counsel from the case.

However, instead of withdrawing as counsel, respondent filed an urgent motion to withdraw the petition. In its Order[7] dated June 25, 2012, the RTC Branch 131 granted the said motion and the case was dropped from the civil docket of the court.

Complainant and her parents sought the legal services of Atty. Alexander M. Verzosa (*Atty. Verzosa*) of the Verzosa Lauengco Jimenez and Abesames Law Offices for their predicament. Atty. Verzosa sent a Letter[8] dated February 26, 2013, to respondent calling his attention regarding the payment of his attorney's fees and the purported fake decision of RTC Branch 162.

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[4] *Id*. at 3.

[5] *Id*. at 11.

[6] *Id*. at 77-80.

[7] *Id*. at 123.

[8] *Id*. at 124.

In his Answer,[9] respondent denied being informed that complainant was an OFW and claimed that he was made to believe that she was merely in the Bicol province, hence, he agreed to draft the petition and gave it to complainant's parents for her signature. The petition was returned to respondent with complainant's signature so he notarized and filed it before the court.

Respondent denied delivering any decision relative to the annulment case of complainant. He asserted that the said decision was only a product of her imagination. Respondent likewise denied that he filed an urgent motion to withdraw the petition in the RTC, Branch 131. He claimed that he merely drafted the said motion and gave it to complainant's parents but he never signed it.

After the parties submitted their respective position papers, the case was submitted for decision.

IBP Report and Recommendation

In its Report and Recommendation,[10] the IBP Commission on Bar Discipline (*Commission*) found that respondent committed several violations of the Code, particularly, Rules 1.01, 1.02 and Canon 1. The Commission held that respondent notarized the Verification and Certification of Non Forum Shopping[11] of the petition, even though complainant was not personally present as she was then in Norway.

The Commission also found that respondent authored a fake decision. It opined that the said decision was fake because it bore the same format and grammatical errors as that of the petition prepared by respondent. The Commission disregarded the defense of respondent that it was complainant's parents who made the fake decision. It stressed that any reasonable mind would know that a fake decision would not benefit complainant. Moreover,

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[9] *Id*. at 21-26.

[10] *Id*. at 127-131.

[11] *Id*. at 111.

complainant's parents continuously paid the legal fees of respondent, which would show their lack of intent to create the fabricated decision.

The Commission further underscored that when respondent was confronted with the fake decision, he filed an urgent motion to withdraw the petition before RTC Branch 131. It highlighted that when the new counsel of complainant questioned respondent regarding these irregularities, he did not respond.

Based on these circumstances, the Commission concluded that the fake decision originated from respondent and that he violated Rules 1.01 and 1.02, Canon I of the Code. It recommended the penalty of suspension of two (2) years from the practice of law.

In its Resolution No. XXI-2015-100[12] dated January 31, 2015, the IBP Board of Governors (*Board*) modified the recommended penalty of two (2) years suspension to a penalty of disbarment.

Respondent filed a motion for reconsideration but it was denied by the IBP Board in its Resolution No. XXII-2016-508[13] dated September 23, 2016.

Respondent filed a second motion for reconsideration but it was also denied by the Board in its Resolution No. XXII-2017-951[14] dated April 19, 2017.

The Court's Ruling

The Court adopts the findings of the Commission and agrees with the recommendation of the IBP Board to disbar respondent.

All those in the legal profession must always conduct themselves with honesty and integrity in all their dealings. Members of the bar took their oath to conduct themselves according to the best of their knowledge and discretion with

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[12] *Id*. at 126.

[13] *Id*. at 149.

[14] *Id*. at 158.

all good fidelity as well to the courts as to their clients and to delay no man for money or malice. These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship.[15]

It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attomey.[16] In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[17]

In this case, the Court finds that respondent violated Canon 1, Rules 1.01 and 1.02 of the Code and the 2004 Rules on Notarial Practice.

Respondent notarized the petition even though the affiant was not present

Notarization is not an empty, meaningless and routinary act. It is imbued with public interest and only those who are qualified and authorized may act as notaries public.[18] Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its

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[15] *Luna v. Atty. Galarrita*, 763 Phil. 175, 184 (2015).

[16] *Velasco v. Atty. Doroin, et al.*, 582 Phil. 1, 9 (2008); citing *Marcelo v. Javier, Jr.*, 288 Phil. 762, 776 (1992).

[17] *Ceniza v. Atty. Rubia*, 617 Phil. 202, 208-209 (2009).

[18] *Ferguson v. Atty. Ramos*, A.C. No. 9209, April 18, 2017.

face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[19]

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document personally appeared before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or other mark in the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting on his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.[20]

In this case, on April 20, 2011, respondent notarized the verification and certification of non forum shopping in the petition filed before RTC Branch 131 supposedly executed by complainant as the affiant. At that time, however, complaint was not in the Philippines because she was still in Norway working as an OFW. Undoubtedly, respondent violated the notarial rules when he notarized a document without the personal presence of the affiant.

Respondent gave a flimsy excuse that he was not informed that complainant was not in the Philippines when he notarized the verification and certification on non forum shopping. Assuming *arguendo* that this is true, he should have refrained from notarizing such document until complainant personally appear before him. In addition, respondent should have explained to complainant and her parents that he can only notarize and file the petition before the court once complainant returns to the Philippines. Lamentably, instead of informing his client

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[19] *Villaflores-Puza v. Atty. Arellano*, A.C. No. 11480, June 20, 2017, citing *Mariano v. Atty. Echanez*, 785 Phil. 923, 927-928 (2016).

[20] 742 Phil. 810, 815-816 (2014).

about the rules of notarization, respondent proceeded with the notarization of the document and gave a false assurance that the case of complainant would still continue even in her absence.

In *Gaddi v. Atty. Velasco*,[21] the Court held that for notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, the lawyer failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code.

Similarly, in *Ferguson v. Atty. Ramos*[22] the Court held that when a lawyer affixes his signature and notarial seal on a deed of sale, he leads the public to believe that the parties personally appeared before him and attested to the truth and veracity of the contents thereof. The act of notarizing a document without the presence of the parties is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that the courts and the public accord to notarized documents.

Here, respondent notarized the verification and certification of non forum shopping even though complainant did not personally appear before him. Not only did he violate the 2004 Rules on Notarial Practice, he also violated Canon 1 and Rule 1.01 of the Code.

Respondent authored a fake decision and delivered it to his client

Aside from improperly notarizing a petition, respondent committed an even graver transgression by drafting a fake decision and delivering it to his client in guise of a genuine decision.

In this case, respondent delivered a decision dated November 16, 2011, to complainant, which purportedly granted the petition

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[21] *Id*. at 817; citing *Isenhardt v. Atty Real*, 682 Phil. 19 (2012).

[22] *Supra* note 18.

for annulment of marriage in her favor. This decision is marred by numerous and serious irregularities that point to respondent as the author thereof.

First, the decision came from a certain Judge Ma. Eliza Becamon-Angeles of RTC Branch 162. Yet, a verification from the RTC revealed that the said judge and the branch were non-existent.

Second, the fake decision is starkly the same as the petition prepared and filed by respondent. A reading of the fake decision shows that the statement of facts, issues and the rationale therein are strikingly similar, if not exactly alike, with the petition. Even the grammatical errors in both documents are similar. The fake decision was so poorly crafted because it merely copied the petition filed by respondent. Moreover, the font and spacing in the caption of the petition and the fake decision are one and the same. Glaringly, respondent did not give any credible explanation regarding the similarity of the fake decision and the petition he drafted.

Third, when respondent was confronted by complainant and her parents about the fake decision, respondent immediately filed an urgent motion to withdraw the petition before RTC Branch 131. Respondent provided a poor excuse that he merely prepared the said motion but did not file it. However, it is clear from the order dated June 25, 2012 of RTC Branch 131 that the motion was filed by respondent and the case was indeed withdrawn.[23]

Lastly, when complainant's case was dropped from the civil docket of RTC Branch 131 at the instance of respondent, complainant and her parents sought the assistance of another lawyer. Atty. Verzosa, through a letter dated February 26, 2013, confronted respondent regarding the payment of attorney's fees and the fake decision which respondent gave to complainant. However, respondent neither answered nor denied the allegation of complainant's new counsel.

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[23] *Rollo*, p. 123.

In his last ditch attempt to escape liability, respondent argued that the fake decision was drafted by complainant's parents. The Court finds this completely absurd. On November 17, 2011, complainant's parents had just paid respondent's staggering acceptance fee as evidenced by a Receipt.[24] On the other hand, the fake decision was dated November 16, 2011. Thus, it is illogical for complainant's parents to draft a fake decision when they regularly paid for the services of respondent to legally and rightfully represent their daughter's case. As opined by the Commission, any reasonable mind would know that a fake decision would not benefit complainant, thus, complainant's parents have nothing to gain from it.

Based on the foregoing circumstances, the Court concludes that respondent indeed authored the fake decision in order to deceive complainant that he won the legal battle in her favor. Fortunately, complainant was prudent in protecting her rights and discovered that the decision given to her by respondent was fake. Surely, respondent's acts resulted to complainant's injuries and has tarnished the noble image of legal profession.

Proper penalty

The Court finds that complainant has established by clear, convincing and satisfactory evidence that: (1) respondent notarized the verification and certification of non forum shopping of the petition without the personal presence of complainant; (2) respondent is the author of the fake decision to deceive complainant that her petition for annulment of marriage was granted; and (3) respondent retaliated against complainant for confronting him with the fake decision by withdrawing the petition in the court, resulting into the dropping of the case from the civil docket of the court. These acts constitute violations of Canon 1, Rule 1.01 and Rule 1.02 of the Code, to wit:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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[24] *Id*. at 11.

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Respondent also violated Section 2, Rule IV of the 2004 Rules on Notarial Practice, which states that:

SECTION 2. Prohibitions. — x x x

(b) 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.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[25]

In *Krursel v. Atty. Abion*,[26] the lawyer therein drafted a fake order from this Court in order to deceive her client. The Court stated that she made a mockery of the judicial system. Her conduct degraded the administration of justice and weakened the people's faith in the judicial system. She inexorably besmirched the entire legal profession. The penalty of disbarment was imposed against the lawyer.

Similarly, in *Gatchalian Promotions Talents Pool, Inc. v. Atty. Naldoza*,[27] the penalty of disbarment was imposed against

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[25] *Sison, Jr. v. Atty. Camacho*, 777 Phil. 1, 14 (2016).

[26] 789 Phil. 584 (2016).

[27] 374 Phil. 1 (1999).

the lawyer who falsified an official receipt from the Court to cover up his misdeeds. The Court stated that since the lawyer clearly failed the standards of his noble profession, he did not deserve to continue as a member of the bar.

In this case, respondent committed unlawful, dishonest, immoral and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him.

WHEREFORE, the Court adopts the recommendation of the Integrated Bar of the Philippines Board of Governors and finds Atty. Dionisio B. Apoya, Jr. **GUILTY** of violating Canon 1, Rule 1.01 and Rule 1.02 of the Code of Professional Responsibility and Section 2, Rule IV of the 2004 Rules on Notarial Practice. He is **DISBARRED** from the practice of law and his name ordered stricken off the Roll of Attorneys, effective immediately.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Dionisio B. Apoya, Jr.'s records. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.*, concur.

EN BANC

[A.M. No. 17-07-05-SC. July 3, 2018]

RE: MEMORANDUM DATED JULY 10, 2017 FROM ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO

[A.M. No. 18-02-13-SC. July 3, 2018]

RE: LETTER OF RESIGNATION OF ATTY. BRENDA JAY ANGELES MENDOZA, PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; *EN BANC* POWER OF APPOINTMENT WITHIN THE JUDICIARY MAY BE DELEGATED; UNDER ADMINISTRATIVE CIRCULAR NO. 37-2001A, THE CHIEF JUSTICE WITH THE CONCURRENCE OF THE CHAIRS OF DIVISIONS, MAY SELECT THE APPOINTEES FOR ASSISTANT CHIEF OF OFFICE AND HIGHER POSITIONS.— The 1987 Constitution vests the power of appointment within the judiciary in the Supreme Court. Article VIII, Section 5(6) states: Section 5. The Supreme Court shall have the following powers: . . .(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law. The "Supreme Court" in which this appointing power is conferred is the Court *En Banc*: x x x This Court's nature as a collegial body requires that the appointing power be exercised by the Court *En Banc*, consistent with Article VIII, Section 1 of the Constitution: x x x A collegial body or court is one in which each member has approximately equal power and authority. Moreover, its members act on the basis of consensus or majority rule. x x x Since this Court is a collegial court, each Justice has equal power and authority, and all Justices must act on the basis of consensus or majority rule. Even if this Court has a Chief Justice and does much of its work in divisions, it still remains that this

Court must exercise its powers as one (1) body: x x x The only exception is when the Court *En Banc* itself delegates the exercise of some of its powers. x x x Being the source of authority, every act in relation to a delegated power may, however, be reviewed by the delegating authority. This is to ensure that the act of the delegate does not go beyond its intended scope. This Court has resolved to delegate the disposition of certain matters to its three (3) divisions, to their chairpersons, or to the Chief Justice alone. Under Administrative Circular No. 37-2001A dated August 21, 2001, the Chief Justice, with the concurrence of the Chairs of Divisions, may select the appointees for Assistant Chief of Office and higher positions.

2. ID.; ID.; ID.; ID.; ID.; ID.; AMBIGUITY IN AM NO. 99-12-08-SC (REVISED) ON THE EXTENT OF THE DELEGATION OF THE APPOINTIVE POWER TO THE CHAIRPERSONS OF THE DIVISIONS SHOULD BE DETERMINED BY THE COURT *EN BANC*.— Third-level positions are "positions from Court Attorney V to Chiefs of Offices which have been classified by the Court as highly technical and/or policy determining pursuant to AM No. 05-9-29-SC, dated September 27, 2005." Under the Supreme Court Human Resource Manual, these positions are filled in by the Chief Justice, with the concurrence of the Chairpersons of the Divisions [pursuant to AM No. 99-12-08-SC (Revised)]. x x x Despite the procedure in the Supreme Court Human Resource Manual, there are third-level positions, classified as highly technical or policy-determining pursuant to A.M. No. 05-9-29-SC, which have been and continue to be appointed by the Court *En Banc*. x x x Thus, A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions. x x x Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised), while seemingly broad as to encompass all appointments of personnel in the judiciary, is contradicted by this Court's Resolutions and practices, both prior to and following its adoption. x x x The extent of the delegation of the appointive power to the Chairpersons of the Divisions should be determined by the Court *En Banc* because of the contradictions between the text of A.M. No. 99-12-08-SC (Revised) and this Court's own practices. Its resolution should not be left to the discretion of those to whom the power has

been delegated, including the Chief Justice and the Chairpersons of the Divisions. At the very least, the Court *En Banc* should be given the opportunity to correct or resolve the ambiguity in A.M. No. 99-12-08-SC (Revised).

3. ID.; ID.; ID.; ID.; ID.; ID.; APPLICATION TO THE INCONSISTENCY IN THE APPOINTMENT OF PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER.— Administrative Order No. 33-2008, formally organized the Philippine Mediation Center Office and the Mediation Center Units. x x x One (1) of the *ex officio* members of [its] Executive Committee is the PHILJA Chief of Office for the Philippine Mediation Center. x x x Under Administrative Order No. 33-2008, all four (4) regular members of the Executive Committee and the PHILJA Chief of Office for the Philippine Mediation Center must be recommended by PHILJA and appointed by this Court. x x x In contrast with the appointments of Atty. Ponferrada and Justice Econg (as PHILJA Chief of Office for the Philippine Mediation Center), Atty. Mendoza was appointed [through Memorandum Order No. 26-2016] not by the Court *En Banc*, but by the Chief Justice, with the concurrence of the Chairpersons of the Divisions of this Court. Further, her recommendation to the position of the PHILJA Chief of Office for the Philippine Mediation Center was not made by the PHILJA Board of Trustees in a Resolution, but further to a screening panel constituted by PHILJA. x x x Under Administrative Order No. 33-2008, the appointment of the PHILJA Chief of Office for the Philippine Mediation Center shall be made "by the Court, upon recommendation of PHILJA." Prior to the appointment of Atty. Mendoza, it is evident that this Court's practice is to have the Court *En Banc* issue the appointment following the recommendation made by the PHILJA Board of Trustees, as evidenced by a Board Resolution. Parenthetically, this was also the position of the Chief Justice in 2015. x x x To emphasize, the mere existence of any inconsistency in the rule of appointments of officials and employees of the Judiciary, including the PHILJA Chief of Office for the Philippine Mediation Center, should have prompted a request for clarification from the Court *En Banc* because it is only the Court *En Banc*, and not one or some of its Members, which is vested with the power of appointments in the Judiciary under the Constitution. PHILJA acting alone has no power to decide the form of the recommendation it must make to this Court.

Re: Memorandum dated July 10, 2017 from Associate Justice Teresita J. Leonardo-De Castro

VELASCO, JR., *J.*, *separate opinion*:

POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT HUMAN RESOURCE MANUAL (SC HR MANUAL); THE COURT *EN BANC* HAS DELEGATED THE POWER TO APPOINT THIRD-LEVEL POSITION PERSONNEL TO THE CHIEF JUSTICE WITH THE CONCURRENCE OF THE CHAIRMEN OF THE DIVISIONS.— [I]n Chapter Two of the Supreme Court Human Resource Manual (SC HR Manual), entitled Personnel Policies and Procedures, which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012, it was stated that in filling career positions, the Chief Justice shall assess the merits of the Selection and Promotion Board's recommendation for appointment and in the exercise of his sound discretion and with the concurrence of the Chairpersons of the Divisions, pursuant to A.M. No. 99-12-08-SC, select the candidate who is most qualified for appointment to the position. The selection of appointees to third-level positions which have been classified as highly technical and/or policy determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions. Taking into consideration the above-mentioned law and issuances, there is no doubt that the Court *En Banc* has delegated the power to appoint personnel to the Chief Justice with the concurrence of the Chairpersons of the Divisions. As such, it is humbly submitted that the appointment of Atty. Brenda Jay A. Mendoza (Atty. Mendoza) as PHILJA Chief of Office for the Philippine Mediation Center was validly made in accordance with the rules and practice.

LEONARDO-DE CASTRO, *J.*, *concurring opinion:*

POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT HUMAN RESOURCE MANUAL (SC HR MANUAL); ON THE DELEGATED POWER OF APPOINTMENT BY THE CHIEF JUSTICE AND THE CHAIRPERSONS OF THE DIVISIONS; APPLIES ONLY TO PERSONNEL IN THE JUDICIARY AND NOT APPLICABLE TO THE PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER.— Chapter Two, Section II(A) of the SC-HRM,

approved on January 31, 2012, providing the Procedure in Filling Career Positions — which stated that "[t]he selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC" — applies only to personnel in the Judiciary whose appointments must be screened by the **Supreme Court Selection and Promotion Board** as mentioned in the said SC-HRM provisions. It is not applicable to the PHILJA Chief of Office for the Philippine Mediation Center, whose appointment is governed particularly by Administrative Order No. 33-2008 of the Court *en banc*. Under said Administrative Order, it is the PHILJA Board of Trustees which screens and recommends to the Court *en banc* the appointment of the PHILJA Chief of Office for the Philippine Mediation Center.

CAGUIOA*, J.*, *separate opinion*:

POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT HUMAN RESOURCE MANUAL (SC HR MANUAL); ON THE DELEGATED POWER OF APPOINTMENT BY THE CHIEF JUSTICE AND THE CHAIRPERSONS OF THE DIVISIONS; INCONSISTENT APPLICATION OF THE RULE THEREON DOES NOT INVALIDATE AN APPOINTMENT MADE THAT IS CONSISTENT WITH THE SC HR MANUAL.— Since the SC HR Manual expressly took into consideration both A.M. No. 05-9-29-SC and A.M. No. 99-12-08-SC (Revised), I see no ambiguity or vagueness in the delegated power of appointment by the Chief Justice and the Chairpersons of the Second and Third Divisions. As of its adoption on January 31, 2012, the SC HR Manual should govern the appointments of personnel in the Judiciary. Since it was adopted prior to Atty. Angeles-Mendoza's appointment, the SC HR Manual should control and be applied accordingly to determine the validity of Atty. Angeles-Mendoza's appointment. The appointment of Atty. Angeles-Mendoza by the Chief Justice and the Chairpersons of the Second and Third Divisions of the Court is in conformity with the SC HR Manual. I take the position that the observation in the Resolution that

the rules of appointment in the SC HR Manual "have been inconsistently applied, or contradict this Court's own practices" does not *per se* invalidate the appointment of Atty. Angeles-Mendoza because her appointment was consistent with the SC HR Manual.

R E S O L U T I O N

LEONEN, *J.*:

This Resolution partially resolves the points raised in the July 10, 2017 Memorandum of Associate Justice Teresita J. Leonardo-De Castro (Associate Justice Leonardo-De Castro) concerning: (1) the extent of the power of appointment of the Court *En Banc*; and (2) the appointment of Atty. Brenda Jay A. Mendoza (Atty. Mendoza) to the position of the Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center.

Associate Justice Leonardo-De Castro submitted to the Court *En Banc* a Memorandum[1] dated July 10, 2017, on the following subjects:

I. (A) Filling Up of Long Vacant Key Positions in the Supreme Court

(B) Appointment of Incumbent PHILJA Chief of Office for the Philippine Mediation Center not in Accordance with Court Resolution

II. Power of Court *En Banc* to Appoint Court Officials and Personnel

III. The Grant by the Chief Justice of Foreign Travel Allowance to Members of her Staff Without Court Resolution.[2]

In her Memorandum, Associate Justice Leonardo-De Castro pointed to the following key positions within this Court which

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[1] *Rollo*, pp. 1-5, Memorandum of Associate Justice Teresita J. Leonardo-De Castro dated July 10, 2017.

[2] *Id.* at 1.

had not yet been filled and which she noted were, thus, prejudicial to the best interest of the service:

1. Deputy Clerk of Court and Chief Attorney (Salary Grade 29): vacant since October 30, 2013; and
2. Two (2) positions of Assistant Court Administrator, Office of the Court Administrator (Salary Grade 30): vacant since January 10, 2013.[3]

She noted that the notice of vacancy for the Deputy Clerk of Court and Chief Attorney position was posted on June 15, 2016. Applications to the post were transmitted to the Office of the Chief Justice on July 18, 2016. No action had been taken on the applications.

Moreover, she called the attention of this Court to the vacancy for one (1) Assistant Court Administrator, which was posted on October 24, 2016 and for which applications were transmitted to the Office of the Chief Justice on December 13, 2016. Now retired Associate Justice Jose P. Perez had requested several times that the filling-up of the vacancy be put in this Court's agenda, as he and Associate Justice Arturo D. Brion were set to compulsorily retire in December 2016. However, his requests were not granted. The vacancy in the other Assistant Court Administrator position had not been posted.

Further, Associate Justice Leonardo-De Castro presented to this Court that the appointment of the incumbent PHILJA Chief of Office for the Philippine Mediation Center, Atty. Mendoza, is not in accordance with Administrative Order No. 33-2008, which requires appointment by this Court upon the recommendation of PHILJA.

She pointed out that unlike the previous appointments to the position, Atty. Mendoza was not appointed by the Court *En Banc*, upon the recommendation of the PHILJA Board of Trustees in a board resolution. Instead, Atty. Mendoza was appointed by virtue of Memorandum Order No. 26-2016 dated

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[3] *Id.*

June 28, 2016, signed only by the Chief Justice and the two (2) most senior Associate Justices.

It was the position of Associate Justice Leonardo-De Castro that since the Constitution vests in this Court the power of appointment of all officials and employees of the judiciary,[4] this power can only be exercised by the Court *En Banc*, unless duly delegated by a court resolution.

She proposed that the Resolution dated April 22, 2003 in A.M. No. 99-12-08-SC (Revised), which was cited as the basis for Memorandum Order No. 26-2016, should be clarified as to the scope of the authority to appoint that is delegated to the Chief Justice and the Chairpersons of the Divisions.

A.M. No. 99-12-08-SC (Revised) states, among others, that the "[a]ppointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court"[5] shall be referred to the Chairpersons of the Divisions. Associate Justice Leonardo-De Castro was of the view that the "personnel" referred to in A.M. No. 99-12-08-SC (Revised) should exclude high-ranking officials of the highly technical and/or policy-determining third-level positions below the Chief Justice and Associate Justices. She pointed to A.M. No. 05-9-29-SC, which enumerates the third-level positions as those with salary grades 26 and higher, as a guide for which positions should continue to be appointed by the Court *En Banc*.

Associate Justice Leonardo-De Castro took the position that pursuant to *Manalang v. Quitoriano*,[6] "personnel" was "used generally to refer to the subordinate officials or clerical employees of an office or enterprise, not to the managers, directors or heads thereof."[7] Nonetheless, under A.M. No. 99-12-08-SC

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[4] CONST. Art. VIII, Sec. 5(6).

[5] A.M. No. 99-12-08-SC Revised (2003), Sec. II (a).

[6] 94 Phil. 903 (1954) [Per J. Concepcion, *En Banc*].

[7] *Id.* at 910.

(Revised), appointments to third-level positions have been delegated to the Chief Justice and the two (2) Senior Associate Justices.

In relation to the matters taken up in this Resolution, our colleague requested that this Court take the following measures:

> It is respectfully recommended that the Court assert its Constitutional authority and forthwith take the following actions measures:
>
> (1) Order the posting of the long vacant positions of the Deputy Clerk of Court, Chief Attorney, and the two positions of Assistant Court Administrators, for immediate appointment by the Court *en banc* and adopt guidelines to require the expeditious posting and filling-up of vacant positions to serve the best interest of the service;
>
> (2) To review the appointment of Atty. Mendoza as Chief of the Philippine Mediation Center;
>
> (3) To identify the positions, particularly from those among the third level positions, whose appointment shall be retained by the Court *en banc*; . . .[8]

On August 15, 2017, Chief Justice Maria Lourdes P. A. Sereno (Chief Justice Sereno)[9] submitted a letter,[10] in which she addressed the issue of the appointment of the PHILJA Chief of Office for the Philippine Mediation Center, while her full response to the Memorandum dated July 10, 2017 was still being finalized. In her letter, she stated that she acted on the matters raised in the Memorandum dated July 10, 2016 pursuant to the authority accorded by the Court *En Banc* to the Chief Justice, and as one (1) of the three (3) most senior Justices of this Court.

Chief Justice Sereno pointed out that the appointment of Atty. Mendoza was approved by the collective act of the three (3)

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[8] *Rollo*, p. 5.

[9] Subject to the May 11, 2018 Decision and June 19, 2018 Resolution in *Republic of the Philippines v. Sereno*, G.R. No. 237428.

[10] Titled "Re: A.M. No. 17-07-05-SC Memorandum of Justice Teresita J. Leonardo-De Castro dated 10 July 2017."

Chairpersons of the Divisions, upon the recommendation of PHILJA. She stated that the appointment was no longer submitted to the Court *En Banc* as A.M. No. 99-12-08-SC (Revised) delegated to the Chairpersons of the Divisions the power to appoint personnel, including the PHILJA Chief of Office for the Philippine Mediation Office. It was her position that the delegation in Section II(a) of A.M. No. 99-12-08-SC (Revised) does not exclude "high ranking officials or the highly technical and/or policy[-]determining third[-]level positions below that of the Chief Justice and Associate Justices."[11] Moreover, the distinction proposed by Associate Justice Leonardo-De Castro is unjustified in light of the intent and purpose of A.M. No. 99-12-08-SC (Revised), which is to relieve the Court *En Banc* from the additional burden of resolving administrative matters at the expense of its deliberations on judicial cases.

Further, Chief Justice Sereno referred to the Supreme Court Human Resource Manual, approved by the Court *En Banc* through A.M. No. 00-6-1-SC dated January 31, 2012, which expressly provides that third-level positions in the career service—including Court Attorney V and Chiefs of Office—shall be appointed by the Chief Justice with the concurrence of the Chairpersons of the Divisions pursuant to A.M. No. 99-12-08-SC.[12] She also noted that Atty. Eden T. Candelaria (Atty. Candelaria), the Deputy Clerk of Court and Chief Administrative Officer of this Court, took the position in her Memorandum *Re: Appointment of PHILJA Chief of Office for PMC* dated April 20, 2016, that this position and other third-level positions which are highly technical and/or policy-determining shall be appointed by the "Chairmen of the Divisions."

Chief Justice Sereno pointed out that the definition of "personnel" in *Manalang v. Quitoriano* is inapplicable, since A.M. No. 99-12-08 (Revised) was issued at a later date. Nevertheless, even if the definition in the case were to be applied,

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[11] Letter of Chief Justice Maria Lourdes P. A. Sereno to the Court *En Banc*, August 15, 2017.

[12] Supreme Court Human Resource Manual, p. II-6.

it was her position that the PHILJA Chief of Office of the Philippine Mediation Center is not a "manager," "director," or "head" of PHILJA as to be excluded from the scope of "personnel."

In her view, under Republic Act No. 8557 and A.M. No. 01-1-04-SC-PHILJA, PHILJA is directed, headed, and/or managed by its Board of Trustees, and by the Offices of the Chancellor, Vice Chancellor, and Executive Secretary. Pursuant to Administrative Order No. 33-2008, the Philippine Mediation Center is under the operational control and supervision of PHILJA. Thus, the Philippine Mediation Center is under the control of PHILJA, and not the other way around.

The Chief Justice took the position that the PHILJA Chief of Office for the Philippine Mediation Center is only appointed to one (1) of several sub-offices within PHILJA, the other heads of which are appointed by the Chairpersons of the Divisions pursuant to A.M. No. 99-12-08-SC (Revised). Thus, the PHILJA Chief of Office for the Philippine Mediation Center is a subordinate official, which is within the definition of "personnel" in *Manalang v. Quitoriano*.

Chief Justice Sereno further pointed out that the PHILJA Chief of Office for the Philippine Mediation Center does not solely "head," "manage," or "direct" the Philippine Mediation Center. Under Administrative Order No. 33-2008, the powers and authority of the Philippine Mediation Center are vested in and exercised by the Executive Committee. This committee is headed by the PHILJA Chancellor as Chairperson, while the Chief of Office is merely an *ex officio* member.

She also took the view that the delegation of appointing power in A.M. No. 99-12-08-SC (Revised) was reiterated by the Court *En Banc* in its Resolution dated August 10, 2010 in A.M. No. 10-4-13-SC. She pointed out that the term "personnel" in the context of the judiciary encompasses all officials and employees aside from Justices and judges:

"**Judicial personnel**" refer to the incumbent Justices and judges of the courts; and "**Non-judicial personnel**" refer to officials and employees who are performing adjudication support functions

(otherwise called judicial support personnel), as well as administrative and financial management functions; including clerks of courts, sheriffs, legal personnel, process servers, accountants, administrative officers, and all other personnel in the Judiciary who are not Justices or judges.[13] (Emphasis in the original)

Further, Administrative Circular No. 37-2001A dated August 21, 2001, which is used by the Office of Administrative Services in its daily operations, states that appointments to positions higher than Assistant Chief of Office may be made by the Chief Justice with the concurrence of the Chairpersons of Divisions.

According to Chief Justice Sereno, it was only when then Judge Geraldine Faith A. Econg (Justice Econg), now Associate Justice of the Sandiganbayan, was appointed as the PHILJA Chief of Office for the Philippine Mediation Center that this position was filled by the Court *En Banc*. Prior to Justice Econg, this position was appointed by the Chairpersons of the Divisions. In a letter dated August 8, 2008, PHILJA, through then Chancellor Ameurfina A. Melencio-Herrera (Chancellor Melencio-Herrera) and Vice Chancellor Justice Justo P. Torres, Jr. (Justice Torres), recommended the appointment of retired Deputy Court Administrator Atty. Bernardo T. Ponferrada (Atty. Ponferrada). This appointment was approved on August 21, 2008 by now retired Chief Justice Reynato S. Puno (Chief Justice Puno) as Chairperson of the First Division, and concurred in by Senior Associate Justice Leonardo A. Quisumbing (Associate Justice Quisumbing), Chairperson of the Second Division, and Associate Justice Consuela Ynares-Santiago (Associate Justice Ynares--Santiago), Chairperson of the Third Division. Thus, Justice Econg's appointment did not revoke the delegated appointing power in A.M. No. 99-12-08-SC (Revised).

However, Chief Justice Sereno did not address whether the Court *En Banc*, in appointing Justice Econg, had already adopted through practice an interpretation of the provisions of this Court's administrative orders.

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[13] A.M. No. 10-4-13-SC (2010), Third "Whereas" Clause.

Chief Justice Sereno presented that Atty. Mendoza's appointment was upon the recommendation of PHILJA, as embodied in its letter dated June 20, 2016. The letter, signed by PHILJA Chancellor Justice Adolfo S. Azcuna (Chancellor Azcuna), explained that a screening panel was constituted by the PHILJA Management Committee, which evaluated the candidates to the vacancy and recommended Atty. Mendoza. Chief Justice Sereno stated that Chancellor Azcuna and Vice Chancellor Justice Romeo S. Callejo, Sr. (Vice Chancellor Calleja) requested to be formally heard by the Court *En Banc* so that they may explain their recommendation of Atty. Mendoza.

In the view of the Chief Justice, a board resolution from the PHILJA Board of Trustees is not a prerequisite for Atty. Mendoza's appointment. As the PHILJA Chief of Office for the Philippine Mediation Center is only an *ex officio* member of the Executive Committee of the Philippine Mediation Center, it is not necessary that the appointee be nominated by the Board of Trustees, since the requirement only applies to the four (4) regular members.[14] Thus, Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center complied with Administrative Order No. 33-2008.

On August 25, 2017, Associate Justice Leonardo-De Castro responded[15] to the letter of the Chief Justice dated August 15, 2017. She noted that certain facts were not disclosed which were crucial to the resolution of the matter of Atty. Mendoza's appointment.

In her letter, Associate Justice Leonardo-De Castro was of the view that Atty. Ponferrada's appointment as the first PHILJA Chief of Office for the Philippine Mediation Center was approved by the Court *En Banc* in a June 3, 2008 Resolution in A.M. No. 08-2-5-SC-PHILJA, upon the recommendation of the PHILJA Board of Trustees in its Board Resolution No. 08-18

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[14] A.M. No. 08-2-5-SC PHILJA, Sec. 2(A).

[15] Titled "Re: Response to the Letter dated 15 August 2017 of the Chief Justice in A.M. No. 17-07-05-SC."

dated May 15, 2008. Thus, both Atty. Ponferrada and Justice Econg's appointments were made by the Court *En Banc* pursuant to a board resolution of the PHILJA Board of Trustees. Only Atty. Mendoza's appointment was made without a PHILJA Board of Trustees Resolution or an approval of the Court *En Banc*.

Further, it was her position that the August 8, 2008 letter, in which Atty. Ponferrada's appointment was approved by the Chairpersons of the Divisions, showed that Atty. Ponferrada was already heading the Philippine Mediation Center Office at that time, by virtue of A.M. No. 08-2-5-SC-PHILJA. The approval by the Chairpersons of the Division merely confirmed the earlier appointment and adjusted Atty. Ponferrada's term of office so that his two (2)-year term under A.M. No. 08-2-5-SC-PHILJA would coincide with his full-time service as Chief of Office.

Moreover, Associate Justice Leonardo-De Castro pointed out that the position of the PHILJA Chief of Office for the Philippine Mediation Center is significant, since this position carries the rank of Associate Justice of the Court of Appeals and a salary grade of 30.

As the power of appointment in the judiciary is vested in this Court by the Constitution, Associate Justice Leonardo-De Castro emphasized that the delegation of this power to the three (3) Chairpersons of the Divisions must be clear and unequivocal. An overbroad construction of the term "personnel" in A.M. No. 99-12-08-SC (Revised) to include all officials and employees aside from Justices and judges would unduly limit the appointing power of the Court *En Banc*. This would mean that no appointment of any court official or personnel would require *En Banc* approval, notwithstanding that certain positions, such as the Court Administrator, Deputy Court Administrators, Assistant Court Administrators, the PHILJA Chancellor and Vice Chancellor, the two (2) regular PHILJA Chiefs of Office for the Philippine Mediation Center prior to Atty. Mendoza, and other court officials, such as the Executive Clerk of Court, are appointed by the Court *En Banc*.

Associate Justice Leonardo-De Castro took the position that the appointment of the PHILJA Chief of Office for the Philippine Mediation Center is not covered by the delegated authority in A.M. No. 99-12-08-SC (Revised) for the following reasons:

First, the applicable appointment process is covered by a specific provision in the Court *En Banc*'s Resolution in A.M. No. 08-2-5-SC-PHILJA, namely, that the appointment must be made by this Court upon recommendation by PHILJA, through the Board of Trustees. *Second*, this appointing process is prescribed in a 2008 Resolution, long after the delegated authority was issued in 2003. *Third*, this Court's intent to retain its appointing power is evident in the appointments of Atty. Ponferrada and Justice Econg as the PHILJA Chiefs of Office for the Philippine Mediation Center. *Fourth*, this appointing process is the status quo maintained in the August 10, 2010 Resolution in A.M. No. 10-4-13-SC. *Fifth*, the rank and salary grade of the PHILJA Chief of Office for the Philippine Mediation Center are comparable to that of the PHILJA Vice Chancellor, who is appointed by the Court *En Banc*, upon recommendation of the PHILJA Board of Trustees. *Sixth*, Atty. Candelaria's "ambivalent memorandum" likewise cited Administrative Order No. 33-2008, which states that "[t]he Philippine Mediation Center Office shall have a PHILJA Chief of Office for PMC who shall be appointed by the Court, upon recommendation of PHILJA."

Associate Justice Leonardo-De Castro proposed to recall and revoke the appointment of Atty. Mendoza as the PHILJA Chief of Office for the Philippine Mediation Center to open the vacancy for more interested applicants. Moreover, she called for the setting of clear guidelines in the appointment of ranking court officials and for the identification of positions which must be appointed by the Court *En Banc*.

On September 5, 2017, Chief Justice Sereno submitted her response to Associate Justice Leonardo-De Castro's August 25, 2017 letter on Atty. Mendoza's appointment.

In her letter, Chief Justice Sereno was of the position that the Resolution dated June 3, 2008 in A.M. No. 08-2-5-SC-PHILJA only approved the membership of the Philippine Mediation Center Office Executive Committee, and did not appoint Atty. Ponferrada as the PHILJA Chief of Office for the Philippine Mediation Center. A contrary interpretation would mean that the Resolution dated June 3, 2008 also appointed Justice Melencio-Herrera as the PHILJA Chancellor, Justice Torres as the PHILJA Vice Chancellor, Court Administrator Zenaida Elepaño as Court Administrator, and Prof. Alfredo F. Tadiar as Chairperson of the PHILJA Alternative Dispute Resolution Department. To Chief Justice Sereno, the only document on the appointment of Atty. Ponferrada as the PHILJA Chief of Office for the Philippine Mediation Center was the letter dated August 8, 2008.

Moreover, the August 8, 2008 letter was not a mere confirmation of a previous appointment, but must be understood in light of the history of the Philippine Mediation Center. Prior to its creation, the Mediation Management and Education Division of the Judicial Reforms Office undertook the management of mediation training and other activities.[16] On October 16, 2001, Atty. Ponferrada was appointed by the Court *En Banc* as a PHILJA Professor II "with additional functions as Head of the Judicial Reforms Office"[17] from August 16, 2001 to August 16, 2003, pursuant to the Resolution in A.M. No. 01-10-5-SC-PHILJA. He was reappointed to the same position in 2003[18] and 2006.[19]

When the Philippine Mediation Center was created, the functions and personnel of the Judicial Reforms Office were transferred to it. Chief Justice Sereno explained that Atty.

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[16] A.M. No. 01-1-04-SC-PHILJA (2004).

[17] Letter of Vice Chancellor Justo P. Torres, Jr. to Chief Justice Reynato S. Puno, August 8, 2008.

[18] A.M. No. 03-9-07-SC (2003).

[19] A.M. No. 06-6-08-SC-PHILJA (2006).

Ponferrada's appointment as a PHILJA Professor II with "additional functions as Head of the Judicial Reforms Office"[20] was still in effect, but was now under the Philippine Mediation Center. Atty. Ponferrada was later appointed Full-time Professor II with administrative duties as Head of the Philippine Mediation Center.[21] Thus, to Chief Justice Sereno, the statement in the August 8, 2008 letter that Atty. Ponferrada headed the Philippine Mediation Office referred to his administrative duties during his appointment as Full-time Professor II, and not to any appointment as the PHILJA Chief of Office for the Philippine Mediation Center.

Chief Justice Sereno reiterated that a board resolution from the PHILJA Board of Trustees was unnecessary to appoint the PHILJA Chief of Office for the Philippine Mediation Center once the recommendation of PHILJA has been secured. Atty. Ponferrada's appointment was not accompanied by a PHILJA Board Resolution. The cited Board Resolution No. 08-18 dated May 15, 2008 referred to the approval of the revised roster of the PHILJA Corps of Professors, including Atty. Ponferrada as Full-time Professor II with administrative duties.

Finally, Chief Justice Sereno was of the view that the Court *En Banc* in A.M. No. 99-12-08-SC (Revised) delegated the authority to appoint personnel to the Chairpersons of the Divisions without imposing any distinction based on salary grades or judicial rank. For her, there is no basis for excluding third-level positions, such as those enumerated in A.M. No. 05-9-29-SC, from the delegated appointing power. That certain positions of comparable rank and salary grade continue to be appointed by the Court *En Banc* is irrelevant. She pointed out that A.M. No. 99-12-08-SC (Revised) likewise acknowledges that the Chief Justice may exercise discretion in determining which matters to refer to the Court *En Banc* for its action or resolution.

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[20] Letter of Vice Chancellor Justo P. Torres, Jr. to Chief Justice Reynato S. Puno, August 8, 2008.

[21] A.M. No. 08-6-4-SC-PHILJA (2008).

Associate Justice Leonardo-De Castro issued a letter dated September 25, 2017 in reply to the letter dated September 5, 2017. She observed that under the September 16, 2003 Resolution in A.M. No. 03-9-07-SC, Atty. Ponferrada's appointment as a full-time PHILJA Professor and additional position as head of the Judicial Reform Office—which later became the Philippine Mediation Center Office—was by virtue of a Court *En Banc* Resolution. His appointment as the PHILJA Chief of Office for the Philippine Mediation Center was formalized in the June 3, 2008 Resolution. It was Associate Justice Leonardo-De Castro's position that when the August 8, 2008 letter was signed by the Division Chairpersons, Atty. Ponferrada was still the head of the Philippine Mediation Center, and was already discharging the functions of that position.

Further, Associate Justice Leonardo-De Castro pointed out that the Chief Justice signed Memorandum Order No. 20-2015, in which Justice Econg was designated as Acting Philippine Mediation Center Office Head until a permanent appointment is recommended by the PHILJA Board of Trustees and made by the Court *En Banc*.

The letters dated September 5, 2017 and September 25, 2017 also addressed the issue of request approvals for foreign travel on official business of this Court's certain officials and personnel. However, this issue shall be separately resolved.

Separately, in A.M. No. 17-08-05-SC,[22] PHILJA Chancellor Azcuna submitted a Compliance, Manifestation and Request[23] dated September 28, 2017. In this Compliance, Manifestation and Request, Chancellor Azcuna stated that he submitted the following documents to the Honorable Court:

> 2. On September 19, 2017, PHILJA Chancellor submitted to this Honorable Court the following documents, thereby complying with the Resolution mentioned:

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[22] Titled "Re: Letter-Request dated August 8, 2017 of Atty. Lorenzo G. Gadon for Certified True Copies of Certain Documents in connection with the Filing of an Impeachment Complaint."

[23] *Rollo*, pp. 18-19.

(a) PHILJA's screening process for the five (5) applicants of the vacant PHILJA Chief of Office for Philippine Mediation Center (PMC) position conducted by the PHILJA Panel;

(b) Results of the PHILJA screening process; and

(c) Letter of PHILJA Chancellor addressed to Supreme Court Chief Justice and PHILJA Board of Trustees Chair, Maria Lourdes P. A. Sereno, transmitting the PHILJA Panel's recommendation of Atty. Brenda Jay Angeles-Mendoza as PHILJA Chief of Office for Philippine Mediation Center (PMC), on the basis of the results of the PHILJA screening process.[24]

Chancellor Azcuna further requested that PHILJA, through its Chancellor and/or Vice Chancellor and other officials, as well as Atty. Mendoza, be allowed to present their positions on the issue of Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center. Attached to the Compliance, Manifestation and Request was a letter dated September 27, 2017[25] from Atty. Mendoza to PHILJA, in which she requested for an opportunity to be heard by this Court regarding her appointment.

Notably, the Compliance, Manifestation and Request serves as an admission that there are no minutes of a board meeting or board resolution issued by the PHILJA Board of Trustees containing the recommendation for Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center. It appears no such minutes or board resolution could be submitted to this Court. Neither does it appear that the PHILJA Board of Trustees took action on the recommendation for appointment. Instead, the documents submitted by Chancellor Azcuna show that a PHILJA screening panel conducted the screening process for the five (5) applicants to the position. It was the PHILJA Chancellor, who transmitted the recommendation to the Chief Justice. Neither the PHILJA Board

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[24] *Id*. at 18.

[25] *Id*. at 20.

of Trustees convened nor the matter of the appointment to the PHILJA Chief of Office for the Philippine Mediation Center put in its agenda, even if its Chair was the Chief Justice.

On Atty. Mendoza's request to be heard regarding her appointment, it must be emphasized that "there is no vested right in public office, [or] an absolute right to hold office."[26] Moreover, any proper recourse would not be addressed to PHILJA, but to this Court as an intervention. Such an intervention by the appointee may be unnecessary in this case, as this is an administrative matter to review the acts of the Chief Justice in the appointment of the PHILJA Chief of Office for the Philippine Mediation Center. This matter does not involve any review of the qualifications or eligibility of Atty. Mendoza for the position.

Nevertheless, to give the parties the opportunity to be heard on this matter, on October 10, 2017, this Court issued a Resolution[27] requiring PHILJA and Atty. Mendoza to submit their respective memoranda "on the process of selection of the PHILJA Chief of Office for the Philippine Mediation Center, and on . . . the validity of the appointment of the current occupant of the office within a non-extendible period of seven (7) calendar days" from receipt.

On October 18, 2017, PHILJA Chancellor Azcuna submitted a Respectful Manifestation,[28] stating that he would be on leave from October 17 to 26, 2017, and that Vice Chancellor Callejo, having been designated as Acting Chancellor, would submit the memorandum of PHILJA.

On October 19, 2017, Acting Chancellor Callejo filed an Urgent Motion for Extension,[29] praying for an extension of three (3) working days, or until October 25, 2017, within which to file the memorandum of PHILJA.

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[26] *Civil Service Commission v. Javier*, 570 Phil. 89, 113-114 (2008) [Per J. Austria-Martinez, *En Banc*].

[27] *Rollo*, p. 21.

[28] *Id*. at 28.

[29] *Id*. at 29-31.

On October 20, 2017, Atty. Mendoza filed her Memorandum,[30] where she stated that she informally learned of the vacancy in the position of the PHILJA Chief of Office for the Philippine Mediation Center from its then occupant, now a Sandiganbayan Associate Justice, Justice Econg in January 2016, during a Philippine Mediation Center event. Sometime in March 2016, an Announcement was issued, stating that applications for the position of the PHILJA Chief of Office for the Philippine Mediation Center may then be filed and received by the Secretariat of the Selection and Promotion Board.[31] The Announcement was signed by Clerk of Court for the *En Banc* Atty. Felipa G. Borlongan-Anama (Atty. Anama).[32]

On March 15, 2016, Atty. Mendoza submitted her Expression of Interest with an attached curriculum vitae[33] to the Secretariat of the Selection and Promotion Board. She was interviewed for the position on May 16, 2016 by a three (3)-member panel composed of Chancellor Azcuna, Vice-Chancellor Callejo, and the PHILJA Chief of Office for Academic Affairs Delilah Vidallon-Magtolis.[34] She then received a letter dated June 9, 2016 from Atty. Elmer DG. Eleria (Atty. Eleria), the PHILJA Chief of Office for Administration, stating that PHILJA considered her application and that should she still be interested in pursuing her application, to signify her intent by signing the attached reply.[35] She submitted the signed reply in a letter dated June 18, 2016, in which she also stated that she was under an intermittent consulting contract with the Asian Development Bank until December 31, 2016 and had teaching loads with the De La Salle University College of Law and University of the Philippines College of Engineering.[36]

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[30] *Id*. 36-167.

[31] *Id*. at 36.

[32] *Id*. at 47.

[33] *Id*. at 48-56.

[34] *Id*. at 38-39.

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

[36] *Id*. at 69-70.

Sometime after June 28, 2016, she was informed that she was appointed as the PHILJA Chief of Office for the Philippine Mediation Center through a phone call from Atty. Eleria. She also obtained a copy of Memorandum Order No. 26-2016, stating her appointment. She took her oath of office on October 3, 2016. Her Memorandum further detailed her major accomplishments as the PHILJA Chief of Office for the Philippine Mediation Center and her qualifications for this position.[37]

In her Memorandum, Atty. Mendoza stated that she did not seek or receive from any member of the judiciary any endorsement of her application for the PHILJA Chief of Office for the Philippine Mediation Center to directly or indirectly influence the selection and appointment process. She pointed out that Memorandum Order No. 26-2016 was approved by the Chief Justice and the Chairpersons of the Second and Third Divisions of this Court. In her view, she was entitled to presume that the selection and appointment process of PHILJA was legal and proper, and she participated in this process in good faith and with full compliance with all the published requirements for the position. She submitted that any resolution on any perceived gaps or losses in the existing guidelines of this Court be applied prospectively, and should not affect her continued and faithful discharge of her service.[38] She prayed that this Court confirm and ratify her appointment as the PHILJA Chief of Office for the Philippine Mediation Center.[39]

On October 27, 2017, Vice Chancellor Calleja submitted his Comment,[40] where he stated that "[PHILJA] ha[d] not followed a specific procedure for the selection of the Chief of Office of the Philippine Mediation Center Office."[41]

On August 1, 2001, Atty. Ponferrada was recommended by then Chancellor Melencio-Herrera to be appointed as a PHILJA

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[37] *Id*. at 40-42.

[38] *Id*. at 42-43.

[39] *Id*. at 45.

[40] *Id*. at 171-200.

[41] *Id*. at 176.

Professor II on a full-time basis, and to head the Judicial Reform Office. The PHILJA Board of Trustees approved his appointment in its BOT Resolution No. 01-19 dated September 18, 2001.[42] The Court *En Banc* approved BOT Resolution No. 01-19 on October 16, 2001. Since then, and until 2008, his appointment as a PHILJA Professor II and Acting Chief of the Judicial Reform Office had been renewed by this Court every two (2) years.[43]

In the meantime, on February 12, 2008, this Court issued Administrative Order No. 33-2008, defining the organizational plans and functions of the Philippine Mediation Center Office. Atty. Ponferrada performed the duties, functions, and responsibilities of the PHILJA Chief of Office for the Philippine Mediation Center in an acting capacity, in addition to his existing positions. He was among the persons recommended to the PHILJA Board of Trustees by then Chancellor Melencio-Herrera to be members of the Executive Committee of the Philippine Mediation Center Office. He was designated as "ex officio member" of the Executive Committee. In its June 3, 2008 Resolution, this Court approved, among others, the membership of the Executive Committee, including Atty. Ponferrada. On August 8, 2008, then Vice Chancellor Torres wrote a letter to then Chief Justice Puno, recommending that Atty. Ponferrada be appointed as a full-time PHILJA Chief of Office for the Philippine Mediation Center. Former Chief Justice Puno, former Associate Justice Quisumbing, and former Associate Justice Ynares-Santiago, the respective Chairpersons of this Court's First, Second, and Third Divisions, approved this recommendation on August 21, 2008. On July 1, 2008, Atty. Ponferrada assumed office as the PHILJA Chief of Office for the Philippine Mediation Center.[44]

When Atty. Ponferrada died on June 25, 2009, Chancellor Azcuna recommended to Chief Justice Puno that retired Justice Marina L. Buzon (Justice Buzon), then the Executive Secretary

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[42] *Id*.

[43] *Id*. at 177.

[44] *Id*. at 177-179.

of the PHILJA Board of Trustees, be designated as the Acting PHILJA Chief of Office for the Philippine Mediation Center, until a new Chief of Office was appointed. On June 26, 2009,[45] Justice Buzon was designated as the Acting PHILJA Chief of Office for the Philippine Mediation Center.

Thereafter, on May 8, 2015, Chief Justice Sereno issued Memorandum Order No. 20-2015, designating Justice Econg as the Acting PHILJA Chief of Office for the Philippine Mediation Center until a permanent appointment would be issued by the Court *En Banc* as recommended by the PHILJA Board of Trustees. On May 25, 2015, the PHILJA Board of Trustees held a special 93rd meeting, in which BOT Resolution No. 11-15 was issued recommending Justice Econg to be appointed as the PHILJA Chief of Office for the Philippine Mediation Center. This BOT Resolution was approved by the Court *En Banc* in its Resolution dated July 7, 2015 in A.M. No. 15-07-01.[46]

When the PHILJA Board of Trustees was informed that Justice Econg was promoted to the Sandiganbayan, it directed Chancellor Azcuna to request that the Chief Justice open the vacancy for the PHILJA Chief of Office for the Philippine Mediation Center. Chancellor Azcuna's request dated February 29, 2016 was approved by Chief Justice Sereno.[47]

According to Acting Chancellor Callejo, the PHILJA Management Committee held a conference,[48] in which they approved Resolution No. 01-2016, creating a screening committee

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[45] Although the Comment stated that Chief Justice Puno approved Chancellor Azcuna's request on "June 29, 2001," this Court, in its June 15, 2010 Resolution in A.M. No. 10-5-5-SC-PHILJA, stated that Justice Buzon was designated as acting PHILJA Chief of Office for the Philippine Mediation Center on June 26, 2009.

[46] *Rollo*, pp. 180-181.

[47] *Id*. at 181.

[48] Chaired by Chancellor Azcuna, and attended by Vice Chancellor Callejo, PHILJA Chief of the Academic Affairs Office Justice Delilah Vidallon-Magtolis, PHILJA Board of Trustees Executive Secretary Justice Buzon, and other members.

to screen the applicants for the PHILJA Chief of Office for the Philippine Mediation Center, and to prepare and submit its report and recommendation to the PHILJA Board of Trustees.

When the screening process concluded, the screening panel issued its recommendation of Atty. Mendoza in a letter-report addressed to Chief Justice Sereno as Chief Justice of this Court and Chair of the PHILJA Board of Trustees, through Clerk of Court of the *En Banc* Atty. Anama.[49] Atty. Mendoza was thereafter appointed the PHILJA Chief of Office for the Philippine Mediation Center by virtue of Memorandum Order No. 26-2016 dated June 28, 2016.[50]

In Acting Chancellor Callejo's view, letter-report from Chancellor Azcuna to Chief Justice Sereno was fully compliant with Section 2(B) of Administrative Order No. 33-2008. He stated that PHILJA may only recommend the PHILJA Chief of Office for the Philippine Mediation Center to this Court through the Chair and Members of the PHILJA Board of Trustees and/or Chancellor Azcuna and/or the other executive officials of PHILJA. For him, if it were this Court's intent that only the PHILJA Board of Trustees can solely and exclusively recommend the PHILJA Chief of Office for the Philippine Mediation Center, it should have specifically named the PHILJA Board of Trustees in Section 2(B) of Administrative Order No. 33-2008. He pointed out that under Section 11(A) of Administrative Order No. 33-2008, the regular members of the Executive Committee of the Philippine Mediation Center Office are recommended by PHILJA, nominated by the PHILJA Board of Trustees,[51] and appointed by this Court:

Section 2. Organizational Structure

The Philippine Mediation Center Office shall be composed of:

A. Executive Committee — The powers and authority of the PMC Office shall be vested in and exercised by an Executive

[49] *Rollo*, pp. 182-184.

[50] *Id*. at 206.

[51] *Id*. at 185-187.

> Committee composed of the PHILJA Chancellor as Chairperson and eight members composed of four regular members who shall be recommended by PHILJA, nominated by the PHILJA Board of Trustees and appointed by the Supreme Court; and four ex officio members, namely, the Court Administrator, the Vice Chancellor, the PHILJA Chief of Office for PMC, and the Chair of the PHILJA ADR Department, all of whom are entitled to vote. . . .[52]

Further, Acting Chancellor Callejo agreed with the Chief Justice's position that pursuant to the Court *En Banc*'s Resolution in A.M. No. 99-12-08-SC (Revised), this Court's power of appointment has been delegated to the Chairpersons of the Divisions. He invoked the Supreme Court Human Resource Manual, which states that level five positions, including Court Attorney V to Chiefs of Office, classified as highly confidential and policy determining pursuant to A.M. No. 05-9-79-SC, shall be made by the Chairpersons of the Divisions. He noted that the Chairpersons of the Divisions approved Memorandum Order No. 37-2015 dated October 15, 2015, appointing Atty. Renelie B. Mayuga as Judicial Reform Program Administrator of the Program Management Office; Memorandum Order No. 12-04-16 dated January 11, 2016, appointing Atty. Anna-Li R. Papa-Gombio as Deputy Clerk of Court, Executive Officer, Office of the Clerk of Court of the Court *En Banc*; and Memorandum Order No. 10-66-16 dated July 4, 2016, appointing Atty. Basilia T. Ringol as Deputy Clerk of Court and Chief of the Judicial Records Office. He prayed that Associate Justice Leonardo-De Castro's July 10, 2017 Memorandum be dismissed.[53]

On November 3, 2017, Acting Chancellor Calleja submitted an Urgent Motion to Admit Amended and Supplemental Comment,[54] with attached Amended and Supplemental Comment.[55] In his Amended and Supplemental Comment, he stated that

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[52] A.M. No. 08-2-5-SC-PHILJA (2008), Sec. 2(A).

[53] *Rollo*, pp. 198-200.

[54] *Id*. at 208-209.

[55] *Id*. at 209-255.

Atty. Ponferrada was appointed as the PHILJA Chief of Office for the Philippine Mediation Center on August 21, 2008 not by this Court, but by the Chairpersons of the Divisions.[56] He contended that A.M. No. 99-12-08-SC and the Supreme Court Human Resource Manual had not been revoked, expressly or impliedly, by the Court *En Banc*, despite the *En Banc* appointments of Assistant Court Administrator Jenny Lind R. Aldecoa-Delorino, Deputy Court Administrator Thelma C. Bahia, the PHILJA Chancellor, and the PHILJA Vice-Chancellor.[57] Any repeal or revocation by implication of an issuance or resolution of the Court *En Banc* may only take place when there is patent intent to do so. The appointment of Justice Econg as the PHILJA Chief of Office for the Philippine Mediation Center did not reveal a clear intent to revoke A.M. No. 99-12-08-SC and the Supreme Court Human Resource Manual.[58] Acting Chancellor Calleja was of the view that this Court should revisit its conflicting Resolutions and formulate controlling guidelines to guide the personnel of the Judiciary, the Bar, and other stakeholders. In his Amended and Supplemental Comment, he prayed that Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center be affirmed and confirmed.[59]

On November 6, 2017, Chief Justice Sereno issued a letter in which, among others, she responded to Associate Justice Leonardo-De Castro's letter dated September 25, 2017. She stated her strong opposition against the recall of Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center, pointing out that there were procedural deficiencies and administrative consequences in this recall.

First, Chief Justice Sereno was of the position that a *quo warranto* proceeding is required before an incumbent official

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[56] *Id*. at 219-220 and 248.

[57] *Id*. at 247 and 250.

[58] *Id*. at 251-252.

[59] *Id*. at 254-255.

is removed due to an allegedly illegal appointment. Following this Court's ruling in *Topacio v. Ong*,[60] collateral attacks on the title of a public officer are prohibited. She stated that the present matter is only meant to clarify the scope of the delegated powers of the Chairpersons of the Divisions, and cannot be used to collaterally attack Atty. Mendoza's right to her position, especially when her appointment was made in good faith by the Chairpersons of the Divisions. She submitted that any resolution in any ambiguity of the scope of the delegated appointing power cannot be applied retroactively to Atty. Mendoza.

Second, she was of the view that the supposed absence of a PHILJA Board of Trustees resolution recommending Atty. Mendoza did not mean that her appointment was not approved by the Trustees. She stated that the PHILJA Board of Trustees was informed of Atty. Mendoza's appointment during the 99th PHILJA Board of Trustees meeting held on July 28, 2016, in which the Board noted the approval of the appointment by the Chairpersons of the Divisions. During the 100th PHILJA Board of Trustees meeting on September 22, 2016, PHILJA Chancellor Azcuna again informed the Board of Atty. Mendoza's appointment. The PHILJA Board of Trustees acted on Atty. Mendoza's recommendations. To Chief Justice Sereno, these approvals of Atty. Mendoza's recommendations indicated an implied ratification of the recommendation made by PHILJA Chancellor Azcuna "on behalf of PHILJA" and the appointment made by the Chairpersons of the Divisions, as the PHILJA Board of Trustees, had also not repudiated Atty. Mendoza's appointment.

Third, Chief Justice Sereno pointed out the administrative consequences should this Court's clarification on the delegated appointing power be made to apply retroactively. Such a retroactive effect would put into question not only Atty. Mendoza's appointment, but also of those who have been appointed by the Chairpersons of the Divisions in the exercise

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[60] 595 Phil. 491 (2008) [Per *J.* Carpio-Morales, *En Banc*].

of their delegated authority in good faith. She noted that since the Civil Service Commission had approved some of these appointments in accordance with Section 9(h) of Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines, on the basis of the Supreme Court Merit Selection and Promotion Plan, these appointments were considered completed. These appointees cannot be removed except for cause, and certain administrative procedures must be followed before their appointments may be recalled.

She further recommended that the proposed clarification on the authority to appoint court personnel with salary grades 29 and higher be reflected in an amended Supreme Court Merit Selection and Promotion Plan, which must be submitted to the Civil Service Commission for its approval. An agency merit selection plan is the basis for the review and evaluation of all appointments to the civil service by the Civil Service Commission and is binding upon the head of the agency, its employees, and the Civil Service Commission.

Fourth, Chief Justice Sereno proffered that instead of declaring the position of the PHILJA Chief of Office for the Philippine Mediation Center vacant, this Court instead referred the supposed absence of endorsement to the PHILJA Board of Trustees to allow it to formally act upon the matter. To her view, this would be more equitable considering the PHILJA Board of Trustees' implied ratification, and would be less disruptive given that Atty. Mendoza had already begun work on Philippine Judicial Academy projects.

Finally, Chief Justice Sereno noted that Atty. Mendoza's appointment is only for a fixed term of two (2) years and would end in June 2018. It was her position that given this limited tenure, it would be reasonable if this Court respect her appointment and await the end of her term.

On February 20, 2018, Atty. Mendoza issued a letter addressed to this Court, through Chief Justice Sereno, tendering her resignation as the PHILJA Chief of Office for the Philippine Mediation Center, effective February 26, 2018. In her letter, she explained that she was "in serious discussion with an

international organization for a pioneering work on environment mediation that require[d] [her] availability" within the month.[61] Her resignation had the recommending approval of PHILJA Chancellor Azcuna.

This matter invokes the administrative powers of the Supreme Court *En Banc*. It does not call for the exercise of this Court's adjudicative powers. Thus, the purpose of this Resolution is to resolve pending questions as to the interpretation of this Court's power as contained in the Constitution, relevant laws, and this Court's administrative orders. Resolutions of this nature may also suggest not only clarifications but also changes in policy when necessary.

Being a collegial body, the Court *En Banc* should welcome queries and suggestions on administrative matters raised by its members either by themselves or through reflecting committees that have been assigned to them. By design, the Constitution crafted a body composed of fifteen (15) Justices in order that in all matters dealt with by the highest judicial body, most, if not all, possible perspectives can be taken into account. Thus, the judiciary is collectively led by the Supreme Court. None of its members, including its presiding officer, should be immune or impervious from accountability towards this body.

The issues to be resolved in this administrative matter are:

First, the identification of the positions, particularly from those among the third-level positions, in which appointment shall be retained by the Court *En Banc*; and

Second, a review of the appointment of Atty. Brenda Jay A. Mendoza as the Philippine Judicial Academy Chief of Office for the Philippine Mediation Center.

I

The 1987 Constitution vests the power of appointment within the judiciary in the Supreme Court. Article VIII, Section 5(6) states:

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[61] Letter of Atty. Breanda Jay A. Mendoza to this Court, February 20, 2018.

Section 5. The Supreme Court shall have the following powers:

. . . . . .

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

The "Supreme Court" in which this appointing power is conferred is the Court *En Banc*:

This is in contrast to the President's power to appoint which is a self-executing power vested by the Constitution itself and thus not subject to legislative limitations or conditions. The power to appoint conferred directly by the Constitution on the Supreme Court *en banc* and on the Constitutional Commissions is also self-executing and not subject to legislative limitations or conditions.

. . . . . .

Fifth, the 1935, 1973, and 1987 Constitutions make a clear distinction whenever granting the power to appoint lower-ranked officers to members of a collegial body or to the head of that collegial body. Thus, the 1935 Constitution speaks of vesting the power to appoint "**in the courts**, or in the heads of departments." Similarly, the 1973 Constitution speaks of "**members of the Cabinet**, courts, heads of agencies, commissions, and boards."

Also, the 1987 Constitution speaks of vesting the power to appoint "**in the courts**, or in the heads of departments, agencies, commissions, or boards." This is consistent with Section 5(6), Article VIII of the 1987 Constitution which states that the "Supreme Court shall . . . [a]ppoint all officials and employees of the Judiciary in accordance with the Civil Service Law," making the Supreme Court *En Banc* the appointing power. In sharp contrast, when the 1987 Constitution speaks of the power to appoint lower-ranked officers in the Executive branch, it vests the power "**in the heads** of departments, agencies, commissions, or boards."[62] (Emphasis in the original, citations omitted)

This Court's nature as a collegial body requires that the appointing power be exercised by the Court *En Banc*, consistent with Article VIII, Section 1 of the Constitution:

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[62] *Rufino v. Endriga*, 528 Phil. 498-500 (2006) [Per J. Carpio, *En Banc*].

Section 1. The judicial power shall be vested in *one Supreme Court* and in such lower courts as may be established by law. . . . (Emphasis supplied)

A collegial body or court is one in which each member has approximately equal power and authority. Moreover, its members act on the basis of consensus or majority rule. In *Payumo v. Sandiganbayan*,[63] the Sandiganbayan, which is another collegial court, was described as such:

The Sandiganbayan is a special court of the same level as the Court of Appeals (CA), and possessing all the inherent powers of a court of justice, with functions of a trial court. *It is a collegial court. Collegial is defined as relating to a collegium or group of colleagues. In turn, a collegium is "an executive body with each member having approximately equal power and authority ." The members of the graft court act on the basis of consensus or majority rule. . . .*[64] (Citations omitted, emphasis supplied)

Since this Court is a collegial court, each Justice has equal power and authority, and all Justices must act on the basis of consensus or majority rule. Even if this Court has a Chief Justice and does much of its work in divisions, it still remains that this Court must exercise its powers as one (1) body:

There is only one Supreme Court from whose decisions all other courts are required to take their bearings. While most of the Court's work is performed by its three divisions, the Court remains one court — single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice. Any doctrine or principle of law laid down by the Court may be modified or reversed only by the Court *en banc*.[65] (Citation omitted)

The only exception is when the Court *En Banc* itself delegates the exercise of some of its powers.

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[63] 669 Phil. 545-570 (2011) [Per J. Mendoza, Third Division].

[64] *Id*. at 561-562.

[65] *Complaint of Mr. Aurelio Indencia Arrienda Against Justices Reynato S. Puno, et al.*, 499 Phil. 1, 15 (2005) [Per J. Corona, *En Banc*].

"The three powers of government—executive, legislative, and judicial—have been generally viewed as non-delegable."[66] Nonetheless, the delegation of these powers has been found necessary owing to the complexity of modern governments.[67] This Court, which is conferred with not only the power of judicial review, but also the role of administrator over all courts and their personnel,[68] has found it necessary to delegate some matters to dispense justice effectively and efficiently.

Being the source of authority, every act in relation to a delegated power may, however, be reviewed by the delegating authority. This is to ensure that the act of the delegate does not go beyond its intended scope.

This Court has resolved to delegate the disposition of certain matters to its three (3) divisions, to their chairpersons, or to the Chief Justice alone.

Under Administrative Circular No. 37-2001A dated August 21, 2001,[69] the Chief Justice, with the concurrence of the Chairs of Divisions, may select the appointees for Assistant Chief of Office and higher positions:

IV. BASIC POLICIES

. . . . . .

15. The selection of appointees to the positions of Assistant Chief of Office, SC Senior Chief Staff Officer and other higher positions shall be made by the Chief Justice with the concurrence of the Chairmen of Divisions pursuant to A.M. No. 99-12-08-SC.

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[66] *Quezon City PTCA Federation, Inc. v. Department of Education*, G.R. No. 188720, February 23, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/188720.pdf> 8 [Per *J.* Leonen, *En Banc*].

[67] *Id.*

[68] Pursuant to CONST., Art. VIII, Sec. 6, which states:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[69] Adm. Circ. No. 37-2001A (2001), Establishing the Supreme Court Merit Selection and Promotion Plan.

Thereafter, this Court issued its Resolution dated April 22, 2003 in A.M. No. 99-12-08-SC, titled "Referral of Administrative Matters and Cases to the Divisions of the Court, The Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution" [A.M. No. 99-12-08-SC (Revised)]:

> **WHEREAS**, a considerable number of administrative matters or cases are still referred to the Court *En Banc* for disposition, determination, or resolution;
>
> **WHEREAS**, to relieve the Court *En Banc* from the additional burden which such matters or cases impose, and for it to have more time for judicial cases which require lengthy careful deliberations, administrative matters or cases shall be assigned to the Divisions of the Court, to the Chairmen of the Divisions, or to the Chief Justice alone[.]

Among the matters which were referred to the Chairpersons of the Divisions for their action or resolution is the appointment power of this Court:

> II. To **REFER** to the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to, or in connection with,
>
> (a) Appointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy (PHILJA), and the Judicial and Bar Council (JBC); officers and members of existing committees; and consultants[.][70] (Emphasis in the original)

However, the extent of the appointments of "regular (including coterminous), temporary, casual, or contractual personnel" which should be referred to the Chairpersons of the Divisions is not defined in A.M. No. 99-12-08-SC (Revised).

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[70] A.M. No. 99-12-08-SC Revised (2003), Sec. II.

On August 10, 2010, this Court issued A.M. No. 10-4-13-SC,[71] expanding the matters delegated under A.M. No. 99-12-08-SC (Revised). Among others, the then existing rules and procedures on the appointment of personnel were maintained:

> III. To maintain the STATUS QUO, or, in other words, *follow existing rules and procedure* for the following administrative and financial management functions and authorities:
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> . . . . . .
>
> 2) Appointment of personnel[.][72] (Emphasis supplied)

Adopted in 2012, the Supreme Court Human Resource Manual[73] states the procedure of appointment of positions within this Court.[74] The selection of appointees in career service differs according to the level of the position.[75]

First level career positions "include clerical, trades, crafts, and custodial service positions involving non-professional or sub-professional work in a non-supervisory capacity requiring less than four (4) years of collegiate studies."[76] Second-level positions are "professional, technical, and scientific positions involving professional, technical, or scientific work in a supervisory or non-supervisory capacity up to Division Chief level, requiring at least four (4) years of collegiate studies."[77] The screening and recommendation of appointees to vacancies in the first and second levels are made by the Supreme Court

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[71] Titled "Providing for the Further Delegation of Approving Thresholds and Authorities to the Heads of Decentralized Units."

[72] A.M. No. 10-4-13-SC, Sec. III (2).

[73] Approved by the Court *En Banc* in A.M. No. 00-6-1-SC (2012), Re: Human Resource Manual [Formerly referred to as Personnel Manual].

[74] Chapter Two, "Personnel Policies and Procedures."

[75] The classification is based on the Civil Service Commission Omnibus Rules Implementing Book V, EO 292 and Other Pertinent Civil Service Laws. See Supreme Court Human Resource Manual, p. II-1.

[76] Supreme Court Human Resource Manual, p. II-2.

[77] *Id.*

Selection and Promotion Board. The recommendations are given to the Chief Justice who, with the concurrence of the Chairpersons of the Divisions, selects the candidate deemed most qualified to be appointed.[78]

Third-level positions are "positions from Court Attorney V to Chiefs of Offices which have been classified by the Court as highly technical and/or policy determining pursuant to AM No. 05-9-29-SC, dated September 27, 2005."[79] Under the Supreme Court Human Resource Manual, these positions are filled in by the Chief Justice, with the concurrence of the Chairpersons of the Divisions:

> 8. The selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy[-] determining pursuant to AM No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to AM No. 99-12-08-SC.[80]

Under A.M. No. 05-9-29-SC,[81] third-level positions in this Court with salary grade 26 and above, excluding the Chief Justice, the Associate Justices, and the Regular Members of the Judicial and Bar Council are classified as "highly technical or policy-determining." These positions range from the PHILJA Chancellor and Court Administrator, both with salary grade 31, to Court Attorney V and PHILJA Attorney V, both with salary grade 26:

Salary Grade	Position Title
31	PHILJA Chancellor
	Court Administrator

[78] *Id*. at II - 6.

[79] *Id*. at II - 2.

[80] *Id*. at II - 6.

[81] A.M. No. 05-9-29-SC (2005), "In the Matter of Classifying as Highly Technical and/or Policy Determining the Third Level Positions Below that of Chief Justice and Associate Justices in the Supreme Court, Including Those in the Philippine Judicial Academy and the Judicial and Bar Council, and for Other Purposes."

30	PHILJA Vice-Chancellor
	Deputy Court Administrator
	Clerk of Court
	Assistant Clerk of Court
	Division Clerk of Court
	Assistant Court Administrator
	PHILJA Assistant Chancellor
	PHILJA Professor II
29	Assistant Division Clerk of Court
	Deputy Clerk of Court and Bar Confidant
	Deputy Clerk of Court and Chief Administrative Officer
	Deputy Clerk of Court and Chief Attorney
	Deputy Clerk of Court and Chief, Judicial Records Office
	Deputy Clerk of Court and Chief, Management Information System Office
	Deputy Clerk of Court and Reporter
	Supreme Court Executive Officer
	Supreme Court Chief, Fiscal Management and Budget Office
	Judicial Reform Program Administrator, Program Management Office
	Mandatory Continuing Legal Office Executive Officer
	PHILJA Professor I
	PHILJA Executive Secretary
	Mandatory Continuing Legal Office Assistant Executive Officer
	Judicial and Bar Council Executive Officer

28	(Office of Recruitment, Selection and Nomination) (Office of Policy and Development Research)
	Judicial and Bar Council Chief of Office (Office of Administrative & Financial Services)
	Supreme Court Assistant Chief of Office
	Supreme Court Senior Chief Staff Officer
	Deputy Judicial Reform Program Administrator, Program Management Office
	Office of the Court Administrator Chief of Office
	Judicial Supervisor
27	Office of the Court Administrator Chief of Office
	Chief Judicial Reform Officer, Program
	Management Office
	Court Attorney VI
26	Supreme Court Supervising Medical Officer
	Court Attorney V
	PHILJA Attorney V

Third-level positions with salary grade 26 or higher created after A.M. No. 05-9-29-SC shall likewise be deemed highly technical or policy-determining positions.

Notably, the purpose for which A.M. No. 05-9-29-SC classified the third-level positions in this Court—including those in the Office of the Court Administrator, PHILJA, Judicial and Bar Council, and Mandatory Continuing Legal Office—as highly technical or policy-determining is to strengthen the Judiciary's independence from the Civil Service. Should these positions not be classified as highly technical or policy-determining, they may be classified instead as managerial or executive, which

would require civil service eligibility prescribed by the Civil Service Commission:

WHEREAS, in her Memorandum dated 17 August 2005, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, reported on the results of the meeting of the Constitutional Fiscal Autonomy Group (CFAG) — Study Group held on 10 August 2005, and informed the Chief Justice that *managerial or executive positions in the CFAG Agencies shall require the eligibility prescribed for the same positions within the bureaucracy, which is the Career [Service] Executive Eligibility (CSEE) conferred by the Civil Service Commission or the Career Executive Service Eligibility (CESE) conferred by the Career Executive Service Board; that highly technical or policy-determining positions do not require CSEE or CESE; and that each CFAG member has the discretion to classify which of its third[-]level positions are managerial or executive or highly technical or policy-determining*;

WHEREAS, Atty. Candelaria further stated that the third[-]level positions in the Supreme Court, except the position of Director III, which is now vacant in view of the resignation of its holder effective 31 August 2005, are either highly technical or policy-determining in character, with titles that are unique to the Judiciary and with qualification standards already established either by the Constitution such as those for the Chief Justice, Associate Justices and the Regular Members of the Judicial and Bar Council (JBC), by statutes, by resolutions of the Court, or by authority of the Chief Justice as duly recognized and accepted by the CSC;

WHEREAS, *it would serve the best interest of the service and further promote the autonomy and strengthen the independence of the Judiciary if all third[-]level positions* below the Chief Justice, Associate Justices, and Regular Members of the Judicial and Bar Council (JBC) in the Supreme Court (SC), including those in the Office of the Court Administrator (OCA), Philippine Judicial Academy (PHILJA), JBC, and Mandatory Continuing Legal Office (MCLEO), which are unique to the Judiciary, *be classified as primarily highly technical or policy-determining and that the qualification standards already established for such positions, except as indicated below, be maintained*[.][82] (Emphasis supplied)

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[82] A.M. No. 05-9-29-SC (2005).

Despite the procedure in the Supreme Court Human Resource Manual, there are third-level positions, classified as highly technical or policy-determining pursuant to A.M. No. 05-9-29-SC, which have been and continue to be appointed by the Court *En Banc*. Pursuant to Section 3 of Presidential Decree No. 828, as amended by Presidential Decree No. 842, the Court *En Banc* appoints the Court Administrator and Deputy Court Administrators:

> Section 3. Qualifications, appointment and tenure. — The Court Administrator and the Deputy Court Administrators shall have the same qualifications as Justices of the Court of Appeals. *They shall be appointed by the Supreme Court* and shall serve until they reach the age of sixty-five (65) years or become incapacitated to discharge the duties of their office, but may be removed or relieved for just cause by a vote of not less than eight (8) Justices of the Supreme Court; provided that a member of the Judiciary appointed to any of the positions, shall not be deemed thereby to have lost the rank, seniority, precedence, benefits, and other privileges appertaining to his judicial position, and his service in the Judiciary, to all intents and purposes, shall be considered as continuous and uninterrupted. (Emphasis supplied)

For example, in a Resolution dated April 16, 2013 in A.M. No. 13-04-07-SC,[83] the Court *En Banc* appointed then Assistant Court Administrator Thelma C. Bahia as Deputy Court Administrator. Likewise, as observed by Associate Justice Leonardo-De Castro, the Court *En Banc* appoints the Assistant Court Administrators by established practice.[84]

Republic Act No. 8557, which established PHILJA, similarly mandates that the PHILJA Chancellor, Vice-Chancellor, Executive Secretary, and the Corps of Professorial Lecturers be appointed by this Court:

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[83] A.M. No. 13-04-07-SC (2013), Re: Applicants for the Position of Deputy Court Administrator [Vice Hon. Antonio M. Eugenio, Jr.].

[84] *Rollo*, p. 3, Memorandum dated July 10, 2017 of Associate Justice Teresita J. Leonardo-De Castro. *See* e.g., Resolution dated January 12, 2010 in A.M. No. 09-12-3-SC (Re: Applicants for the Position of Assistant Court Administrator), issued by the Court *En Banc*.

Section 6. The Executive Officials of the Academy shall be composed of a Chancellor, a Vice-Chancellor and an Executive Secretary, *to be appointed by the Supreme Court* for a term of two (2) years and without prejudice to subsequent reappointments. . . .

Section 7. The Academy shall be staffed by a Corps of Professorial Lecturers. A Lecturer shall be nominated by any member of the Board of Trustees. Upon a majority vote of the Board, *the nomination shall be submitted to the Supreme Court for approval and formal appointment* for a term of two (2) years without prejudice to subsequent reappointments.[85] (Emphasis supplied)

As no distinction was made in Republic Act No. 8557, and consistent with this Court's collegial nature, these PHILJA appointments must be made by the Court *En Banc*.[86]

The Resolution dated September 29, 2005 in A.M. No. 05-9-29-SC was issued after A.M. No. 99-12-08-SC (Revised). However, A.M. No. 05-9-29-SC itself does not state that it modifies, amends, or supplements A.M. No. 99-12-08-SC (Revised). A.M. No. 05-9-29-SC does not contain any express grant to the Chairpersons of the Division the power to appoint all personnel enumerated in it. Moreover, as shown above, some positions listed in A.M. No. 05-9-29-SC continue to be appointed by the Court *En Banc*. Thus, A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions.

It is Associate Justice Alfredo Benjamin S. Caguioa's view that the Supreme Court Human Resource Manual should have governed the appointments of personnel in the Judiciary since its adoption on January 31, 2012.[87] However, it has been shown

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[85] Rep. Act No. 8557 (1998), Secs. 6 and 7.

[86] For example, the renewal of Justice Marina L. Buzon's appointment as PHILJA Executive Secretary was approved by the Court *En Banc* in its February 14, 2012 Resolution in A.M. No. 08-6-1-SC-PHILJA (Re: Appointment of Justice Marina L. Buzon As PHILJA's Executive Secretary and Justice Delilah Vidallon-Magtolis As Head of PHILJA's Academic Affairs Office [Renewal Of Appointments]).

[87] Draft Separate Opinion of Associate Justice Caguioa, p. 6 (Re-circulated June 19, 2018).

that the rules of appointment set down in the Supreme Court Human Resource Manual, particularly in relation to third-level positions deemed highly technical or policy-determining under A.M. No. 05-9-29-SC, have been inconsistently applied, or contradict this Court's own practices. The ambiguity that has been created undermines the very purpose for which the Supreme Court Human Resource Manual was issued.

Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. To do otherwise is to permit an abdication of the "duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another."[88] This is demonstrated by the requirement for a valid delegation of legislative power that both the completeness and sufficient standard tests must be passed.[89]

Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised), while seemingly broad as to encompass all appointments of personnel in the judiciary, is contradicted by this Court's Resolutions and practices, both prior to and following its adoption. Several third-level positions within the Judiciary, such as the Court Administrator, Deputy Court Administrators, and Assistant Court Administrators, as well as third-level PHILJA officials, continue to be appointed by the Court *En Banc*, and not by the Chairpersons of the Divisions.

The extent of the delegation of the appointive power to the Chairpersons of the Divisions should be determined by the Court *En Banc* because of the contradictions between the text of A.M. No. 99-12-08-SC (Revised) and this Court's own practices. Its resolution should not be left to the discretion of those to whom the power has been delegated, including the Chief Justice and the Chairpersons of the Divisions. At the very least, the Court *En Banc* should be given the opportunity to correct or resolve the ambiguity in A.M. No. 99-12-08-SC (Revised).

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[88] *Gerochi v. Department of Energy*, 554 Phil. 563, 584 (2007) [Per J. Nachura, *En Banc*].

[89] *Id*.

To ensure consistency in the extent of the delegation of the appointing power, all positions with salary grades 29 and higher, and those with judicial rank, in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, PHILJA, and the Judicial and Bar Council, shall be filled only by the Court *En Banc*, subject to any other requirement in law or Court Resolution. This shall be without prejudice to any exceptions or qualifications that may hereafter be made by the Court *En Banc* for the delegation of its appointing power to the Chairpersons of the Divisions.

II

The Philippine Mediation Center was created by this Court by virtue of A.M. No. 01-10-5-SC-PHILJA,[90] with the following functions:

1.1 Establish, in coordination with the Office of the Court Administrator (OCA), units of the Philippine Mediation Center (PMC) in courthouses, and in such other places as may be necessary: Each unit, manned by Mediators and Supervisors, shall render mediation services to parties in court-referred, court-related mediation cases;

1.2 Recruit, screen, train and recommend Mediators for accreditation to this Court,

1.3 Require prospective Mediators to undergo four-week internship programs;

1.4 Provide training in mediation to judges, court personnel, educators, trainors, lawyers, and officials and personnel of quasi-juicial agencies;

1.5 Oversee and evaluate the performance of Mediators and Supervisors who are assigned cases by the courts,

1.6 Prepare a Code of Ethical Standards for Mediators for approval by the PHILJA Board of Trustees and this Court;

1.7 Implement the procedures in the assignment by the PMC Units of court-referred, court-related mediation cases to particular Mediators;

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[90] A.M. No. 01-10-5-SC-PHILJA (2001), Re: Various Resolutions of the Board of Trustees of the PHILJA Approved During its Meetings on 18 September 2001 and 10 October 2001.

1.8 Propose to the Supreme Court (a) Guidelines on Mediation and (b) Compensation Guidelines for Mediators and Supervisors; and.

1.9 Perform other related functions.

The Philippine Mediation Center is under the direction and management of PHILJA.

Under Section 5 of Republic Act No. 8557, apart from the PHILJA Chancellor, Vice-Chancellor, and Executive Secretary, who serve as Executive Officials, PHILJA has a governing body known as the Board of Trustees:

> Section 5. The Academy shall have a Governing Board to be known as the Board of Trustees, composed of the Chief Justice of the Supreme Court as *ex-officio* Chairman, the Senior Associate Justice of the Supreme Court as *ex-officio* Vice Chairman; the Chancellor of the Academy, the Presiding Justices of the Court of Appeals and the Sandiganbayan, the Court Administrator, the President of the Philippine Judges Association; and the President of the Philippine Association of Law Schools, as *ex-officio* members; and a Judge of a first level court, as appointive member, who shall have served as such for at least five (5) years and has taught in a reputable law school for the same number of years.
>
> The appointive member shall be appointed by the Supreme Court and shall serve for a term of one (1) calendar year, and may be reappointed for another term.
>
> The *ex-officio* members of the Board of Trustees shall serve as such for the duration of their incumbency in their respective offices.
>
> All members shall serve without compensation but shall be entitled to reasonable honoraria/allowance for the performance of their duties.

Among its other functions, the PHILJA Board of Trustees nominates the members of the Corps of Professorial Lecturers for this Court's approval and formal appointment.[91]

On February 12, 2008, this Court issued Administrative Order No. 33-2008, adopted in A.M. No. 08-2-5-SC-PHILJA,[92] which

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[91] Rep. Act No. 8557 (1998), Sec. 7.

[92] A.M. No. 08-2-5-SC-PHILJA (2008), Re: Resolution No. 08-02 re: Approval of the ADR and JURIS DMC Committees Resolution No. 03-07-A;

formally organized the Philippine Mediation Center Office and the Mediation Center Units. The Philippine Mediation Center Office is responsible for "the expansion, development, implementation, monitoring and sustainability"[93] of this Court's Alternative Dispute Resolution mechanisms. Its powers and authority are vested in and exercised by an Executive Committee:

> Section 2. Organizational Structure
>
> The Philippine Mediation Center Office shall be composed of:
>
> A. Executive Committee — The powers and authority of the PMC Office shall be vested in and exercised by an Executive Committee composed of the PHILJA Chancellor as Chairperson and eight members composed of four regular members who shall be recommended by PHILJA, nominated by the PHILJA Board of Trustees and appointed by the Supreme Court; and four *ex officio* members, namely, the Court Administrator, the Vice Chancellor, the PHILJA Chief of Office for PMC, and the Chair of the PHILJA ADR Department, all of whom are entitled to vote. . . .[94]

One (1) of the *ex officio* members of the Executive Committee is the PHILJA Chief of Office for the Philippine Mediation Center. The qualifications and term of the Chief of Office are stated in Section 2(B) of Administrative Order No. 33-2008:

> B. PHILJA Chief of Office for PMC — The Philippine Mediation Center Office shall have a PHILJA Chief of Office for PMC who shall be appointed by the Court, upon recommendation of PHILJA, for a term of two years without prejudice to subsequent reappointment.

He must be a member of the Philippine Bar for at least 10 years and must have extensive experience in ADR of not less than five

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Proposed Organization, Powers and Functions of the Philippine Mediation Center Office (PMCO) and Mediation Center Units, Including Its Organizational Chart and Staffing Pattern. See *rollo*, p. 262.

[93] Adm. O. No. 33-2008 (2008), Sec. 1.

[94] Adm. O. No. 33-2008 (2008), Sec. 2(a).

years. He shall receive the same compensation and benefits as an Associate Justice of the Court of Appeals.

For purposes of retirement privileges, seniority, and other benefits, service of the PHILJA Chief of Office for PMC shall be considered as service in the Judiciary, except as may otherwise be provided by law.

Under Administrative Order No. 33-2008, all four (4) regular members of the Executive Committee and the PHILJA Chief of Office for the Philippine Mediation Center must be recommended by PHILJA and appointed by this Court.

The first regular PHILJA Chief of Office for the Philippine Mediation Center, retired Deputy Court Administrator Atty. Ponferrada, was appointed further by this Court's Resolution dated June 3, 2008 in A.M. No. 08-2-5-SC-PHILJA, issued by the Court *En Banc*:

A.M. No. 08-2-5-SC-PhilJA. — Re: Resolution No. 08-02 re: Approval of the ADR and JURIS DMC Committees Resolution No 03-07-A; Proposed Organization, Powers and Functions of the Philippine Mediation Center Office (PMCO) and Mediation Center Units, Including Its Organizational Chart and Staffing Pattern. The Court Resolved, upon the recommendation of the PhilJA Board of Trustees, to **APPROVE** the

(a) Membership of the Executive Committee (EXECOM) of the Philippine Mediation Center Office (PMCO) effective April 15, 2008, as follows:

. . . .

Ex-officio Members:

. . . .

3. DCA (Ret.) Bernardo T. Ponferrada PhilJA Chief of Office for PMC . . .[95]

The composition of the Executive Committee of the Philippine Mediation Center was based on the recommendations of the

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[95] *Rollo*, p. 262.

PHILJA Board of Trustees in its Resolution No. 08-18 dated May 15, 2008.[96]

In a letter dated August 8, 2008, PHILJA, through then PHILJA Vice Chancellor Torres and with the conformity of then PHILJA Chancellor Melencio-Herrera, recommended Atty. Ponferrada's appointment to the PHILJA Chief of Office for the Philippine Mediation Center as fulltime, effective July 1, 2008. The letter acknowledged that as of 2008, Atty. Ponferrada was already the head of the Philippine Mediation Center Office:

> After his retirement as Deputy Court Administrator, DCA Bernardo T. Ponferrada joined the Academy. He was appointed as full-time PHILJA Professor II with additional functions as Head of the Judicial Reforms Office (JRO) for a term of two (2) years effective 16 August 2001, without prejudice to subsequent re-appointments, pursuant to Section 7 of Republic Act No. 8557. *Since then, he headed the JRO and thereafter in 2008, the [Philippine Mediation Center Office]*. (Emphasis supplied)

The recommendation in the letter dated August 8, 2008 was approved by the now retired Chief Justice Puno as Chairperson of the First Division, Senior Associate Quisumbing as Chairperson of the Second Division, and Associate Justice Ynares-Santiago as Chairperson of the Third Division.

Chief Justice Sereno contends that the Resolution dated June 3, 2008 in A.M. No. 08-2-5-SC-PHILJA did not serve as Atty. Ponferrada's appointment as the PHILJA Chief of Office of the Philippine Mediation Center Office, since the Resolution only approved his membership in its Executive Committee, but not his appointment as its Chief.

However, Atty. Ponferrada would not have been appointed to the Executive Committee if he were not the PHILJA Chief of Office of the Philippine Mediation Center Office, since his being appointed as such was a requirement for membership in the Executive Committee. If he were not the PHILJA Chief of Office of the Philippine Mediation Center Office when the

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[96] *Id*. at 261.

Resolution dated June 3, 2008 was issued, then this Court's approval of his membership in the Executive Committee would have been invalid.

Nevertheless, the vagueness in what constitutes as the prerequisites for a valid appointment as the PHILJA Chief of Office of the Philippine Mediation Center Office, if any, should have prompted a referral of the matter to the Court *En Banc*.

On May 8, 2015, Chief Justice Sereno issued Memorandum Order No. 20-2015, designating officers in PHILJA in an acting capacity until permanent appointments could be made. In this Memorandum Order, the Chief Justice took the position that the PHILJA Chief of Office of the Philippine Mediation Center Office should be appointed by the Court En Banc, upon the recommendation of the PHILJA Board of Trustees. The full Memorandum Order reads:

MEMORANDUM ORDER NO. 20-2015

In the exigency of the service, and so as not to disrupt the day-to-day operations of the Philippine Judicial Academy (PHILJA), the following are designated in an acting capacity effective 10 May 2015 until permanent appointments are recommended by ***the PHILJA Board of Trustees and made by the Supreme Court En Banc***:

1. **Justice Marina L. Buzon** - *Vice-Chancellor and Finance Office Head*
2. **Justice Delilah Vidallon-Magtolis**- Executive Secretary
3. **Atty. Elmer DG Eleria** - *Head of the Academic Affairs Office and concurrent Head of the Administrative Office*
4. **Judge Geraldine Faith A. Econg**- PMCO Head

May 8, 2015.

signed
MARIA LOURDES P.A. SERENO
Chief Justice

(Emphasis supplied)

Then Judge Econg was subsequently appointed the PHILJA Chief of Office of the Philippine Mediation Center Office by the Court *En Banc* in A.M. No. 15-07-01-SC-PHILJA. She was recommended to the post by the PHILJA Board of Trustees in its Resolution No. 15-11 dated May 25, 2015:

A.M. No. 15-07-01-SC-PHILJA (Re: Appointment of Judge Geraldine Faith A. Econg as the Chief of Office for the Philippine Mediation Center for a Period of Two [2] Years). — The Court Resolved to

(a) **NOTE** the Letter dated June 26, 2015 of Chancellor Adolfo S. Azcuna, PHILJA, transmitting, among others, PHILJA BOT Resolution No. 15-11 dated May 25, 2015; and

(b) **NOTE** and **APPROVE** the aforesaid PHILJA BOT Resolution No. 15-11, recommending the appointment of Judge Geraldine Faith A. Econg as the Chief of Office for the Philippine Mediation Center for a period of two (2) years.[97]

After then Judge Econg was appointed as Associate Justice of the Sandiganbayan on January 25, 2016,[98] the position of the PHILJA Chief of Office for the Philippine Mediation Center became vacant.

In contrast with the appointments of Atty. Ponferrada and Justice Econg, Atty. Mendoza was appointed not by the Court *En Banc*, but by the Chief Justice, with the concurrence of the Chairpersons of the Divisions of this Court. Further, her recommendation to the position of the PHILJA Chief of Office for the Philippine Mediation Center was not made by the PHILJA Board of Trustees in a Resolution, but further to a screening panel constituted by PHILJA.

In a letter dated June 20, 2016, PHILJA, through PHILJA Chancellor Azcuna, recommended Atty. Mendoza as the PHILJA Chief of Office for the Philippine Mediation Center, to replace Justice Econg. The letter explained that the PHILJA Management

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[97] *Id*. at 2.

[98] *Aquino appoints 6 new anti-graft court justices*, RAPPLER, January 25, 2016 <https://www.rappler.com/nation/120212-aquino-appoints-sandiganbayan-justices> (last accessed on September 4, 2017).

Committee created a screening panel, composed of PHILJA Chancellor Azcuna, PHILJA Vice-Chancellor Callejo, and PHILJA Chief of Office for Academic Affairs Justice Delilah Vidallon-Magtolis, to evaluate the applicants for the vacancy. The screening panel found that among the applicants, Atty. Mendoza garnered the most points in the evaluation.

PHILJA, however, did not explain in its letter why its Board of Trustees was unable to act on the appointment of one (1) of its most significant offices.

On June 28, 2016, through Memorandum Order No. 26-2016,[99] Atty. Mendoza was appointed as the PHILJA Chief of Office for the Philippine Mediation Center. Memorandum Order No. 26-2016 stated that the appointment was made following the recommendation submitted by PHILJA and pursuant to A.M. No. 99-12-08-SC:

APPOINTING THE PHILIPPINE JUDICIAL ACADEMY (PHILJA) CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER

. . . . . .

WHEREAS, *the Philippine Judicial Academy has submitted its recommended applicant to the position*, for a term of two (2) years, without prejudice to subsequent reappointment.

NOW, THEREFORE, the undersigned, *for and in behalf of the Supreme Court, by virtue of and pursuant to the power and authority vested in the revised Resolution in A.M No. 99-12-08-SC*, do hereby appoint **ATTY. BRENDA JAY A. MENDOZA as PHILJA Chief of Office for the Philippine Mediation Center**.[100] (Emphasis supplied; boldface in the original)

The Memorandum Order was signed by Chief Justice Sereno, Senior Associate Justice Antonio T. Carpio, and Associate Justice

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[99] Memorandum Order No. 26-2016 (2016), Appointing the Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center.

[100] *Rollo*, p. 71.

Presbitero J. Velasco, Jr. as Chairpersons of the First, Second, and Third Divisions, respectively.

Previously, in a Memorandum dated April 20, 2016,[101] the Office of Administrative Services, through Deputy Clerk of Court and Chief Administrative Officer Atty. Candelaria, submitted to Chief Justice Sereno the applications for the vacancy in the position of Chief of Office. The memorandum cited as justification A.M. No. 99-12-08-SC in relation to A.M. No. 05-9-29-SC:

> Respectfully submitted for consideration are the applications for the position of PHILJA Chief of Office for PMC (Item No. ROS-8-1998) in the Philippine Mediation Center Office, Philippine Judicial Academy. *The selection of appointees to Third[-]Level positions which have been classified by the Court as highly technical and/or policy[-] determining pursuant to A.M No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M No. 99-12-08-SC. . . .* (Emphasis supplied)

This justification is the same as the procedure in the Supreme Court Human Resource Manual. However, A.M. No. 05-9-29-SC cannot be relied upon as a basis for the extent of the delegated appointing power, there being no clear and unequivocal adoption by this Court of the classification of positions in it for the purposes of A.M. No. 99-12-08-SC (Revised). Moreover, the Supreme Court Office of Administrative Services cannot make any binding interpretation of the *En Banc* Resolutions of this Court, including those concerning administrative matters. Only this Court, acting *En Banc*, may do so.

At the very least, considering that contrary interpretations may arise over this Court's previous practice of appointing the PHILJA Chief of Office for the Philippine Mediation Center, any changes to the appointing process should have been referred to the Court *En Banc* for consultation. The power of appointment in the judiciary being vested by the Constitution in the Court *En Banc*, any delegation or diminution thereof must be resolved by the Court *En Banc*.

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[101] Titled "Re: Appointment of PHILJA Chief of Office for PMC."

The PHILJA Chief of Office for the Philippine Mediation Center receives the same compensation and benefits as an Associate Justice of the Court of Appeals.[102] Due to this position having judicial rank, which bears a salary grade of 30, and consistent with the prior Resolutions of this Court, the PHILJA Chief of Office for the Philippine Mediation Center is deemed included as among the positions which shall be appointed by the Court *En Banc*.

Finally, in contrast with the appointments of Atty. Ponferrada and Justice Econg, PHILJA's recommendation for Atty. Mendoza's appointment was not made in a Board Resolution of the PHILJA Board of Trustees. Instead, PHILJA, through PHILJA Chancellor Azcuna, issued a letter recommending Atty. Mendoza.

Under Administrative Order No. 33-2008, the appointment of the PHILJA Chief of Office for the Philippine Mediation Center shall be made "by the Court, upon recommendation of PHILJA."[103] Prior to the appointment of Atty. Mendoza, it is evident that this Court's practice is to have the Court *En Banc* issue the appointment following the recommendation made by the PHILJA Board of Trustees, as evidenced by a Board Resolution. Parenthetically, this was also the position of the Chief Justice in 2015.[104]

In line with this Court's prior Resolutions and further to its interpretation that the "recommendation of PHILJA" means the recommendation of the PHILJA Board of Trustees, there must be a Resolution issued by the PHILJA Board of Trustees, stating its recommendation for the position of the PHILJA Chief of Office for the Philippine Mediation Center. This is regardless of any other methods employed by PHILJA to evaluate its personnel recommendations to this Court.

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[102] Adm. O. No. 33-2008 (2008), Sec. 2(8). See *rollo*, p. 2.

[103] *Id.*

[104] Memorandum Order No. 20-2015 (2015).

Contrary to the view of Associate Justice Caguioa, an "implied ratification"[105] of PHILJA Chancellor Azcuna's recommendation by the PHILJA Board of Trustees cannot be a substitute for the "recommendation of PHILJA" as expressly required under Administrative Order No. 33-2008. It is PHILJA, acting through its governing body, the PHILJA Board of Trustees, which must make the recommendation. In the past, the PHILJA Board of Trustees made its recommendations for the appointments of Atty. Ponferrada and Justice Econg, as evidenced in Board Resolutions duly transmitted to the Court *En Banc* for its approval. The inconsistency of the PHILJA Board of Trustees' own practice with regard to Atty. Mendoza's appointment has not been explained.

To emphasize, the mere existence of any inconsistency in the rule of appointments of officials and employees of the Judiciary, including the PHILJA Chief of Office for the Philippine Mediation Center, should have prompted a request for clarification from the Court *En Banc* because it is only the Court *En Banc*, and not one or some of its Members, which is vested with the power of appointments in the Judiciary under the Constitution. PHILJA acting alone has no power to decide the form of the recommendation it must make to this Court.

Nothing in this Resolution should be interpreted in any manner as a judgment on the qualifications or eligibility of Atty. Mendoza. The issue in this administrative matter only pertains to the procedure for her appointment, not her competence or qualifications. Concededly, Chief Justice Sereno, Senior Associate Justice Carpio, and Associate Justice Velasco all signed Memorandum Order No. 26-2016, appointing Atty. Mendoza in accordance with A.M. No. 99-12-08-SC (Revised) and the Supreme Court Human Resource Manual. Also, it appears that Atty. Mendoza ranked first in the selection process conducted by a screening panel convened by the PHILJA Management Committee, a standing committee of PHILJA.

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[105] Draft Separate Opinion of Associate Justice Caguioa, p. 4 (Re-circulated June 19, 2018).

This Court acknowledges Atty. Mendoza's February 20, 2018 letter, in which her resignation was requested to be effective on February 26, 2018, a day before this Court was set to deliberate on this matter. With regrets, the Court *En Banc* accepts Atty. Mendoza's resignation. Thus, the issue of the ratification of her appointment is moot and academic. None of the incidents in this case should work to prejudice any of her future applications to the same position or to any other judicial position. The official who is the next most senior in rank shall be the officer-in-charge of the Philippine Mediation Center Office until the appointment of the new PHILJA Chief of Office of the Philippine Mediation Center.

WHEREFORE, in view of the foregoing, the PHILJA Board of Trustees is **INSTRUCTED** to commence with its selection process for its recommendations to the position of the PHILJA Chief of Office of the Philippine Mediation Center. The Philippine Judicial Academy shall present its recommendations within sixty (60) days from receipt of this resolution.

The official who is the next most senior in rank shall be the officer-in-charge of the Philippine Mediation Center Office until the appointment of the new PHILJA Chief of Office of the Philippine Mediation Center.

The rules on the appointment of personnel to the Judiciary, as clarified in this Resolution, are amended. The delegation to the Chief Justice and the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised) of the power of appointment and revocation or renewal of appointments of personnel in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, the Philippine Judicial Academy, and the Judicial and Bar Council shall not be deemed to include personnel with salary grades 29 and higher, and those with judicial rank.

SO ORDERED.

Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.*, concur.

Carpio, *Acting C.J.*, joins the separate opinion of *J. Velasco.*

Velasco, Jr., Leonardo-de Castro, and *Caguioa, JJ.*, see separate concurring opinions.

SEPARATE OPINION

VELASCO, JR., *J.*:

It is clear that the 1987 Constitution vests the power of appointment within the judiciary in the Supreme Court. Article VIII, Section 5(6) provides:

Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Nonetheless, such power may be delegated and the Court resolved to delegate this power to its three divisions, or their Chairpersons, or to the Chief Justice alone. Consequently, on April 22, 2003, this Court issued its Resolution in A.M. No. 99-12-08-SC, entitled "Referral of Administrative Matters and Cases to the Divisions of the Court, The Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution" (A.M. No. 99-12-08-SC (Revised).

A.M. No. 99-12-08-SC (Revised) empowers the Chairmen of the Divisions to act for and in behalf of the Court *En Banc* in rendering the appropriate action or resolution of administrative matters relating to, or in connection with the "appointment of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Tax Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy (PHILJA), and the Judicial and Bar Council (JBC); officers and members of existing committees; and consultants."[1]

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[1] Section II(a), A.M. No. 99-12-08-SC (Revised).

The delegation of this appointing power was even reiterated by the Court *En Banc* in its Resolution dated August 10, 2010 in A.M. No. 10-4-13-SC, to wit:

> **NOW THEREFORE**, the Court hereby **RESOLVES**
>
> x x x x x x x x x
>
> III. To maintain the **STATUS QUO**, or, in other words, follow existing rules and procedure for the following administrative and financial management functions and authorities:
>
> 1. x x x
> 2. Appointment of personnel.

Likewise, in Chapter Two of the Supreme Court Human Resource Manual (SC HR Manual), entitled Personnel Policies and Procedures, which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012, it was stated that in filling career positions, the Chief Justice shall assess the merits of the Selection and Promotion Board's recommendation for appointment and in the exercise of his sound discretion and with the concurrence of the Chairpersons of the Divisions, pursuant to A.M. No. 99-12-08-SC, select the candidate who is most qualified for appointment to the position. The selection of appointees to third-level positions which have been classified as highly technical and/or policy determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions.

Taking into consideration the above-mentioned law and issuances, there is no doubt that the Court *En Banc* has delegated the power to appoint personnel to the Chief Justice with the concurrence of the Chairpersons of the Divisions. As such, it is humbly submitted that the appointment of Atty. Brenda Jay A. Mendoza (Atty. Mendoza) as PHILJA Chief of Office for the Philippine Mediation Center was validly made in accordance with the rules and practice.

Moreover, Atty. Mendoza was qualified and recommended by the PHILJA, through Chancellor Justice Azcuna, to be appointed for the vacant position, to wit:

After due deliberation, Atty. Brenda Jay Angeles-Mendoza topped the screening process, with a rating of 93.96%. With her commendable educational background, training and experience, both in law and in alternative dispute resolution, we highly recommend Atty. Mendoza as PHILJA Chief of Office for Philippine Mediation Center (PMC).

The undersigned relied in good faith that there was compliance with the pertinent rules for the appointment of Atty. Mendoza because of the recommendation of Chancellor Justice Azcuna.

Furthermore, as stated by Acting Chancellor Justice Callejo in his Comment dated October 27, 2017, the recommendation of Chancellor Justice Azcuna was fully compliant with Section 2(B) of Administrative Order No. 33-2008 which states that the **PHILJA** may only recommend the PHILJA Chief of Office for the Philippine Mediation Center to the Supreme Court. The said provision does not specifically indicate that the recommendation for the position of the PHILJA Chief of Office for the Philippine Mediation Center must come only from the PHILJA Board of Trustees. Thus, as Acting Chancellor Justice Callejo opined, it is clear that Section 2(B) of Administrative Order No. 33-2008 authorizes the following: (1) Chair and Members of the PHILJA Board of Trustees; and/**or** (2) Chancellor Justice Azcuna; and/**or** (3) the other executive officials of the PHILJA. Any of them can recommend to the Supreme Court their nominees for appointment of PHILJA Chief of Office for the Philippine Mediation Center. Hence, the Chief Justice and the Chairpersons of the Supreme Court may rely on the report and recommendation made by Chancellor Justice Azcuna in the appointment of Atty. Mendoza because it is already compliant with Administrative Order No. 33-2008.

From the foregoing, it is submitted that the appointment of Atty. Mendoza is legal and valid. Indeed, it should be upheld. To do otherwise, will cause unnecessary harm and injustice to Atty. Mendoza who stands to be innocent and who has made major accomplishments during her stint in the Philippine Mediation Center as PHILJA Chief of Office for one year and eight months. It is likewise respectfully submitted that any interpretation or clarification of the above-mentioned rules and

issuances should be applied prospectively to be fair and reasonable under the circumstances.

In view of the resignation of Atty. Mendoza as PHILJA Chief of Office for the Philippine Mediation Center Office, I submit that this matter be considered closed and terminated.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I fully concur with the *ponencia* of Honorable Justice Marvic M.V.F. Leonen which is firmly grounded on the Constitution and several Court Resolutions which Justice Leonen exhaustively and painstakingly discussed in his *ponencia*. This separate concurring opinion only expresses my brief response to the separate opinions of Honorable Justices Presbitero J. Velasco, Jr. and Alfredo Benjamin S. Caguioa.

Justices Velasco and Caguioa are of the view that Atty. Brenda J. Mendoza's appointment is valid as the power of appointment to the position of Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center, a third level position that is highly technical and/or policy determining, has been delegated to the Chief Justice and the Chairpersons of the Divisions by virtue of the Court *en banc* Resolutions in A.M. No. 99-12-08-SC (Revised) dated May 1, 2003 and A.M. No. 10-4-13-SC dated August 10, 2010, as well as the Supreme Court Human Resource Manual (SC-HRM), approved by the Court *en banc* in A.M. No. 00-6-1-SC dated January 31, 2012, in relation to A.M. No. 05-9-29-SC dated September 27, 2005.

Section II(a) of A.M. No. 99-12-08-SC (Revised) dated May 1, 2003 referred to the Chief Justice and Chairpersons of the Divisions for appropriate action or resolution, for and in behalf of the Court *en banc*, administrative matters relating to or in connection with the appointment of "regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including Sharia'h courts),

the PHILJA, and Judicial and Bar Council (JBC); officers and members of existing committees; and consultants."

I cannot subscribe to the overbroad interpretation of the term "personnel" in Section II(a) of A.M. No. 99-12-08-SC (Revised) as to refer to all employees of the Judiciary, even including those in third level positions. Such interpretation will result in the absurd situation in which the Chairpersons of the Divisions are considered vested with the delegated power of appointment over all positions in the Supreme Court below the Chief Justice and Associate Justices, that would include even the positions of PHILJA Chancellor, Vice-Chancellor, and Assistant Chancellor; Court Administrator, Deputy Court Administrator, and Assistant Court Administrator; Clerk of Court, Assistant Clerk of Court, Division Clerk of Court, and Assistant Division Clerk of Court.

I completely agree with Justice Leonen's pronouncements in his *ponencia* that:

> Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. To do otherwise is to permit an abdication of the "duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another." This is demonstrated by the requirement for a valid delegation of legislative power that both the completeness and sufficient standard tests must be passed.
>
> Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised), while seemingly broad as to encompass all appointments of personnel in the judiciary, is contradicted by this Court's Resolutions and practices, both prior to and following its adoption. Several third-level positions within the Judiciary, such as the Court Administrator, Deputy Court Administrators, and Assistant Court Administrators, as well as third-level PHILJA officials, continue to be appointed by the Court *En Banc*, and not by the Chairpersons of the Divisions.

A.M. No. 05-9-29-SC dated September 27, 2005 merely classified all third level positions in the Supreme Court, including the Office of the Court Administrator (OCA), PHILJA, JBC, and Mandatory Continuing Legal Education Office (MCLEO),

with Salary Grade 26 and above as highly technical or policy determining. It contains no provision at all on the delegation by the Court *en banc* of its power to appoint to said third level positions. Hence, the said Resolution cannot be used as a basis to remove from the Court *en banc* the constitutional authority of appointment to third level positions classified as highly technical or policy determining.

Chapter Two, Section II(A) of the SC-HRM, approved on January 31, 2012, providing the Procedure in Filling Career Positions — which stated that "[t]he selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC" — applies only to personnel in the Judiciary whose appointments must be screened by the **Supreme Court Selection and Promotion Board** as mentioned in the said SC-HRM provisions. It is not applicable to the PHILJA Chief of Office for the Philippine Mediation Center, whose appointment is governed particularly by Administrative Order No. 33-2008 of the Court *en banc*. Under said Administrative Order, it is the PHILJA Board of Trustees which screens and recommends to the Court *en banc* the appointment of the PHILJA Chief of Office for the Philippine Mediation Center.

I stress once more that the SC-HRM is a mere compilation of laws, issuances, and circulars governing personnel and records management for the Judiciary and it is not intended to repeal, modify, or set aside existing rules, regulations, or resolutions specifically adopted by the Court *en banc*. Despite the reference by the SC-HRM to A.M. No. 99-12-08-SC (Revised) and A.M. No. 05-9-29-SC, there is nothing in said Resolutions to support the purported delegation by the Court *en banc* to the Chief Justice and the Chairpersons of the other Divisions of its power to appoint to third level positions in the Judiciary classified as highly technical and/or policy determining and those which are covered by specific law like Presidential Decree No. 842

(1975) creating the office of the Court Administrator and the Court *en banc* issuances.

To conclude, I wholly concur with the disposition of this case in the *ponencia* of Justice Leonen, which I have intended to be done by the Court, when I filed my Memorandum subject of this Administrative Matter, to forestall the diminution of the appointing power of the Court *en banc* under the Constitution, by the misinterpretation or the unintended overbroad application of Court Resolutions. I quote below the pertinent part of the dispositive portion of the Resolution which will now clarify the limits of the appointing power delegated to the Chief Justice and the Chairpersons of the Divisions:

> The delegation to the Chief Justice and the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised) of the power of appointment and revocation or renewal of appointments of personnel in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, the Philippine Judicial Academy, and the Judicial and Bar Council shall not be deemed to include personnel with salary grades 29 and higher, and those with judicial rank.

SEPARATE OPINION

CAGUIOA, *J.*:

At the outset, it may be advisable to clarify the Court's power of appointment of court officials and employees.

Justice Teresita J. Leonardo-De Castro has posited that Article VIII, Section 5, paragraph 6 of the 1987 Constitution is cited as vesting upon the Supreme Court the power to appoint all officials and employees of the Judiciary in accordance with the Civil Service Laws. She asserts further that: "Hence, unless duly delegated by Court resolution, the power to appoint court officials and employees can only be exercised by the Court *en banc*."[1]

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[1] Memorandum dated July 10, 2017 from *J.* De Castro, p. 3.

It is not disputed that the Court adopted A.M. No. 99-12-08-SC (Revised) on April 22, 2003 which provides in paragraph II(a): "To **REFER** to the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to, or in connection with x x x Appointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy (PHILJA), and the Judicial and Bar Council (JBC); officers and members of existing committees; and consultants." However, Justice De Castro takes the position, citing *Manalang v. Quitoriano*,[2] that the term "personnel" is used generally to refer to subordinate officials or clerical employees of an office or enterprise, and not to managers, directors or heads thereof and should not include high ranking officials or highly technical and/or policy determining third level positions below that of the Chief Justice and Associate Justices.

A.M. No. 05-9-29-SC dated September 27, 2005 enumerates the highly technical and/or policy-determining third level positions below that of the Chief Justice and Associate Justices, including those in the PHILJA and the JBC. It also provides that any third level position with Salary Grade 26 or higher which may thereafter be created in the Court, PHILJA or JBC will, unless otherwise indicated, be deemed highly technical or policy-determining.

Chapter Two of the Supreme Court Human Resources Manual (SC HR Manual), entitled "Personnel Policies and Procedures," which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012 provides the procedure in filling Career Positions, which include the Chief Justice's assessment of the merits of the Selection and Promotion Board's recommendation for appointment and the selection of appointees to third-level positions which have been classified by the Court

[2] 94 Phil. 903, 910 (1954).

as highly technical and/or policy-determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC.

There is, as well, no question that the delegation of the power to appoint personnel by the Court *En Banc* to the Chief Justice with the concurrence of the Division Chairmen is clearly within the inherent power of the Court *En Banc*. There is also no dispute that this delegation was impelled by the desire to lessen the administrative burden of the Court *En Banc*. With the adoption of the SC HR Manual in 2012 by the Court *En Banc*, there is no question in my mind that this desire subsisted then and that the pros and cons of such delegation were surely ventilated and thoroughly discussed.

Proceeding to the matter on the appointment of Atty. Brenda Jay C. Angeles-Mendoza (Atty. Angeles-Mendoza) as Philippine Mediation Center Office (PMCO) Chief of Office, the Comment dated October 27, 2017 of the PHILJA Acting Chancellor, Justice Romeo Callejo, Sr., proposes that the validity of the appointment should be determined based on the resolution of two sub-issues, namely: (1) whether the PHILJA through a Resolution of the Board of Trustees (BOT) is mandated to recommend the appointment of Atty. Angeles-Mendoza as PMCO Chief of Office under Section 2(B) of Administrative Order (A.O.) No. 33-2008 issued on February 12, 2008 (adopting A.M. No. 08-2-5-SC-PHILJA); and (2) whether the Court *En Banc* should act on and approve or deny the recommendation of the PHILJA BOT for the appointment of Atty. Angeles-Mendoza. I concur that this proposal is the correct approach.

Sub-issue No. 1

Section 2(B) of A.O. No. 33-2008 provides in part: "The Philippine Mediation Center Office shall have a PHILJA Chief of Office for PMC who shall be appointed by the Court, **upon recommendation of PHILJA**, for a term of two years without prejudice to subsequent reappointment."

The PHILJA Comment outlined the procedure that had been followed in Atty. Angeles-Mendoza's appointment, thus: (a) The PHILJA Management Committee created a Screening Committee chaired by PHILJA Chancellor Justice Adolfo S. Azcuna, with PHILJA Vice Chancellor Justice Callejo, Sr. and Academic Affairs Chief of Office Justice Delilah Vidallon-Magtolis, as members; (b) The Screening Committee interviewed and screened the five applicants; (c) The PHILJA, through Chancellor Justice Azcuna, submitted a "Report and Recommendation" to Chief Justice Sereno.

Apparently, Atty. Angeles-Mendoza was appointed to her present office based on that Recommendation. Memorandum Order No. 26-2016, entitled "Appointing the Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center," contains the following WHEREAS clauses:

WHEREAS, evaluations have been made based on the criteria for the selection of the most qualified applicants;

WHEREAS, the Philippine Judicial Academy has submitted its recommended applicant to the position, for a term of two (2) years, without prejudice to subsequent reappointment.

Essentially, the PHILJA takes the position that the Recommendation by PHILJA Chancellor Justice Azcuna based on the results of the Screening Committee's evaluation of the applicants for the subject position is substantially a "recommendation of PHILJA," and is in accord with Section 2(B) of A.O. No. 33-2008. The contrary view is that such Recommendation is insufficient because what is required is a Resolution by the PHILJA BOT, the principal argument being that PHILJA, being a juridical entity, can only act through its BOT.

Based on PHILJA's Comment, the selection and recommendation of the Chief of Office of PMCO since retired Deputy Court Administrator (DCA) Bernardo Ponferrada's appointment up to Atty. Angeles-Mendoza's appointment did not follow a specific procedure. While there was a PHILJA BOT Resolution in the appointment of then Judge Geraldine

Faith Econg as Chief of Office of the PMCO, the designation of retired Justice Marina Buzon as Acting Chief of Office was through a recommendation letter of Chancellor Justice Azcuna. PHILJA's Comment also admits that DCA Ponferrada was not recommended by the BOT of PHILJA. In other words, based on this representation of historical antecedents, the Court's practice in the appointment of the PHILJA PMCO Chief of Office has not been consistent.

PHILJA, in asserting that the appointment of Atty. Angeles-Mendoza was valid, cites certain administrative issuances (A.M. No. 01-1-04-SC dated September 23, 2000, Revised A.O. No. 02-2009 dated March 10, 2015 and Section 2[A] of A.O. No. 33-2008) where the PHILJA BOT's action is expressly required, unlike in Section 2(B) of A.O. No. 33-2008 which only mentions "recommendation of PHILJA."

While there may be a need to clarify what actions require PHILJA BOT approval and recommendation and whether a specific BOT resolution is required to accompany such approval and recommendation, I take the view, in respect of Atty. Angeles-Mendoza's appointment, that the failure to follow the "strict view," *i.e.*, requiring a BOT Resolution, as espoused by Justice De Castro, is not a fatal defect that cannot be remedied. To date, and this is not disputed, the PHILJA BOT has not revoked Chancellor Justice Azcuna's recommendation of Atty. Angeles-Mendoza's appointment. Neither has the PHILJA BOT questioned Chancellor Justice Azcuna's action. Moreover, as Atty. Angeles-Mendoza had stated in her Memorandum, she had been invited to attend meetings of the PHILJA BOT to report and answer queries about important PMC policy matters.[3] In other words, the fact that PHILJA BOT has not, to date, done any act to countermand the actions of Chancellor Justice Azcuna's recommendation and action leads me to believe that there has, at the very least, been an implied ratification of Chancellor Justice Azcuna's recommendation.

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[3] Memorandum dated October 20, 2017 by Atty. Brenda Jay C. Angeles-Mendoza, p. 7, C.2.

In this regard, the Court should not lose sight of the fact that the appointment of Atty. Angeles-Mendoza was signed not only by the Chief Justice, but also by the two other most senior justices of the Court. The three most senior members of the Court, who have the authority to appoint the PMCO Chief of Office as discussed below, have found the Recommendation by PHILJA Chancellor Justice Azcuna compliant and sufficient.

Sub-issue No. 2

Proceeding to the second sub-issue, the PMCO Chief of Office has a Salary Grade of 30 which is the same as that of an Associate Justice of the Court of Appeals. A.M. No. 05-9-29-SC (September 27, 2005) provides that any third level position with Salary Grade 26 or higher which may thereafter be created in the Court, PHILJA or JBC will, unless otherwise indicated, be deemed highly technical or policy-determining. In turn, the SC HR Manual (approved on January 31, 2012) provides that the appointment and the selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy-determining pursuant to A.M. No. 05-9-29-SC requires only the approval of the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC.

I submit that regardless of what has been the practice in the past, if ever there was such a "practice," the SC HR Manual should now be viewed as taking precedence and should be followed.

In the Court's Resolution, it is observed that:

> The Resolution dated September 29, 2005 in A.M. No. 05-9-29-SC was issued after A.M. No. 99-12-08-SC (Revised). However, A.M. No. 05-9-29-SC itself does not state that it modifies, amends, or supplements A.M. No. 99-12-08-SC (Revised). A.M. No. 05-9-29-SC does not contain any express grant to the Chairpersons of the Division[s] the power to appoint all personnel enumerated in it. Moreover, as shown above, some positions listed in A.M. No. 05-9-29-SC continue to be appointed by the Court *En Banc*. Thus, A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of

the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions.[4]

It will be recalled that then Judge Geraldine Faith A. Econg, who was Chief of Office of the PMCO, was promoted Associate Justice of the Sandiganbayan in January 2016,[5] and Atty. Angeles-Mendoza's appointment as PHILJA Chief of Office of the PMCO took effect on June 28, 2016.[6]

Given the timeline, the SC HR Manual, which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012, was then in effect.

The SC HR Manual states:

Chapter Two

PERSONNEL POLICIES AND PROCEDURES

The Supreme Court shall have (a) the power to appoint all officials and employees of the Judiciary; and (b) administrative supervision over all courts and personnel thereof, conformably with the 1987 Constitution.[7]

Appointments of personnel in the Judiciary shall be referred to the Chief Justice and the Chairpersons of the Divisions.[8]

I. Classes of Positions:[9]

Positions in the Civil Service are classified into Career and Non-Career service.

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[4] *Ponencia*, p. 28.

[5] Comment, *J.* Romeo J. Callejo, Jr., Acting Chancellor, PHILJA, p. 11.

[6] Memorandum Order No. 26-2016 signed by *C.J.* Sereno, Chairperson of the Second Division *J.* Carpio, and Chairperson of the Third Division *J.* Velasco, Jr.

[7] CONSTITUTION, Art. VIII, Sec. 5(6).

[8] See Administrative Matter (AM) No. 99-12-08-SC, January 18, 2000.

[9] CSC Omnibus Rules Implementing Book V, EO 292 and Other Pertinent Civil Service Laws.

A. Career Service is characterized by

1. entrance based on merit and fitness to be determined by competitive examination or highly technical qualifications;
2. opportunity for advancement to higher career positions; and
3. security of tenure.

Positions in the Career Service are grouped into three major levels as follows.

1. First-Level — x x x
2. Second-Level — x x x
3. Third-Level — includes the positions from Court Attorney V to Chiefs of Offices which have been classified by the Court as highly technical and/or policy determining pursuant to AM No. 05-9-29-SC, dated September 27, 2005.

B. Non-Career Service is characterized by

x x x x x x x x x

Since the SC HR Manual expressly took into consideration both A.M. No. 05-9-29-SC and A.M. No. 99-12-08-SC (Revised), I see no ambiguity or vagueness in the delegated power of appointment by the Chief Justice and the Chairpersons of the Second and Third Divisions. As of its adoption on January 31, 2012, the SC HR Manual should govern the appointments of personnel in the Judiciary. Since it was adopted prior to Atty. Angeles-Mendoza's appointment, the SC HR Manual should control and be applied accordingly to determine the validity of Atty. Angeles-Mendoza's appointment. The appointment of Atty. Angeles-Mendoza by the Chief Justice and the Chairpersons of the Second and Third Divisions of the Court is, as stated earlier, in conformity with the SC HR Manual.

I take the position that the observation in the Resolution that the rules of appointment in the SC HR Manual "have been inconsistently applied, or contradict this Court's own practices"[10] does not *per se* invalidate the appointment of Atty. Angeles-Mendoza because her appointment was consistent with the SC HR Manual. There is legal basis for her appointment, and until

[10] *Ponencia*, p. 28.

the SC HR Manual is amended or superseded, it must be accorded legal respect.

That the Resolution now seeks to exclude from "[t]he delegation to the Chief Justice and the Chairpersons of the Divisions in [the SC HR Manual] of the power of appointment and revocation or renewal of appointments x x x in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy, and the Judicial and Bar Council x x x personnel with salary grades 29 and higher, and those with judicial rank"[11] is a recognition that such delegation at least insofar as the appointment of the PMCO Chief of Office with Salary Grade of 30 is concerned exists and is in effect.

While Justice De Castro opines that the SC HR Manual is a "mere compilation of laws, issuances and circulars governing personnel and records management for the Judiciary and it is not intended to repeal, modify, or set aside existing rules, regulations, or resolutions specifically adopted by the Court *en banc*," I invite attention to the *Foreword* of the SC HR Manual written by former Justice Arturo D. Brion who states that [t]he Manual's current updating was made by the Judicial Reform Support Project (*JRSP*) Sub-Committee on Enhancing Institutional Integrity CWC-SB (*Sub-Committee*) with the objective of having "a single repository of all laws, issuances and circulars governing personnel and records management for the entire Judiciary."[12]

In private institutions, an HR Manual or employee handbook is required to be read and conformed to prior to employment. It is part of the employment contract. This is so because the current policies on personnel, including their appointment, promotion, separation, benefits, privileges, leaves and travel,

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[11] *Id*. at 38-39.

[12] *Foreword* of former Associate Justice Arturo D. Brion, Chairperson of JRSP Sub-Committee on Institutional Integrity CWC-B, Human Resource Manual of the Supreme Court, Republic of the Philippines (2012), p. *xi*.

are part thereof. To a private employee, it is a Bible so to speak of what he expects from his employer and *vice-versa*.

Thus, the SC HR Manual is not inconsequential and non-binding. To be sure, I refer to the following *Message* of the late Chief Justice Renato C. Corona:

> x x x the ***Human Resource Manual*** [is] a specific set of guidelines for us men and women in the Judiciary in the exercise of our duties as administrators of justice.
>
> x x x x x x x x x
>
> The Judiciary's high regard for integrity dismisses any argument for the redundancy of the *Manual* in ensuring the proper functioning of our courts. Indeed, just as it cannot be overemphasized that the credibility of our courts depends on the confidence of the people in the Judiciary, so can we not over stress to members of the Court the need for a clean, competent, and cohesive judicial workforce. This *Manual*, covering justices, judges, officials, and employees in courts all over the country, gives members of the judicial branch a clearer picture of the exacting standards required from us in the delivery of judicial services, from the moment we enter the Judiciary, to every minute spent at work, to the time we leave the service.[13]

Moreover, the SC HR Manual is the "result of a series of consultative, collaborative, and comprehensive study, [and] serves to benefit both the public and the courts. On one hand, it draws up a framework within which we in the Judiciary are to perform our duties towards an effective, efficient, and economic administration of justice. It also provides a system of checks and controls to make us accountable as we serve the public. On the other hand, the *Manual* also lays down policies to protect the welfare of court officials and employees, giving us the means to assert our rights as members of the Court. As a guide, the *Manual* also serves to steer personnel to the right direction, allowing us to achieve both professional and personal growth."[14]

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[13] *Message* of the late Chief Justice Renato C. Corona, *id.* at *ix-x*.

[14] *Message* of the late Chief Justice Renato C. Corona, *id.* at *x*.

If this matter involving Atty. Angeles-Mendoza calls for revisiting, at this juncture, the delegation policy of the power to appoint personnel after almost five years of effectivity of the SC HR Manual, then it is incumbent upon all to pinpoint exactly the parameters wherein the present policy needs improvement, if any. In this regard, the lessons learned, if any, from the five-year implementation of the policy are valuable. To totally disregard the existing policy is, I believe, a step backward. Indeed, with the gargantuan loads of the individual justices on judicial matters, there is, in my case, a legitimate concern to be relieved of administrative matters — which thereby supports the continuance of the delegation policy.

Given the foregoing, it is my position that the appointment of Atty. Angeles-Mendoza as PHILJA Chief of Office for the PMCO is valid. I believe that a resolution in favor of validity is not only legally sound, it is also the equitable position to take under the circumstances. I say this because there is no question that Atty. Angeles-Mendoza, considering the major accomplishments she has, to date, achieved as PMCO Chief of Office,[15] has no fault in any of these developments. As well, her contributions in the Supreme Court Technical Working Groups[16] may be for naught if her appointment is deemed invalid.

While the intervening resignation[17] of Atty. Angeles-Mendoza may have rendered the issue on the validity of her appointment moot and academic, a resolution in favor of validity will remove any black mark that this unfortunate matter may have cast upon her career in the judiciary. Surely, as an innocent, she rightfully deserves this.

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[15] Atty. Angeles-Mendoza's Memorandum, pp. 6-7.

[16] See *id*. at 7.

[17] Per Letter of Atty. Angeles-Mendoza dated February 20, 2018.

EN BANC

[G.R. No. 199802. July 3, 2018]

CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO A. AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, and ATTY. JOSE MALVAR VILLEGAS, *petitioners, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; SECRETARY CESAR PURISIMA, Department of Finance; SECRETARY FLORENCIO H. ABAD, Department of Budget and Management; COMMISSIONER KIM JACINTO-HENARES, Bureau Of Internal Revenue; and NATIONAL TREASURER ROBERTO TAN, Bureau of the Treasury,** *respondents.*

[G.R. No. 208488. July 3, 2018]

HONORABLE ENRIQUE T. GARCIA, JR., in his personal and official capacity as representative of the 2nd District of the Province of Bataan, *petitioner, vs.* **HONORABLE [PAQUITO] N. OCHOA, JR., Executive Secretary; HONORABLE CESAR V. PURISIMA, SECRETARY, Department of Finance; HONORABLE FLORENCIO H. ABAD, Secretary, Department of Budget and Management; HONORABLE KIM S. JACINTO-HENARES, Commissioner, Bureau of Internal Revenue; and HONORABLE ROZZANO RUFINO B. BIAZON, Commissioner, Bureau of Customs,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; REQUISITES FOR THE ISSUANCE THEREOF; THE WRIT OF *MANDAMUS* MAY NOT ISSUE TO COMPEL

AN OFFICIAL TO DO ANYTHING THAT IS NOT HIS DUTY TO DO, OR THAT IS HIS DUTY NOT TO DO, OR TO OBTAIN FOR THE PETITIONER ANYTHING TO WHICH HE IS NOT ENTITLED BY LAW; THE DISCRETION OF CONGRESS ON WHAT CONSTITUTES THE JUST SHARE OF THE LOCAL GOVERNMENT UNITS IN THE NATIONAL TAXES, BEING EXCLUSIVE, IS NOT SUBJECT TO EXTERNAL DIRECTION.— For the writ of *mandamus* to issue, the petitioner must show that the act sought to be performed or compelled is ministerial on the part of the respondent. An act is ministerial when it does not require the exercise of judgment and the act is performed pursuant to a legal mandate. The burden of proof is on the *mandamus* petitioner to show that he is entitled to the performance of a legal right, and that the respondent has a corresponding duty to perform the act. The writ of *mandamus* may not issue to compel an official to do anything that is not his duty to do, or that is his duty not to do, or to obtain for the petitioner anything to which he is not entitled by law. Considering that its determination of what constitutes the *just share* of the LGUs in the national taxes under the 1987 Constitution is an entirely discretionary power, Congress cannot be compelled by writ of *mandamus* to act either way. The discretion of Congress thereon, being exclusive, is not subject to external direction; otherwise, the delicate balance underlying our system of government may be unduly disturbed.

2. ID.; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; THE ACTUAL NATURE OF EVERY ACTION IS DETERMINED BY THE ALLEGATIONS IN THE BODY OF THE PLEADING OR THE COMPLAINT ITSELF, NOT BY THE NOMENCLATURE USED TO DESIGNATE THE SAME; NEITHER SHOULD THE PRAYER FOR RELIEF BE CONTROLLING; HENCE, THE COURTS MAY STILL GRANT THE PROPER RELIEF AS THE FACTS ALLEGED IN THE PLEADINGS AND THE EVIDENCE INTRODUCED MAY WARRANT EVEN WITHOUT A PRAYER FOR SPECIFIC REMEDY.— Garcia's petition, while dubbed as a petition for *mandamus*, is also a petition for *certiorari* because it alleges that Congress thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. It is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading

or the complaint itself, not by the nomenclature used to designate the same. Moreover, neither should the prayer for relief be controlling; hence, the courts may still grant the proper relief as the facts alleged in the pleadings and the evidence introduced may warrant even without a prayer for specific remedy. In this regard, Garcia's allegation of the unconstitutionality of the insertion by Congress of the words *internal revenue* in the phrase *national taxes* justifies treating his petition as one for *certiorari*. It becomes our duty, then, to assume jurisdiction over his petition. In *Araullo v. Aquino III*, the Court has emphatically opined that the Court's *certiorari* jurisdiction under the expanded judicial power as stated in the second paragraph of Section 1, Article VIII of the Constitution can be asserted: x x x to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.

3. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENT; BEING THE MERE CREATURES OF THE STATE, LOCAL GOVERNMENTS ARE SUBJECT TO THE WILL OF CONGRESS, THEIR CREATOR, SUCH THAT THEIR CONTINUED EXISTENCE AND THE GRANT OF THEIR POWERS ARE DEPENDENT ON THE DISCRETION OF CONGRESS.— Municipal corporations are now commonly known as local governments. They are the bodies politic established by law partly as agencies of the State to assist in the civil governance of the country. Their chief purpose has been to regulate and administer the local and internal affairs of the cities, municipalities or districts. They are legal institutions formed by charters from the sovereign power, whereby the populations within communities living within prescribed areas have formed themselves into bodies politic and corporate, and assumed their corporate names with the right of continuous succession and for the purposes and with the authority of subordinate self-government and improvement and the local administration of

the affairs of the State. Municipal corporations, being the mere creatures of the State, are subject to the will of Congress, their creator. Their continued existence and the grant of their powers are dependent on the discretion of Congress. x x x [I]n the earlier ruling in *Ganzon v. Court of Appeals*, the Court has pointed out that the 1987 Constitution, in mandating autonomy for the LGUs, did not intend to deprive Congress of its authority and prerogatives over the LGUs.

4. ID.; ID.; ID.; EXTENT OF AUTONOMY OF LOCAL GOVERNMENT UNITS (LGUs); LOCAL GOVERNMENT UNITS PERFORM CERTAIN FUNCTIONS AND EXERCISE CERTAIN POWERS SUBJECT TO THE LIMITATIONS THAT THE 1987 CONSTITUTION OR CONGRESS MAY IMPOSE.— x x x [T]here remains no question that Congress possesses and wields plenary power to control and direct the destiny of the LGUs, subject only to the Constitution itself, for Congress, just like any branch of the Government, should bow down to the majesty of the Constitution, which is always supreme. The 1987 Constitution limits Congress' control over the LGUs by ordaining in Section 25 of its Article II that: "*The State shall ensure the autonomy of local governments*." The autonomy of the LGUs as thereby ensured does not contemplate the fragmentation of the Philippines into a collection of mini-states, or the creation of *imperium in imperio*. The grant of autonomy simply means that Congress will allow the LGUs to perform certain functions and exercise certain powers in order not for them to be overly dependent on the National Government subject to the limitations that the 1987 Constitution or Congress may impose. Local autonomy recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities.

5. ID.; ID.; ID.; ID.; DECENTRALIZATION OF POWER AND DECENTRALIZATION OF ADMINISTRATION DISTINGUISHED.— The constitutional mandate to ensure local autonomy refers to decentralization. In its broad or general sense, decentralization has two forms in the Philippine setting, namely: the decentralization of power and the decentralization of administration. The decentralization of power involves the abdication of political power in favor of the autonomous LGUs as to grant them the freedom to chart their own destinies and to shape their futures with minimum intervention from the central

government. This amounts to *self-immolation* because the autonomous LGUs thereby become accountable not to the central authorities but to their constituencies. On the other hand, the decentralization of administration occurs when the central government delegates administrative powers to the LGUs as the means of broadening the base of governmental powers and of making the LGUs more responsive and accountable in the process, and thereby ensure their fullest development as self-reliant communities and more effective partners in the pursuit of the goals of national development and social progress. This form of decentralization further relieves the central government of the burden of managing local affairs so that it can concentrate on national concerns.

6. ID.; ID.; ID.; ID.; FISCAL DECENTRALIZATION DOES NOT SIGNIFY THE ABSOLUTE FREEDOM OF THE LGUs TO CREATE THEIR OWN SOURCES OF REVENUE AND TO SPEND THEIR REVENUES UNRESTRICTEDLY OR UPON THEIR INDIVIDUAL WHIMS AND CAPRICES.— Fiscal decentralization emanates from a specific constitutional mandate that is expressed in several provisions of Article X (*Local Government*) of the 1987 Constitution, specifically: Section 5; Section 6; and Section 7. The constitutional authority extended to each and every LGU to create its own sources of income and revenue has been formalized from Section 128 to Section 133 of the LGC. To implement the LGUs' entitlement to the just share in the national taxes, Congress has enacted Section 284 to Section 288 of the LGC. Congress has further enacted Section 289 to Section 294 of the LGC to define the share of the LGUs in the national wealth. Indeed, the requirement for the automatic release to the LGUs of their just share in the national taxes is but the consequence of the constitutional mandate for fiscal decentralization. For sure, fiscal decentralization does not signify the absolute freedom of the LGUs to create their own sources of revenue and to spend their revenues unrestrictedly or upon their individual whims and caprices. Congress has subjected the LGUs' power to tax to the guidelines set in Section 130 of the LGC and to the limitations stated in Section 133 of the LGC. The concept of local fiscal autonomy does not exclude any manner of intervention by the National Government in the form of supervision if only to ensure that the local programs, fiscal and otherwise, are consistent with the national goals.

7. ID.; ID.; ID.; THE LOCAL GOVERNMENT UNITS SHALL HAVE A JUST SHARE IN THE NATIONAL TAXES, THE JUST SHARE SHALL BE DETERMINED BY LAW, AND THE JUST SHARE SHALL BE AUTOMATICALLY RELEASED TO THE LOCAL GOVERNMENT UNITS.— Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a *just share* in the national taxes x x x. Section 6, when parsed, embodies three mandates, namely: (1) the LGUs shall have a *just share* in the *national taxes*; (2) the *just share* shall be *determined by law*; and (3) the *just share* shall be *automatically released* to the LGUs.

8. POLITICAL LAW; THE LOCAL GOVERNMENT CODE; THE PHRASE "NATIONAL INTERNAL REVENUE TAXES" USED IN SECTION 284 THEREOF DEVIATES FROM THE 1987 CONSTITUTION WHICH PROVIDES THAT NATIONAL TAXES SHOULD BE THE BASE FROM WHICH THE JUST SHARE OF THE LOCAL GOVERNMENT UNIT COMES.— Congress has sought to carry out the second mandate of Section 6 by enacting Section 284, Title III (*Shares of Local Government Units in the Proceeds of National Taxes*) x x x : Section 284. *Allotment of Internal Revenue Taxes*. – Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows: x x x. Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution. The phrase *national internal revenue taxes* engrafted in Section 284 is undoubtedly more restrictive than the term *national taxes* written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that *national taxes* should be the base from which the *just share* of the LGU comes. Such departure is impermissible. *Verba legis non est recedendum* (from the words of a statute there should be no departure). Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution.

9. TAXATION; TAXES; ELEMENTS.— Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Every tax

has three elements, namely: (a) it is an enforced proportional contribution from persons and properties; (b) it is imposed by the State by virtue of its sovereignty; and (c) it is levied for the support of the Government. Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.

10. POLITICAL LAW; THE LOCAL GOVERNMENT CODE; SECTION 284 THEREOF; THE EXCLUSION OF CUSTOMS DUTIES FROM THE BASE FOR DETERMINING THE *JUST SHARE* OF THE LOCAL GOVERNMENT UNITS CONTRAVENED SECTION 6, ARTICLE X OF THE 1987 CONSTITUTION.— What the phrase *national internal revenue taxes* as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, *viz:* Section 21. *Sources of Revenue*. — The following taxes, fees and charges are deemed to be national internal revenue taxes: (a) Income tax; (b) Estate and donor's taxes; (c) Value-added tax; (d) Other percentage taxes; (e) Excise taxes; (f) Documentary stamp taxes; and (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. In view of the foregoing enumeration of what are the national internal revenue taxes, Section 284 has effectively deprived the LGUs from deriving their *just share* from *other* national taxes, like the customs duties. Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. According to *Garcia v. Executive Secretary*, *customs duties* is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country. Although customs duties have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes, it is often difficult to say which of the two is the principal objective in a particular instance, for, verily, customs duties, much like internal revenue taxes, are rarely designed to achieve only one policy objective. We further note that Section 102(oo) of R.A. No. 10863 (*Customs Modernization and Tariff Act*) expressly includes all fees and charges imposed under the Act under the blanket term of *taxes.* It is clear from the foregoing clarification that the exclusion of *other* national taxes like customs duties from the base for determining the *just share* of

the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

11. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENTS; ALTHOUGH CONGRESS HAS THE PRIMARY DISCRETION TO DETERMINE AND FIX THE JUST SHARE OF THE LOCAL GOVERNMENT UNITS (LGUs) IN THE NATIONAL TAXES, IT CANNOT DISOBEY THE EXPRESS MANDATE OF THE 1987 CONSTITUTION FOR THE JUST SHARE OF THE LGUs TO BE DERIVED FROM THE NATIONAL TAXES; REQUIRING THAT THE JUST SHARE OF LGUs IN THE NATIONAL TAXES SHALL BE DETERMINED BY LAW IS TANTAMOUNT TO THE UNAUTHORIZED REVISION OF THE 1987 CONSTITUTION.— [T]he OSG posits that Congress can manipulate, by law, the base of the allocation of the just share in the national taxes of the LGUs. The position of the OSG cannot be sustained. Although it has the primary discretion to determine and fix the *just share* of the LGUs in the national taxes (*e.g.*, Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the *just share* of the LGUs to be derived from the *national taxes*. The phrase *as determined by law* in Section 6 follows and qualifies the phrase *just share*, and cannot be construed as qualifying the succeeding phrase *in the national taxes*. The intent of the people in respect of Section 6 is really that the base for reckoning the just share of the LGUs should includes *all* national taxes. To read Section 6 differently as requiring that *the just share of LGUs in the national taxes shall be determined by law* is tantamount to the unauthorized revision of the 1987 Constitution.

12. ID.; ID.; ID.; BASE AMOUNT FOR COMPUTING THE JUST SHARE OF THE LOCAL GOVERNMENT UNITS, INCLUSIONS AND EXCLUSIONS. — Anent the share of the affected LGUs in the proceeds of the sale and conversion of the former military bases pursuant to R.A. No. 7227, the exclusion is warranted for the reason that such proceeds do not come from a tax, fee or exaction imposed on the sale and conversion. As to the share of the affected LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products

under R.A. No. 7171 (now Section 289 of the NIRC); the share of the affected LGUs in incremental revenues from Burley and native tobacco products under Section 8, R.A. No. 8240 (now Section 288 of the NIRC); the share of the COA in the NIRTs pursuant to Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC; and the share of the host LGUs in the franchise taxes paid by the Manila Jockey Club, Inc., and Philippine Racing Club, Inc., under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, respectively, the exclusion is also justified. Although such shares involved national taxes as defined under the NIRC, Congress had the authority to exclude them by virtue of their being taxes imposed for special purposes. A reading of Section 288 and Section 289 of the NIRC and Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC reveals that all such taxes are levied and collected for a special purpose. The same is true for the franchise taxes paid under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, inasmuch as certain percentages of the franchise taxes go to different beneficiaries. The exclusion conforms to Section 29(3), Article VI of the 1987 Constitution x x x. The exclusion of the share of the different LGUs in the excise taxes imposed on mineral products pursuant to Section 287 of the NIRC in relation to Section 290 of the LGC is premised on a different constitutional provision. Section 7, Article X of the 1987 Constitution allows affected LGUs to have an equitable share in the proceeds of the utilization of the nation's national wealth "within their respective areas," x x x. This constitutional provision is implemented by Section 287 of the NIRC and Section 290 of the LGC x x x. Lastly, the NIRTs collected by the provinces and cities within the ARMM whose portions are distributed to the ARMM's provincial, city and regional governments are also properly excluded for such taxes are intended to truly enable a sustainable and feasible autonomous region as guaranteed by the 1987 Constitution. x x x. The shares of the municipalities in the VATs collected pursuant to R.A. No. 7643 should be included in determining the base for computing the *just share* because such VATs are national taxes, and nothing can validly justify their exclusion.

13. STATUTORY CONSTRUCTION; STATUTES; DOCTRINE OF OPERATIVE ACT; EXPLAINED; APPLIED TO THE CASE AT BAR; THE EFFECT OF THE DECLARATION OF THE UNCONSTITUTIONALITY OF

SECTION 284 OF THE LOCAL GOVERNMENT CODE AND ITS RELATED LAWS AS FAR AS THEY LIMITED THE SOURCE OF THE JUST SHARE OF THE LOCAL GOVERNMENT UNITS TO THE NATIONAL INTERNAL REVENUE TAXES IS PROSPECTIVE.— The petitioners' prayer for the payment of the arrears of the LGUs' *just share* on the theory that the computation of the base amount had been unconstitutional all along cannot be granted. It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the *just share* they should have received had the LGC properly reckoned such just share from all national taxes, on the one hand, and the share – represented by the IRA – the LGUs have actually received since the effectivity of the IRA under the LGC, on the other. This puts the National Government in arrears as to the *just share* of the LGUs. A legislative or executive act declared void for being unconstitutional cannot give rise to any right or obligation. Yet, the Court has conceded in *Araullo v. Aquino III* that: x x x **the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result**? **The need is answered by the doctrine of operative fact.** The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank* x x x. **The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect**. But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play. It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application. Conformably with the foregoing

pronouncements in *Araullo v. Aquino III*, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise.

14. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENTS; THE *JUST SHARE* OF THE LOCAL GOVERNMENT UNITS IN THE NATIONAL TAXES SHALL BE RELEASED TO THEM WITHOUT NEED OF YEARLY APPROPRIATION. — Section 6, Article X of the 1987 Constitution commands that the *just share* of the LGUs in national taxes shall be *automatically released* to them. The term *automatic* connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order *to receive* their *just share* in the national taxes. x x x. Section 6 does not mention of appropriation as a condition for the automatic release of the just share to the LGUs. This is because Congress not only already determined the *just share* through the LGC's fixing the percentage of the collections of the NIRTs to constitute such *fair share* subject to the power of the President to adjust the same in order to manage public sector deficits subject to limitations on the adjustments, but also explicitly authorized such just share to be "*automatically released*" to the LGUs in the proportions and regularity set under Section 285 of the LGC without need of annual appropriation. To operationalize the automatic release without need of appropriation, Section 286 of the LGC clearly provides that the automatic release of the *just share* directly to the provincial, city, municipal or barangay treasurer, as the case may be, shall be "*without need of any further action*," x x x. The 1987 Constitution is forthright and unequivocal in ordering that the *just share* of the LGUs in the national taxes shall be *automatically released* to them. With Congress having established the *just share* through the LGC, it seems to be beyond debate that the inclusion of the just share of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the *just share* of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

VELASCO, JR., *J., separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, ARTICLE X, SECTION 6 THEREOF; LOCAL GOVERNMENTS; THE VALUE ADDED TAX, DOCUMENTARY STAMP TAXES, AND EXCISE TAXES COLLECTIONS OF THE BUREAU OF CUSTOMS SHOULD BE INCLUDED IN THE BASE AMOUNT OF THE REVENUE ALLOCATION TO THE LOCAL GOVERNMENT UNITS.— Clear as crystal is that VAT, DSTs, and Excise Taxes are within the enumeration of national internal revenue taxes under Section 21 of the NIRC. When Section 284 of the LGC then declared that all LGUs shall be entitled to 40% of the "national internal revenue taxes," collections for these forms of taxes are necessarily included in the computation. VAT, DSTs, and Excise Taxes do not lose their character as national internal revenue taxes simply because they are not reported as collections of the BIR, and neither on the ground that they are collected by the BOC. This is so since Section 12(A) of the NIRC is categorical that the BOC merely acts as an agent of the BIR in collecting these taxes.

2. STATUTORY CONSTRUCTION; PLAIN-MEANING RULE; WHERE THE WORDS OF A STATUTE ARE CLEAR, PLAIN, AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT ATTEMPTED INTERPRETATION; SECTION 284 OF THE LOCAL GOVERNMENT CODE IS UNCONSTITUTIONAL FOR IT LIMITS THE SHARE OF THE LOCAL GOVERNMENT UNITS TO NATIONAL INTERNAL REVENUE TAXES, AND EXCLUDES OTHER FORMS OF NATIONAL TAXES SUCH AS TARIFFS AND CUSTOM DUTIES.— A cardinal rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure. Here, Article X, Section 6 of the 1987 Constitution is clear and categorical that Local Government Units (LGUs) shall have a share in the country's

national taxes. For Congress to grant them anything less would then trench on the provision. Unfortunately, this is what Section 284 of RA 7160, as currently worded, accomplishes. The contested phrase is unduly restrictive, nay unconstitutional, for it limits the share of the LGUs to national *internal revenue* taxes. It effectively excludes other forms of national taxes than those specified in Section 21 of the NIRC. Conspicuously absent in the enumeration is the duties imposed on internationally sourced goods under Presidential Decree No. (PD) 1464, otherwise known as the Tariff and Customs Code of 1978, which consolidated and codified the tariff and customs law in the Philippines. There is no cogent reason to segregate the tax collections of the BOC pursuant to the NIRC from those in implementation of other legal edicts. Customs duties form part of the country's national taxes and should, therefore, be included in the basis for determining the LGU's aliquot share in the pie.

3. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, ARTICLE X, SECTION 6 THEREOF; LOCAL GOVERNMENTS; CONGRESS IS ONLY ALLOWED TO DETERMINE THE ALIQUOT SHARE THAT THE LGUs ARE ENTITLED TO, BUT THEY ARE NOT AUTHORIZED TO MODIFY THE BASE AMOUNT OF THE BUDGET TO BE DISTRIBUTED.— [W]e too must be conscious here of the phraseology of Article X, Section 6 of the 1987 Constitution. As couched, the phrase "*as determined by law*" follows and, therefore, qualifies "*just share*"; it cannot be construed as qualifying the succeeding phrase "*in the national taxes.*" Hence, x x x the determination of what constitutes "*just share*" is within the province of legislative powers. But what Congress is only allowed to determine is the aliquot share that the LGUs are entitled to. They are not authorized to modify the base amount of the budget to be distributed. To insist that the proper interpretation of the provision is that "*the just share of LGUs in the national taxes shall be determined by law*" is tantamount to a revision of the Constitution and a blatant disregard to the specific order and wording of the provision, as crafted by its framers.

4. ID.; ID.; ID.; INCLUSIONS AND EXCLUSIONS IN THE BASE AMOUNT OF THE REVENUE ALLOCATION TO THE LOCAL GOVERNMENT UNITS.— [O]nly (a) 50% of the VAT collections from the ARMM, (b) 30% of all other

national tax collections from the ARMM, (c) 60% of the national tax collections from the exploitation and development of national wealth, (d) 5% of the 25% franchise taxes from the 8.5% and 8.25% of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc., and (e) 20% of the 85% of the incremental revenue from excise taxes on Virginia, burley and native tobacco products shall be included in the computation of the base amount of the 40% allotment. The remainders are allocated to beneficiary LGUs determined by law as part of their just share in the national taxes. Other special purpose funds shall likewise be excluded. Further, incremental taxes shall be disposed of in consonance with Section 282 of the NIRC, as amended. The sales proceeds from the disposition of former military bases pursuant to RA 7227, on the other hand, are excluded since these are non-tax items to which LGUs are not constitutionally entitled to a share. There is also no impropriety in allocating ½ of 1% of tax collections to the COA as compensation for auditing fees.

5. ID.; ID.; ID.; THE GENERAL APPROPRIATIONS LAW CANNOT BE DEEMED AS THE AMENDATORY STATUTE THAT WOULD PERMIT CONGRESS TO LOWER, DISREGARD, AND CIRCUMVENT THE 40% SHARE OF THE LOCAL GOVERNMENT UNITS IN THE NATIONAL TAXES FOR AN APPROPRIATION ACT CANNOT MODIFY SECTION 284 OF THE LGC, WHICH IS A SUBSTANTIVE LAW.— The yearly enactment of a general appropriations law cannot be deemed as the amendatory statutes that would permit Congress to lower, disregard, and circumvent the 40% threshold. For though an appropriation act is a piece of legislature, it cannot modify Section 284 of the LGC, which is a substantive law, by simply appropriating to the LGUs an amount lower than 40%. The appropriation of a lower amount should not be understood as the creation of an exception to Section 284 of the LGC, but should be considered as an inappropriate provision. Article VI, Section 25(2) of the Constitution deems a provision inappropriate if it does not relate specifically to some particular item of appropriation. x x x. Thus Congress cannot introduce arbitrary figures as the budgetary allocation to the LGUs in the guise of amending the 40% threshold in Section 284 of the LGC. To hold otherwise would bestow Congress unbridled license to enact in the GAA any manner of allocation to the LGUs that it wants, rendering illusory

the 40% statutory percentage under Section 284. It would allow for no fixed expectation on the part of the LGUs as to the share they will receive, for it could range from .01-100%, depending on either the whim or wisdom of Congress. Under this setup, Congress might dangle the modification of the percentage share as a stick or carrot before the LGUs for the latter to toe the line. In turn, this would provide basis to fear that LGUs would be beholden to Congress by increasing or decreasing allocations as a form of discipline. This would run contrary to the constitutional provision on local autonomy, and the spirit of the LGC.

6. STATUTORY CONSTRUCTION; DOCTRINE OF OPERATIVE FACT; THE LAW IS DECLARED AS UNCONSTITUTIONAL BUT THE EFFECTS OF THE UNCONSTITUTIONAL LAW, PRIOR TO ITS DECLARATION OF NULLITY, MAY BE LEFT UNDISTURBED AS A MATTER OF EQUITY AND FAIR PLAY; THE COURT'S RULING DECLARING THE PHRASE "INTERNAL REVENUE" IN SECTION 284 OF THE LOCAL GOVERNMENT CODE UNCONSTITUTIONAL IS APPLIED PROSPECTIVELY; PRAYER FOR THE AWARD OF ARREARS DENIED UNDER THE DOCTRINE OF OPERATIVE FACT.— Notwithstanding the postulation that the phrase "*internal revenue*" in Section 284 of the LGC and, consequently, its embodiment in the appropriation laws are unconstitutional, x x x the prayer for the award of arrears should nevertheless be denied. Article 7 of the Civil Code states that "*When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern*." The provision sets the general rule that an unconstitutional law is void and therefore produces no rights, imposes no duties and affords no protection. However, the doctrine of operative fact is a recognized exception. Under the doctrine, the law is declared as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. The Court acknowledges that an unconstitutional law may have consequences which cannot always be ignored and that the past cannot always be erased by a new judicial declaration. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. In this case, the

proposed nullification of the phrase *"internal revenue"* in Section 284 of RA 7160 would have served as the basis for the recovery of the LGUs' just share in the tariff and customs duties collected by the BOC that were illegally withheld from 1991-2012. However, this entitlement to a share in the tariff collections would have been further compounded by the LGU's alleged ₱500-billion share, more or less, in the VAT, Excise Tax, and DST collections of the BOC. These arrears would be too cumbersome for the government to shoulder, which only had a budget of ₱1.8 Trillion in 2012. Thus, while petitioners request that the LGU's can still recover the arrears of the national, it is submitted that this is no longer feasible. This would prove too much for the government's strained budget to meet, unless paid out on installment or in a staggered basis. The operative fact doctrine allows for the prospective application of the outcome of this case and justifies the denial of petitioners' claim for arrears.

LEONEN, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN MAY BE FILED; PETITIONER MUST SHOW BOTH THE LEGAL BASIS FOR THE DUTY, AND THE RESPONDENT'S FAILURE TO PERFORM THE DUTY.— Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for *mandamus* may be filed "[w]hen any tribunal, corporation, board, officer or person *unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office,* trust, or station." It may also be filed "[w]hen any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled." "Through a writ of *mandamus,* the courts *'compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent'* by operation of his or her office, trust, or station." It is necessary for petitioner to show both the legal basis for the duty, and the defendant's or respondent's failure to perform the duty. "It is equally necessary that the respondent have the power to perform the act concerning which the application for mandamus is made." There was no unlawful neglect on the part of public respondents, particularly the Commissioner of Internal Revenue, in the

computation of the internal revenue allotment. Moreover, the act being requested of them is not their ministerial duty; hence, *mandamus* does not lie and the Petitions must be dismissed.

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENTS; BASIS FOR THE COMPUTATION OF THE LOCAL GOVERNMENT UNITS (LGUs) INTERNAL REVENUE ALLOTMENT (IRA).— Respondents' computation of the internal revenue allotment was not without legal justification. Republic Act No. 7160, Section 284 provides that the local government units shall have a forty percent (40%) share in the national internal revenue taxes based on the collections of the third fiscal year preceding the current fiscal year. Article 378 of Administrative Order No. 270 or the Rules and Regulations Implementing the Local Government Code of 1991 (Local Government Code Implementing Rules) mandates that "[t]he total annual internal revenue allotments . . . due the [local government units] shall be determined on the basis of collections from national internal revenue taxes *actually realized as certified by the [Bureau of Internal Revenue]*." Consistent with this Rule, it was reiterated in Development Budget Coordination Committee Resolution No. 2003-02 dated September 4, 2003 that the national internal revenue collections as defined in Republic Act No. 7160 shall refer to "*cash collections based on the [Bureau of Internal Revenue] data as reconciled with the [Bureau of Treasury]*." Pursuant to the foregoing Article 378 of the Local Government Code Implementing Rules and Development Budget Coordination Committee Resolution, the Bureau of Internal Revenue computed the internal revenue allotment on the bases of its actual collections of national internal revenue taxes. The value-added tax, excise taxes, and a portion of the documentary stamp taxes collected by the Bureau of Customs on imported goods were not included in the computation because "these collections of the [Bureau of Customs] are remitted directly to the [Bureau of Treasury]" and, as explained by then Commissioner Jacinto-Henares, "are recognized by the Bureau of Treasury as the collection performance of the Bureau of Customs." Furthermore, the exclusions of certain special taxes from the revenue base for the internal revenue allotment were made pursuant to special laws—Presidential Decree No. 1445 and Republic Act Nos. 6631, 6632, 7160, 7171, 7227, 7643,

and 8240—all of which enjoy the presumption of constitutionality and validity. It is basic that laws and implementing rules are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms. Thus, respondents must be deemed to have conducted themselves in good faith and with regularity when they acted pursuant to the Local Government Code and its Implementing Rules, the Development Budget Coordination Committee Resolution, and special laws.

3. ID.; ID.; ID.; ID.; THE DISBURSEMENT OF PUBLIC FUNDS LIES WITHIN THE MANDATE OF THE EXECUTIVE, SUBJECT TO THE LIMITATIONS ON THE AMOUNT AND PURPOSE DETERMINED BY CONGRESS.— [T]he issue on the alleged "unlawful neglect" of respondents was settled when Congress adopted and approved their internal revenue allotment computation in the General Appropriations Act of 2012. Mandamus will also not lie to enjoin respondents to withhold the ₱60,750,000,000.00 appropriations in the General Appropriations Act of 2012 for capital outlays of national agencies and release the same to the local government units as internal revenue allotment. Congress alone, as the "appropriating and funding department of the Government," can authorize the expenditure of public funds through its power to appropriate. Article VI, Section 29(1) of the Constitution is clear that the expenditure of public funds must be pursuant to an appropriation made by law. Inherent in Congress' power of appropriation is the power to specify not just the amount that may be spent but also the purpose for which it may be spent. While the disbursement of public funds lies within the mandate of the Executive, it is subject to the limitations on the amount and purpose determined by Congress. Book VI, Chapter 5, Section 32 of Executive Order No. 292 directs that "[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." It is the ministerial duty of the Department of Budget and Management to desist from disbursing public funds without the corresponding appropriation from Congress. Thus, the Department of Budget and Management has no power to set aside fund for purposes outside of those mentioned in the appropriations law. The proper remedy of the petitioners is to apply to Congress for the enactment of a special appropriation law; but it is still discretionary on the part of Congress to appropriate or not.

4. ID.; ID.; ID.; ID.; THE JUST SHARE OF THE LOCAL GOVERNMENT UNITS DOES NOT REFER ONLY TO A PERCENTAGE, BUT IT CAN ALSO REFER TO A DETERMINATION AS TO WHICH NATIONAL TAXES, AS WELL AS THE PERCENTAGE OF SUCH CLASSES OF NATIONAL TAXES, WILL BE SHARED WITH LOCAL GOVERNMENTS.— We assess the validity of the internal revenue allotment of the local government units in light of Article X, Section 6 of the 1987 Constitution, which provides: Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them. "Just share" does not refer only to a percentage, but it can also refer to a determination as to which national taxes, as well as the percentage of such classes of national taxes, will be shared with local governments. There are no constitutional restrictions on how the share of the local governments should be determined other than the requirement that it be "just." The "just share" is to be determined "by law," a term which covers both the Constitution and statutes. Thus, the Congress and the President are expressly authorized to determine the "just share" of the local government units.

5. ID.; ID.; ID.; ID.; ID.; BROADENING THE BASE FOR THE COMPUTATION OF THE 40% SHARE TO NATIONAL TAXES INSTEAD OF TO NATIONAL INTERNAL REVENUE TAXES WOULD, IN EFFECT, INCREASE THE LOCAL GOVERNMENT UNITS' SHARE TO AN AMOUNT MORE THAN WHAT CONGRESS HAS DETERMINED AND INTENDED.— The percentages 30% in the first year, 35% in the second year, and 40% in the third year, and onwards were fixed in Section 284 of the Local Government Code on the basis of what Congress determined as the revenue base, i.e., national internal revenue taxes. Thus, we cannot simply declare the phrase "internal revenue" as unconstitutional and strike it from Section 284 of the Local Government Code, because this would effectively change Congress' determination of the just share of the local government units. By broadening the base for the computation of the 40% share to national taxes instead of to national internal revenue taxes, we would, in effect, increase the local government units' share to an amount more than what Congress has determined and intended. The limitation provided in Article X, Section 6 of the 1987 Constitution should be reasonably construed so as

not to unduly hamper the full exercise by the Legislative Department of its powers. Under the Constitution, it is Congress' exclusive power and duty to authorize the budget for the coming fiscal year. "Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy." For sure, this Court has, in the past, acknowledged the awesome power of Congress to control appropriations.

6. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; APPROPRIATION IS A POLITICAL ACT, NOT A JUDICIAL FUNCTION.— Appropriation is not a judicial function. We do not have the power of the purse and rightly so. The power to appropriate public funds for the maintenance of the government and other public needs distinctively belongs to Congress. Behind the Constitutional mandate that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law" lies the principle that the people's money may be spent only with their consent. That consent is to be expressed either in the Constitution itself or in valid acts of the legislature as the direct representative of the people. Every appropriation is a political act. Allocation of funds for programs, projects, and activities are very closely related to political decisions. The budget translates the programs of the government into monetary terms. It is intended as a guide for Congress to follow not only in fixing the amounts of appropriation but also in determining the specific governmental activities for which public funds should be spent.

7. ID.; ID.; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENT; THE INTERPRETATION OF CONGRESS AND OF THE PRESIDENT OF WHAT CONSTITUTES THE "JUST SHARE" OF THE LOCAL GOVERNMENT UNITS SHOULD BE RESPECTED.— The Constitution requires that all appropriation bills should originate from the House of Representatives. Since the House of Representatives, through the district Representatives, is closer to the people and has more interaction with the local government that is within their districts than the Senate, it is expected to be more sensitive to and aware of the local needs and problems, and thus, have the privilege of taking the initiative in the disposal of the people's money.

The Senate, on the other hand, may propose amendments to the House bill. The appropriation bill passed by Congress is submitted to the President for his or her approval. The Constitution grants the President the power to veto any particular item or items in the appropriation bill, without affecting the other items to which he or she does not object. This function enables the President to remove any item of appropriation, which in his or her opinion, is wasteful or unnecessary. Considering the entire process, from budget preparation to legislation, we can presume that the Executive and Congress have prudently determined the level of expenditures that would be covered by the anticipated revenues for the government on the basis of historical performance and projections of economic conditions for the incoming year. The determination of just share contemplated under Article X, Section 6 of the 1987 Constitution is part of this process. Their interpretation or determination is not absurd and well within the text of the Constitution. We should exercise deference to the interpretation of Congress and of the President of what constitutes the "just share" of the local government units.

8. ID.; ID.;ID.; THE GENERAL APPROPRIATIONS ACT OF 2012 WHICH PROVIDES THAT THE LOCAL GOVERNMENT UNITS' INTERNAL REVENUE ALLOTMENT IS 40% OF NATIONAL INTERNAL REVENUE TAXES EXCLUDING TAX COLLECTIONS OF THE BUREAU OF CUSTOMS MUST BE GIVEN EFFECT; THE GENERAL APPROPRIATIONS ACT PREVAILS OVER THE NATIONAL INTERNAL REVENUE CODE, INSOFAR AS THE INTERNAL REVENUE ALLOTMENTS OF THE LOCAL GOVERNMENT UNITS ARE CONCERNED.— The general appropriations law is a special law pertaining specifically to appropriations of money from the public treasury. The "just share" of the local government units is incorporated as the internal revenue allotment in the general appropriations law. By the very essence of how the general appropriations law is enacted, particularly for this case the General Appropriations Act of 2012, it can be presumed that Congress has *purposefully, deliberately, and precisely* approved the revenue base, including the exclusions, for the internal revenue allotment. A basic rule in statutory construction is that as between a specific and general law, the former must prevail since it reveals the legislative intent

more clearly than a general law does. The specific law should be deemed an exception to the general law. The appropriations law is a special law, which specifically outlines the share in the national fund of all branches of the government, including the local government units. On the other hand, the National Internal Revenue Code is a general law on taxation, generally applicable to all persons. Being a specific law on appropriations, the General Appropriations Act should be considered an exception to the National Internal Revenue Code definition of national internal revenue taxes insofar as the internal revenue allotments of the local government units are concerned. The General Appropriations Act of 2012 is the clear and specific expression of the legislative will—that the local government units' internal revenue allotment is 40% of national internal revenue taxes excluding tax collections of the Bureau of Customs—and must be given effect. That this was the obvious intent can also be gleaned from Congress' adoption and approval of internal revenue allotments using the same revenue base in the General Appropriations Act from 1992 to 2011.

9. ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF THE INTERNAL REVENUE ALLOTMENT OF THE LOCAL GOVERNMENT UNITS IN THE GOVERNMENT APPROPRIATIONS ACT IS LEFT TO THE SOLE PREROGATIVE OF THE LEGISLATURE; IF A PARTICULAR STATUTE IS WITHIN THE CONSTITUTIONAL POWERS OF THE LEGISLATURE TO ENACT, IT SHOULD BE SUSTAINED WHETHER THE COURTS AGREE OR NOT IN THE WISDOM OF ITS ENACTMENT.— What is involved here is the internal revenue allotment of the local government units in the Government Appropriations Act of 2012, the determination of which was, under the Constitution, left to the sole prerogative of the legislature. Congress has full discretion to determine the "just share" of the local government units, in which authority necessarily includes the power to fix the revenue base, or to define what are included in this base, and the rate for the computation of the internal revenue allotment. Absent any clear and unequivocal breach of the Constitution, this Court should proceed with restraint when a legislative act is challenged in deference to a co-equal branch of the Government. "If a particular statute is within the constitutional powers of the Legislature to

enact, it should be sustained whether the courts agree or not in the wisdom of its enactment."

10. ID.; ID.; ID.; ID.; APPROPRIATION AND RELEASE, DISTINGUISHED; BEFORE MONEY CAN BE TAKEN OUT OF THE GOVERNMENT TREASURY FOR ANY PURPOSE, THERE MUST FIRST BE AN APPROPRIATION MADE BY LAW FOR THAT SPECIFIC PURPOSE; THUS, THE FISCAL OFFICERS OR ANY OTHER OFFICIAL OF THE GOVERNMENT ARE NOT AUTHORIZED TO ORDER THE EXPENDITURE OF UNAPPROPRIATED FUNDS— The ponencia further elaborates "automatic release" in Section 286 of the Local Government Code as "without need for a yearly *appropriation*." This is contrary to the Constitution. A statute cannot amend the Constitutional requirement. x x x. Appropriation and *release* refer to two (2) different actions. "An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose." It is the Congressional authorization required by the Constitution for spending. Release, on the other hand, has to do with the actual disbursement or spending of funds. "Appropriations have been considered 'released' if there has already been an allotment or authorization to incur obligations and disbursement authority." This is a function pertaining to the Executive Department, particularly the Department of Budget and Management, in the execution phase of the budgetary process. x x x. In other words, before money can be taken out of the Government Treasury for any purpose, there must first be an appropriation made by law for that specific purpose. Neither of the fiscal officers or any other official of the Government is authorized to order the expenditure of unappropriated funds. Any other course would give to these officials a dangerous discretion.

11. ID.; ID.; ID.; ID.; THE "AUTOMATIC RELEASE" OF APPROVED ANNUAL APPROPRIATIONS REQUIRES THE FULL RELEASE OF APPROPRIATIONS WITHOUT ANY CONDITION; THE AUTOMATIC RELEASE OF INTERNAL REVENUE ALLOTMENTS OF THE LOCAL GOVERNMENT UNITS BINDS BOTH THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS.— "Automatic appropriation" is not the same as "automatic release" of appropriations. x x x [T]he power to appropriate belongs to

Congress, while the responsibility of releasing appropriations belongs to the Department of Budget and Management. Items of expenditure that are automatically appropriated, like debt service, are approved at its annual levels or on a lump sum by Congress upon due deliberations, without necessarily going into the details for implementation by the Executive. However, just because an expenditure is automatically appropriated does not mean that it is no longer included in the general appropriations law. On the other hand, the "automatic release" of approved annual appropriations requires the full release of appropriations without any condition. Thus, "no report, no release" policies cannot be enforced against institutions with fiscal autonomy. Neither can a "shortfall in revenues" be considered as valid justification to withhold the release of approved appropriations. With regard to the local government units, the automatic release of internal revenue allotments under Article X, Section 6 of the Constitution binds both the Legislative and Executive departments. In *ACORD, Inc. v. Zamora*, the [General Appropriations Act 2000] of placed ₱10,000,000,000.00 of the [internal revenue allotment] under "unprogrammed funds." This Court, citing *Province of Batangas* and *Pimentel v. Aguirre,* ruled that such withholding of the internal revenue allotment contingent upon whether revenue collections could meet the revenue targets originally submitted by the President contravened the constitutional mandate on automatic release.

12. ID.; ID.; ID.; ID.; THE RELEASE OF THE LOCAL GOVERNMENT UNITS' SHARE WITHOUT AN APPROPRIATION SUBSTANTIALLY AMENDS THE CONSTITUTION AND ALTERS THE RELATIONSHIP OF THE PRESIDENT TO LOCAL GOVERNMENTS, EFFECTIVELY DIMINISHING, IF NOT REMOVING, SUPERVISION AS MANDATED BY THE CONSTITUTION. — The *automatic* release of the local government units' shares is a basic feature of local fiscal autonomy. Nonetheless, as clarified in *Pimentel*: Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected

to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress. As we stated in *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government. The release of the local government units' share without an appropriation x x x substantially amends the Constitution. It also gives local governments a level of fiscal autonomy not enjoyed even by constitutional bodies like the Supreme Court, the Constitutional Commissions, and the Ombudsman. It bypasses Congress as mandated by the Constitution. "Without appropriation" also substantially alters the relationship of the President to local governments, effectively diminishing, if not removing, supervision as mandated by the Constitution.

CAGUIOA, *J., separate opinion*:

1. **STATUTORY CONSTRUCTION; STATUTES; PRESUMPTION OF CONSTITUTIONALITY; LAWS SHALL NOT BE DECLARED INVALID UNLESS THE CONFLICT WITH THE CONSTITUTION IS CLEAR BEYOND REASONABLE DOUBT; IN CASE OF DOUBT, THE CONSTITUTIONALITY OF THE STATUTE SHALL BE SUSTAINED.—** Every statute has in its favor the presumption of constitutionality. This presumption rests on the doctrine of separation of powers, which enjoins the three branches of government to encroach upon the duties and powers of another. It is based on the respect that the judicial branch accords to the legislature, which is presumed to have passed every law with careful scrutiny to ensure that it is in accord with the Constitution. Thus, before a law is declared unconstitutional, there must be a clear and unequivocal showing that what the Constitution prohibits, the statute permits. In other words, laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt. To doubt is to sustain the constitutionality of the assailed statute.

2. **ID.; ID.; ID.; IF THERE IS DOUBT OR UNCERTAINTY AS TO THE MEANING OF THE LEGISLATURE, IF THE WORDS OR PROVISIONS OF THE STATUTE ARE**

OBSCURE, OR IF THE ENACTMENT IS FAIRLY SUSCEPTIBLE OF TWO OR MORE CONSTRUCTIONS, THAT INTERPRETATION WILL BE ADOPTED WHICH WILL AVOID THE EFFECT OF UNCONSTITUTIONALITY, EVEN THOUGH IT MAY BE NECESSARY, FOR THIS PURPOSE, TO DISREGARD THE MORE USUAL OR APPARENT IMPORT OF THE LANGUAGE EMPLOYED; A LIBERAL INTERPRETATION OF THE CONSTITUTION IN FAVOR OF THE CONSTITUTIONALITY OF LEGISLATION SHOULD BE ADOPTED.— It is a settled rule in the construction of laws, that "[i]f there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed." x x x [T]he foregoing rule [applies] even to the construction of the Constitution. Thus, as between the x x x restrictive approach and liberal approach, x x x the latter should be upheld. The Court's ruling in *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service,* lends credence: Indeed, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; **that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases**; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; **and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted**."

3. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; LEGISLATIVE DEPARTMENT; THE ABSOLUTE AUTHORITY AND DISCRETION VESTED UPON CONGRESS TO DETERMINE THE LOCAL GOVERNMENT UNITS' (LGUs) "JUST SHARE", THROUGH THE ENACTMENT OF LAWS, INCLUDING THE LOCAL GOVERNMENT CODE, THE NATIONAL INTERNAL REVENUE CODE AND THE GENERAL APPROPRIATIONS ACT, IS BEYOND THE COURT'S

JUDICIAL REVIEW.— x x x [T]he Constitution gave Congress the absolute authority and discretion to determine the LGUs' "just share" — which include both the classes of national taxes and the percentages thereof. The exercise of this plenary power vested upon Congress, through the latter's enactment of laws, including the LGC, the National Internal Revenue Code and the general appropriations act, is beyond the Court's judicial review as this pertains to policy and wisdom of the legislature.

4. **ID.; D.; ID.; ID.; ID.; COURTS CANNOT PROVIDE A NEW FORMULA FOR THE INTERNAL REVENUE ALLOTMENTS (IRA) OR SUBSTITUTE ITS OWN DETERMINATION OF WHAT "JUST SHARE" SHOULD BE, ABSENT A CLEAR SHOWING THAT THE ASSAILED ACT OF CONGRESS IS PROHIBITED BY THE FUNDAMENTAL LAW.—** x x x [A]ppropriation is not a judicial function. Congress, which holds the power of the purse, is in the best position to determine the "just share" of the LGUs based on their needs and circumstances. Courts cannot provide a new formula for the Internal Revenue Allotments (IRA) or substitute its own determination of what "just share" should be, absent a clear showing that the assailed act of Congress (*i.e.*, Section 284 of the LGC) is prohibited by the fundamental law. To do so would be to tread the dangerous grounds of judicial legislation and violate the deeply rooted doctrine of separation of powers.

5. **STATUTORY CONSTRUCTION; STATUTES; OPERATIVE FACT DOCTRINE; EXPLAINED; APPLICABLE TO THE CASE AT BAR.—** x x x [E]ven assuming that Section 284 of the LGC is constitutionally infirm, x x x [t]he operative fact doctrine should apply to this case. The doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. In *Araullo v. Aquino III,* the doctrine was held to apply to recognize the positive results of the implementation of the unconstitutional law or executive issuance to the economic welfare of the country. Not to apply the doctrine of operative fact would result in most undesirable wastefulness and would be enormously burdensome

for the Government. In the same vein, petitioners cannot claim deficiency IRA from previous fiscal years as these funds may have already been used for government projects, the undoing of which would not only be physically impossible but also impractical and burdensome for the Government. Verily, considering that the decisions of this Court can only be applied prospectively, x x x [t]he Court's computation of "just share" of no practical value to petitioners and other LGUs; because while LGUs, in accordance with the Court's ruling, are now entitled to share directly from national taxes, Congress, as they may see fit, can simply enact a law lowering the percentage shares of LGUs equivalent to the amount initially granted to them. In fine, and in all practicality, this case is much ado over nothing.

REYES, JR., *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION, SECTION 6, ARTICLE X THEREOF; LOCAL GOVERNMENTS; THE LOCAL GOVERNMENT UNITS (LGUs) HAVE NO INHERENT POWERS, AND THEY ONLY DERIVE THEIR EXISTENCE AND AUTHORITIES FROM AN ENABLING LAW FROM CONGRESS; DISCUSSED.— In line with the mandate to enact a local government code, Congress passed Republic Act (R.A.) No. 7160, otherwise known as the LGC of 1991, to serve as the general framework for LGUs. The LGC of 1991 laid down the general powers and attributes of LGUs, the qualifications and election of local officials, the power of LGUs to legislate and create their own sources of revenue, the scope of their taxing powers, and the allocated share of LGUs in the national taxes, among other things. Under Section 6 of the LGC of 1991, Congress also retained the power to create, divide, merge or abolish a province, city, municipality, or any other political subdivision. Thus, LGUs have no inherent powers, and they only derive their existence and authorities from an enabling law from Congress. The power of Congress, in turn, is checked by the relevant provisions of the Constitution. The Court, in *Lina, Jr. v. Paño*, discussed this principle as follows: Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion. The basic relationship between the national legislature and the local government units has not

been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. **By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.** While the discussion in *Lina* relates specifically to the legislative power of LGUs, the Court has applied the same principle with respect to the other powers conferred by Congress. **In other words, despite the shift towards local autonomy, the National Government, through Congress, retains control over LGUs—albeit, in a lesser degree.**

2. ID.; ID.; ID.; ID.; CONGRESS HAS THE AUTHORITY TO DETERMINE HOW MUCH OF THE NATIONAL TAXES ARE THE LOCAL GOVERNMENT UNITS (LGUs) RIGHTLY ENTITLED TO RECEIVE; LIMITATIONS.— With respect to the share of LGUs in the national taxes, Section 6, Article X of the 1987 Constitution limits the power of Congress in three (3) ways: (a) the share of LGUs must be *just*; (b) the just share in the national taxes must be *determined by law*; and (c) the share must be *automatically released* to the LGU. The Constitution, however, does not prescribe the exact percentage share of LGUs in the national taxes. It left Congress with the authority to determine how much of the national taxes are the LGUs' rightly entitled to receive. Concomitant with this authority is the mandate granted to Congress to allocate these resources among the LGUs, in a local government code. Accordingly, in Section 284 of the LGC of 1991, Congress established the IRA providing LGUs with a 40% share in "*the national* ***internal revenue*** *taxes based on the collection of the third fiscal year preceding the current fiscal year*." This percentage share may not be changed, unless the National Government incurs an unmanageable public-sector deficit. The National Government may not also lower the IRA to less than 30% of the national internal revenue taxes collected on the third fiscal year preceding

the current fiscal year. The LGC of 1991 further requires the quarterly release of the IRA, within five (5) days after the end of each quarter, without any lien or holdback imposed by the national government for whatever purpose.

3. ID.; ID.; ID.; ID.; THE CONSTITUTION REQUIRES CONGRESS TO PROVIDE LGUs WITH A JUST SHARE IN THE NATIONAL TAXES, WHICH SHOULD BE AUTOMATICALLY RELEASED TO THEM, BUT IT DOES NOT SPECIFY THE TAXES THAT SHOULD BE INCLUDED IN THE JUST SHARE OF LGUs, NOR DOES IT MANDATE THE INCLUSION OF *ALL* NATIONAL TAXES IN THE COMPUTATION OF THE INTERNAL REVENUE ALLOTMENT (IRA) OR IN ANY OTHER SHARE GRANTED TO LGUs.— The plain text of Section 6, Article X of the 1987 Constitution requires Congress to provide LGUs with a just share in the national taxes, which should be automatically released to them. **Nowhere in this provision does the Constitution specify the taxes that should be included in the just share of LGUs. Neither does the Constitution mandate the inclusion of *all* national taxes in the computation of the IRA or in any other share granted to LGUs.**

4. ID.; ID.; ID.; ID.; CONGRESS HAS THE AUTHORITY TO DETERMINE THE EXACT PERCENTAGE SHARE OF THE LGUs, AND THE BASIS OF THIS SHARE AND MAY INCLUDE SOME OR ALL OF THE NATIONAL TAXES FOR A GIVEN PERIOD OF TIME.— The IRA is only one of several other block grants of funds from the national government to the local government. It was established in the LGC of 1991 not only because of Section 6, Article X of the 1987 Constitution but also pursuant to Section 3 of the same article mandating Congress to "allocate among the different local government units their x x x resources x x x." Clearly, Section 6, Article X of the 1987 Constitution is not solely implemented through the IRA of LGUs. Congress, in several other statutes other than the LGC of 1991, grant certain LGUs an additional share in some—not all—national taxes, *viz.*: (a) **R.A. No. 7171**, which grants 15% of the excise taxes on locally manufactured Virginia type cigarettes to provinces producing Virginia tobacco; (b) **R.A. No. 8240**, which grants 15% of the incremental revenue collected from the excise tax on tobacco products to provinces producing burley and native

tobacco; (c) **R.A. Nos. 7922**, and **7227**, as amended by R.A. No. 9400, which grants a portion of the gross income tax paid by business enterprises within the Economic Zones to specified LGUs; (d) **R.A. No. 7643**, which grants certain LGUs an additional 20% share in 50% of the national taxes collected under Sections 100, 102, 112, 113, and 114 of the National Internal Revenue Code, in excess of the increase in collections for the immediately preceding year; and (e) **R.A. Nos. 7953** and **8407**, granting LGUs where the racetrack is located a 5% share in the value-added tax paid by the Manila Jockey Club, Inc. and the Philippine Racing Club, Inc. Under the foregoing laws, Congress did not include the entirety of the national taxes in the computation of the LGUs' share. **Thus, inasmuch as Congress has the authority to determine the exact percentage share of the LGUs, Congress may likewise determine the basis of this share and include some or all of the national taxes for a given period of time**. This is consistent with the plenary power vested by the Constitution to the legislature, to determine by law, the just share of LGUs in the national taxes. This plenary power is subject only to the limitations found in the Constitution, which, x x x, includes providing for a *just* share that is automatically released to the LGUs.

5. ID.; ID.; ID.; ID.; CONGRESS CANNOT INTRODUCE AMENDMENTS OR CHANGES TO THE LGUs' SHARE IN THE APPROPRIATION BILL, ESPECIALLY WITH RESPECT TO THE 40% SHARE FIXED IN THE LOCAL GOVERNMENT CODE OF 1991; IT MAY ONLY INCREASE OR DECREASE THIS PERCENTAGE IN A SEPARATE LAW FOR THIS PURPOSE.— [A]side from the express grant of discretion under Sections 3 and 6, Article X of the 1987 Constitution, **Congress possesses the power of the purse**. Pursuant to this power, Congress must make an appropriation measure every time money is paid out of the National Treasury. In these appropriation bills, Congress may not include a provision that does not specifically relate to an appropriation. Since the IRA involves an intergovernmental transfer of public funds from the National Treasury to the LGUs, Congress necessarily makes an appropriation for these funds in favor of the LGUs. However, Congress cannot introduce amendments or changes to the LGUs' share in the appropriation bill, especially with respect to the 40% share fixed in Section

284 of the LGC of 1991. Congress may only increase or decrease this percentage in a separate law for this purpose.

6. ID.; ID.; ID.; ID.; PARAMETERS IN DETERMINING WHETHER CONGRESS ACTED WITHIN ITS AUTHORITY IN GRANTING THE JUST SHARE OF LGUs IN THE NATIONAL TAXES.— Verily, there are several parameters in determining whether Congress acted within its authority in granting the just share of LGUs in the national taxes. *First,* the General Appropriations Act (GAA) should not modify the percentage share in the national internal revenue taxes prescribed in Section 284 of the LGC of 1991. *Second,* there must be no direct or indirect lien on the release of the IRA, which must be automatically released to the LGUs. And, *third*, the LGU share must be *just.* Outside of these parameters, the Court cannot examine the constitutionality of Sections 284 and 285 of the LGC of 1991, and the IRA appropriation in the GAA. It bears noting at this point that the IRA forms part of the national government's major current operating expenditure. By increasing the base of the IRA, the national budget for other government expenditures such as debt servicing, economic and public services, and national defense, is necessarily reduced. This is effectively an adjustment of the national budget—a function solely vested in Congress and outside the authority of this Court.

7. ID.; ID.; ID.; THE DETERMINATION OF CONGRESS AS TO THE BASE AMOUNT FOR THE COMPUTATION OF THE IRA IS A QUESTION OF POLICY BEST LEFT TO ITS WISDOM, AND THE COURT'S DETERMINATION AS TO WHAT SHOULD BE INCLUDED IN THE LGUs' JUST SHARE IN THE NATIONAL TAXES IS AN ENCROACHMENT ON THE LEGISLATIVE POWER OF CONGRESS. — Ultimately, the determination of Congress as to the base amount for the computation of the IRA is a question of policy best left to its wisdom. This is an issue that must be examined through the legislative process where inquiries may be made beyond the information available to Congress, and studies on its overall impact may be thoroughly conducted. Again, the Court must not intrude into "areas committed to other branches of government." Matters of appropriation and budget are areas firmly devoted to Congress by no less than the Constitution itself, and accordingly, **the**

Court may neither bind the hands of Congress nor supplant its wisdom. For these reasons, the Court should have limited its review on whether Congress exceeded the boundaries of its authority under the Constitution. In declaring the term "*internal revenue*" in Section 284 of the LGC of 1991 as unconstitutional, the Court in effect dictated the manner by which Congress should exercise their discretion beyond the limitations prescribed in the Constitution. The majority Decision's determination as to what should be included in the LGUs' just share in the national taxes is an encroachment on the legislative power of Congress.

APPEARANCES OF COUNSEL

The Solicitor General for public respondents.

Gana Manlangit & Perez Law Office for petitioners in G.R. No. 199802.

Emiliano S. Pomer for petitioner in G.R. No. 208488.

D E C I S I O N

BERSAMIN, *J.*:

The petitioners hereby challenge the manner in which the *just share* in the national taxes of the local government units (LGUs) has been computed.

Antecedents

One of the key features of the 1987 Constitution is its push towards decentralization of government and local autonomy. Local autonomy has two facets, the administrative and the fiscal. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the National Government, as well as the power to allocate their resources in accordance with their own priorities.[1] Such autonomy is as indispensable to the viability of the policy of decentralization as the other.

[1] *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201, 218.

Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act No. 7160, otherwise known as the *Local Government Code* (LGC), in order to guarantee the fiscal autonomy of the LGUs by specifically providing that:

> SECTION 284. *Allotment of Internal Revenue Taxes.* — Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
>
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The share of the LGUs, heretofore known as the Internal Revenue Allotment (IRA), has been regularly released to the LGUs. According to the implementing rules and regulations of the LGC, the IRA is determined on the basis of the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue (BIR).[2]

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[2] Article 378, Administrative Order No. 270, Series of 1992.

G.R. No. 199802 (Mandanas, *et al.*) is a special civil action for *certiorari*, prohibition and *mandamus* assailing the manner the General Appropriations Act (GAA) for FY 2012 computed the IRA for the LGUs.

Mandanas, *et al.* allege herein that certain collections of NIRTs by the Bureau of Customs (BOC) — specifically: excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) — have not been included in the base amounts for the computation of the IRA; that such taxes, albeit collected by the BOC, should form part of the base from which the IRA should be computed because they constituted NIRTs; that, consequently, the release of the additional amount of ₱60,750,000,000.00 to the LGUs as their IRA for FY 2012 should be ordered; and that for the same reason the LGUs should also be released their unpaid IRA for FY 1992 to FY 2011, inclusive, totaling ₱438,103,906,675.73.

In G.R. No. 208488, Congressman Enrique Garcia, Jr., the lone petitioner, seeks the writ of *mandamus* to compel the respondents thereat to compute the *just share* of the LGUs on the basis of *all national taxes*. His petition insists on a literal reading of Section 6, Article X of the 1987 Constitution. He avers that the insertion by Congress of the words *internal revenue* in the phrase *national taxes* found in Section 284 of the LGC caused the diminution of the base for determining the *just share* of the LGUs, and should be declared unconstitutional; that, moreover, the exclusion of certain taxes and accounts pursuant to or in accordance with special laws was similarly constitutionally untenable; that the VATs and excise taxes collected by the BOC should be included in the computation of the IRA; and that the respondents should compute the IRA on the basis of all national tax collections, and thereafter distribute any shortfall to the LGUs.

It is noted that named as common respondents were the then incumbent Executive Secretary, Secretary of Finance, the Secretary of the Department of Budget and Management (DBM), and the Commissioner of Internal Revenue. In addition, Mandanas, *et al*. impleaded the National Treasurer, while Garcia added the Commissioner of Customs.

The cases were consolidated on October 22, 2013.[3] In the meanwhile, Congressman Garcia, Jr. passed away. Jose Enrique Garcia III, who was subsequently elected to the same congressional post, was substituted for Congressman Garcia, Jr. as the petitioner in G.R. No. 208488 under the resolution promulgated on August 23, 2016.[4]

In response to the petitions, the several respondents, represented by the Office of the Solicitor General (OSG), urged the dismissal of the petitions upon procedural and substantive considerations.

Anent the procedural considerations, the OSG argues that the petitions are procedurally defective because, firstly, *mandamus* does not lie in order to achieve the reliefs sought because Congress may not be compelled to appropriate the sums allegedly illegally withheld for to do so will violate the doctrine of separation of powers; and, secondly, *mandamus* does not also lie to compel the DBM to release the amounts to the LGUs because such disbursements will be contrary to the purposes specified in the GAA; that Garcia has no clear legal right to sustain his suit for *mandamus*; that the filing of Garcia's suit violates the doctrine of hierarchy of courts; and that Garcia's petition seeks declaratory relief but the Court cannot grant such relief in the exercise of its original jurisdiction.

On the substantive considerations, the OSG avers that Article 284 of the LGC is consistent with the mandate of Section 6, Article X of the 1987 Constitution to the effect that the LGUs shall have a *just share* in the national taxes; that the determination of the *just share* is within the discretion of Congress; that the limitation under the LGC of the basis for the *just share* in the NIRTs was within the powers granted to Congress by the 1987 Constitution; that the LGUs have been receiving their *just share* in the national taxes based on the correct base amount; that Congress has the authority to exclude certain taxes from the

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[3] *Rollo* (G.R. No. 208488), p. 50.

[4] *Id.* at 310.

base amount in computing the IRA; that there is a distinction between the VATs, excise taxes and DSTs collected by the BIR, on one hand, and the VATs, excise taxes and DSTs collected by the BOC, on the other, thereby warranting their different treatment; and that Development Budget Coordination Committee (DBCC) Resolution No. 2003-02 dated September 4, 2003 has limited the base amount for the computation of the IRA to the "cash collections based on the BIR data as reconciled with the Bureau of Treasury;" and that the collection of such national taxes by the BOC should be excluded.

Issues

The issues for resolution are limited to the following, namely:

I.

Whether or not *Mandamus* is the proper vehicle to assail the constitutionality of the relevant provisions of the GAA and the LGC;

II.

Whether or not Section 284 of the LGC is unconstitutional for being repugnant to Section 6, Article X of the 1987 Constitution;

III.

Whether or not the existing shares given to the LGUs by virtue of the GAA is consistent with the constitutional mandate to give LGUs a "just share" to national taxes following Article X, Section 6 of the 1987 Constitution;

IV.

Whether or not the petitioners are entitled to the reliefs prayed for.

Simply stated, the petitioners raise the novel question of whether or not the exclusion of certain national taxes from the base amount for the computation of the *just share* of the LGUs in the national taxes is constitutional.

Ruling of the Court

The petitions are partly meritorious.

I
Mandamus is an improper remedy

Mandanas, *et al*. seek the writs of *certiorari,* prohibition and *mandamus*, while Garcia prays for the writ of *mandamus*. Both groups of petitioners impugn the validity of Section 284 of the LGC.

The remedy of *mandamus* is defined in Section 3, Rule 65 of the *Rules of Court*, which provides:

> Section 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person 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 to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

For the writ of *mandamus* to issue, the petitioner must show that the act sought to be performed or compelled is ministerial on the part of the respondent. An act is ministerial when it does not require the exercise of judgment and the act is performed pursuant to a legal mandate. The burden of proof is on the *mandamus* petitioner to show that he is entitled to the performance of a legal right, and that the respondent has a corresponding duty to perform the act. The writ of *mandamus* may not issue to compel an official to do anything that is not his duty to do, or that is his duty not to do, or to obtain for the petitioner anything to which he is not entitled by law.[5]

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[5] *In the Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund (JDF) and Reduction of Fiscal Autonomy*, UDK-15143, January 21, 2015,

Considering that its determination of what constitutes the *just share* of the LGUs in the national taxes under the 1987 Constitution is an entirely discretionary power, Congress cannot be compelled by writ of *mandamus* to act either way. The discretion of Congress thereon, being exclusive, is not subject to external direction; otherwise, the delicate balance underlying our system of government may be unduly disturbed. This conclusion should at once then demand the dismissal of the Garcia petition in G.R. No. 208488, but we do not dismiss it. Garcia has attributed the non-release of some portions of their IRA balances to an alleged congressional indiscretion — the diminution of the base amount for computing the LGU's just share. He has asserted that Congress altered the constitutional base not only by limiting the base to the NIRTs instead of including therein all national taxes, but also by excluding some national taxes and revenues that only benefitted a few LGUs to the detriment of the rest of the LGUs.

Garcia's petition, while dubbed as a petition for *mandamus*, is also a petition for *certiorari* because it alleges that Congress thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. It is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading or the complaint itself, not by the nomenclature used to designate the same.[6] Moreover, neither should the prayer for relief be controlling; hence, the courts may still grant the proper relief as the facts alleged in the pleadings and the evidence introduced may warrant even without a prayer for specific remedy.[7]

In this regard, Garcia's allegation of the unconstitutionality of the insertion by Congress of the words *internal revenue* in the phrase *national taxes* justifies treating his petition as one

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746 SCRA 352, 371, citing *Uy Kiao Eng v. Lee,* G.R. No. 176831, January 15, 2010, 610 SCRA 211, 217.

[6] *Ruby Shelter Builders and Realty Development Corporation v. Formaran, III*, G.R. No. 175914, February 10, 2009.

[7] *Evangelista v. Santiago*, G.R. No. 157447, April 29, 2005, 457 SCRA 744, 762.

for *certiorari*. It becomes our duty, then, to assume jurisdiction over his petition. In *Araullo v. Aquino III*,[8] the Court has emphatically opined that the Court's *certiorari* jurisdiction under the expanded judicial power as stated in the second paragraph of Section 1, Article VIII of the Constitution can be asserted:

> x x x to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[9]

Further, observing that one of the reliefs being sought by Garcia is identical to the main relief sought by Mandanas, *et al*., the Court should rightly dwell on the substantive arguments posited by Garcia to the extent that they are relevant to the ultimate resolution of these consolidated suits.

II.
Municipal corporations and their relationship with Congress

The correct resolution and fair disposition of the issues interposed for our consideration require a review of the basic principles underlying our system of local governments, and of the extent of the autonomy granted to the LGUs by the 1987 Constitution.

Municipal corporations are now commonly known as local governments. They are the bodies politic established by law partly as agencies of the State to assist in the civil governance of the country. Their chief purpose has been to regulate and administer the local and internal affairs of the cities, municipalities or districts. They are legal institutions formed by charters from the sovereign power, whereby the populations within communities

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[8] G.R. No. 209287, July 1, 2014, 728 SCRA 1.

[9] *Id.* at 75.

living within prescribed areas have formed themselves into bodies politic and corporate, and assumed their corporate names with the right of continuous succession and for the purposes and with the authority of subordinate self-government and improvement and the local administration of the affairs of the State.[10]

Municipal corporations, being the mere creatures of the State, are subject to the will of Congress, their creator. Their continued existence and the grant of their powers are dependent on the discretion of Congress. On this matter, Judge John F. Dillon of the State of Iowa in the United States of America enunciated in *Merriam v. Moody's Executors*[11] the rule of statutory construction that came to be oft-mentioned as Dillon's Rule, to wit:

> [A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation-not simply convenient but indispensible; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation-against the existence of the powers.[12]

The formulation of Dillon's Rule has since undergone slight modifications. Judge Dillon himself introduced some of the modifications through his post-*Merriam* writings with the objective of alleviating the original formulation's harshness. The word *fairly* was added to the second proviso; the word *absolutely* was deleted from the third proviso; and the words *reasonable* and *substantial* were added to the fourth proviso, thusly:

> x x x second, those necessarily or *fairly* implied in or incident to the powers expressly granted; third, those essential to x x x. Any fair, reasonable, doubt.[13]

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[10] Black's Law Dictionary, 6th ed., Nolan, J., & Nolan-Haley, J., West Group, St. Paul, Minnesota, 1990, p. 1017.

[11] 25 Iowa 163 (1868).

[12] *Id*. at 170.

[13] 1 J. Dillon, *Municipal Corporations*, § 89 (3rd Ed. 1881). See Dean, K.D., *The Dillon Rule – a Limit on Local Government Powers*, Missouri Law Review, Vol. 41, Issue 4, Fall 1976, p. 547.

The modified Dillon's Rule has been followed in this jurisdiction, and has remained despite both the 1973 Constitution and the 1987 Constitution mandating autonomy for local governments. This has been made evident in several rulings of the Court, one of which was that handed down in *Magtajas v. Pryce Properties Corporation, Inc.*:[14]

> In light of all the above considerations, we see no way of arriving at the conclusion urged on us by the petitioners that the ordinances in question are valid. On the contrary, we find that the ordinances violate P.D. 1869, which has the character and force of a statute, as well as the public policy expressed in the decree allowing the playing of certain games of chance despite the prohibition of gambling in general.
>
> The rationale of the requirement that the ordinances should not contravene a statute is obvious. **Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.**
>
> > **Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.**
>
> **This basic relationship between the national legislature and the local government units has not been enfeebled by the new**

[14] G.R. No. 111097, July 20, 1994, 234 SCRA 255, 272-273, citing *The City of Clinton v. The Cedar Rapids and Missouri River Railroad Company*, 24 Iowa (1868): 455 at 475.

provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it. [Bold underscoring supplied for emphasis]

Also, in the earlier ruling in *Ganzon v. Court of Appeals*,[15] the Court has pointed out that the 1987 Constitution, in mandating autonomy for the LGUs, did not intend to deprive Congress of its authority and prerogatives over the LGUs.

Nonetheless, the LGC has tempered the application of Dillon's Rule in the Philippines by providing a norm of interpretation in favor of the LGUs in its Section 5(a), to wit:

x x x x x x x x x

(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the local government unit. **Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned**; [Bold underscoring supplied for emphasis]

x x x x x x x x x

III.
The extent of local autonomy in the Philippines

Regardless, there remains no question that Congress possesses and wields plenary power to control and direct the destiny of the LGUs, subject only to the Constitution itself, for Congress,

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[15] G.R. No. 93252, August 5, 1991, 200 SCRA 271, 281.

just like any branch of the Government, should bow down to the majesty of the Constitution, which is always supreme.

The 1987 Constitution limits Congress' control over the LGUs by ordaining in Section 25 of its Article II that: "*The State shall ensure the autonomy of local governments*." The autonomy of the LGUs as thereby ensured does not contemplate the fragmentation of the Philippines into a collection of mini-states,[16] or the creation of *imperium in imperio*.[17] The grant of autonomy simply means that Congress will allow the LGUs to perform certain functions and exercise certain powers in order not for them to be overly dependent on the National Government subject to the limitations that the 1987 Constitution or Congress may impose.[18] Local autonomy recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities.[19]

The constitutional mandate to ensure local autonomy refers to decentralization.[20] In its broad or general sense, decentralization has two forms in the Philippine setting, namely: the decentralization of power and the decentralization of administration. The decentralization of power involves the abdication of political power in favor of the autonomous LGUs as to grant them the freedom to chart their own destinies and to shape their futures with minimum intervention from the central government. This amounts to *self-immolation* because the autonomous LGUs thereby become accountable not to the central authorities but to their constituencies. On the other hand, the decentralization of administration occurs when the central government delegates administrative powers to the LGUs as the means of broadening

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[16] *Id*. at 281.

[17] *Land Transportation Office v. City of Butuan*, G.R. No. 131512, January 20, 2000, 322 SCRA 805, 808.

[18] See *Ganzon v. Court of Appeals*, note 15.

[19] *Disomangcop v. Datumanong*, G.R. No. 149848, November 25, 2004, 444 SCRA 203, 227.

[20] *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, 65.

the base of governmental powers and of making the LGUs more responsive and accountable in the process, and thereby ensure their fullest development as self-reliant communities and more effective partners in the pursuit of the goals of national development and social progress. This form of decentralization further relieves the central government of the burden of managing local affairs so that it can concentrate on national concerns.[21]

Two groups of LGUs enjoy decentralization in distinct ways. The decentralization of power has been given to the regional units (namely, the Autonomous Region for Muslim Mindanao [ARMM] and the constitutionally-mandated Cordillera Autonomous Region [CAR]). The other group of LGUs (*i.e.*, provinces, cities, municipalities and barangays) enjoy the decentralization of administration.[22] The distinction can be reasonably understood. The provinces, cities, municipalities and barangays are given decentralized administration to make governance at the local levels more directly responsive and effective. In turn, the economic, political and social developments of the smaller political units are expected to propel social and

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[21] *Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989, 170 SCRA 786, 795.

[22] In *Cordillera Board Coalition v. Commission on Audit*, G.R. No. 79956, January 29, 1990, 181 SCRA 495, 506, the Court observed that: "It must be clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, Sec. 2] refers to the *administrative* autonomy of local government units or, cast in more technical language, the decentralization of government authority [*Villegas v. Subido*, G.R. No. L-31004, January 8, 1971, 37 SCRA 1]. Local autonomy is not unique to the 1987 Constitution, it being guaranteed also under the 1973 Constitution [Art. II, Sec. 10]. And while there was no express guarantee under the 1935 Constitution, the Congress enacted the Local Autonomy Act (R.A. No. 2264) and the Decentralization Act (R.A. No. 5185), which ushered the irreversible march towards further enlargement of local autonomy in the country [*Villegas v. Subido*, *supra*.]

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of *political* autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, Sec. 18]".

economic growth and development.[23] In contrast, the regional autonomy of the ARMM and the CAR aims to permit determinate groups with common traditions and shared social-cultural characteristics to freely develop their ways of life and heritage, to exercise their rights, and to be in charge of their own affairs through the establishment of a special governance regime for certain member communities who choose their own authorities from within themselves, and exercise the jurisdictional authority legally accorded to them to decide their internal community affairs.[24]

It is to be underscored, however, that the decentralization of power in favor of the regional units is not unlimited but involves only the powers enumerated by Section 20, Article X of the 1987 Constitution and by the acts of Congress. For, with various powers being devolved to the regional units, the grant and exercise of such powers should always be consistent with and limited by the 1987 Constitution and the national laws.[25] In other words, the powers are guardedly, not absolutely, abdicated by the National Government.

Illustrative of the limitation is what transpired in *Sema v. Commission on Elections*,[26] where the Court struck down Section

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[23] *Pimentel v. Aguirre*, *supra* note 1, at 217.

[24] *Disomangcop v. Datumanong*, *supra* note 19, at 231.

[25] Section 20, Article X of the 1987 Constitution states:

Section 20. Within its territorial jurisdiction and **subject to the provisions of this Constitution and national laws**, the organic act of autonomous regions shall provide for legislative powers over:

(1) Administrative organization;

(2) Creation of sources of revenues;

(3) Ancestral domain and natural resources;

(4) Personal, family, and property relations;

(5) Regional urban and rural planning development;

(6) Economic, social, and tourism development;

(7) Educational policies;

(8) Preservation and development of the cultural heritage; and

(9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

[26] G.R. No. 177597, July 16, 2008, 558 SCRA 700, 743-744.

19, Article VI of Republic Act No. 9054 (*An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled "An Act Providing for the Autonomous Region in Muslim Mindanao, " as Amended*) insofar as the provision granted to the ARMM the power to create provinces and cities, and consequently declared as void Muslim Mindanao Autonomy Act No. 201 creating the Province of Shariff Kabunsuan for being contrary to Section 5, Article VI and Section 20, Article X of the 1987 Constitution, as well as Section 3 of the Ordinance appended to the 1987 Constitution. The Court clarified therein that only Congress could create provinces and cities. This was because the creation of provinces and cities necessarily entailed the creation of legislative districts, a power that only Congress could exercise pursuant to Section 5, Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the Constitution; as such, the ARMM would be thereby usurping the power of Congress to create legislative districts and national offices.[27]

The 1987 Constitution has surely encouraged decentralization by mandating that a system of decentralization be instituted through the LGC in order to enable a more responsive and accountable local government structure.[28] It has also delegated the power to tax to the LGUs by authorizing them to create their own sources of income that would make them self-reliant.[29] It further ensures that each and every LGU will have a just share in national taxes as well in the development of the national wealth.[30]

The LGC has further delineated in its Section 3 the different operative principles of decentralization to be adhered to consistently with the constitutional policy on local autonomy, *viz.*:

Sec. 3. Operative Principles of Decentralization —

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[27] *Id*. at 730-732.

[28] *See* Article X, Section 3.

[29] *Id*., Section 5.

[30] *Id*., Section 5 and Section 6.

The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:

(a) There shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources;

(b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities;

(c) Subject to civil service law, rules and regulations, local officials and employees paid wholly or mainly from local funds shall be appointed or removed, according to merit and fitness, by the appropriate appointing authority;

(d) The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions: hence, they shall have the power to create and broaden their own sources of revenue and the right to a just share in national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas;

(e) Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions;

(f) Local government units may group themselves, consolidate or coordinate their efforts, services, and resources commonly beneficial to them;

(g) The capabilities of local government units, especially the municipalities and barangays, shall be enhanced by providing them with opportunities to participate actively in the implementation of national programs and projects;

(h) There shall be a continuing mechanism to enhance local autonomy not only by legislative enabling acts but also by administrative and organizational reforms;

(i) Local government units shall share with the national government the responsibility in the management and maintenance

of ecological balance within their territorial jurisdiction, subject to the provisions of this Code and national policies;

(j) Effective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership;

(k) The realization of local autonomy shall be facilitated through improved coordination of national government policies and programs an extension of adequate technical and material assistance to less developed and deserving local government units;

(l) The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development; and

(m) The national government shall ensure that decentralization contributes to the continuing improvement of the performance of local government units and the quality of community life.

Based on the foregoing delineation, decentralization can be considered as the decision by the central government to empower its subordinates, whether geographically or functionally constituted, to exercise authority in certain areas. It involves decision-making by subnational units, and is typically a delegated power, whereby a larger government chooses to delegate authority to more local governments.[31] It is also a process, being the set of policies, electoral or constitutional reforms that transfer responsibilities, resources or authority from the higher to the lower levels of government.[32] It is often viewed as a shift of authority towards local governments and away from the central government, with total government authority over society and economy imagined as fixed.[33]

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[31] *Disomangcop v. Datumanong*, *supra* note 19, at 233.

[32] *Does Decentralization Improve Perceptions of Accountability? Attitudinal Evidence from Colombia,* Escobar-Lemmon, M. & Ross, A. Midwest Political Science Association, American Journal of Political Science, Vol. 58, No. 1 (January 2014), p. 176 accessed at http://www.jstor.org/stable/10.1017/s0022381612000667 last October 4, 2017.

[33] *Comparative Federalism and Decentralization: On Meaning and Measurement*. Rodden, J. Comprative Politics, Ph.D. Programs in Political

As a system of transferring authority and power from the National Government to the LGUs, decentralization in the Philippines may be categorized into four, namely: (1) political decentralization or devolution; (2) administrative decentralization or deconcentration; (3) fiscal decentralization; and (4) policy or decision-making decentralization.

Political decentralization or devolution occurs when there is a transfer of powers, responsibilities, and resources from the central government to the LGUs for the performance of certain functions. It is a more liberal form of decentralization because there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to the LGUs in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.[34] It is an act by which the National Government confers power and authority upon the various LGUs to perform specific functions and responsibilities.[35] It encompasses reforms to open sub-national representation and policies to "devolve political authority or electoral capacities to subnational actors."[36] Section 16 to Section 19 of the LGC characterize political decentralization in the LGC as different LGUs empowered to address the different needs of their constituents. In contrast, devolution in favor of the regional units is more expansive because they are given the authority to regulate a wider array of subjects, including personal, family and property relations.

Administrative decentralization or deconcentration involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local

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Science, City University of New York. Comparative politics, Vol. 36, No.4 (July 2004), p. 482. Accessed at http://www.jstor.org/stable/4150172 last October 6, 2017.

[34] *Disomangcop v. Datumanong*, *supra* note 19, at 234.

[35] Section 17, LGC.

[36] *Does Decentralization Improve Perceptions of Accountability? Attitudinal Evidence from Colombia*. Escobar-Lemmon, M. & Ross, A. Midwest Political Science Association, American Journal of Political Science, Vol. 58, No. 1 (January 2014), p. 176 accessed at http://www.jstor.org/stable/10.1017/s0022381612000667 last October 4, 2017.

offices.[37] Consistent with this concept, the LGC has created the Local School Boards,[38] the Local Health Boards[39] and the Local Development Councils,[40] and has transferred some of the authority from the agencies of the National Government, like the Department of Education and the Department of Health, to such bodies to better cope up with the needs of particular localities.

Fiscal decentralization means that the LGUs have the power to create their own sources of revenue in addition to their just share in the national taxes released by the National Government. It includes the power to allocate their resources in accordance with their own priorities. It thus extends to the preparation of their budgets, so that the local officials have to work within the constraints of their budgets. The budgets are not formulated at the national level and imposed on local governments, without regard as to whether or not they are relevant to local needs and resources. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals, is recognized and addressed.[41]

Fiscal decentralization emanates from a specific constitutional mandate that is expressed in several provisions of Article X (*Local Government*) of the 1987 Constitution, specifically: Section 5;[42] Section 6;[43] and Section 7.[44]

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[37] *Disomangcop v. Datumanong*, *supra* note 19, at 233.

[38] Section 98, LGC.

[39] Section 102, LGC.

[40] Section 107, LGC.

[41] *Pimentel, Jr. v. Aguirre*, *supra* note 1, at 218.

[42] Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

[43] Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

[44] Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth

The constitutional authority extended to each and every LGU to create its own sources of income and revenue has been formalized from Section 128 to Section 133 of the LGC. To implement the LGUs' entitlement to the just share in the national taxes, Congress has enacted Section 284 to Section 288 of the LGC. Congress has further enacted Section 289 to Section 294 of the LGC to define the share of the LGUs in the national wealth. Indeed, the requirement for the automatic release to the LGUs of their just share in the national taxes is but the consequence of the constitutional mandate for fiscal decentralization.[45]

For sure, fiscal decentralization does not signify the absolute freedom of the LGUs to create their own sources of revenue and to spend their revenues unrestrictedly or upon their individual whims and caprices. Congress has subjected the LGUs' power to tax to the guidelines set in Section 130 of the LGC and to the limitations stated in Section 133 of the LGC. The concept of local fiscal autonomy does not exclude any manner of intervention by the National Government in the form of supervision if only to ensure that the local programs, fiscal and otherwise, are consistent with the national goals.[46]

Lastly, policy- or decision-making decentralization exists if at least one sub-national tier of government has exclusive authority to make decisions on at least one policy issue.[47]

In fine, certain limitations are and can be imposed by Congress in all the forms of decentralization, for local autonomy, whether as to power or as to administration, is not absolute. The LGUs remain to be the tenants of the will of Congress subject to the guarantees that the Constitution itself imposes.

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within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

[45] *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 760.

[46] *Pimentel, Jr. v. Aguirre*, *supra* note 1.

[47] *Decentralization and Intrastate Struggles: Chechnya, Punjab, and Quebec*. Bakke, K. Cambridge University Press, New York, 2015, p. 12.

IV.
Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution

Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a *just share* in the national taxes, *viz.*:

> Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Section 6, when parsed, embodies three mandates, namely: (1) the LGUs shall have a *just share* in the *national taxes*; (2) the *just share* shall be *determined by law*; and (3) the *just share* shall be *automatically released* to the LGUs.[48]

Congress has sought to carry out the second mandate of Section 6 by enacting Section 284, Title III (*Shares of Local Government Units in the Proceeds of National Taxes*), of the LGC, which is again quoted for ready reference:

> Section 284. *Allotment of Internal Revenue Taxes*. — Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
>
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty

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[48] *Province of Batangas v. Romulo*, *supra* note 45.

percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

There is no issue as to what constitutes the LGUs' *just share* expressed in percentages of the national taxes (*i.e.*, 30%, 35% and 40% stipulated in subparagraphs (a), (b), and (c) of Section 284). Yet, Section 6, *supra*, mentions *national taxes* as the source of the *just share* of the LGUs while Section 284 ordains that the *share* of the LGUs be taken from *national internal revenue taxes* instead.

Has not Congress thereby infringed the constitutional provision?

Garcia contends that Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the *just share* of the LGUs.

We agree with Garcia's contention.

Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution.[49] The phrase *national internal revenue taxes* engrafted in Section 284 is undoubtedly more restrictive than the term *national taxes* written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that *national taxes* should be the base from which the *just share* of the LGU comes. Such departure is impermissible. *Verba legis non est recedendum* (from the words of a statute there should be no departure).[50] Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution.

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[49] See *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 689.

[50] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Every tax has three elements, namely: (a) it is an enforced proportional contribution from persons and properties; (b) it is imposed by the State by virtue of its sovereignty; and (c) it is levied for the support of the Government.[51] Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.[52]

What the phrase *national internal revenue taxes* as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, *viz.*:

Section 21. *Sources of Revenue*. — The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;

(b) Estate and donor's taxes;

(c) Value-added tax;

(d) Other percentage taxes;

(e) Excise taxes;

(f) Documentary stamp taxes; and

(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

In view of the foregoing enumeration of what are the national internal revenue taxes, Section 284 has effectively deprived the LGUs from deriving their *just share* from *other* national taxes, like the customs duties.

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. According

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[51] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 482.

[52] Aban, *Law of Basic Taxation in the Philippines*, Revised Ed. 2001, p. 27.

to *Garcia v. Executive Secretary*,[53] *customs duties* is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country. Although customs duties have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes, it is often difficult to say which of the two is the principal objective in a particular instance, for, verily, customs duties, much like internal revenue taxes, are rarely designed to achieve only one policy objective.[54] We further note that Section 102(oo) of R.A. No. 10863 (*Customs Modernization and Tariff Act*) expressly includes all fees and charges imposed under the Act under the blanket term of *taxes*.

It is clear from the foregoing clarification that the exclusion of *other* national taxes like customs duties from the base for determining the *just share* of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

Still, the OSG posits that Congress can manipulate, by law, the base of the allocation of the just share in the national taxes of the LGUs.

The position of the OSG cannot be sustained. Although it has the primary discretion to determine and fix the *just share* of the LGUs in the national taxes (*e.g.*, Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the *just share* of the LGUs to be derived from the *national taxes*. The phrase *as determined by law* in Section 6 follows and qualifies the phrase *just share*, and cannot be construed as qualifying the succeeding phrase *in the national taxes*. The intent of the people in respect of Section 6 is really that the base for reckoning the just share of the LGUs should includes *all* national taxes. To read Section 6 differently as requiring that *the just share of LGUs in the national taxes shall be determined by law* is tantamount to the unauthorized revision of the 1987 Constitution.

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[53] G.R. No. 101273, July 3, 1992, 211 SCRA 219, 227.

[54] *Id*.

V.
Congress can validly exclude taxes that will constitute the base amount for the computation of the IRA only if a Constitutional provision allows such exclusion

Garcia submits that even assuming that the present version of Section 284 of the LGC is constitutionally valid, the implementation thereof has been erroneous because Section 284 does not authorize any exclusion or deduction from the collections of the NIRTs for purposes of the computation of the allocations to the LGUs. He further submits that the exclusion of certain NIRTs diminishes the fiscal autonomy granted to the LGUs. He claims that the following NIRTs have been illegally excluded from the base for determining the fair share of the LGUs in the IRA, to wit:

(1) NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the Autonomous Region for Muslim Mindanao (ARMM), the regional government and the central government, pursuant to Section 15[55] in relation

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[55] SECTION 15. Collection and Sharing of Internal Revenue Taxes. — **The share of the central government or national government of all current year collections of internal revenue taxes, within the area of autonomy shall, for a period of five (5) years be allotted for the Regional Government in the Annual Appropriations Act.**

The Bureau of Internal Revenue (BIR) or the duly authorized treasurer of the city or municipality concerned, as the case may be, shall continue to collect such taxes and remit the share to the Regional Autonomous Government and the central government or national government through duly accredited depository bank within thirty (30) days from the end of each quarter of the current year;

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

(a) twenty percent (20%) shall accrue to the city or municipality where such taxes are collected; and

(b) eighty percent (80%) shall accrue to the Regional Government.

In all cases, the Regional Government shall remit to the local government units their respective shares within sixty (60) days from the end of each quarter of the current taxable year. The provinces, cities, municipalities, and barangay within the area of autonomy shall continue to receive their respective shares in the Internal Revenue Allotment (IRA),

to Section 9,[56] Article IX of R.A. No. 9054 (*An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No. 6734, entitled An Act providing for an Organic Act for the Autonomous Region in Muslim Mindanao*);

(2) The shares in the excise taxes on mineral products of the different LGUs, as provided in Section 287 of the NIRC[57]

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as provided for in Section 284 of Republic Act No. 7160, the Local Government Code of 1991. The five-year (5) period herein abovementioned may be extended upon mutual agreement of the central government or national government and the Regional Government.

[56] **Section 9.** *Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges.*— The collections of a province or city **from national internal revenue taxes**, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

(a) **Thirty-five percent (35%) to the province or city**;

(b) **Thirty-five percent (35%) to the regional government**; and

(c) **Thirty percent (30%) to the central government or national government.**

The share of the province shall be apportioned as follows: forty-five percent (45%) to the province, thirty-five percent (35%) to the municipality and twenty percent (20%) to the barangay.

The share of the city shall be distributed as follows: fifty percent (50%) to the city and fifty percent (50%) to the barangay concerned.

The province or city concerned shall automatically retain its share and remit the shares of the Regional Government and the central government or national government to their respective treasurers who shall, after deducting the share of the Regional Government as mentioned in paragraphs (b) and (c) of this Section, remit the balance to the national government within the first five (5) days of every month after the collections were made.

The remittance of the shares of the provinces, cities, municipalities, and barangay in the internal revenue taxes, fees, and charges and the taxes, fees, and charges on the use, development, and operation of natural resources within the autonomous region shall be governed by law enacted by the Regional Assembly.

The remittances of the share of the central government or national government of the internal revenue taxes, fees, and charges and on the taxes, fees, and charges on the use, development, and operation of the natural resources within the autonomous region shall be governed by the rules and regulations promulgated by the Department of Finance of the central government or national government.

Officials who fail to remit the shares of the central government or national government, the Regional Government and the local government units concerned in the taxes, fees, and charges mentioned above may be suspended or removed from office by order of the Secretary of Finance in cases involving the share of the central government or national government or by the Regional Governor in cases involving the share of the Regional Government and by the proper local government executive in cases involving the share of local government. [Bold emphasis supplied]

[57] **SEC. 287.** *Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.* — Local Government units

in relation to Section 290 of the LGC;[58]

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shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. — **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.**

(B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation. — Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

(1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt.

(C) Allocation of Shares. — The share in the preceding Section shall be distributed in the following manner:

(1) Where the natural resources are located in the province:

(a) Province - twenty percent (20%)

(b) Component city/municipality - forty-five percent (45%); and

(c) Barangay - thirty-five percent (35%)

Provided, however, That where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of: (l) Population - seventy percent (70%); and (2) Land area - thirty percent (30%).

(2) Where the natural resources are located in a highly urbanized or independent component city:

(a) City - sixty-five percent (65%); and

(b) Barangay - thirty-five percent (35%)

Provided, however, That where the natural resources are located in two (2) or more Cities, the allocation of shares shall be based on the formula on population and land area as specified in subsection (C)(1) hereof. [Bold emphasis supplied]

[58] SEC. 290. *Amount of Share of Local Government Units*. — **Local government units shall,** in addition to the internal revenue allotment, **have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges**, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. (Bold emphasis supplied)

(3) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc.[59] and Philippine Racing Club, Inc.;[60]

(4) The shares of various municipalities in VAT collections under R.A. No. 7643 (*An Act to Empower the Commissioner of*

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[59] Section 6 of R.A. No. 6631 (*An Act granting Manila Jockey Club, Inc. a Franchise to Construct, Operate and Maintain a Race Track for Horse Racing in the City of Manila or in the Province of Bulacan*) states:

Section 6. In consideration of the franchise and rights herein granted to the Manila Jockey Club, Inc., the grantee shall pay into the national Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one-half per centum (8 ½%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section four hereof, allotted as follows: a) National Government, five per centum (5%); b) **the city or municipality where the race track is located, five per centum (5%)**; c) Philippine Charity Sweepstakes Office, seven per centum (7%); d) Philippine Anti-Tuberculosis Society, six per centum (6%); and e) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, now or in the future, on its properties, whether real or personal, and profits, from which taxes the grantee is hereby expressly excepted. (Bold emphasis supplied)

[60] Section 8 of Republic Act 6632 (*An Act granting the Philippine Racing Club, Inc., a franchise to operate and maintain a race track for Horse Racing in the Province of Rizal*) provides:

Section 8. In consideration of the franchise and rights herein granted to the Philippine Racing Club, Inc., the grantee shall pay into the National Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one fourth per centum (8 1/4%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section six hereof, allotted as follows: a) National Government, five per centum (5%); **the Municipality of Makati, five per centum (5%)**; b) Philippine Charity Sweepstakes Office, seven per centum (7%); c) Philippine Anti-Tuberculosis Society, six per centum (6%); and d) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax, of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, on its properties, whether real or personal, from which taxes the grantee is hereby expressly exempted. (Bold emphasis supplied)

Internal Revenue to Require the Payment of the Value Added Tax Every Month and to Allow Local Government Units to Share in VAT Revenue, Amending for this Purpose Certain Sections of the National Internal Revenue Code) as embodied in Section 283 of the NIRC;[61]

(5) The shares of relevant LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227 (*Bases Conversion and Development Act of 1992*);[62]

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[61] *Disposition of National Internal Revenue*. — National Internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

In addition to the internal revenue allotment as provided for in the preceding paragraph, **fifty percent (50%) of the national taxes collected under Sections 106, 108 and 116 of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows**:

(a) **Twenty percent (20%) shall accrue to the city or municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991**; and

(b) Eighty percent (80%) shall accrue to the National Government. (Bold emphasis supplied)

[62] R.A. No. 7227 (*Bases Conversion and Development Act of 1992*) states:

Section 8. *Funding Scheme*. — x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

(6) The shares of different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided

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(1) Thirty-two and five-tenths percent (35.5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-relianceand modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;

(2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extentions;

(3) Five Percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities continguous to the base areas as mandated herein; and

(4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people.

***Provided*, That, in the case of Fort Bonifacio, two and five tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig and Pateros: *Provided, further*, That in no case shall farmers affected be denied due compensation.**

With respect to the military reservations and their extensions, the President upon recommendation of the Conversion Authority or the Subic Authority when it concerns the Subic Special Economic Zone shall likewise be authorized to sell or dispose those portions of lands which the Conversion Authority or the Subic Authority may find essential for the development of their projects. (Bold emphasis supplied)

Section 12. *Subic Special Economic Zone*. — Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the office of the

in Section 3 of R.A. No. 7171 (*An Act to Promote the Development of the Farmers in the Virginia Tobacco Producing Provinces*), and as now provided in Section 289 of the NIRC;[63]

President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the Zone as provided herein.

The abovementioned zone shall be subject to the following policies:

x x x x x x x x x

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, **one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors**. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter; (Bold emphasis supplied)

x x x x x x x x x

[63] The NIRC provides in Section 289 as follows:

Section 289. Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco. — The financial support given by the National Government for the beneficiary provinces shall be constituted and collected from the proceeds of fifteen percent (15%) of the excise taxes on locally manufactured Virginia-type of cigarettes.

The funds allotted shall be divided among the beneficiary provinces pro-rata according to the volume of Virginia tobacco production.

Provinces producing Virginia tobacco shall be the beneficiary provinces under Republic Act No. 7171. Provided, however, that to qualify as beneficiary under R.A. No. 7171, a province must have an average annual production of Virginia leaf tobacco in an amount not less than one million kilos: Provided, further, that the Department of Budget and Management (DBM) shall each year determine the beneficiary provinces and their computed share of the funds under R.A. No. 7171, referring to the National Tobacco Administration (NTA) records of tobacco acceptances, at the tobacco trading centers for the immediate past year.

(7) The shares of different LGUs in the incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240 (*An Act Amending Sections 138, 140 and 142 of the National Internal Revenue Code as Amended and for Other Purposes*) and as now provided in Section 288 of the NIRC;[64] and

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The Secretary of Budget and Management is hereby directed to retain annually the said funds equivalent to fifteen percent (15%) of excise taxeson locally manufactured Virginia-type cigarettes to be remitted to the beneficiary provinces qualified under R.A. No. 7171.

The provisions of existing laws to the contrary notwithstanding, the fifteen percent (15%) share from government revenues mentioned in R.A. No. 7171 and due to the Virginia tobacco-producing provinces shall be directly remitted to the provinces concerned.

Provided, That this Section shall be implemented in accordance with the guidelines of Memorandum Circular No. 61-A dated November 28, 1993, which amended Memorandum Circular No. 61, entitled '*Prescribing Guidelines for Implementing Republic Act No. 7171*', dated January 1, 1992.

Provided, further, That in addition to the local government units mentioned in the above circular, the concerned officials in the province shall be consulted as regards the identification of projects to be financed. [Bold emphasis supplied]

[64] Section 288. Disposition of Incremental Revenues.—

x x x x x x x x x

(B) Incremental Revenues from Republic Act No. 8240. — Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under R. A. No. 8240 shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. The fund shall be exclusively utilized for programs to promote economically viable alternatives for tobacco farmers and workers such as:

(1) Programs that will provide inputs, training, and other support for tobacco farmers who shift to production of agricultural products other than tobacco including, but not limited to, high-value crops, spices, rice, corn, sugarcane, coconut, livestock and fisheries;

(2) Programs that will provide financial support for tobacco farmers who are displaced or who cease to produce tobacco;

(3) Cooperative programs to assist tobacco fanners in planting alternative crops or implementing other livelihood projects;

(8) The share of the Commission of Audit (COA) in the NIRTs as provided in Section 24(3) of P.D. No. 1445 (*Government Auditing Code of the Philippines*)[65] in relation to Section 284 of the NIRC.[66]

Garcia insists that the foregoing taxes and revenues should have been included by Congress and, by extension, the BIR in the base for computing the IRA on the strength of the cited provisions; that the LGC did not authorize such exclusion; and that the continued exclusion has undermined the fiscal autonomy guaranteed by the 1987 Constitution.

The insistence of Garcia is valid to an extent.

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(4) Livelihood programs and projects that will promote, enhance, and develop the tourism potential of tobacco-growing provinces;

(5) Infrastructure projects such as farm to market roads, schools, hospitals, and rural health facilities; and

(6) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The Department of Budget and Management, in consultation with the Department of Agriculture, shall issue rules and regulations governing the allocation and disbursement of this fund, not later than one hundred eighty (180) days from the effectivity of this Act. [Bold emphasis supplied]

[65] **Section 24.** *Appropriations and funding.*

x x x x x x x x x

3. A maximum of one-half of one per-centum (1/2 of 1%) of the collections from national internal revenue taxes not otherwise accruing to Special Funds or Special Accounts in the General Fund of the National Government, upon authority from the Minister (Secretary) of Finance, shall be deducted from such collections and shall be remitted to the National Treasury to cover the cost of auditing services rendered to local government units;

[66] **SEC. 284. Allotment for the Commission on Audit.** — One-half of one percent (1/2 of 1%) of the collections from the national internal revenue taxes not otherwise accruing to special accounts in the general fund of the national government shall accrue to the Commission on Audit as a fee for auditing services rendered to local government units, excluding maintenance, equipment, and other operating expenses as provided for in Section 21 of Presidential Decree No. 898.

An examination of the above-enumerated laws confirms that the following have been excluded from the base for reckoning the just share of the LGUs as required by Section 6, Article X of the 1987 Constitution, namely:

(a) The share of the affected LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227;

(b) The share of the different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided for in Section 3, R.A. No. 7171, and as now provided in Section 289 of the NIRC;

(c) The share of the different LGUs in incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240, and as now provided for in Section 288 of the NIRC;

(d) The share of the COA in the NIRTs as provided in Section 24(3) of P.D. No. 1445[67] in relation to Section 284 of the NIRC;

(e) The shares of the different LGUs in the excise taxes on mineral products, as provided in Section 287 of the NIRC in relation to Section 290 of the LGC;

(f) The NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the ARMM, the regional

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The Secretary of Finance is hereby authorized to deduct from the monthly internal revenue tax collections an amount equivalent to the percentage as herein fixed, and to remit the same directly to the Commission on Audit under such rules and regulations as may be promulgated by the Secretary of Finance and the Chairman of the Commission on Audit.

[67] S**ection 24.** *Appropriations and funding.*

x x x x x x x x x

3. A maximum of one-half of one per-centum (1/2 of 1%) of the collections from national internal revenue taxes not otherwise accruing to Special Funds or Special Accounts in the General Fund of the National Government, upon authority from the Minister (Secretary) of Finance, shall be deducted from such collections and shall be remitted to the National Treasury to cover the cost of auditing services rendered to local government units;

government and the central government, pursuant to Section 15[68] in relation to Section 9,[69] Article IX of R. A. No. 9054; and

(g) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc., and the Philippine Racing Club, Inc.

Anent the share of the affected LGUs in the proceeds of the sale and conversion of the former military bases pursuant to R.A. No. 7227, the exclusion is warranted for the reason that

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[68] SECTION 15. Collection and Sharing of Internal Revenue Taxes. — **The share of the central government or national government of all current year collections of internal revenue taxes, within the area of autonomy shall, for a period of five (5) years be allotted for the Regional Government in the Annual Appropriations Act.**

The Bureau Of Internal Revenue (BIR) or the duly authorized treasurer of the city or municipality concerned, as the case may be, shall continue to collect such taxes and remit the share to the Regional Autonomous Government and the central government or national government through duly accredited depository bank within thirty (30) days from the end of each quarter of the current year;

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

(a) twenty percent (20%) shall accrue to the city or municipality where such taxes are collected; and

(b) eighty percent (80%) shall accrue to the Regional Government.

In all cases, the Regional Government shall remit to the local government units their respective shares within sixty (60) days from the end of each quarter of the current taxable year. The provinces, cities, municipalities, and barangay within the area of autonomy shall continue to receive their respective shares in the Internal Revenue Allotment (IRA), as provided for in Section 284 of Republic Act No. 7160, the Local Government Code of 1991. The five-year (5) period herein abovementioned may be extended upon mutual agreement of the central government or national government and the Regional Government.

[69] **Section 9.** *Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges.*— The collections of a province or city **from national internal revenue taxes**, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

such proceeds do not come from a tax, fee or exaction imposed on the sale and conversion.

As to the share of the affected LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products under R.A. No. 7171 (now Section 289 of the NIRC); the share of the affected LGUs in incremental revenues from Burley and

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(a) **Thirty-five percent (35%) to the province or city**;

(b) **Thirty-five percent (35%) to the regional government**; and

(c) **Thirty percent (30%) to the central government or national government.**

The share of the province shall be apportioned as follows: forty-five percent (45%) to the province, thirty-five percent (35%) to the municipality and twenty percent (20%) to the barangay.

The share of the city shall be distributed as follows: fifty percent (50%) to the city and fifty percent (50%) to the barangay concerned.

The province or city concerned shall automatically retain its share and remit the shares of the Regional Government and the central government or national government to their respective treasurers who shall, after deducting the share of the Regional Government as mentioned in paragraphs (b) and (c) of this Section, remit the balance to the national government within the first five (5) days of every month after the collections were made.

The remittance of the shares of the provinces, cities, municipalities, and barangay in the internal revenue taxes, fees, and charges and the taxes, fees, and charges on the use, development, and operation of natural resources within the autonomous region shall be governed by law enacted by the Regional Assembly.

The remittances of the share of the central government or national government of the internal revenue taxes, fees, and charges and on the taxes, fees, and charges on the use, development, and operation of the natural resources within the autonomous region shall be governed by the rules and regulations promulgated by the Department of Finance of the central government or national government.

Officials who fail to remit the shares of the central government or national government, the Regional Government and the local government units concerned in the taxes, fees, and charges mentioned above may be suspended or removed from office by order of the Secretary of Finance in cases involving the share of the central government or national government or by the Regional Governor in cases involving the share of the Regional Government and by the proper local government executive in cases involving the share of local government. [Emphasis Supplied]

native tobacco products under Section 8, R.A. No. 8240 (now Section 288 of the NIRC); the share of the COA in the NIRTs pursuant to Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC; and the share of the host LGUs in the franchise taxes paid by the Manila Jockey Club, Inc., and Philippine Racing Club, Inc., under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, respectively, the exclusion is also justified. Although such shares involved national taxes as defined under the NIRC, Congress had the authority to exclude them by virtue of their being taxes imposed for special purposes. A reading of Section 288 and Section 289 of the NIRC and Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC reveals that all such taxes are levied and collected for a special purpose.[70] The same is true for the franchise taxes paid under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, inasmuch as certain percentages of the franchise taxes go to different beneficiaries. The exclusion conforms to Section 29(3), Article VI of the 1987 Constitution, which states:

> Section 29. x x x
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> x x x x x x x x x
>
> (3) **All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only.** If the purpose for which a special fund was created has been

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[70] Section 288 of the NIRC (formerly Section 8 of R.A. No. 8240) imposed an excise tax on tobacco products, a percentage of which is to be allocated and divided among the provinces producing Burley and native tobacco in accordance with the volume of tobacco production. Such share received would then be allocated by the recipient LGUs for the benefit of the farmers and workers, through any of the programs set by the law.

Section 289 of the NIRC gives the concerned LGUs a share in the excise taxes imposed on locally manufactured Virginia tobacco products. The LGUs consist of the provinces and their subdivisions producing Virginia tobacco. This share is considered by Congress as the National Government's financial support to the beneficiary LGUs producing Virginia tobacco.

The share of the COA from the NIRT is an aliquot part of the NIRTs, and serves the special purpose of defraying the cost of auditing services rendered to the LGUs.

fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. [Bold emphasis supplied]

The exclusion of the share of the different LGUs in the excise taxes imposed on mineral products pursuant to Section 287 of the NIRC in relation to Section 290 of the LGC is premised on a different constitutional provision. Section 7, Article X of the 1987 Constitution allows affected LGUs to have an equitable share in the proceeds of the utilization of the nation's national wealth "within their respective areas," to wit:

> Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

This constitutional provision is implemented by Section 287 of the NIRC and Section 290 of the LGC thusly:

> SEC. 287. *Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth*. — Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.
>
> (A) Amount of Share of Local Government Units. — **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.**
>
> (B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation. — Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government- owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

(1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt. [Bold emphasis supplied]

SEC. 290. *Amount of Share of Local Government Units*. — **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges**, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. [Bold emphasis supplied]

Lastly, the NIRTs collected by the provinces and cities within the ARMM whose portions are distributed to the ARMM's provincial, city and regional governments are also properly excluded for such taxes are intended to truly enable a sustainable and feasible autonomous region as guaranteed by the 1987 Constitution. The mandate under Section 15 to Section 21, Article X of the 1987 Constitution is to allow the separate development of peoples with distinctive cultures and traditions in the autonomous areas.[71] The grant of autonomy to the autonomous regions includes the right of self-determination — which in turn ensures the right of the peoples residing therein to the necessary level of autonomy that will guarantee the support of their own cultural identities, the establishment of priorities by their respective communities' internal decision-making processes and the management of collective matters by themselves.[72] As such, the NIRTs collected by the provinces and cities within the ARMM will ensure local autonomy and their very existence with a continuous supply of funding sourced from their very

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[71] *Disomangcop v. Datumanong*, *supra* note 19, at 227.

[72] *Id*. at 230.

own areas. The ARMM will become self-reliant and dynamic consistent with the dictates of the 1987 Constitution.

The shares of the municipalities in the VATs collected pursuant to R.A. No. 7643 should be included in determining the base for computing the *just share* because such VATs are national taxes, and nothing can validly justify their exclusion.

In recapitulation, the national taxes to be included in the base for computing the just share the LGUs shall henceforth be, but shall not be limited to, the following:

1. The NIRTs enumerated in Section 21 of the NIRC, as amended, to be inclusive of the VATs, excise taxes, and DSTs collected by the BIR and the BOC, and their deputized agents;
2. Tariff and customs duties collected by the BOC;
3. 50% of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VATs and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of R.A. No. 9054;
4. 60% of the national taxes collected from the exploitation and development of the national wealth; the remaining 40% will exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;
5. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant created in R.A. No. 7171 and R.A. No. 7227;
6. The entire 50% of the national taxes collected under Section 106, Section 108 and Section 116 of the NIRC in excess of the increase in collections for the immediately preceding year; and
7. 5% of the franchise taxes in favor of the national government paid by franchise holders in accordance with Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632.

VI.
Entitlement to the reliefs sought

The petitioners' prayer for the payment of the arrears of the LGUs' *just share* on the theory that the computation of the base amount had been unconstitutional all along cannot be granted.

It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the *just share* they should have received had the LGC properly reckoned such just share from all national taxes, on the one hand, and the share – represented by the IRA — the LGUs have actually received since the effectivity of the IRA under the LGC, on the other. This puts the National Government in arrears as to the *just share* of the LGUs. A legislative or executive act declared void for being unconstitutional cannot give rise to any right or obligation.[73]

Yet, the Court has conceded in *Araullo v. Aquino III*[74] that:

x x x **the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result**?

The need is answered by the doctrine of operative fact. The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank*:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the

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[73] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, October 8, 2013, 707 SCRA 66, 77.

[74] *Supra* note 8.

fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.' Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official.'

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality

as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.[75] But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play.[76] It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.

Conformably with the foregoing pronouncements in *Araullo v. Aquino III*, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise.

VII.
Automatic release of the LGUs' just share in the National Taxes

Section 6, Article X of the 1987 Constitution commands that the *just share* of the LGUs in national taxes shall be *automatically released* to them. The term *automatic* connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order *to receive* their *just share* in the national taxes.[77]

Before anything, we must highlight that the 1987 Constitution includes several provisions that actually deal with and authorize the automatic release of funds by the National Government.

To begin with, Section 3 of Article VIII favors the Judiciary with the automatic and regular release of its appropriations:

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[75] *Id*., citing *Yap v. Thenamaris Ship's Management*, G.R. No. 179532, May 30, 2011, 649 SCRA 369, 381.

[76] *Id*., citing *League of Cities Philippines v. COMELEC*, G.R. No. 176951, August 24, 2010, 628 SCRA 819, 833.

[77] See *Province of Batangas v. Romulo*, *supra* note 45.

Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Then there is Section 5 of Article IX(A), which contains the common provision in favor of the Constitutional Commissions:

Section 5. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Section 14 of Article XI extends to the Office of the Ombudsman a similar privilege:

Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

Section 17(4) of Article XIII replicates the privilege in favour of the Commission on Human Rights:

Section 17(4) The approved annual appropriations of the Commission shall be automatically and regularly released.

The foregoing constitutional provisions share two aspects. The first relates to the grant of *fiscal autonomy*, and the second concerns the *automatic release of funds*.[78] The *common denominator* of the provisions is that the automatic release of the appropriated amounts is predicated on the approval of the annual appropriations of the offices or agencies concerned.

Directly contrasting with the foregoing provisions is Section 6, Article X of the 1987 Constitution because the latter provision forthrightly ordains that the "(l)ocal government units shall have a just share, as determined by law, in the national taxes **which shall be automatically released to them**." Section 6 does not mention of appropriation as a condition for the automatic release of the just share to the LGUs. This is because Congress

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[78] *Commission on Human Rights Employees' Association (CHREA) v. Commission on Human Rights*, G.R. No. 155336, July 21, 2006, 496 SCRA 226, 315-316.

not only already determined the *just share* through the LGC's fixing the percentage of the collections of the NIRTs to constitute such *fair share* subject to the power of the President to adjust the same in order to manage public sector deficits subject to limitations on the adjustments, but also explicitly authorized such just share to be "*automatically released*" to the LGUs in the proportions and regularity set under Section 285[79] of the LGC without need of annual appropriation. To operationalize the automatic release without need of appropriation, Section 286 of the LGC clearly provides that the automatic release of

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[79] Section 285. *Allocation to Local Government Units*. — The share of local government units in the internal revenue allotment shall be collected in the following manner:

(a) Provinces - Twenty-three percent (23%);

(b) Cities - Twenty-three percent (23%);

(c) Municipalities - Thirty-four percent (34%); and

(d) Barangays - Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population - Fifty percent (50%);

(b) Land Area - Twenty-five percent (25%); and

(c) Equal sharing - Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population - Forty percent (40%); and

(2) Equal sharing - Sixty percent (60%)

(b) On the second year:

(1) Population - Fifty percent (50%); and

(2) Equal sharing - Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population - Sixty percent (60%); and

(2) Equal sharing - Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

the *just share* directly to the provincial, city, municipal or barangay treasurer, as the case may be, shall be "*without need of any further action*," *viz.*:

Section 286. *Automatic Release of Shares*.— (a) The share of each local government unit shall be released, without need of any further action; directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose. x x x (Bold emphasis supplied)

The 1987 Constitution is forthright and unequivocal in ordering that the *just share* of the LGUs in the national taxes shall be *automatically released* to them. With Congress having established the *just share* through the LGC, it seems to be beyond debate that the inclusion of the just share of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the *just share* of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

WHEREFORE, the petitions in G.R. No. 199802 and G.R. No. 208488 are **PARTIALLY GRANTED**, and, **ACCORDINGLY**, the Court:

1. DECLARES the phrase "internal revenue" appearing in Section 284 of Republic Act No. 7160 (*Local Government Code*) **UNCONSTITUTIONAL**, and **DELETES** the phrase from Section 284.

Section 284, as hereby modified, shall henceforth read as follows:

Section 284. *Allotment of Taxes*. — Local government units shall have a share in the national taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

(a) On the first year of the effectivity of this Code, thirty percent (30%);

(b) On the second year, thirty-five percent (35%); and

(c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national taxes of the third fiscal year preceding the current fiscal year; Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The phrase "internal revenue" is likewise hereby **DELETED** from the related sections of Republic Act No. 7160 (*Local Government Code*), specifically Section 285, Section 287, and Section 290, which provisions shall henceforth read as follows:

Section 285. *Allocation to Local Government Units.* — The share of local government units in the allotment shall be collected in the following manner:

(a) Provinces – Twenty-three percent (23%);

(b) Cities – Twenty-three percent (23%);

(c) Municipalities –Thirty-four percent (34%); and

(d) Barangays – Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population – Fifty percent (50%);

(b) Land Area – Twenty-five percent (25%); and

(c) Equal sharing – Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the allotment, and the balance to be a1located on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population – Forty percent (40%); and

(2) Equal sharing – Sixty percent (50%)

(b) On the second year:

(1) Population – Fifty percent (50%); and

(2) Equal sharing – Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population – Sixty percent (60%); and

(2) Equal sharing – Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

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Section 287. *Local Development Projects.* — Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

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Section 290. *Amount of Share of Local Government Units.* — Local government units shall, in addition to the allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

Article 378, Article 379, Article 380, Article 382, Article 409, Article 461, and related provisions of the Implementing Rules and Regulations of R.A. No. 7160 are hereby **MODIFIED** to reflect the deletion of the phrase "internal revenue" as directed herein.

Henceforth, any mention of "Internal Revenue Allotment" or "IRA" in Republic Act No. 7160 (*Local Government Code*)

and its Implementing Rules and Regulations shall be understood as pertaining to the allotment of the Local Government Units derived from the national taxes;

2. **ORDERS the SECRETARY OF THE DEPARTMENT OF FINANCE; the SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; the COMMISSIONER OF INTERNAL REVENUE; the COMMISSIONER OF CUSTOMS;** and **the NATIONAL TREASURER** to include **ALL COLLECTIONS OF NATIONAL TAXES** in the computation of the base of the just share of the Local Government Units according to the ratio provided in the now-modified Section 284 of Republic Act No. 7160 (*Local Government Code*) except those accruing to special purpose funds and special allotments for the utilization and development of the national wealth.

For this purpose, the collections of national taxes for inclusion in the base of the just share the Local Government Units shall include, but shall not be limited to, the following:

(a) The national internal revenue taxes enumerated in Section 21 of the *National Internal Revenue Code*, as amended, collected by the Bureau of Internal Revenue and the Bureau of Customs;

(b) Tariff and customs duties collected by the Bureau of Customs;

(c) 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao.

The remaining 50% of the collections of value-added taxes and 70% of the collections of the other national taxes in the Autonomous Region in Muslim Mindanao shall be the exclusive share of the Autonomous Region in Muslim Mindanao pursuant to Section 9 and Section 15 of Republic Act No. 9054.

(d) 60% of the national taxes collected from the exploitation and development of the national wealth.

The remaining 40% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host Local Government Units pursuant

to Section 290 of Republic Act No. 7160 (*Local Government Code*);

(e) 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products.

The remaining 15% shall accrue to the special purpose funds created by Republic Act No. 7171 and Republic Act No. 7227;

(f) The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and

(g) 5% of the 25% franchise taxes given to the National Government under Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632.

3. **DECLARES** that:

(a) The apportionment of the 25% of the franchise taxes collected from the Manila Jockey Club and Philippine Racing Club, Inc. — that is, five percent (5%) to the National Government; five percent (5%) to the host municipality or city; seven percent (7%) to the Philippine Charity Sweepstakes Office; six percent (6%) to the Anti-Tuberculosis Society; and two percent (2%) to the White Cross pursuant to Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632 — is **VALID**;

(b) Section 8 and Section 12 of Republic Act No. 7227 are **VALID**; and, **ACCORDINGLY**, the proceeds from the sale of the former military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units; and

(c) Section 24(3) of Presidential Decree No. 1445, in relation to Section 284 of the National Internal Revenue Code, apportioning one-half of one percent (½ of 1%) of national tax collections as the auditing fee of the Commission on Audit is **VALID**;

4. **DIRECTS** the Bureau of Internal Revenue and the Bureau of Customs and their deputized collecting agents to certify all national tax collections, pursuant to Article 378 of the Implementing Rules and Regulations of R.A. No. 7160;

5. **DISMISSES** the claims of the Local Government Units for the settlement by the National Government of arrears in the just share on the ground that this decision shall have **PROSPECTIVE APPLICATION**; and

6. **COMMANDS** the **AUTOMATIC RELEASE WITHOUT NEED OF FURTHER ACTION** of the just shares of the Local Government Units in the national taxes, through their respective provincial, city, municipal, or barangay treasurers, as the case may be, on a quarterly basis but not beyond five (5) days from the end of each quarter, as directed in Section 6, Article X of the 1987 Constitution and Section 286 of Republic Act No. 7160 (*Local Government Code*), and operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

Let a copy of this decision be furnished to the President of the Republic of the Philippines, the President of the Senate, and the Speaker of the House of Representatives for their information and guidance.

SO ORDERED.

Carpio, Acting C.J, *Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Martires, Tijam*, and *Gesmundo, JJ*., concur.

Velasco, Jr., J., see separate opinion.

Leonen, Caguioa, and *Reyes, JJ.,* dissents, see separate dissenting opinions.

Jardeleza, J., no part, prior OSG action.

SEPARATE OPINION

VELASCO, JR., *J.*:

Nature of the Case

In these consolidated cases before the Court, petitioners question the manner by which budgetary appropriations are made in favor of local government units (LGUs). At the core, petitioners seek clarification on whether or not respondents had been gravely abusing their discretion in excluding certain tax

collections in determining the base amount for computing the just share in the national taxes LGUs are entitled to.

The Facts

G.R. No. 199802 for Certiorari, Prohibition, and Mandamus, with Prayer for Preliminary Injunction and/or Temporary Restraining Order

Section 284 of Republic Act No. (RA) 7160, otherwise known as the Local Government Code (LGC), allocates 40% of national internal revenue tax collections to LGUs. The provision pertinently reads:

> **Section 284.** *Allotment of Internal Revenue Taxes.* — Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
> (b) On the second year, thirty-five percent (35%); and
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of **national internal revenue taxes** of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services. (emphasis added)

Petitioners, local elective government officials from the province of Batangas, allege that the mandated base under Section 284 is not being observed as some tax collections are allegedly

being unlawfully withheld by the national government and excluded from distribution to the LGUs.

In particular, petitioners pray that respondents include the (a) Value-Added Tax (VAT), (b) Excise Tax, and (c) Documentary Stamp Tax (DST) collections of the Bureau of Customs (BOC) in computing the base amount. Through letters addressed to petitioner Hermilando I. Mandanas (Mandanas), then congressman of the second district of Batangas, and dated September 12, 2011[1] and November 18, 2011,[2] BOC Commissioners Angelito A. Alvarez and Rozanno Rufino B. Biazon, respectively, attested to the amount of VAT, Excise Tax, and DST collections of the BOC from 1989-2009:

	Collections in Millions		**Collections**
Year	**VAT**	**Excise Tax**	**DST**
1989	10,069	174	2,176,550.03
1990	12,854	254	2,002,011.93
1991	11,675	147	2,007,871.48
1992	13,982	296	1,992,401.92
1993	21,413	299	46,880,825.83
1994	21,293	186	179,411,238.68
1995	28,901	579	210,359,504.10
1996	35,008	1,171	41,328,214.50
1997	42,484	1,896	77,856,280.28
1998	31,980	1,193	47,281,003.31
1999	36,632	1,397	81,496,945.00
2000	42,257	2,277	51,469,598.00
2001	47,247	5,691	45,393,853.25
2002	49,383	9,970	43,413,415.00

[1] *Rollo*, p. 46.

[2] *Id.* at 48.

2003	52,663	11,753	89,191,480.00
2004	58,883	16,997	45,154,928.00
2005	68,813	14,599	47,440,326.00
2006	111,869	10,759	48,747,783.00
2007	129,023	13,385	48,945,260.00
2008	156,330	15,509	65,646,588.00
2009	133,907	17,917	56,068,698.00

Petitioners proffer that these monies were collected by the BOC as an agent of the Bureau of Internal Revenue (BIR), pursuant to Section 12 of RA 8424, otherwise known as the National Internal Revenue Code (NIRC).[3] As such, these formed part of the national internal revenue tax collections that ought to have been shared in by all LGUs. Per petitioners' calculation, the LGUs were deprived of their just share in the collections in the amount of ₱498,854,388,154.93.

Petitioner Mandanas then began writing to various government agencies, including the Department of Finance (DOF), Department of Budget and Management (DBM), and the BIR, to seek support for his position that the enumerated BOC collections be included in the distribution to LGUs. He likewise implored then president Benigno Simeon Aquino III to include the amount he arrived at as part of the 2012 budget.

Unfortunately, all of petitioner Mandanas' efforts were in vain and RA 10155 or the 2012 General Appropriations Act was signed into law. The amounts he considered as arrears of the national government to the LGUs were not recognized as valid obligations. Hence, Mandanas and his co-petitioners lodged the instant recourse praying for the following relief:

PRAYER

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of the Honorable Court that:

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[3] Now amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

1. Upon filing of this petition, a temporary restraining order be issued enjoining the Respondents from unlawfully releasing, disbursing and/or using the amount of SIXTY BILLION AND SEVEN HUNDRED FIFTY MILLION (₱60.75) that is included in the capital outlays of the departments or agencies of the national government as that sum belongs to the LGUs as a part of their internal revenue shares based on the NIRT collections of the BOC in 2009 but, to emphasize, has been excluded from the IRAs for the LGUs appropriated in the 2012 GAA.

2. After notice & hearing, a preliminary injunction be issued.

3. And by way of judgment —

a) To set aside as unconstitutional and illegal the misappropriation, misallocation and misuse of ₱60.75 billion belonging to the LGUs but which is embodied in the new appropriations of the 2012 GAA for the use of national government departments and/or agencies;

b) Make the preliminary injunction permanent;

c) Compel the Respondents to cause the automatic release in of the LGUs' IRAs as provided in the 2012 GAA, including the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION (₱60,750,000,000.00) PESOS from the 2009 NIRT collections of the BOC; and

d) Compel Respondents to recognize and release the unpaid IRAs due to the LGUs from BOC collections of NIRT from 1992 to 2011, which is placed at FOUR HUNDRED THIRTY EIGHT BILLION, ONE HUNDRED THREE MILLION, NINE HUNDRED SIXTY THOUSAND, SIX HUNDRED SEVENTY FIVE PESOS AND SEVENTY-THREE CENTAVOS (₱438,103,960,675.73) which, when added to the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION coming from 2009 collections of the BOC referred to in letter (c) above, would total FOUR HUNDRED NINETY EIGHT BILLION EIGHT HUNDRED FIFTY FOUR MILLION, THREE HUDNRED EIGHTY-EIGHT THOUSAND, ONE HUNDRED FIFTY FOUR PESOS AND NINETY-THREE CENTAVOS (₱498,854,388,154.93). This latter amount, to repeat, is the total unreleased IRA due to the LGUs from [1989]-2012.

Other reliefs just and equitable under the premises are likewise prayed for.

The case was filed against erstwhile Executive Secretary Paquito N. Ochoa, Secretary of Finance Cesar Purisima, Budget Secretary Florencio H. Abad, Commissioner of Internal Revenue Kim Jacinto-Henares, and National Treasurer Roberto Tan.

G.R. No. 208488 for Mandamus

Enrique T. Garcia (Garcia), then congressional representative for the second district of Bataan, likewise filed a petition for certiorari against the same respondents in G.R. No. 199802, except that Customs Commissioner Rozanno Rufino B. Biazon was impleaded as party respondent instead of National Treasurer Roberto Tan. In his petition, Garcia assails what he perceives as the continuing failure of the national government to allocate to the LGUs what is due them under the Constitution.

Specifically, Garcia asserts that Section 284 of RA 7160 is constitutionally infirm since it limits the basis for the computation of the LGU allocations only to national internal revenue taxes, contrary to the mandate of Article X, Section 6 of the Constitution, *viz*:

> SECTION 6. Local government units shall have a just share, as determined by law, in the **national taxes** which shall be automatically released to them. (emphasis added)

The insertion of the phrase "internal revenue" in Section 284 of RA 7160, according to Garcia, is patently unconstitutional. As a consequence of this infirmity, the LGUs had been receiving far less than what the Constitution mandates. Garcia thus seeks intervention from the Court to nullify the phrase "internal revenue" in the provision. He argues that LGUs should share in all forms of "national taxes," not just in those enumerated under Section 21 of the NIRC.

Moreover, Garcia contends that even assuming *arguendo* that the phrase "internal revenue" under Section 284 of RA 7160 passes the test of constitutionality, the various deductions and the exclusions therefrom find no legal basis. On this point, Garcia directs the Court's attention to the formula utilized in determining the total internal revenue allocation for the LGUs from 2009-

2011. He noted that the reduced tax base, from "national taxes" to "national internal revenue taxes," was further subjected to several deductions, namely:

1. Sections 9 and 15, Article IX of RA 9054 regarding the allocation of internal revenue taxes collected by cities and provinces in the Autonomous Region in Muslim Mindanao (ARMM);
2. Section 287 of the NIRC in relation to Section 290[4] of RA 7160 regarding the share of LGUs in the excise tax collections on mineral products;
3. Section 6 of RA 6631 and Section 8 of RA 6632 on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;
4. Remittances of VAT collections under RA 7643;
5. Sections 8 and 12 of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;
6. RA 7171 and Section 289 of the NIRC on the share of LGUs to the Excise Tax collections from the manufacture of Virginia tobacco products
7. Section 8 of RA 8240, as now provided in Section 288 of the NIRC, on the allocation of incremental revenues from excise taxes;
8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC

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[4] **Section 290.** *Amount of Share of Local Government Units.*— Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

He additionally insists that all tax collections of the BOC were unlawfully excluded in determining the tax base. Since Section 21 of the NIRC expressly includes VAT and excise taxes in the enumeration of national internal revenue taxes, all collections for these accounts, regardless of whether it was collected by the BOC or directly by the BIR, should have been included in the computation.

Garcia therefore prays that respondents be directed to perform the following:

a) Compute the IRA of the LGUs on the basis of the national tax collections, including all the tax collections of the BIR and the BOC;

b) Desist from deduction from the national tax collections any tax, item, or amount that is not authorized by law to be deducted for the purpose of computing the IRA;

c) Submit a details computation of the IRA from 1995-2014 and determine therefrom the IRA shortfall; and

d) Distribute the IRA shortfall to the LGUs.

Respondents' Comments

Speaking through the Office of the Solicitor General (OSG), respondents reasoned out that Congress has the full and broad discretion to determine the base and the rate the LGUs are entitled to in the national taxes. This is based on the language of Article X, Section 6 of the Constitution itself, which states that the just share of the LGUs in the national taxes shall be determined by law. And in the exercise of its prerogative, Congress limited the base for the allocation to LGUs to "national internal revenue taxes," to the exclusion of customs duties and taxes from foreign sources.

According to respondents, the determination of what constitutes "just share" for the LGUs is a decision reached by the legislative in the collective wisdom of its members. The Court should then observe judicial deference and employ an attitude of non-interference in this case involving policy directions in the exercise of the power of the purse. Otherwise,

the Court would be engaging in judicial legislation, forbidden under the principle of separation of powers.

Garcia's enumeration of so-called deductions from the national internal revenue taxes is justified, so respondents claim. They cite the basic tenet in statutory construction that when statutes are *in pari materia*, or cover the same specific or particular subject matter, or have the same purpose or object, they should be construed together. Here, the executive branch merely interpreted the special laws in consonance with the NIRC and the LGC.

Under Section 283 of the NIRC, which is a later law than the LGC and a special law specifically on the disposition of national internal revenue taxes, collections that are already earmarked or otherwise specially disposed of by law will *not* accrue to the National Treasury. The provision reads:

SEC. 283. Disposition of National Internal Revenue. — National internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

Respondents posit that the amounts pertaining to the enumeration that Garcia coined as unlawful deductions are examples of those accounts that do not accrue to the National Treasury from where the shares of the LGUs will be carved out. The balance of the National Treasury, after deducting the shares of the LGUs, shall be available for the general purposes of the government.

Respondents also add that correlative to the BOC's duty to assess and collect taxes on imported items is its duty to turn over its collections of the National Treasury. For instance, out of every ₱265.00 collected by the BOC as DST, only ₱15.00 is reported as BIR collection, while the remaining ₱250.00 is credited to the collections of the BOC. Thus, when the BIR determines the allocations to the LGUs on the basis of certified

data on its own collections, pursuant to Article 378 of the Implementing Rules and Regulations of RA 7160,[5] only ₱15.00 of every ₱265.00 DST collection of the BOC would be subject to distribution to the LGUs. There is then a distinction between the VAT, DST, and Excise Tax collections of the BOC and the BIR, and that not all BOC collections are reflected on the data of the BIR.

Lastly, it is argued that Mandamus does not lie to compel the exercise of the power of the purse. A judicial writ cannot order the appropriation of public funds since such power is an exclusive legislative prerogative that cannot be interfered with. Likewise, to award backpay for the allegedly withheld IRA from prior years, from 1989-2012, in the amount of ₱498,854,388,154.93 as prayed for by Mandanas, will effectively dislocate the budgets then intended for salaries, operational expenses, and development programs in the year of 2012.

The Issues

The issues in this case can be restated in the following wise:

I. Whether or not the VAT, DST, and Excise Tax collections of the BOC should form part of the base amount for computing the just share of the LGUs in the national taxes.

II. Whether or not the LGUs are entitled to a just share in the tariff and customs duties collected by the BOC.

III. Whether or not the respondents had illegally been withholding amounts from the LGUs through the special laws enumerated in the Garcia petition.

IV. Whether or not the LGUs may still collect from the national government the arrears from the alleged errors in computing the national tax allocations.

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[5] Article 378. Allotment of Internal Revenue Taxes. The total annual internal revenue allotments (IRAs) due the LGUs shall be determined on the basis of collections from national internal revenue taxes actually realized as certified by the BIR during the third fiscal year preceding the current fiscal year: x x x

Discussion

I vote to partially grant the petitions.

The tax collections of the BOC should be included in determining the basis for allocation to the LGUs

a. The VAT, DST, and Excise Tax collections of the BOC are National Internal Revenue Taxes

To recall, Mandanas and his cohorts have no qualm over the constitutionality of Section 284 of RA 7160. They merely seek to include the VAT, DST, and Excise Tax collections of the BOC in determining the base for the LGUs' rightful share in the national taxes.

I find the contention tenable.

Pertinently, Section 21 of the NIRC reads:

Section 21. *Sources of Revenue*. — The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;
(b) Estate and donor's taxes;
(c) Value-added tax;
(d) Other percentage taxes;
(e) excise taxes;
(f) Documentary stamp taxes; and
(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (emphasis added)

Clear as crystal is that VAT, DSTs, and Excise Taxes are within the enumeration of national internal revenue taxes under Section 21 of the NIRC. When Section 284 of the LGC then declared that all LGUs shall be entitled to 40% of the "national internal revenue taxes," collections for these forms of taxes are necessarily included in the computation.

VAT, DSTs, and Excise Taxes do not lose their character as national internal revenue taxes simply because they are not reported as collections of the BIR, and neither on the ground that they are collected by the BOC. This is so since Section

12(A) of the NIRC is categorical that the BOC merely acts as an agent of the BIR in collecting these taxes:

Section 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* — The following are hereby constituted agents of the Commissioner:

(a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;

x x x x x x x x x

The details of the agency relation between the BIR, as principal, and the BOC, as agent, are explicated in the succeeding sections of the NIRC. In concrete, Sections 107[6] and 129[7] are general provisions on the imposition of VAT and Excise Taxes on imported goods. On the other hand, Section 131 of the NIRC specifically directs the taxpayer to pay his excise tax liabilities on imported goods to the BOC, and Section 4.107-1(B) of Revenue Regulation 16-2005 provides that VAT on the imported goods should be settled before they can be removed from customs custody, *viz*:

Section 131. *Payment of Excise Taxes on Importer Articles*.—

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably

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[6] **Section 107.** *Value-Added Tax on Importation of Goods*. —

(A) *In General*. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other harges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

x x x x x x x x x

[7] **Section 129.** *Goods subject to Excise Taxes.* — Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

x x x x x x x x x

with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

x x x x x x x x x

Sec. 4.107-1. VAT on Importation of Goods

x x x x x x x x x

(b) Applicability and payment — The rates prescribed under Sec. 107 (A) of the [NIRC] shall be applicable to all importations withdrawn from customs custody.

The VAT on the importation shall be paid by the importer prior to the release of such goods from customs custody. (emphasis and words on brackets added)

As far as the authority of the BOC to collect DSTs is concerned, this finds legal basis under Section 188 of the NIRC:

Section 188. *Stamp Tax on Certificates*. — On each certificate of damages or otherwise, and on every certificate or document issued by any customs officer, marine surveyor, or other person acting as such, and on each certificate issued by a notary public, and on each certificate of any description required by law or by rules or regulations of a public office, or which is issued for the purpose of giving information, or establishing proof of a fact, and not otherwise specified herein, there shall be collected a documentary stamp tax of Fifteen pesos (₱15.00).

All these provisions strengthen Mandanas' position that the VAT, DSTs, and Excise Taxes collected by the BOC partake the nature of national internal revenue taxes under Section 21 of the NIRC. Though collected by the BOC, these taxes are nevertheless impositions under the NIRC that should be included in the base amount of the revenue allocation to the LGUs. It matters not who collects the items of national income. Neither Article X, Section 6 of the Constitution nor Section 284 of RA 7160 requires that the national collections be credited to the BIR. For what is controlling is that they accrue to the account of the National Treasury.

b. Section 284 of RA 7160 is unconstitutional insofar as it limits the allotment base to national internal revenue taxes; Tariff and Customs duties are national taxes

Anent G.R. No. 208488, I concur with the argument of petitioner Garcia that abidance with the constitutional mandate constrains the Court to declare the recurring phrase "internal revenue" in Section 284 of RA 7160 as unconstitutional.

A cardinal rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[8] This is what is known as the plain-meaning rule. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[9]

Here, Article X, Section 6 of the 1987 Constitution is clear and categorical that Local Government Units (LGUs) shall have a share in the country's *national taxes*. For Congress to grant them anything less would then trench on the provision. Unfortunately, this is what Section 284 of RA 7160, as currently worded, accomplishes.

The contested phrase is unduly restrictive, nay unconstitutional, for it limits the share of the LGUs to national *internal revenue* taxes. It effectively excludes other forms of national taxes than those specified in Section 21 of the NIRC. Conspicuously absent in the enumeration is the duties imposed on internationally sourced goods under Presidential Decree No. (PD) 1464, otherwise known as the Tariff and Customs Code of 1978, which consolidated and codified the tariff and customs law in the Philippines.[10] There

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[8] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

[9] *Id.*

[10] See also RA 8752 or the Anti-Dumping Act of 1999, which provides the rules for "Anti-Dumping Duties"; RA 8800, or the "Safeguard Measures Act," which provides the rules on Safeguard Duties; RA 8751 on Countervailing Duty.

is no cogent reason to segregate the tax collections of the BOC pursuant to the NIRC from those in implementation of other legal edicts. Customs duties form part of the country's national taxes and should, therefore, be included in the basis for determining the LGU's aliquot share in the pie.

The concept of customs duties has been explicated in the case of *Garcia v. Executive Secretary*,[11] viz:

> **"*[C]ustoms duties*" is "the name given to *taxes on the importation and exportation of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country."** The levying of customs duties on imported goods may have in some measure the effect of protecting local industries — where such local industries actually exist and are producing comparable goods. Simultaneously, however, **the very same customs duties inevitably have the effect of producing governmental revenues**. Customs duties like internal revenue taxes are rarely, if ever, designed to achieve one policy objective only. Most commonly, **customs duties, which constitute taxes in the sense of exactions the proceeds of which become public funds** — have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes and frequently, it is very difficult to say which, in a particular instance, is the dominant or principal objective. In the instant case, since the Philippines in fact produces ten (10) to fifteen percent (15%) of the crude oil consumed here, the imposition of increased tariff rates and a special duty on imported crude oil and imported oil products may be seen to have *some* "protective" impact upon indigenous oil production. For the effective, price of imported crude oil and oil products is increased. At the same time, it cannot be gainsaid that substantial revenues for the government are raised by the imposition of such increased tariff rates or special duty. (emphasis added)

"Tariff" refers to the system or principle of imposing duties on the importation of foreign merchandise.[12] Thus, embodied in the Tariff and Customs Code is the list or schedule of articles on which a duty is imposed upon their importation, with the rates at which they are taxed. Meanwhile, clear from the above

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[11] G.R. No. 101273, July 3, 1992.

[12] <https://thelawdictionary.org/tariff/> last accessed May 16, 2018.

excerpt is that these customs duties are *taxes* levied on imports. It is collected by the customs authorities of a country not only to protect domestic industries from more efficient or predatory competitors abroad, but also to raise state revenues.

All taxes are classifiable as either national or local. A tax imposition is considered local if it is levied by an LGU pursuant to its revenue-generating power under Article X, Section 5 of the Constitution and Section 18 of RA 7160.[13] On the other hand, national taxes, by definition, are imposed by the national government through congressional enactment. Among these tax measures signed into law is RA No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), which was signed into law on May 30, 2016, amending PD 1464.

Significantly, while local governments were granted by the Constitution the power to tax, such grant is circumscribed by "guidelines and limitations as the Congress may provide." Article X, Section 5 of the 1987 Constitution reads:

SECTION 5. **Each local government unit shall have the power to create its own sources of revenues** and to levy taxes, fees, and charges subject **to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments

In line with this, the LGC expressly excludes from the ambit of local taxation the imposition of tariff and customs duties. Section 133 of the LGC pertinently provides:

Sec. 133. **Common Limitations on the Taxing Powers of Local Government Units.** — Unless otherwise provided herein, **the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:**

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[13] Sec. 18. *Power to Generate and Apply Resources*. Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of further action;

x x x x x x x x x

(d) **Customs duties**, registration fees of vessels, wharfage on wharves, tonnage dues and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) **Taxes, fees, charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local governments** in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes in any form whatever upon such goods or merchandise.

The limits on local taxation and thus the exclusion therefrom of customs duties and tariff was recognized by the Supreme Court when it ruled in *Petron Corp. v. Tiangco*[14] that:

Congress has the constitutional authority to impose limitations on the power to tax of local government units, and **Section 133 of the LGC is one such limitation.** Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power.

In *Palma Development Corp. v. Municipality of Malangas*,[15] the Court more particularly said:

Section 133(e) of RA No. 7160 prohibits the imposition, in the guise of wharfage, of fees — as well as all other taxes or charges in any form whatsoever — on goods or merchandise. It is therefore irrelevant if the fees imposed are actually for police surveillance on the goods, because any other form of imposition on goods passing through the territorial jurisdiction of the municipality is clearly prohibited by Section 133(e).

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[14] 574 Phil. 620, 639 (2008); See also *Palma Development Corp. v. Municipality of Malangas*, 459 Phil. 1042 (2003); *Batangas City v. Pilipinas Shell Petroleum Corp.*, G.R. No. 187631, July 8, 2015; *First Philippine Industrial Corp. v. Court of Appeals*, 360 Phil. 852 (1998); *City of Davao v. Regional Trial Court*, 504 Phil. 543 (2005); *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006); *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*, 653 Phil. 328 (2010).

[15] 459 Phil. 1042 (2003).

In sum, by the principle of exclusion provided by Section 133 of the LGC, no customs duties and/or tariffs can be considered local taxes; all customs duties and tariffs can only be imposed by the Congress and, as such, they can only be national taxes.

Ubi lex non distinguit nec nos distingui redebemus. When the law does not distinguish, neither must we distinguish.[16] To reiterate, Article X, Section 6 of the Constitution mandates that the LGUs shall share in the *national taxes*, without distinction. It can even be inferred from the deliberations of the framers that they intended Article X, Section 6 to be mandatory, *viz*:[17]

MR. RODRIGO. I am not an expert on taxation, so I just want to know. Even a municipality levies taxes. Does the province have a share?

MR. SUAREZ. May I state that I have the same question, so I would like to join Commissioner Rodrigo in that inquiry.

MR. RODRIGO. I ask so because if a municipality levies taxes, it is impossible for the province to share in those taxes.

MR. NOLLEDO. I am not aware of any rule that says so but I know that even the province has also the power to levy taxes.

MR. RODRIGO. That is correct. But is it then the purpose of this amendment that taxes imposed by a municipality should be exclusively for that municipality and that the province may not share at all in the taxes? Is that the purpose of the amendment?

MR. NOLLEDO. I think the question should be directed to the proponent.

MR. DAVIDE. Even under the Committee's wording, it would clearly appear that if a municipality levies a particular tax, the province is not entitled to a share for the reason that the province itself, as a separate governmental unit, may collect and levy taxes for itself.

MR. NOLLEDO. Besides, the national government shall share national taxes with the province.

MR. RODRIGO. But if we approve that amendment, the national government may not share in the taxes levied by the province?

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[16] *Amores v. HRET*, G.R. No. 189600, June 29, 2010.

[17] Record of the Constitutional Commission, Vol. III, pp. 478-479.

MR. DAVIDE. The national government may impose its own national taxes. The concept here is that the national government must share these national taxes with the other local government units. That is the second paragraph of the original section 9, now section 12, beginning from lines 29-30.

MR. RODRIGO. Do I get then that if the national government imposes taxes, local government units share in those taxes?

MR. DAVIDE. Yes, the local government shares in the national taxes.

MR. RODRIGO. But if the local government imposes local taxes, the national government may not share?

MR. DAVIDE. That is correct because that is precisely to emphasize the local autonomy of the unit.

MR. NOLLEDO. That has been the practice.

For Congress to have excluded, as they continue to exclude, certain items of national tax, such as tariff and customs duties, from the amount to be distributed to the LGUs is then a glaring contravention of our fundamental law. The alleged basis for the exclusion, the phrase "internal revenue" under Section 284 of the LGC, should therefore be declared as unconstitutional.

The school of thought adopted by the respondents is that the phrase "as determined by law" appearing in Article X, Section 6 of the Constitution authorizes Congress to determine the inclusions and exclusions from the national taxes before determining the amount the LGUs would be entitled to. Thus, it is this authority that was exercised by the legislative when it limited the allocation of LGUs to national *internal revenue* taxes. Regrettably, I cannot join respondents in their construction of the statute.

Article X, Section 6 of the Constitution had already been interpreted in *ACORD v. Zamora (ACORD)*[18] in the following manner:

Moreover, there is merit in the argument of the intervenor Province of Batangas that, if indeed the framers intended to allow the enactment

[18] G.R. No. 144256, June 8, 2005.

of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded differently. Instead of reading Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically released to them (italics supplied), it would have read as follows, so the Province of Batangas posits:

Local government units shall have a just share, *as determined by law*, in the national taxes which shall be [automatically] released to them *as provided by law*, or,

Local government units shall have a just share in the national taxes which shall be [automatically] released to them *as provided by law*, or

Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically released to them *subject to exceptions Congress may provide*.

Since, under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**, and not the release thereof, the plain implication is that Congress is not authorized by the Constitution to hinder or impede the automatic release of the IRA. (emphasis added)

As further held in *ACORD*, the provision, when parsed, mandates that (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs. And guilty of reiteration, "under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**."[19] This ruling resulted in the nullification of appropriation items XXXVII and LIV Special Provisions 1 and 4 of the General Appropriations Act of 2000 insofar as they set a *condition sine qua non* for the release of Internal Revenue Allotment to LGUs to the tune of ₱10 Billion.

Similarly, we too must be conscious here of the phraseology of Article X, Section 6 of the 1987 Constitution. As couched, the phrase "*as determined by law*" follows and, therefore, qualifies "*just share*"; it cannot be construed as qualifying the succeeding

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[19] *Id.*

phrase "*in the national taxes*." Hence, the *ponencia* is correct in ruling that the determination of what constitutes "*just share*" is within the province of legislative powers. But what Congress is only allowed to determine is the aliquot share that the LGUs are entitled to. They are not authorized to modify the base amount of the budget to be distributed. To insist that the proper interpretation of the provision is that "*the just share of LGUs in the national taxes shall be determined by law*" is tantamount to a revision of the Constitution and a blatant disregard to the specific order and wording of the provision, as crafted by its framers.

Constitutional considerations on the allocation to LGUs

The Constitution cannot be supplanted through ordinary legislative fiat. Any limitation on the allocation of wealth to the LGUs guaranteed by the fundamental law must likewise be embodied in the Constitution itself. Thus, instead of looking to RA 7160 in determining the scope of the base amount for allotment, due attention must be given to Article X, Section 7 and Article VI, Section 29(3) of the Constitution:

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

x x x x x x x x x

SECTION 29. x x x

(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

With the foregoing in mind, we are now poised to gauge whether or not the items identified by petitioner Garcia are in fact unlawful deductions or exclusions from the LGUs' share in the national taxes:

1. Sections 9 and 15, Article IX of RA 9054[20] regarding the allocation of internal revenue taxes collected by cities and provinces in the ARMM;

Section 9 of RA 9054 provides for the sharing of government taxes collected from LGUs in the ARMM in the following manner: 35% to the province or city, 35% to the regional government, and 30% to the national government. The provision likewise empowers the province and city concerned to automatically retain its share and remit the shares of the regional government and the national government to their respective treasurers. Meanwhile Section 15 of RA 9054 allocates 50% of the VAT collections from the ARMM exclusively to the region and its constituencies.

The above provisions do not violate Section 6, Article X of the Constitution. Instead, this is a clear application of the Constitutional provision that empowers Congress to determine the *just share* that LGUs are entitled to receive. For while the taxes mentioned in Sections 9 and 15 of the Constitution are in the nature of national taxes, the LGUs are already receiving their *just* share thereon. Receiving their *just* share does not mean receiving a share that is equal with everyone else's. This is evident

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[20] **Section 9.** Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges. — The collections of a province or city from national internal revenue taxes, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

(a) Thirty-five percent (35%) to the province or city;

(b) Thirty-five percent (35%) to the regional government; and

(c) Thirty percent (30%) to the central government or national government.

x x x x x x x x x

SECTION 15. *Collection and Sharing of Internal Revenue Taxes.*—

x x x x x x x x x

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

x x x x x x x x x

from RA 7160 which expressly provides that the share of an LGU is dependent on its population and land area—considerations that prevent any two LGU from sharing equally from the pie.

To clarify, the determination of what constitutes an LGU's just share in the national taxes is not restricted to Section 284 of RA 7160. The 40% share under the provision merely sets the general rule. And as will later be discussed, exceptions abound in statutes such as RA 9054.

Moreover, there is justification for allocating the lion's share in the tax collections from the ARMM to LGUs within the region themselves, rather than allowing *all* LGUs to share thereon in equal footing.

The creation of autonomous regions is in compliance with the constitutional directive under Article X, Sections 18 and 19[21] to address the concerned regions' continuous struggle for self-rule and self-determination. The grant to the autonomous region of a larger share in the collections is simply an incident to this grant of autonomy. To give meaning to their autonomous status, their financial and political dependence on the national government is reduced. Allocating them a larger share of the national taxes collected from their own territory allows not only for the expeditious delivery of-basic services, but for them to

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[21] Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

be more self-sufficient and self-reliant. In a way, it can also be considered as a special purpose fund.

Thus, there is no constitutional violation in allocating 50% of the VAT collections from the ARMM to the LGUs within the region, leaving only 50% to the central government and to the other LGUs. There is nothing illegal in the ARMM's retention of 70% of the national taxes collected therein, limiting the amount of national tax to be included in the base amount for distribution to the LGUs to 30%.

2. Section 287[22] of the NIRC in relation to Section 290[23] of RA 7160 regarding the share of LGUs in the excise tax collections on mineral products;

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[22] **SEC. 287. Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.** — Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

(B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation.— Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

(1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt.

[23] **Section 290.** *Amount of Share of Local Government Units.*— Local government units shall, in addition to the internal revenue allotment, have

The questioned provisions grant a 40% share in the tax collections from the exploitation and development of national wealth to the LGUs under whose territorial jurisdiction such exploitation and development occur. Such preferential allocation, in addition to their national tax allotment, cannot be deemed violative of Article X, Section 6 of the Constitution for it is in pursuance of Article X, Section 7 earlier quoted.

The exclusion of the other LGUs from sharing in the said 40% had been justified by the Constitutional Commission in the following wise:

> MR. OPLE. Madam President, the issue has to do with Section 8 on page 2 of Committee Report No. 21:
>
> > Local taxes shall belong exclusively to local governments and they shall likewise be entitled to share in the proceeds of the exploitation and development of the national wealth within their respective areas.
>
> Just to cite specific examples. In the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example. May I point out that in the previous government, this has always been a very nettlesome subject of Cabinet debates. Are the people in the locality, where God chose to locate His bounty, not entitled

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a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them? And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a 20-percent rebate in power because of the contributions of the Tiwi plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources? So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.[24]

As can be gleaned from the discussion, the additional allocation under Article X, Section 7 is granted by reason of equity. It is given to the host LGUs for bearing the brunt of the exploitation of their territory, and is also a form of incentivizing the introduction of developments in their locality. And from the language of Article X, Section 7 itself, it is not limited to tax collections from mineral products and mining operations, but extends to taxes, fees or charges from all forms of exploitation and development of national wealth. This includes the cited establishment and operation of geothermal and hydrothermal plants in Macban, Makiling-Banahaw area in Laguna, in Tiwi, Albay, and in Iligan City, as well as the extraction of petroleum and natural gasses.

Respondents did not then err in setting aside 40% of the gross collection of taxes on utilization and development of the national wealth to the host LGU. Meanwhile, all LGUs and the national government shall share in the remaining 60% of the

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[24] Record of the Constitutional Committee, Vol. 3, p. 178.

tax collections, satisfying the constitutional mandate that all LGUs shall receive their just share in the national taxes, albeit at a lesser amount.

3. Section 6 of RA 6631[25] and Section 8 of RA 6632[26] on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;

The cited provisions relate to the automatic allocation of a 5% share in the 25% franchise tax—collected from 8.5% and

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[25] **SECTION 6.** In consideration of the franchise and rights herein granted to the Manila Jockey Club, Inc., the grantee shall pay into the national Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one-half per centum (8½%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section four hereof, allotted as follows: a) National Government, five per centum (5%); b) the city or municipality where the race track is located, five per centum (5%); c) Philippine Charity Sweepstakes Office, seven per centum (7%); d) Philippine Anti-Tuberculosis Society, six per centum (6%); and e) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, now or in the future, on its properties, whether real or personal, and profits, from which taxes the grantee is hereby expressly excepted.

[26] **SECTION 8.** In consideration of the franchise and rights herein granted to the Philippine Racing Club, Inc., the grantee shall pay into the National Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one fourth per centum (8 ¼%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section six hereof, allotted as follows: a) National Government, five per centum (5%); the Municipality of Makati, five per centum (5%); b) Philippine Charity Sweepstakes Office, seven per centum (7%); c) Philippine Anti-Tuberculosis Society, six per centum (6%); and d) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax, of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, on its properties, whether real or personal, from which taxes the grantee is hereby expressly exempted.

8.25% of the wager funds from the operations of the Manila Jockey Club and Philippine Racing Club, Inc., respectively—to the city or municipality where the race track is located.

This is another example of an allocation by Congress to certain LGUs, on top of their share in the 40% of national taxes under Section 284 of RA 7160. Similar to the situation of the LGUs in the ARMM, the host cities and municipalities in RA 6631 and 6632 enjoy the 5% as part and parcel of their *just share* in the national taxes. To reiterate, the just share of LGUs, as determined by law, need not be uniform for all units. It is within the wisdom of Congress to determine the extent of the shares in the national taxes that the LGUs will be accorded.

Anent the remaining 20% of the franchise taxes, Sections 6 and 8 of RA 6631 and 6632, respectively, reveals that this had already been earmarked for special purposes. Under the distribution, only 5% of the franchise tax shall accrue to the national government, which will then be subject to distribution to LGUs. The rest of the apportionments of the 25% franchise taxes collected under RA 6631 and RA 6632—five percent (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross—are special purpose funds, which shall not be distributed to all LGUs.

It must be noted that RA 6631 and 6632 had been amended by RA 8407[27] and 7953,[28] respectively. The Court hereby takes

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[27] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTY-ONE ENTITLED "AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITIDN THE PROVINCES OF BULACAN, CAVITE OR RIZAL" AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS (25) FROM THE EXPIRATION OF THE TERM THEREOF.

[28] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTY-TWO ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND

judicial notice of its salient provisions including the imposition of Documentary Stamp Taxes at the rate of ten centavos (PhP 0.10) for every peso cost of each horse racing ticket,[29] and of the ten percent (10%) taxes on winnings and prizes.[30] These are national taxes included in the enumeration of Section 21 of the NIRC. Thus, the LGUs shall share on the collections thereon.

4. Sharing of VAT collections under RA 7643;

RA 7643 amended Section 282 of the NIRC to read thusly:

SEC. 282. *Disposition of national internal revenue.*— x x x

x x x x x x x x x

In addition to the internal revenue allotment as provided for in the preceding paragraph, fifty percent (50%) of the national taxes collected under Sections 100, 102, 112, 113, and 114 of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows: (a) Twenty percent (20%) shall accrue to the city or municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991; and (b) Eighty percent (80%) shall accrue to the National Government.

Notably, the 20%-80% allocation in favor of the national government is lesser than the 40% allocation under Section 284 of the LGC. This does not contravene Article X, Section 6 of the Constitution, however, for it merely sets the just share that LGUs are entitled to in the particular account. There being a special percentage allocation for these incremental taxes, respondents can then properly exclude them in computing the base amount for the national tax allocations to the LGUs.

MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL,' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS (25) FROM THE EXPIRATION OF THE TERM THEREOF.

[29] Section 8 of RA 7953, and Section 11 of RA 8407.

[30] Section 10 of RA 7953, and Section 13 of RA 8407.

5. Sections 8[31] and 12[32] of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;

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[31] **Section 8.** Funding Scheme:

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties x x x The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

(1) Thirty-two and five-tenths percent (32.5%) To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP'S medical facilities;

(2) Fifty percent (50%) To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extensions;

(3) Five Percent (5%) To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein; and

(4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people.

Provided That in the case of Fort Bonifacio, two and five tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig, and Pateros: Provided further That in no case shall farmers affected be denied due compensation.

x x x x x x x x x

[32] **Section 12.** Subic Special Economic Zone. x x x

x x x x x x x x x

"(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the

Section 8 of RA 7227 authorizes the President, through the Bases Conversion Development Authority, to sell former military bases. It likewise mandates that the LGUs of Makati, Taguig, and Pateros shall be entitled to a 2.5% share in the disposition of converted properties in Fort Bonifacio.

Meanwhile, Section 12 of RA 7227, as amended, imposes a 5% collection on gross income to be paid by all business enterprises within the Subic Special Economic Zone. Of the imposition, 3% shall be remitted to the National Government. The remaining 2% shall be remitted to the SBMA but will be distributed to the LGUs affected by the declaration of the economic zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan. The distribution shall be based on population (50%), land mass (25%), and equal sharing (25%).

Invoking Article X, Section 6 of the Constitution, petitioner Garcia questions the provisos granting special allocations and prays that the same be included in the pool of national taxes to be distributed to all LGUs.

The argument lacks merit.

To reiterate, Article X, Section 6 of the Constitution guarantees that LGUs shall have a just share, as determined by law, in the *national taxes*. The proceeds from the sale of converted bases and the percentage collection from income, though governmental revenue, are *not* in the form of tax collections. To be sure, businesses and enterprises in the economic zone are *tax exempt* and the fees being charged the enterprises are *in lieu of paying taxes*. Section 12(C) categorically states: "x x x no national and local taxes shall be imposed within the Subic Special Economic Zone." As non-tax items, these revenues do not fall

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City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land mass (25%), and equal sharing (25%).

within the concept of national tax within the ambit of Article X, Section 6 of the Constitution, and the LGUs cannot then reasonably claim entitlement to a share thereon.

6. RA 7171 and Section 289[33] of the NIRC on the share of LGUs in the Excise Tax collections from the manufacture of Virginia tobacco products;

Petitioner next calls for the inclusion of the 15% collections on the excise taxes from the manufacture of Virginia tobacco products in determining the allocation base. Under Section 289 of the NIRA, the 15% being requested currently accrues to the Virginia tobacco-producing provinces, pro-rated based on their level of production.

This is another exercise by Congress of its authority to determine the *just share* in the national taxes that LGUs are entitled to. In this case, the tobacco producing provinces are provided incentives for their economic contribution, and financial assistance for the tobacco farmers.

Additionally, Excise Tax collections from the manufacture of Virginia tobacco products form part of a special fund for special purposes, within the contemplation of Article VI, Section 29(3) of the Constitution. In the same way, the Court

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[33] **Section 289.** *Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco.*— The financial support given by the National Government for the beneficiary provinces shall be constituted and collected from the proceeds of fifteen percent (15%) of the excise taxes on locally manufactured Virginia-type of cigarettes.

The funds allotted shall be divided among the beneficiary provinces pro-rata according to the volume of Virginia tobacco production.

x x x x x x x x x

The Secretary of Budget and Management is hereby directed to retain annually the said funds equivalent to fifteen percent (15%) of excise taxes on locally manufactured Virginia type cigarettes to be remitted to the beneficiary provinces qualified under R.A. No. 7171.

The provision of existing laws to the contrary notwithstanding, the fifteen percent (15%) share from government revenues mentioned in R.A. No. 7171 and due to the Virginia tobacco-producing provinces shall be directly remitted to the provinces concerned. x x x

in *Osmeña v. Orbos*[34] held that the oil price stabilization fund was a special fund segregated from the general fund and placed as it were in a trust account. And in *Gaston v. Republic Planters Bank*,[35] We ruled that the stabilization fees collected from sugar millers, planters, and producers were for a special purpose: to finance the growth and development of the sugar industry.

The special purposes, in this case, are embodied in Sections 1 and 2 of RA 7171 in the following wise:

SECTION 1. Declaration of Policy — It is hereby declared to be the policy of the government to extend special support to the farmers of the Virginia tobacco-producing provinces inasmuch as these farmers are the nucleus of the Virginia tobacco industry which generates a sizeable income, in terms of excise taxes from locally manufactured Virginia-type cigarettes and customs duties on imported blending tobacco, for the National Government. For the reason stated, it is hereby further declared that the **special support for these provinces shall be in terms of financial assistance for developmental projects to be implemented by the local governments of the provinces concerned.**

SECTION 2. Objective — The special support to the Virginia tobacco-producing provinces shall be utilized to advance the self-reliance of the tobacco farmers through:

a. Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmer's income;
b. Livelihood projects particularly the development of alternative farming systems to enhance farmers income;
c. Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization; and
d. Infrastructure projects such as farm-to-market roads. (emphasis added)

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[34] G.R. No. 99886, March 31, 1993.

[35] G.R. No. 77194, March 15, 1988.

The Excise Tax collections from the manufacture of Virginia tobacco earmarked for these programs were then validly placed in an account separate from the collections for other national tax items. The balance shall not be transferrable to the general funds of the government, from where the shares of the LGUs are sourced, unless the purposes for which the special fund was created have been fulfilled or abandoned. Absent any showing that said special purpose no longer exists, respondents committed no error in excluding 15% of Excise Tax collections on Virginia tobacco products from the distribution of national wealth to the LGUs.

To be sure, RA 10351[36] introduced an amendment to Section 288 of the NIRC on the allocation of excise taxes from tobacco products, to wit:

(C) Incremental Revenues from the Excise Tax on Alcohol and Tobacco Products. —

After deducting the allocations under Republic Act Nos. 7171 and 8240, eighty percent (80%) of the remaining balance of the incremental revenue derived from this Act shall be allocated for the universal health care under the National Health Insurance Program, the attainment of the millennium development goals and health awareness programs; **and twenty percent (20%) shall be allocated nationwide, based on political and district subdivisions, for medical assistance and health enhancement facilities program, the annual requirements of which shall be determined by the Department of Health (DOH).**

Thus, only 20% of the balance, after deducting the 15% of incremental excise tax allocation to the Virginia tobacco growers, shall form part of the base amount for determining the LGUs' share under Section 284 of the LGC, the 80% having been specially allocated for a special purpose.

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[36] 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.

7. Section 8 of RA 8240,[37] as now provided in Section 288 of the NIRC;

Section 288 of the NIRC, on the allocation of the incremental revenue from excise tax collections on tobacco products, deserves the same treatment as the earlier-discussed Excise Tax collections from the manufacture of Virginia tobacco. The pertinent provision reads:

Section 288. *Disposition of Incremental Revenues.* —

x x x x x x x x x

(B) Incremental Revenues from Republic Act No. 8240. — Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under RA. No. 8240 shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. **The fund shall be exclusively utilized for programs in pursuit of the following objectives:**

(1) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;

(2) Livelihood projects, particularly the development of alternative farming system to enhance farmer's income; and

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[37] SEC. 8. Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under this Act shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. The fund shall be exclusively utilized for programs in pursuit of the following objectives:

(a) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;

(b) Livelihood projects particularly the development of alternative farming system to enhance farmer's income;

(c) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The Department of Budget and Management in consultation with the Oversight Committee created hereunder shall issue the corresponding rules and regulations governing the allocation and disbursement of this fund.

(3) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The directive that the funds be exclusively utilized for the enumerated programs places the provision on par with Section 289 of the NIRC, in relation to RA 7171, as discussed in the preceding section. Both partake of special purpose funds that cannot be disbursed for any obligation other than those for which they are intended. Respondents then likewise correctly excluded from the computation base this 15% incremental excise tax collections for a special purpose account. But just like the case of the Excise Taxes on Virginia tobacco products, 80% of the remainder will accrue to a special purpose fund, leaving only 20% of the remainder for distribution to the LGUs. This is in view of the amendment introduced by RA 10351.

8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC;

Section 284 of the NIRC reads:

Section 284. *Allotment for the Commission on Audit*. — One-half of one percent (½ of 1%) of the collections from the national internal revenue taxes not otherwise accruing to special accounts in the general fund of the national government **shall accrue to the Commission on Audit as a fee for auditing services rendered to local government units**, excluding maintenance, equipment, and other operating expenses as provided for in Section 21 of Presidential Decree No. 898. (emphasis added)

Evidently, the provision does not diminish the base amount of national taxes that LGUs are to share from. It merely apportions half of 1% of national tax collections to the COA as compensation for its auditing services. This is not an illegal exclusion, but a recognition of the COA's right to fiscal autonomy under Article IX-A, Section 5 of the Constitution.[38] Thus, there is no clash

[38] **SECTION 5.** The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

nor conflict between the 40% allocation to LGUs under RA 7160 and the ½ of 1% allocation to COA under Section 285.

In sum, only (a) 50% of the VAT collections from the ARMM, (b) 30% of all other national tax collections from the ARMM, (c) 60% of the national tax collections from the exploitation and development of national wealth, (d) 5% of the 25% franchise taxes from the 8.5% and 8.25% of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc., and (e) 20% of the 85% of the incremental revenue from excise taxes on Virginia, burley and native tobacco products shall be included in the computation of the base amount of the 40% allotment. The remainders are allocated to beneficiary LGUs determined by law as part of their just share in the national taxes. Other special purpose funds shall likewise be excluded.

Further, incremental taxes shall be disposed of in consonance with Section 282 of the NIRC, as amended. The sales proceeds from the disposition of former military bases pursuant to RA 7227, on the other hand, are excluded since these are non-tax items to which LGUs are not constitutionally entitled to a share. There is also no impropriety in allocating ½ of 1% of tax collections to the COA as compensation for auditing fees.

The 40% share of the LGUs in the national taxes must be released upon proper appropriation; the allocation cannot be reduced without first amending Section 284 of the LGC

Pursuant to Article VI, Section 29 of the Constitution, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This highlights the requirement of an appropriation law, the annual General Appropriations Act (GAA), despite the "automatic release" clause under Article X, Section 6, and places LGUs on par with Constitutional Commissions and agencies that are granted fiscal autonomy.

Guilty of reiteration, Article X, Section 6 of the Constitution declared that the LGUs are entitled to their just share in the national taxes, without distinction as to the type of national

tax being collected. Thus, while Congress has the exclusive power of the purse, it cannot validly exclude from its appropriation to the LGUs the national tax collections of the BOC that are remitted to the national coffers. Otherwise stated, the base for national tax allotments is not limited to national internal revenue taxes under Section 21 of the NIRC, as amended, collected by the BIR, but also includes the Tariff and Customs Duties collected by the BOC, including the VAT, Excise Taxes and DST collected thereon.

The national government could have misconstrued the application of Section 6, Article X of the Constitution in not giving to the LGUs what is due the latter. True, Congress may enact statutes to set what constitutes the just share of the LGUs, so long as the LGUs remain to share in *all* national taxes. But lest it be forgotten, the percentage allocation to the LGUs need not be uniform across all forms of national taxes. Thus, while Section 284 of RA 7160 establishes a 40% share of the LGUs in the national taxes, this is only the general rule that is subject to exceptions, as explicated in the preceding discussion.

Absent any law amending Section 284 of the LGC, the 40% general allotment to the LGUs can only be reduced under the following circumstance:

> x x x That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) x x x

The yearly enactment of a general appropriations law cannot be deemed as the amendatory statutes that would permit Congress to lower, disregard, and circumvent the 40% threshold. For though an appropriation act is a piece of legislature, it cannot modify Section 284 of the LGC, which is a substantive law, by simply appropriating to the LGUs an amount lower than 40%.

The appropriation of a lower amount should not be understood as the creation of an exception to Section 284 of the LGC, but should be considered as an inappropriate provision.

Article VI, Section 25(2) of the Constitution[39] deems a provision inappropriate if it does not relate specifically to some particular item of appropriation. The concept, however, was expanded in *PHILCONSA v. Enriquez*,[40] wherein the Court taught that "*included in the category of 'inappropriate provisions' are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill.*" Thus Congress cannot introduce arbitrary figures as the budgetary allocation to the LGUs in the guise of amending the 40% threshold in Section 284 of the LGC.

To hold otherwise would bestow Congress unbridled license to enact in the GAA any manner of allocation to the LGUs that it wants, rendering illusory the 40% statutory percentage under Section 284. It would allow for no fixed expectation on the part of the LGUs as to the share they will receive, for it could range from .01-100%, depending on either the whim or wisdom of Congress. Under this setup, Congress might dangle the modification of the percentage share as a stick or carrot before the LGUs for the latter to toe the line. In turn, this would provide basis to fear that LGUs would be beholden to Congress by increasing or decreasing allocations as a form of discipline.

This would run contrary to the constitutional provision on local autonomy, and the spirit of the LGC. Perhaps the reason there is clamor for federalism is precisely because the allocations to LGUs had not been sufficient to finance basic services to

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[39] Section 25.

x x x x x x x x x

(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

[40] G.R. No. 113105, August 19, 1994.

local communities, which predicament might be addressed by broadening the allocation base up to what the Constitution provides. Therefore, the Court should uphold the lofty idea behind the LGC—that of empowering the LGUs and making them self-reliant by ensuring that they receive what is due them, amounting to 40% of national tax collections.

The computation of the 40% allocation base shall be based on the collections from the third fiscal year preceding the current fiscal year, as certified by the BIR and the BOC to the DBM as remittances to the National Treasury. The DBM shall then use said amount certified by the BIR and the BOC in determining the base amount which shall be incorporated in the budget proposal for submission to Congress. Upon enactment of the appropriations act, the national tax allotment the LGUs are entitled to shall be automatically released to them by the DBM within 5 days after the end of each quarter, in accordance with Section 286 of RA 7160.[41]

The Operative Fact Doctrine prevents the LGUs from collecting the arrears sought after; the Court's ruling herein can only be prospectively applied

Notwithstanding the postulation that the phrase "*internal revenue*" in Section 284 of the LGC and, consequently, its embodiment in the appropriation laws are unconstitutional, it is respectfully submitted that the prayer for the award of arrears should nevertheless be denied.

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[41] **Section 286.** *Automatic Release of Shares.*—

(a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

(b) Nothing in this Chapter shall be understood to diminish the share of local government units under existing laws.

Article 7 of the Civil Code states that "*When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern*." The provision sets the general rule that an unconstitutional law is void and therefore produces no rights, imposes no duties and affords no protection.[42]

However, the doctrine of operative fact is a recognized exception. Under the doctrine, the law is declared as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play.[43] The Court acknowledges that an unconstitutional law may have consequences which cannot always be ignored and that the past cannot always be erased by a new judicial declaration.[44] The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[45]

In this case, the proposed nullification of the phrase "*internal revenue*" in Section 284 of RA 7160 would have served as the basis for the recovery of the LGUs' just share in the tariff and customs duties collected by the BOC that were illegally withheld from 1991-2012. However, this entitlement to a share in the tariff collections would have been further compounded by the LGU's alleged ₱500-billion share, more or less, in the VAT, Excise Tax, and DST collections of the BOC. These arrears would be too cumbersome for the government to shoulder, which only had a budget of ₱1.8 Trillion in 2012.[46] Thus, while petitioners request that the LGU's can still recover the arrears

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[42] G.R. No. 79732, November 8, 1993.

[43] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, August 24, 2010.

[44] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, 14 March 2008.

[45] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, August 24, 2010.

[46] See Republic Act No. 10155.

of the national, it is submitted that this is no longer feasible. This would prove too much for the government's strained budget to meet, unless paid out on installment or in a staggered basis.

The operative fact doctrine allows for the prospective application of the outcome of this case and justifies the denial of petitioners' claim for arrears. As held in *Commissioner of Internal Revenue v. San Roque Power Corporation*[47] that:

> x x x for the operative fact doctrine to apply, there must be a "legislative or executive measure," meaning a law or executive issuance, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, **the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid**. (emphasis added)

This was echoed in *Araullo v. Aquino (Araullo)*[48] wherein the Court held that the operative fact doctrine can be applied to government programs, activities, and projects that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the disbursement acceleration program (DAP). In that case, the Court also agreed to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact because they had nothing to do at all with the adoption of the invalid acts and practices. To quote:

> As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply. In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine.

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[47] G.R. No. 187485, October 8, 2013.

[48] G.R. No. 209287, February 3, 2015.

For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

Taking our cue from *Araullo*, it is then beyond quibbling that no amount of bad faith can be attributed to the respondents herein. They merely followed established practice in government, which in turn was based on the plain reading of how Section 284 of the LGC. As couched, the provision seemingly allowed limiting the share of the LGUs to the national internal revenue taxes under Section 21 of the NIRC.

Moreover, it is imprecise to state that respondents illegally withheld monies from the LGUs. For the monies that should have been shared with the LGUs were nevertheless disbursed via the pertinent appropriation laws. Applying the presumption of regularity accorded to government officials, it may be presumed that the amount of ₱498,854,388,154.93 being claimed was utilized to finance government projects just the same, and ended up redounding not to the benefit of a particular LGU, but to the public-at-large. No badge of bad faith therefore obtained in the actuations of respondents. Consequently, the operative fact doctrine can properly be applied.

Increased national tax allotments may cure economic imbalance

As a final word, it cannot be gainsaid that this ruling of the Court granting a bigger piece of the national taxes to the LGUs will undoubtedly be an effective strategy and positive approach in addressing the sad plight of poor or underdeveloped LGUs that yearn to loosen the ostensible grip of imperial Manila over its supposed co-equals, *imperium in imperio*.

This ruling is timely since we are now in the midst of amending or revising the 1987 Constitution, with the avowed goal to "address the economic imbalance" through "transfer or sharing of the powers and resources of the government."[49] Encapsulated in the proposed Constitution is the "bayanihan federalism" anchored on the principles of "working together" and "cooperative

[49] Ding Generoso, April 19, 2018, PTV news – AB.

competition or coopetition."[50] Our own brand of federalism may just work given its presidential-federal form of government that is "uniquely Filipino" that is tailor-fit to the Filipino nation. The well-crafted proposal will undergo exhaustive scrutiny and intense debate both in and out of the halls of Congress. Whatever may be the outcome of the debates and the decision of Congress and the Filipino people will hopefully be for the betterment of the country.

In the meantime, we must continue to explore readily available means to address the imbalance suffered by the LGUs. Indeed, there is sufficient room in our Constitution to expand the authority of the LGUs, there being no constitutional proscription against further devolving powers and decentralizing governance in their favor. On the contrary, this is what our laws prescribe. Article X, Section 3 of the Constitution state:

> **Section 3. The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, **and all other matters relating to the organization and operation of the local units**.

By constitutional fiat, Congress has within its arsenal ample mandate to enact laws to grant and allocate among the different LGUs more powers, responsibilities and resources through the amendment of RA 7160 or the Local Government Code of 1991. And increasing the wealth and resources of the component LGUs is but one of the veritable measures to concretize the concept of local autonomy under Article X of the 1987 Constitution possibly without resorting to radical changes in our political frameworks.

If it is the sincere goal of the national government to provide ample financial resources to the LGUs, then it can consider amending Section 284 of RA 7160 and even increase the national

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[50] *Id.*

tax allotment (formerly IRA) to more than 40% of national taxes. Scrutiny should be made, however, of the percentage by which the national tax allotment is being distributed to among the different LGUs. For instance, Congress may consider balancing Section 285 of RA 7160 by adjusting the 23% share of the 145 cities vis-a-vis the percentage allocation of 1,478 municipalities now pegged at 34%. There are currently too few cities taking up too much share. This notwithstanding that cities, unlike many of the underperforming municipalities, are more progressive and financially viable because of the higher taxes they collect from people and business activities in their respective territories.

Congress may also decentralize and devolve more powers and duties to the LGUs or deregulate some activities or processes to entitle said LGUs more elbow room to successfully attain their programs and projects in harmony with national development programs. It has the supremacy in the enactment of laws that will define any aspect of organization and operation of the LGUs to make it more efficient and financially stable with special focus on the amplification of the taxing powers of said government units. Ergo, if Congress is so minded to reinforce the powers of the LGUs, it can, within the confines of the present Constitution, transfer or share any power of the national government to said local governments.

Moreover, Article VII, Section 17 of the Constitution makes the President the Chief of the Executive branch of Government, thus:

Section 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that laws be faithfully executed.

In the same token, Section 1, Chapter III of the Administrative Code of 1987 provides that the executive power shall be vested in the President of the Philippines. The President is the head of the executive branch of government having full control of all executive departments, bureaus and offices.[51] Part and parcel

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[51] Section 17 of Article VII of the 1987 Constitution and Section 1, Chapter 1, Title 1, Book III of the Administrative Code.

of the President's ordinance power is the issuance of executive or administrative that tend to decentralize or devolve certain powers and functions belonging to the executive departments, bureaus, and offices to the LGUs, unless otherwise provided by law.

The President may also order the DBM to review and evaluate the current formula for computation of the national tax allotment. At present, DBM relies mainly on two (2) factors in determining the allotments of provinces, municipalities and cities—50% percent based on population, 25% for land area and 25% for equal sharing. For barangays, it is 60% based on population and 40% for equal sharing. A view has been advanced that the shares of a province, city or municipality should be based on the classification of LGUs under Executive Order No. 249 dated July 25, 1987 determined from the average annual income of the LGU and not mainly on population and land area which are not accurate factors. It was put forward that the shares of LGUs in the NTA shall be in **inverse proportion** to their classification. A bigger share shall be granted to the 6th class municipality and a lower share to a 1st class municipality. At present, Senate Bill No. 2664 is pending which intends to rationalize the income classification of LGUs. We leave it to Congress or the President to resolve this issue, hopefully for a fairer sharing scheme that fully benefit the poor and disadvantaged provinces and municipalities.

Lastly, the President has the power of general supervision over local governments under Article X, Section 4 of the Constitution, *viz*:

> **Section 4.** The President of the **Philippines shall exercise general supervision over local governments**. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (emphasis added)

He can, therefore, support, guide, or even hand-hold the LGUs that are financially distressed or politically ineffective via the regional and provincial officials of the executive departments

or bureaus. In short, the President can transfer or share executive powers through decentralization or devolution without need of a fresh mandate under a new constitution.

From the foregoing, the perceived ills brought about by a unitary system of government may after all be readily remediable through congressional and executive interventions through the concepts of decentralization and devolution of powers to the LGUs. In the meantime that the leaders of the public and private sectors are busy dissecting and analyzing the proposed Bayanihan Federalism or, more importantly, resolving the issue of whether a charter amendment is indeed necessary, it may be prudent to consider whether the government can make do of its present powers and mandate to attain the goal of bringing progress to our poor and depressed local government units. After all, the present constitution may be ample enough to straighten out the "economic imbalance" and does not require fixing.

I, therefore, vote to **PARTIALLY GRANT** the instant petitions. In particular, I concur with the following dispositions:

1. The phrase "internal revenue" appearing in Section 284 of RA 7160 is declared **UNCONSTITUTIONAL** and is hereby **DELETED**.

a. The Section 284, as modified, shall read as follows:

> **Section 284.** *Allotment of ~~Internal Revenue~~ Taxes*. — Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
>
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to

consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the ~~internal revenue~~ allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national ~~internal revenue~~ taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) ~~internal revenue~~ allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

b. The phrase "internal revenue" shall likewise be **DELETED** from the related sections of RA 7160, particularly Sections 285, 287, and 290, which shall now read:

Section 285. *Allocation to Local Government Units.* — The share of local government units in the ~~internal revenue~~ allotment shall be collected in the following manner:

(a) Provinces- Twenty-three percent (23%);
(b) Cities- Twenty-three percent (23%);
(c) Municipalities- Thirty-four percent (34%); and
(d) Barangays- Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population- Fifty percent (50%);
(b) Land Area- Twenty-five percent (25%); and
(c) Equal sharing- Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (~~P~~80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the ~~internal revenue~~ allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:
    (1) Population- Forty percent (40%); and
    (2) Equal sharing- Sixty percent (60%)
(b) On the second year:

(1) Population- Fifty percent (50%); and
(2) Equal sharing- Fifty percent (50%)

(c) On the third year and thereafter:
(1) Population- Sixty percent (60%); and
(2) Equal sharing- Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

x x x x x x x x x

Section 287. *Local Development Projects*. — Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

x x x x x x x x x

Section 290. *Amount of Share of Local Government Units*. — Local government units shall, in addition to the ~~internal revenue~~ allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

c. Articles 378, 379, 380, 382, 409, 461, and other related provisions in the Implementing Rules and Regulations of RA 7160 are hereby likewise **MODIFIED** to reflect deletion of the phrase "internal revenue."

d. Henceforth, any mention of "IRA" in RA 7160 and its Implementing Rules and Regulations shall hereinafter be understood as pertaining to the national tax allotment of a local government unit;

2. Respondents are hereby **DIRECTED** to include all forms of national tax collections, other than those accruing to

special purpose funds and special allotments for the utilization and development of national wealth, in the subsequent computations for the base amount of just share the Local Government Units are entitled to. The base for national tax allotments shall include, but shall not be limited to:

a. National Internal Revenue Taxes under Section 21 of the National Internal Revenue Code, as amended, collected by the Bureau of Internal Revenue and its deputized agents, including Value-Added Taxes, Excise Taxes, and Documentary Stamp Taxes collected by the Bureau of Customs;

b. Tariff and Customs Duties collected by the Bureau of Customs;

c. Fifty percent (50%) of the Value-Added Tax collections from the Autonomous Region in Muslim Mindanao (ARMM), and thirty percent (30%) of all other national tax collections from the ARMM.

The remaining fifty percent (50%) of the Value-Added Taxes and seventy (70%) of the other national taxes collected in the ARMM shall be the exclusive share of the region pursuant to Sections 9 and 15 of RA 9054;

d. Sixty percent (60%) of the national tax collections from the exploitation and development of national wealth.

The remaining forty (40%) will validly exclusively accrue to the host Local Government Unit pursuant to Section 290 of RA 7160;

e. Five percent (5%) of the twenty-five percent (25%) franchise taxes collected from eight and a half percent (8.5%) and eight and one fourth percent (8.25%) of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc. pursuant to Sections 6 and 8 of RA 6631 and 6632, respectively.

The remaining twenty percent (20%) shall be divided as follows (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross;

f. Twenty percent (20%) of the eighty-five (85%) of the Excise Tax collections from Virginia, burley, and native tobacco products.

The first fifteen percent (15%) shall accrue to the tobacco producing units pursuant to RA Nos. 7171 and 8240. Eighty percent (80%) of the remainder shall be segregated as special purpose funds under RA 10351;

3. In addition, the Court further **DECLARES** that:

a. The apportionment of incremental taxes — twenty percent (20%) to the city or municipality where the tax is collected and eighty percent (80%) to the national government of fifty percent (50%) of incremental tax collections — under Section 282 of the National Internal Revenue Code, as amended by Republic Act No. 7643, is **VALID** and shall be observed;

b. Sections 8 and 12 of RA 7227 are hereby declared **VALID**. The proceeds from the sale of military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units since these are sales proceeds, not tax collections;

c. The one-half of one percent (1/2%) of national tax collections as the auditing fee of the Commission on Audit under Section 24(3) of Presidential Decree No. 1445 shall not be deducted prior to the computation of the forty percent (40%) share of the Local Government Units in the national taxes; and

d. Other special purpose funds are likewise **EXCLUDED** from the computation of the national tax allotment base.

4. The Bureau of Internal Revenue and Bureau of Customs are hereby **ORDERED** to certify to the Department of Budget and Management all their collections and remittances of National Taxes;

5. The Court's formula in this case for determining the base amount for computing the share of the Local Government Units shall have **PROSPECTIVE APPLICATION** from finality of this decision in view of the operative fact doctrine. Thus, petitioners' claims of arrears from the national government for the unlawful exclusions from the base amount are hereby **DENIED**.

6. Finally, once the General Appropriations Act for the succeeding year is enacted, the national tax allotments of the Local Government Units shall **AUTOMATICALLY** and **DIRECTLY** be released, without need of any further action, to the provincial, city, municipal, or *barangay* treasurer, as the case may be, on a quarterly basis but not beyond five (5) days after the end of each quarter. The Department of Budget and Management is hereby **ORDERED** to strictly comply with Article X, Section 6 of the Constitution and Section 286 of the Local Government Code, operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

The Constitution only requires that the local government units should have a "just share" in the national taxes. "Just share, as determined by law"[1] does not refer only to a percentage, but

[1] CONST., Art. X, Sec. 6.

likewise a determination by Congress and the President as to which national taxes, as well as the percentage of such classes of national taxes, will be shared with local governments. The phrase "national taxes" is broad to give Congress a lot of leeway in determining what portion or what sources within the national taxes should be "just share."

We should be aware that Congress consists of both the Senate and the House of Representatives. The House of Representatives meantime also includes district representatives. We should assume that in the passage of the Local Government Code and the General Appropriations Act, both Senate and the House are fully aware of the needs of the local government units and the limitations of the budget.

On the other hand, the President, who is sensitive to the political needs of local governments, likewise, would seek the balance between expenditures and revenues.

What petitioners seek is to short-circuit the process. They will to empower us, unelected magistrates, to substitute our political judgment disguised as a decision of this Court.

The provisions of the Constitution may be reasonably read to defer to the actions of the political branches. Their interpretation is neither absurd nor odious.

We should stay our hand.

I

Mandamus will not lie to achieve the reliefs sought by the parties.

G.R. No. 199802 (Mandanas' Petition) is a petition for certiorari, prohibition, and mandamus to set aside the allocation or appropriation of some ₱60,750,000,000.00 under Republic Act No. 10155 or the General Appropriations Act of 2012, which supposedly should form part of the 40% internal revenue allotment of the local government units. Petitioners contend that the General Appropriations Act of 2012 is unconstitutional, in so far as it misallocates some ₱60,750,000,000.00 that represents a part of the local government units' internal revenue

allotment coming from the national internal revenue taxes specifically the value-added taxes, excise taxes, and documentary stamp taxes collected by the Bureau of Customs.[2]

Thus, petitioners seek to enjoin respondents from releasing the ₱60,750,000,000.00 of the ₱1,816,000,000,000.00 appropriations provided under the General Appropriations Act of 2012. They submit that the ₱60,750,000,000.00 should be deducted from the capital outlay of each national department or agency to the extent of their respective pro-rated share.[3]

Petitioners further seek to compel respondents to cause the automatic release of the local government units' internal revenue allotments for 2012, including the amount of ₱60,750,000,000.00; and to pay the local government units their past unpaid internal revenue allotments from Bureau of Customs' collections of national internal revenue taxes from 1989 to 2009.[4]

On the other hand, G.R. No. 208488 (Garcia's Petition) seeks to declare as unconstitutional Section 284 of Republic Act No. 7160 or the Local Government Code of 1991, in limiting the basis for the computation of the local government units' internal revenue allotment to *national internal revenue taxes* instead of *national taxes* as ordained in the Constitution.[5]

This Petition also seeks a writ of mandamus to command respondents to fully and faithfully perform their duties to give the local government units their just share in the national taxes. Petitioner contends that the exclusion of the following special taxes and special accounts from the basis of the internal revenue allotment is unlawful:

a. Autonomous Region of Muslim Mindanao, RA No. 9054;
b. Share of LGUs in mining taxes, RA No. 7160;
c. Share of LGUs in franchise taxes, RA No. 6631, RA No. 6632;

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[2] *Rollo* (G.R. No. 199802), pp. 4-5.

[3] *Id.* at 24.

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

[5] *Rollo* (G.R. No. 208488), p. 15.

d. VAT of various municipalities, RA No. 7643;
e. ECOZONE, RA No. 7227;
f. Excise tax on Locally Manufactured Virginia Tobacco, RA No. 7171;
g. Incremental Revenue from Burley and Native Tobacco, RA No. 8240;
h. COA share, PD 1445.[6]

Similar to Mandanas' Petition, Garcia argues that the value-added tax and excise taxes collected by the Bureau of Customs should be included in the scope of national internal revenue taxes.

Specifically, petitioner asks that respondents be commanded to:

(a) Compute the internal revenue allotment of the local government units on the basis of the national tax collections including tax collections of the Bureau of Customs, without any deductions;

(b) Submit a detailed computation of the local government units' internal revenue allotments from 1995 to 2014; and

(c) Distribute the internal revenue allotment shortfall to the local government units.[7]

In sum, both Petitions ultimately seek a writ of mandamus from this Court to compel the Executive Department to disburse amounts, which allegedly were illegally excluded from the local government units' Internal Revenue Allotments for 2012 and previous years, specifically from 1992 to 2011.

Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for *mandamus* may be filed "[w]hen any tribunal, corporation, board, officer or person *unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office*, trust, or station." It may also be filed "[w]hen any tribunal, corporation, board, officer or person

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[6] *Id*. at 11.

[7] *Id*. at 15-16.

. . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

"Through a writ of *mandamus*, the courts '*compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent*' by operation of his or her office, trust, or station."[8] It is necessary for petitioner to show both the legal basis for the duty, and the defendant's or respondent's failure to perform the duty.[9] "It is equally necessary that the respondent have the power to perform the act concerning which the application for mandamus is made."[10]

There was no unlawful neglect on the part of public respondents, particularly the Commissioner of Internal Revenue, in the computation of the internal revenue allotment. Moreover, the act being requested of them is not their ministerial duty; hence, *mandamus* does not lie and the Petitions must be dismissed.

Respondents' computation of the internal revenue allotment was not without legal justification.

Republic Act No. 7160, Section 284 provides that the local government units shall have a forty percent (40%) share in the national internal revenue taxes based on the collections of the third fiscal year preceding the current fiscal year. Article 378 of Administrative Order No. 270 or the Rules and Regulations Implementing the Local Government Code of 1991 (Local Government Code Implementing Rules) mandates that "[t]he total annual internal revenue allotments . . . due the [local government units] shall be determined on the basis of collections from national internal revenue taxes *actually realized as certified by the [Bureau of Internal Revenue]*." Consistent with this Rule,

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[8] *Bagumbayan-VNP Movement, Inc. v. Commission on Elections*, G.R. No. 222731 (Resolution), March 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/222731.pdf> 10 [Per *J.* Leonen, *En Banc*].

[9] *Id.*

[10] *Alzate v. Aldana*, 118 Phil. 220, 225 (1963) [Per *J.* Barrera, *En Banc*].

it was reiterated in Development Budget Coordination Committee Resolution No. 2003-02 dated September 4, 2003 that the national internal revenue collections as defined in Republic Act No. 7160 shall refer to "*cash collections based on the [Bureau of Internal Revenue] data as reconciled with the [Bureau of Treasury]*."

Pursuant to the foregoing Article 378 of the Local Government Code Implementing Rules and Development Budget Coordination Committee Resolution, the Bureau of Internal Revenue computed the internal revenue allotment on the bases of its actual collections of national internal revenue taxes. The value-added tax, excise taxes, and a portion of the documentary stamp taxes collected by the Bureau of Customs on imported goods were not included in the computation because "these collections of the [Bureau of Customs] are remitted directly to the [Bureau of Treasury]"[11] and, as explained by then Commissioner Jacinto-Henares, "are recognized by the Bureau of Treasury as the collection performance of the Bureau of Customs."[12]

Furthermore, the exclusions of certain special taxes from the revenue base for the internal revenue allotment were made pursuant to special laws—Presidential Decree No. 1445 and Republic Act Nos. 6631, 6632, 7160, 7171, 7227, 7643, and 8240—all of which enjoy the presumption of constitutionality and validity.

It is basic that laws and implementing rules are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms.[13] Thus, respondents must be deemed to have conducted themselves in good faith and with regularity when they acted pursuant to the Local Government Code and its Implementing Rules, the Development Budget Coordination Committee Resolution, and special laws.

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[11] *Rollo* (G.R. No. 199802), p. 198, Memorandum of Respondents.

[12] *Id*. at 217-218, Memorandum of Petitioner.

[13] See *Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008) [*J*. Corona, *En Banc*].

At any rate, the issue on the alleged "unlawful neglect" of respondents was settled when Congress adopted and approved their internal revenue allotment computation in the General Appropriations Act of 2012.

Mandamus will also not lie to enjoin respondents to withhold the ₱60,750,000,000.00 appropriations in the General Appropriations Act of 2012 for capital outlays of national agencies and release the same to the local government units as internal revenue allotment.

Congress alone, as the "appropriating and funding department of the Government,"[14] can authorize the expenditure of public funds through its power to appropriate. Article VI, Section 29(1) of the Constitution is clear that the expenditure of public funds must be pursuant to an appropriation made by law. Inherent in Congress' power of appropriation is the power to specify not just the amount that may be spent but also the purpose for which it may be spent.[15]

While the disbursement of public funds lies within the mandate of the Executive, it is subject to the limitations on the amount and purpose determined by Congress. Book VI, Chapter 5, Section 32 of Executive Order No. 292 directs that "[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." It is the ministerial duty of the Department of Budget and Management to desist from disbursing public funds without the corresponding appropriation from Congress. Thus, the Department of Budget and Management has no power to set aside fund for purposes outside of those mentioned in the appropriations law. The proper remedy of the petitioners is to apply to Congress for the enactment of a

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[14] Dissenting Opinion of J. Padilla in *Gonzales v. Macaraig, Jr.*, 269 Phil. 472, 516 (1990) [Per *J.* Melencio-Herrera, *En Banc*].

[15] See *Verceles, Jr. v. Commission on Audit*, G.R. No. 211553, September 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/211553.pdf> [Per *J.* Brion, *En Banc*]; *Atitiw v. Zamora*, 508 Phil. 321 (2005) [Per *J.* Tinga, *En Banc*].

special appropriation law; but it is still discretionary on the part of Congress to appropriate or not.

Thus, on procedural standpoint alone, the Petitions must be dismissed.

II

On the substantive issue, I hold the view that:

1) Section 284[16] of the Local Government Code, limiting the base for the computation of internal revenue allotment to national internal revenue taxes is a proper exercise of the legislative discretion accorded by the Constitution[17] to determine the "just share" of the local government units;

2) The exclusion of certain revenues—value-added tax, excise tax, and documentary stamp taxes collected by

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[16] LOCAL GOVT. CODE, Sec. 284 provides:

Section 284. *Allotment of Internal Revenue Taxes*.— Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

(a) on the first year of the effectivity of this Code, thirty percent (30%);
(b) on the second year, thirty-five percent (35%); and
(c) on the third year and thereafter, forty percent (40%).

Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

[17] CONST., Art. X, Sec. 6 states:

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

the Bureau of Customs—from the base for the computation for the internal revenue allotment, which was approved in the General Appropriations Act of 2012, is not unconstitutional; and

3) The deductions to the Bureau of Internal Revenue's collections made pursuant to special laws were proper.

III

We assess the validity of the internal revenue allotment of the local government units in light of Article X, Section 6 of the 1987 Constitution, which provides:

> Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

"Just share" does not refer only to a percentage, but it can also refer to a determination as to which national taxes, as well as the percentage of such classes of national taxes, will be shared with local governments. There are no constitutional restrictions on how the share of the local governments should be determined other than the requirement that it be "just." The "just share" is to be determined "by law," a term which covers both the Constitution and statutes. Thus, the Congress and the President are expressly authorized to determine the "just share" of the local government units.

According to the *ponencia*, mandamus will not lie because "the determination of what constitutes the just share of the local government units in the national taxes under the 1987 Constitution is an entirely discretionary power"[18] and the discretion of Congress is not subject to external direction. Yet the disposition on the substantive issues, in essence, supplants legislative discretion and relegates it to one that is merely ministerial.

The percentages 30% in the first year, 35% in the second year, and 40% in the third year, and onwards were fixed in

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[18] *Ponencia*, p. 6.

Section 284 of the Local Government Code on the basis of what Congress determined as the revenue base, i.e., national internal revenue taxes. Thus, we cannot simply declare the phrase "internal revenue" as unconstitutional and strike it from Section 284 of the Local Government Code, because this would effectively change Congress' determination of the just share of the local government units. By broadening the base for the computation of the 40% share to national taxes instead of to national internal revenue taxes, we would, in effect, increase the local government units' share to an amount more than what Congress has determined and intended.

The limitation provided in Article X, Section 6 of the 1987 Constitution should be reasonably construed so as not to unduly hamper the full exercise by the Legislative Department of its powers. Under the Constitution, it is Congress' exclusive power and duty to authorize the budget for the coming fiscal year. "Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy."[19] For sure, this Court has, in the past, acknowledged the awesome power of Congress to control appropriations.

In *Guingona, Jr. v. Carague*,[20] petitioners therein urged that Congress could not give debt service the highest priority in the General Appropriations Act of 1990 because under Article XIV, Section 5(5) of the Constitution, it should be education that is entitled to the highest funding. Rejecting therein petitioners' argument, this Court held:

While it is true that under Section 5(5), Article XIV of the Constitution Congress is mandated to "assign the highest budgetary priority to education" in order to "insure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction

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[19] Separate Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 686 (2013) [Per J. Perlas-Bernabe, *En Banc*].

[20] 273 Phil. 443 (1991) [Per J. Gancayco, *En Banc*].

and fulfillment," **it does not thereby follow that the hands of Congress are so hamstrung as to deprive it the power to respond to the imperatives of the national interest and for the attainment of other state policies or objectives**.

As aptly observed by respondents, since 1985, the budget for education has tripled to upgrade and improve the facility of the public school system. The compensation of teachers has been doubled. The amount of ₱29,740,611,000.00 set aside for the Department of Education, Culture and Sports under the General Appropriations Act (R.A. No. 6831), is the highest budgetary allocation among all department budgets. This is a clear compliance with the aforesaid constitutional mandate according highest priority to education.

Having faithfully complied therewith, Congress is certainly not without any power, guided only by its good judgment, to provide an appropriation, that can reasonably service our enormous debt, the greater portion of which was inherited from the previous administration. It is not only a matter of honor and to protect the credit standing of the country. More especially, the very survival of our economy is at stake. **Thus, if in the process Congress appropriated an amount for debt service bigger than the share allocated to education, the Court finds and so holds that said appropriation cannot be thereby assailed as unconstitutional.**[21] (Emphasis supplied)

Appropriation is not a judicial function. We do not have the power of the purse and rightly so. The power to appropriate public funds for the maintenance of the government and other public needs distinctively belongs to Congress. Behind the Constitutional mandate that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law"[22] lies the principle that the people's money may be spent only with their consent. That consent is to be expressed either in the Constitution itself or in valid acts of the legislature as the direct representative of the people.

Every appropriation is a political act. Allocation of funds for programs, projects, and activities are very closely related

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[21] *Id*. at 451.

[22] CONST., Art. VI, Sec. 29(1).

to political decisions. The budget translates the programs of the government into monetary terms. It is intended as a guide for Congress to follow not only in fixing the amounts of appropriation but also in determining the specific governmental activities for which public funds should be spent.

The Constitution requires that all appropriation bills should originate from the House of Representatives.[23] Since the House of Representatives, through the district Representatives, is closer to the people and has more interaction with the local government that is within their districts than the Senate, it is expected to be more sensitive to and aware of the local needs and problems,[24] and thus, have the privilege of taking the initiative in the disposal of the people's money. The Senate, on the other hand, may propose amendments to the House bill.[25]

The appropriation bill passed by Congress is submitted to the President for his or her approval.[26] The Constitution grants the President the power to veto any particular item or items in the appropriation bill, without affecting the other items to which he or she does not object.[27] This function enables the President to remove any item of appropriation, which in his or her opinion, is wasteful[28] or unnecessary.

Considering the entire process, from budget preparation to legislation, we can presume that the Executive and Congress have prudently determined the level of expenditures that would be covered by the anticipated revenues for the government on the basis of historical performance and projections of economic conditions for the incoming year. The determination of just

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[23] CONST., Art. VI, Sec. 24.

[24] See *Tolentino v. Secretary of Finance,* 305 Phil. 686 (1994) [Per *J.* Mendoza, *En Banc*].

[25] CONST., Art. VI, Sec. 24.

[26] CONST., Art. VI, Sec. 27(1).

[27] CONST., Art. VI, Sec. 27(2).

[28] Concurring Opinion of *J.* Carpio, *Belgica v. Ochoa*, 721 Phi1. 416, 613-654 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

share contemplated under Article X, Section 6 of the 1987 Constitution is part of this process. Their interpretation or determination is not absurd and well within the text of the Constitution. We should exercise deference to the interpretation of Congress and of the President of what constitutes the "just share" of the local government units.

IV

The general appropriations law, like any other law, is a product of deliberations in the legislative body. Congress' role in the budgetary process[29] and the procedure for the enactment of the appropriations law has been described in detail as follows:

> The **Budget Legislation Phase** covers the period commencing from the time Congress receives the President's Budget, which is inclusive of the [National Expenditure Program] and the [Budget of Expenditures and Sources of Financing], up to the President's approval of the GAA. This phase is also known as the Budget Authorization Phase, and involves the significant participation of the Legislative through its deliberations.
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> Initially, the President's Budget is assigned to the House of Representatives' Appropriations Committee on First Reading. The Appropriations Committee and its various Sub-Committees schedule and conduct budget hearings to examine the PAPs of the departments and agencies. Thereafter, the House of Representatives drafts the General Appropriations Bill (GAB).
>
> The GAB is sponsored, presented and defended by the House of Representatives' Appropriations Committee and Sub-Committees in plenary session. As with other laws, the GAB is approved on Third Reading before the House of Representatives' version is transmitted to the Senate.
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> After transmission, the Senate conducts its own committee hearings on the GAB. To expedite proceedings, the Senate may conduct its committee hearings simultaneously with the House of Representatives' deliberations. The Senate's Finance Committee and its Sub-Committees

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[29] The budgetary process was described as consisting of four phases: (1) Budget Preparation; (2) Budget Legislation; (3) Budget Execution; and (4) Accountability. Congress enters the picture in the second phase.

may submit the proposed amendments to the GAB to the plenary of the Senate only after the House of Representatives has formally transmitted its version to the Senate. The Senate version of the GAB is likewise approved on Third Reading.

The House of Representatives and the Senate then constitute a panel each to sit in the Bicameral Conference Committee for the purpose of discussing and harmonizing the conflicting provisions of their versions of the GAB. The "harmonized" version of the GAB is next presented to the President for approval. The President reviews the GAB, and prepares the Veto Message where budget items are subjected to direct veto, or are identified for conditional implementation.

If, by the end of any fiscal year, the Congress shall have failed to pass the GAB for the ensuing fiscal year, the GAA for the preceding fiscal year shall be deemed re-enacted and shall remain in force and effect until the GAB is passed by the Congress.[30] (Emphasis in the original, citations omitted)

The general appropriations law is a special law pertaining specifically to appropriations of money from the public treasury. The "just share" of the local government units is incorporated as the internal revenue allotment in the general appropriations law. By the very essence of how the general appropriations law is enacted, particularly for this case the General Appropriations Act of 2012, it can be presumed that Congress has *purposefully, deliberately, and precisely* approved the revenue base, including the exclusions, for the internal revenue allotment.

A basic rule in statutory construction is that as between a specific and general law, the former must prevail since it reveals the legislative intent more clearly than a general law does.[31] The specific law should be deemed an exception to the general law.[32]

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[30] *Araullo v. Aquino III*, 737 Phil. 457, 547-549 (2014) [Per J. Bersamin, *En Banc*].

[31] See *Vinzons-Chato v. Fortune Tobacco Corp.*, 552 Phil. 101 (2007) [Per J. Ynares Santiago, Third Division]; *De Jesus v. People*, 205 Phil. 663 (1983) [Per J. Escolin, *En Banc*].

[32] See *Lopez, Jr. v. Civil Service Commission*, 273 Phil. 147 (1991) [Per J. Sarmiento, *En Banc*].

The appropriations law is a special law, which specifically outlines the share in the national fund of all branches of the government, including the local government units. On the other hand, the National Internal Revenue Code is a general law on taxation, generally applicable to all persons. Being a specific law on appropriations, the General Appropriations Act should be considered an exception to the National Internal Revenue Code definition of national internal revenue taxes insofar as the internal revenue allotments of the local government units are concerned. The General Appropriations Act of 2012 is the clear and specific expression of the legislative will—that the local government units' internal revenue allotment is 40% of national internal revenue taxes excluding tax collections of the Bureau of Customs—and must be given effect. That this was the obvious intent can also be gleaned from Congress' adoption and approval of internal revenue allotments using the same revenue base in the General Appropriations Act from 1992 to 2011.

The ruling in *Province of Batangas v. Romulo*[33] that a General Appropriations Act cannot amend substantive law must be read in its context.

In that case, the General Appropriations Acts of 1999, 2000, and 2001 contained provisos earmarking for each corresponding year the amount of ₱5,000,000,000.00 of the local government units' internal revenue allotment for the Local Government Service Equalization Fund and imposing the condition that "such amount shall be released to the local government units subject to the implementing rules and regulations, including such mechanisms and guidelines for the equitable allocations and distribution of said fund among the local government units subject to the guidelines that may be prescribed by the Oversight Committee on Devolution." This Court struck down the provisos in the General Appropriations Acts of 1999, 2000, and 2001 as unconstitutional, and the Oversight Committee on Devolution resolutions promulgated pursuant to these provisos. This Court held that to subject the distribution and release of the Local

[33] 473 Phil. 806 (2004) [Per *J.* Callejo, Sr., *En Banc*].

Government Service Equalization Fund, a portion of the internal revenue allotment, to the rules and guidelines prescribed by the Oversight Committee on Devolution makes the release *not* automatic, a flagrant violation of the constitutional and statutory mandate that the "just share" of the local government units "shall be automatically released to them."

This Court further found that the allocation of the shares of the different local government units in the internal revenue allotment as provided in Section 285[34] of the Local Government Code was not followed, as the resolutions of the Oversight Committee on Devolution prescribed different sharing schemes of the Local Government Service Equalization Fund. This Court held that the percentage sharing of the local government units fixed in the Local Government Code are matters of substantive law, which could not be modified through appropriations laws or General Appropriations Acts. This Court explained that Congress cannot include in a general appropriation bill matters that should be more properly enacted in a separate legislation.

Province of Batangas cited in turn this Court's ruling in *Philippine Constitution Association (PHILCONSA) v. Enriquez*,[35] which defined what were considered inappropriate provisions in appropriation laws:

As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an

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[34] LOCAL GOVT. CODE, Sec. 285 states:

Section 285. *Allocation to Local Government Units*. — The share of local government units in the internal revenue allotment shall be allocated in the following manner:

(a) Provinces - Twenty-three percent (23%);
(b) Cities - Twenty-three percent (23%);
(c) Municipalities - Thirty-four percent (34%); and
(d) Barangays - Twenty percent (20%).

[35] 305 Phil. 546 (1994) [Per *J*. Quiason, *En Banc*].

inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind[s] of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments.

The doctrine of "inappropriate provision" was well elucidated in *Henry v. Edwards*, ... , thus:

> Just as the President may not use his item-veto to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation . . . cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to choose between approving unacceptable substantive legislation or vetoing 'items' of expenditures essential to the operation of government. *The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation*. ... We are no more willing to allow the legislature to use its appropriation power to infringe on the Governor's constitutional right to veto matters of substantive legislation than we are to allow the Governor to encroach on the constitutional powers of the legislature. In order to avoid this result, we hold that, *when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as 'items' for purposes of the Governor's item veto power over general appropriation bills*.[36] (Emphasis in the original)

In *PHILCONSA*, this Court upheld the President's veto of the proviso in the Special Provision of the item on debt service requiring that "*any payment in excess of the amount herein appropriated* shall be subject to the approval of the President of the Philippines with the concurrence of the Congress of the

[36] *Id*. at 577-578.

Philippines."[37] This Court held that the proviso was an *inappropriate provision* because it referred to funds other than the ₱86,323,438,000.00 appropriated for debt service in the General Appropriations Act of 1991.

Province of Batangas referred to a provision in the General Appropriations Act, which was clearly shown to contravene the Constitution, while *PHILCONSA* referred to an inappropriate provision, i.e., a provision that was clearly extraneous to any definite item of appropriation in the General Appropriations Act, which incidentally constituted an implied amendment of another law.

What is involved here is the internal revenue allotment of the local government units in the Government Appropriations Act of 2012, the determination of which was, under the Constitution, left to the sole prerogative of the legislature. Congress has full discretion to determine the "just share" of the local government units, in which authority necessarily includes the power to fix the revenue base, or to define what are included in this base, and the rate for the computation of the internal revenue allotment. Absent any clear and unequivocal breach of the Constitution, this Court should proceed with restraint when a legislative act is challenged in deference to a co-equal branch of the Government.[38] "If a particular statute is within the constitutional powers of the Legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment."[39]

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The *ponencia* further elaborates "automatic release" in Section 286 of the Local Government Code as "without need for a yearly

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[37] *Id*. at 573.

[38] See *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357 (2012) [Per J. Mendoza, *En Banc*]; *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per J. Bellosillo, *En Banc*].

[39] *Tajanlañgit, et al. v. Peñaranda, et al*., 37 Phil. 155, 160 (1917) (Per J. Johnson, First Division].

appropriation." This is contrary to the Constitution. A statute cannot amend the Constitutional requirement.

Section 286 of the Local Government Code states:

> Section 286. *Automatic Release of Shares*. — (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

Appropriation and *release* refer to two (2) different actions. "An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose."[40] It is the Congressional authorization required by the Constitution for spending.[41] Release, on the other hand, has to do with the actual disbursement or spending of funds. "Appropriations have been considered 'released' if there has already been an allotment or authorization to incur obligations and disbursement authority."[42] This is a function pertaining to the Executive Department, particularly the Department of Budget and Management, in the execution phase of the budgetary process.[43]

Article VI, Section 29(1) of the Constitution is explicit that:

> Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

In other words, before money can be taken out of the Government Treasury for any purpose, there must first be an appropriation made by law for that specific purpose. Neither

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[40] *Bengzon v. Secretary of Justice*, 62 Phil. 912, 916 (1936) [Per *J.* Malcolm, *En Banc*].

[41] *Araullo v. Aquino III*, 737 Phil. 457, 571 (2014) (Per *J.* Bersamin, *En Banc*] citing *Gonzales v. Raquiza*, 259 Phil. 736 (1989) [Per *C.J.* Fernan, Third Division].

[42] *Id.*

[43] *Id.*

of the fiscal officers or any other official of the Government is authorized to order the expenditure of unappropriated funds. Any other course would give to these officials a dangerous discretion.

This Court has pronounced that to be valid, an appropriation must be specific, both in amount and purpose.[44] In *Nazareth v. Villar*,[45] this Court held that even if there is a law authorizing the grant of Magna Carta benefits for science and technology personnel, the funding for these benefits must be "purposefully, deliberately, and precisely" appropriated for by Congress in a general appropriation law:

> Article VI Section 29 (1) of the 1987 Constitution firmly declares that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This constitutional edict requires that the GAA be purposeful, deliberate, and precise in its provisions and stipulations. As such, the requirement under Section 20 of R.A. No. 8439 that the amounts needed to fund the *Magna Carta* benefits were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA. The funding for the *Magna Carta* benefits would not materialize as a matter of course simply by fiat of R.A. No. 8439, but must initially be proposed by the officials of the DOST as the concerned agency for submission to and consideration by Congress. That process is what complies with the constitutional edict. R.A. No. 8439 alone could not fund the payment of the benefits because the GAA did not mirror every provision of law that referred to it as the source of funding. It is worthy to note that the DOST itself acknowledged the absolute need for the appropriation in the GAA. Otherwise, Secretary Uriarte, Jr. would not have needed to request the OP for the express authority to use the savings to pay the *Magna Carta* benefits.[46] (Citation omitted)

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[44] *Dela Cruz v. Ochoa, Jr.*, G.R. No. 219683, January 23, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/219683.pdf> [Per J. Bersamin, *En Banc*] citing *Goh v. Bayron*, 748 Phil. 282 (2014) [Per J. Carpio, *En Banc*].

[45] 702 Phil. 319 (2013) [Per J. Bersamin, *En Banc*].

[46] *Id*. at 338-339.

All government expenditures must be integrated in the general appropriations law. This is revealed by a closer look into the entire government budgetary and appropriation process.

The first phase in the process is the budget preparation. The Executive prepares a National Budget that is reflective of national objectives, strategies, and plans for the following fiscal year. Under Executive Order No. 292 of the Administrative Code of 1987, the national budget is to be "formulated within the context of a regionalized government structure and of the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations."[47]

The budget may include the following:

(1) A budget message setting forth in brief the government's budgetary thrusts for the budget year, including their impact on development goals, monetary and fiscal objectives, and generally on the implications of the revenue, expenditure and debt proposals; and

(2) Summary financial statements setting forth:

   (a) Estimated expenditures and proposed appropriations necessary for the support of the Government for the ensuing fiscal year, including those financed from operating revenues and from domestic and foreign borrowings;

   (b) Estimated receipts during the ensuing fiscal year under laws existing at the time the budget is transmitted and under the revenue proposals, if any, forming part of the year's financing program;

   (c) Actual appropriations, expenditures, and receipts during the last completed fiscal year;

   (d) Estimated expenditures and receipts and actual or proposed appropriations during the fiscal year in progress;

   (e) Statements of the condition of the National Treasury at the end of the last completed fiscal year, the estimated

[47] ADM. CODE., Book VI, Chap. 2, Sec. 3.

condition of the Treasury at the end of the fiscal year in progress and the estimated condition of the Treasury at the end of the ensuing fiscal year, taking into account the adoption of financial proposals contained in the budget and showing, at the same time, the unencumbered and unobligated cash resources;

(f) Essential facts regarding the bonded and other long-term obligations and indebtedness of the Government, both domestic and foreign, including identification of recipients of loan proceeds; and

(g) Such other financial statements and data as are deemed necessary or desirable in order to make known in reasonable detail the financial condition of the government.[48]

The President, in accordance with Article VII, Section 22 of the Constitution, submits the budget of expenditures and sources of financing, which is also called the National Expenditure Plan, to Congress as the basis of the general appropriation bill,[49] which will be discussed, debated on, and voted upon by Congress. Also included in the budget submission are the proposed expenditure levels of the Legislative and Judicial Branches, and of Constitutional bodies.[50]

All appropriation proposals must be included in the budget preparation process.[51] Congress then "deliberates or acts on the budget proposals . . . in the exercise of its own judgment and wisdom [and] formulates an appropriation act."[52] The Constitution states that "Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget."[53] Furthermore,

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[48] ADM. CODE, Book VI, Chap. 3, Sec. 12.

[49] CONST., Art. VII, Sec. 22.

[50] ADM. CODE, Book VI, Chap. 3, Sec. 12.

[51] ADM. CODE, Book VI, Chap. 4, Sec. 27.

[52] *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357, 375 (2012) [Per *J.* Mendoza, *En Banc*].

[53] CONST., Art. VI, Sec. 25(1).

"all expenditures for (1) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (2) principal and interest on public debt, (3) national government guarantees of obligations which are drawn upon, are automatically appropriated."[54]

Parenthetically, the General Appropriations Act of 2012 includes the budgets for entities enjoying fiscal autonomy,[55] and for debt service that is automatically appropriated, under the following titles:

1. Title XXIX, the Judiciary;
2. Title XXX, Civil Service Commission;
3. Title XXXI, Commission on Audit;
4. Title XXXII, Commission on Elections;
5. Title XXXIII, Office of the Ombudsman;
6. Annex A, Automatic Appropriations, which include the interest payments for debt service and the internal revenue allotment of the local government units; and
7. Annex B, Debt Service — Principal Amortizations.[56]

"Automatic appropriation" is not the same as "automatic release" of appropriations. As stated earlier, the power to

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[54] ADM. CODE, Book VI, Chap. 4, Sec. 26.

[55] See *Commission on Human Rights Employees' Association v. Commission on Human Rights*, 528 Phil. 658, 678 (2006) [Per *J.* Chico-Nazario, Special Second Division]. "Fiscal Autonomy shall mean independence or freedom regarding financial matters from outside control and is characterized by self direction or self determination.... [it] means more than just the automatic and regular release of approved appropriation, and also encompasses, among other things: (1) budget preparation and implementation; (2) flexibility in fund utilization of approved appropriations; and (3) use of savings and disposition of receipts."

[56] For 2012 GAA, please look at SUM2012 (Summary of FY 2012 New Appropriations) folder. The Annexes to the 2012 New Appropriations consist of (1) Automatic Appropriations, which included the interest payments for debt service; and (2) Debt Service—Principal Amortization. Please refer to the AA and DSPA folders for the details of the automatic appropriations and debt service appropriations, respectively. The yearly GAAs can be accessed from the Department of Budget and Management website under DBM Publications.

appropriate belongs to Congress, while the responsibility of releasing appropriations belongs to the Department of Budget and Management.[57]

Items of expenditure that are automatically appropriated, like debt service, are approved at its annual levels or on a lump sum by Congress upon due deliberations, without necessarily going into the details for implementation by the Executive.[58] However, just because an expenditure is automatically appropriated does not mean that it is no longer included in the general appropriations law.

On the other hand, the "automatic release" of approved annual appropriations requires the full release[59] of appropriations without any condition.[60] Thus, "no report, no release" policies cannot be enforced against institutions with fiscal autonomy. Neither can a "shortfall in revenues" be considered as valid justification to withhold the release of approved appropriations.[61]

With regard to the local government units, the automatic release of internal revenue allotments under Article X, Section 6 of the Constitution binds both the Legislative and Executive departments.[62] In *ACORD, Inc. v. Zamora*,[63] the [General Appropriations Act 2000] of placed ₱10,000,000,000.00 of the [internal revenue allotment] under "unprogrammed funds." This

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[57] See *Civil Service Commission v. Department of Budget and Management,* 517 Phil. 440 (2006) [Per J. Carpio Morales, *En Banc*].

[58] See *Guingona, Jr. v. Carague*, 273 Phil. 443 (1991) [Per J. Gancayco, *En Banc*].

[59] *Civil Service Commission v. Department of Budget and Management*, 517 Phil. 440 (2006) [Per J. Carpio Morales, *En Banc*].

[60] *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372 (2005) [Per J. Carpio Morales, *En Banc*].

[61] *Id.*

[62] *ACORD Inc. v. Zamora*, 498 Phil. 615 (2005) [Per J. Carpio Morales, *En Banc*].

[63] 498 Phil. 615 (2005) [Per J. Carpio Morales, *En Banc*].

Court, citing *Province of Batangas* and *Pimentel v. Aguirre*,[64] ruled that such withholding of the internal revenue allotment contingent upon whether revenue collections could meet the revenue targets originally submitted by the President contravened the constitutional mandate on automatic release.

The *automatic* release of the local government units' shares is a basic feature of local fiscal autonomy. Nonetheless, as clarified in *Pimentel*:

> Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress. As we stated in *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government.[65] (Citation omitted)

The release of the local government units' share without an appropriation, as what the *ponencia* proposes, substantially amends the Constitution. It also gives local governments a level of fiscal autonomy not enjoyed even by constitutional bodies like the Supreme Court, the Constitutional Commissions, and the Ombudsman. It bypasses Congress as mandated by the Constitution.

"Without appropriation" also substantially alters the relationship of the President to local governments, effectively diminishing, if not removing, supervision as mandated by the Constitution.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

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[64] 391 Phil. 84 (2000) [Per *J*. Panganiban, *En Banc*].

[65] *Id*. at 102.

SEPARATE OPINION

CAGUIOA, *J.*:

Every statute has in its favor the presumption of constitutionality. This presumption rests on the doctrine of separation of powers, which enjoins the three branches of government to encroach upon the duties and powers of another.[1] It is based on the respect that the judicial branch accords to the legislature, which is presumed to have passed every law with careful scrutiny to ensure that it is in accord with the Constitution.[2] Thus, before a law is declared unconstitutional, there must be a clear and unequivocal showing that what the Constitution prohibits, the statute permits.[3] In other words, laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt.[4] To doubt is to sustain the constitutionality of the assailed statute.[5]

In the present case, doubt exists as to whether Section 284 of the Local Government Code (LGC) directly contravenes Section 6, Article X of the 1987 Constitution because the latter is susceptible of two interpretations.

Section 6, Article X of the 1987 Constitution states:

> SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

In *Province of Batangas v. Romulo*,[6] the Court explained that the foregoing provision mandates that (1) the local government units (LGUs) shall have a "just share" in the national

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[1] See *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524, 530 (2001).

[2] See *id.*; see also *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001).

[3] *Garcia v. Commission on Elections*, 297 Phil. 1034, 1047 (1993).

[4] *Rama v. Moises*, G.R. No. 197146, August 8, 2017.

[5] See *Garcia v. Commission on Elections*, *supra* note 3, at 1047.

[6] 473 Phil. 806, 830 (2004).

taxes; (2) the "just share" shall be determined by law; and (3) the "just share" shall be automatically released to the LGUs.

The issue now before this Court is what constitutes a "just share".

The *ponencia* offers a restrictive interpretation of the term "just share" as referring only to a percentage or fractional value of the entire pie of national taxes. This necessarily results in finding Section 284 of the LGC too restrictive as it limits the pie to internal revenue taxes only. Thus, the *ponencia* finds the words "internal revenue" in Section 284 of the LGC constitutionally infirm and deems the same as not written.

Justice Leonen, on the other hand, provides a liberal interpretation. According to him the term "just share" may refer to the classes of national taxes as well as to the percentages of such classes, since other than the term "just", no other restrictions on how the share of the LGUs should be determined are provided by the Constitution. He posits that the Constitution left the sole discretion to Congress in determining the "just share" of the LGUs, which authority necessarily includes the power to fix the revenue base (*i.e.*, only a portion of "national taxes") and the rate for the computation of the allotment to the LGUs.

It is a settled rule in the construction of laws, that "[i]f there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed."[7]

I find the foregoing rule applicable even to the construction of the Constitution. Thus, as between the *ponencia*'s restrictive approach and Justice Leonen's liberal approach, I submit that the latter should be upheld. The Court's ruling in *Remman*

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[7] *In re Guariña*, 24 Phil. 37, 47 (1913).

Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service,[8] lends credence:

> Indeed, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; **that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases**; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; **and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted**."[9]

Moreover, I join the position of Justice Leonen that the Constitution gave Congress the absolute authority and discretion to determine the LGUs' "just share" — which include both the classes of national taxes and the percentages thereof. The exercise of this plenary power vested upon Congress, through the latter's enactment of laws, including the LGC, the National Internal Revenue Code and the general appropriations act, is beyond the Court's judicial review as this pertains to policy and wisdom of the legislature.

I echo Justice Leonen's statement that appropriation is not a judicial function. Congress, which holds the power of the purse, is in the best position to determine the "just share" of the LGUs based on their needs and circumstances. Courts cannot provide a new formula for the Internal Revenue Allotments (IRA) or substitute its own determination of what "just share" should be, absent a clear showing that the assailed act of Congress (*i.e.*, Section 284 of the LGC) is prohibited by the fundamental law. To do so would be to tread the dangerous grounds of judicial legislation and violate the deeply rooted doctrine of separation of powers.

Finally, even assuming that Section 284 of the LGC is constitutionally infirm, I agree with the *ponencia's* position

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[8] 726 Phil. 104 (2014).

[9] *Id.* at 126. Emphasis supplied.

that the operative fact doctrine should apply to this case. The doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[10] In *Araullo v. Aquino III*,[11] the doctrine was held to apply to recognize the positive results of the implementation of the unconstitutional law or executive issuance to the economic welfare of the country. Not to apply the doctrine of operative fact would result in most undesirable wastefulness and would be enormously burdensome for the Government.[12]

In the same vein, petitioners cannot claim deficiency IRA from previous fiscal years as these funds may have already been used for government projects, the undoing of which would not only be physically impossible but also impractical and burdensome for the Government.

Verily, considering that the decisions of this Court can only be applied prospectively, I find the Court's computation of "just share" of no practical value to petitioners and other LGUs; because while LGUs, in accordance with the Court's ruling, are now entitled to share directly from national taxes, Congress, as they may see fit, can simply enact a law lowering the percentage shares of LGUs equivalent to the amount initially granted to them. In fine, and in all practicality, this case is much ado over nothing.

For the foregoing reasons, I vote to **DISMISS** the Petitions.

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[10] *Film Development Council of the Phils. v. Colon Heritage Realty Corp.*, 760 Phil. 519, 552-553 (2015), citing *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 627 (2011).

[11] 737 Phil. 457 (2014).

[12] *Id.* at 624-625.

DISSENTING OPINION

REYES, JR., *J.*:

At the root of the controversy is the basis for computing the share of Local Government Units (LGUs) in the national taxes. The petitioners in these cases argue that certain national taxes were excluded from the amount upon which the Internal Revenue Allotment (IRA) was based, in violation of the constitutional mandate under Section 6, Article X of the 1987 Constitution.[1]

The *ponencia* agreed with the petitioners and declared the term "*internal revenue*" in Sections 284 and 285 of the Local Government Code (LGC)[2] of 1991 as constitutionally infirm. I respectfully dissent from the majority Decision for unduly encroaching on the plenary power of Congress to determine the just share of LGUs in the national taxes.

As exhaustively discussed in the majority Decision, the 1987 Constitution emphasized the thrust towards local autonomy and decentralization of administration.[3] The Constitution also devised ways of expanding the financial resources of LGUs, in order to enhance their ability to operate and function.[4] LGUs were granted broad taxing powers,[5] an equitable share in the proceeds of the utilization and development of national wealth,[6] and a just share in the national taxes.[7]

Yet, despite the recognition to decentralize the administration for a more efficient delivery of services, the powers and authorities granted to LGUs remain constitutionally restrained

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[1] Decision, pp. 2-5.

[2] Republic Act No. 7160. Approved on October 10, 1991.

[3] 1987 CONSTITUTION, Article X, Section 2.

[4] *Sen. Alvarez v. Hon. Guingona, Jr.*, 322 Phil. 774, 783 (1996); See also R.A. No. 7160, Section 3(d).

[5] 1987 CONSTITUTION, Article X, Section 5.

[6] *Id.* at Article X, Section 7.

[7] *Id.* at Article X, Section 6.

through one branch of the government—Congress. This is apparent from the following provisions of the 1987 Constitution:

Article X
Local Government

General Provisions

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SECTION 3. **The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

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SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges **subject to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

SECTION 6. Local government units shall have a just share, **as determined by law**, in the national taxes which shall be automatically released to them.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, **in the manner provided by law**, including sharing the same with the inhabitants by way of direct benefits. (Emphasis and underscoring Ours)

In line with the mandate to enact a local government code, Congress passed Republic Act (R.A.) No. 7160, otherwise known as the LGC of 1991, to serve as the general framework for LGUs. The LGC of 1991 laid down the general powers and attributes of LGUs, the qualifications and election of local officials, the power of LGUs to legislate and create their own sources of revenue, the scope of their taxing powers, and the allocated share of LGUs in the national taxes, among other things.

Under Section 6 of the LGC of 1991, Congress also retained the power to create, divide, merge or abolish a province, city, municipality, or any other political subdivision.[8] Thus, LGUs have no inherent powers, and they only derive their existence and authorities from an enabling law from Congress. The power of Congress, in turn, is checked by the relevant provisions of the Constitution. The Court, in *Lina, Jr. v. Paño*,[9] discussed this principle as follows:

> Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.
>
> > The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. **By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.**[10] (Emphasis Ours)

While the discussion in *Lina* relates specifically to the legislative power of LGUs, the Court has applied the same principle with respect to the other powers conferred by Congress.[11] **In other words, despite the shift towards local autonomy, the National Government, through Congress, retains control over LGUs—albeit, in a lesser degree.**

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[8] See 1987 CONSTITUTION, Article X, Sections 10-12; *See* also *R.A. No. 7160*, Section 9.

[9] 416 Phil. 438 (2001).

[10] *Id*. at 448, citing *Mayor Magtajas v. Pryce Properties Corp., Inc.*, 304 Phil. 428, 446 (1994).

With respect to the share of LGUs in the national taxes, Section 6, Article X of the 1987 Constitution limits the power of Congress in three (3) ways: (a) the share of LGUs must be *just*; (b) the just share in the national taxes must be *determined by law*; and (c) the share must be *automatically released* to the LGU.[12] The Constitution, however, does not prescribe the exact percentage share of LGUs in the national taxes. It left Congress with the authority to determine how much of the national taxes are the LGUs' rightly entitled to receive.

Concomitant with this authority is the mandate granted to Congress to allocate these resources among the LGUs, in a local government code.[13] Accordingly, in Section 284 of the LGC of 1991, Congress established the IRA providing LGUs with a 40% share in "*the national* ***internal revenue*** *taxes based on the collection of the third fiscal year preceding the current fiscal year*."[14] This percentage share may not be changed, unless the National Government incurs an unmanageable public-sector deficit. The National Government may not also lower the IRA to less than 30% of the national internal revenue taxes collected on the third fiscal year preceding the current fiscal year.[15] The LGC of 1991 further requires the quarterly release of the IRA, within five (5) days after the end of each quarter, without any lien or holdback imposed by the national government for whatever purpose.[16]

In this case, the petitioners notably do not assail the percentage share (*i.e.*, 40%) of LGUs in the national taxes.

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[11] See *Basco, et al. v. Philippine Amusement and Gaming Corp.*, 274 Phil. 323, 340-341 (1991); *See* also *Batangas CATV, Inc. v. CA*, 482 Phil. 544, 599-560 (2004).

[12] See *Gov. Mandanas v. Hon. Romulo*, 473 Phil. 806, 830 (2004).

[13] 1987 CONSTITUTION, Article X, Section 3.

[14] *R.A. No. 7160*, Section 284; *See also* Administrative Order No. 270 (Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991), Rule XXXII, Part I, Article 378.

[15] *Id.*

[16] *R.A. No. 7160*, Section 286(a).

They instead challenge the base amount of the IRA from which the 40% is taken, arguing that all "*national taxes*" and not only "*national internal revenue taxes*" should be included in the computation of the IRA. The majority Decision agreed with this argument.

Again, I respectfully disagree.

The plain text of Section 6, Article X of the 1987 Constitution requires Congress to provide LGUs with a just share in the national taxes, which should be automatically released to them. **Nowhere in this provision does the Constitution specify the taxes that should be included in the just share of LGUs. Neither does the Constitution mandate the inclusion of *all* national taxes in the computation of the IRA or in any other share granted to LGUs.**

The IRA is only one of several other block grants of funds from the national government to the local government. It was established in the LGC of 1991 not only because of Section 6, Article X of the 1987 Constitution but also pursuant to Section 3 of the same article mandating Congress to "allocate among the different local government units their x x x resources x x x." Clearly, Section 6, Article X of the 1987 Constitution is not solely implemented through the IRA of LGUs. Congress, in several other statutes other than the LGC of 1991, grant certain LGUs an additional share in some—not all—national taxes, *viz.*:

(a) **R.A. No. 7171**,[17] which grants 15% of the excise taxes on locally manufactured Virginia type cigarettes to provinces producing Virginia tobacco;

b) **R.A. No. 8240**,[18] which grants 15% of the incremental revenue collected from the excise tax on tobacco products to provinces producing burley and native tobacco;

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[17] AN ACT TO PROMOTE THE DEVELOPMENT OF THE FARMER IN THE VIRGINIA TOBACCO PRODUCING PROVINCES. Approved on January 9, 1992.

[18] AN ACT AMENDING SECTIONS 138, 140, & 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES. Approved on January 1, 1997.

(c) **R.A. Nos. 7922**,[19] and **7227**,[20] as amended by R.A. No. 9400, which grants a portion of the gross income tax paid by business enterprises within the Economic Zones to specified LGUs;

d) **R.A. No. 7643**,[21] which grants certain LGUs an additional 20% share in 50% of the national taxes collected under Sections 100, 102, 112, 113, and 114 of the National Internal Revenue Code, in excess of the increase in collections for the immediately preceding year; and

(e) **R.A. Nos. 7953**[22] and **8407**,[23] granting LGUs where the racetrack is located a 5% share in the value-added tax[24]

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[19] AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on February 14, 1995.

[20] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on March 13, 1992.

[21] AN ACT TO EMPOWER THE COMMISSIONER OF INTERNAL REVENUE TO REQUIRE THE PAYMENT OF THE VALUE-ADDED TAX EVERY MONTH AND TO ALLOW LOCAL GOVERNMENT UNITS TO SHARE IN VAT REVENUE, AMENDING FOR THIS PURPOSE CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE. Approved on December 28, 1992.

[22] AN ACT AMENDING REPUBLIC ACT NUMBERED 6632, ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL,' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on March 30, I995.

[23] AN ACT AMENDING REPUBLIC ACT NUMBERED 6631, ENTITLED 'AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITHIN THE PROVINCES OF BULACAN, CAVITE OR RIZAL' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE (25) YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on November 23, 1997.

[24] R.A. No. 7716, as amended by R.A. No. 8241.

paid by the Manila Jockey Club, Inc. and the Philippine Racing Club, Inc.

Under the foregoing laws, Congress did not include the entirety of the national taxes in the computation of the LGUs' share. **Thus, inasmuch as Congress has the authority to determine the exact percentage share of the LGUs, Congress may likewise determine the basis of this share and include some or all of the national taxes for a given period of time.** This is consistent with the plenary power vested by the Constitution to the legislature, to determine by law, the just share of LGUs in the national taxes. This plenary power is subject only to the limitations found in the Constitution,[25] which, as previously discussed, includes providing for a *just* share that is automatically released to the LGUs.

Furthermore, aside from the express grant of discretion under Sections 3 and 6, Article X of the 1987 Constitution, **Congress possesses the power of the purse**. Pursuant to this power, Congress must make an appropriation measure every time money is paid out of the National Treasury.[26] In these appropriation bills, Congress may not include a provision that does not specifically relate to an appropriation.[27]

Since the IRA involves an intergovernmental transfer of public funds from the National Treasury to the LGUs, Congress necessarily makes an appropriation for these funds in favor of the LGUs.[28] However, Congress cannot introduce amendments or changes to the LGUs' share in the appropriation bill, especially with respect to the 40% share fixed in Section 284 of the LGC of 1991. Congress may only increase or decrease this percentage in a separate law for this purpose.[29]

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[25] *Vera v. Avelino*, 77 Phil. 192, 212 (1946).

[26] 1987 CONSTITUTION, Article VI, Section 29(1).

[27] *Id*. at Article VI, Section 25(2).

[28] *Id*. at Article VI, Section 29(1).

[29] *Gov. Mandanas v. Hon. Romulo*, *supra* note 12, at 839.

Verily, there are several parameters in determining whether Congress acted within its authority in granting the just share of LGUs in the national taxes. *First*, the General Appropriations Act (GAA) should not modify the percentage share in the national internal revenue taxes prescribed in Section 284 of the LGC of 1991.[30] *Second*, there must be no direct or indirect lien on the release of the IRA, which must be automatically released to the LGUs.[31] And, *third*, the LGU share must be *just*.[32] Outside of these parameters, the Court cannot examine the constitutionality of Sections 284 and 285 of the LGC of 1991, and the IRA appropriation in the GAA.

It bears noting at this point that the IRA forms part of the national government's major current operating expenditure.[33] By increasing the base of the IRA, the national budget for other government expenditures such as debt servicing, economic and public services, and national defense, is necessarily reduced. This is effectively an adjustment of the national budget—a function solely vested in Congress and outside the authority of this Court.

Ultimately, the determination of Congress as to the base amount for the computation of the IRA is a policy question of policy best left to its wisdom.[34] This is an issue that must

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[30] *Id.* at 832.

[31] *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000.

[32] *Gov. Mandanas v. Hon. Romulo*, *supra* note 12.

[33] Department of Budget and Management, Expenditure Categories and their Economic Importance, <https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B4.pdf> accessed last July 2, 2018.

[34] See *Mayor Magtajas v. Pryce Properties Corp., Inc.*, *supra* note 10, at 447, in which the Court held that:

"This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. **The power to create still**

be examined through the legislative process where inquiries may be made beyond the information available to Congress, and studies on its overall impact may be thoroughly conducted. Again, the Court must not intrude into "areas committed to other branches of government."[35] Matters of appropriation and budget are areas firmly devoted to Congress by no less than the Constitution itself, and accordingly, **the Court may neither bind the hands of Congress nor supplant its wisdom**.

For these reasons, the Court should have limited its review on whether Congress exceeded the boundaries of its authority under the Constitution. In declaring the term "*internal revenue*" in Section 284 of the LGC of 1991 as unconstitutional, the Court in effect dictated the manner by which Congress should exercise their discretion beyond the limitations prescribed in the Constitution. The majority Decision's determination as to what should be included in the LGUs' just share in the national taxes is an encroachment on the legislative power of Congress.

In light of the foregoing, I vote to dismiss the petitions.

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includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it." (Emphasis Ours)

[35] *Francisco, Jr., et al. v. Toll Regulatory Board, et al.*, 648 Phil. 54, 84-85 (2010).

EN BANC

[G.R. No. 210838. July 3, 2018]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; THERE WAS NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE COMMISSION ON AUDIT (COA) WHEN IT DISALLOWED THE GOVERNANCE FORUM PRODUCTIVITY AWARD (GFPA) GRANTED BY DBP'S BOARD OF DIRECTORS (BOD) TO ITS EMPLOYEES ON THE BASIS OF A COMPROMISE TO SETTLE A LABOR DISPUTE.— The ultimate issue for this Court's resolution is whether or not the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, when it disallowed the GFPA on the basis that it was in the nature of a compromise agreement to settle a labor dispute, allegedly an *ultra vires* act of DBP's Board of Directors (BOD). x x x [W]hile Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the Salary Standardization Law (SSL). From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein. x x x [Further,] although Sec. 9(e) of its charter authorizes its BOD to compromise or release any claim or settled liability to or against the bank, [t]o interpret the provision as including contested benefits that are demanded by employees of a chartered GFI such as the DBP is a wide stretch. To reiterate, its officers and employees' remunerations may only be granted in the manner provided under Sec. 13 of its charter and conformably with the SSL.

2. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT OFFICIALS AND EMPLOYEES WHO RECEIVED BENEFITS OR ALLOWANCES, WHICH WERE DISALLOWED, MAY KEEP THE AMOUNTS RECEIVED IF THERE IS NO FINDING OF BAD FAITH AND THE DISBURSEMENT WAS MADE IN GOOD FAITH.— It is settled that Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith. On the other hand, officers who participated in the approval of the disallowed allowances or benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; DEVELOPMENT BANK OF THE PHILIPPINES (DBP); THE POWER OF THE DBP TO COMPROMISE CLAIMS UNDER SECTION 9(e) OF ITS CHARTER INCLUDES CONTESTED BENEFITS DEMANDED BY ITS EMPLOYEES.— I disagree with the ponencia that the power of the Development Bank of the Philippines' Board of Directors to compromise claims under Section 9(e) of its Charter does not include contested benefits demanded by its employees. I also disagree with the posture that the Development Bank of the Philippines' employees may only collectively bargain for non-economic benefits. The Development Bank of the Philippines is an economic agent in the public sector acquired by the government. It was established as a separate corporate entity to engage in the banking business—with a private and commercial objective—and as such, different from regular agencies of the government performing governmental functions. In this sense, its employees are similarly situated to those in government corporations established under the Corporation Code who enjoy full collective bargaining rights. To exclude economic benefits from the scope of the Development Bank of the Philippines' employees' collective bargaining rights would constitute an abridgment of their fundamental right and cause prejudice against them, besides being contrary to social justice.

2. ID.; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEES; RIGHT TO SELF-ORGANIZATION.— The right to labor

and the right to form unions or employee organizations are unassailable. They are guaranteed under the Universal Declaration of Human Rights, to which the Philippines is a signatory, and the 1987 Constitution. Article III, Section 8, in particular, expressly recognizes the right of workers in the public sector to form unions, associations, and societies.This guarantee is reiterated in the second paragraph of Article XIII, Section 3, on Social Justice and Human Rights, x x x Specifically with respect to employees in the civil service, i.e., "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters," Article IX-B, Section 2, paragraph (5) provides that "[t]he right to self-organization shall not be denied to government employees." x x x Executive Order No. 180 x x x which provides guidelines for the exercise of the right to organize of "employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." x x x As it now stands, workers in government-owned or -controlled corporations incorporated under the general corporation law have the right to bargain collectively as those in the private sector. Those in government corporations with special charter, which are subject to Civil Service Laws, have limited collective bargaining rights, covering only those terms and conditions of employment that are not fixed by law.

3. ID.; DEVELOPMENT BANK OF THE PHILIPPINES; THE DBP IS EXEMPTED FROM THE COVERAGE OF THE SALARY STANDARDIZATION LAW (SSL); DBP'S BOARD OF DIRECTORS (BOD) IS EMPOWERED TO APPROVE THE DBP'S COMPENSATION, POSITION CLASSIFICATION SYSTEM, QUALIFICATION STANDARDS, TO FIX THE SALARIES AND EMOLUMENTS OF ITS OFFICERS AND EMPLOYEES, AND TO GRANT INCREASES BASED ON THE DBP'S PROFITABILITY.— The Development Bank of the Philippines is one of those government financial institutions that are exempt from the coverage of the Salary Standardization Law. x x x Thus, the Development Bank of the Philippines Board of Directors is empowered to approve the Development Bank of the Philippines' compensation, position classification system, and qualification standards. It also has the power to fix the salaries and emoluments of its officers and employees, and to

> grant increases based on the Development Bank of the Philippines' profitability. x x x Section 13 [of Executive Order No. 180], however, mandates the Development Bank of the Philippines to "endeavor to make its system conform as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended)." x x x Thus, in setting the compensation package of its officers and employees, the Development Bank of the Philippines' Board of Directors should be guided by the principles of "just and equitable wages" and "basic pay comparable with the private sector for comparable work" under the Salary Standardization Law. This, however, cannot be construed to limit the collective bargaining rights of the Development Bank of the Philippines' employees. Since the salaries and emoluments of the Development Bank of the Philippines' employees are not fixed by law, but by the Development Bank of the Philippines' Board of Directors, these may be subject to negotiations between the Development Bank of the Philippines and its employees in accordance with Executive Order No. 180.

APPEARANCES OF COUNSEL

Fritzie P. Tangkia-Fabricante, et al. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

In this Petition for Certiorari[1] under Rule 64, in relation to Rule 65, petitioner Development Bank of the Philippines (DBP) seeks the nullification of the following issuances of the Commission on Audit (COA):

a. Decision[2] No. 2012-207 dated November 15, 2012, which denied DBP's Petition for Review, thereby sustaining the

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[1] *Rollo*, pp. 3-36.

[2] Penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza. *Id*. at 37-46.

disallowance of the payment of Governance Forum Productivity Award to DBP's officials and employees in the total amount of ₱170,893,689.00; and

b. Resolution[3] dated December 6, 2013, which denied with finality DBP's subsequent Motion for Reconsideration.

The Antecedent Facts

DBP, a government financial institution created and operating under its own charter,[4] was faced with labor unrest in 2003 due to its employees' insistence that they be paid their benefits which includes Amelioration Allowance (AA), Cost of Living Allowance (COLA) and the Bank Equity Benefit Differential Pay (BEBDP), for the year that the Department of Budget and Management Corporate Compensation Circular No. 10 (DBM CCC No. 10) was declared ineffective by this Court for non-publication.[5]

After a series of conferences referred to as a governance forum, the employees' group and DBP arrived at an agreement to put an end to the division causing disruptions in bank operations. The DBP Board of Directors (BOD) adopted Board Resolution No. 0133[6] dated May 9, 2003, approving a one-time grant called the Governance Forum Productivity Award (GFPA) to DBP's officers and employees. The total amount distributed was PhP170,893,689.00.[7]

An audit team was subsequently constituted to look into the legality of the GFPA pursuant to Office Order No. 2003-078 of the COA Legal and Adjudication Office. As a result, Audit Observation Memorandum (AOM) No. 001[8] dated January 7,

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[3] Promulgated by Director Fortunata M. Rubico. *Id*. at 47-48.

[4] Executive Order No. 81, series of 1986, as amended by Republic Act No. 8523 on February 14, 1998, otherwise known as *The 1986 Revised Charter of the Development Bank of the Philippines*.

[5] *Rollo*, p. 5.

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

[7] *Id*. at 5-7.

[8] *Id*. at 51-57.

2005 found the grant of the GFPA without legal basis and recommended its refund.[9]

Meanwhile, the Executive Committee (Execom) of the DBP adopted Resolution No. 0151[10] dated November 16, 2005, which granted the payment of Amelioration Allowance (AA) to bank employees. The amount due as AA for individual employees was offset against the GFPA already received by them, in the following manner:

To finally settle both the AA and GFPA issues, it will be better to pay the AA, to be offset from the amount already paid as GFPA with the following suggested conditions:

a. If the amount of the AA is more than the GFPA, the differential amount will be paid to the employees.

b. If the AA is less than the GFPA, concerned employees shall no longer be required to return the amount.

c. Those who did not receive the GFPA will get their AA in full.

d. Retirees/resignees without the usual waiver will likewise receive their AA in full. Those with waivers, do not get anything more.[11] (Emphasis ours.)

On January 3, 2007, DBP received Notice of Disallowance (ND) No. LAS-OGC-2006-001[12] dated December 18, 2006, disallowing the grant of the GFPA. According to COA's Legal and Adjudication Team, industrial peace may not be used as a legal and sufficient basis in granting monetary awards. Furthermore, the GFPA partakes the nature of a compromise agreement and circumvents the rule that only a settled claim may be a subject of compromise.[13]

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[9] *Id.* at 7.

[10] *Id*. at 66-68.

[11] *Id*. at 8.

[12] *Id*. at 69-70.

[13] *Id*. at 9.

In its Motion for Reconsideration[14] on February 28, 2007, DBP assailed the ND by arguing that payment of the GFPA was made pursuant to the power of its Board of Directors (BOD) to enter into a compromise agreement for settlement of employees' claims; that industrial peace is a valid consideration for a compromise agreement; and that the GFPA was superseded and rendered inexistent by the grant of the AA to DBP's employees.[15]

COA's Fraud Audit and Investigation Office (FAIO) treated DBP's Motion for Reconsideration (MR) as an appeal and upheld the disallowance thru the Decision No. 2010-005 dated October 7, 2010.[16] The FAIO ruled that the power of DBP's Board to fix the remuneration and emoluments of its officials and employees is not absolute and is subject to Sections 5 and 6 of Presidential Decree (PD) No. 1597[17] and Section 3 of Memorandum Order (MO) No. 20 of the Office of the President dated June 25, 2001 requiring prior presidential approval. It held that the power of DBP's BOD to enter into a compromise agreement has no basis in law. Furthermore, the subsequent payment of the AA was a separate matter that does not render the disallowance of the GFPA moot and academic.

Aggrieved, on January 21, 2011, DBP filed a Petition for Review[18] arguing that: PD No. 1597 and MO No. 20 requiring prior approval of the President, are not applicable to its case; reiterating its contention that subsequent payment of the AA rendered the grant of GFPA moot and academic as it was already converted part of the AA; and, that the employees received the GFPA in good faith and with honest belief that the same was valid, hence, they should not be required to refund the amount.

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[14] *Id*. at 71-76.

[15] *Id*. at 71.

[16] *Id*. at 77-82.

[17] *Further Rationalizing the System of Compensation and Position Classification in the National Government* dated June 11, 1978.

[18] *Rollo*, pp. 83-110.

On March 10, 2011, DBP filed its Reply raising lack of due process for not citing PD No. 1597 and MO No. 20 as grounds for disallowance of GFPA in the ND.

On November 15, 2012, the Commission in its Decision No. 2012-207 denied the Petition for Review and held that there was no denial of due process as the COA's general audit power does not restrict itself on the grounds relied upon by the agency's auditor. It further stated that matters relating to salaries, allowances and benefits of employees in the public sector cannot be a valid subject of a compromise or negotiation because these are governed and fixed by laws. It debunked the notion that the subsequent grant of the AA rendered the case moot and academic, and argued that good faith is not a valid defense under the principle of *solutio indebiti*.

On December 6, 2013, the Motion for Reconsideration of DBP was thereafter denied with finality. Hence, the present petition dated February 4, 2014.

The Court's Ruling

On June 20, 2014, the Office of the Solicitor General, as counsel for respondent COA filed its Comment[19]on the instant petition.

Acting on DBP's Manifestation with Motion to Resolve filed on July 17, 2014, this Court issued a Temporary Restraining Order (TRO) on September 16, 2014, restraining the COA from enforcing the assailed Decision and Resolution relating to the grant of the GFPA.[20]

In compliance with our June 6, 2017 Resolution,[21] DBP filed its Reply[22] on August 4, 2017. DBP insists that under its charter, the BOD was authorized to settle its employees' claims, which it did, by way of the grant of GFPA. It reiterated its exemption

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[19] *Id*. at 249-268.

[20] *Id*. at 295-296.

[21] *Id*. at 311.

[22] *Id*. at 326-344.

from RA No. 6758, otherwise known as the *Compensation and Position Classification Act of 1989* or popularly known as the *Salary Standardization Law* (SSL). DBP also maintains that the GFPA recipients and DBP Directors who approved the disbursement all acted in good faith; consequently, should the disallowance be upheld, they may not be held liable for the return of the disallowed amount. Finally, DBP invites our attention to the fact that COA's ND against the AA, subject of another case docketed as G.R. No. 213126, also entitled *DBP v. COA*, was finally upheld on November 18, 2014, the refund of which is presently the subject of execution proceedings.[23]

It bears recalling that the grant of GFPA on May 9, 2003 was subsequently offset against the AA granted on November 16, 2005. Considering that the COA is currently implementing a refund of the AA pursuant to the final decision in G.R. No. 213126, it is now argued that DBP should not be asked to return the same amount twice.

We now resolve.

The ultimate issue for this Court's resolution is whether or not the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, when it disallowed the GFPA on the basis that it was in the nature of a compromise agreement to settle a labor dispute, allegedly an *ultra vires* act of DBP's BOD.

There is no quibbling over the fact that labor unrest impelled the DBP, in the interest of industrial peace, to grant the GFPA to its employees. In the COA's view, it was not within the board's powers to grant a monetary award or benefit as a result of labor negotiations. The DBP, on the other hand, points to Section 9 of its charter in arguing that its BOD was authorized to compromise claims against it, pertinently:

Sec. 9. *Powers and Duties of the Board of Directors*. The Board of Directors shall have, among others, the following duties, powers and authority:

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[23] *Id*. at 345-349.

x x x x x x x x x

(e) To compromise or release, in whole or in part, any claim of or settled liability to the Bank regardless of the amount involved, under such terms and conditions it may impose **to protect the interests of the Bank. This authority to compromise shall extend to claims against the Bank.** x x x (Emphasis supplied)

Emphasizing further that its charter grants it a free hand in the fixing of compensation and allowances of its officers and employees, DBP cites Section 13 thereof:

Sec. 13. *Other Officers and Employees*. — The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, **fix their remunerations and other emoluments**. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. **The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (*Republic Act No. 6758, as amended*)**. (Emphasis supplied.)

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

The policy requiring prior Presidential approval upon recommendation from the Secretary of Budget as provided in PD 1597, with respect to the grant of allowances and benefits, was re-affirmed by the Congress in 2009 through *Joint Resolution No. 4*, also known as the *Salary Standardization Law III* which provides that the "coverage, conditions for the grant, including the rates of allowances, benefits, and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the Department of Budget and Management." This policy mirrors MO No. 20 issued earlier in 2001, which directed the heads of government-owned and controlled corporations, government financial institutions (GFIs), and subsidiaries exempted from the SSL to implement pay rationalization in all senior officer positions.

What made the GFPA granted by the DBP to its officers and employees in 2003 unique was that it was the product of a compromise arrived at after negotiations between DBP employees and management referred to as a governance forum. The COA considered the process undertaken as labor negotiations.

It appears that DBP misconstrued its authority to compromise. Sec. 9 (e) of its charter authorizes its BOD to compromise or release any claim or settled liability to or against the bank. To interpret the provision as including contested benefits that are demanded by employees of a chartered GFI such as the DBP is a wide stretch. To reiterate, its officers and employees' remunerations may only be granted in the manner provided under Sec. 13 of its charter and conformably with the SSL.

The COA's insistence that industrial peace is not a determining factor under the principles of the SSL in fixing the compensation of DBP's employees, is correct. The grant of a wider latitude to DBP's BOD in fixing remunerations and emoluments does not include an abrogation of the principle that employees in the civil service "cannot use the same weapons employed by the workers in the private sector to secure concessions from their employees."[24] While employees of chartered GFIs enjoy

[24] *Jacinto v. CA*, 346 Phil. 656, 670 (1997).

the constitutional right to bargain collectively, they may only do so for non-economic benefits and those not fixed by law, and may not resort to acts amounting to work stoppages or interruptions. There is no other way to view the GFPA, other than as a monetary benefit collectively wrung by DBP's employees under threat of disruption to the bank's smooth operations. We held in *Dulce M. Abanilla v. Commission On Audit*, reiterating *Alliance of Government Workers v. Minister of Labor and Employment*[25]:

> Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, **not through collective bargaining agreements**.[26] (Emphasis in the original)

All told, the grant of GFPA was indeed an *ultra vires* act or beyond the authority of DBP's BOD. There was no grave abuse of discretion on the part of COA when it disallowed the GFPA on the basis of a compromise agreement to settle a labor dispute. We thus, sustain the disallowance.

We take judicial notice of the fact that this Court in another case docketed as G.R. No. 213126 entitled *DBP v. COA* had already sustained the disallowance of the AA granted by the DBP and which was offset against the GFPA earlier distributed, for being contrary to the SSL. In this regard, DBP argued that it cannot be ordered to refund the same amount twice. A careful scrutiny of the records of the said related case, however, revealed that the AA disallowed and is now the subject of execution proceedings only covered **the difference** in the amount between the GFPA already distributed and the subsequent AA granted.

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[25] 505 Phil. 202 (2005), 209 Phil. 1, 15 (1983).

[26] *Id.* at 207.

There is no merit in the contention that ordering a refund of the GFPA would result in double recovery.

Notwithstanding the foregoing, We hold that a refund of the GFPA would not be in order. A refund of the AA was considered proper by this Court in G.R. No. 213126 not only on the basis of *solutio indebiti*, but more significantly because there was a determination of bad faith on the part of DBP's Execom. There was a finding that DBP patently disregarded DBM Budget Circular No. 2001-03 dated November 12, 2001 clearly prohibiting the payment of AA and other inflation connected allowance. DBP also remained indifferent on the settled decision of the Executive Secretary that the AA was already considered integrated into the basic salary of DBP's employees. The same does not hold true in the case of the GFPA.

We find the records of the present petition bereft of findings of bad faith on the part of the DBP with regard to the grant of the GFPA. Even the COA argued that the disallowance of the GFPA was a distinct matter from the legality of the AA because the disallowance of the GFPA boiled down to the propriety of the compromise between DBP and its employees. To remedy an ongoing labor dispute in 2003, the DBP's BOD relied in good faith on its interpretation of statutory authority to fix the compensation structure of the bank's officials and employees *vis-a-vis* its statutory power to enter into a compromise in protection of the bank's interests. It acted under the honest belief that its charter conferred its authority to settle contested employees' benefits in the interest of the bank. Hence, in line with settled jurisprudence on disbursements subsequently disallowed by the COA, which provides that recipients or payees need not refund disallowed amounts when received in good faith,[27] We hold that the DBP is no longer required to refund the GFPA distributed.

It is settled that Government officials and employees who received benefits or allowances, which were disallowed, may

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[27] *Maritime Industry Authority v. Commission On Audit*, 750 Phil. 288, 336 (2015).

keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith. On the other hand, officers who participated in the approval of the disallowed allowances or benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith.[28]

WHEREFORE, We **AFFIRM** the Commission on Audit's disallowance of the payment of Governance Forum Productivity Award to DBP's officials and employees in the total amount of PhP170,893,689.00 as contained in its Decision No. 2012-207 dated November 15, 2012 subject to the **MODIFICATION** that the DBP's officials and employees are no longer required to refund the said amount.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Caguioa, Martires, Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

Leonen, J., dissents, see dissenting opinion.

Jardeleza, J., no part.

DISSENTING OPINION

LEONEN, *J.*:

I disagree with the ponencia that the power of the Development Bank of the Philippines' Board of Directors to compromise claims under Section 9(e) of its Charter does not include contested benefits demanded by its employees. I also disagree with the posture that the Development Bank of the Philippines' employees may only collectively bargain for non-economic benefits.

The Development Bank of the Philippines is an economic agent in the public sector acquired by the government. It was

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[28] *Id*.

* Senior Associate Justice, per Section 12, R.A. 296, The Judiciary Act of 1948, as amended.

established as a separate corporate entity to engage in the banking business—with a private and commercial objective—and as such, different from regular agencies of the government performing governmental functions. In this sense, its employees are similarly situated to those in government corporations established under the Corporation Code who enjoy full collective bargaining rights. To exclude economic benefits from the scope of the Development Bank of the Philippines' employees' collective bargaining rights would constitute an abridgment of their fundamental right and cause prejudice against them, besides being contrary to social justice.

I

The right to labor and the right to form unions or employee organizations are unassailable. They are guaranteed under the Universal Declaration of Human Rights,[1] to which the Philippines is a signatory, and the 1987 Constitution.[2] Article III, Section 8,

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[1] Universal Declaration of Human Rights, UN General Assembly, December 10, 1948, Art. 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

[2] CONST., Art. II, Sec. 18 states:

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

CONST., Art. III, Sec. 8 states:

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

CONST., Art. XIII, Sec. 3 states:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

in particular, expressly recognizes the right of workers in the public sector to form unions, associations, and societies.

This guarantee is reiterated in the second paragraph of Article XIII, Section 3, on Social Justice and Human Rights, which mandates that the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law" and that "[t]hey shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law."

Specifically with respect to employees in the civil service, i.e., "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters,"[3] Article IX-B, Section 2, paragraph (5) provides that "[t]he right to self-organization shall not be denied to government employees." The rationale for this provision was:

> The government is in a sense the repository of the national sovereignty and, in that respect, it must be held in reverence if not in awe. It symbolizes the unity of the nation, but it does perform a mundane task as well. It is an employer in every sense of the word except that terms and conditions of work are set forth through a Civil Service Commission. The government is the biggest employer in the

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> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[3] CONST., Art. IX-8, Sec. 2(1).

Philippines. There is an employer-employee relationship and we all know that the accumulated grievances of several decades are now beginning to explode in our faces among government workers who feel that the rights afforded by the Labor Code, for example, to workers in the private sector have been effectively denied to workers in government . . . and the government did not even state the reasons why. The government employees were being discriminated against. As a general rule, the majority of the world's countries now entertain public service unions. What they really add up to is that the employees of the government form their own association. Generally, they do not bargain for wages because these are fixed in the budget but they do acquire a forum where, among other things, professional and self-development is (sic) promoted and encouraged. They also act as watchdogs of their own bosses so that when graft and corruption is committed, generally, it is the unions who are no longer afraid by virtue of the armor of self-organization that become the public's own allies for detecting graft and corruption and for exposing it.[4] (Citation omitted)

Statutory implementation of the Constitutional guarantee of self- organization is found in Article 245 of Presidential Decree No. 442 or the Labor Code, as amended by Executive Order No. 111 (1986):

Article 245. *Right of employees in the public service*. — Employees of government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law.

Article 245 upholds government employees' right to self-organization. In this connection, they are divided in to two (2) groups, namely, those employed in government corporations established under the Corporation Code, and those in the civil service, including government corporations with original charters. While it is specifically provided that those belonging to the first class may bargain collectively with their employers; those

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[4] *Trade Unions of the Philippines and Allied Services v. National Housing Corp*., 255 Phil. 33, 39-40 (1989) [Per J. Regalado, *En Banc*].

pertaining to the second class may organize "for purposes not contrary to law."

Under the Labor Code, the right to self-organization essentially includes (a) the right to organize labor unions for purposes of collective bargaining or negotiation, and (b) to engage in lawful concerted activities for furtherance and protection of the members' rights and interests.[5]

However, for employees in the civil service, they have limited collective bargaining rights *only* in the sense that the terms and conditions of employment are "fixed by law."[6] Article IX-B, Section 8 of the 1987 Constitution prohibits against additional

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[5] LABOR CODE, Art. 247 states:

Article 247. *Non-abridgment of right to self-organization*. — It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection, subject to the provisions of Article 264 of this Code. (As amended by Batas Pambansa Bilang 70, May 1, 1980)

[6] *Blaquera v. Alcala*, 356 Phil. 678, 750 (1998) [Per J. Purisima, *En Banc*] citing *Alliance of Government Workers v. Minister of Labor and Employment*, 209 Phil. 1-31 (1983) [Per J. Gutierrez, Jr., *En Banc*].

CONST., Art. IX-B, Sec. 5 states:

Section 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

LABOR CODE, Art. 291 (renumbered pursuant to Republic Act No. 10151) states:

Article 291. *Government employees*.— The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.

compensation of elective or appointive officer or employee of the government except when specifically authorized by law. The purpose of the prohibition was expressed in *Peralta v. Mathay*:[7]

> This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position. It is an entirely different matter if the legislative body would itself determine for reasons satisfactory to it that he should receive something more. If it were to be thus though, there must be a law to that effect. So the Constitution decrees.[8]

It is also settled that their right to organize does not include the right to strike "and other forms of mass action that will lead in the temporary stoppage or disruption of public service."[9]

> Since the terms and conditions of government employment *are fixed by law*, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled

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[7] 148 Phil. 261 (1971) [Per *J*. Fernando, *En Banc*].

[8] *Id*. at 265-266.

[9] *Government Service Insurance System v. Kapisanan ng mga Manggagawa sa GSIS*, 539 Phil. 677, 691 (2006) [Per *J*. Garcia, Second Division]; *Bangalisan v. Court of Appeals*, 342 Phil. 586 (1997) [Per *J*. Regalado, *En Banc*].

through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.[10] (Emphasis in the original)

Executive Order No. 180[11] was issued shortly after the 1987 Constitution, which provides guidelines for the exercise of the right to organize of "employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."[12] Section 13 thereof explicitly allows negotiation where the terms and conditions of employment involved are not among those fixed by law.

Section 13. Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiations between duly recognized employees' organizations and appropriate government authorities.

The same Executive Order has also provided for the general mechanism for the settlement of labor disputes in the public sector, to wit:

Section 16. The Civil Service and labor laws and procedures, whenever applicable, shall be followed in the resolution of complaints, grievances and cases involving government employees. In case any dispute remains unresolved after exhausting all the available remedies under existing laws and procedures, the parties may jointly refer the dispute to the [Public Sector Labor-Management] Council for appropriate action.

Construing this provision, this Court in *Social Security System Employees Association (SSSEA) v. Court of Appeals*[13] concluded:

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[10] *Alliance of Government Workers v. Minister of Labor and Employment*, 209 Phil. 1, 15 (1983) [Per *J*. Gutierrez, Jr., *En Banc*].

[11] Exec. Order No. 180 (1987). Creation of a Public Sector Labor-Management Council.

[12] Exec. Order No. 180 (1987), Sec. 1.

[13] 256 Phil. 1079 (1989) [Per *J*. Cortes, Third Division].

Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or *negotiate with the appropriate government agencies for the improvement of those which are not fixed by law.* If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action. But employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, to pressure the Government to accede to their demands.[14] (Emphasis supplied)

As it now stands, workers in government-owned or -controlled corporations incorporated under the general corporation law have the right to bargain collectively as those in the private sector. Those in government corporations with special charter, which are subject to Civil Service Laws, have limited collective bargaining rights, covering only those terms and conditions of employment that are not fixed by law.

II

The Development Bank of the Philippines is one of those government financial institutions[15] that are exempt from the coverage of the Salary Standardization Law. Section 13 of its Charter,[16] as amended by Republic Act No. 8523[17] on February 14, 1998, states:

Section 13. Other officers and employees. — The Board of Directors shall provide for an organization and staff of officers and employees

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[14] *Id*. at 1089.

[15] Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

Mendoza v. Commission on Audit, 717 Phil. 491 (2013) [Per *J*. Leonen, *En Banc*].

[16] Exec. Order No. 81 (1986).

[17] An Act Strengthening the Development Bank of the Philippines, amending for the Purpose Executive Order No. 81, otherwise known as The 1986 Revised Charter of the Development Bank of the Philippines.

of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. *The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard*. The Bank shall however, endeavor to make its system conform as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended). (Emphasis supplied)

Thus, the Development Bank of the Philippines Board of Directors is empowered to approve the Development Bank of the Philippines' compensation, position classification system, and qualification standards. It also has the power to fix the salaries and emoluments of its officers and employees, and to grant increases based on the Development Bank of the Philippines' profitability. The flexibility that was given to the Development Bank of the Philippines' Board of Directors to set the compensation package for its employees was to enable the Development Bank of the Philippines to hire and retain competent and highly motivated personnel so that it could effectively carry out its objectives. The exemption from the Salary Standardization Law was justified by the fact that as "an institution engaged in development activities[, it] should be given the same opportunities as the private sector to compete."[18]

Section 13, however, mandates the Development Bank of the Philippines to "endeavor to make its system conform as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended)."

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[18] *J.* Carpio Morales, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per *J.* Puno, *En Banc*].

Construing a similar provision in *Trade and Investment Development Corporation v. Civil Service Commission*,[19] this Court said:

> The phrase "to endeavor" means . . . "to devote serious and sustained effort" and "to make an effort to do." It is synonymous with the words to strive, to struggle and to seek. The use of "to endeavor" ... means that despite TIDCORP's exemption from laws involving compensation, position classification and qualification standards, it should still strive to conform as closely as possible with the principles and modes provided in RA 6758. The phrase "as closely as possible," which qualifies TIDCORP's duty "to endeavor to conform," *recognizes that the law allows TIDCORP to deviate from RA 6758, but it should still try to hew closely with its principles and modes.* Had the intent of Congress been to require TIDCORP to fully, exactly and strictly comply with RA 6758, it would have so stated in unequivocal terms. Instead, the mandate it gave TIDCORP was to endeavor to conform to the principles and modes of RA 6758, and not to the entirety of this law.[20] (Emphasis supplied, citation omitted)

Thus, in setting the compensation package of its officers and employees, the Development Bank of the Philippines' Board of Directors should be guided by the principles of "just and equitable wages" and "basic pay comparable with the private sector for comparable work" under the Salary Standardization Law. This, however, cannot be construed to limit the collective bargaining rights of the Development Bank of the Philippines' employees. Since the salaries and emoluments of the Development Bank of the Philippines' employees are not fixed by law, but by the Development Bank of the Philippines' Board of Directors, these may be subject to negotiations between the Development Bank of the Philippines and its employees in accordance with Executive Order No. 180.

Nonetheless, the Development Bank of the Philippines must report to the Office of the President, through the Department of Budget and Management, the details of its position classification

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[19] 705 Phil. 357 (2013) [Per J. Brion, *En Banc*].

[20] *Id*. at 377.

and compensation system,[21] in line with the President's power of control over executive departments, bureaus, and offices and pursuant to Section 6 of Presidential Decree No. 1597.[22]

III

Although subsumed under the executive department, the Development Bank of the Philippines does not stand in the same class as an agency of the government. The Development Bank of the Philippines is a "non-regulatory [corporation] exercising purely commercial functions."[23]

Traditional classifications distinguish between government entities performing governmental or constituent functions, and those performing proprietary or ministrant functions. This Court discussed these two (2) functions in the early case of *Bacani v. NACOCO*:[24]

The former [constituent] are those which constitute the very bonds of society and are compulsory in nature; the latter [ministrant] are those that are undertaken only by way of advancing the general interests

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[21] See *Philippine Economic Zone Authority v. Commission on Audit*, G.R. No. 210903, October 11, 2016 <http://sc.judiciary.gov.ph/jurisprudence/2012/july2012/189767.html> [Per J. Peralta, *En Banc*].

[22] Pres. Decree No. 1597 (1978), Sec. 6. Rationalizing the System of Compensation and Position Classification in the National Government.

Section 6. *Exemptions from OCPC Rules and Regulations*. — Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall ***observe such guidelines and policies as may be issued by the President*** governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. ***Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.*** (Emphasis supplied)

[23] J. Carpio, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, *En Banc*].

[24] 100 Phil. 468 (1956) [Per J. Angelo Bautista, *En Banc*].

of society, and are merely optional. President Wilson enumerates the constituent functions as follows:

(1) The keeping of order and providing for the protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil cases.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the state with foreign powers: the preservation of the state from external danger or encroachment and the advancement of its international interests....

The most important of the ministrant functions are: public works, public education, public charity, health and safety regulations, and regulations of trade and industry. The principles determining whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake and (2) that a government should do these things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals....

From the above we may infer that, strictly speaking, there are functions which our government is required to exercise to promote its objectives as expressed in our Constitution and which are exercised by it as an attribute of sovereignty, and those which it may exercise to promote merely the welfare, progress and prosperity of the people. To this latter class belongs the organization of those corporations owned or controlled by the government to promote certain aspects of the economic life of our people such as the National Coconut Corporation. These are what we call government-owned or controlled corporations which may take on the form of a private enterprise or

one organized with powers and formal characteristics of a private corporations [sic] under the Corporation Law.[25] (Citations omitted)

One example of a government-owned or -controlled corporation performing proprietary functions is the Bases Conversion Development Authority. This Court in *Shipside v. Court of Appeals*[26] discussed how the Bases Conversion and Development Authority has a separate and distinct personality from the government:

> We, however, must not lose sight of the fact that the BCDA is an entity invested with a personality separate and distinct from the government. Section 3 of Republic Act No. 7227 reads:
>
> > SECTION 3. *Creation of the Bases Conversion and Development Authority*. — There is hereby created a body corporate to be known as the Conversion Authority which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation.
>
> It may not be amiss to state at this point that the functions of government have been classified into governmental or constituent and proprietary or ministrant. While public benefit and public welfare, particularly, the promotion of the economic and social development of Central Luzon, may be attributable to the operation of the BCDA, yet it is certain that the functions performed by the BCDA are basically proprietary in nature. The promotion of economic and social development of Central Luzon, in particular, and the country's goal for enhancement, in general, do not make the BCDA equivalent to the Government. Other corporations have been created by government to act as its agents for the realization of its programs, the SSS, GSIS, NAWASA and the NIA, to count a few, and yet, the Court has ruled that these entities, although performing functions aimed at promoting public interest and public welfare, are not government-function corporations invested with governmental attributes. *It may thus be said that the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions*.[27] (Emphasis supplied)

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[25] *Id*. at 472.

[26] 404 Phil. 981 (2001) [Per *J*. Melo, Third Division].

[27] *Id*. at 999.

Here, the Development Bank of the Philippines was created as a body corporate and a government financial institution "principally to service the medium and long term needs of agricultural and industrial enterprises, particularly in the countryside and preferably for small and medium scale enterprises."[28]

Section 3 of its Revised Charter vests in the Development Bank of the Philippines specific powers normally exercised by privately owned banks. These powers include the authority to accept demand, savings, and time deposits; grant loans to any agricultural or industrial enterprise; accept and manage trust funds; enter into contracts of guaranty or suretyship; and acquire or dispose of marketable securities and debt instruments. In addition to the enumeration of specific powers granted to the Development Bank of the Philippines, Section 3 of its Revised Charter also authorizes it:

(g) . . . to exercise the general powers of a corporation mentioned in the Corporation Code of the Philippines, and of a thrift bank under the General Banking Act, insofar as such powers are not inconsistent or incompatible with the provisions of this Charter.

As in any corporate entity, the Development Bank of the Philippines' affairs and business are directed, its properties are managed, and its powers are exercised through its Board of Directors. Specific powers vested in the Board of Directors under Section 9 of the Revised Charter include the formulation of policies, approval of loans, adoption of the Development Bank of the Philippines' annual budget, and compromise of claims.

Section 9. *Powers and Duties of the Board of Directors*. — The Board of Directors shall have, among others, the following duties, powers and authority:

(a) To formulate policies necessary to carry out effectively the provisions of this Charter and to prescribe, amend, and repeal by-laws, rules and regulations for the effective operation of

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[28] Exec. Order No. 81 (1986). 1986 Revised Charter of the Development Bank of the Philippines.

the Bank, and the manner in which the general business of the Bank may be conducted and the powers granted by law to the Bank exercised;

(b) To approve loans, to fix rates of interest on loans and to prescribe such terms and conditions for loans and credits as may be deemed necessary, consistent with the provisions of this Charter; Provided, that the Board may delegate the authority to approve loans to such officer or officers as may be deemed necessary;

(c) To adopt an annual budget for the effective operation and administration of the Bank;

(d) To create and establish a "Provident Fund" which shall consist of contributions, made both by the Bank and its officers or employees, to a common fund for the payment of benefits to such officers or employees, or their heirs, under such terms and conditions as the Board of Directors may fix;

(e) To compromise or release, in whole or in part, any claim of or settled liability to the Bank regardless of the amount involved, under such terms and conditions it may impose to protect the interests of the Bank. *This authority to compromise shall extend to claims against the Bank; and*

(f) To appoint, promote or remove officers from the rank of Vice President or its equivalent, and other more senior officer positions, excluding the Chairman and the Vice Chairman. (Emphasis supplied)

The powers granted to the Development Bank of the Philippines' Board of Directors under the Revised Charter, including the authority to determine the position and salary rates of its employees, are geared towards enabling the Development Bank of the Philippines "to achieve a more efficient and effective use of available resources, to improve [its] viability, and avoid unfair competition with the private sector."[29] Viewed in this light, the authority of the Development Bank of the Philippines' Board of Directors to compromise claims against the Development Bank of the Philippines is without qualification, and accordingly, includes labor claims. Where the law does not distinguish, courts should not distinguish.

[29] Exec. Order No. 81 (1986), last "Whereas" clause.

As can be gleaned from its Revised Charter, the Development Bank of the Philippines is not a mere agency of the government, but it has a separate legal personality.[30] It derives its income to meet operating expenses, including salaries of its employees, solely from commercial transactions in competition with the private sector.[31] As a lending institution, it is part of the banking system and covered by the regulatory power exercised over such entities by the Central Bank. It exercises proprietary functions, unlike government instrumentalities which essentially performs governmental functions.

In *Manila Hotel Employees Association v. Manila Hotel Co.*:[32]

> [W]hen the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. ... By engaging in a particular business thru the instrumentality of a corporation, the government divests itself *pro hac vice* of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations. ... When the state acts in its proprietary capacity, it is amenable to all the rules of law which bind private individuals. ... "There is not one law for the sovereign and another for the subject, but when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, whenever the contract in any form comes before the courts, the rights and obligation of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor."[33] (Citations omitted)

Since the Development Bank of the Philippines is engaged in the banking business, which is essentially proprietary in nature,

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[30] *Shipside v. Court of Appeals*, 404 Phil. 981 (2001) [Per J. Melo, Third Division]. This Court discussed how the Bases Conversion and Development Authority has a separate and distinct personality from the government.

[31] J. Carpio, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, *En Banc*].

[32] 73 Phil. 374 (1941) [Per J. Ozaeta, *En Banc*]. See also *Malong v. Philippine National Railways*, 222 Phil. 381, 385 (1985) [Per J. Aquino, *En Banc*].

[33] *Id*. at 388-389.

there is no substantial distinction between the Development Bank of the Philippines' employees as against employees in the private sector and government-owned or -controlled corporations under the Corporation Code. They are in this sense similarly situated. The rights and duties of the Development Bank of the Philippines' employees are comparable with those in government corporations under the Corporation Code who enjoy full collective bargaining rights. Therefore, excluding economic benefits from the scope of collective bargaining rights of the Development Bank of the Philippines employees is a denial of their inherent and constitutionally protected right, a violation of the equal protection clause for lack of substantial basis, and is contrary to social justice.

ACCORDINGLY, I vote to **GRANT** the Petition.

EN BANC

[G.R. No. 213446. July 3, 2018]

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE); JUDICIARY EMPLOYEES ASSOCIATION OF THE PHILIPPINES (JUDEA-PHILS); SANDIGANBAYAN EMPLOYEES ASSOCIATION (SEA); SANDIGAN NG MGA EMPLEYADONG NAGKAKAISA SA ADHIKAIN NG DEMOKRATIKONG ORGANISASYON (S.E.N.A.D.O.); ASSOCIATION OF COURT OF APPEALS EMPLOYEES (ACAE); DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES-DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (SWEAP-DSWD); DEPARTMENT OF TRADE AND INDUSTRY EMPLOYEES UNION

(DTI-EU); KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG METRO MANILA DEVELOPMENT AUTHORITY (KKK-MMDA); WATER SYSTEM EMPLOYEES RESPONSE (WATER); CONSOLIDATED UNION OF EMPOYEES OF THE NATIONAL HOUSING AUTHORITIES (CUE-NHA); and KAPISANAN NG MGA MANGGAGAWA AT KAWANI NG QUEZON CITY (KASAMA KA-QC), *petitioners, vs.* **COMMISSIONER, BUREAU OF INTERNAL REVENUE and THE SECRETARY, DEPARTMENT OF FINANCE,** *respondents.* **NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS OF THE DEPARTMENT OF AGRICULTURE (NAFEDA), represented by its Executive Vice President ROMAN M. SANCHEZ, DEPARTMENT OF AGRICULTURE EMPLOYEES ASSOCIATION OFFICE OF THE SECRETARY (DAEA-OSEC), represented by its Acting President ROWENA GENETE, NATIONAL AGRICULTURAL AND FISHERIES COUNCIL EMPLOYEES ASSOCIATION (NAFCEA), represented by its President SOLIDAD B. BERNARDO, COMMISSION ON ELECTIONS EMPLOYEES UNION (COMELEC EU), represented by its President MARK CHRISTOPHER D. RAMIREZ, MINES AND GEOSCIENCES BUREAU EMPLOYEES ASSOCIATION CENTRAL OFFICE (MGBEA CO), represented by its President MAYBELLYN A. ZEPEDA, LIVESTOCK DEVELOPMENT COUNCIL EMPLOYEES ASSOCIATION (LDCEA), represented by its President JOVITA M. GONZALES, ASSOCIATION OF CONCERNED EMPLOYEES OF PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (ACE OF PFDA), represented by its President ROSARIO DEBLOIS,** *intervenors.*

[G.R. No. 213658. July 3, 2018]

JUDGE ARMANDO A. YANGA, in his personal capacity and in his capacity as President of the RTC Judges

Association of Manila, and MA. CRISTINA CARMELA I. JAPZON, in her personal capacity and in her capacity as President of the Philippine Association of Court Employees-Manila Chapter, *petitioners, vs.* **HON. COMMISSIONER KIM S. JACINTO-HENARES, in her capacity as Commissioner of the Bureau of Internal Revenue,** *respondent.* **THE MEMBERS OF THE ASSOCIATION OF REGIONAL TRIAL COURT JUDGES IN ILOILO CITY,** *intervenors.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY IF THERE IS NO APPEAL OR ANY OTHER REMEDY AVAILABLE; THE REMEDY AGAINST THE ASSAILED ISSUANCE OF COMMISSIONER OF INTERNAL REVENUE (CIR) RE REVENUE MEMORANDUM ORDER (RMO) IS APPEAL WITH THE SECRETARY OF FINANCE.— It is an unquestioned rule in this jurisdiction that certiorari under Rule 65 will only lie if there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law against the assailed issuance of the Commissioner of Internal Revenue (CIR). The plain, speedy and adequate remedy expressly provided by law is an appeal of the assailed Revenue Memorandum Order (RMO) with the Secretary of Finance under Section 4 of the NIRC of 1997, x x x The CIR's exercise of its power to interpret tax laws comes in the form of revenue issuances, which include RMOs that provide "directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing." These revenue issuances are subject to the review of the Secretary of Finance. In relation thereto, Department of Finance Department Order No. 007-02 issued by the Secretary of Finance laid down the procedure and requirements for filing an appeal from the adverse ruling of the CIR to the said office. A taxpayer is granted a period of thirty (30) days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.

2. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; PURPOSE.— The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.

3. REMEDIAL LAW; JURISDICTION; RULE ON HIERARCHY OF COURTS; THE ISSUE ON CONSTITUTIONALITY OF REVENUE ISSUANCE SHOULD BE LODGED WITH THE COURT OF TAX APPEALS (CTA) FIRST BEFORE INVOKING THE COURT'S JURISDICTION; THE COURT TAKES COGNIZANCE OF THE CASE NONETHELESS AS IT AFFECTS GOVERNMENT EMPLOYEES.— [P]etitioners violated the rule on hierarchy of courts as the petitions should have been initially filed with the CTA, having the exclusive appellate jurisdiction to determine the constitutionality or validity of revenue issuances. x x x A direct invocation of this Court's jurisdiction should only be allowed when there are special, important and compelling reasons clearly and specifically spelled out in the petition. Nevertheless, despite the procedural infirmities of the petitions that warrant their outright dismissal, the Court deems it prudent, if not crucial, to take cognizance of, and accordingly act on, the petitions as they assail the validity of the actions of the CIR that affect thousands of employees in the different government agencies and instrumentalities. The Court, following recent jurisprudence, avails itself of its judicial prerogative in order not to delay the disposition of the case at hand and to promote the vital interest of justice.

4. TAXATION; COMMISSIONER OF INTERNAL REVENUE; THE CIR POWER TO ISSUE ADMINISTRATIVE RULINGS MUST BE CONSISTENT WITH THE LAW.— Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, the CIR cannot, in the exercise of such power, issue administrative rulings or

circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. The courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.

5. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; EVERY FORM OF COMPENSATION FOR SERVICES IS SUBJECT TO TAX; APPLICABLE TO GOVERNMENT EMPLOYEES.— Compensation income is the income of the individual taxpayer arising from services rendered pursuant to an employer-employee relationship. Under the NIRC of 1997, as amended, every form of compensation for services, whether paid in cash or in kind, is generally subject to income tax and consequently to withholding tax. The name designated to the compensation income received by an employee is immaterial. x x x The law is clear [under Section 2.78 of RR No. 2-98, as amended, issued by the Secretary of Finance to implement the withholding tax system under the NIRC of 1997, as amended] that withholding tax on compensation applies to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions. The Government, as an employer, is constituted as the withholding agent, mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees.

6. ID.; REVENUE MEMORANDUM ORDER (RMO) NO. 23-2014; SECTIONS III AND IV THEREOF ARE VALID; THIS RULING GIVEN A PROSPECTIVE EFFECT.— Sections III and IV of the assailed RMO do not charge any new or additional tax. On the contrary, they merely mirror the relevant provisions of the NIRC of 1997, as amended, and its implementing rules on the withholding tax on compensation income as discussed above. The assailed Sections simply reinforce the rule that every form of compensation for personal services received by all employees arising from employer-employee relationship is deemed subject to income tax and, consequently, to withholding tax, unless specifically exempted or excluded by the Tax Code; and the duty of the Government, as an employer, to withhold and remit the correct amount of withholding taxes due thereon. While Section III enumerates certain allowances which may be subject to withholding tax, it

does not exclude the possibility that these allowances may fall under the exemptions identified under Section IV — thus, the phrase, "subject to the exemptions enumerated herein." In other words, Sections III and IV articulate in a general and broad language the provisions of the NIRC of 1997, as amended, on the forms of compensation income deemed subject to withholding tax and the allowances, bonuses and benefits exempted therefrom. Thus, Sections III and IV cannot be said to have been issued by the CIR with grave abuse of discretion as these are fully in accordance with the provisions of the NIRC of 1997, as amended, and its implementing rules. x x x [A]s a measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice,*that its ruling on the validity of Sections III and IV of the assailed RMO is to be given only prospective effect.

7. ID.; ID.; ID.; ALLEGED FRINGE BENEFITS EXEMPTED FROM WITHHOLDING TAX IS A QUESTION OF FACT; TAX EXEMPTION IS CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.— Petitioners insist that the allowances, bonuses and benefits enumerated in Section III of the assailed RMO are, in fact, fringe and *de minimis* benefits exempt from withholding tax on compensation. The Court cannot, however, rule on this issue as it is essentially a question of fact that cannot be determined in this petition questioning the constitutionality of the RMO. [S]ettled is the rule that exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed. The determination, therefore, of the merits of petitioners' claim for tax exemption would necessarily require the resolution of both legal and factual issues, which this Court, not being a trier of facts, has no jurisdiction to do; more so, in a petition filed at first instance.

8. ID.; ID.; ID.; SECTIONS VI AND VII ON OFFENSES AND PENALTIES, PRESCRIBED; SECTION VII IS VALID WHILE SECTION VI CONTRAVENES IN PART THE PROVISIONS OF THE NIRC OF 1997.— Petitioners claim that RMO No. 23-2014 is *ultra vires* insofar as Sections VI

and VII thereof define new offenses and prescribe penalties therefor, particularly upon government officials. The NIRC of 1997, as amended, clearly provides the offenses and penalties relevant to the obligation of the withholding agent to deduct, withhold and remit the correct amount of withholding taxes on compensation income, x x x [T]ested against the provisions of the NIRC of 1997, as amended, Section VII of RMO No. 23-2014 does not define a crime and prescribe a penalty therefor. Section VII simply mirrors the relevant provisions of the NIRC of 1997, as amended, on the penalties for the failure of the withholding agent to withhold and remit the correct amount of taxes, as implemented by RR No. 2-98. However, with respect to Section VI of the assailed RMO, the Court finds that the CIR overstepped the boundaries of its authority to interpret existing provisions of the NIRC of 1997, x x x Accordingly, the Court finds that the CIR gravely abused its discretion in issuing Section VI of RMO No. 23-2014 insofar as it includes the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in agencies, GOCCs, and other government offices, as persons required to withhold and remit withholding taxes, as they are not among those officials designated by the 1997 NIRC, as amended, and its implementing rules.

9. REMEDIAL LAW; MOOT AND ACADEMIC CASE; NO ADJUDICATION ON PETITIONERS' PRAYER DUE TO SUPERVENING EVENTS.— As regards the prayer for the issuance of a writ of mandamus to compel respondents to increase the ₱30,000.00 non-taxable income ceiling, the same has already been rendered moot and academic due to the enactment of RA No. 10653. x x x Recently, RA No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, further increased the income tax exemption for 13th month pay and other benefits to ₱90,000.00. A case is considered moot and academic if it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.

APPEARANCES OF COUNSEL

Aquilino Q. Pimentel, Jr. and *Elmar Jay Martin I. Dejaresco* for petitioners in G.R. No. 213446.

Ruben O. Fruto and *Remigio A. Ukol, Jr.* for petitioners in G.R. No. 213658.

Remigio D. Saladero, Jr. and *Noel V. Neri* for intervenors in G.R. No. 213446.

The Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.*:

G.R. Nos. 213446 and 213658 are petitions for Certiorari, Prohibition and/or Mandamus under Rule 65 of the Rules of Court, with Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, uniformly seeking to: *(a)* issue a Temporary Restraining Order to enjoin the implementation of Revenue Memorandum Order (RMO) No. 23-2014 dated June 20, 2014 issued by the Commissioner of Internal Revenue (CIR); and *(b)* declare null, void and unconstitutional paragraphs A, B, C, and D of Section III, and Sections IV, VI and VII of RMO No. 23-2014. The petition in G.R. No. 213446 also prays for the issuance of a Writ of Mandamus to compel respondents to upgrade the ₱30,000.00 non-taxable ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government.

The Antecedents

On June 20, 2014, respondent CIR issued the assailed RMO No. 23-2014, in furtherance of Revenue Memorandum Circular (RMC) No. 23-2012 dated February 14, 2012 on the "*Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof*," in order to clarify and consolidate the responsibilities of the public sector to withhold taxes on its

transactions as a customer (on its purchases of goods and services) and as an employer (on compensation paid to its officials and employees) under the National Internal Revenue Code (NIRC or Tax Code) of 1997, as amended, and other special laws.

The Petitions

G.R. No. 213446

On August 6, 2014, petitioners Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), *et al.*, organizations/unions of government employees from the Sandiganbayan, Senate of the Philippines, Court of Appeals, Department of Agrarian Reform, Department of Social Welfare and Development, Department of Trade and Industry, Metro Manila Development Authority, National Housing Authority and local government of Quezon City, filed a Petition for Prohibition and Mandamus,[1] imputing grave abuse of discretion on the part of respondent CIR in issuing RMO No. 23-2014. According to petitioners, RMO No. 23-2014 classified as taxable compensation, the following allowances, bonuses, compensation for services granted to government employees, which they alleged to be considered by law as non-taxable fringe and *de minimis* benefits, to wit:

I. Legislative Fringe Benefits
   a. Anniversary Bonus
   b. Additional Food Subsidy
   c. 13th Month Pay
   d. Food Subsidy
   e. Cash Gift
   f. Cost of Living Assistance
   g. Efficiency Incentive Bonus
   h. Financial Relief Assistance
   i. Grocery Allowance
   j. Hospitalization
   k. Inflationary Assistance Allowance
   l. Longevity Service Pay
   m. Medical Allowance

[1] *Rollo* (G.R. No. 213446), pp. 3-81.

n. Mid-Year Eco. Assistance
o. Productivity Incentive Benefit
p. Transition Allowance
q. Uniform Allowance

II. Judiciary Benefits
a. Additional Compensation Income
b. Extraordinary & Miscellaneous Expenses
c. Monthly Special Allowance
d. Additional Cost of Living Allowance (from Judiciary Development Fund)
e. Productivity Incentive Benefit
f. Grocery Allowance
g. Clothing Allowance
h. Emergency Economic Assistance
i. Year-End Bonus (13th Month Pay)
j. Cash Gift
k. Loyalty Cash Award (Milestone Bonus)
l. Christmas Allowance
m. Anniversary Bonus[2]

Petitioners further assert that the imposition of withholding tax on these allowances, bonuses and benefits, which have been allotted by the Government to its employees free of tax for a long time, violates the prohibition on non-diminution of benefits under Article 100 of the Labor Code;[3] and infringes upon the fiscal autonomy of the Legislature, Judiciary, Constitutional Commissions and Office of the Ombudsman granted by the Constitution.[4]

Petitioners also claim that RMO No. 23-2014 (*1*) constitutes a usurpation of legislative power and diminishes the delegated power of local government units inasmuch as it defines new offenses and prescribes penalty therefor, particularly upon local government officials;[5] and (*2*) violates the equal protection clause of the Constitution as it discriminates against government

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[2] *Id*. at 29-33.

[3] *Id*. at 27-28.

[4] *Id*. at 28-29.

[5] *Id*. at 21, 33-35.

officials and employees by imposing fringe benefit tax upon their allowances and benefits, as opposed to the allowances and benefits of employees of the private sector, the fringe benefit tax of which is borne and paid by their employers.[6]

Further, the petition also prays for the issuance of a writ of mandamus ordering respondent CIR to perform its duty under Section 32(B)(7)(e)(iv) of the NIRC of 1997, as amended, to upgrade the ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government, including petitioners.[7]

G.R. No. 213658

On August 19, 2014, petitioners Armando A. Yanga, President of the Regional Trial Court (RTC) Judges Association of Manila, and Ma. Cristina Carmela I. Japzon, President of the Philippine Association of Court Employees — Manila Chapter, filed a Petition for Certiorari and Prohibition[8] as duly authorized representatives of said associations, seeking to nullify RMO No. 23-2014 on the following grounds: (*1*) respondent CIR is bereft of any authority to issue the assailed RMO. The NIRC of 1997, as amended, expressly vests to the Secretary of Finance the authority to promulgate all needful rules and regulations for the effective enforcement of tax provisions;[9] and (*2*) respondent CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of RMO No. 23-2014 when it subjected to withholding tax benefits and allowances of court employees which are tax-exempt such as: (*a*) Special Allowance for Judiciary (SAJ) under Republic Act (RA) No. 9227 and additional cost of living allowance (AdCOLA) granted under Presidential Decree (PD) No. 1949 which are considered as non-taxable fringe benefits under Section 33(A) of the NIRC of 1997, as amended; (*b*) cash gift, loyalty awards, uniform

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[6] *Id*. at 108-110.

[7] *Id*. at 42-43.

[8] *Rollo* (G.R. No. 213658), pp. 3-61.

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

and clothing allowance and additional compensation (ADCOM) granted to court employees which are considered *de minimis* under Section 33(C)(4) of the same Code; (*c*) allowances and benefits granted by the Judiciary which are not taxable pursuant to Section 32(7)(E) of the NIRC of 1997, as amended; and (*d*) expenses for the Judiciary provided under Commission on Audit (COA) Circular 2012-001.[10]

Petitioners further assert that RMO No. 23-2014 violates their right to due process of law because while it is ostensibly denominated as a mere revenue issuance, it is an illegal and unwarranted legislative action which sharply increased the tax burden of officials and employees of the Judiciary without the benefit of being heard.[11]

On October 21, 2014, the Court resolved to consolidate the foregoing cases.[12]

Respondents, through the Office of the Solicitor General (OSG), filed their Consolidated Comment[13] on December 23, 2014. They argue that the petitions are barred by the doctrine of hierarchy of courts and petitioners failed to present any special and important reasons or exceptional and compelling circumstance to justify direct recourse to this Court.[14]

Maintaining that RMO No. 23-2014 was validly issued in accordance with the power of the CIR to make rulings and opinion in connection with the implementation of internal revenue laws, respondents aver that unlike Revenue Regulations (RRs), RMOs do not require the approval or signature of the Secretary of Finance, as these merely provide directives or instructions in the implementation of stated policies, goals, objectives, plans and programs of the Bureau.[15] According to them, RMO No.

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[10] *Id*. at 20-42.

[11] *Id*. at 43.

[12] *Id*. at 159-160.

[13] *Id*. at 212-265.

[14] *Id*. at 218-220.

[15] *Id*. at 220.

23-2014 is in fact a mere reiteration of the Tax Code and previous RMOs, and can be traced back to RR No. 01-87 dated April 2, 1987 implementing Executive Order No. 651 which was promulgated by then Secretary of Finance Jaime V. Ongpin upon recommendation of then CIR Bienvenido A. Tan, Jr. Thus, the CIR never usurped the power and authority of the legislature in the issuance of the assailed RMO.[16] Also, contrary to petitioners' assertion, the due process requirements of hearing and publication are not applicable to RMO No. 23-2014.[17]

Respondents further argue that petitioners' claim that RMO No. 23-2014 is unconstitutional has no leg to stand on. They explain that the constitutional guarantee of fiscal autonomy to Judiciary and Constitutional Commissions does not include exemption from payment of taxes, which is the lifeblood of the nation.[18] They also aver that RMO No. 23-2014 never intended to diminish the powers of local government units. It merely reiterates the obligation of the government as an employer to withhold taxes, which has long been provided by the Tax Code.[19]

Moreover, respondents assert that the allowances and benefits enumerated in Section III A, B, C, and D, are not fringe benefits which are exempt from taxation under Section 33 of the Tax Code, nor *de minimis* benefits excluded from employees' taxable basic salary. They explain that the SAJ under RA No. 9227 and AdCOLA under PD No. 1949 are additional allowances which form part of the employee's basic salary; thus, subject to withholding taxes.[20]

Respondents also claim that RMO No. 23-2014 does not violate petitioners' right to equal protection of laws as it covers all employees and officials of the government. It does not create a new category of taxable income nor make taxable those which

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[16] *Id*. at 224.

[17] *Id*. at 222.

[18] *Id*. at 227-229.

[19] *Id*. at 229-230.

[20] *Id*. at 231-245.

are not taxable but merely reflect those incomes which are deemed taxable under existing laws.[21]

Lastly, respondents aver that mandamus will not lie to compel respondents to increase the ceiling for tax exemptions because the Tax Code does not impose a mandatory duty on the part of respondents to do the same.[22]

The Petitions-in-Intervention

Meanwhile, on September 11, 2014, the National Federation of Employees Associations of the Department of Agriculture (NAFEDA) *et al.*, duly registered union/association of employees of the Department of Agriculture, National Agricultural and Fisheries Council, Commission on Elections, Mines and Geosciences Bureau, and Philippine Fisheries Development Authority, claiming similar interest as petitioners in G.R. No. 213446, filed a Petition-in-Intervention[23] seeking the nullification of items III, VI and VII of RMO No. 23-2014 based on the following grounds: (*1*) that respondent CIR acted with grave abuse of discretion and usurped the power of the Legislature in issuing RMO No. 23-2014 which imposes additional taxes on government employees and prescribes penalties for government official's failure to withhold and remit the same;[24] (*2*) that RMO No. 23-2014 violates the equal protection clause because the Commission on Human Rights (CHR) was not included among the constitutional commissions covered by the issuance and the ADCOM of employees of the Judiciary was subjected to withholding tax but those received by employees of the Legislative and Executive branches are not;[25] and (*3*) that respondent CIR failed to upgrade the tax exemption ceiling for benefits under Section 32(B)(7) of the NIRC of 1997, as amended.[26]

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[21] *Id*. at 246-248.

[22] *Id*. at 249-252.

[23] *Rollo* (G.R. No. 213446), pp. 117-143.

[24] *Id*. at 130-135.

[25] *Id*. at 135-137.

[26] *Id*. at 137-139.

In its Comment,[27] respondents, through the OSG, sought the denial of the Petition-in-Intervention for failure of the intervenors to seek prior leave of Court and to demonstrate that the existing consolidated petitions are not sufficient to protect their interest as parties affected by the assailed RMO.[28] They further contend that, contrary to the intervenors' position, the CHR is not exempt from the applicability of RMO No. 23-2014.[29] They explain that the enumeration of government offices and constitutional bodies covered by RMO No. 23-2014 is not exclusive; Section III thereof in fact states that RMO No. 23-2014 covers all employees of the public sector.[30] They also allege that the ADCOM referred to in Section III(B) of the assailed RMO is unique to the Judiciary; employees and officials in the executive and legislative do not receive this specific type of ADCOM enjoyed by the employees and officials of the Judicial branch.[31]

On October 10, 2014, a Motion for Intervention with attached Complaint in Intervention[32] was filed, in G.R. No. 213658, by the Members of the Association of Regional Trial Court Judges in Iloilo City. Claiming that they are similarly situated with petitioners, said intervenors pray that the Court declare null and void RMO No. 23-2014 and direct the Bureau of Internal Revenue (BIR) to refund the amount illegally exacted from the salaries/compensations of the judges by virtue of the implementation of RMO No. 23-2014.[33] The intervenors claim that RMO No. 23-2014 violates their right to due process as it takes away a portion of their salaries and compensation without giving them the opportunity to be heard.[34] They also aver that

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[27] *Id*. at 307-324.

[28] *Id*. at 312.

[29] *Id*. at 316.

[30] *Id.*

[31] *Id*. at 317.

[32] *Rollo* (G.R. No. 213658), pp. 147-158.

[33] *Id*. at 154.

[34] *Id*. at 153.

the implementation of RMO No. 23-2014 resulted in the diminution of their salaries/compensation in violation of Sections 3 and 10, Article VIII of the Constitution.[35]

In their Comment[36] to the Motion, respondents adopted the arguments in their Consolidated Comment and further stated that: (1) RMO No. 23-2014 does not diminish the salaries and compensation of members of the judiciary as it has been judicially settled that the imposition of taxes on salaries and compensation of judges and justices is not equivalent to diminution of the same;[37] (2) the allowances and benefits enumerated under Section III(B) of RMO No. 23-2014 are not fringe benefits exempt from taxation;[38] (3) the AdCOLA and SAJ are not fringe benefits as these are considered part of the basic salary of government employees subject to income tax;[39] and (4) there is no valid ground for the refund of the taxes withheld pursuant to RMO No. 23-2014.[40]

In sum, petitioners and intervenors (collectively referred to as petitioners) argue that:

1. RMO No. 23-2014 is *ultra vires* insofar as:
    a. Sections III and IV of RMO No. 23-2014, for subjecting to withholding taxes non-taxable allowances, bonuses and benefits received by government employees;
    b. Sections VI and VII, for defining new offenses and prescribing penalties therefor, particularly upon government officials;
2. RMO No. 23-2014 violates the equal protection clause as it discriminates against government employees;

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[35] *Id.*

[36] *Id*. at 273-294.

[37] *Id*. at 278-279.

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

[39] *Id*. at 284-290.

[40] *Id*. at 291.

3. RMO No. 23-2014 violates fiscal autonomy enjoyed by government agencies;

4. The implementation of RMO No. 23-2014 results in diminution of benefits of government employees, a violation of Article 100 of the Labor Code; and

5. Respondents may be compelled through a writ of mandamus to increase the tax-exempt ceiling for 13th month pay and other benefits.

On the other hand, respondents counter that:

1. The instant consolidated petitions are barred by the doctrine of hierarchy of courts;

2. The CIR did not abuse its discretion in the issuance of RMO No. 23-2014 because:

    a. It was issued pursuant to the CIR's power to interpret the NIRC of 1997, as amended, and other tax laws, under Section 4 of the NIRC of 1997, as amended;

    b. RMO No. 23-2014 does not discriminate against government employees. It does not create a new category of taxable income nor make taxable those which are exempt;

    c. RMO No. 23-2014 does not result in diminution of benefits;

    d. The allowances, bonuses or benefits listed under Section III of the assailed RMO are not fringe benefits;

    e. The fiscal autonomy granted by the Constitution does not include tax exemption; and

3. Mandamus does not lie against respondents because the NIRC of 1997, as amended, does not impose a mandatory duty upon them to increase the tax-exempt ceiling for 13th month pay and other benefits.

Incidentally, in a related case docketed as A.M. No. 16-12-04-SC, the Court, on July 11, 2017, issued a Resolution directing

the Fiscal Management and Budget Office of the Court to maintain the *status quo* by the non-withholding of taxes from the benefits authorized to be granted to judiciary officials and personnel, namely, the Mid-year Economic Assistance, the Year-end Economic Assistance, the Yuletide Assistance, the Special Welfare Assistance (SWA) and the Additional SWA, until such time that a decision is rendered in the instant consolidated cases.

The Court's Ruling

I.

Procedural

Non-exhaustion of administrative remedies.

It is an unquestioned rule in this jurisdiction that certiorari under Rule 65 will only lie if there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law against the assailed issuance of the CIR.[41] The plain, speedy and adequate remedy expressly provided by law is an appeal of the assailed RMO with the Secretary of Finance under Section 4 of the NIRC of 1997, as amended, to wit:

> SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance**.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.[42]

The CIR's exercise of its power to interpret tax laws comes in the form of revenue issuances, which include RMOs that provide

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[41] *Estrada v. Office of the Ombudsman,* 751 Phil. 821, 890 (2015), citing *Interorient Maritime Enterprises, Inc. v. NLRC*, 330 Phil. 493, 502 (1996).

[42] Emphasis and underscoring supplied.

"directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing."[43] These revenue issuances are subject to the review of the Secretary of Finance. In relation thereto, Department of Finance Department Order No. 007-02[44] issued by the Secretary of Finance laid down the procedure and requirements for filing an appeal from the adverse ruling of the CIR to the said office. A taxpayer is granted a period of thirty (30) days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.[45]

In *Asia International Auctioneers, Inc. v. Parayno, Jr.*,[46] the Court dismissed the petition seeking the nullification of RMC No. 31-2003 for failing to exhaust administrative remedies. The Court held:

> x x x It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[47]

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[43] *Revenue Issuances*," <https://www.bir.gov.ph/index.php/revenue-issuances.html> (last accessed on June 28, 2018).

[44] PROVIDING FOR THE IMPLEMENTING RULES OF THE FIRST PARAGRAPH OF SECTION 4 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, REPEALING FOR THIS PURPOSE DEPARTMENT ORDER NO. 005-99 AND REVENUE ADMINISTRATIVE ORDER NO. 1-99, May 7, 2002.

[45] DOF Department Order No. 007-02, Sec. 3.

[46] 565 Phil. 255 (2007).

[47] *Id.* at 270-271.

The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[48] While there are recognized exceptions to this salutary rule, petitioners have failed to prove the presence of any of those in the instant case.

Violation of the rule on hierarchy of courts.

Moreover, petitioners violated the rule on hierarchy of courts as the petitions should have been initially filed with the CTA, having the exclusive appellate jurisdiction to determine the constitutionality or validity of revenue issuances.

In *The Philippine American Life and General Insurance Co. v. Secretary of Finance*,[49] the Court held that rulings of the Secretary of Finance in its exercise of its power of review under Section 4 of the NIRC of 1997, as amended, are appealable to the CTA.[50] The Court explained that while there is no law which explicitly provides where rulings of the Secretary of Finance under the adverted to NIRC provision are appealable, Section 7(a)[51]

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[48] *The Iloilo City Zoning Board of Adjustment and Appeals v. Gegato-Abecia Funeral Homes, Inc.,* 462 Phil. 803, 812 (2003), citing *Paat v. Court of Appeals*, 334 Phil. 146, 152-153 (1997).

[49] 747 Phil. 811 (2014).

[50] *Id*. at 823-824.

[51] SEC. 7. *Jurisdiction*.— The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.] (Underscoring supplied)

of RA No. 1125, the law creating the CTA, is nonetheless sufficient, albeit impliedly, to include appeals from the Secretary's review under Section 4 of the NIRC of 1997, as amended.

Moreover, echoing its pronouncements in *City of Manila v. Grecia-Cuerdo*,[52] that the CTA has the power of certiorari within its appellate jurisdiction, the Court declared that "it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."[53]

Subsequently, in *Banco de Oro v. Republic,*[54] the Court, sitting *En Banc*, further held that the CTA has exclusive appellate jurisdiction to review, on certiorari, the constitutionality or validity of revenue issuances, even without a prior issuance of an assessment. The Court *En Banc* reasoned:

> We revert to the earlier rulings in *Rodriguez*, *Leal*, and *Asia International Auctioneers, Inc*. The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.
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> Article VIII, Section 1 of the 1987 Constitution provides the general definition of judicial power:
>
> ARTICLE [VIII]
> JUDICIAL DEPARTMENT
>
> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[52] 726 Phil. 9 (2014).

[53] *The Philippine American Life and General Insurance Co. v. Secretary of Finance*, *supra* note 49, at 831.

[54] 793 Phil. 97 (2016).

> 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.* (Emphasis supplied)

Based on this constitutional provision, this Court recognized, for the first time, in *The City of Manila v. Hon. Grecia-Cuerdo*, the Court of Tax Appeals' jurisdiction over petitions for certiorari assailing interlocutory orders issued by the Regional Trial Court in a local tax case. Thus:

> [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that 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.**
>
> On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases. (Emphasis in the original)

This Court further explained that the Court of Tax Appeals' authority to issue writs of certiorari is inherent in the exercise of its appellate jurisdiction:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate

jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority

> over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (Citations omitted)

Judicial power likewise authorizes lower courts to determine the constitutionality or validity of a law or regulation in the first instance. This is contemplated in the Constitution when it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality is in issue.

On June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor — the former Board of Tax Appeals — but as a part of the judicial system with exclusive jurisdiction to act on appeals from:

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same

level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions

of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax

law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[55]

A direct invocation of this Court's jurisdiction should only be allowed when there are special, important and compelling reasons clearly and specifically spelled out in the petition.[56]

Nevertheless, despite the procedural infirmities of the petitions that warrant their outright dismissal, the Court deems it prudent, if not crucial, to take cognizance of, and accordingly act on, the petitions as they assail the validity of the actions of the CIR that affect thousands of employees in the different government agencies and instrumentalities. The Court, following recent jurisprudence, avails itself of its judicial prerogative in order not to delay the disposition of the case at hand and to promote the vital interest of justice. As the Court held in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*:[57]

From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine

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[55] *Id*. at 118-125. Emphasis supplied; citations omitted.

[56] *Dagan v. Office of the Ombudsman*, 721 Phil. 400, 413 (2013).

[57] 792 Phil. 751 (2016).

of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.,* pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. **To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR.** The position we now take is more in accord with latest jurisprudence. x x x[58]

II.

Substantive

The petitions assert that the CIR's issuance of RMO No. 23-2014, particularly Sections III, IV, VI and VII thereof, is tainted with grave abuse of discretion. "By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[59] It is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[60]

As earlier stated, Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend

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[58] *Id*. at 760-761. Emphasis and underscoring supplied.

[59] *Republic v. Rambuyong*, 646 Phil. 373, 382 (2010), citing *Banal III v. Panganiban*, 511 Phil. 605, 614 (2005).

[60] *Id*. at 382, citing *Ferrer v. Office of the Ombudsman*, 583 Phil. 50, 63-64 (2008).

to carry out.[61] The courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[62] Thus, in *Philippine Bank of Communications v. Commissioner of Internal Revenue,*[63] the Court upheld the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue because it was contrary to the express provision of Section 230 of the NIRC of 1977.

Also, in *Banco de Oro v. Republic,*[64] the Court nullified BIR Ruling Nos. 370-2011 and DA 378-2011 because they completely disregarded the 20 or more-lender rule added by Congress in the NIRC of 1997, as amended, and created a distinction for government debt instruments as against those issued by private corporations when there was none in the law.[65]

Conversely, if the assailed administrative rule conforms with the law sought to be implemented, the validity of said issuance must be upheld. Thus, in *The Philippine American Life and General Insurance Co. v. Secretary of Finance*,[66] the Court declared valid Section 7 (c.2.2) of RR No. 06-08 and RMC No. 25-11, because they merely echoed Section 100 of the NIRC that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift; thus, subject to donor's tax.[67]

In this case, the Court finds the petitions partly meritorious only insofar as Section VI of the assailed RMO is concerned. On the other hand, the Court upholds the validity of Sections

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[61] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,* 453 Phil. 1043, 1052 (2003).

[62] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).

[63] *Id*. at 928-930.

[64] 750 Phil. 349 (2015).

[65] *Id*. at 399, 412.

[66] *Supra* note 49.

[67] *Id*. at 831-832.

III, IV and VII thereof as these are in fealty to the provisions of the NIRC of 1997, as amended, and its implementing rules.

Sections III and IV of RMO No. 23-2014 are valid.

Compensation income is the income of the individual taxpayer arising from services rendered pursuant to an employer-employee relationship.[68] Under the NIRC of 1997, as amended, every form of compensation for services, whether paid in cash or in kind, is generally subject to income tax and consequently to withholding tax.[69] The name designated to the compensation income received by an employee is immaterial.[70] Thus, salaries, wages, emoluments and honoraria, allowances, commissions, fees, (including director's fees, if the director is, at the same time, an employee of the employer/corporation), bonuses, fringe benefits (except those subject to the fringe benefits tax under Section 33 of the Tax Code), pensions, retirement pay, and other income of a similar nature, constitute compensation income[71] that are taxable and subject to withholding.

The withholding tax system was devised for three primary reasons, namely: (1) to provide the taxpayer a convenient manner to meet his probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow.[72] This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.[73]

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[68] Recalde, E.R., *A Treatise on Philippine Internal Revenue Taxes* (2014), pp. 257-258, citing RR No. 2-98, Sec. 2.78.1(A).

[69] *ING Bank N.V. v. Commissioner of Internal Revenue*, 764 Phil. 418, 443 (2015).

[70] *Id*. at 446.

[71] See RR No. 2-98, Sec. 2.78.1(A).

[72] *Chamber of Real Estate and Builders Associations, Inc. v. Romulo*, 628 Phil. 508, 535-536 (2010).

[73] *Id*. at 536.

Section 79(A) of the NIRC of 1997, as amended, states:

SEC. 79. *Income Tax Collected at Source.* —

(A) *Requirement of Withholding.* — Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, **every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner**.[74]

In relation to the foregoing, Section 2.78 of RR No. 2-98,[75] as amended, issued by the Secretary of Finance to implement the withholding tax system under the NIRC of 1997, as amended, provides:

SECTION 2.78. *Withholding Tax on Compensation*. — The withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income**. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines**. **The employer is constituted as the withholding agent**.[76]

Section 2.78.3 of RR No. 2-98 further states that the term employee "covers ***all*** *employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political subdivision thereof or any agency or instrumentality*"; while an employer, as Section 2.78.4 of the same regulation provides, "embraces not only an individual and an organization engaged in trade or business, but also *includes an organization exempt from income tax, such as charitable and religious organizations, clubs, social organizations and*

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[74] Emphasis supplied.

[75] 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, April 17, 1998.

[76] Emphasis supplied.

societies, as well as the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions."

The law is therefore clear that withholding tax on compensation applies to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions. The Government, as an employer, is constituted as the withholding agent, mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees.

However, not all income payments to employees are subject to withholding tax. The following allowances, bonuses or benefits, excluded by the NIRC of 1997, as amended, from the employee's compensation income, are exempt from withholding tax on compensation:

1. Retirement benefits received under RA No. 7641 and those received by officials and employees of private firms, whether individual or corporate, under a reasonable private benefit plan maintained by the employer subject to the requirements provided by the Code [Section 32(B)(6)(a) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(a) of RR No. 2-98];

2. Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, such as retrenchment, redundancy, or cessation of business [Section 32(B)(6)(b) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(b) of RR No. 2-98];

3. Social security benefits, retirement gratuities, pensions and other similar benefits received by residents or non-resident citizens of the Philippines or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions private or public [Section 32(B)(6)(c) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(c) of RR No. 2-98];

4. Payments of benefits due or to become due to any person residing in the Philippines under the law of the United States administered by the United States Veterans Administration [Section 32(B)(6)(d) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(d) of RR No. 2-98];

5. Payments of benefits made under the Social Security System Act of 1954 as amended [Section 32(B)(6)(e) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(e) of RR No. 2-98];

6. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity received by government officials and employees [Section 32(B)(6)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(f) of RR No. 2-98];

7. Thirteenth (13th) month pay and other benefits received by officials and employees of public and private entities not exceeding ₱82,000.00 [Section 32(B)(7)(e) of the NIRC of 1997, as amended, and Section 2.78.1(B)(11) of RR No. 2-98, as amended by RR No. 03-15];

8. GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees [Section 32(B)(7)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(12) of RR No. 2-98];

9. Remuneration paid for agricultural labor [Section 2.78.1(B)(2) of RR No. 2-98];

10. Remuneration for domestic services [Section 28, RA No. 10361 and Section 2.78.1(B)(3) of RR No. 2-98];

11. Remuneration for casual labor not in the course of an employer's trade or business [Section 2.78.1(B)(4) of RR No. 2-98];

12. Remuneration not more than the statutory minimum wage and the holiday pay, overtime pay, night shift differential pay and hazard pay received by Minimum Wage Earners [Section 24(A)(2) of the NIRC of 1997, as amended];

13. Compensation for services by a citizen or resident of the Philippines for a foreign government or an international organization [Section 2.78.1(B)(5) of RR No. 2-98];

14. Actual, moral, exemplary and nominal damages received by an employee or his heirs pursuant to a final judgment or compromise agreement arising out of or related to an employer-employee relationship [Section 32(B)(4) of the NIRC of 1997, as amended and Section 2.78.1(B)(6) of RR No. 2-98];

15. The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, provided however, that interest payments agreed under the policy for the amounts which are held by the insured under such an agreement shall be included in the gross income [Section 32(B)(1) of the NIRC of 1997, as amended and Section 2.78.1(B)(7) of RR No. 2-98];

16. The amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract [Section 32(B)(2) of the NIRC of 1997, as amended and Section 2.78.1(B)(8) of RR No. 2-98];

17. Amounts received through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness [Section 32(B)(4) of the NIRC of 1997, as amended and Section 2.78.1(B)(9) of RR No. 2-98];

18. Income of any kind to the extent required by any treaty obligation binding upon the Government of the Philippines [Section 32(B)(5) of the NIRC of 1997, as amended and Section 2.78.1(B)(10) of RR No. 2-98];

19. Fringe and *De minimis* Benefits. [Section 33(C) of the NIRC of 1997, as amended); and

20. Other income received by employees which are exempt under special laws (RATA granted to public officers and employees under the General Appropriations Act and Personnel Economic Relief Allowance granted to government personnel).

Petitioners assert that RMO No. 23-2014 went beyond the provisions of the NIRC of 1997, as amended, insofar as Sections III and IV thereof impose new or additional taxes to allowances, benefits or bonuses granted to government employees. A closer look at the assailed Sections, however, reveals otherwise.

For reference, Sections III and IV of RMO No. 23-2014 read, as follows:

III. OBLIGATION TO WITHHOLD ON COMPENSATION PAID TO GOVERNMENT OFFICIALS AND EMPLOYEES

As an employer, government offices including government-owned or controlled corporations (such as but not limited to the Bangko Sentral ng Pilipinas, Metropolitan Waterworks and Sewerage System, Philippine Deposit Insurance Corporation, Government Service Insurance System, Social Security System), as well as provincial, city and municipal governments are constituted as withholding agents for purposes of the creditable tax required to be withheld from compensation paid for services of its employees.

Under Section 32(A) of the NIRC of 1997, as amended, compensation for services, in whatever form paid and no matter how called, form part of gross income. Compensation income includes, among others, salaries, fees, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; taxable bonuses and fringe benefits except those which are subject to the fringe benefits tax under Section 33 of the NIRC; taxable pensions and retirement pay; and other income of a similar nature.

The foregoing also includes allowances, bonuses, and other benefits of similar nature received by officials and employees of the Government of the Republic of the Philippines or any of its branches, agencies and instrumentalities, its political subdivisions, including government-owned and/or controlled corporations (herein referred to as *officials and employees in the public sector*) which are composed of (but are not limited to) the following:

A. Allowances, bonuses, honoraria or benefits received by employees and officials in the Legislative Branch, such as anniversary bonus, Special Technical Assistance Allowance, Efficiency Incentive Benefits, Additional Food Subsidy, Eight[h] (8th) Salary Range Level Allowance, Hospitalization Benefits, Medical Allowance, Clothing Allowance, Longevity Pay, Food Subsidy, Transition Allowance, Cost of Living Allowance, Inflationary Adjustment Assistance, Mid-Year Economic Assistance, Financial Relief Assistance, Grocery Allowance, Thirteenth (13th) Month Pay, Cash Gift and Productivity Incentive Benefit and other allowances, bonuses and benefits given by the Philippine Senate and House of

Representatives to their officials and employees, **subject to the exemptions enumerated herein.**

B. Allowances, bonuses, honoraria or benefits received by employees and officials in the Judicial Branch, such as the Additional Compensation (ADCOM), Extraordinary and Miscellaneous Expenses (EME), Monthly Special Allowance from the Special Allowance for the Judiciary, Additional Cost of Living Allowance from the Judiciary Development Fund, Productivity Incentive Benefit, Grocery Allowance, Clothing Allowance, Emergency Economic Allowance, Year-End Bonus, Cash Gift, Loyalty Cash Award (Milestone Bonus), SC Christmas Allowance, anniversary bonuses and other allowances, bonuses and benefits given by the Supreme Court of the Philippines and all other courts and offices under the Judicial Branch to their officials and employees, **subject to the exemptions enumerated herein.**

C. Compensation for services in whatever form paid, including, but not limited to allowances, bonuses, honoraria or benefits received by employees and officials in the Constitutional bodies (Commission on Election, Commission on Audit, Civil Service Commission) and the Office of the Ombudsman, **subject to the exemptions enumerated herein.**

D. Allowances, bonuses, honoraria or benefits received by employees and officials in the Executive Branch, such as the Productivity Enhancement Incentive (PEI), Performance-Based Bonus, anniversary bonus and other allowances, bonuses and benefits given by the departments, agencies and other offices under the Executive Branch to their officials and employees, **subject to the exemptions enumerated herein.**

Any amount paid either as advances or reimbursements for expenses incurred or reasonably expected to be incurred by the official and employee in the performance of his/her duties are not compensation subject to withholding, if the following conditions are satisfied:

1. The employee was duly authorized to incur such expenses on behalf of the government; and

2. Compliance with pertinent laws and regulations on accounting and liquidation of advances and reimbursements, including, but not limited to withholding tax rules. The expenses should

be duly receipted for and in the name of the government office concerned.

Other than those pertaining to intelligence funds duly appropriated and liquidated, any amount not in compliance with the foregoing requirements shall be considered as part of the gross taxable compensation income of the taxpayer. Intelligence funds not duly appropriated and not properly liquidated shall form part of the compensation of the government officials/personnel concerned, unless returned.

IV. NON-TAXABLE COMPENSATION INCOME — Subject to existing laws and issuances, the following income received by the officials and employees in the public sector are not subject to income tax and withholding tax on compensation:

A. Thirteenth (13th) Month Pay and Other Benefits not exceeding Thirty Thousand Pesos (₱30,000.00) paid or accrued during the year. Any amount exceeding Thirty Thousand Pesos (₱30,000.00) are taxable compensation. This includes:

   1. Benefits received by officials and employees of the national and local government pursuant to Republic Act no. 6686 ("*An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1998*");

   2. Benefits received by employees pursuant to Presidential Decree No. 851 ("*Requiring All Employers to Pay Their Employees a 13th Month Pay*"), as amended by Memorandum Order No. 28, dated August 13, 1986;

   3. Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 19, 1986;

   4. Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by officials and employees of government offices, including the additional compensation allowance (ACA) granted and paid to all officials and employees of the National Government Agencies (NGAs) including state universities and colleges (SUCs), government-owned and/or controlled corporations (GOCCs), government

financial institutions (GFIs) and Local Government Units (LGUs).

B. Facilities and privileges of relatively small value or "*De Minimis Benefits*" as defined in existing issuances and conforming to the ceilings prescribed therein;

C. Fringe benefits which are subject to the fringe benefits tax under Section 33 of the NIRC, as amended;

D. Representation and Transportation Allowance (RATA) granted to public officers and employees under the General Appropriations Act;

E. Personnel Economic Relief Allowance (PERA) granted to government personnel;

F. The monetized value of leave credits paid to government officials and employees;

G. Mandatory/compulsory GSIS, Medicare and Pag-Ibig Contributions, *provided that*, voluntary contributions to these institutions in excess of the amount considered mandatory/ compulsory are not excludible from the gross income of the taxpayer and hence, not exempt from Income Tax and Withholding Tax;

H. Union dues of individual employees;

I. Compensation income of employees in the public sector with compensation income of not more than the Statutory Minimum Wage (SMW) in the non-agricultural sector applicable to the place where he/she is assigned;

J. Holiday pay, overtime pay, night shift differential pay, and hazard pay received by Minimum Wage Earners (MWEs);

K. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity/benefits received by government officials and employees under pertinent retirement laws;

L. All other benefits given which are not included in the above enumeration but are exempted from income tax as well as withholding tax on compensation under existing laws, as confirmed by BIR.[77]

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[77] Emphasis and underscoring supplied.

Clearly, Sections III and IV of the assailed RMO do not charge any new or additional tax. On the contrary, they merely mirror the relevant provisions of the NIRC of 1997, as amended, and its implementing rules on the withholding tax on compensation income as discussed above. The assailed Sections simply reinforce the rule that every form of compensation for personal services received by all employees arising from employer-employee relationship is deemed subject to income tax and, consequently, to withholding tax,[78] unless specifically exempted or excluded by the Tax Code; and the duty of the Government, as an employer, to withhold and remit the correct amount of withholding taxes due thereon.

While Section III enumerates certain allowances which may be subject to withholding tax, it does not exclude the possibility that these allowances may fall under the exemptions identified under Section IV — thus, the phrase, "subject to the exemptions enumerated herein." In other words, Sections III and IV articulate in a general and broad language the provisions of the NIRC of 1997, as amended, on the forms of compensation income deemed subject to withholding tax and the allowances, bonuses and benefits exempted therefrom. Thus, Sections III and IV cannot be said to have been issued by the CIR with grave abuse of discretion as these are fully in accordance with the provisions of the NIRC of 1997, as amended, and its implementing rules.

Furthermore, the Court finds untenable petitioners' contention that the assailed provisions of RMO No. 23-2014 contravene the equal protection clause, fiscal autonomy, and the rule on non-diminution of benefits.

The constitutional guarantee of equal protection is not violated by an executive issuance which was issued to simply reinforce existing taxes applicable to both the private and public sector. As discussed, the withholding tax system embraces not only private individuals, organizations and corporations, but also covers organizations exempt from income tax, including the

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[78] *ING Bank N.V. v. Commissioner of Internal Revenue*, *supra* note 69, at 443.

Government of the Philippines, its agencies, instrumentalities, and political subdivisions. While the assailed RMO is a directive to the Government, as a reminder of its obligation as a withholding agent, it did not, in any manner or form, alter or amend the provisions of the Tax Code, for or against the Government or its employees.

Moreover, the fiscal autonomy enjoyed by the Judiciary, Ombudsman, and Constitutional Commissions, as envisioned in the Constitution, does not grant immunity or exemption from the common burden of paying taxes imposed by law. To borrow former Chief Justice Corona's words in his Separate Opinion in *Francisco, Jr. v. House of Representatives*,[79] "fiscal autonomy entails freedom from outside control and limitations, **other than those provided by law**. It is the freedom to allocate and utilize funds granted by law, **in accordance with law** and pursuant to the wisdom and dispatch its needs may require from time to time."[80]

It bears to emphasize the Court's ruling in *Nitafan v. Commissioner of Internal Revenue*[81] that the imposition of taxes on salaries of Judges does not result in diminution of benefits. This applies to all government employees because the intent of the framers of the Organic Law and of the people adopting it is "**that all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably**."[82]

Determination of existence of fringe benefits is a question of fact.

Petitioners, nonetheless, insist that the allowances, bonuses and benefits enumerated in Section III of the assailed RMO are, in fact, fringe and *de minimis* benefits exempt from withholding

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[79] 460 Phil. 830, 1006-1028 (2003).

[80] *Id*. at 1028. Emphasis and underscoring supplied.

[81] 236 Phil. 307 (1987).

[82] *Id*. at 315-316. Emphasis and underscoring supplied.

tax on compensation. The Court cannot, however, rule on this issue as it is essentially a question of fact that cannot be determined in this petition questioning the constitutionality of the RMO.

To be sure, settled is the rule that exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[83] One who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden[84] and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[85] The determination, therefore, of the merits of petitioners' claim for tax exemption would necessarily require the resolution of both legal and factual issues, which this Court, not being a trier of facts, has no jurisdiction to do; more so, in a petition filed at first instance.

Among the factual issues that need to be resolved, at the first instance, is the nature of the fringe benefits granted to employees. The NIRC of 1997, as amended, does not impose income tax, and consequently a withholding tax, on payments to employees which are either (*a*) required by the nature of, or necessary to, the business of the employer; or (*b*) for the convenience or advantage of the employer.[86] This, however, requires proper documentation. Without any documentary proof that the payment ultimately redounded to the benefit of the employer, the same shall be considered as a taxable benefit to the employee, and hence subject to withholding taxes.[87]

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[83] *Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, 698 Phil. 385, 395 (2012), citing *Quezon City v. ABS-CBN Broadcasting Corp.*, 588 Phil. 785, 803 (2008).

[84] *The City of Iloilo v. Smart Communications, Inc. (SMART)*, 599 Phil. 492, 497 (2009).

[85] *Quezon City v. ABS-CBN Broadcasting Corp.*, *supra* note 83, at 803, citing Agpalo, R.E., *Statutory Construction* (2003 ed.), p. 301.

[86] Recalde, E.R., *supra* note 68, at 266, citing Section 33(A) of the NIRC of 1997, as amended.

[87] See *id.* at 267, citing *First Lepanto Taisho Insurance Corp. v. Commissioner of Internal Revenue*, 708 Phil. 616, 624 (2013). See also *Commissioner of Internal Revenue v. Secretary of Justice*, 799 Phil. 13, 38-39 (2016).

Another factual issue that needs to be confirmed is the recipient of the alleged fringe benefit. Fringe benefits furnished or granted, in cash or in kind, by an employer to its managerial or supervisory employees, are not considered part of compensation income; thus, exempt from withholding tax on compensation.[88] Instead, these fringe benefits are subject to a fringe benefit tax equivalent to 32% of the grossed-up monetary value of the benefit, which the employer is legally required to pay.[89] On the other hand, fringe benefits given to rank and file employees, while exempt from fringe benefit tax,[90] form part of compensation income taxable under the regular income tax rates provided in Section 24(A)(2) of the NIRC, of 1997, as amended;[91] and consequently, subject to withholding tax on compensation.

Furthermore, fringe benefits of relatively small value furnished by the employer to his employees (both managerial/supervisory and rank and file) as a means of promoting health, goodwill, contentment, or efficiency, otherwise known as *de minimis* benefits, that are exempt from both income tax on compensation and fringe benefit tax; hence, not subject to withholding tax,[92] are limited and exclusive only to those enumerated under RR No. 3-98, as amended.[93] All other benefits given by the employer which are not included in the said list, although of relatively

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[88] See RR No. 2-98, Sec. 2.79(B).

[89] See Section 33(A) of the NIRC of 1997, as implemented by Section 2.33(A) of RR No. 03-98 on IMPLEMENTING SECTION 33 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 RELATIVE TO THE SPECIAL TREATMENT OF FRINGE BENEFITS, May 21, 1998.

[90] See Section 33(C)(3) of the NIRC of 1997, as amended.

[91] See Recalde, E.R., *supra* note 68, at 262.

[92] See Section 33(C)(4) of the NIRC of 1997, as amended. See also RR 3-98.

[93] Section 2.33(C) of RR 3-98, as last amended by RR No. 5-2008, 5-2011, 8-2012 and 1-2015, states:

SEC. 2.33. *Special Treatment of Fringe Benefits.* —

x x x x x x x x x

(C) *Fringe Benefits Not Subject to Fringe Benefits Tax*– x x x

x x x x x x x x x

small value, shall not be considered as *de minimis* benefits; hence, shall be subject to income tax as well as withholding tax on compensation income, for rank and file employees, or fringe benefits tax for managerial and supervisory employees, as the case may be.[94]

(a) Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;

(b) Monetized value of vacation and sick leave credits paid to government officials and employees;

(c) Medical cash allowance to dependents of employees, not exceeding ₱750 per employee per semester or ₱125 per month;

(d) Rice subsidy of ₱1,500 or one (1) sack of 50 kg. rice per month amounting to not more than ₱1,500;

(e) Uniform and Clothing allowance not exceeding ₱5,000 per annum;

(f) Actual medical assistance, e.g. medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding ₱10,000 per annum;

(g) Laundry allowance not exceeding ₱300 per month;

(h) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding ₱10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;

(i) Gifts given during Christmas and major anniversary celebrations not exceeding ₱5,000 per employee per annum;

(j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis; and

(k) Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes provided that the total annual monetary value received from both CBA and productivity incentive schemes combined, do not exceed ten thousand pesos (₱10,000) per employee, per taxable year.

[94] See Section 2 of RR No. 5-2011; see also "*Additional ₱10,000 nontaxable De Minimis Benefits effective January 1, 2015*" by Orlando Calundan on Jan 10th, 2015 <http://philcpa.org/2015/01/additional-p10000-nontaxable-de-minimis-benefits-effective-january-1-2015/>(last accessed on June 28, 2018).

Based on the foregoing, it is clear that to completely determine the merits of petitioners' claimed exemption from withholding tax on compensation, under Section 33 of the NIRC of 1997, there is a need to confirm several factual issues. As such, petitioners cannot but first resort to the proper courts and administrative agencies which are better equipped for said task.

All told, the Court finds Sections III and IV of the assailed RMO valid. The NIRC of 1997, as amended, is clear that all forms of compensation income received by the employee from his employer are presumed taxable and subject to withholding taxes. The Government of the Philippines, its agencies, instrumentalities, and political subdivisions, as an employer, is required by law to withhold and remit to the BIR the appropriate taxes due thereon. Any claims of exemption from withholding taxes by an employee, as in the case of petitioners, must be brought and resolved in the appropriate administrative and judicial proceeding, with the employee having the burden to prove the factual and legal bases thereof.

Section VII of RMO No. 23-2014 is valid; Section VI contravenes, in part, the provisions of the NIRC of 1997, as amended, and its implementing rules.

Petitioners claim that RMO No. 23-2014 is *ultra vires* insofar as Sections VI and VII thereof define new offenses and prescribe penalties therefor, particularly upon government officials.

The NIRC of 1997, as amended, clearly provides the offenses and penalties relevant to the obligation of the withholding agent to deduct, withhold and remit the correct amount of withholding taxes on compensation income, to wit:

TITLE X
Statutory Offenses and Penalties

CHAPTER I
Additions to the Tax

SEC. 247. *General Provisions.* —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this

Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or -controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

(c) The term "*person*", as used in this Chapter, includes an officer or employee of a corporation who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 248. *Civil Penalties.* — x x x[95]

SEC. 249. *Interest.*— x x x[96]

x x x x x x x x x

SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* — Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner

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[95] RR No. 2-98, Sec. 2.80(C)(3) states:

(C) Additions to Tax. —

x x x x x x x x x

(3) Deficiency Interest — Any deficiency in the basic tax due, as the term is defined in the Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

If the withholding agent is the government or any of its agencies, political subdivisions, or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of tax shall be personally liable for the surcharge and interest imposed herein.

[96] RR No. 2-98, Sec. 2.80(C)(2) states:

(C) Additions to Tax. —

x x x x x x x x x

(2) Interest — There shall be assessed and collected on any unpaid amount of tax, an interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed for payment until the amount is fully paid.

to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.[97]

SEC. 252. *Failure of a Withholding Agent to Refund Excess Withholding Tax.* — Any employer/withholding agent who fails or refuses to refund excess withholding tax shall, in addition to the penalties provided in this Title, be liable to a penalty equal to the total amount of refunds which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

CHAPTER II
Crimes, Other Offenses and Forfeitures

x x x x x x x x x

SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate

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[97] RR No. 2-98, Sec. 2.80(A) provides:

(A) Employer. —

(1) In general, the employer shall be responsible for the withholding and remittance of the correct amount of tax required to be deducted and withheld from the compensation income of his employees. If the employer fails to withhold and remit the correct amount of tax, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable.

(2) The employer who required to collect, account for and remit any tax imposed by the NIRC, as amended, who willfully fails to collect such tax, or account for and remit such tax or willfully assist in any manner to evade any payment thereof, shall in addition to other penalties, provided for in the Code, as amended, be liable, upon conviction, to a penalty equal to the amount of the tax not collected nor accounted for or remitted.

(3) Any employer/withholding agent who fails, or refuses to refund excess withholding tax not later than January 25 of the succeeding year shall, in addition to any penalties provided in Title X of the Code, as amended, be liable to a penalty equal to the total amount of refund which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

CHAPTER III
Penalties Imposed on Public Officers

x x x x x x x x x

SEC. 272. *Violation of Withholding Tax Provision.* — Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or -controlled corporations, including the *Bangko Sentral ng Pilipinas* (BSP), who, under the provisions of this Code or rules and regulations promulgated thereunder, is charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with the provisions of this Code and other laws is guilty of any offense hereinbelow specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (₱5,000) but not more than Fifty thousand pesos (₱50,000) or suffer imprisonment of not less than six (6) months and one day (1) but not more than two (2) years, or both:

(a) Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations;

(b) Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; and

(c) Failing or causing the failure to file return or statement within the time prescribed, o rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations.[98]

Based on the foregoing, and similar to Sections III and IV of the assailed RMO, the Court finds that Section VII thereof

[98] See RR No. 2-98, Secs. 4.114(E) and 5.116(D).

was issued in accordance with the provisions of the NIRC of 1997, as amended, and RR No. 2-98. For easy reference, Section VII of RMO No. 23-2014 states:

VII. PENALTY PROVISION

In case of non-compliance with their obligation as withholding agents, the abovementioned persons shall be liable for the following sanctions:

A. Failure to Collect and Remit Taxes (Section 251, NIRC)

"Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted."

B. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation (Section 255, NIRC)

"Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand

pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

C. Violation of Withholding Tax Provisions (Section 272, NIRC)

"Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or controlled corporations, including the Bangko Sentral ng Pilipinas (BSP), who is charged with the duty to deduct and withhold any internal revenue tax and to remit the same is guilty of any offense herein below specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (₱5,000) but not more than Fifty thousand pesos (₱50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both:

1. Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations; or
2. Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; or
3. Failing or causing the failure to file return or statement within the time prescribed, or rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations."

All revenue officials and employees concerned shall take measures to ensure the full enforcement of the provisions of this Order and in case of any violation thereof, shall commence the appropriate legal action against the erring withholding agent.

Verily, tested against the provisions of the NIRC of 1997, as amended, Section VII of RMO No. 23-2014 does not define a crime and prescribe a penalty therefor. Section VII simply mirrors the relevant provisions of the NIRC of 1997, as amended, on the penalties for the failure of the withholding agent to withhold and remit the correct amount of taxes, as implemented by RR No. 2-98.

However, with respect to Section VI of the assailed RMO, the Court finds that the CIR overstepped the boundaries of its authority to interpret existing provisions of the NIRC of 1997, as amended.

Section VI of RMO No. 23-2014 reads:

VI. PERSONS RESPONSIBLE FOR WITHHOLDING

The following officials are duty bound to deduct, withhold and remit taxes:

a) For Office of the Provincial Government-province- the Chief Accountant, Provincial Treasurer and the Governor;

b) For Office of the City Government-cities- the Chief Accountant, City Treasurer and the City Mayor;

c) For Office of the Municipal Government-municipalities- the Chief Accountant, Municipal Treasurer and the Mayor;

d) Office of the Barangay-Barangay Treasurer and Barangay Captain

e) For NGAs, GOCCs and other Government Offices, the Chief Accountant and the Head of Office or the Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager).

To recall, the Government of the Philippines, or any political subdivision or agency thereof, or any GOCC, as an employer, is constituted by law as the withholding agent, mandated to deduct, withhold and remit the correct amount of taxes on the compensation income received by its employees. In relation thereto, Section 82 of the NIRC of 1997, as amended, states that the return of the amount deducted and withheld upon any wage paid to government employees shall be made by the officer or employee having control of the payments or by any officer or employee duly designated for such purpose.[99] Consequently, RR No. 2-98 identifies *the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in*

[99] See RR No. 2-98, Secs. 2.58(C), 2.82 and 2.83.1.

municipalities, Barangay Treasurer in barangays, Treasurers of government-owned or -controlled corporations (GOCCs), and the Chief Accountant or any person holding similar position and performing similar function in national government offices, as persons required to deduct and withhold the appropriate taxes on the income payments made by the government.[100]

However, nowhere in the NIRC of 1997, as amended, or in RR No. 2-98, as amended, would one find the Provincial Governor, Mayor, Barangay Captain and the Head of Government Office or the "Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager)" in an Agency or GOCC as one of the officials required to deduct, withhold and remit the correct amount of withholding taxes. The CIR, in imposing upon these officials the obligation not found in law nor in the implementing rules, did not merely issue an interpretative rule designed to provide guidelines to the law which it is in charge of enforcing; but instead, supplanted details thereon — a power duly vested by law only to respondent Secretary of Finance under Section 244 of the NIRC of 1997, as amended.

Moreover, respondents' allusion to previous issuances of the Secretary of Finance designating the Governor in provinces, the City Mayor in cities, the Municipal Mayor in municipalities, the Barangay Captain in barangays, and the Head of Office (official holding the highest position) in departments, bureaus, agencies, instrumentalities, government-owned or -controlled corporations, and other government offices, as officers required to deduct and withhold,[101] is bereft of legal basis. Since the 1977 NIRC and Executive Order No. 651, which allegedly breathed life to these issuances, have already been repealed with the enactment of the NIRC of 1997, as amended, and RR No. 2-98, these previous issuances of the Secretary of Finance have ceased to have the force and effect of law.

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[100] See RR No. 2-98, Secs. 4.114(B), 4.114(E)(1) and 5.116(D)(1).

[101] Respondents' Consolidated Comment, *rollo* (G.R. No. 213658), pp. 222-226.

Accordingly, the Court finds that the CIR gravely abused its discretion in issuing Section VI of RMO No. 23-2014 insofar as it includes the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in agencies, GOCCs, and other government offices, as persons required to withhold and remit withholding taxes, as they are not among those officials designated by the 1997 NIRC, as amended, and its implementing rules.

Petition for Mandamus is moot and academic.

As regards the prayer for the issuance of a writ of mandamus to compel respondents to increase the ₱30,000.00 non-taxable income ceiling, the same has already been rendered moot and academic due to the enactment of RA No. 10653.[102]

The Court takes judicial notice of RA No. 10653, which was signed into law on February 12, 2015, which increased the income tax exemption for 13th month pay and other benefits, under Section 32(B)(7)(e) of the NIRC of 1997, as amended, from ₱30,000.00 to₱ 82,000.00.[103] Said law also states that every three (3) years after the effectivity of said Act, the President of the Philippines shall adjust the amount stated therein to its present value using the Consumer Price Index, as published by the National Statistics Office.[104]

Recently, RA No. 10963,[105] otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, further

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[102] AN ACT ADJUSTING THE 13TH MONTH PAY AND OTHER BENEFITS CEILING EXCLUDED FROM THE COMPUTATION OF GROSS INCOME FOR PURPOSES OF INCOME TAXATION, AMENDING FOR THE PURPOSE SECTION 32(B) CHAPTER VI OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, February 12, 2015.

[103] RA No. 10653, Sec. 1.

[104] *Id.*

[105] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195,

increased the income tax exemption for 13th month pay and other benefits to ₱90,000.00.[106]

A case is considered moot and academic if it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.[107]

With the enactment of RA Nos. 10653 and 10963, which not only increased the tax exemption ceiling for 13th month pay and other benefits, as petitioners prayed, but also conferred upon the President the power to adjust said amount, a supervening event has transpired that rendered the resolution of the issue on whether mandamus lies against respondents, of no practical value. Accordingly, the petition for mandamus should be dismissed for being moot and academic.

As a final point, the Court cannot turn a blind eye to the adverse effects of this Decision on ordinary government employees, including petitioners herein, who relied in good faith on the belief that the appropriate taxes on all the income they receive from their respective employers are withheld and paid. Nor does the Court ignore the situation of the relevant officers of the different departments of government that had believed, in good faith, that there was no need to withhold the taxes due on the compensation received by said ordinary government employees. Thus, as a measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice,* that its ruling on the validity of

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196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED AND FOR OTHER PURPOSES, December 19, 2017.

[106] RA No. 10963, Sec. 9.

[107] *Jacinto-Henares v. St. Paul College of Makati*, G.R. No. 215383, March 8, 2017, 820 SCRA 92, 101.

Sections III and IV of the assailed RMO is to be given only prospective effect.[108]

WHEREFORE, premises considered, the Petitions and Petitions-in-Interventions are **PARTIALLY GRANTED**. Section VI of Revenue Memorandum Order No. 23-2014 is **DECLARED** null and void insofar as it names the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in government agencies, government-owned or -controlled corporations, and other government offices, as persons required to withhold and remit withholding taxes.

Sections III, IV and VII of RMO No. 23-2014 are **DECLARED** valid inasmuch as they merely mirror the provisions of the National Internal Revenue Code of 1997, as amended. However, the Court cannot rule on petitioners' claims of exemption from withholding tax on compensation income because these involve issues that are essentially factual or evidentiary in nature, which must be raised in the appropriate administrative and/or judicial proceeding.

The Court's Decision upholding the validity of Sections III and IV of the assailed RMO is to be applied only prospectively.

Finally, the Petition for Mandamus in G.R. No. 213446 is hereby **DENIED** on the ground of mootness.

SO ORDERED.

Carpio[*]*, Senior Associate Justice, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Jardeleza, J. no part, prior OSG action.

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[108] See *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018; *National Transmission Corp. v. Commission on Audit*, G.R. No. 227796, February 20, 2018; *Nayong Pilipino Foundation, Inc. v. Pulido Tan*, G.R. No. 213200, September 19, 2017; *National Transmission Corporation v. Commission on Audit*, G.R. No. 223625, November 22, 2016, 809 SCRA 562; *Silang v. Commission on Audit*, 769 Phil. 327 (2015).

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

EN BANC

[G.R. No. 224678. July 3, 2018]

SPOUSES JOSE MANUEL and MARIA ESPERANZA RIDRUEJO STILIANOPOULOS, *petitioners, vs.* **THE REGISTER OF DEEDS FOR LEGAZPI CITY and THE NATIONAL TREASURER,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; INDIVIDUALS PURCHASING A REAL PROPERTY RELYING ON A CLEAN CERTIFICATE OF TITLE IS AN INNOCENT PURCHASER FOR VALUE.— It is a fundamental principle that "a Torrens certificate of Title is indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction x x x in a direct proceeding for cancellation of title." "The purpose of adopting a Torrens System in our jurisdiction is to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. x x x As a corollary, "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. When a certificate of title is clean and free from any encumbrance, potential purchasers have every right to rely on such certificate. **Individuals who rely on a clean certificate of title in making the decision to purchase the real property are often referred to as "innocent purchasers for value" and 'in good faith.'" Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property[,] the court cannot disregard such rights and order the total cancellation of the certificate.** x x x Notably, the term "innocent purchaser for value" may also refer to an innocent mortgagee who had no knowledge of any defects in the title of the mortgagor of the property, such as in this case.

2. ID.; ID.; PROPERTY REGISTRATION DECREE (PD NO. 1529); REMEDY FOR THOSE UNJUSTLY DEPRIVED OF THEIR RIGHTS OVER REAL PROPERTY BY REASON

OF OUR REGISTRATION LAWS IS ACTION FOR COMPENSATION AGAINST THE ASSURANCE FUND; REQUISITES.— [W]hile "public policy and public order demand x x x that titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy[,] x x x **[p]ublic policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies.**" Thus, as early as the 1925 case of *Estrellado v. Martinez*, it has been discerned that remedies, such as an action against the Assurance Fund, are available remedies to the unwitting owner: x x x The Assurance Fund is a long-standing feature of our property registration system which is intended "**to relieve innocent persons from the harshness of the doctrine that a certificate is conclusive evidence of an indefeasible title to land** x x x." In *Register of Deeds of Negros Occidental v. Anglo, Sr.* (*Anglo, Sr.*), the Court held that "[b]ased solely on Section 95 of Presidential Decree No. 1529 (Property Registration Decree), the following conditions must be met: ***First***, the individual must sustain loss or damage, or the individual is deprived of land or any estate or interest. ***Second***, the individual must not be negligent. ***Third***, the loss, damage, or deprivation is the consequence of either (*a*) **fraudulent registration under the Torrens system after the land's original registration**, or (*b*) any error, omission, mistake, or misdescription in any certificate of title or in any entry or memorandum in the registration book. [*And*] ***[f]ourth***, the individual must be barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein."

3. ID.; ID.; ID.; ID.; ID.; ON LOSS AS A CONSEQUENCE OF FRAUDULENT REGISTRATION UNDER THE TORRENS SYSTEM AFTER THE LAND'S ORIGINAL REGISTRATION; THE LOSS BECOMES COMPENSABLE WHEN THE PROPERTY HAS BEEN FURTHER REGISTERED IN THE NAME OF AN INNOCENT PURCHASER FOR VALUE.— [I]t should be clarified that loss, damage, or deprivation of land or any estate or interest therein through fraudulent registration alone is not a valid ground to recover damages against the Assurance Fund. Section 101 of PD 1529 explicitly provides that "[t]he Assurance Fund shall **not** be liable for any loss, damage or deprivation caused or

occasioned by **a breach of trust, whether express, implied or constructive** or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title." It is hornbook doctrine that "[w]hen a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party." However, as stated in Section 101 of PD 1529, the inability to recover from the defrauding party does not make the Assurance Fund liable therefor. **Instead, the loss, damage or deprivation becomes compensable under the Assurance Fund when the property has been further registered in the name of an innocent purchaser for value.** This is because in this instance, the loss, damage or deprivation are not actually caused by any breach of trust but rather, by the operation of the Torrens system of registration which renders indefeasible the title of the innocent purchaser for value. **To note, it has been held that a mortgagee in good faith (such as Rowena) stands as an innocent mortgagee for value with the rights of an innocent purchaser for value.**

4. ID.; ID.; ID.; ID.; ID.; ID.; IT IS NECESSARY FOR THE PROPERTY TO HAVE TRANSFERRED TO A REGISTERED "INNOCENT" PURCHASER BEFORE RECOVERY FROM THE ASSURANCE FUND MAY PROSPER.— In the 1916 of *Dela Cruz v. Fabie*, the Court discussed that it is necessary for the property to have transferred to a registered innocent purchaser — not to a mere registered purchaser — before recovery from the Assurance Fund may prosper, x x x Later, in the 1936 case of *La Urbana v. Bernardo*, the Court qualified that "it is a condition *sine qua non* that the person who brings an action for damages against the assurance fund be the registered owner, **and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value**." In sum, the Court herein holds that an action against the Assurance Fund on the ground of "fraudulent registration under the Torrens system after the land's original registration" may be brought only after the claimant's property is registered in the name of an innocent purchaser for value. This is because it is only after the registration of the innocent purchaser for value's title (and not the usurper's title which constitutes a breach of trust) can it be said that the claimant effectively "sustains loss or damage, or is deprived of land or any estate or interest therein ***in consequence of the bringing***

of the land under the operation of the Torrens system." The registration of the innocent purchaser for value's title is therefore a condition *sine qua non* in order to properly claim against the Assurance Fund.

5. ID.; ID.; ID.; ID.; TO RECOVER AGAINST THE ASSURANCE FUND, IT IS NECESSARY THAT THE EXECUTION AGAINST DEFENDANTS OTHER THAN THE NATIONAL TREASURER AND THE REGISTER OF DEEDS IS RETURNED UNSATISFIED.— An action for compensation against the Assurance Fund is a separate and distinct remedy, apart from review of decree of registration or reconveyance of title, which can be availed of when there is an unjust deprivation of property. x x x Section 96 of [PD 1529] states against whom the said action may be filed: x x x [Thus,] "if [the] action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission, mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants." The phrase "other person or persons" would clearly include the usurper who fraudulently registered the property under his name. To recover against the Assurance Fund, however, it must appear that the execution against "such defendants other than the National Treasurer and the Register of Deeds" is "returned unsatisfied in whole and in part." "[O]nly then shall the court, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the National Treasurer out of the Assurance Fund."

6. ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD; SIX-YEAR PRESCRIPTIVE PERIOD "FROM THE TIME THE RIGHT TO BRING ACTION FIRST OCCURRED".— [Section 102 of PD 1529] sets a six (6)-year prescriptive period "from the time the right to bring such action first occurred" within which one may proceed to file an action for compensation against the Assurance Fund, x x x Jurisprudence has yet to interpret the meaning of the phrase "*from the time the right to bring such action first occurred*"; hence, the need to clarify the same. x x x **[P]rescription, for purposes of determining the right to bring an action against the Assurance Fund,**

should be reckoned from the moment the innocent purchaser for value registers his or her title *and* upon actual knowledge thereof of the original title holder/claimant. *As discussed, the registration of the innocent purchaser for value's title is a prerequisite for a claim against the Assurance Fund on the ground of fraud to proceed, while actual knowledge of the registration is tantamount to the discovery of the fraud.* [T]his interpretation preserves and actualizes the intent of the law, and provides some form of justice to innocent original title holders.

LEONEN, *J.*, *separate concurring opinion*:

CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE (PD 1529); SECTION 102 ON THE PRESCRIPTIVE PERIOD OF ACTIONS TO CLAIM COMPENSATION FROM THE ASSURANCE FUND.— The present case involves the interpretation of Section 102 of Presidential Decree No. 1529, which provides for the prescriptive period of actions to claim compensation from the assurance fund. The first part of Section 102 of Presidential Decree No. 1529 provides that "[a]ny action for compensation against the assurance fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted *within a period of six years from the time the right to bring such action first occurred*[.]" The right to bring an action for compensation against the assurance fund depends upon compliance with the requisites provided under Chapter VII of Presidential Decree No. 1529. x x x Prescriptive statutes safeguard the diligent and vigilant. They operate primarily against those who have slept on their rights not against those who wanted to act but could not do so for reasons beyond their control. x x x The actual title holder cannot be deprived of his or her rights twice — first, by the fraudulent registration of the title in the name of the forger and second, by the operation of the constructive notice rule upon the registration of the title in the name of the innocent purchaser for value. The innocent purchaser for value is amply protected by the rule that a Torrens certificate of title is indefeasible and binding upon the whole world. An innocent purchase for value, by relying on the correctness of the certificate of title, is shielded from any claims that other persons might have over the property. The constructive notice rule should

not be made to apply to title holders who have been unjustly deprived of their land without their negligence.

CAGUIOA, *J., separate concurring opinion*:

1. **CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE (PD NO. 1529); INNOCENT PURCHASER FOR VALUE (IPV); THE IPV PRINCIPLE AND THE CONSTRUCTIVE NOTICE RULE ARE INTEGRAL FEATURES OF THE TORRENS SYSTEM AND MAY BE APPLIED ONLY WITH RESPECT TO TITLES THAT HAVE BEEN PLACED UNDER ITS SCOPE THROUGH REGISTRATION.—** The IPV principle and constructive notice rule proceed from the indefeasibility of titles issued under the Torrens system. These features are set forth in Sections 32 and 52 of PD 1529: x x x Both features stand to protect the registered title holder from any form of encroachment upon his/her right of ownership. **Such protection, as already explained, only extends to holders of Torrens titles issued in accordance with PD 1529.** Hence, those who claim to possess rights over real property which have not come under the Torrens system by virtue of registration can neither be accorded the status of being IPVs, nor can third persons be deemed to have constructive notice of their rights in the absence of actual registration, filing or entry in the Register of Deeds.

2. **ID.; ID.; ID.; TCT ISSUED IN VIOLATION OF PD 1529 IS NOT ONLY VOID BUT ALSO INEXISTENT.—** During the course of trial before the RTC, it was established that (i) the owner's duplicate copy of Spouses Stilianopoulos' TCT No. 13450 was not presented to the RD for cancellation; and (ii) the issuance of Anduiza's TCT No. 42486 had not been recorded in the PEB. These undisputed findings clearly show that the mandatory requirements for registration of voluntary instruments under Sections 53 and 56 of PD 1529 had not been complied with, x x x **Failure to comply with these requirements averts the registration process, and prevents the underlying transaction from affecting the land subject of the registration**. x x x The irregularities precluded, prevented and averted the completion of the registration process — thus rendering TCT No. 42486, issued only because of the complicity of the RD, as **totally inexistent**. Verily, the issuance of TCT No. 42486

did not have, as it could not have had, the effect of conveying any right in Anduiza's favor, **because no registration had in fact taken place.**

3. **ID.; ID.; ID.; A TITLE ISSUED WITHOUT A SUPPORTING TITLE IN A MODE OF ACQUISITION PRESCRIBED BY LAW DID NOT HAVE THE EFFECT OF CONFERRING OWNERSHIP.—** PD 1529 governs registration of title under the Torrens system. Registration under the Torrens system presupposes that ownership over the real property subject of the application had already been acquired through any of the modes of acquisition prescribed by law, as registration merely serves as the process through which existing ownership is confirmed. In turn, ownership over real property is acquired and transmitted by the concurrence of a title and a mode of acquisition. Mode "is the specific cause which produces dominion and other real rights as a result of the co-existence of special status of things, capacity, x x x intention of person and [the] fulfillment of the requisites of law." On the other hand, title is "the juridical right which gives a means to acquisition of [such] rights." x x x Article 712 of the Civil Code provides the modes of acquiring and transmitting ownership and other real rights over property: x x x In order that ownership may be transmitted by one person to another, the thing to be transmitted "must form part of his patrimony." As a corollary, *actual* ownership should neither be confused nor deemed synonymous with the existence of a Torrens title in one's name. A Torrens title merely serves as *evidence* of ownership or title over the particular property described therein. **Consequently, registration neither operates to confirm nor convey ownership over land which does not in fact exist.**

APPEARANCES OF COUNSEL

Aytona Law Office for petitioners.
The Solicitor General for public respondents.

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 March 16, 2016 and the Resolution[3] dated May 19, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 104207, which partially reversed and set aside the Decision[4] dated August 19, 2013 and the Order[5] dated April 30, 2014 of the Regional Trial Court of Legazpi City, Albay, Branch 2 (RTC) in Civil Case No. 10805, and accordingly, held that the claim of petitioners Spouses Jose Manuel (Jose Manuel) and Maria Esperanza Ridruejo Stilianopoulos (collectively; petitioners) against the Assurance Fund is already barred by prescription.

The Facts

This case stemmed from a Complaint[6] for Declaration of Nullity of Transfer Certificate of Title (TCT) No. 42486, Annulment of TCT No. 52392 and TCT No. 59654, and Recovery of Possession of Lot No. 1320 with Damages (subject complaint) filed by petitioners against respondents The Register of Deeds for Legazpi City (RD-Legazpi) and The National Treasurer (National Treasurer), as well as Jose Fernando Anduiza (Anduiza), Spouses Rowena Hua-Amurao (Rowena) and Edwin Amurao (collectively; Spouses Amurao), and Joseph Funtanares Co, *et al.* (the Co Group) before the RTC.

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[1] *Rollo*, pp. 16-31.

[2] *Id*. at 36-52. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

[3] *Id*. at 54-55.

[4] *Id*. at 151-166. Penned by Judge Ignacio N. Almodovar, Jr.

[5] *Id*. at 176-178.

[6] Dated February 24, 2009. *Id*. at 134-148.

Petitioners alleged that they own a 6,425-square meter property known as Lot No. 1320, as evidenced by TCT No. 13450[7] in the name of Jose Manuel, who is a resident of Spain and without any administrator of said property in the Philippines.[8] On October 9, 1995, Anduiza caused the cancellation of TCT No. 13450 and issuance of TCT No. 42486[9] in his name.[10]

Thereafter, Anduiza mortgaged Lot No. 1320 to Rowena.[11] As a result of Anduiza's default, Rowena foreclosed the mortgage, and consequently, caused the cancellation of TCT No. 42486 and issuance of TCT No. 52392[12] in her name on July 19, 2001.[13] On April 15, 2008, Rowena then sold Lot No. 1320 to the Co Group, resulting in the cancellation of TCT No. 52392 and issuance of TCT No. 59654[14] in the latter's name.[15]

According to petitioners, their discovery of the aforesaid transactions only on January 28, 2008 prompted them to file a complaint for recovery of title on May 2, 2008.[16] However, such complaint was dismissed for petitioners' failure to allege the assessed value of Lot No. 1320. Thus, they filed the subject complaint on March 18, 2009, praying that: (*a*) TCT Nos. 42486, 52392, and 59654 in the respective names of Anduiza, Rowena, and the Co Group be annulled; (*b*) all defendants be held solidarily liable to pay petitioners damages and attorney's fees; and (*c*) the RD-Legazpi and the National Treasurer, through the

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[7] *Id*. at 107-108.

[8] See *id*. at 136.

[9] *Id*. at 110-111.

[10] See *id*. at 138.

[11] See Deed of Real Estate Mortgage dated January 8, 1998; *id*. at 112-113. See also *id*. at 140-141.

[12] *Id*. at 120-121.

[13] See *id*. at 142.

[14] *Id*. at 124.

[15] See *id*. at 38.

[16] See *id*. at 19.

Assurance Fund, be ordered to pay petitioners' claims should the defendants be unable to pay the same in whole or in part.[17] In support of their complaint, petitioners claimed that they were deprived of the possession and ownership of Lot No. 1320 without negligence on their part and through fraud, and in consequence of errors, omissions, mistakes, or misfeasance of officials and employees of RD-Legazpi.[18]

In their defense, Spouses Amurao and the Co Group both maintained that they purchased Lot No. 1320 in good faith and for value, and that petitioners' cause of action has already prescribed, considering that they only had ten (10) years from the issuance of TCT No. 42486 in the name of Anduiza on October 9, 1995 within which to file a complaint for recovery of possession.[19] For their part,[20] the RD-Legazpi and the National Treasurer also invoked the defense of prescription, arguing that the right to bring an action against the Assurance Fund must be brought within six (6) years from the time the cause of action occurred, or in this case, on October 9, 1995 when Anduiza caused the cancellation of petitioners' TCT over Lot No. 1320.[21] Notably, Anduiza did not file any responsive pleading despite due notice.[22]

The RTC Ruling

In a Decision[23] dated August 19, 2013 the RTC: (*a*) dismissed the case against Spouses Amurao and the Co Group as they were shown to be purchasers in good faith and for value; and (*b*) found Anduiza guilty of fraud in causing the cancellation of petitioners' TCT over Lot No. 1320, and thus, ordered him

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[17] See *id*. at 146-147. See also *id*. at 40.

[18] *Id*. at 145.

[19] See *id*. at 40.

[20] See Comment dated June 19, 2017; *id*. at 77-101.

[21] See *id*. at 35. See also *id*. at 41.

[22] *Id*. at 153.

[23] *Id*. at 151-166.

to pay petitioners the amount of ₱5,782,500.00 representing the market value of Lot No. 1320, as well as ₱10,000.00 as exemplary damages; and (*c*) held the National Treasurer, as custodian of the Assurance Fund, subsidiarily liable to Anduiza's monetary liability should the latter be unable to fully pay the same.[24]

Prefatorily, the RTC characterized the subject complaint filed on March 18, 2009 as one for reconveyance based on an implied trust, which is subject to extinctive prescription of ten (10) years ordinarily counted from the time of the repudiation of the trust, *i.e.*, when Anduiza registered TCT No. 42486 in his name on October 9, 1995. This notwithstanding, the RTC found that since: (*a*) petitioners are residing in Spain; (*b*) they are in possession of the owner's duplicate copy of TCT No. 13450 registered in their names; and (*c*) Anduiza's act of fraudulently cancelling their title was unknown to — if not effectively concealed from — them, the ten (10)-year prescriptive period should be reckoned from their actual discovery of the fraud in 2008.[25] As such, petitioners' complaint for reconveyance – as well as their claim against the Assurance Fund which has a six (6)-year prescriptive period — has not prescribed.[26]

Anent the merits of the case, the RTC found that Anduiza had indeed acquired title over Lot No. 1320 in bad faith and through fraud – a fact which is further highlighted by his failure to refute petitioner's allegations against him on account of his omission to file a responsive pleading despite due notice.[27] This notwithstanding, the RTC held that petitioners could no longer recover Lot No. 1320 from Spouses Amurao and/or the Co Group as the latter are innocent purchasers for value and in good faith, absent any evidence to the contrary. As such, it is only proper that Anduiza be made to pay compensatory damages corresponding

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[24] See *id*. at 163 and 165-166.

[25] See *id*. at 163-165.

[26] See *id*. at 165.

[27] See *id*. at 163.

to the value of the loss of property, as well as exemplary damages as stated above.[28]

Finally, the RTC found that Anduiza alone could not have perpetrated the fraud without the active participation of the RD-Legazpi. It then proceeded to point out that the evidence on record clearly established the irregularities in the cancellation of petitioners' title and the issuance of Anduiza's title, all of which cannot be done successfully without the complicity of the RD-Legazpi. Hence, the Assurance Fund may be held answerable for the monetary awards in favor of petitioners, should Anduiza be unable to pay the same in whole or in part.[29]

Aggrieved, petitioners moved for reconsideration,[30] while the RD-Legazpi and the National Treasurer moved for a partial reconsideration;[31] both of which were denied in an Order[32] dated April 30, 2014. Thus, they filed their respective notices of appeal.[33] However, in an Order[34] dated June 11, 2014, petitioners' notice of appeal was denied due course due to their failure to pay the appellate docket and other lawful fees.[35] Consequently, the Co Group moved for a partial entry of judgment,[36] which the RTC granted in an Order[37] dated July 22, 2014. As such,

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[28] See *id*. at 165.

[29] See *id*. at 163.

[30] Petitioners' motion for reconsideration is not attached to the *rollo*.

[31] See Motion for Partial Reconsideration dated September 9, 2013; *rollo*, pp. 167-174.

[32] *Id*. at 176-178.

[33] See Notices of Appeal filed by petitioners dated May 26, 2014 (*id*. at 179-180) and by the Office of the Solicitor General in behalf of the RD-Legazpi and the National Treasurer dated June 3, 2014 (*id*. at 181-182).

[34] *Id*. at 183.

[35] See *id*.

[36] See Motion for Partial Entry of Judgment dated July 1, 2014; *id*. at 184-188.

[37] *Id*. at 191-193.

only the appeal of the RD-Legazpi and the National Treasurer questioning the subsidiary liability of the Assurance Fund was elevated to the CA.[38]

The CA Ruling

In a Decision[39] dated March 16, 2016, the CA reversed and set aside the RTC's ruling insofar as the National Treasurer's subsidiary liability was concerned.[40] It held that petitioners only had six (6) years from the time Anduiza caused the cancellation of TCT No. 13450 on October 9, 1995, or until October 9, 2001, within which to claim compensation from the Assurance Fund. Since petitioners only filed their claim on March 18, 2009, their claim against the Assurance Fund is already barred by prescription.[41]

Dissatisfied, petitioners moved for reconsideration,[42] which was, however, denied in a Resolution[43] dated May 19, 2016; hence, this petition.[44]

The Issue Before the Court

The essential issue for resolution is whether or not the CA correctly held that petitioners' claim against the Assurance Fund has already been barred by prescription.

The Court's Ruling

The petition is granted.

I. Nature and Purpose of the Assurance Fund

It is a fundamental principle that "a Torrens certificate of Title is indefeasible and binding upon the whole world unless

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[38] See *id*. at 37.

[39] *Id*. at 36-52.

[40] See *id*. at 51.

[41] See *id*. at 49.

[42] See Motion for Reconsideration dated April 4, 2016; *id*. at 256-266.

[43] *Id*. at 54-55.

[44] *Id*. at 16-31.

it is nullified by a court of competent jurisdiction x x x in a direct proceeding for cancellation of title."[45] "The purpose of adopting a Torrens System in our jurisdiction is to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. This is to avoid any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property."[46]

As a corollary, "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. When a certificate of title is clean and free from any encumbrance, potential purchasers have every right to rely on such certificate. **Individuals who rely on a clean certificate of title in making the decision to purchase the real property are often referred to as 'innocent purchasers for value' and 'in good faith.'"**[47] **"Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property[,] the court cannot disregard such rights and order the total cancellation of the certificate**. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued."[48]

The rationale for the rule on innocent purchasers for value "is the public's interest in sustaining 'the indefeasibility of a certificate of title, as evidence of the lawful ownership of the

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[45] *Co v. Militar*, 466 Phil. 217, 224 (2004).

[46] See *Casimiro Development Corporation v. Mateo*, 670 Phil. 311, 323 (2011), as cited in *Cagatao v. Almonte*, 719 Phil. 214, 253 (2013).

[47] *Register of Deeds of Negros Occidental v. Anglo, Sr.*, 765 Phil. 714, 731 (2015); citations omitted.

[48] See *Spouses Aboitiz v. Spouses Po*, G.R. Nos. 208450 & 208497, June 5, 2017.

land or of any encumbrance' on it."[49] Notably, the term "innocent purchaser for value" may also refer to an innocent mortgagee who had no knowledge of any defects in the title of the mortgagor of the property, such as in this case.

However, while "public policy and public order demand x x x that titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy[,] x x x **[p]ublic policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies**."[50] Thus, as early as the 1925 case of *Estrellado v. Martinez*,[51] it has been discerned that remedies, such as an action against the Assurance Fund, are available remedies to the unwitting owner:

> The authors of the Torrens system x x x wisely included provisions intended to safeguard the rights of prejudiced parties rightfully entitled to an interest in land but shut off from obtaining titles thereto [because of the indefeasibility of a Torrens title]. **[Therefore,] [a]s suppletory to the registration of titles, pecuniary compensation by way of damages was provided for in certain cases for persons who had lost their property. For this purpose, an assurance fund was created.** x x x[52] (Emphasis and underscoring supplied)

The Assurance Fund is a long-standing feature of our property registration system which is intended "**to relieve innocent persons from the harshness of the doctrine that a certificate is conclusive evidence of an indefeasible title to land** x x x."[53] Originally, claims against the Assurance Fund were governed by Section 101[54] of

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[49] See *id*.

[50] *People v. Cainglet*, 123 Phil. 568, 573 (1966).

[51] 48 Phil. 256 (1925).

[52] *Id*. at 263.

[53] See *id*. at 264.

[54] Section 101 of Act No. 496 reads:

> Section 101. Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk,

Act No. 496, otherwise known as the "Land Registration Act." The language of this provision was substantially carried over to our present "Property Registration Decree," *i.e.*, Presidential Decree No. (PD) 1529,[55] Section 95 of which reads:

> Section 95. *Action for compensation from funds.* — A person who, without negligence on his part, sustains **loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system** or arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.

In *Register of Deeds of Negros Occidental v. Anglo, Sr.*[56] (*Anglo, Sr.*), the Court held that "[b]ased solely on Section 95 of Presidential Decree No. 1529, the following conditions must be met: ***First***, the individual must sustain loss or damage, or the individual is deprived of land or any estate or interest. ***Second***, the individual must not be negligent. ***Third***, the loss, damage,

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or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in any entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago for the recovery of damages to be paid out of the assurance fund.

[55] Entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," approved on June 11, 1978.

[56] *Supra* note 47.

or deprivation is the consequence of either (*a*) **fraudulent registration under the Torrens system after the land's original registration**, or (*b*) any error, omission, mistake, or misdescription in any certificate of title or in any entry or memorandum in the registration book. *[And]* ***[f]ourth,*** the individual must be barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein."[57]

Anent the first ground (*i.e.*, item [a] of the third condition above), it should be clarified that loss, damage, or deprivation of land or any estate or interest therein through fraudulent registration alone is not a valid ground to recover damages against the Assurance Fund. Section 101 of PD 1529 explicitly provides that "[t]he Assurance Fund shall **not** be liable for any loss, damage or deprivation caused or occasioned by **a breach of trust, whether express, implied or constructive** or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title." It is hornbook doctrine that "[w]hen a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party."[58] However, as stated in Section 101 of PD 1529, the inability to recover from the defrauding party does not make the Assurance Fund liable therefor.

Instead, the loss, damage or deprivation becomes compensable under the Assurance Fund when the property has been further registered in the name of an innocent purchaser for value. This is because in this instance, the loss, damage or deprivation are not actually caused by any breach of trust but rather, by the operation of the Torrens system of registration which renders indefeasible the title of the innocent

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[57] See *id*. at 736.

[58] See *Spouses Aboitiz v. Spouses Po, supra* note 48. See also Article 1456 of the Civil Code, which provides:

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

purchaser for value. **To note, it has been held that a mortgagee in good faith (such as Rowena) stands as an innocent mortgagee for value with the rights of an innocent purchaser for value.**[59]

In the 1916 case of *Dela Cruz v. Fabie*,[60] the Court discussed that it is necessary for the property to have transferred to a registered innocent purchaser — not to a mere registered purchaser — before recovery from the Assurance Fund may prosper, *viz.*:

> The Attorney-General did not err when he wrote in his brief in the preceding case: "To hold that the principal may recover damages from the assurance fund on account of such a fraudulent act as that charged to Vedasto Velazquez in this case would be equivalent to throwing open the door to fraud, to the great advantage of the registered landowner and his agent and to the ruin and rapid disappearance of the assurance fund, and the general funds of the Insular Treasury would become liable for the claims for indemnity in cases where none such was due. This course would in time wreck the Insular Treasury and enrich designing scoundrels." (Brief, p. 16.)
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> x x x x x x x x x
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> The simple allegation contained in the complaint that Fabie is a *registered purchaser* is not the same as that of his being a registered innocent purchaser. The fact of the sale and the fact of the registration are not sufficient to allow the understanding that it was also admitted in the demurrer that he was an *innocent* purchaser.
>
> There is no law or doctrine that authorizes such an interpretation. The plaintiff must set forth in his complaint all the facts that necessarily conduce toward the result sought by his action. The action was for the purpose of recovering from the assurance fund indemnity for the damage suffered by the plaintiff in losing the ownership of his land as a result of the registration obtained by an innocent holder for value (purchase). **It is a necessary requirement of the law that the registered property shall have been conveyed to an innocent holder for value who shall also have registered his acquisition.**

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[59] See *Metropolitan Bank and Trust Company v. Tan*, 226 Phil. 264, 274 (1986).

[60] 35 Phil. 144 (1916).

Necessarily the complaint must show these facts as they are required by the law. x x x[61] (Emphasis and underscoring supplied)

Later, in the 1936 case of *La Urbana v. Bernardo*,[62] the Court qualified that "it is a condition *sine qua non* that the person who brings an action for damages against the assurance fund be the registered owner, **and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value**."[63]

In sum, the Court herein holds that an action against the Assurance Fund on the ground of "fraudulent registration under the Torrens system after the land's original registration" may be brought only after the claimant's property is registered in the name of an innocent purchaser for value. This is because it is only after the registration of the innocent purchaser for value's title (and not the usurper's title which constitutes a breach of trust) can it be said that the claimant effectively "sustains loss or damage, or is deprived of land or any estate or interest therein ***in consequence of the bringing of the land under the operation of the Torrens system***." The registration of the innocent purchaser for value's title is therefore a condition *sine qua non* in order to properly claim against the Assurance Fund.

II. Action for Compensation Against the Assurance Fund; Prescriptive Period

An action for compensation against the Assurance Fund is a separate and distinct remedy, apart from review of decree of registration or reconveyance of title, which can be availed of when there is an unjust deprivation of property.[64] This is evident from the various provisions of Chapter VII of PD 1529 which provide for specific parameters that govern the action.

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[61] *Id*. at 154 and 161.

[62] 62 Phil. 790 (1936).

[63] *Id*. at 803; emphasis and underscoring supplied.

[64] See Noblejas, A. and Noblejas, E., *Registration of Land Titles and Deeds*, 2007 Revised Edition, pp. 260-261. See also *Heirs of Roxas v. Garcia*, 479 Phil. 918, 928-929 (2004).

Among others, Section 95 of PD 1529 cited above states the conditions to claim against the Assurance Fund. Meanwhile, Section 96 of the same law states against whom the said action may be filed:

> Section 96. *Against whom action filed.*— If such action is brought to recover for loss or damage or for deprivation of land or of any estate or interest therein arising wholly through fraud, negligence, omission, mistake or misfeasance of the court personnel, Register of Deeds, his deputy, or other employees of the Registry in the performance of their respective duties, the action shall be brought against the Register of Deeds of the province or city where the land is situated and the National Treasurer as defendants. **But if such action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission, mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants**. It shall be the duty of the Solicitor General in person or by representative to appear and to defend all such suits with the aid of the fiscal of the province or city where the land lies: Provided, however, that nothing in this Decree shall be construed to deprive the plaintiff of any right of action which he may have against any person for such loss or damage or deprivation without joining the National Treasurer as party defendant. **In every action filed against the Assurance Fund, the court shall consider the report of the Commissioner of Land Registration.** (Emphases and underscoring supplied)

As Section 96 of PD 1529 provides, "if [the] action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission, mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants." The phrase "other person or persons" would clearly include the usurper who fraudulently registered the property under his name.

To recover against the Assurance Fund, however, it must appear that the execution against "such defendants other than the National Treasurer and the Register of Deeds" is "returned unsatisfied in whole and in part." "[O]nly then shall the court, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the National Treasurer out of the Assurance Fund." Section 97 of PD 1529 states:

> Section 97. *Judgment, how satisfied*. — If there are defendants other than the National Treasurer and the Register of Deeds and judgment is entered for the plaintiff and against the National Treasury, the Register of Deeds and any of the other defendants, **execution shall first issue against such defendants other than the National Treasurer and the Register of Deeds**. **If the execution is returned unsatisfied in whole or in part, and the officer returning the same certificates that the amount due cannot be collected from the land or personal property of such other defendants, only then shall the court, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the National Treasurer out of the Assurance Fund**. In an action under this Decree, the plaintiff cannot recover as compensation more than the fair market value of the land at the time he suffered the loss, damage, or deprivation thereof. (Emphasis supplied)

Based on the afore-cited provision, it is apparent that a prior declaration of insolvency or inability to recover from the usurper is *not* actually required before the claimant may file an action against the Assurance Fund. Whether or not funds are to be paid out of the Assurance Fund is a matter to be determined and resolved at the execution stage of the proceedings. Clearly, this should be the proper treatment of the insolvency requirement, contrary to the insinuation made in previous cases on the subject.[65]

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[65] In *Tenio-Obsequio v. CA* (*Tenio-Obsequio*) (G.R. No. 107697, March 1, 1994, 230 SCRA 550), it was stated that "[t]he remedy of the person prejudiced is to bring an action for damages against those who caused or employed the fraud, and **if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund**." (*Id*. at 560-561; citation omitted) The highlighted phrase suggests that it is only when the person who caused or employed the fraud is insolvent may an action to recover against the Assurance Fund lie.

Another important provision in Chapter VII of PD 1529 is Section 102, which incidentally stands at the center of the present controversy. This provision sets a six (6)-year prescriptive period "from the time the right to bring such action first occurred" within which one may proceed to file an action for compensation against the Assurance Fund, *viz.*:

> Section 102. *Limitation of Action.* — Any action for compensation against the Assurance Fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted **within a period of six years from the time the right to bring such action first occurred**: Provided, That the right of action herein provided shall survive to the legal representative of the person sustaining loss or damage, unless barred in his lifetime; and Provided, further, That if at the time such right of action first accrued the person entitled to bring such action was a minor or insane or imprisoned, or otherwise under legal disability, such person or anyone claiming from, by or under him may bring the proper action at any time within two years after such disability has been removed, notwithstanding the expiration of the original period of six years first above provided. (Emphasis supplied)

Jurisprudence has yet to interpret the meaning of the phrase "*from the time the right to bring such action first occurred*"; hence, the need to clarify the same.

The general rule is that "a right of action accrues only from the moment the right to commence the action comes into existence, and prescription begins to run from that time x x x."[66] However, in cases involving fraud, the common acceptation is that the period of prescription runs from the discovery of the fraud. Under the old Code of Civil Procedure, an action for relief on the ground of fraud prescribes in four years, "but the right of action in such case shall not be deemed to have accrued *until the discovery of the fraud*."[67] Meanwhile, under prevailing

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See also *Heirs of Roxas v. Garcia* (*id*. at 928-929), *Philippine National Bank v. CA* (265 Phil. 703 [1990]), and *Blanco v. Esquierdo* (110 Phil. 494 [1960]) which had similar pronouncements with that in *Tenio-Obsequio*.

[66] *Fernandez v. P. Cuerva & Co.*, 129 Phil. 332, 337 (1967).

[67] *Rone v. Claro*, 91 Phil. 250, 252 (1952).

case law, "[w]hen an action for reconveyance is based on fraud, it must be filed within four (4) years *from discovery of the fraud*, and such discovery is deemed to have taken place from the issuance of the original certificate of title. x x x The rule is that the registration of an instrument in the Office of the RD constitutes constructive notice to the whole world and therefore the discovery of the fraud is deemed to have taken place at the time of registration."[68]

However, in actions for compensation against the Assurance Fund grounded on fraud, registration of the innocent purchaser for value's title should only be considered as a condition *sine qua non* to file such an action and not as a form of constructive notice for the purpose of reckoning prescription. This is because the concept of registration *as a form of constructive notice* is essentially premised on the policy of protecting the innocent purchaser for value's title, which consideration does not, however, obtain in Assurance Fund cases. As earlier intimated, an action against the Assurance Fund operates as form of relief in favor of the original property owner who had been deprived of his land by virtue of the operation of the Torrens registration system. It does not, in any way, affect the rights of the innocent purchaser for value who had apparently obtained the property from a usurper but nonetheless, stands secure because of the indefeasibility of his Torrens certificate of title. The underlying rationale for the constructive notice rule — given that it is meant to protect the interest of the innocent purchaser for value and not the original title holder/claimant — is therefore absent in Assurance Fund cases. Accordingly, it should not be applied, especially since its application with respect to reckoning prescription would actually defeat the Assurance Fund's laudable purpose.

The Assurance Fund was meant as a form of State insurance that allows recompense to an original title holder who, without any negligence on his part whatsoever, had been apparently deprived of his land initially by a usurper. The ordinary remedies

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[68] *D.B.T. Mar Bay Construction, Inc. v. Panes*, 612 Phil. 93, 109 (2009).

against the usurper would have allowed the original title holder to recover his property. However, if the usurper is able to transfer the same to an innocent purchaser for value and he is unable to compensate the original title holder for the loss, then the latter is now left without proper recourse. As exemplified by this case, original title holders are, more often than not, innocently unaware of the unscrupulous machinations of usurpers and later on, the registration of an innocent purchaser for value's title. If the constructive notice rule on registration were to apply in cases involving claims against the Assurance Fund, then original title holders — who remain in possession of their own duplicate certificates of title, as petitioners in this case — are in danger of losing their final bastion of recompense on the ground of prescription, despite the lack of any negligence or fault on their part. Truly, our lawmakers would not have intended such an unfair situation. As repeatedly stated, the intent of the Assurance Fund is to indemnify the innocent original title holder for his property loss, which loss is attributable to not only the acts of a usurper but ultimately the operation of the Torrens System of registration which, by reasons of public policy, tilts the scales in favor of innocent purchasers for value.

Thus, as aptly pointed out by Associate Justice Marvic M.V.F. Leonen during the deliberations on this case, the constructive notice rule on registration should not be made to apply to title holders who have been unjustly deprived of their land without their negligence. The actual title holder cannot be deprived of his or her rights twice — first, by fraudulent registration of the title in the name of the usurper and second, by operation of the constructive notice rule upon registration of the title in the name of the innocent purchaser for value. **As such, prescription, for purposes of determining the right to bring an action against the Assurance Fund, should be reckoned from the moment the innocent purchaser for value registers his or her title *and* upon actual knowledge thereof of the original title holder/claimant**. *As above-discussed, the registration of the innocent purchaser for value's title is a prerequisite for a claim against the Assurance Fund on the ground of fraud to proceed, while actual knowledge of the registration is tantamount*

to the discovery of the fraud. More significantly, this interpretation preserves and actualizes the intent of the law, and provides some form of justice to innocent original title holders. In *Alonzo v. Intermediate Appellate Court*,[69] this Court exhorted that:

> [I]n seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.
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> Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. x x x[70]

In this case, it has been established that petitioners are residents of Spain and designated no administrator over their property, *i.e.*, Lot No. 1320, in the Philippines. They remain in possession of the owner's duplicate copy of TCT No. 13450 in their names,[71] the surrender of which was necessary in order to effect a valid transfer of title to another person through a voluntary instrument.[72]

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[69] 234 Phil. 267, 272-273 (1987).

[70] *Id.* at 272.

[71] See *rollo*, p. 136.

[72] Section 53 of PD 1529 states:

> Section 53. *Presentation of owner's duplicate upon entry of new certificate.*— **No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.**
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> The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.
>
> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without

As the records show, not only did Anduiza, the usurper, forge a deed of sale purportedly transferring petitioners' property in his favor,[73] they were also not required by the RD-Legazpi or through a court order to surrender possession of their owner's duplicate certificate of title for the proper entry of a new certificate of title[74] in Anduiza's favor. Neither was the issuance of TCT No. 42486 in the name of Anduiza recorded/registered in the Primary Entry Book, nor was a copy of the deed of sale in his favor kept on file with the RD-Legazpi.[75] Consequently, petitioners were not in any way negligent as they, in fact, had the right to rely on their owner's duplicate certificate of title and the concomitant protection afforded thereto by the Torrens system, unless a better right, *i.e.*, in favor of an innocent purchaser for value, intervenes.[76] As it turned out, Anduiza mortgaged Lot No. 1320 to Spouses Amurao, particularly Rowena. As a

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prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void. (Emphasis supplied).

[73] See *rollo*, p. 39.

[74] Section 107 of PD 1529 states:

Section 107. *Surrender of withheld duplicate certificates.*– **Where it is necessary to issue a new certificate of title** pursuant to any involuntary instrument which divests the title of the registered owner against his consent or **where voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds.** The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[75] See Certification dated January 28, 2008 issued by the RD-Legazpi; *rollo*, p. 106.

[76] See the last paragraph of Section 53 of PD 1529.

result of Anduiza's default, Rowena foreclosed the mortgage, and consequently, caused the cancellation of TCT No. 42486 and issuance of TCT No. 52392 in her name on July 19, 2001.[77] Spouses Amurao and later, the Co group, in whose favor the subject lot was sold — by virtue of the final judgment of the RTC — were conclusively deemed as innocent purchasers for value. Their status as such had therefore been settled and hence, cannot be revisited, lest this Court deviate from the long-standing principle of immutability of judgments, which states:

> A definitive final judgment, however erroneous, is no longer subject to change or revision.
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> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.[78]

In this regard, the RTC held that the Assurance Fund would be subsidiarily liable to petitioners, should the judgment debt be left unsatisfied from the land or personal property of Anduiza. If the constructive notice rule were to be applied, then petitioners' claim against the Assurance Fund filed on March 18, 2009 would be barred, considering the lapse of more than six (6) years from the registration of Spouses Amurao's title over the subject lot

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[77] See *rollo*, p. 142.

[78] *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 366-367 (2008).

on July 19, 2001. However, as earlier explained, the constructive notice rule holds no application insofar as reckoning the prescriptive period for Assurance Fund cases. Instead, the six (6)-year prescriptive period under Section 102 of PD 1529 should be counted from **January 28, 2008**, or the date when petitioners discovered the anomalous transactions over their property, which included the registration of Rowena's title over the same. Thus, when they filed their complaint on **March 18, 2009**, petitioners' claim against the Assurance Fund has not yet prescribed. Accordingly, the CA erred in ruling otherwise.

To recount, the CA held that prescription under Section 102 of PD 1529 runs from the time of the registration of the title in favor of the person who caused the fraud, *i.e.*, the usurper.[79] As basis, the CA relied on the case of *Guaranteed Homes, Inc. v. Heirs of Valdez* (*Guaranteed Homes, Inc.*),[80] wherein the Court made the following statement:

> Lastly, respondents' claim against the Assurance Fund also cannot prosper. Section 101 of P.D. No. 1529 clearly provides that the Assurance Fund shall not be liable for any loss, damage or deprivation of any right or interest in land which may have been caused by a breach of trust, whether express, implied or constructive. **Even assuming *arguendo* that they are entitled to claim against the Assurance Fund, the respondents' claim has already prescribed since any action for compensation against the Assurance Fund must be brought within a period of six (6) years from the time the right to bring such action first occurred, which in this case was in 1967.**[81] (Emphasis supplied)

After a careful perusal of the *Guaranteed Homes, Inc.* case in its entirety, the Court herein discerns that the foregoing pronouncement on prescription was mere *obiter dicta*, and hence, non-binding.[82] Actually, the issue for resolution in that case

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[79] See *rollo*, pp. 47-48.

[80] 597 Phil. 437 (2009).

[81] *Id*. at 451.

[82] "An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination

revolved only around petitioner Guaranteed Homes, Inc.'s motion to dismiss Pablo Pascua's (respondent's predecessor) complaint for reconveyance on the ground of failure to state a cause of action. Ultimately, the Court held that respondent's complaint failed to state a cause of action for the reasons that: (*a*) the complaint does not allege any defect in the TCT assailed therein; (*b*) the transfer document relied upon by Guaranteed Homes, Inc. (*i.e.*, the Extrajudicial Settlement of a Sole Heir and Confirmation of Sales) was registered and had an operative effect; and (*c*) respondent cannot make a case for quieting of title since their title was cancelled, but added, *as an aside*, that the claim against the Assurance Fund would be improper "since the Assurance Fund shall not be liable for any loss, damage or deprivation of any right or interest in land which may have been caused by a breach of trust, whether express, implied or constructive", and moreover, "[e]ven assuming *arguendo* that they are entitled to claim against the Assurance Fund, the respondents' claim has already prescribed."[83] Thus, as it was not a pronouncement that was made in relation to the actual issues involved, the quoted excerpt by the CA from *Guaranteed Homes, Inc.* is not binding jurisprudence and hence, would not necessarily apply to this case.

In any event, the reckoning of the six (6)-year period from the time a certificate of title was issued in favor of the usurper is incorrect doctrine.[84] At the risk of belaboring the point, the

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of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*." (*Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 913-914 [2011]; citations omitted.)

[83] *Guaranteed Homes, Inc. v. Heirs of Valdez*, *supra* note 80, at 446-451.

[84] See also *Sesuya v. Lacopia* (54 Phil. 534 [1930]) and *Heirs of Enriquez v. Enriquez* (44 Phil. 885 [1922]) where a similar reckoning point of the six (6)-year prescriptive period as that in *Guaranteed Homes, Inc.* had been apparently applied by the Court.

registration of the property in the name of an innocent purchaser for value is integral in every action against the Assurance Fund on the ground of "fraudulent registration under the Torrens system after the land's original registration." This is because it is only at that moment when the claimant suffers loss, damage or deprivation of land caused by the operation of the Torrens system of registration, for which the State may be made accountable. To follow the CA's ruling based on the *obiter dictum* in *Guaranteed Homes, Inc.* is to recognize that the right of action against the Assurance Fund arises already at the point when the usurper fraudulently registers his title. By legal attribution, this latter act is a breach of an implied trust, which, however, by express provision of Section 101 of PD 1529, does not render the Assurance Fund liable. Thus, the CA committed reversible error in ruling that the prescriptive period under Section 102 of PD1529 for filing a claim against the Assurance Fund should be reckoned from the registration of the usurper's title. On the contrary, the period should be reckoned from the moment the innocent purchaser for value registers his or her title *and* upon actual knowledge thereof of the original title holder/ claimant. In this light, the claim has yet to prescribe.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 16, 2016 and the Resolution dated May 19, 2016 of the Court of Appeals in CA-G.R. CV No. 104207 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 19, 2013 and the Order dated April 30, 2014 of the Regional Trial Court of Legazpi City, Albay, Branch 2 (RTC), are hereby **REINSTATED** *in toto*. Accordingly, the RTC is hereby **DIRECTED** to conduct execution proceedings with reasonable dispatch.

SO ORDERED.

Carpio, *Velasco, Jr., Bersamin, del Castillo, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Leonardo-de Castro, J., joins the separate concurring opinion of *J.* Caguioa.

Leonen and *Caguioa, JJ.,* see separate concurring opinions.

Peralta and *Jardeleza, JJ.,* no part.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur.

The present case involves the interpretation of Section 102 of Presidential Decree No. 1529, which provides for the prescriptive period of actions to claim compensation from the assurance fund.

The first part of Section 102 of Presidential Decree No. 1529 provides that "[a]ny action for compensation against the assurance fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted *within a period of six years from the time the right to bring such action first occurred*[.]"

The right to bring an action for compensation against the assurance fund depends upon compliance with the requisites provided under Chapter VII of Presidential Decree No. 1529.

First, the claimant must have sustained "loss or damage, or is deprived of land or any estate or interest therein."[1]

Second, the loss, damage, or deprivation must be caused by either the fraudulent registration of the land after its original registration, or an "error, omission, mistake, or misdescription in any certificate of title or in any entry or memorandum in the registration book."[2] Furthermore, the loss, damage, or deprivation

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[1] Pres. Decree No. 1529, Sec. 95 provides:

Section 95. *Action for Compensation from Funds*. — A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages

[2] Pres. Decree No. 1529, Sec. 95.

must not be caused by breach of trust or by mistakes in the resurvey or subdivision of registered land.[3]

Third, the claimant must not have been negligent. Otherwise, his or her claim shall be barred.[4]

Fourth, the claimant must be barred by or is precluded by law from bringing an action to recover the land or estate.[5]

Fifth, the claim must be brought "within a period of six years from the time the right to bring such action first occurred."[6]

I concur that the loss, damage, or deprivation becomes compensable once the property has been registered in the name of an innocent purchaser for value. Section 101 of Presidential Decree No. 1529 expressly excludes from the coverage of the assurance fund claims for loss, damage, or deprivation caused by breach of trust or mistakes in the resurvey or subdivision of registered land.

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[3] Pres. Decree No. 1529, Sec. 101 provides:

Section 101. *Losses Not Recoverable*. — The Assurance Fund shall not be liable for any loss, damage or deprivation caused or occasioned by a breach of trust, whether express, implied or constructive or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title.

[4] Pres. Decree No. 1529, Sec. 95.

[5] Pres. Decree No. 1529, Sec. 95.

[6] Pres. Decree No. 1529, Sec. 102 provides:

Section 102. *Limitation of Action*. — Any action for compensation against the Assurance Fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted within a period of six years from the time the right to bring such action first occurred: *Provided*, That the right of action herein provided shall survive to the legal representative of the person sustaining loss or damage, unless barred in his lifetime; and *provided, further*, That if at the time such right of action first accrued the person entitled to bring such action was a minor or insane or imprisoned, or otherwise under legal disability, such person or anyone claiming from, by or under him may bring the proper action at any time within two years after such disability has been removed, notwithstanding the expiration of the original period of six years first above provided.

I agree that the registration of the property in the name of an innocent purchaser for value should not be the reckoning point of the six (6)-year prescriptive period. Justice and equity demand that the right to bring an action against the assurance fund should be construed to commence from the moment that the innocent purchaser for value registers his or her title *and* upon actual knowledge of the original title holder.

Prescriptive statutes safeguard the diligent and vigilant. They operate primarily against those who have slept on their rights[7] not against those who wanted to act but could not do so for reasons beyond their control.[8] In *Antonio, Jr. v. Morales*:[9]

> Prescription as understood and used in this jurisdiction does not simply mean a mere lapse of time. Rather, there must be a categorical showing that due to plaintiff's negligence, inaction, lack of interest, or intent to abandon a lawful claim or cause of action, no action whatsoever was taken, thus allowing the statute of limitations to bar any subsequent suit.[10]

Petitioners in this case were neither negligent nor was it shown that they lacked the interest in protecting their rights. Petitioners immediately filed a complaint less than four (4) months after they discovered the transactions involving their land.[11]

The actual title holder cannot be deprived of his or her rights twice—first, by the fraudulent registration of the title in the name of the forger and second, by the operation of the constructive notice rule upon the registration of the title in the name of the innocent purchaser for value.

The innocent purchaser for value is amply protected by the rule that a Torrens certificate of title is indefeasible and binding

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[7] *Antonio, Jr. v. Morales*, 541 Phil. 306, 310 (2007) [Per J. Sandoval-Gutierrez, First Division].

[8] *Id*. at 311, citing *Republic v. Court of Appeals*, 221 Phil. 685 (1985) [Per J. Cuevas, Second Division].

[9] 541 Phil. 306 (2007) [Per J. Sandoval-Gutierrez, First Division].

[10] *Id*. at 310-311.

[11] *Ponencia*, p. 2.

upon the whole world. An innocent purchase for value, by relying on the correctness of the certificate of title, is shielded from any claims that other persons might have over the property.[12]

The constructive notice rule should not be made to apply to title holders who have been unjustly deprived of their land without their negligence. In this case, petitioners were residents of Spain and left no administrator to oversee their properties.[13] They also had in their possession the title to their property.[14] Although it is true that the act of registration in the name of the innocent purchaser for value is deemed constructive notice to all persons, it is equally true that original title holders have the right to safely rely on the indefeasibility of their title. After all, the purpose of registration under the Torrens system in general is to provide certainty as well as "incontestability in titles to land."[15]

The interpretation that claims against the assurance fund should be reckoned from the moment that the innocent purchaser for value registers his or her title *and* upon actual knowledge of the original title holder will not render the principle of constructive notice meaningless and illusory. As pointed out by the majority, the constructive notice rule is meant to protect innocent purchasers for value.

Furthermore, this interpretation would advance the purpose for which the assurance fund was made.

The assurance fund was established upon the recognition that our Torrens system is not infallible.[16] It is a measure intended to safeguard the rights of persons who have been divested of their title. In *Estrellado v. Martinez*:[17]

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[12] See *Tenio-Obsequio v. Court of Appeals*, 300 Phil. 588 (1994) [Per J. Regalado, Second Division].

[13] *Rollo*, p. 136.

[14] *Id*. at 154.

[15] *Estrellado v. Martinez*, 48 Phil. 256, 262 (1925) [Per J. Malcolm, *En Banc*].

[16] *Register of Deeds of Negros Occidental v. Anglo, Sr.*, 765 Phil. 714, 733 (2015) [Per J. Leonen, Second Division].

[17] 48 Phil. 256 (1925) [Per J. Malcolm, *En Banc*].

The authors of the Torrens system also wisely included provisions intended to safeguard the rights of prejudiced parties rightfully entitled to an interest in land but shut off from obtaining titles thereto. As suppletory to the registration of titles, pecuniary compensation by way of damages was provided for in certain cases for persons who had lost their property. For this purpose, an assurance fund was created. But the assurance fund was not intended to block any right which a person might have against another for the loss of his land.[18]

The assurance fund was created to "relieve innocent persons from the harshness of the doctrine that a certificate is conclusive evidence of an indefeasible title to land."[19]

The assurance fund works for the protection of the defeated title holder. In this case, petitioners have been defeated in their title twice. In equity, this Court should not allow that they also lose their right to bring an action.

WHEREFORE, I vote to **GRANT** the petition.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

The Petition assails the Decision dated March 16, 2016 and Resolution dated May 19, 2016 issued by the Court of Appeals (CA) in CA-G.R. CV No. 104207 holding that the action for damages filed by petitioners Jose Manuel and Maria Esperanza Ridruejo Stilianopoulos (collectively, Spouses Stilianopoulos) against the Assurance Fund had already prescribed.

To resolve the Petition, I am of the opinion that the determinative issue is whether a Torrens title issued despite non-compliance with the mandatory requirements for registration

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[18] *Id*. at 263.

[19] *Register of Deeds of Negros Occidental v. Anglo, Sr.*, 765 Phil. 714, 733 (2015) [Per J. Leonen, Second Division] *citing Spouses De Guzman, Jr. v. The National Treasurer*, 391 Phil. 941 (2000) [Per J. Kapunan, First Division].

under Presidential Decree No. (PD) 1529[1] may serve as a source of a valid title to vest in a transferee thereof (who is able to secure a registered Torrens title in his name) the status of an innocent purchaser for value (IPV). Stated otherwise, can an unregistered certificate of title be a valid source of right so as to enable someone (a transferee thereof) to qualify as an IPV and trigger the running of the six-year prescriptive period to file an action against the Assurance Fund?

The facts are not in dispute.

Spouses Stilianopoulos were the owners of a 6,425-square meter property situated in Legazpi City. The property, designated as Lot 1320, was covered by Transfer Certificate of Title (TCT) No. 13450,[2] registered under the name of Jose Manuel Stilianopoulos (Jose Manuel).[3] The owner's duplicate copy of TCT No. 13450 has always been in Jose Manuel's possession.[4]

On October 9, 1995, Jose Fernando Anduiza (Anduiza) caused the cancellation of Jose Manuel's TCT No. 13450 and the alleged issuance of TCT No. 42486 in his favor.[5] **Notably, the issuance of TCT No. 42486 was not entered in the Primary Entry Book (PEB) of the Register of Deeds (RD) of Legazpi City.**[6] A day later, the RD allegedly annotated on the original TCT No. 13450 a Deed of Absolute Sale (DAS) purportedly executed by Jose Manuel in Anduiza's favor.[7] **However, in separate Certifications dated January 8, 2008 and February 14, 2008, the RD later confirmed that no copy of the DAS had been found on file.**[8]

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[1] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, otherwise known as the Property Registration Decree, June 11, 1978.

[2] Erroneously referred to as TCT No. 13054 in the RTC Decision.

[3] *Rollo*, p. 37.

[4] *Id.* at 154 and 155.

[5] *Id.* at 154.

[6] *Id.*

[7] *Id.* at 154-155.

[8] *Id.* at 155.

On January 8, 1998, Anduiza used TCT No. 42486 to constitute a mortgage over Lot 1320 in favor of Rowena Hua-Amurao (Amurao) in order to secure a loan.[9] Amurao later foreclosed the mortgage due to Anduiza's default, leading to the conduct of an auction sale where Amurao emerged as lone bidder.[10] Later still, on July 19, 2001, Anduiza's TCT No. 42486 was cancelled, and TCT No. 52392 was issued in Amurao's name.[11]

It was only on January 28, 2008 when Spouses Stilianopoulos discovered Anduiza's fraudulent acts. Thus, on May 2, 2008, they filed an action before the RTC, seeking to declare Anduiza and Amurao's TCTs null and void (First Action).[12]

Thirteen (13) days later, Amurao sold Lot 1320 to Joseph Funtares Co and several co-owners (Co, *et al.*). This sale led to the cancellation of Amurao's TCT, and the issuance of TCT No. 59654 in Co, *et al.*'s name on June 10, 2008.[13]

On February 11, 2009, the First Action was dismissed due to lack of jurisdiction, since the assessed value of Lot 1320 was not alleged in Spouses Stilianopoulos' complaint.[14] Thus, on March 18, 2009, Spouses Stilianopoulos filed another action for the annulment of Anduiza, Amurao and Co, *et al.*'s respective TCTs, recovery of possession of Lot 1320 and payment of damages (Second Action).[15] Spouses Stilianopoulos impleaded the RD, the National Treasurer (Treasurer), Anduiza, Amurao and Co, *et al*. as defendants.[16]

On August 19, 2013, the RTC issued a Decision: (i) dismissing the Second Action as against Amurao and Co, *et al*. as they

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[9] *Id*. at 152, 155.

[10] *Id*. at 155.

[11] *Id*. at 152.

[12] *Id*. at 156.

[13] *Id.*

[14] See *id*. at 38-39, 156.

[15] *Id*. at 151.

[16] *Id*. at 152.

were found to be purchasers in good faith and for value; (ii) finding Anduiza guilty of fraud and ordering him to pay Spouses Stilianopoulos the market value of Lot 1320 and exemplary damages; and (iii) holding the Treasurer (as custodian of the Assurance Fund) subsidiarily liable for Anduiza's monetary liability.[17]

Anent the Assurance Fund's subsidiary liability, the RTC held:

> x x x As shown by the documentary evidence, [Anduiza] clearly procured his title in bad faith through fraud, and as such is not entitled to protection of the law for the Torrens system of land registration was never intended as a means to perpetrate fraud. **The [RTC] finds that such fraud could not have been perpetrated by *Anduiza* alone without the active participation of the then [RD]. The evidence clearly established the irregularities in the cancellation of [the Spouses'] title and the issuance of [Anduiza's) title which cannot be done successfully without the complicity of the [RD].**
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> x x x x x x x x x
>
> x x x Contrary to the claim of the Solicitor General, the [RTC] believes and so holds that the right of action to claim recompense from the Assurance Fund first accrued upon the actual discovery of fraud which was on January 28, 2008.
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> x x x x x x x x x
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> x x x [T]he [RTC] finds that because [Spouses Stilianopoulos] are residing in Spain and the fact that they are in possession of the owner's duplicate copy of TCT No. 13450 registered in their name and the fraudulent cancellation of their title by the [RD] in favor [of] *Anduiza* was unknown to them, if not effectively concealed from them, the reckoning period of prescription shall be from the time of their actual discovery of the fraud and not from the fraudulent registration of the title. x x x[18] (Emphasis supplied)

The RD and Treasurer appealed the RTC's Decision in the Second Action before the CA, but only to question the Assurance Fund's subsidiary liability.[19] **Since the other parties failed to**

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[17] *Id*. at 165-166.

[18] *Id*. at 163-164.

[19] *Id*. at 37.

appeal, the RTC's Decision became final and executory as to them.[20]

On March 16, 2016, the CA issued a Decision modifying the RTC's Decision by deleting the Assurance Fund's subsidiary liability.[21] **Citing Section 102 of PD 1529, the CA held that any action for compensation against the Assurance Fund must be brought within a period of six years from the time the right to bring the action first occurred.**[22] The CA reckoned this period from the fraudulent issuance of Anduiza's TCT on October 9, 1995, and concluded that Spouses Stilianopoulos' claim against the Assurance Fund had already prescribed at the time their Second Action was filed on March 19, 2009.[23]

Aggrieved, Spouses Stilianopoulos now seek redress before the Court *via* Rule 45. **At the heart of the controversy is the reckoning date of the six-year period within which to file a claim against the Assurance Fund.**

Resolving the Petition, the *ponencia* holds that the constructive notice rule does not apply in cases of fraudulent registration under the Torrens system where the original title holders are unjustly deprived of their land without their negligence.[24] Thus, the *ponencia* concludes that in actions against the Assurance Fund arising from such circumstances, prescription "should be reckoned from the moment the [IPV] registers his or her title *and* upon actual knowledge thereof of the original title holder/claimant."[25]

Proceeding therefrom, the *ponencia* grants the Petition based on the following findings: (i) Spouses Stilianopoulos were not in any way negligent as they kept the owner's duplicate copy

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[20] *Id*. at 44.

[21] *Id*. at 51.

[22] *Id*. at 47-48.

[23] *Id*. at 49.

[24] See *Ponencia*, p. 13.

[25] *Id*. Emphasis and underscoring omitted.

of TCT No. 13450 in their possession since its issuance;[26] (ii) Amurao and Co, *et al*. are conclusively deemed IPVs by virtue of the final judgment of the RTC, hence, their status as IPVs can no longer be revisited without violating the principle of immutability of judgments;[27] (iii) the six-year prescriptive period within which Spouses Stilianopoulos may bring an action against the Assurance Fund should be reckoned from **January 28, 2008**, or the date when they discovered the anomalous transactions involving Lot 1320;[28] and (iv) Spouses Stilianopoulos' Second Action was filed on **March 18, 2009**, well within the six-year prescriptive period.[29]

I agree with the *ponencia* insofar as it grants the Petition. However, I submit that in view of the particular circumstances attendant in this case, the six-year prescriptive period herein should be *reckoned* from the day Spouses Stilianopoulos received notice of the partial entry of the RTC's decision in the Second Action which characterized Amurao and Co, *et al*. as IPVs.[30] Since Spouses Stilianopoulos were the ones who filed the Second Action against Anduiza, Amurao, Co, *et al*., **and the Assurance Fund**, then their six-year prescriptive period to claim against the latter did not even begin to run.

This submission is anchored on the following points:

i. The IPV principle and constructive notice rule are integral in the Torrens system of registration, such that without a valid registration pursuant to PD 1529, they cannot arise, much less be invoked. Thus, the IPV principle and constructive notice rule do not apply where no actual registration has taken place, as in this case.

ii. Since Amurao and Co, *et al.*'s TCTs originate from one which is inexistent within the Torrens system, they cannot

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[26] See *id*. at 14.

[27] *Id*. at 15.

[28] *Id.*

[29] *Id*. at 16.

[30] See Order dated July 22, 2014, *rollo*, pp. 191-193.

be accorded the status of being IPVs. Moreover, Spouses Stilianopoulos cannot be deemed to have constructive notice of the issuance of their respective titles.

iii. The RTC erroneously extended to Amurao and Co, *et al*. the protection accorded by the Torrens system by awarding them the status of being IPVs. This error is extant even as the Court is bound, consistent with the principle of immutability of judgments, to respect the RTC's Decision in the Second Action in view of its finality.

iv. Accordingly, in the face of the extant finding by the RTC itself that Amurao and Co, *et al.*'s TCTs originate from one which is inexistent within the Torrens system, then Amurao and Co, *et al*.'s status as IPVs stem *not* from the concurrence of circumstances required by law, but rather, only because of the RTC judgment that has already become final — in other words, since it is only by judicial fiat that Amurao and Co, *et al.* are considered IPVs, then such status cannot be made to retroact to the dates of issuance of Amurao and Co, *et al*.'s respective titles (which, to repeat, proceeds from a title that is inexistent within the Torrens system).

v. Since Spouses Stilianopoulos lost their land by operation of the Torrens system *only* upon notice of the issuance of the Certificate of Finality (as it was only at this point when Amurao and Co, *et al*. could be regarded as IPVs), their claim against the Assurance Fund can only be deemed to have accrued at such time.

I discuss these matters in sequence.

The IPV principle and the constructive notice rule are integral features of the Torrens system and may be applied only with respect to titles that have been placed under its scope through registration.

The IPV principle and constructive notice rule proceed from the indefeasibility of titles issued under the Torrens system. These features are set fort in Sections 32 and 52 of PD 1529:

SEC. 32. *Review of decree of registration; Innocent purchaser for value.*—The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but **in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value**.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

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SEC. 52. *Constructive notice upon registration.*— Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, **if registered, filed or entered in the office of the Register of Deeds** for the province or city where the land to which it relates lies, **be constructive notice to all persons from the time of such registering, filing or entering**. (Emphasis supplied)

Both features stand to protect the registered title holder from any form of encroachment upon his/her right of ownership. **Such protection, as already explained, only extends to holders of Torrens titles issued in accordance with PD 1529.** Hence, those who claim to possess rights over real property which have

not come under the Torrens system by virtue of registration can neither be accorded the status of being IPVs, nor can third persons be deemed to have constructive notice of their rights in the absence of actual registration, filing or entry in the RD.

With these principles in mind, it becomes clear that Amurao and Co, *et al*. assume the status of IPVs *not* by virtue of law, but merely because the RTC judgment holding them as such has become final and immutable.

Anduiza's TCT No. 42486 is not only void but also inexistent, as it was issued in violation of PD 1529.

During the course of trial before the RTC, it was established that (i) the owner's duplicate copy of Spouses Stilianopoulos' TCT No. 13450 was not presented to the RD for cancellation; and (ii) the issuance of Anduiza's TCT No. 42486 had not been recorded in the PEB.[31]

These undisputed findings clearly show that the mandatory requirements for registration of voluntary instruments under Sections 53 and 56 of PD 1529 had not been complied with, thus:

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate*.—**No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument**, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

x x x x x x x x x

SEC. 56. *Primary Entry Book: fees; certified copies*. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted**, and the

[31] *Rollo*, pp. 154-155, 157.

memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (Emphasis supplied)

Failure to comply with these requirements averts the registration process, and prevents the underlying transaction from affecting the land subject of the registration.

The Court's ruling in the early case of *Levin v. Bass*[32] (*Levin*) is instructive:

x x x **Under the Torrens system the act of registration is the operative act to convey and affect the land**. [Does] the entry in the day book of a deed of sale which was presented and filed together with the owner's duplicate certificate of title with the office of the Registrar of Deeds and full payment of registration fees constitute a complete act of registration which operates to convey and affect the land? **In voluntary registration, such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within [fifteen] [(]15[)] days, entry in the day book of the deed of sale does not operate to convey and affect the land sold**. In involuntary registration, such as an attachment, levy upon execution, *lis pendens* and the like, entry thereof in the day book is a sufficient notice to all persons of such adverse claim. Eugenio Mintu fulfilled or took all the steps he was expected to take in order to have the Registrar of Deeds in and for the City of Manila issue to him the corresponding transfer certificate of title on the lot and house at No. 326 San Rafael Street sold to him by Joaquin V. Bass. The evidence shows that Eugenio Mintu is an innocent purchaser for value. Nevertheless, the court below held that the sale made by Bass to Mintu is as against Rebecca Levin without force and effect because of the express provision of law which in part says:

x x x x x x x x x

x x x The pronouncement of the court below is to the effect that an innocent purchaser for value has no right to the property because he is not a holder of a certificate of title to such property acquired

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[32] 91 Phil. 419 (1952) [*En Banc,* Per *J.* Padilla].

by him for value and in good faith. It amounts to holding that for failure of the Registrar of Deed[s] to comply and perform his duty an innocent purchaser for value loses that character—he is not an "innocent holder for value of a certificate of title." The court below has strictly and literally construed the provision of law applicable to the case. If the strict and literal construction of the law made by the court below be the true and correct meaning and intent of the lawmaking body, the act of registration—the operative act to convey and affect registered property—would be left to the Registrar of Deeds. True, there is a remedy available to the registrant to compel the Registrar of Deeds to issue to him the certificate of title but the step would entail expense and cause unpleasantness. Neither violence to, nor stretching of the meaning of, the law would be done, if we should hold that **an innocent purchaser for value of registered land becomes the registered owner and in the contemplation of law the holder of a certificate thereof the moment he presents and files a duly notarized and lawful deed of sale and the same is entered on the day book and at the same time he surrenders or presents the owner's duplicate certificate of title to the property sold and pays the full amount of registration fees, because what remains to be done lies not within his power to perform.** The Registrar of Deeds is in (sic) duty bound to perform it. We believe that [this] is a reasonable and practical interpretation of the law under consideration—a construction which would lead to no inconsistency and injustice.[33] (Emphasis and underscoring supplied)

Levin thus teaches that an IPV "**becomes the registered owner and in the contemplation of law the holder of a certificate thereof the moment he does the following: (i) presents and files a duly notarized and lawful deed of sale; (ii) causes the same to be entered in the day book; (iii) he surrenders or presents the owner's duplicate certificate of title to the property sold; and (iv) pays the full amount of registration fees.** While *Levin* was decided under the regime of the Land Registration Act,[34] it remains applicable as the requirements referred to thereunder had been carried over and re-adopted under Sections 51, 52, 53 and 56 of PD 1529.[35]

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[33] *Id*. at 436-438.

[34] Act 496, November 6, 1902.

[35] The relevant provisions read, in part:

The facts in this case show that at least three of the above four requirements had not been complied with.

SEC. 51. *Conveyance and other dealings by registered owner.*— An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate.* — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

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SEC. 56. *Primary Entry Book; fees; certified copies.*— Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**:

First, as attested to in separate certifications dated January 8, 2008 and February 14, 2008 (Certifications), the RD confirmed that no copy of the DAS had been found on file;[36]

Second, the DAS was not entered in the PEB — indeed, even the issuance of TCT No. 42486 was not entered in the PEB;[37] and

Third, the Spouses Stilianopoulos' owner's duplicate certificate was not presented to the RD and was not entered in the PEB.

These irregularities precluded, prevented and averted the completion of the registration process — thus rendering TCT No. 42486, issued only because of the complicity of the RD, as **totally inexistent**. Verily, the issuance of TCT No. 42486 did not have, as it could not have had, the effect of conveying any right in Anduiza's favor, **because no registration had in fact taken place**. Otherwise stated, TCT No. 42486 is not a valid or authentic Torrens title. Hence, it cannot be conferred the protection afforded by the Torrens system of registration. The titles that derive from this invalid and unauthentic Torrens title are likewise invalid as truly, the spring cannot rise higher than the source. In effect, they are, in legal contemplation, inexistent.

In light of the foregoing, I cannot agree that TCT No. 42486 serves as a source of a valid title in the hands of Amurao and Co, *et al.*

Anduiza's TCT No. 42486 cannot be a source of a valid title precisely because it is not a registered Torrens title.

As stated, the IPV principle and the constructive notice rule both operate as a consequence of the Torrens system of registration, in order to secure the registered owner's Torrens

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Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (Emphasis supplied)

[36] *Rollo*, pp. 106, 109 and 155.

[37] *Id*. at 106, 154-155.

title and to protect subsequent purchasers in good faith and for value against all liens and encumbrances which have not been registered and do not appear on the face of their Torrens titles. **However, the IPV principle and the constructive notice rule cannot be made to apply where, *as here*, no actual registration had in fact taken place.**

Considering the factual circumstances attendant in this case, I find the Court's ruling in *Escobar v. Luna*[38] (*Escobar*) squarely applicable. In *Escobar*, respondents' predecessor Clodualdo Luna sought to annul the TCTs issued in the name of petitioners Adelaida and Lolita Escobar. The disputed TCTs covered two lots situated in Tagaytay City, which respondents claim to have been in Clodualdo's possession since 1941. **In the course of trial, the RTC discovered that the petitioners made it appear that their TCTs originated from a completely spurious title which did not exist in the records of the RD.** Having lost before the CA, the petitioners filed a Rule 45 petition before the Court, asserting, among others, that they are IPVs entitled to protection under PD 1529.

Denying the petition, the Court held:

> x x x [T]he certification dated June 11, 1990 issued by Atty. Cainza-Valenton, who was duly authorized to issue the certification, stating that **OCT No. 5483 was not existing in the files of the [RD] of the Province of Batangas and which confirmed that OCT No. 5483 was fictitious, making the titles derived from it spurious, is sufficient evidence for the stated purpose.** The [RD] of the Province of Batangas is the repository of all records regarding OCTs issued in that province, and the certification is therefore competent and admissible evidence to prove that the titles of the Escobars derived from it are from a fictitious source.
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> x x x x x x x x x
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> x x x [P]etitioners state that the law insulates registered titles obtained under the Torrens system from the dangers of frivolous suits. Respondents did not even bother to discuss the issue, and for good reason. **Even if petitioners were innocent purchasers for**

[38] 547 Phil. 661 (2007) [Second Division, Per *J.* Quisumbing].

value and in good faith, no right passed to a transferee from a vendor who did not have any right in the first place. Void *ab initio* land titles issued cannot ripen into private ownership. A spring cannot rise higher than its source.[39] (Emphasis and underscoring supplied)

Similar to Anduiza's title, the fraudulent titles subject of the dispute in *Escobar* were spurious and inexistent in the records of the RD. **Like the fraudulent titles in *Escobar*, Anduiza's title cannot have the effect of conveying any right in Anduiza's favor, for, in fact and in law, no registration had taken place. The fact that there is no record in the RD of the registration of Anduiza's title makes his title spurious if not completely fabricated. In other words, the RTC's finding that Amurao and Co, *et al.* are IPVs was erroneous** because, in so ruling, the RTC afforded them protection under the Torrens system notwithstanding the fact that the Torrens title from which they sourced their respective TCTs is unregistered, inexistent and spurious. The subsequent certificates of title issued to Amurao and Co, *et al.*, which are derived from Anduiza's unregistered certificate of title, are likewise spurious and legally inexistent.

Such error becomes more glaring in the absence of evidence sufficient to establish that Amurao and Co, *et al.* had exercised due diligence in the acquisition of Lot 1320. Verily, an IPV entitled to protection under PD 1529 "is one who buys the property of another, without notice that some other person has a right or interest in the property, for which a full and fair price is paid by the buyer at the time of the purchase or before receipt of any notice of claims or interest of some other person in the property."[40] Contrary to the RTC's pronouncement, good faith is *not* presumed in the case of a party claiming to be an IPV. *Nobleza v. Nuega*,[41] a decision rendered in 2015, is instructive:

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[39] *Id*. at 671-673.

[40] *Nobleza v. Nuega*, 155 Phil. 656, 663 (2015) [Third Division, Per *J*. Villarama, Jr.]. Emphasis omitted.

[41] *Id*.

x x x It is the party who claims to be an innocent purchaser for value who has the burden of proving such assertion, and it is not enough to invoke the ordinary presumption of good faith. To successfully invoke and be considered as a buyer in good faith, the presumption is that first and foremost, the "buyer in good faith" must have shown prudence and due diligence in the exercise of his/her rights. It presupposes that the buyer did everything that an ordinary person would do for the protection and defense of his/her rights and interests against prejudicial or injurious concerns when placed in such a situation. The prudence required of a buyer in good faith is "not that of a person with training in law, but rather that of an average man who 'weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his knowledge is nil.'" A buyer in good faith does his homework and verifies that the particulars are in order — such as the title, the parties, the mode of transfer and the provisions in the deed/contract of sale, to name a few. **To be more specific, such prudence can be shown by making an ocular inspection of the property, checking the title/ownership with the proper Register of Deeds alongside the payment of taxes therefor, or inquiring into the minutiae such as the parameters or lot area, the type of ownership, and the capacity of the seller to dispose of the property, which capacity necessarily includes an inquiry into the civil status of the seller to ensure that if married, marital consent is secured when necessary.** In fine, for a purchaser of a property in the possession of another to be in good faith, he must exercise due diligence, conduct an investigation, and weigh the surrounding facts and circumstances like what any prudent man in a similar situation would do.[42] (Emphasis supplied)

The records of the case do not show that Amurao and Co, *et al*. sufficiently established that they exercised due diligence in the acquisition of Lot 1320. If they had in fact done so, they would have easily ascertained, **through a simple inquiry with the RD**, that the alleged transfer of Lot 1320 in Anduiza's favor **was neither supported by any deed or similar document, nor was such transfer entered in the PEB**. Amurao and Co, *et al*.'s alleged ignorance of such facts belies their status as IPVs.

Notwithstanding that Anduiza, Amurao, and Co, *et al*. could *not*, in law, be considered IPVs, the Court, following the rule

[42] *Id*. at 663-664.

on finality of judgments, is bound by the RTC's erroneous finding that they *are* IPVs. Time and again, this Court has emphasized that "a decision that has acquired finality becomes immutable and unalterable, and 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 be made by the court that rendered it or by the Highest Court of the land."[43] While there are recognized exceptions[44] to this rule, I find that none exists in this case so as to merit disturbance of the RTC's decision with respect to Amurao and Co, *et al*.

That said, however, the finding of IPV status does not prevent the Court from reckoning the six-year period to file an action against the Assurance Fund not from the issuance of Amurao's title, but rather, from the day Spouses Stilianopoulos received notice of the partial entry of judgment of the RTC's decision characterizing Amurao and Co, *et al*. as IPVs.[45] **To stress, Amurao and Co, *et al.*'s status as IPVs had been vested *not* by virtue of the circumstances attending the issuance of their respective titles, but solely by the RTC's partial judgment, albeit erroneous, declaring them as such. Stated differently, Spouses Stilianopoulos lost their land by operation of the Torrens system *only* upon notice of the issuance of the Certificate of Finality, as it was only at this point when Amurao and Co, *et al.* could be regarded as IPVs — again, *not* on the basis of the circumstances attending the issuance of their respective TCTs, but only because of the finality of**

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[43] *Tomas v. Criminal Investigation and Detection Group (CIDG)*, 799 Phil. 310, 321 (2016) [Third Division, Per *J*. Peralta]. Emphasis supplied.

[44] *Id*. at 321, citing *FGU Insurance Corporation v. Regional Trial Court of Makati City Branch 66*, 659 Phil. 117, 123 (2011) [Second Division, Per *J.* Mendoza] which states:

> But like any other rule, [the doctrine of finality of judgment] has exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. x x x

the RTC's findings. Considering that such notice came after the filing of the Second Action not only against Anduiza, Amurao, and Co, *et al*., but also, against the Assurance Fund, then the Spouses Stilianopoulos' six-year prescriptive period to claim against the Assurance Fund did not even begin to run.

Anduiza's TCT No. 42486 did not have the effect of conferring ownership in favor of Amurao and Co, et al., as it was issued without a supporting title and an underlying mode.

In any case, even if it is assumed, *arguendo*, that Anduiza's title had in fact been duly registered, such did not have the effect of conveying title in Anduiza's favor, as registration does not operate to confirm ownership over real property which, in fact and in law, does not exist.

PD 1529 governs registration of title under the Torrens system. Registration under the Torrens system presupposes that ownership over the real property subject of the application had already been acquired through any of the modes of acquisition prescribed by law, as registration merely serves as the process through which existing ownership is confirmed.[46]

In turn, ownership over real property is acquired and transmitted by the concurrence of a title and a mode of acquisition.[47] Mode "is the specific cause which produces dominion and other real rights as a result of the co-existence of special status of things, capacity, x x x intention of person and [the] fulfillment of the requisites of law."[48] On the other hand, title is "the juridical right which gives a means to the acquisition of [such] rights."[49] Thus:

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[45] See Order dated July 22, 2014, *rollo*, pp. 191-193.

[46] See *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368 (2003) [Third Division, Per *J*. Panganiban].

[47] See Eduardo P. Caguioa, I *Comments and Cases on Civil Law* 774 (1961).

[48] *Id*. at 773.

[49] *Id.*

x x x [A]n asserted right or claim to ownership or a real right over a thing arising from a juridical act, however justified, is not *per se* sufficient to give rise to ownership over the *res*. That right or title must be completed by fulfilling certain conditions imposed by law. Hence, **ownership and real rights are acquired only pursuant to a legal mode or process. While title is the juridical justification, mode is the actual process of acquisition or transfer of ownership over a thing in question**.[50] (Emphasis supplied)

Article 712 of the Civil Code provides the following modes of acquiring and transmitting ownership and other real rights over property: by occupation, by intellectual creation, by law, by donation, by testate and intestate succession, by prescription, and in consequence of certain contracts, by tradition.

In order that ownership may be transmitted by one person to another, the thing to be transmitted "must form part of his patrimony."[51] As a corollary, *actual* ownership should neither be confused nor deemed synonymous with the existence of a Torrens title in one's name. A Torrens title merely serves as *evidence* of ownership or title over the particular property described therein.[52] **Consequently, registration neither operates to confirm nor convey ownership over land which does not in fact exist**. As explained by the Court in *Chavez v. Public Estates Authority*[53]:

x x x Registration of land under Act No. 496 or [PD 1529] does not vest in the registrant private or public ownership of the land. Registration is not a mode of acquiring ownership but is merely evidence of ownership previously conferred by any of the recognized modes of acquiring ownership. **Registration does not give the registrant a better right than what the registrant had prior to the registration.** The registration of lands of the public domain under

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[50] *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995) [First Division, Per *J.* Padilla].

[51] Eduardo P. Caguioa, *supra* note 47.

[52] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac, supra* note 46, at 377.

[53] 433 Phil. 506 (2002) [*En Banc*, Per *J.* Carpio].

the Torrens system, by itself, cannot convert public lands into private lands.[54] (Emphasis supplied)

Here, Spouses Stilianopoulos, the owners of the land, had no intention to convey Lot 1320 in favor of Anduiza. The DAS allegedly executed between them does not even exist in the records of the RD. Verily, Anduiza's unregistered Torrens title did not proceed from any title or mode, and thus, did not have the effect of conveying ownership of Lot 1320 in his favor. Necessarily, Anduiza could not subsequently convey ownership and any other real rights over Lot 1320, as it never formed part of his patrimony. Again, the spring cannot rise higher than its source.

It cannot be stressed enough that Spouses Stilianopoulos have been in possession of their owner's duplicate certificate since its issuance, and as such, were not expected to wait in the portals of the court to avoid the possibility of losing their land. The denial of their Petition would have the effect of unduly leaving Spouses Stilianopoulos without any remedy whatsoever **for what is effectively a robbery of their property** — and thereby defeat the very purpose of the land registration system, as illustrated in the early case of *Legarda v. Saleeby*[55]:

> x x x The real purpose of that system is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. **That being the purpose of the law, it would seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the "mirador de su casa," to avoid the possibility of losing his land.** x x x[56] (Emphasis supplied)

For these reasons, I vote with the *ponencia* to **GRANT** the Petition.

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[54] *Id*. at 581-582.

[55] 31 Phil. 590 (1915) [First Division, Per *J*. Johnson]. Per *J*. Padilla].

[56] *Id*. at 593.

EN BANC

[G.R. No. 232395. July 3, 2018]

PEDRO S. AGCAOILI, JR., ENCARNACION A. GAOR, JOSEPHINE P. CALAJATE, GENEDINE D. JAMBARO, EDEN C. BATTULAYAN, EVANGELINE C. TABULOG, *petitioners,* **MARIA IMELDA JOSEFA "IMEE" R. MARCOS,** *co-petitioner, vs.* **THE HONORABLE REPRESENTATIVE RODOLFO C. FARIÑAS, THE HONORABLE REPRESENTATIVE JOHNNY T. PIMENTEL, Chairman of the Committee on Good Government and Public Accountability, and LT. GEN. ROLAND DETABALI (RET.), in his capacity as Sergeant-at-Arms of the House of Representatives,** *respondents,* **THE COMMITTEE ON GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY,** *co-respondent.*

SYLLABUS

1. POLITICAL LAW; WRIT OF *HABEAS CORPUS*; DISCUSSED.— The writ of *Habeas Corpus* or the "great writ of liberty" was devised as a "speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom." The primary purpose of the writ "is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal." Under the Constitution, the privilege of the writ of *Habeas Corpus* cannot be suspended except in cases of invasion or rebellion when the public safety requires it. As to what kind of restraint against which the writ is effective, case law deems any restraint which will preclude freedom of action as sufficient. Thus, as provided in the Rules of Court under Section 1, Rule 102 thereof, a writ of *Habeas Corpus* "shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." On the other hand, Section 4, Rule 102 spells the instances when the writ of *Habeas Corpus* is not allowed or when the discharge thereof is authorized.

2. ID.; ID.; INSTANCES WHEN A WRIT OF *HABEAS CORPUS* IS NOT/NO LONGER EFFECTIVE.— [A] Writ of *Habeas Corpus* may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court because since then, the restraint has become legal. In the illustrative case of *Ilagan v. Hon. Ponce Enrile*, the Court dismissed the petition for *habeas corpus* on the ground of mootness considering the filing of an information before the court. The court pronounced that since the incarceration was now by virtue of a judicial order, the remedy of *habeas corpus* no longer lies. Like so, in *Duque v. Capt. Vinarao*, the Court held that a petition for *habeas corpus* can be dismissed upon voluntary withdrawal of the petitioner. Further, in *Pestaño v. Corvista*, it was pronounced that where the subject person had already been released from the custody complained of, the petition for *habeas corpus* then still pending was considered already moot and academic and should be dismissed. x x x Far compelling than the question of mootness is that the element of illegal deprivation of freedom of movement or illegal restraint is jurisdictional in petitions for *habeas corpus*. Consequently, in the absence of confinement and custody, the courts lack the power to act on the petition for *habeas corpus* and the issuance of a writ thereof must be refused.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOOT AND ACADEMIC CASES; AS A RULE, THE SAME WARRANTS DISMISSAL; EXCEPTIONS.— Although the general rule is that mootness of the issue warrants a dismissal, the same admits of certain exceptions. In *Prof. David v. Pres. Macapagal-Arroyo*, the Court summed up the four exceptions to the rule when Courts will decide cases, otherwise moot, thus: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.

4. ID.; JURISDICTION OVER PETITIONS FOR *HABEAS CORPUS* AND THE ADJUNCT AUTHORITY TO ISSUE THE WRIT ARE SHARED BY THIS COURT AND THE LOWER COURTS; JURISDICTION ACQUIRED THEREIN CONTINUES UNTIL THE CASE IS

TERMINATED.— Jurisdiction over petitions for *habeas corpus* and the adjunct authority to issue the writ are shared by this Court and the lower courts. The Constitution vests upon this Court original jurisdiction over petitions for *habeas corpus.* On the other hand, Batas Pambansa (B.P.) Blg. 129, as amended, gives the CA original jurisdiction to issue a writ of *habeas corpus* whether or not in aid of its appellate jurisdiction. The CA's original jurisdiction over *Habeas Corpus* petitions was re-stated in R.A. No. 7902. Similarly, B.P. Blg. 129 gives the RTCs original jurisdiction in the issuance of a writ of *Habeas Corpus*. Family courts have concurrent jurisdiction with this Court and the CA in petitions for *habeas corpus* where the custody of minors is at issue, with the Family courts having exclusive jurisdiction to issue the ancillary writ of *Habeas Corpus* in a petition for custody of minors filed before it. In the absence of all RTC judges in a province or city, special jurisdiction is likewise conferred to any Metropolitan Trial Judge, Municipal Trial Judge or Municipal Circuit Trial Judge to hear and decide petitions for a writ of *Habeas Corpus*. These conferment of jurisdiction finds procedural translation in Rule 102, Section 2 which provides that an application for a writ of *Habeas Corpus* may be made before this Court, or any member thereof, or the Court of Appeals or any member thereof, and if so granted, the same shall be enforceable anywhere in the Philippines. An application for a writ of *Habeas Corpus* may also be made before the RTCs, or any of its judges, but if so granted, is enforceable only within the RTC's judicial district. The writ of *Habeas Corpus* granted by the Court or by the CA may be made returnable before the court or any member thereof, or before the RTC or any judge thereof for hearing and decision on the merits. It is clear from the foregoing that this Court, the CA and the RTC enjoy concurrent jurisdiction over petitions for *habeas corpus.* As the *Habeas Corpus* Petition was filed by petitioners with the CA, the latter has acquired jurisdiction over said petition to the exclusion of all others, including this Court. This must be so considering the basic postulate that jurisdiction once acquired by a court is not lost upon the instance of the parties but continues until the case is terminated.

5. ID.; SPECIAL CIVIL ACTIONS; PROHIBITION; MAY BE ISSUED BY THE COURT UNDER ITS EXPANDED JURISDICTION, TO CORRECT ERRORS OF JURISDICTION BY THE LEGISLATIVE AND

EXECUTIVE BRANCHES OF GOVERNMENT.— [T]he availability of the remedy of prohibition for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Legislative and Executive branches has been categorically affirmed by the Court in *Judge Villanueva v. Judicial and Bar Council*, x x x The pronouncement [therein] is but an application of the Court's judicial power which Section 1, Article VIII of the Constitution defines as the duty of the courts of justice (1) to settle actual controversies involving rights which are legally demandable and enforceable, and (2) 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. Such innovation under the 1987 Constitution later on became known as the Court's "traditional jurisdiction" and "expanded jurisdiction," respectively. While the requisites for the court's exercise of either concept of jurisdiction remain constant, note that the exercise by the Court of its "expanded jurisdiction" is not limited to the determination of grave abuse of discretion to quasi-judicial or judicial acts, but extends to *any* act involving the exercise of discretion on the part of the government.

6. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; LEGISLATIVE DEPARTMENT; POWER TO CONDUCT INQUIRIES IN AID OF LEGISLATION; DISCUSSED.— The power of both houses of Congress to conduct inquiries in aid of legislation is expressly provided by the Constitution under Section 21, Article VI thereof, x x x [However,] [a]lthough expansive, the power of both houses of Congress to conduct inquiries in aid of legislation is not without limitations. Foremost, the inquiry must be in furtherance of a legitimate task of the Congress, *i.e.*, legislation, and as such, "investigations conducted solely to gather incriminatory evidence and punish those investigated" should necessarily be struck down. Further, the exercise of the power of inquiry is circumscribed by the above-quoted Constitutional provision, such that the investigation must be "in aid of legislation in accordance with its duly published rules of procedure" and that "the rights of persons appearing in or affected by such inquiries shall be respected." It is jurisprudentially settled that the rights of persons under the Bill of Rights must be respected, including the right to due process and the right not to be compelled to testify against one's self.

7. ID.; WRIT OF *AMPARO*; THE PRIVILEGE OF THE WRIT OF *AMPARO* IS CONFINED TO INSTANCES OF EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES OR THREATS THEREOF.— Section 1 of the Rule on the writ of *Amparo* provides: SECTION 1. *Petition.* The petition for a *writ of Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances. In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al*., the Court categorically pronounced that the *Amparo* Rule, as it presently stands, is confined to extralegal killings and enforced disappearances, or to threats thereof, and jurisprudentially defined these two instances, as follows: [T]he *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, enforced disappearances are attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

8. ID.; DOCTRINE OF SEPARATION OF POWERS; CONGRESS POWER TO CITE IN CONTEMPT AND TO COMPEL ATTENDANCE OF COURT JUSTICES; LIMITATIONS.— [O]f the Congressional power to cite in contempt and consequently, to arrest and detain, x x x such could not be used to deprive the Court of its Constitutional duty to supervise judges of lower courts [and Justices of the Court of Appeals] in the performance of their official duties. x x x In point is the power of legislative investigation which the Congress exercises as a Constitutional prerogative. Concomitantly, the principle of separation of powers serves as one of the basic postulates for exempting the Justices, officials and employees of the Judiciary and for excluding the Judiciary's

> privileged and confidential documents and information from *any* compulsory processes which very well includes the Congress' power of inquiry in aid of legislation. Such exemption has been jurisprudentially referred to as judicial privilege as implied from the exercise of judicial power expressly vested in one Supreme Court and lower courts created by law. However, as in all privileges, the exercise thereof is not without limitations. The invocation of the Court's judicial privilege is understood to be limited to matters that are part of the internal deliberations and actions of the Court in the exercise of the Members' adjudicatory functions and duties. x x x By way of qualification, judicial privilege is unavailing on matters external to the Judiciary's deliberative adjudicatory functions and duties. x x x As a guiding principle, the purpose of judicial privilege, as a child of judicial power, is principally for the effective discharge of such judicial power. If the matter upon which Members of the Court, court officials and employees privy to the Court's deliberations, are called to appear and testify do not relate to and will not impair the Court's deliberative adjudicatory judicial power, then judicial privilege may not be successfully invoked.

APPEARANCES OF COUNSEL

Estelito P. Mendoza and Hyacinth E. Rafael-Antonio for petitioners and co-petitioner.

Berberabe Santos & Quiñones, collaborating counsel for petitioners and co-petitioner.

The Solicitor General for respondents and co-respondent.

D E C I S I O N

TIJAM, *J.*:

Styled as an Omnibus Petition,[1] petitioners Pedro S. Agcaoili, Jr. (Agcaoili, Jr.), Encarnacion A. Gaor (Gaor), Josephine P. Calajate (Calajate), Genedine D. Jambaro (Jambaro), Eden C. Battulayan (Battulayan), Evangeline C. Tabulog (Tabulog) —

[1] *Rollo*, pp. 3-74.

all employees[2] of the Provincial Government of Ilocos Norte and storied as "Ilocos 6" — seek that the Court assume jurisdiction over the *Habeas Corpus* Petition[3] earlier filed by petitioners before the Court of Appeals (CA),[4] and upon assumption, to direct the CA to forward the records of the case to the Court for proper disposition and resolution.

Co-petitioner Maria Imelda Josefa "Imee" Marcos — the incumbent Governor of the Province of Ilocos Norte — joins the present petition by seeking the issuance of a writ of prohibition under Rule 65 of the Rules of Court for purposes of declaring the legislative investigation into House Resolution No. 882[5] illegal and in excess of jurisdiction, and to enjoin respondents Representatives Rodolfo C. Fariñas (Fariñas) and Johnny T. Pimentel and co-respondent Committee on Good Government and Public Accountability (House Committee) from further proceeding with the same. Co-petitioner prays for the issuance of a temporary restraining order and/or issuance of a writ of preliminary injunction, to restrain and enjoin respondents and co-respondent from conducting any further hearings or proceedings relative to the investigation pending resolution of the instant petition.

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[2] Petitioner Pedro S. Agcaoili, Jr. belongs to the Provincial Planning and Development Office, petitioner Josephine P. Calajate is the Provincial Treasurer, petitioner Evangeline Tabulog is the Provincial Budget Officer, petitioner Eden Battulayan is the accountant IV and the Officer-in-Charge of the Provincial Accounting Office, petitioner Genedine Jambaro is from the Office of the Provincial Treasurer and petitioner Encarnacion Gaor is also from the Office of the Provincial Treasurer.

[3] Docketed as CA-G.R. SP No. 151029 entitled *Genedine D. Jambaro, et al. v. Lt. Gen. Roland M. Detabali (Ret.), Sergeant-at-Arms, House of Representatives*; *rollo*, pp. 191-195.

[4] Raffled to the CA's Special Fourth Division composed of Associate Justices Stephen C. Cruz, Nina G. Antonio-Valenzuela and Carmelita Salandanan-Manahan.

[5] The House Resolution was introduced and sponsored by respondent Farinas, representatives Juan Pablo P. Bondoc and Aurelio D. Gonzales, Jr. and was referred to the Committee on Rules chaired by respondent Farinas, and then referred to respondent Committee on Good Government and Public Accountability; *rollo*, pp. 78-79.

In common, petitioners and co-petitioner seek the issuance of a writ of *Amparo* to protect them from alleged actual and threatened violations of their rights to liberty and security of person.

The Antecedents

On March 14, 2017, House Resolution No. 882 was introduced by respondent Fariñas, along with Representatives Pablo P. Bondoc and Aurelio D. Gonzales, Jr., directing House Committee to conduct an inquiry, in aid of legislation, pertaining to the use by the Provincial Government of Ilocos Norte of its shares from the excise taxes on locally manufactured virginia-type cigarettes for a purpose other than that provided for by Republic Act (R.A.) No. 7171.[6] The "whereas clause" of House Resolution No. 882 states that the following purchases by the Provincial Government of Ilocos Norte of vehicles in three separate transactions from the years 2011 to 2012 in the aggregate amount of ₱66,450,000.00 were in violation of R.A. No. 7171 as well as of R.A. No. 9184[7] and Presidential Decree (P.D.) No. 1445:[8]

a. Check dated December 1, 2011, "to cash advance the amount needed for the purchase of 40 units Mini cab for distribution to the different barangays of Ilocos Norte as per supporting papers hereto attached to the amount of …." EIGHTEEN MILLION SIX HUNDRED THOUSAND PESOS (PhP18,000,000.00);

b. Check dated May 25, 2012, "to cash advance the amount needed for the purchase of 5 units Buses as per supporting papers hereto attached to the amount of ..." FIFTEEN MILLION THREE HUNDRED THOUSAND PESOS (PhP15,300,000.00), which were all second hand units; and

c. Check dated September 12, 2012, "to cash advance payment of 70 units Foton Mini Truck for distribution to different municipalities

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[6] AN ACT TO PROMOTE THE DEVELOPMENT OF THE FARMER IN THE VIRGINIA TOBACCO PRODUCING PROVINCES. Approved on January 9, 1992.

[7] Government Procurement Reform Act.

[8] Government Auditing Code Of The Philippines.

of Ilocos Norte as per supporting papers hereto attached in the amount of ...." THIRTY TWO MILLION FIVE HUNDRED FIFTY THOUSAND PESOS (PhP32,550,000.00).[9]

Invitation Letters[10] dated April 6, 2017 were individually sent to petitioners for them to attend as resource persons the initial hearing on House Resolution No. 882 scheduled on May 2, 2017. In response, petitioners sent similarly-worded Letters[11] dated April 21, 2017 asking to be excused from the inquiry pending official instructions from co-petitioner Marcos as head of the agency.

Because of petitioners' absence at the May 2, 2017 hearing, a *subpoena ad testificandum* was issued by co-respondent House Committee on May 3, 2017 directing petitioners to appear and testify under oath at a hearing set on May 16, 2017.[12] Likewise, an invitation was sent to co-petitioner Marcos to appear on said hearing.[13]

Since the subpoena was received by petitioners only one day prior to the scheduled hearing, petitioners requested that their appearance be deferred to a later date to give them time to prepare. In their letters also, petitioners requested clarification as to what information co-respondent House Committee seeks to elicit and its relevance to R.A. No. 7171.[14] Co-petitioner Marcos, on the other hand, submitted a Letter[15] dated May 15, 2017 seeking clarification on the legislative objective of House Resolution No. 882 and its discriminatory application to the Province of Ilocos Norte to the exclusion of other virginia-type tobacco producing provinces.

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[9] *Rollo*, pp. 78-79.

[10] *Id*. at 82-87.

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

[12] *Id*. at 523.

[13] *Id*. at 12.

[14] *Id*. at 525-526.

[15] *Id*. at 108-112.

Petitioners failed to attend the hearing scheduled on May 16, 2017. As such, the House Committee issued a Show Cause Order[16] why they should not be cited in contempt for their refusal without legal excuse to obey summons. Additionally, petitioners and co-petitioner Marcos were notified of the next scheduled hearing on May 29, 2017.[17]

In response to the Show Cause Order, petitioners reiterated that they received the notice only one day prior to the scheduled hearing date in alleged violation of the three-day notice rule under Section 8[18] of the House Rules Governing Inquiries.[19] Co-petitioner Marcos, on the other hand, reiterated the queries she raised in her earlier letter.

Nevertheless, at the scheduled committee hearing on May 29, 2017, all the petitioners appeared.[20] It is at this point of the factual narrative where the parties' respective interpretations of what transpired during the May 29, 2017 begin to differ.

Legislative hearing on May 29, 2017 and the contempt citation

On one hand, petitioners allege that at the hearing of May 29, 2017, they were subjected to threats and intimidation.[21]

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[16] *Id.* at 113-118.

[17] *Id*. at 113-119.

[18] Section 8 on the Attendance of Witnesses of the Rules Governing Inquiries provides:

Section 8. *Attendance of Witnesses*. — x x x

x x x x x x x x x

Subpoena shall be served to a witness at least three (3) days before a scheduled hearing in order to give the witness every opportunity to prepare for the hearing and to employ counsel, should the witness desire. The *subpoena* shall be accompanied by a notice stating that should a witness wishes to confer with the secretary of the committee prior to the date of the hearing, the witness may convey such desire to the committee by mail, telephone or any other electronic communication device.

[19] *Rollo*, pp. 120-126.

[20] *Id.* at 527.

[21] *Id*. at 15.

According to petitioners, they were asked "leading and misleading questions" and that regardless of their answers, the same were similarly treated as evasive.[22]

Specifically, Jambaro claims that because she could not recall the transactions Farinas alluded to and requested to see the original copy of a document presented to her for identification, she was cited in contempt and ordered detained.[23] Allegedly, the same inquisitorial line of questioning was used in the interrogation of Gaor. When Gaor answered that she could no longer remember if she received a cash advance of ₱18,600,000.00 for the purchase of 40 units of minicab, Gaor was likewise cited in contempt and ordered detained.[24]

The same threats, intimidation and coercion were likewise supposedly employed on Calajate when she was asked by Fariñas if she signed a cash advance voucher in the amount of ₱18,600,000.00 for the purchase of the 40 units of minicabs. When Calajate refused to answer, she was also cited in contempt and ordered detained.[25]

Similarly, when Battulayan could no longer recall having signed a cash advance voucher for the purchase of minicabs, she was also cited in contempt and ordered detained.[26]

Agcaoili, Jr. was likewise cited in contempt and ordered detained when he failed to answer Fariñas's query regarding the records of the purchase of the vehicles.[27] Allegedly, the same threats and intimidation were employed by Fariñas in the questioning of Tabulog who was similarly asked if she remembered the purchase of 70 mini trucks. When Tabulog

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[22] *Id*. at 14.

[23] *Id*. at 15.

[24] *Id*. at 16-17.

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

[26] *Id*. at 20-22.

[27] *Id*. at 24.

replied that she could no longer remember such transaction, she was also cited in contempt and ordered detained.[28]

On the other hand, respondents aver that petitioners were evasive in answering questions and simply claimed not to remember the specifics of the subject transactions. According to respondents, petitioners requested to be confronted with the original documents to refresh their memories when they knew beforehand that the Commission on Audit (COA) to which the original vouchers were submitted could no longer find the same.[29]

Proceedings before the CA

The next day, or on May 30, 2017, petitioners filed a Petition for *Habeas Corpus* against respondent House Sergeant-at-Arms Lieutenant General Detabali (Detabali) before the CA. The CA scheduled the petition for hearing on June 5, 2017 where the Office of the Solicitor General (OSG) entered its special appearance for Detabali, arguing that the latter was not personally served with a copy of the petition.[30] On June 2, 2017, the CA in its Resolution[31] issued a writ of *Habeas Corpus* ordering Detabali to produce the bodies of the petitioners before the court on June 5, 2017.

On June 5, 2017, Detabali again failed to attend. Instead, the Deputy Secretary General of the House of Representatives appeared to explain that Detabali accompanied several members of the House of Representatives on a Northern Luzon trip, thus his inability to attend the scheduled hearing.[32] A motion to dissolve the writ of *Habeas Corpus* was also filed on the ground that the CA had no jurisdiction over the petition.[33]

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[28] *Id*. at 25.

[29] *Id*. at 527.

[30] *Id*. at 530-531.

[31] *Id*. at 198-200.

[32] *Id*. at 27.

[33] *Id*. at 531.

On June 6, 2017, petitioners filed a Motion for Provisional Release based on petitioners' constitutional right to bail. Detabali, through the OSG, opposed the motion.[34]

At the hearing set on June 8, 2017, Detabali again failed to attend. On June 9, 2017, the CA issued a Resolution[35] denying Detabali's motion to dissolve the writ of *Habeas Corpus* and granting petitioners' Motion for Provisional Release upon posting of a bond. Accordingly, the CA issued an Order of Release Upon Bond.[36] Attempts to serve said Resolution and Order of Release Upon Bond to Detabali were made but to no avail.[37]

On June 20, 2017, the House of Representatives called a special session for the continuation of the legislative inquiry.[38] Thereat, a *subpoena ad testificandum* was issued to compel co-petitioner Marcos to appear at the scheduled July 25, 2017 hearing.[39]

The tension between the House of Representatives and the CA

During the June 20, 2017 hearing, House Committee unanimously voted to issue a Show Cause Order against the three Justices of the CA's Special Fourth Division,[40] directing them

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[34] *Id*.

[35] *Id*. at 224-229.

[36] *Id*. at 28.

[37] The process server of the CA first attempted to serve the Resolution and Order of Release Upon Bond to respondent Detabali on June 9, 2017 at around 7:00pm but that there was no one authorized to receive the same. Attempts to serve said court issuances were made on June 10, 2017 and June 13, 2017, but service was refused. *Id*. at 28-29.

[38] *Id*. at 533.

[39] *Id*. at 26.

[40] Composed of Justices Stephen C. Cruz (Acting Chairperson), Edwin D. Sorongon (Acting Senior Member who was designated by raffle as acting third member for the hearing on that day after Justice Carmelita Salandanan-Manahan went on official leave) and Nina G. Antonio-Valenzuela (Ponente-Junior Member).

to explain why they should not be cited in contempt by the House of Representatives.[41] The House of Representatives was apparently dismayed over the CA's actions in the *Habeas Corpus* Petition, with House Speaker Pantaleon Alvarez quoted as calling the involved CA Justices "*mga gago*" and threatening to dissolve the CA.[42] Disturbed by this turn of events, the involved CA Justices wrote a letter dated July 3, 2017 addressed to the Court *En Banc* deferring action on certain pending motions[43] and administratively referring the same to the Court for advice and/or appropriate action.

Meanwhile, in the *Habeas Corpus* Petition, Detabali moved for the inhibition of CA Justices Stephen Cruz and Nina Antonio-Valenzuela while CA Justice Edwin Sorongon voluntarily inhibited himself.[44]

Subsequent Release of Petitioners and Dismissal of the Habeas Corpus Petition by the CA

On July 13, 2017 and while the *Habeas Corpus* Petition was still pending before the CA, petitioners and co-petitioner Marcos filed the instant Omnibus Petition.

During the congressional hearing on July 25, 2017 which petitioners and co-petitioner Marcos attended, and while the present Omnibus Petition is pending final resolution by the Court, respondent House Committee lifted the contempt order and ordered the release of petitioners. Consequently, petitioners

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[41] *Id*. at 30.

[42] *Id*. at 273.

[43] These then pending incidents were:

1. Lt. Gen. Detabali's Motion for Reconsideration *ad cautela* (to the Order of Release Upon Bond dated 9 June 2017) dated June 13, 2017;

2. Lt. Gen. Detabali's Motion to Deem the Case Submitted for Decision and to Resolve the Same on the Earliest Possible Time dated June 23, 2017; and

3. Lt. Gen. Detabali's Motion for Inhibition dated June 28, 2017.

[44] *Id*. at 31.

were released on the same date.[45] Respondent House Committee held the continuance of the legislative hearings on August 9, 2017 and August 23, 2017.[46]

On August 31, 2017, the CA issued a Resolution in the *Habeas Corpus* Petition considering the case as closed and terminated on the ground of mootness.[47]

The Arguments

For the assumption of jurisdiction over the Habeas Corpus Petition

Petitioners insist that the *Habeas Corpus* Petition then pending before the CA can be transferred to the Court on the strength of the latter's power to promulgate rules concerning the pleading, practice and procedure in all courts and its authority to exercise jurisdiction over all courts as provided under Sections 1[48] and 5(5),[49] Article VIII of the Constitution.

Additionally, petitioners stress that the Court exercises administrative supervision over all courts as provided under Section 6,[50] Article VIII of the Constitution, and pursuant to

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[45] *Id*. at 535.

[46] *Id*. at 1115.

[47] *Id*. at 1442.

[48] Sec. 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."

[49] Sec. 5. The Supreme Court shall have the following powers;

x x x x x x x x x

5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. x x x.

[50] Sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

its authority as such, the Court has the power to transfer cases from one court to another which power it implements through Rule 4, Section 3(c)[51] of AM No. 10-4-20-SC.[52]

Citing *People of the Philippines v. Gutierrez, et al.*,[53] petitioners likewise argue that the administrative power of the Court to transfer cases from one court to another is based on its inherent power to protect the judiciary and prevent a miscarriage of justice.[54]

Respondents counter that the Omnibus Petition should be dismissed on the ground of mootness as petitioners were released from detention.

In any case, respondents argue that petitioners cannot compel the Court to assume jurisdiction over the *Habeas Corpus* Petition pending before the CA as assumption of jurisdiction is conferred by law. Respondents also argue that the Omnibus Petition is dismissible on the grounds of misjoinder of action and for failure to implead indispensable parties, *i.e.*, the CA in the petition to assume jurisdiction over the *Habeas Corpus* Petition and the Congress in the prohibition and *Amparo* petitions. Respondents also argue that petitioners committed forum shopping when they filed the present Omnibus Petition at a time when a motion for reconsideration before the CA was still pending resolution.

For the issuance of a Writ of Prohibition

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[51] Rule 4. THE EXERCISE OF ADMINISTRATIVE FUNCTION

Sec. 3. *Administrative functions of the Court.* — The administrative functions of the Court *en banc* consist of, but are not limited to, the following:

x x x x x x x x x

(c) the transfer of cases, from one court, administrative area or judicial region, to another, or the transfer of venue of the trial of cases to avoid miscarriage of justice.

[52] INTERNAL RULES OF THE SUPREME COURT.

[53] 146 Phil. 761 (1970).

[54] *Rollo*, p. 36.

Co-petitioner Marcos assails the nature of the legislative inquiry as a fishing expedition in violation of petitioners' right to due process and is allegedly discriminatory to the Province of Ilocos Norte.

Respondents counter that a petition for prohibition is not the proper remedy to enjoin legislative actions. House Committee is not a tribunal, corporation, board or person exercising judicial or ministerial function but a separate and independent branch of government. Citing *Holy Spirit Homeowners Association, Inc. v. Defensor*,[55] and *The Senate Blue Ribbon Committee v. Hon. Majaducon*,[56] respondents argue that prohibition does not lie against legislative or quasi-legislative functions.

For the issuance of a Writ of Amparo

Petitioners contend that their rights to liberty and personal security were violated as they have been detained, while co-petitioner Marcos is continuously being threatened of arrest.[57]

In opposition, respondents maintain that the writ of *Amparo* and writ of *Habeas Corpus* are two separate remedies which are incompatible and therefore cannot co-exist in a single petition. Further, respondents argue that the issuance of a writ of *Amparo* is limited only to cases of extrajudicial killings and enforced disappearances which are not extant in the instant case.

The Issues

Encapsulated, the issues for resolution are:

1. Whether or not the instant Omnibus Petition which seeks the release of petitioners from detention was rendered moot by their subsequent release from detention?

2. Whether or not the Court can assume jurisdiction over the *Habeas Corpus* Petition then pending before the CA?

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[55] 529 Phil. 573 (2006).

[56] 455 Phil. 61 (2003).

[57] *Rollo*, p. 55.

3. Whether or not the subject legislative inquiry on House Resolution No. 882 may be enjoined by a writ of prohibition?

4. Whether or not the instant Omnibus Petition sufficiently states a cause of action for the issuance of a writ of *Amparo*?[58]

Ruling of the Court

We dismiss the Omnibus Petition.

I.

The Petition to Assume Jurisdiction over *Habeas Corpus* Petition

The release of persons in whose behalf the application for a Writ of Habeas Corpus was filed renders the petition for the issuance thereof moot and academic

The writ of *Habeas Corpus* or the "great writ of liberty"[59] was devised as a "speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom."[60] The primary purpose of the writ "is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal."[61] Under the Constitution, the privilege of the writ of *Habeas Corpus* cannot be suspended except in cases of invasion or rebellion when the public safety requires it.[62]

As to what kind of restraint against which the writ is effective, case law[63] deems any restraint which will preclude freedom of action as sufficient. Thus, as provided in the Rules of Court

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[58] *Id*. at 339.

[59] *Morales, Jr. v. Minister Enrile, et al.*, 206 Phil. 466, 495 (1983).

[60] *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919).

[61] *Id*. at 790.

[62] Article III, Section 15.

[63] *Id.*

under Section 1, Rule 102 thereof, a writ of *Habeas Corpus* "shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."

On the other hand, Section 4, Rule 102 spells the instances when the writ of *Habeas Corpus* is not allowed or when the discharge thereof is authorized:

> Sec. 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

Accordingly, a Writ of *Habeas Corpus* may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court[64] because since then, the restraint has become legal.[65] In the illustrative case of *Ilagan v. Hon. Ponce Enrile*,[66] the Court dismissed the petition for *habeas corpus* on the ground of mootness considering the filing of an information before the court. The court pronounced that since the incarceration was now by virtue of a judicial order, the remedy of *habeas corpus* no longer lies.

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[64] See *In Re: Petition for Habeas Corpus of Villar v. Director Bugarin*, 224 Phil. 161, 170 (1985).

[65] *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988), citing *Cruz v. Gen. Montoya*, 159 Phil. 601, 604-605 (1975).

[66] *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561 (1985).

Like so, in *Duque v. Capt. Vinarao*,[67] the Court held that a petition for *habeas corpus* can be dismissed upon voluntary withdrawal of the petitioner. Further, in *Pestaño v. Corvista*,[68] it was pronounced that where the subject person had already been released from the custody complained of, the petition for *habeas corpus* then still pending was considered already moot and academic and should be dismissed. This pronouncement was carried on in *Olaguer v. Military Commission No. 34*,[69] where the Court reiterated that the release of the persons in whose behalf the application for a writ of *habeas corpus* was filed is effected, the petition for the issuance of the writ becomes moot and academic.[70] Thus, with the subsequent release of all the petitioners from detention, their petition for *habeas corpus* has been rendered moot. The rule is that courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved and thus, will not determine a moot question as the resolution thereof will be of no practical value.[71]

Far compelling than the question of mootness is that the element of illegal deprivation of freedom of movement or illegal restraint is jurisdictional in petitions for *habeas corpus*. Consequently, in the absence of confinement and custody, the courts lack the power to act on the petition for *habeas corpus* and the issuance of a writ thereof must be refused.

Any lingering doubt as to the justiciability of the petition to assume jurisdiction over the *Habeas Corpus* Petition before the CA is ultimately precluded by the CA Resolution considering the petition closed and terminated. With the termination of the *Habeas Corpus* Petition before the CA, petitioners' plea that the same be transferred to this Court, or that the Court assume jurisdiction thereof must necessarily be denied.

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[67] 159 Phil. 809 (1975).

[68] 81 Phil. 53 (1948).

[69] 234 Phil. 144 (1987).

[70] *Id*. at 151.

[71] *Korea Exchange Bank v. Judge Gonzales*, 520 Phil. 690, 701 (2006).

Nevertheless, the Court, in exceptional cases, decides moot questions

Although as above-enunciated, the general rule is that mootness of the issue warrants a dismissal, the same admits of certain exceptions.

In *Prof. David v. Pres. Macapagal-Arroyo*,[72] the Court summed up the four exceptions to the rule when Courts will decide cases, otherwise moot, thus: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[73] At the least, the presence of the second and fourth exceptions to the general rule in the instant case persuades us to proceed.

The Court's administrative supervision over lower courts does not equate to the power to usurp jurisdiction already acquired by lower courts

Jurisdiction over petitions for *habeas corpus* and the adjunct authority to issue the writ are shared by this Court and the lower courts.

The Constitution vests upon this Court original jurisdiction over petitions for *habeas corpus*.[74] On the other hand, Batas Pambansa (B.P.) Blg. 129,[75] as amended, gives the CA original jurisdiction to issue a writ of *habeas corpus* whether or not in aid of its appellate jurisdiction.[76] The CA's original jurisdiction

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[72] 522 Phil. 705 (2006).

[73] *Id*. at 754.

[74] Article III, Section 5(1).

[75] The Judiciary Reorganization Act Of 1980.

[76] Section 9 of B.P. Blg. 129.

over *Habeas Corpus* petitions was re-stated in R.A. No. 7902.[77] Similarly, B.P. Blg. 129 gives the RTCs original jurisdiction in the issuance of a writ of *Habeas Corpus*.[78] Family courts have concurrent jurisdiction with this Court and the CA in petitions for *habeas corpus* where the custody of minors is at issue,[79] with the Family courts having exclusive jurisdiction to issue the ancillary writ of *Habeas Corpus* in a petition for custody of minors filed before it.[80] In the absence of all RTC judges in a province or city, special jurisdiction is likewise conferred to any Metropolitan Trial Judge, Municipal Trial Judge or Municipal Circuit Trial Judge to hear and decide petitions for a writ of *Habeas Corpus*.[81]

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[77] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980. Approved on February 23, 1995.

[78] Section 21 of B.P. Blg. 129.

[79] R.A. No. 8369 or The Family Courts Act Of 1997 and A.M. No. 03-03-04-SC Re: PROPOSED RULE ON CUSTODY OF MINORS AND WRIT OF *HABEAS CORPUS* IN RELATION TO CUSTODY OF MINORS. Section 20 of which provides that:

Section 20. *Petition for writ of habeas corpus.* — A verified petition for a writ of *habeas corpus* involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.

x x x x x x x x x

The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

x x x x x x x x x

See also *In the Matter of Application for the Issuance of a Writ of Habeas Corpus Richard Brian Thornton for and in behalf of the minor child Sequeira Jennifer Delle Francisco Thornton v. Adelfa Francisco Thornton,* 480 Phil. 224 (2004).

[80] A.M. No. 03-04-04-SC, April 22, 2003.

[81] Section 35 of B.P. Blg. 129.

These conferment of jurisdiction finds procedural translation in Rule 102, Section 2 which provides that an application for a writ of *Habeas Corpus* may be made before this Court, or any member thereof, or the Court of Appeals or any member thereof, and if so granted, the same shall be enforceable anywhere in the Philippines.[82] An application for a writ of *Habeas Corpus* may also be made before the RTCs, or any of its judges, but if so granted, is enforceable only within the RTC's judicial district.[83] The writ of *Habeas Corpus* granted by the Court or by the CA may be made returnable before the court or any member thereof, or before the RTC or any judge thereof for hearing and decision on the merits.[84]

It is clear from the foregoing that this Court, the CA and the RTC enjoy concurrent jurisdiction over petitions for *habeas corpus.* As the *Habeas Corpus* Petition was filed by petitioners with the CA, the latter has acquired jurisdiction over said petition to the exclusion of all others, including this Court. This must be so considering the basic postulate that jurisdiction once acquired by a court is not lost upon the instance of the parties but continues until the case is terminated.[85] A departure from this established rule is to run the risk of having conflicting decisions from courts of concurrent jurisdiction and would unwittingly promote judicial interference and instability.

Rule 102 in fact supports this interpretation. Observe that under Section 6, Rule 102, the return of the writ of *Habeas Corpus* may be heard by a court apart from that which issued the writ.[86] In such case, the lower court to which the writ is made returnable by the issuing court shall proceed to decide the petition for *habeas corpus.* In *Medina v. Gen. Yan*[87] and

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[82] Rule 102, Section 2 of the Rules of Court.

[83] *Id.*

[84] *Id.*

[85] *Deltaventures Resources, Inc. v. Hon. Cabato*, 384 Phil. 252, 261 (2000).

[86] Rule 102, Section 6 of the Rules of Court.

[87] 158 Phil. 286, 298 (1974).

Saulo v. Brig. Gen. Cruz, etc.,[88] the Court held that by virtue of such designation, the lower court "acquire[s] the power and authority to determine the merits of the [petition for *habeas corpus*.]" Indeed, when a court acquires jurisdiction over the petition for *habeas corpus*, even if merely designated to hear the return of the writ, such court has the power and the authority to carry the petition to its conclusion.

Petitioners are without unbridled freedom to choose which between this Court and the CA should decide the *habeas corpus* petition. Mere concurrency of jurisdiction does not afford the parties absolute freedom to choose the court to which the petition shall be filed. After all, the hierarchy of courts "also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs."[89]

Further, there appears to be no basis either in fact or in law for the Court to assume or wrest jurisdiction over the *Habeas Corpus* Petition filed with the CA.

Petitioners' fear that the CA will be unable to decide the *Habeas Corpus* petition because of the assault[90] it suffered from the House of Representatives is unsubstantiated and therefore insufficient to justify their plea for the Court to over-step into the jurisdiction acquired by the CA. There is no showing that the CA will be or has been rendered impotent by the threats it received from the House of Representatives.[91] Neither was there any compelling reason advanced by petitioners that the non-assumption by this Court of the *habeas corpus* petition will result to an iniquitous situation for any of the parties.

Neither can the Court assume jurisdiction over the then pending *Habeas Corpus* Petition by invoking Section 6, Article VIII of

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[88] 109 Phil. 378, 382 (1960).

[89] *Chamber of Real Estate and Builders Assn. (CREBA) v. Sec. of Agrarian Reform*, 635 Phil. 283, 300 (2010) citing *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 432 (2005).

[90] *Rollo*, p. 25.

[91] *Id*. at 273.

the Constitution and Section 3(c), Rule 4 of A.M. No. 10-4-20-SC which both refer to the Court's exercise of administrative supervision over all courts.

Section 6, Article VIII of the Constitution provides:

> Sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

This Constitutional provision refers to the administrative supervision that the Department of Justice previously exercised over the courts and their personnel. The deliberations of the Constitutional Commission enlighten:

> MR. GUINGONA: x x x.
>
> The second question has reference to Section 9, about the administrative supervision over all courts to be retained in the Supreme Court. I was wondering if the Committee had taken into consideration the proposed resolution for the transfer of the administrative supervision from the Supreme Court to the Ministry of Justice. But as far as I know, none of the proponents had been invited to explain or defend the proposed resolution.
>
> Also, I wonder if the Committee also took into consideration the fact that the UP Law Constitution Project in its Volume I, entitled: Annotated Provision had, in fact, made this an alternative proposal, the transfer of administrative supervision from the Supreme Court to the Ministry of Justice.
>
> Thank you.
>
> MR. CONCEPCION: May I refer the question to Commissioner Regalado?
>
> THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Regalado is recognized.
>
> MR. REGALADO: Thank you, Mr. Presiding Officer.
>
> We did invite Minister Neptali Gonzales, who was the proponent for the transfer of supervision of the lower courts to the Ministry of Justice. I even personally called up and sent a letter or a short note inviting him, but the good Minister unfortunately was enmeshed in a lot of official commitments. We wanted to hear him because the Solicitor General of his office, Sedfrey Ordofiez, appeared before

us, and asked for the maintenance of the present arrangement wherein the supervision over lower courts is with the Supreme Court. But aside from that, although there were no resource persons, we did further studies on the feasibility of transferring the supervision over the lower courts to the Ministry of Justice. All those things were taken into consideration motu proprio.[92]

Administrative Supervision in Section 38, paragraph 2, Chapter 7, Book IV of the Administrative Code is defined as follows:

(2) Administrative Supervision.—(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them[.]

Thus, administrative supervision merely involves overseeing the operations of agencies to ensure that they are managed effectively, efficiently and economically, but without interference with day-to-day activities.[93]

Thus, to effectively exercise its power of administrative supervision over all courts as prescribed by the Constitution, Presidential Decree No. 828, as amended by Presidential Decree No. 842, created the Office of the Court Administrator. Nowhere in the functions of the several offices in the Office of the Court

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[92] RECORDS, CONSTITUTIONAL COMMISSION, Vol. I, pp. 456-457 (July 11, 1986).

[93] Executive Order No. 292, Book IV, Chapter 7, Section 38(2).

Administrator is it provided that the Court can assume jurisdiction over a case already pending with another court.[94]

Rule 4, Section 3(c) of A.M. No. 10-4-20-SC, on the other hand provides:

Sec. 3. Administrative Functions of the Court. — The administrative functions of the Court *en banc* consist of, but are not limited to, the following:

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[94] Circular No. 36-97 in part provides:

The Supreme Court, in its Resolution dated 24 October 1996, declared it necessary, in view of past experience and future needs, to reorganize and further strengthen the Office of the Court Administrator as its principal arm in performing its constitutional duty. In the same Resolution, the Supreme Court provided for, among others, the creation of the following offices in the Office of the Court Administrator.

1. *Office of Administrative Services.* — This Office provides services relating to personnel policy and administration; appointments and personnel actions; salary adjustments; salary policy, housing and other loans; applications for resignation; applications for retirement, Medicare and employees' compensation benefits; policies, programs and projects for the employees' welfare; personnel records of attendance; applications for leave; records of leave credits; recommendations for the separation and/or dropping from the service of personnel for violation of leave laws, rules and regulations; certificates of service; reports on judges with cases undecided beyond the prescribed ninety-day period; the procurement program for supplies, materials and equipment; the proper inventory, storage and distribution of supplies, materials and equipment; the issuance of memoranda receipt covering the equipment and vehicles distributed; the disposal of unserviceable property in accordance with existing rules and regulations; the centralized and organized mailing system of outgoing mail; the receipt and distribution of incoming mail; the storage, retrieval and disposition of personnel records of officials and employees of the Office of the Court Administrator and lower court judges and personnel; the maintenance of offices, facilities, furniture, equipment and motor vehicles.

2. *Financial Management Office.* — This Office provides services involving the preparation of vouchers and the processing of payrolls for the payment of salaries with corresponding deductions, all allowances, all fringe benefits as well as financial assistance and burial aid for all officials and employees of the Office of the Court Administrator and the lower courts, including the payment of gratuities and the money value of terminal leave benefits of all retired, resigned, terminated and deceased officials; processes commercial

x x x x x x x x x

(c) the **transfer of cases, from one court, administrative area or judicial region, to another, or the transfer of venue** of the trial of cases to avoid miscarriage of justice[.] (Emphasis ours)

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vouchers for purchases of office supplies, materials and equipment for the Office of the Court Administrator and the lower courts; processes bond applications of accountable officers and fees of counsel *de officio*; prepares and transmits remittances to the BIR, GSIS, SCSLA, JUSLA and other associations and governments agencies, processes loan applications, refunds and other benefits, maintains books of accounts of the Office of the Court Administrator and the lower courts; records collections and deposits originating from the lower courts; accepts collections for the Judiciary Development Fund [JDF], General Fund, etc., and postal money orders; deposits and remits all daily collections with the depository bank, reconciles collections and payrolls of the JDF, continuous forms and modified disbursement scheme; prepares budget proposals; requests the release of allotments and cash allocations; and submits financial reports as requested by the different government agencies.

3. *Court Management Office.* — This Office provides services relating to judicial supervision and monitoring; judicial assignment and placement; circuitization and decircuitization and the delineation of the territorial area of the lower courts; case data compilation, analysis and validation; implementation of the National Crime Information System; fiscal monitoring, audit and reconciliation; performance evaluation; review of work systems, procedures and processes; and formulation of long-range and annual plans, programs and projects for the Office of the Court Administrator and the lower courts.

4. *Legal Office.* — This Office receives complaints against justices of the Court of Appeals and the Sandiganbayan and judges and personnel of the lower courts; monitors the status of complaints and reports thereon; collates data on all administrative complaints and cases; prepares clearances requested by the Court of Appeals and Sandiganbayan justices, judges and personnel of the lower courts; processes and initiates preliminary inquiry and formal investigation of administrative complaints; evaluates and submits reports thereon to the Supreme Court; takes appropriate action on applications for transfer of venue of cases, transfer of detention prisoners, authority to teach, engage in the practice of profession or business, or appear as counsel in personal cases; and prepares comments on executive and legislative referrals/ matters affecting the courts.

5. *Publication and Information Office.* — This Office serves as the source of general information on the lower courts and on the policies, plans, activities and accomplishments of the Office of the Court Administrator and the lower courts; ensures the dissemination of accurate and proper information on the Office of the Court Administrator and the lower courts; and prepares

Clearly, the administrative function of the Court to transfer cases is a matter of venue, rather than jurisdiction. As correctly pointed out by respondents, the import of the Court's pronouncement in *Gutierrez*[95] is the recognition of the incidental and inherent power of the Court to transfer the trial of cases from one court to another of *equal rank* in a neighboring site, whenever the imperative of securing a fair and impartial trial, or of preventing a miscarriage of justice, so demands.[96] Such incidental and inherent power cannot be interpreted to mean an authority on the part of the Court to determine which court should hear specific cases without running afoul with the doctrine of separation of powers between the Judiciary and the Legislative.

II.

The Petition for Prohibition

Under the Court's expanded jurisdiction, the remedy of prohibition may be issued to correct errors of jurisdiction by any branch or instrumentality of the Government

Respondents principally oppose co-petitioner Marcos' petition for prohibition on the ground that a writ of prohibition does not lie to enjoin legislative or quasi-legislative actions. In support thereof, respondents cite the cases of *Holy Spirit Homeowners Association*[97] and *The Senate Blue Ribbon Committee.*[98]

Contrary to respondents' contention, nowhere in *The Senate Blue Ribbon Committee* did the Court finally settle that

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and distributes mass media materials in support of the objectives and activities of the Judiciary.

x x x x x x x x x

[95] *Supra* note 53.

[96] *Id*. at 771.

[97] *Supra* note 55.

[98] *Supra* note 56.

prohibition does not lie against legislative functions.[99] The import of the Court's decision in said case is the recognition of the Constitutional authority of the Congress to conduct inquiries in aid of legislation in accordance with its duly published rules of procedure and provided that the rights of persons appearing in or affected by such inquiries shall be respected. Thus, if these Constitutionally-prescribed requirements are met, courts have no authority to prohibit Congressional committees from requiring the attendance of persons to whom it issues a subpoena.

On the other hand, the Court's pronouncement in *Holy Spirit Homeowners Association* should be taken in its proper context. The principal relief sought by petitioners therein was the invalidation of the implementing rules issued by the National Government Center Administration Committee pursuant to its quasi-legislative power. Hence, the Court therein stated that prohibition is not the proper remedy but an ordinary action for nullification, over which the Court generally exercises not primary, but appellate jurisdiction.[100]

In any case, the availability of the remedy of prohibition for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Legislative and Executive branches has been categorically affirmed by the Court in *Judge Villanueva v. Judicial and Bar Council*,[101] thus:

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[99] *Rollo*, p. 563.

[100] CONSTITUTION, Article VIII, Section 5 states: The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decrees, proclamation, order, instruction, ordinance, or regulation is in question.

x x x x x x x x x

[101] 757 Phil. 534 (2015).

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, supra.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise **constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials**.[102] (Citation omitted and emphasis ours)

The above pronouncement is but an application of the Court's judicial power which Section 1,[103] Article VIII of the Constitution defines as the duty of the courts of justice (1) to settle actual controversies involving rights which are legally demandable and enforceable, and (2) 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. Such innovation under the 1987 Constitution later on became known as the Court's "traditional jurisdiction" and "expanded jurisdiction," respectively.[104]

While the requisites for the court's exercise of either concept of jurisdiction remain constant, note that the exercise by the Court of its "expanded jurisdiction" is not limited to the determination of grave abuse of discretion to quasi-judicial or judicial acts, but extends to *any* act involving the exercise of discretion on the part of the government. Indeed, the power of the Court to enjoin a legislative act is beyond cavil as what the

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[102] *Id*. at 544, citing *Araullo, et al. v. President Benigno S.C. Aquino III, et al*., 737 Phil. 457, 531 (2014).

[103] *Supra* note 48.

[104] See *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 883, 909-910 (2003).

Court did in *Garcillano v. The House of Representatives Committees on Public Information, et al.*[105] when it enjoined therein respondent committees from conducting an inquiry in aid of legislation on the notorious "Hello Garci" tapes for failure to comply with the requisite publication of the rules of procedure.

Co-petitioner Marcos failed to show that the subject legislative inquiry violates the Constitution or that the conduct thereof was attended by grave abuse of discretion amounting to lack or in excess of jurisdiction

While there is no question that a writ of prohibition lies against legislative functions, the Court finds no justification for the issuance thereof in the instant case.

The power of both houses of Congress to conduct inquiries in aid of legislation is expressly provided by the Constitution under Section 21, Article VI thereof, which provides:

> Sec. 21. The Senate or the House of Representatives or any of its respective committee **may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure.** The rights of persons appearing in, or affected by, such inquiries shall be respected. (Emphasis ours)

Even before the advent of the 1987 Constitution, the Court in *Arnault v. Nazareno*[106] recognized that the power of inquiry is an "essential and appropriate auxiliary to the legislative function."[107] In *Senate of the Philippines v. Exec. Sec. Ermita*,[108] the Court categorically pronounced that the power of inquiry is broad enough to cover officials of the executive branch, as in the instant case.[109]

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[105] 595 Phil. 775 (2008).

[106] 87 Phil. 29 (1950).

[107] *Id*. at 45.

[108] 522 Phil. 1 (2006).

[109] *Id*. at 34.

Although expansive, the power of both houses of Congress to conduct inquiries in aid of legislation is not without limitations. Foremost, the inquiry must be in furtherance of a legitimate task of the Congress, *i.e.*, legislation, and as such, "investigations conducted solely to gather incriminatory evidence and punish those investigated" should necessarily be struck down.[110] Further, the exercise of the power of inquiry is circumscribed by the above-quoted Constitutional provision, such that the investigation must be "in aid of legislation in accordance with its duly published rules of procedure" and that "the rights of persons appearing in or affected by such inquiries shall be respected."[111] It is jurisprudentially settled that the rights of persons under the Bill of Rights must be respected, including the right to due process and the right not to be compelled to testify against one's self.

In this case, co-petitioner Marcos primordially assails the nature of the legislative inquiry as a fishing expedition in alleged violation of her right to due process and to be discriminatory to the Province of Ilocos Norte. However, a perusal of the minutes of legislative hearings so far conducted reveals that the same revolved around the use of the Province of Ilocos Norte's shares from the excise tax on locally manufactured virginia-type cigarettes through cash advances which co-petitioner Marcos herself admits[112] to be the "usual practice" and was actually allowed by the Commission on Audit (COA).[113] In fact, the cause of petitioners' detention was not the perceived or gathered illegal use of such shares but the rather unusual inability of petitioners to recall the transactions despite the same having involved considerable sums of money.

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[110] *Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.*, 586 Phil. 135, 189 (2008).

[111] *Standard Chartered Bank v. Senate Committee on Banks*, 565 Phil. 744, 758 (2007) citing *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 841 (1991).

[112] *Rollo*, p. 535.

[113] *Id*. at 112.

Like so, co-petitioner Marcos' plea for the prevention of the legislative inquiry was anchored on her apprehension that she, too, will be arrested and detained by House Committee. However, such remains to be an apprehension which does not give cause for the issuance of the extraordinary remedy of prohibition. Consequently, co-petitioner Marcos' prayer for the ancillary remedy of a preliminary injunction cannot be granted, because her right thereto has not been proven to be clear and unmistakable. In any event, such injunction would be of no useful purpose given that the instant Omnibus Petition has been decided on the merits.[114]

III.
The Petition for the Issuance of a Writ of *Amparo*

The filing of the petition for the issuance of a writ of Amparo before this Court while the Habeas Corpus Petition before the CA was still pending is improper

Even in civil cases pending before the trial courts, the Court has no authority to separately and directly intervene through the writ of *Amparo*, as elucidated in *Tapuz, et al. v. Hon. Judge Del Rosario, et al.*,[115] thus:

> Where, as in this case, there is an ongoing civil process dealing directly with the possessory dispute and the reported acts of violence and harassment, we see no point in separately and directly intervening through a writ of Amparo in the absence of any clear *prima facie* showing that the right to life, liberty or security — the *personal* concern that the writ is intended to protect — is immediately in danger

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[114] Section 1 of Rule 58 of the Rules of Court, preliminary injunction is defined as an order granted at any stage of an action or proceeding *prior to the judgment or final order,* requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

[115] 577 Phil. 636 (2008).

or threatened, or that the danger or threat is continuing. We see no legal bar, however, to an application for the issuance of the writ, *in a proper case*, by motion in a pending case on appeal or on *certiorari*, applying by analogy the provisions on the co-existence of the writ with a separately filed criminal case.[116] (Italics in the original)

Thus, while there is no procedural and legal obstacle to the joining of a petition for *habeas corpus* and a petition for *Amparo*,[117] the peculiarity of the then pendency of the *Habeas Corpus* Petition before the CA renders the direct resort to this Court for the issuance of a writ of *Amparo* inappropriate.

The privilege of the writ of Amparo is confined to instances of extralegal killings and enforced disappearances, or threats thereof

Even if the Court sets aside this procedural *faux pas*, petitioners and co-petitioner Marcos failed to show, by *prima facie* evidence, entitlement to the issuance of the writ. Much less have they exhibited, by substantial evidence, meritorious grounds to the grant of the petition.

Section 1 of the Rule on the writ of *Amparo* provides:

SECTION 1. *Petition.* The petition for a *writ of Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances.

In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al.*,[118] the Court categorically pronounced that the *Amparo* Rule, as it presently stands, is confined to extralegal killings and enforced disappearances, or to threats thereof, and jurisprudentially defined these two instances, as follows:

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[116] *Id*. at 656.

[117] See *So v. Hon. Judge Tacla, Jr., et al.*, 648 Phil. 149 (2010).

[118] 589 Phil. 1 (2008).

[T]he *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, enforced disappearances are attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.[119] (Citations omitted)

The above definition of "enforced disappearance" appears in the Declaration on the Protection of All Persons from Enforced Disappearances[120] and is as statutorily defined in Section 3(g)[121] of R. A. No. 9851.[122] Thus, in *Navia, et al. v. Pardico*,[123] the elements constituting "enforced disappearance," are enumerated as follows:

(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;

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[119] *Id.* at 37-38.

[120] Adopted by General Assembly Resolution 47/133 of 18 December 1992.

[121] Sec. 3. *For the purposes of this Act, the term*:

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(g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

[122] AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES. Approved December 11, 2009.

[123] 688 Phil. 266 (2012).

(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *Amparo* petition; and,

(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.[124]

In *Lozada, Jr., et al. v. President Macapagal-Arroyo, et al.*,[125] the Court reiterates that the privilege of the writ of *Amparo* is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual.[126]

Here, petitioners and co-petitioner Marcos readily admit that the instant Omnibus Petition does not cover extralegal killings or enforced disappearances, or threats thereof. Thus, on this ground alone, their petition for the issuance of a writ of *Amparo* is dismissible.

Despite this, petitioners insist that their rights to liberty and security were violated because of their unlawful detention. On the other hand, co-petitioner Marcos seeks the protective writ of *Amparo* on the ground that her right to liberty and security are being threatened by the conduct of the legislative inquiry on House Resolution No. 882. But even these claims of actual and threatened violations of the right to liberty and security fail to impress.

To reiterate, the writ of *Amparo* is designed to protect and guarantee the (1) right to life; (2) right to liberty; and (3) right to security of persons, free from fears and threats that vitiate the quality of life. In *Rev. Fr. Reyes v. Court of Appeals, et al.*,[127]

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[124] *Id*. at 279.

[125] 686 Phil. 536 (2012).

[126] *Id*. at 276.

[127] 621 Phil. 519 (2009).

the Court had occasion to expound on the rights falling within the protective mantle of the writ of *Amparo*, thus:

> The rights that fall within the protective mantle of the Writ of *Amparo* under Section 1 of the Rules thereon are the following: (1) right to life; (2) right to liberty; and (3) right to security.
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> In *Secretary of National Defense et al. v. Manalo et al.*, the Court explained the concept of *right to life* in this wise:
>
> > While the right to life under Article III, Section 1 guarantees essentially the right to be alive- upon which the enjoyment of all other rights is preconditioned - the right to security of person is a guarantee of the secure quality of this life, *viz*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property . . . pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual."
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> The *right to liberty*, on the other hand, was defined in the *City of Manila, et al. v. Hon. Laguio, Jr.,* in this manner:
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> > Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." x x x
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> *Secretary of National Defense et al. v. Manalo et al.*, thoroughly expounded on the import of the *right to security*, thus:

A closer look at the right to security of person would yield various permutations of the exercise of this right.

***First*, the right to security of person is "freedom from fear."** In its "whereas" clauses, the **Universal Declaration of Human Rights** (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and **freedom from fear** and want has been proclaimed as the highest aspiration of the common people." x x x Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. It is the "right to security of person" as the word "security" itself means "freedom from fear." Article 3 of the UDHR provides, *viz*:

> Everyone has the right to life, liberty and **security of person**.

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The Philippines is a signatory to both the UDHR and the ICCPR.

In the context of Section 1 of the *Amparo* Rule, "freedom from fear" is the right and any **threat to the rights to life, liberty or security** is the **actionable wrong**. Fear is a state of mind, a reaction; **threat** is a stimulus, a **cause of action**. Fear caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus. Thus, in the *Amparo* context, it is more correct to say that the "right to security" is actually the "**freedom from threat."** Viewed in this light, the "threatened with violation" Clause in the latter part of Section 1 of the *Amparo* Rule is a form of violation of the right to security mentioned in the earlier part of the provision.

***Second*, the right to security of person is a guarantee of bodily and psychological integrity or security.** Article III, Section II of the 1987 Constitution guarantees that, as a general rule, ones body cannot be searched or invaded without a search warrant. Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment,

physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person.

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***Third*, the right to security of person is a guarantee of protection of ones rights by the government.** In the context of the writ of *Amparo*, this right is **built into the guarantees of the right to life and liberty** under Article III, Section 1 of the 1987 Constitution **and the right to security of person** (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State guarantees full respect for human rights under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. x x x.[128] (Citations omitted and emphasis and italics in the original)

Nevertheless, and by way of caution, the rule is that a writ of Amparo shall not issue on amorphous and uncertain grounds. Consequently, every petition for the issuance of a writ of *Amparo* should be supported by justifying allegations of fact, which the Court in *Tapuz*[129] laid down as follows:

"(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown

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[128] *Id.* at 530-532.

[129] *Supra* note 115.

or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs."

The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed.[130] (Citations omitted and italics in the original)

Even more telling is the rule that the writ of *Amparo* cannot be issued in cases where the alleged threat has ceased and is no longer imminent or continuing.[131]

In this case, the alleged unlawful restraint on petitioners' liberty has effectively ceased upon their subsequent release from detention. On the other hand, the apprehension of co-petitioner Marcos that she will be detained is, at best, merely speculative. In other words, co-petitioner Marcos has failed to show any clear threat to her right to liberty actionable through a petition for a writ of *Amparo*.

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[130] *Id.* at 652-653.

[131] *Tapuz, et al. v. Hon. Judge Del Rosario, et al.*, *supra* note 115, at 656.

In *Mayor William N. Mamba, et al. v. Leomar Bueno*,[132] the Court held that:

> Neither did petitioners and co-petitioner successfully establish the existence of a threat to or violation of their right to security. In an *Amparo* action, the parties must establish their respective claims by substantial evidence. Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged.[133]

Here, it appears that petitioners and co-petitioner Marcos even attended and participated in the subsequent hearings on House Resolution No. 882 without any untoward incident. Petitioners and co-petitioner Marcos thus failed to establish that their attendance at and participation in the legislative inquiry as resource persons have seriously violated their right to liberty and security, for which no other legal recourse or remedy is available. Perforce, the petition for the issuance of a writ of *Amparo* must be dismissed.

IV.
Congress' Power to Cite in Contempt and to Compel Attendance of Court Justices

It has not escaped the attention of the Court that the events surrounding the filing of the present Omnibus Petition bear the unsavory impression that a display of force between the CA and the Congress is impending. Truth be told, the letter of the CA Justices to the Court *En Banc* betrays the struggle these CA Justices encountered in view of the Congressional power to cite in contempt and consequently, to arrest and detain. These Congressional powers are indeed awesome. Yet, such could not be used to deprive the Court of its Constitutional duty to supervise judges of lower courts in the performance of their official duties. The fact remains that the CA Justices are non-

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[132] G.R. No. 191416, February 7, 2017.

[133] *Id.*

impeachable officers. As such, authority over them primarily belongs to this Court and to no other.

To echo the Court's ruling in *Maceda v. Ombudsman Vasquez*:[134]

> [T]he Supreme Court [has] administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take the proper administrative action against them if they commit any violation thereof. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[135]

It is this very principle of the doctrine of separation of powers as enshrined under the Constitution that urges the Court to carefully tread on areas falling under the sole discretion of the legislative branch of the government. In point is the power of legislative investigation which the Congress exercises as a Constitutional prerogative.

Concomitantly, the principle of separation of powers also serves as one of the basic postulates for exempting the Justices, officials and employees of the Judiciary and for excluding the Judiciary's privileged and confidential documents and information from *any* compulsory processes which very well includes the Congress' power of inquiry in aid of legislation.[136] Such exemption has been jurisprudentially referred to as judicial privilege as implied from the exercise of judicial power expressly vested in one Supreme Court and lower courts created by law.[137]

However, as in all privileges, the exercise thereof is not without limitations. The invocation of the Court's judicial privilege is understood to be limited to matters that are part of the internal

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[134] 293 Phil. 503 (1993).

[135] *Id.* at 506.

[136] *Senate of the Philippines v. Exec. Sec. Ermita*, *supra* note 108, at 49.

[137] CONSTITUTION, Article VIII, Section 1.

deliberations and actions of the Court in the exercise of the Members' adjudicatory functions and duties. For the guidance of the bench, the Court herein reiterates its *Per Curiam* Resolution[138] dated February 14, 2012 on the production of court records and attendance of court officials and employees as witnesses in the then impeachment complaint against former Chief Justice Renato C. Corona, insofar as it summarized the documents or communications considered as privileged as follows:

(1) Court actions such as the result of the raffle of cases and the actions taken by the Court on each case included in the agenda of the Court's session on acts done material to pending cases, except where a party litigant requests information on the result of the raffle of the case, pursuant to Rule 7, Section 3 of the Internal Rules of the Supreme Court (IRSC);

(2) Court deliberations or the deliberations of the Members in court sessions on cases and matters pending before the Court;

(3) Court records which are "predecisional" and "deliberative" in nature, in particular, documents and other communications which are part of or related to the deliberative process, *i.e*, notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers;

(4) Confidential information secured by justices, judges, court officials and employees in the course of their official functions, mentioned in (2) and (3) above, are privileged even after their term of office.

(5) Records of cases that are still pending for decision are privileged materials that cannot be disclosed, except only for pleadings, orders and resolutions that have been made available by the court to the general public.

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By way of qualification, judicial privilege is unavailing on matters external to the Judiciary's deliberative adjudicatory

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[138] *En Banc* Resolution entitled *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012.*

functions and duties. Justice Antonio T. Carpio discussed in his Separate Opinion to the *Per Curiam* Resolution, by way of example, the non-confidential matters as including those "information relating to the commission of crimes or misconduct, or violations of the Code of Judicial Conduct, or any violation of a law or regulation," and those outside the Justices' adjudicatory functions such as "financial, budgetary, personnel and administrative matters relating to the operations of the Judiciary."

As a guiding principle, the purpose of judicial privilege, as a child of judicial power, is principally for the effective discharge of such judicial power. If the matter upon which Members of the Court, court officials and employees privy to the Court's deliberations, are called to appear and testify do not relate to and will not impair the Court's deliberative adjudicatory judicial power, then judicial privilege may not be successfully invoked.

The Court had occasion to illustrate the application of the rule on judicial privilege and its qualifications to impeachment proceedings as follows:

> [W]here the ground cited in an impeachment complaint is bribery, a Justice may be called as a witness in the impeachment of another Justice, as bribery is a matter external to or is not connected with the adjudicatory functions and duties of a magistrate. A Justice, however, may not be called to testify on the arguments the accused Justice presented in the internal debates as these constitute details of the deliberative process.[139]

Nevertheless, the traditional application of judicial privilege cannot be invoked to defeat a positive Constitutional duty. Impeachment proceedings, being *sui generis*,[140] is a Constitutional process designed to ensure accountability of impeachable officers, the seriousness and exceptional importance of which outweighs the claim of judicial privilege.

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[139] *Id.*

[140] *Gonzales III v. Office of the President of the Philippines, et al.,* 725 Phil. 380, 407 (2014).

To be certain, the Court, in giving utmost importance to impeachment proceedings even as against its own Members, recognizes not the superiority of the power of the House of Representatives to initiate impeachment cases and the power of the Senate to try and decide the same, but the superiority of the impeachment proceedings as a Constitutional process intended to safeguard public office from culpable abuses. In the words of Chief Justice Maria Lourdes P. A. Sereneo in her Concurring and Dissenting Opinion to the *Per Curiam* Resolution, the matter of impeachment is of such paramount societal importance that overrides the generalized claim of judicial privilege and as such, the Court should extend respect to the Senate acting as an Impeachment Court and give it wide latitude in favor of its function of exacting accountability as required by the Constitution.

With the foregoing disquisition, the Court finds it unnecessary to discuss the other issues raised in the Omnibus Petition.

WHEREFORE, the Omnibus Petition is **DISMISSED**.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, and *Gesmundo, JJ.,* concur.

Peralta and *Reyes, Jr., JJ.,* no part.

EN BANC

[G.R. No. 234608. July 3, 2018]

ARVIN R. BALAG, *petitioner, vs.* **SENATE OF THE PHILIPPINES, SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS DRUGS, SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS, SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS AND REVISION OF CODES AND MGEN. JOSE V. BALAJADIA, JR. (RET.) IN HIS CAPACITY AS SENATE SERGEANT-AT-ARMS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOOT AND ACADEMIC CASES; INSTANCES WHERE THE COURT MAY ASSUME JURISDICTION OVER A CASE THAT HAS BEEN RENDERED MOOT AND ACADEMIC BY SUPERVENING EVENTS.— The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. x x x Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic. This Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events when any of the following instances

are present: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review.

2. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; LEGISLATIVE DEPARTMENT; POWER OF THE SENATE TO CONDUCT INQUIRY IN AID OF LEGISLATION; IN A CONTEMPT ORDER ISSUED IN RELATION THERETO, THE DURATION OF DETENTION SHOULD ONLY LAST UNTIL THE TERMINATION OF THE LEGISLATIVE INQUIRY UNDER WHICH THE POWER WAS INVOKED.— In this case, the petition presents a critical and decisive issue that must be addressed by Court: what is the duration of the detention for a contempt ordered by the Senate? x x x [T]he Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other. **The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked**. In *Arnault,* it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject. Accordingly, as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised. Conversely, once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases and there is no more genuine necessity to penalize the detained witness.

3. ID.; ID.; ID.; ID.; WHEN LEGISLATIVE INQUIRY TERMINATED.— [T]he Court rules that the legislative inquiry of the Senate terminates on two instances: *First,* upon the

approval or disapproval of the Committee Report. x x x *Second,* the legislative inquiry of the Senate also terminates upon the expiration of one (1) Congress.

APPEARANCES OF COUNSEL

Teodoro M. Jumamil for petitioner.
Office of the Senate Legal Counsel for respondents.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* and prohibition with prayer for issuance of a temporary restraining order*(TRO)*and/or writ of preliminary injunction seeking to annul, set aside and enjoin the implementation of Senate P.S. Resolution *(SR)* No. 504[1] and the October 18, 2017 Order[2]*(Contempt Order)*of the Senate Committee on Public Order and Dangerous Drugs citing Arvin Balag*(petitioner)* in contempt.

The Antecedents

On September 17, 2017, Horacio Tomas T. Castillo III *(Horacio III),*[3]a first year law student of the University of Sto. Tomas *(UST),* died allegedly due to hazing conducted by the Aegis Juris Fraternity *(AJ Fraternity)* of the same university.

On September 19, 2017, SR No. 504,[4] was filed by Senator Juan Miguel Zubiri*(Senator Zubiri)*[5] condemning the death of

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[1] *Rollo*, pp. 53-54; Entitled Condemning in the Strongest Sense the Death of Freshman Law Student Horacio Tomas Castillo III and Directing the Appropriate Senate Committees to Conduct an Investigation, in Aid of Legislation, to Hold Accountable Those Responsible for this Senseless Act.

[2] *Id*. at 55.

[3] *Id*.; referred to as Horatio "ATIO" Castillo III in the Order.

[4] *Id*. at 53; *supra* note 1.

[5] *Id*. at 774.

Horacio III and directing the appropriate Senate Committee to conduct an investigation, in aid of legislation, to hold those responsible accountable.

On September 20, 2017, SR No. 510, entitled: "A Resolution Directing the Appropriate Senate Committees to Conduct An Inquiry, In Aid of Legislation, into the Recent Death of Horacio Tomas Castillo III Allegedly Due to Hazing-Related Activities" was filed by Senator Paolo Benigno Aquino IV.[6]

On the same day, the Senate Committee on Public Order and Dangerous Drugs chaired by Senator Panfilo Lacson*(Senator Lacson)* together with the Committees on Justice and Human Rights and Constitutional Amendment and Revision of Codes, invited petitioner and several other persons to the Joint Public Hearing on September 25, 2017 to discuss and deliberate the following:Senate Bill Nos. 27,[7] 199,[8] 223,[9] 1161,[10] 1591,[11] and SR No. 504.

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[6] *Id.*

[7] **Senate Bill No. 27.** An Act Amending Republic Act No. 8049 entitled An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities and other Organizations and Providing Penalties Therefor, and for other Purposes.

[8] **Senate Bill No. 199.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.

[9] **Senate Bill No. 223.** An Act Amending Section 4 of Republic Act No. 8049, otherwise Known as An Act Regulating Hazing and other Forms of Initiation Rites in Fraternities, Sororities and other Organizations and Providing Penalties Therefor.

[10] **Senate Bill No. 1161.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations, and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.

[11] **Senate Bill No. 1591.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations, and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.

Petitioner, however, did not attend the hearing scheduled on September 25, 2017. Nevertheless, John Paul Solano, a member of AJ Fraternity, Atty. Nilo T. Divina, Dean of UST Institute of Civil Law and Arthur Capili, UST Faculty Secretary, attended the hearing and were questioned by the senate committee members.

On the same date, Spouses Carmina T. Castillo and Horacio M. Castillo, Jr. *(Spouses Castillo),* parents of Horacio III, filed a Criminal Complaint[12] for Murder and violation of Section 4 of Republic Act *(R.A.)* No. 8049,[13] before the Department of Justice *(DOJ)* against several members of the AJ Fraternity, including petitioner. On October 9, 2017, Spouses Castillo filed a Supplemental Complaint-Affidavit[14] before the DOJ citing the relevant transcripts of stenographic notes during the September 25, 2017 Senate Hearing.

On October 11, 2017,Senator Lacson as Chairman of Senate Committee on Public Order and Dangerous Drugs,and as approved by Senate President Aquilino Pimentel III, issued a Subpoena *Ad Testificandum*[15] addressed to petitioner directing him to appear before the committee and to testify as to the subject matter under inquiry.[16] Another Subpoena *Ad Testificandum*[17] was issued on October 17, 2017, which was received by petitioner on the same day, requiring him to attend the legislative hearing on October 18, 2017.

On said date, petitioner attended the senate hearing. In the course of the proceedings, at around 11:29 in the morning, Senator Grace Poe *(Senator Poe)* asked petitioner if he was

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[12] *Rollo*, pp. 56-71.

[13] Otherwise Known as An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities Sororities, and other Organizations and Providing Penalties Therefor.

[14] *Id*. at 90-105.

[15] *Id*. at 1091-1092.

[16] *Id*.

[17] *Id*. at 532-533.

the president of AJ Fraternity but he refused to answer the question and invoked his right against self-incrimination. Senator Poe repeated the question but he still refused to answer. Senator Lacson then reminded him to answer the question because it was a very simple question, otherwise, he could be cited in contempt. Senator Poe retorted that petitioner might still be clinging to the supposed "Code of Silence" in his alleged text messages to his fraternity. She manifested that petitioner's signature appeared on the application for recognition of the AJ Fraternity and on the organizational sheet, indicating that he was the president. Petitioner, again, invoked his right against self-incrimination. Senator Poe then moved to cite him in contempt, which was seconded by Senators Joel Villanueva *(Senator Villanueva)* and Zubiri. Senator Lacson ruled that the motion was properly seconded, hence, the Senate Sergeant-at-arms was ordered to place petitioner in detention after the committee hearing. Allegedly, Senator Lacson threatened to order the detention of petitioner in Pasay City Jail under the custody of the Senate Sergeant-at-arms and told him not to be evasive because he would be merely affirming school records.

A few minutes later, at around 12:09 in the afternoon, Senators Lacson and Poe gave petitioner another chance to purge himself of the contempt charge. Again, he was asked the same question twice and each time he refused to answer.[18]

Thereafter, around 1:19 in the afternoon, Senator Villanueva inquired from petitioner whether he knew whose decision it was to bring Horacio III to the Chinese General Hospital instead of the UST Hospital. Petitioner apologized for his earlier statement and moved for the lifting of his contempt. He admitted that he was a member of the AJ Fraternity but he was not aware as to who its president was because, at that time, he was enrolled in another school.

Senator Villanueva repeated his question to petitioner but the latter, again, invoked his right against self-incrimination. Petitioner reiterated his plea that the contempt order be lifted

[18] *Id*. at 775.

because he had already answered the question regarding his membership in the AJ Fraternity. Senator Villanueva replied that petitioner's contempt would remain. Senator Lacson added that he had numerous opportunities to answer the questions of the committee but he refused to do so. Thus, petitioner was placed under the custody of the Senate Sergeant-at-arms. The Contempt Order reads:

RE: PRIVILEGE SPEECH OF SEN. JUAN MIGUEL ZUBIRI ON THE DEATH OF HORATIO "ATIO" CASTILLO III DUE TO HAZING DELIVERED ON 20 SEPTEMBER 2017;

PS RES. NO. 504: RESOLUTION CONDEMNING IN THE STRONGEST SENSE THE DEATH OF FRESHMAN LAW STUDENT HORATIO TOMAS CASTILLO III AND DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, TO HOLD ACCOUNTABLE THOSE RESPONSIBLE FOR THIS SENSELESS ACT (SEN. ZUBIRI); AND

SENATE BILLS NOS. 27, 199, 223, 1161, AND 1591.

x x x x x x x x x

For testifying falsely and evasively before the Committee on [October 18,2017] and thereby delaying, impeding and obstructing the inquiry into the death of Horacio "Atio" Castillo III. Thereupon the motion of Senator Grace Poe and seconded by Senator Joel Villanueva and Senator Juan Miguel Zubiri, the Committee hereby cites MR. ARVIN BALAG in contempt and ordered arrested and detained at the Office of the Sergeant-at-Arms until such time that he gives his true testimony, or otherwise purges himself of that contempt.

The Sergeant-at-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement.

SO ORDERED.[19]

Hence, this petition.

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[19] *Supra* note 2.

ISSUE

WHETHER RESPONDENT SENATE COMMITTEES ACTED WITH GRAVE ABUSE OF DISCRETION IN CONDUCTING THE LEGISLATIVE INQUIRY AND CITING PETITIONER IN CONTEMPT.

Petitioner chiefly argues that the legislative inquiry conducted by respondent committees was not in aid of legislation; rather, it was in aid of prosecution. He posits that the purpose of SR No. 504 was to hold accountable those responsible for the senseless act of killing Horacio III, and not to aid legislation. Petitioner underscores that the transcripts during the September 25, 2017 committee hearing were used in the criminal complaint filed against him, which bolsters that the said hearings were in aid of prosecution. He insists that the senate hearings would violate his right to due process and would pre-empt the findings of the DOJ with respect to the criminal complaint filed against him.

Petitioner also asserts that he properly invoked his right against self-incrimination as the questions propounded by Senator Poe regarding the officers, particularly the presidency of the AJ Fraternity, were incriminating because the answer thereto involves an element of the crime of hazing. Despite the questions being incriminating, he, nonetheless, answered them by admitting that he was a member of the AJ Fraternity but he did not know of its current president because he transferred to another school. He adds that his right to equal protection of laws was violated because the other resource persons who refused to answer the questions of the Senate committees were not cited in contempt.

Finally, petitioner prays for the issuance of TRO and/or writ of preliminary injunction because the Senate illegally enforced and executed SR No. 504 and the Contempt Order, which caused him grave and irreparable injury as he was deprived of his liberty without due process of law. He contends that respondents did not exercise their power of contempt judiciously and with restraint.

In their Comment,[20] respondents, through the Office of the Senate Legal Counsel, countered that the purpose of the hearing was to re-examine R.A. No. 8049; that several documents showed that the legislative hearing referred to Senate Bill Nos. 27, 199, 223, 1161, and 1591; that the statement of the senators during the hearing demonstrated that the legislative inquiry was conducted in aid of legislation; and that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation *(Senate Rules)*were duly published.

Respondents emphasized that petitioner was first asked on October 18, 2017, around 11:29 in the morning, whether he was the president of the AJ Fraternity, based on school records, and he denied it; he was asked again at 12:09 in the afternoon whether he was the president of the AJ Fraternity but he still refused to answer the question; at 1:19 in the afternoon, he admitted that he was a member of the fraternity but still he refused to say whether or not he was the president, only saying that he is already studying in another school. On November 6, 2017, at the resumption of the hearing, petitioner was still unresponsive. According to respondents, these acts were contemptuous and were valid reasons to cite petitioner in contempt.

Respondents highlighted that there were numerous documents showing that petitioner was the president of the AJ Fraternity but he continuallyrefused to answer. They added that petitioner cannot purge himself of contempt by continually lying.

Further, respondents underscored that the question propounded to petitioner was not incriminating because an admission that he was an officer of the AJ Fraternity would not automatically make him liable under R.A. No. 8049. They emphasized that the Senate respected petitioner's right to due process because the hearing was conducted in aid of legislation; that the senators explained why he would be cited in contempt; that he was given several chances to properly purge himself from contempt; and that no incriminating question was asked. Respondents concluded

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[20] *Id*. at 772.

that there was no violation of petitioner's right to equal protection of laws because the other resource persons did not invoke their right against self-incrimination when asked if they were the officers of the AJ Fraternity.

Respondents likewise explained that the legislative inquiry in aid of legislation may still continue in spite of any pending criminal or administrative cases or investigation. They countered that the actions for *certiorari* and prohibition were not proper because there were existing remedies that petitioner could have availed of, particularly: a motion to reverse the contempt charge filed within 7 days under Section 18 of the Senate Rules; and a petition for *habeas corpus* as petitioner ultimately would seek for his release from detention.

Finally, respondents asserted that the recourse for the issuance of TRO and/or writ of preliminary injunction was not proper because petitioner was actually asking to be freed from detention, and this was contemplated under a *status quo ante order*. For invoking the wrong remedy, respondents concluded that a TRO and/or writ of preliminary injunction should not be issued.

In its Resolution[21] dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition.

In its Manifestation[22] dated February 20, 2018, respondents stated that on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly submitted Committee Report Nos. 232 and 233 recommending that Senate Bill No. 1662 be approved in substitution of Senate Bill Nos. 27, 199, 223, 1161, 1591, and 1609. The said committee reports were approved by the majority of their members.[23] On February 12, 2018, the Senate passed on 3rd reading Senate Bill No. 1662, entitled: An Act Amending Republic Act No. 8049 to Strengthen the Law on Hazing and Regulate Other Forms

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[21] *Rollo,* p. 1625.

[22] *Id*. at 1640.

[23] *Id*. at 1642.

of Initiation Rites of Fraternities, Sororities, and Other Organizations, Providing Penalties Therefor, and for Other Purposes, with its short title as "Anti-Hazing Act of 2018."

The Court's Ruling

The petition is moot and academic.

The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[24]

In this case, the Court finds that there is no more justiciable controversy. Petitioner essentially alleges that respondents unlawfully exercised their power of contempt and that his detention was invalid. As discussed earlier, in its resolution dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition. Thus, petitioner was no longer detained under the Senate's authority.

Then, on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly adopted Committee Report Nos. 232 and 233 and submitted the same to the Senate. Committee Report No. 232 referred to the findings of respondent committees in the inquiry conducted in aid of legislation; while Committee Report No. 233 referred to the recommendation that Senate Bill No. 1662 be approved

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[24] *Lim Bio Hian v. Lim Eng Tian,* G.R. Nos. 195472 & 195568, January 8, 2018.

in substitution of Senate Bill Nos. 27, 199, 223, 1161, 1591, and 1609. On February 12, 2018, the Senate passed on 3rd reading Senate Bill No. 1662.

Evidently, respondent committees have terminated their legislative inquiry upon the approval of Committee Report Nos. 232 and 233 by the majority of its members. The Senate even went further by approving on its 3rd reading the proposed bill, Senate Bill No. 1662, the result of the inquiry in aid of legislation. As the legislative inquiry ends, the basis for the detention of petitioner likewise ends.

Accordingly, there is no more justiciable controversy regarding respondents' exercise of their constitutional power to conduct inquiries in aid of legislation, their power of contempt, and the validity of petitioner's detention. Indeed, the petition has become moot and academic.

Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic.[25] This Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events when any of the following instances are present:

(1) Grave constitutional violations;
(2) Exceptional character of the case;
(3) Paramount public interest;
(4) The case presents an opportunity to guide the bench, the bar, and the public; or
(5) The case is capable of repetition yet evading review.[26]

In *David v. Arroyo*,[27] several petitions assailed the constitutionality of the declaration of a state of national emergency by then

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[25] *Mattel, Inc. v. Francisco, et al.,* 582 Phil. 492, 501 (2008).

[26] *Supra* note 24.

[27] 522 Phil. 705 (2006).

President Gloria Macapagal-Arroyo. During the pendency of the suits, the said declaration was lifted. However, the Court still decided the cases on the merits because the issues involved a grave violation of the Constitution and it affected public interest.

Similarly, in *Republic v. Principalia Management and Personnel Consultants, Inc.*,[28] the controversy therein was whether the Regional Trial Court *(RTC)*had jurisdiction over an injunction complaint filed against the Philippine Overseas Employment Administration *(POEA)*regarding the cancellation of the respondent's license. The respondent then argued that the case was already moot and academic because it had continuously renewed its license with the POEA. The Court ruled that although the case was moot and academic, it could still pass upon the main issue for the guidance of both bar and bench, and because the said issue was capable of repetition.

Recently, in *Regulus Development, Inc. v. Dela Cruz,*[29] the issue therein was moot and academic due to the redemption of the subject property by the respondent. However, the Court ruled that it may still entertain the jurisdictional issue of whether the RTC had equity jurisdiction in ordering the levy of the respondent's property since it posed a situation capable of repetition yet evading judicial review.

In this case, the petition presents a critical and decisive issuethat must be addressed by Court: what is the duration of the detention for a contempt ordered by the Senate?

This issue must be threshed out as the Senate's exercise of its power of contempt without a definite period is capable of repetition. Moreover, the indefinite detention of persons cited in contempt impairs their constitutional right to liberty. Thus, paramount public interest requires the Court to determine such issue to ensure that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.

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[28] 768 Phil. 334 (2015).

[29] 779 Phil. 75 (2016).

The contempt order issued against petitioner simply stated that he wouldbe arrested and detained until such time that he gives his true testimony, or otherwise purges himself of the contempt. It does not provide any definite and concrete period of detention. Neither does the Senate Rules specify a precise period of detention when a person is cited in contempt.

Thus, a review of the Constitution and relevant laws and jurisprudence must be conducted to determine whether there is a limitation to the period of detention when the Senate exercises its power of contempt during inquiries in aid of legislation.

Period of imprisonment for contempt during inquiries in aid of legislation

The contempt power of the legislature under our Constitution is sourced from the American system.[30] A study of foreign jurisprudence reveals that the Congress' inherent power of contempt must have a limitation. In the 1821 landmark case of *Anderson v. Dunn,*[31] the Supreme Court of the United States *(SCOTUS)*held that although the offense committed under the inherent power of contempt by Congress may be undefinable, it is justly contended that the punishment need not be indefinite. It held that as the legislative body ceases to exist from the moment of its adjournment or periodical dissolution, then it follows that imprisonment under the contempt power of Congress must terminate with adjournment.

As the US Congress was restricted of incarcerating an erring witnesses beyond their adjournment under its inherent power of contempt,it enacted a statutory law that would fix the period of imprisonment under legislative contempt. Section 102 of the Revised Statutes, enacted on January 24, 1857, provided that the penalty of imprisonment for legislative contempt was a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not

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[30] See *Arnault v. Nazareno,* 87 Phil. 29 (1950).

[31] 19 U.S. 204 (1821).

less than one (1) month nor more than twelve (12) months.[32] The legislative contempt under the statutes must be initiated for criminal prosecution and it must heard before the courts in order to convict the contumacious witness.[33]

The case of *In re Chapman*[34] involved the constitutionality of the statutory power of contempt of the US Congress. There, the SCOTUS ruled that the said statute was valid because Congress, by enacting this law, simply sought to aid each of the Houses in the discharge of its constitutional functions.

Subsequently, in *Jurney v. MacCracken,*[35] the SCOTUS clarified that the power of either Houses of Congress to punish for contempt was not impaired by the enactment of the 1857 statute. The said law was enacted, not because the power of both Houses to punish for a past contempt was doubted, but because imprisonment limited to the duration of the session was not considered sufficiently drastic as a punishment for contumacious witnesses. The purpose of the statutory contempt was merely to supplement the inherent power of contempt by providing for additional punishment.On June 22, 1938, Section 102 of the Revised Statutes was codified in Section 192, Title II of the U.S. Code.[36]

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[32] *In re Chapman*, 166 U.S. 661 (1897).

[33] *Watkins v. United States,* 354 U.S. 178 (1957).

[34] *Supra* note 32.

[35] 294 U.S. 125 (1935).

[36] 2 U.S. Code § 192 — Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

In our jurisdiction, the period of the imprisonment for contempt by Congress was first discussed in *Lopez v. De Los Reyes*[37] *(Lopez)*. In that case, on September 16, 1930, the petitioner therein was cited in contempt by the House of Representatives for physically attacking their member. However, the assault occurred during the Second Congress, which adjourned on November 8, 1929. The Court ruled therein that there was no valid exercise of the inherent power of contempt because the House of Representatives already adjourned when it declared the petitioner in contempt.

It was held therein that imprisonment for a term not exceeding the session of the deliberative body in which the contempt occurred was the limit of the authority to deal directly by way of contempt, without criminal prosecution. Citing foreign jurisprudence, it was thoroughly discussed therein that the power of contempt was limited to imprisonment during the session of the legislative body affected by the contempt. The Court also discussed the nature of Congress' inherent power of contempt as follows:

> x x x **We have said that the power to find in contempt rests fundamentally on the power of self-preservation.** That is true even of contempt of court where the power to punish is exercised on the preservative and not on the vindictive principle. **Where more is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights.** Proceeding a step further, it is evident that, while the legislative power is perpetual, and while one of the bodies composing the legislative power disappears only every three years, yet the sessions of that body mark new beginnings and abrupt endings, which must be respected.[38] (emphases supplied)

The Court ruled therein that if the House of Representatives desires to punish the person cited in contempt beyond its adjournment, then criminal prosecution must be brought. In

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[37] 55 Phil. 170 (1930).

[38] *Id*. at 184.

that instance, the said person shall be given an opportunity to defend himself before the courts.

Then came *Arnault v. Nazareno*[39] *(Arnault),* where the Senate's power of contempt was discussed. In that case, the Court held that the Senate "is a continuing body and which does not cease to exist upon the periodical dissolution of Congress or of the House of Representatives. There is no limit as to time [with] the Senate's power to punish for contempt in cases where that power may constitutionally be exerted x x x."[40] It was ruled therein that had contempt been exercised by the House of Representatives, the contempt could be enforced until the final adjournment of the last session of the said Congress.[41]

Notably, *Arnault* gave a distinction between the Senate and the House of Representatives' power of contempt. In the former, since it is a continuing body, there is no time limit in the exercise of its power to punish for contempt; on the other hand, the House of Representatives, as it is not a continuing body, has a limit in the exercise of its power to punish for contempt, which is on the final adjournment of its last session. In the same case, the Court addressed the possibility that the Senate might detain a witness for life, to wit:

> As against the foregoing conclusion it is argued for the petitioner that the power may be abusively and oppressively exerted by the Senate which might keep the witness in prison for life. But we must assume that the Senate will not be disposed to exert the power beyond its proper bounds. And if, contrary to this assumption, proper limitations are disregarded, the portals of this Court are always open to those whose rights might thus be transgressed.[42]

Further, the Court refused to limit the period of imprisonment under the power of contempt of the Senate because "[l]egislative functions may be performed during recess by duly constituted

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[39] *Supra* note 30.

[40] *Id.* at 62.

[41] *Id.*

[42] *Id*. at 63.

committees charged with the duty of performing investigations or conducting hearings relative to any proposed legislation. To deny to such committees the power of *inquiry* with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an essential and appropriate auxiliary to its legislative function. x x x."[43]

Later, in *Neri v. Senate*[44] *(Neri),* the Court clarified the nature of the Senate as continuing body:

> On the nature of the Senate as a "continuing body", this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate as an institution is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it. The Rules of the Senate itself confirms this when it states:
>
> RULE XLIV
> UNFINISHED BUSINESS
>
> SEC. 123. Unfinished business at the end of the session shall be taken up at the next session in the same status.
>
> All pending matters and proceedings shall terminate upon the expiration of one (1) Congress, but may be taken by the succeeding Congress as if present for the first time.

Undeniably from the foregoing, all pending matters and proceedings, i.e., unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time. The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. If the Senate is a continuing body even with respect to the conduct

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[43] *Supra* note 30.

[44] 586 Phil. 135 (2008).

of its business, then pending matters will not be deemed terminated with the expiration of one Congress but will, as a matter of course, continue into the next Congress with the same status.[45]

Based on the above-pronouncement, the Senate is a continuing institution. However, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate of the Congress before it. Due to the termination of the business of the Senate during the expiration of one (1) Congress, **all pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress** and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time.

The termination of the Senate's business and proceedings after the expiration of Congress was utilized by the Court in ruling that the Senate needs to publish its rules for its legislative inquiries in each Congress. The pronouncement in *Neri* was reiterated in *Garcillano v. House of Representatives*[46] and *Romero II v. Estrada*.[47]

The period of detention under the Senate's inherent power of contempt is not indefinite.

The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. **Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.** Under *Arnault,* however, a witness or resource speaker cited in contempt by the Senate may be detained indefinitely due to its characteristic as a

[45] *Id*. at 196-197.

[46] 595 Phil. 775 (2008).

[47] 602 Phil. 312 (2009).

continuing body. The said witness may be detained for a day, a month, a year, or even for a lifetime depending on the desire of the perpetual Senate. Certainly, in that case, the rights of persons appearing before or affected by the legislative inquiry are in jeopardy.The constitutional right to liberty that every citizen enjoys certainly cannot be respected when they are detained for an indefinite period of time without due process of law.

As discussed in *Lopez,* Congress' power of contempt rests solely upon the right of self-preservation and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself.[48] Even *arguendo* that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a restriction to the liberty of the said witness. It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose.[49] An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.

Nevertheless, it is recognized that the Senate's inherent power of contempt is of utmost importance. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change.Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry.[50] While there is a

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[48] *Supra* note 37 at 184.

[49] *Alejano v. Cabuay,* 505 Phil. 298, 314 (2005).

[50] See *Arnault v. Nazareno, supra* note 30 at 45.

presumption of regularity that the Senate will not gravely abuse its power of contempt, there is still a lingering and unavoidable possibility of indefinite imprisonment of witnesses as long as there is no specific period of detention, which is certainly not contemplated and envisioned by the Constitution.

Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other.[51]

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked. In *Arnault,* it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject.[52] Accordingly, as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised. Conversely, once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases and there is no more genuine necessity to penalize the detained witness.

Further, the Court rules that the legislative inquiry of the Senate terminates on two instances:

First, upon the approval or disapproval of the Committee Report. Sections 22 and 23 of Senate Rules state:

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[51] *Secretary of Justice v. Hon. Lantion, et al.,* 397 Phil. 423, 437 (2000).

[52] *Supra* note 30 at 45 & 48.

Sec. 22. Report of Committee. **Within fifteen (15) days after the conclusion of the inquiry, the Committee shall meet to begin the consideration of its Report.**

The Report shall be approved by a majority vote of all its members. Concurring and dissenting reports may likewise be made by the members who do not sign the majority report within seventy-two (72) hours from the approval of the report. The number of members who sign reports concurring in the conclusions of the Committee Report shall be taken into account in determining whether the Report has been approved by a majority of the members: Provided, That the vote of a member who submits both a concurring and dissenting opinion shall not be considered as part of the majority unless he expressly indicates his vote for the majority position.

The Report, together with any concurring and/or dissenting opinions, shall be filed with the Secretary of the Senate, who shall include the same in the next Order of Business.

Sec. 23. Action on Report. The Report, upon inclusion in the Order of Business, shall be referred to the Committee on Rules for assignment in the Calendar. (emphases supplied)

As gleaned above, the Senate Committee is required to issue a Committee Report after the conduct of the legislative inquiry. The importance of the Committee Report is highlighted in the Senate Rules because it mandates that the committee begin the consideration of its Report within fifteen (15) days from the conclusion of the inquiry. The said Committee Report shall then be approved by a majority vote of all its members; otherwise, it is disapproved. The said Report shall be the subject matter of the next order of business, and it shall be acted upon by the Senate. Evidently, the Committee Report is the culmination of the legislative inquiry. Its approval or disapproval signifies the end of such legislative inquiry and it is now up to the Senate whether or not to act upon the said Committee Report in the succeeding order of business. At that point, the power of contempt simultaneously ceases and the detained witness should be released. As the legislative inquiry ends, the basis for the detention of the recalcitrant witness likewise ends.

Second, the legislative inquiry of the Senate also terminates upon the expiration of one (1) Congress. As stated in *Neri,* all

pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time. Again, while the Senate is a continuing institution, its proceedings are terminated upon the expiration of that Congress at the final adjournment of its last session. Hence, as the legislative inquiry ends upon that expiration, the imprisonment of the detained witnesses likewise ends.

In *Arnault,* there have been fears that placing a limitation on the period of imprisonment pursuant to the Senate's power of contempt would "deny to it an essential and appropriate means for its performance."[53] Also, in view of the limited period of imprisonment, "the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed x x x."[54]

The Court is of the view that these fears are insufficient to permit an indefinite or an unspecified period of imprisonment under the Senate's inherent power of contempt. If Congress believes that there is a necessity to supplement its power of contempt by extending the period of imprisonment beyond the conduct of its legislative inquiry or beyond its final adjournment of the last session, then it can enact a law or amend the existing law that penalizes the refusal of a witness to testify or produce papers during inquiries in aid of legislation. The charge of contempt by Congress shall be tried before the courts, where the contumacious witness will be heard. More importantly, it shall indicate the exact penalty of the offense, which may include a fine and/or imprisonment, and the period of imprisonment shall be specified therein. This constitutes as the statutory power of contempt, which is different from the inherent power of contempt.

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[53] *Id*. at 62.

[54] *Id*. at 63.

Congress' statutory power of contempt has been recognized in foreign jurisdictions as reflected in the cases of *In re Chapman* and *Jurney v. MacCracken*.Similarly,in this jurisdiction, the statutory power of contempt of Congress was also acknowledged in *Lopez*.It was stated therein that in cases that if Congress seeks to penalize a person cited in contempt beyond its adjournment, it must institute a criminal proceeding against him. When his case is before the courts, the culprit shall be afforded all the rights of the accused under the Constitution. He shall have an opportunity to defend himself before he can be convicted and penalized by the State.

Notably, there is an existing statutory provision under Article 150 of the Revised Penal Code, which penalizes the refusal of a witness to answer any legal inquiry before Congress, to wit:

> Art. 150. Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions. — The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, **refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions**. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official. (emphasis and underscoring supplied)

Verily, the said law may be another recourse for the Senate to exercise its statutory power of contempt. The period of detention provided therein is definite and is not limited by the period of the legislative inquiry. Of course, the enactment of

a new lawor the amendment of the existing law to augment its power of contempt and to extend the period of imprisonment shall be in the sole discretion of Congress.

Moreover, the apprehension in *Arnault* — that the Senate will be prevented from effectively conducting legislative hearings during recess – shall be duly addressed because it is expressly provided herein that the Senate may still exercise its power of contempt during legislative hearings while on recess provided that the period of imprisonment shall only last until the termination of the legislative inquiry, specifically, upon the approval or disapproval of the Committee Report. Thus, the Senate's inherent power of contempt is still potent and compelling even during its recess. At the same time, the rights of the persons appearing are respected because their detention shall not be indefinite.

In fine, the interests of the Senate and the witnesses appearing in its legislative inquiry are balanced. The Senate can continuously and effectively exercise its power of contempt during the legislative inquiry against recalcitrant witnesses, even during recess. Such power can be exercised by the Senate immediately when the witness performs a contemptuous act, subject to its own rules and the constitutional rights of the said witness.

In addition, if the Congress decides to extend the period of imprisonment for the contempt committed by a witness beyond the duration of the legislative inquiry, then it may file a criminal case under the existing statute or enact a new law to increase the definite period of imprisonment.

WHEREFORE, the petition is **DENIED** for being moot and academic. However, the period of imprisonment under the inherent power of contempt of the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry.

The December 12, 2017 Resolution of the Court ordering the temporary release of Arvin R. Balag from detention is hereby declared **FINAL**.

SO ORDERED.

Carpio, *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam,* and *Reyes, Jr., JJ.,* concur.

Martires, J., no part, related to one of the parties.

SECOND DIVISION

[A.C. No. 11185. July 4, 2018]
(Formerly CBD No. 12-3619)

JAIME S. DE BORJA, *complainant, vs.* **ATTY. RAMON R. MENDEZ, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); AN ATTORNEY IS BOUND TO PROTECT THE INTEREST OF HIS CLIENT TO THE BEST OF HIS ABILITY AND WITH UTMOST DILIGENCE; FAILURE TO FILE THE CLIENT'S APPEAL BRIEF ON TIME IS TANTAMOUNT TO NEGLIGENCE IN VIOLATION TO THE MANDATE PRESCRIBED IN THE CODE OF PROFESSIONAL RESPONSIBILITY; CASE AT BAR.— Canon 18 of the Code of Professional Responsibility for Lawyers states that "*A lawyer shall serve his client with competence and diligence*." x x x In the instant case, Atty. Mendez' guilt as to his failure to do his duty to his client is undisputed. His conduct relative to the non-filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause. An attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence. Failure to file the brief within the reglementary period despite notice certainly constitutes inexcusable negligence, more so if the failure

resulted in the dismissal of the appeal, as in this case. x x x Other than Atty. Mendez' allegation of non-receipt of the notice, he has failed to duly present any reasonable excuse for the non-filing of the appellant's brief despite notice, thus, the allegation of negligence on his part in filing the appellant's brief remains uncontroverted. As a lawyer, it is expected of him to make certain that the appeal brief was filed on time. Clearly, his failure to do so is tantamount to negligence which is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility enjoining lawyers not to neglect a legal matter entrusted to him.

2. **ID.; ID.; THE LEGAL PROFESSION DICTATES THAT IT IS NOT A MERE DUTY, BUT AN OBLIGATION, OF A LAWYER TO ACCORD THE HIGHEST DEGREE OF FIDELITY, ZEAL AND FERVOR IN THE PROTECTION OF THE CLIENT'S INTEREST.—** Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. A lawyer's fidelity to the cause of his client requires him to be ever mindful of the responsibilities that should be expected of him. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice. Atty. Mendez failed to perform such duty and his omission is tantamount to a desecration of the Lawyer's Oath.

3. **ID.; ID.; WHERE A CLIENT GIVES MONEY TO HIS LAWYER FOR A SPECIFIC PURPOSE, THE LAWYER, UPON FAILURE TO SPEND THE MONEY ENTRUSTED TO HIM/HER FOR THE PURPOSE, MUST IMMEDIATELY RETURN THE SAID MONEY ENTRUSTED BY THE CLIENT.—** In line with the highly fiduciary nature of an

attorney-client relationship, Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand. Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client. x x x Time and again, We have reminded lawyers that the practice of law is a privilege bestowed only to those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion. The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.

4. REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE APPROPRIATE PENALTY ON AN ERRANT LAWYER DEPENDS ON THE EXERCISE OF SOUND JUDICIAL DISCRETION BASED ON THE SURROUNDING FACTS; CASE AT BAR.— A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. Considering our jurisprudence and the totality of the circumstances in the present case, the Court finds that the suspension for six (6) months recommended by the IBP-CBD which was adopted by the Board of Governors is not sufficient punishment for Atty. Mendez' transgressions. His failure to discharge his duty properly constitutes an infringement of ethical

standards and of his oath. Such failure makes him answerable not just to his client, but also to this Court, to the legal profession, and to the general public.

APPEARANCES OF COUNSEL

De Leon & Desiderio for complainant.
R.R. Mendez & Associates Law Offices for respondent.

D E C I S I O N

PERALTA, ***J.*:**

Before us is a Complaint[1] dated October 23, 2012 for disciplinary action filed by complainant Jaime S. De Borja (*Jaime*) against respondent Atty. Ramon R. Mendez, Jr. (*Atty. Mendez*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*), docketed as CBD Case No. 12-3619, now A.C. No. 11185.

The facts are as follows:

Sometime in 2004, Jaime, as representative of the Heirs of Deceased Augusto De Borja, engaged the services of R.R. Mendez & Associates Law Offices where Atty. Mendez is a lawyer, for the reconveyance of a parcel of land. Along with the prosecution of the case, Atty. Mendez demanded Three Hundred Thousand Pesos (₱300,000.00) for the titling of a property situated in Pateros. Jaime submitted a copy of the receipt of said amount of money which was acknowledged by Atty. Mendez.[2]

However, the complaint for reconveyance was dismissed, thus, Atty. Mendez filed a notice of appeal. On October 20, 2011, the Court of Appeals ordered the Heirs of De Borja to file their Appellant's Brief within forty-five (45) days from receipt of the notice.[3] When Jaime received the notice on October

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[1] *Rollo*, pp. 2-9.

[2] *Id.* at 10.

[3] *Id.* at 11.

27, 2011,[4] he inquired with Atty. Mendez about the letter, to which Atty. Mendez committed that he will file the Appellant's Brief as soon as he receives a copy of the notice.

On February 3, 2012, Jaime was surprised to receive a Resolution[5] dated January 27, 2012 from the Court of Appeals dismissing the appealed case for failure to file Appellant's Brief. He asked Atty. Mendez the reason why they weren't able to file the required pleading, and he was told that the firm did not receive a copy of the notice which ordered them to file the appellant's brief. Atty. Mendez assured him that he will file the motion for reconsideration based on non-receipt of the notice, and will subsequently file the appellant's brief.

Unsatisfied, Jaime went to the Court of Appeals and the Postal Office of Caloocan. He discovered that the notice to file appellant's brief was in fact received by one Jennifer Lastimosa (*Lastimosa*), a secretary of the firm R.R. Mendez & Associates Law Offices. Jaime presented a copy of the Certification[6] issued by the Caloocan Central Post Office showing that Lastimosa received on October 28, 2011 the notice from the Court of Appeals.

Disappointed, in a Letter[7] dated February 13, 2012, citing loss of trust and confidence due to the dismissal of their appeal, Jaime terminated the services of Atty. Mendez, and demanded the return of the Three Hundred Thousand (Php300,000.00). Unable to get a reply from Atty. Mendez even after six months, on August 2, 2012, Jaime wrote anew to Atty. Mendez and demanded the return of the money.[8] Thus, the instant administrative complaint against Atty. Mendez for incompetence and malpractice.

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[4] *Id*. at 12.

[5] *Id*. at 14-15.

[6] *Id*. at 17.

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

[8] *Id*. at 20.

On October 24, 2012, the IBP-CBD ordered Atty. Mendez to submit his Answer to the complaint.[9]

In his Answer[10] dated December 21, 2012, Atty. Mendez insisted that his law office did not receive a copy of the court order to file the appellant's brief. He claimed that even their secretary, Jennifer Lastimosa, cannot recall having received said order or mail. He claimed that when Jaime informed him about the dismissal order, he lost no time in preparing the motion for reconsideration and the appellant's brief. He lamented, however, that before the drafted motion for reconsideration and appellant's brief could be filed in court, Jaime already terminated his services as counsel. Atty. Mendez maintained that he has been in the practice of law for more than three (3) decades already and that he was never remiss in his duty to his clients. He claimed that it was unfortunate that his secretary's signature was forged to make it appear that she has received the mail.

Atty. Mendez, however, acknowledged the receipt of ₱300,000.00 as retainer's fees from Jaime. He averred that considering that he had actually rendered professional services to Jaime, he may refund reasonable portion thereof. Finally, Atty. Mendez asserted that due to the fact that his office actually failed to receive the notice from the court, there is no basis to show that he was unprofessional, thus, does not deserve to be meted any harsh punishment from the Court.

On January 24, 2013, the IBP-CBD, notified the parties to appear before the commission for the mandatory conference.[11]

Meanwhile, after more than one (1) year, or on June 26, 2013, Atty. Mendez made partial return of Jaime's money in the amount of ₱140,000.00 which was received by Atty. Marie Diane Bolong, Jaime's new counsel.[12] Atty. Mendez, in his Position Paper, claimed that he does not know how he can return

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[9] *Id*. at 34.

[10] *Id*. at 35-39.

[11] *Id*. at 60.

[12] *Id*. at 113.

the remaining balance as he already spent it for the titling of the property and that he also used the money for his daily needs considering that said money was also his retainer's fee.

In its Report and Recommendation[13] dated September 25, 2014, the IBP-CBD found Atty. Mendez guilty of negligence, thus, violating Canon 18 of the Code of Professional Responsibility which directs lawyers to serve his client with competence and diligence. It recommended that Atty. Mendez be suspended from the practice of law for a period of six (6) months with a warning that a repetition of the same infraction will result in the imposition of a more severe penalty.

In Notice of Resolution No. XXI-2015-170[14] dated February 20, 2015, the IBP-Board of Governors resolved to adopt and approve with modification the report and recommendation of the IBP-CBD. It further recommended that Atty. Mendez be ordered to return to Jaime the remaining amount of One Hundred Sixty Thousand Pesos (₱160,000.00).

We sustain the findings of the IBP, except as to the imposition of penalty.

Canon 18 of the Code of Professional Responsibility for Lawyers states that "*A lawyer shall serve his client with competence and diligence*." Rule 18.03 thereof stresses:

> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In the instant case, Atty. Mendez' guilt as to his failure to do his duty to his client is undisputed. His conduct relative to the non-filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause. An attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence. Failure to file the brief within the reglementary period despite notice

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[13] *Id*. at 119-123.

[14] *Id*. at 117-118.

certainly constitutes inexcusable negligence, more so if the failure resulted in the dismissal of the appeal, as in this case.[15]

We cannot give credence to Atty. Mendez' lame excuse that they did not receive the notice to file the appellant's brief, or that their secretary cannot recall receiving the notice. Such bare allegation of non-receipt of notice as against the registry return card, the postmaster's record books and the certification issued by the Caloocan Central Post Office showing receipt of the notice by Jennifer Lastimosa, the firm's secretary, the latter deserves more weight. Likewise, in the absence of proof to support Atty. Mendez' claim of forgery insofar as Jennifer's signature showing receipt of notice, such claim cannot be sustained.

Making the law office secretary, clerk or messenger the scapegoat or patsy for the delay in the filing of pleadings, motions and other papers and for the lawyer's dereliction of duty is common alibi of practicing lawyers. Like the alibi of the accused in criminal cases, counsel's shifting of the blame to his office employee is usually a concoction utilized to cover up his own negligence, incompetence, indolence and ineptitude.[16]

Other than Atty. Mendez' allegation of non-receipt of the notice, he has failed to duly present any reasonable excuse for the non-filing of the appellant's brief despite notice, thus, the allegation of negligence on his part in filing the appellant's brief remains uncontroverted. As a lawyer, it is expected of him to make certain that the appeal brief was filed on time. Clearly, his failure to do so is tantamount to negligence which is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility enjoining lawyers not to neglect a legal matter entrusted to him.[17]

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[15] *Ford v. Atty. Daitol,* 320 Phil. 53, 58 (1995); *People v. Villar*, 150-B Phil. 97 (1972).

[16] *Adaza v. Barinaga*, 192 Phil. 198, 201 (1981).

[17] See *Atty. Solidon v. Atty. Macalalad*, 627 Phil. 284, 293 (2010).

We cannot overstress the duty of a lawyer to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients.[18]

Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free.[19] A lawyer's fidelity to the cause of his client requires him to be ever mindful of the responsibilities that should be expected of him. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice.[20] Atty. Mendez failed to perform such duty and his omission is tantamount to a desecration of the Lawyer's Oath.

Atty. Mendez' transgressions did not end there. Other than our finding of negligence, We also find Atty. Mendez guilty of violating Rule 16.01 of the Code of Professional Responsibility which requires a lawyer to account for all the money received from the client.[21]

In line with the highly fiduciary nature of an attorney-client relationship, Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come

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[18] *Atty. Alcantara, et al. v. Atty. De Vera*, 650 Phil. 214, 221 (2010).

[19] *Barbuco v. Atty. Beltran*, 479 Phil. 692, 697 (2004).

[20] *Penilla v. Atty. Alcid, Jr.*, 717 Phil. 210, 222 (2013).

[21] *Atty. Solidon v. Atty. Macalalad*, *supra* note 17, at 292.

into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand.[22]

Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client.[23] The Court's statement in *Del Mundo v. Atty. Capistrano*[24] on this point, is instructive:

> Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.

In the present case, Atty. Mendez received money from Jaime for the titling of property covered by Tax Declaration No. D-006-01404 on August 30, 2009.[25] However, despite several oral and written demands to Atty. Mendez as evidenced by demand letters dated February 13, 2012 and August 2, 2012, the same fell on deaf ears. Not only did Atty. Mendez failed to use the money for its intended purpose, and return the money after demand, he also did not give Jaime any reply regarding the latter's demands.

We, likewise, take note that considering it took more than a year before Atty. Mendez' made an initiative to return the money *albeit* partial only, the same cannot be said to be prompt

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[22] *Gutierrez v. Atty. Maravilla-Ona*, 789 Phil. 619, 623 (2016).

[23] *Id*.

[24] 685 Phil. 687, 693 (2012).

[25] *Rollo*, p. 10.

or immediate return of the money, rather, he was already in delay for a considerable period of time in returning his client's money. Notably, it must be pointed out that Atty. Mendez not only failed to return the money immediately, but he also failed to return the whole amount of ₱300,000.00. He was able to return the amount of ₱140,000.00 only, thus, there is still a remaining balance of ₱160,000.00. While, Atty. Mendez insisted that the remaining balance was used for the titling of the property and his daily needs, there was still no proper accounting as to when, where and how the remaining balance was specifically utilized. Clearly, these acts constitute violations of Atty. Mendez' professional obligations under Canon 16[26] of the CPR which mandates lawyers to hold in trust and account all moneys and properties of his client that may come into his possession.

In *Jinon v. Atty. Jiz*,[27] the lawyer failed to facilitate the transfer of land to his client's name and failed to return the money he received from the client despite demand. We suspended the lawyer from the practice of law for two years.

In *Agot v. Atty. Rivera*,[28] the lawyer neglected his obligation to secure his client's visa and failed to return his client's money despite demand. We also suspended him from the practice of law for two years.

In *Luna v. Atty. Galarrita*,[29] the lawyer failed to promptly inform his client of his receipt of the proceeds of a settlement for the client, and further refused to turn over the amount received. As in the above cases, We suspended him from the practice of law for two years.

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[26] CANON 16— A lawyer shall hold in trust all moneys and properties of his client that may come into his possession;

Rule 16.01. — A lawyer shall account for all money or property collected or received for or from the client; Code of Professional Responsibility; Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand.

[27] 705 Phil. 321 (2013).

[28] 740 Phil. 393 (2014).

[29] 763 Phil. 175 (2015).

Time and again, We have reminded lawyers that the practice of law is a privilege bestowed only to those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.[30]

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.[31]

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[32]

Considering our jurisprudence and the totality of the circumstances in the present case, the Court finds that the suspension for six (6) months recommended by the IBP-CBD which was adopted by the Board of Governors is not sufficient punishment for Atty. Mendez' transgressions. His failure to discharge his duty properly constitutes an infringement of ethical standards and of his oath. Such failure makes him answerable

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[30] *Gutierrez v. Atty. Maravilla-Ona, supra* note 22, at 624.

[31] *Malangas v. Atty. Zaide*, 785 Phil. 930, 940 (2016).

[32] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 574 (2014).

not just to his client, but also to this Court, to the legal profession, and to the general public.

Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of ₱160,000.00 he received from complainant for the titling of their property. It is well to note that while the Court has previously held that "disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature - for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement."[33] Here, since Atty. Mendez received the aforesaid amount as part of his legal fees as he claimed, the Court, thus, find it necessary, under the given circumstances, that he return the unaccounted remaining balance of ₱160,000.00 to Jaime.[34]

WHEREFORE, premises considered, respondent **ATTY. RAMON R. MENDEZ, JR**. is found **GUILTY** of violating Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for a period of one (1) year, effective upon receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Atty. Mendez is, likewise, **ORDERED to RETURN** to complainant Jaime S. De Borja the remaining balance of ₱160,000.00 with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Decision. Failure to comply with this directive will merit the imposition of the more severe penalty, which this Court shall impose based on the complainant's motion with notice duly furnished to Atty. Mendez.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Mendez

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[33] *Pitcher v. Atty. Gagate,* 719 Phil. 82, 94 (2013).

[34] See *Gutierrez v. Atty. Maravilla-Ona*, *supra* note 22, at 626.

as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-17-2491. July 4, 2018]
(Formerly OCA IPI No. 10-3448-RTJ)

LUCIO L. YU, JR., *complainant, vs.* **PRESIDING JUDGE JESUS B. MUPAS, Regional Trial Court, Branch 112, Pasay City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; HASTY DISMISSAL OF CASE WITHOUT REGARD TO THE BASIC RULES OF PROCEDURE AND THE CIRCUMSTANCES EVIDENT ON RECORDS; PENALTY.— Here, Judge Mupas hastily dismissed the subject case without regard to the basic rules of procedure and the circumstances evident on records. To recall, the assailed February 4, 2009 Order dismissed the subject case pursuant to Section l(h), Rule 16 and Section 3, Rule 17 of the Rules of Court. However, Section 2, Rule 16 plainly provides that a dismissal of the case pursuant thereto requires a hearing, wherein "the parties shall submit their arguments on the question of law and their evidence on the questions of fact involved" in the case. Only after the requisite hearing may the court dismiss the action or claim. Instead of

conducting a preliminary hearing, Judge Mupas dismissed the subject case based on Mendoza's mere allegation that his loan obligation has been fully satisfied. In *Bautista v. Causapin, Jr.*, the Court categorically ruled that the failure of Judge Causapin to conduct a preliminary hearing on the motion to dismiss the complaint under Rule 16, amounts to gross ignorance of law which makes a judge subject to disciplinary action: x x x Verily, for carelessly dismissing the subject case in utter disregard of elementary rules of procedure, Judge Mupas acted in gross ignorance of the law. Under Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is a serious charge with a penalty ranging from a fine of more than ₱20,000.00 but not exceeding ₱40,000.00 to dismissal. In this regard, it is relevant to note that this is not the first time that the Court has held Judge Mupas administratively liable. In *Mina v. Mupas*, the Court fined Judge Mupas ₱10,000.00 for undue delay in rendering an order. In view thereof, a fine of ₱35,000.00 would be more appropriate.

D E C I S I O N

CAGUIOA, *J.*:

For resolution is the Complaint-Affidavit[1] (Complaint) dated June 17, 2010 and Supplemental Complaint[2] dated November 4, 2010, both filed by Lucio L. Yu, Jr., (Yu, Jr.), in his capacity as Vice President/Assistant Chief Legal Counsel of the Government Service Insurance System (GSIS), charging Presiding Judge Jesus B. Mupas (Judge Mupas), Regional Trial Court (RTC), Branch 112, Pasay City, of grave misconduct, ignorance of the law, violation of the Code of Judicial Ethics, and knowingly rendering an unjust order relative to Civil Case No. 07-1139-CFM (subject case), entitled "*Government Service Insurance System v. Felix D. Mendoza.*"[3]

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[1] *Rollo*, pp. 1-12.

[2] *Id.* at 66-71.

[3] *Id.* at 165.

In the subject case, which was raffled to RTC Pasay City, Branch 112, presided by Judge Mupas, GSIS filed a Complaint for Collection of Sum of Money and Damages with Prayer for Preliminary Attachment,[4] against Felix D. Mendoza (Mendoza) in connection with the latter's loan obligation which became due and demandable upon his separation from service.[5]

On August 3, 2007, Judge Mupas issued an Order granting GSIS' prayer for the issuance of a Writ of Preliminary Attachment.[6] Consequently, the Ford Explorer Pick-up owned by Mendoza was seized by Sheriff IV Rodelio R. Buenviaje on April 28, 2008, for safekeeping and as security to answer for whatever monetary award may be adjudged in favor of GSIS.[7]

Subsequently, GSIS filed a motion to declare Mendoza in default in view of his failure to file an Answer within fifteen (15) days from the service of summons.[8]

On September 5, 2008, Judge Mupas issued an Order declaring Mendoza in default and allowing GSIS to present evidence *ex parte* before the Branch Clerk of Court, which was set on October 20, 2008. In compliance with the trial court's directive, GSIS presented its evidence *ex parte* before the Branch Clerk of Court Joel T. Pelicano at around 9:00 a.m. of October 20, 2008. However, Mendoza also appeared in court at 2:00 p.m. of even date, manifesting that he would file the appropriate responsive pleading within fifteen (15) days thereafter.[9]

Consequently, Mendoza filed an Omnibus Motion, with the belated Answer attached thereto, asking for the following reliefs:

a. that the Order declaring him in default and allowing GSIS to present evidence *ex parte* be set aside;

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[4] *Id*. at 15-24.

[5] *Id*. at 17-19.

[6] *Id*. at 25.

[7] *Id*. at 26.

[8] *Id*. at 165.

[9] *Id*. at 166.

b. that the Writ of Attachment be quashed;

c. that the reception of evidence be set aside;

d. that the Answer to the Complaint be admitted; and

e. that the Complaint be dismissed on the ground that the loan obligation has already been settled due to involuntary surrender of the subject vehicle.[10]

On February 4, 2009, Judge Mupas issued an Order granting Mendoza's Omnibus Motion and dismissing the subject case, in contradiction to his September 5, 2008 Order. The pertinent portion of the February 4, 2009 Order reads as follows:

> It appearing further, upon reading the records, that the Motor Vehicle subject subject (sic) in this case was surrendered voluntarily by herein defendant and already in possession of the plaintiff, this rendering full satisfaction of the loan obligation of the defendant in accordance with the terms and conditions being made by both parties. Considering thereof, Motion to [D]eclare Defendant in Default is hereby **Denied for lack of merit**.
>
> Consequently, having been fully satisfied with the loan obligation of the defendant, thus, the main cause of action is already moot and academic and pursuant to Rule 16, Sec. 1(h) and Rule 17, Sec. 3 of the Rules of Court[,] let this case be, as it is hereby DISMISSED.
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> **SO ORDERED.**[11]

GSIS sought reconsideration of said Order but this was denied by Judge Mupas in his Order dated May 29, 2009.[12]

Aggrieved, GSIS, through complainant Yu, Jr., commenced the instant administrative proceeding alleging that Judge Mupas grossly ignored the rules when he suddenly disregarded his September 5, 2008 Order.[13] Complainant claims that the appropriate action Judge Mupas should have taken was to issue

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[10] *Id*.

[11] *Rollo*, p. 166.

[12] *Id.*

[13] *Id*. at 6.

an order setting aside the order in default, pursuant to Section 3(b), Rule 9 of the Rules of Court; that Judge Mupas' unfamiliarity with the Rules of Court is a sign of incompetence; and that to not be aware of basic and elementary law constitutes gross ignorance thereof.[14]

Complainant further contends that Judge Mupas violated Canon 3, Rule 3.02 of the Code of Judicial Conduct, which mandates that "in every case, a judge shall endeavor diligently to ascertain the facts and the applicable law," when he dismissed the subject case based on allegedly "twisted and erroneous" interpretation of the GSIS Policy and Procedural Guidelines, which provides, in part:

> 2. The System shall have the right to take possession of the motor vehicle as full payment of the loan obligation should the monies payable to the Borrower not be enough to settle his loan obligation.
>
> 3. Failure or refusal of the Borrower to settle his full obligation constitutes a cause for the System to exercise its right to take possession of the vehicle and/or take legal action against the borrower.[15]

Complainant asserts that the attachment of the Ford Explorer owned by Mendoza was not intended to satisfy the latter's obligation to GSIS, but merely to serve as a lien to satisfy Mendoza's liability to be determined in the civil proceeding then pending before Judge Mupas; thus, it was premature to dismiss the case based on the erroneous conclusion that the alleged surrender of the vehicle is considered a full satisfaction of Mendoza's indebtedness to GSIS.[16]

Complainant further claims that Judge Mupas' conclusion that GSIS was not remiss in its duty to prosecute the action had no factual and legal bases because had Judge Mupas diligently reviewed the case instead of arbitrarily dismissing

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[14] *Id*. at 4-7, 166-167.

[15] *Id*. at 167.

[16] *Rollo*, pp. 9-11.

it, he would have been apprised that GSIS was earnest in prosecuting its cause of action against Mendoza.[17]

In the Supplemental Complaint,[18] Yu, Jr. manifested that in the Decision dated August 11, 2010, the Court of Appeals already resolved the petition, docketed as CA-G.R. SP No. 110402, filed by GSIS to assail the two (2) Orders dated February 4, 2009 and May 29, 2009 issued by Judge Mupas in the subject case. The CA ruled that Judge Mupas committed grave abuse of discretion in issuing the assailed orders on the following ratiocination:

> It must be noted that at the time of the issuance of the February 4, 2009 order, the trial court already issued the September 5, 2008 order, granting the motion file by petitioner to declare private respondent in default. Certainly, the trial court cannot rule on the same motion twice. More fittingly, the trial court should have granted the omnibus motion to set aside the order of default or denied the same and specified the ground relied upon in arriving at its conclusion.[19]
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> Finally, we find that the trial court erroneously dismissed the complaint on the ground that the same was rendered moot and academic by the eventual surrender of the loaned motor vehicle to petitioner. Apparently, the trial court anchored its conclusion on an improper interpretation of Policy and Procedural Guidelines No. 154-00 and Board Resolution No. 67 which provide:[20]
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> In this case, private respondent was separated from service but had to initiate steps to secure a clearance. Thus, his accountabilities and remaining entitlements, if any, cannot be determined with certainty. There being no definite determination on whether private respondent had any remaining entitlements from GSIS, the fact of insufficiency of the same to cover his outstanding loan cannot be established. Consequently, the surrender of the motor vehicle cannot be considered

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[17] *Id*.

[18] *Id*. at 66-71.

[19] *Id*. at 97.

[20] *Id*. at 99.

as full satisfaction of his loan. Hence, the trial court erred in dismissing the case on the ground that the loan obligation had already been fully satisfied.[21]

The CA Decision became final and executory on March 12, 2011.[22]

In his Comment,[23] Judge Mupas alleges that the filing of the instant Complaint while the petition before the CA was still pending constitutes blatant and malicious forum shopping meriting summary dismissal.[24] Judge Mupas explains that an administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by his erroneous order or judgment; for until there is a final declaration by the appellate court that the challenged order or judgment is manifestly erroneous, there will be no basis to conclude whether he is administratively liable.[25]

Judge Mupas also contends that the GSIS failed to overcome the burden of proving by substantial evidence the accusations of gross ignorance of the law and/or knowingly rendering an unjust judgment, particularly the allegations of bias, bad faith, malice or corrupt motive.[26]

In his Reply, complainant counters that the issue of prematurity cannot prevail over the more essential and substantive accusations of gross ignorance of the law and incompetence in the discharge of Judge Mupas' duties. According to complainant, Judge Mupas should have refuted the allegations of bad faith by discussing the merits of his assailed orders, instead of hiding behind the cloak of prematurity.[27] Complainant further argues that the issue

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[21] *Id*. at 100.

[22] *Id*. at 168.

[23] *Id*. at 110-120.

[24] *Id*. at 112-114.

[25] *Id*. at 112.

[26] *Id*. at 116.

[27] *Id*. at 127.

of prematurity becomes immaterial in view of the finality of the CA Decision and that contrary to the insistence of Judge Mupas, the filing of the instant Complaint does not constitute deliberate forum shopping as the Certification and Verification appended thereto disclosed that there is a pending case before the CA.[28]

In his Rejoinder, Judge Mupas insists that judicial remedies must first be exhausted before complainant may seek redress in the form of an administrative complaint.[29] He further claims that the two (2) questioned Orders are supported by law.[30] Judge Mupas likewise justifies the dismissal of the subject case for being moot and academic and adds that the presumption of regularity in the performance of his duty should prevail over baseless allegation of bad faith.[31]

Report and Recommendation of the Office of the Court Administrator

In its Report[32] dated January 30, 2017, the Office of the Court Administrator (OCA) recommended that:

> respondent Judge Jesus B. Mupas, Branch 112, Regional Trial Court, Pasay City, be found GUILTY of Gross Ignorance of the Law and Violation of the New Code of Conduct for the Philippine Judiciary and be meted the penalty of FINE in the amount of Twenty-Five Thousand Pesos (₱25,000.00), with a WARNING that a repetition of the same or any similar act in the future be dealt with more severely.[33]

The OCA found that Judge Mupas ignored the elementary rules of procedure on setting aside an order of default under Section 3(b), Rule 9 and the procedure when affirmative defenses are pleaded in the Answer pursuant to Section 6, Rule 16 of

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[28] *Id*. at 130-131.

[29] *Id*. at 152.

[30] *Id*. at 154.

[31] *Id*. at 160-162.

[32] *Rollo*, pp. 165-175.

[33] *Id*. at 175.

the Rules of Court. The OCA opined that instead of hastily dismissing the case, Judge Mupas, following the aforesaid provisions, should have issued an order lifting the order of default, admitting the Answer, and setting the case for trial or preliminary hearing to thresh out the litigious issue of whether or not the alleged surrender of the subject vehicle would be deemed sufficient payment of Mendoza's loan obligation.[34]

The OCA also noted that the assailed February 4, 2009 Order dismissed the subject case pursuant to Section 3, Rule 17 of the Rules of Court, which allows the dismissal of the case due to the fault of the plaintiff; but records of the case show that GSIS earnestly availed of all the legal remedies to protect its interest and to expedite the proceedings by availing of the writ of attachment, filing a motion to declare Mendoza in default and seeking to present its evidence *ex parte*. The OCA further opined that Judge Mupas' indifference to these established facts betrays not only his ignorance of the law, but also his defiance to his judicial duty to comport himself with competence and diligence which are prerequisites to due performance of judicial office.[35]

The OCA, however, found no substantial evidence to hold Judge Mupas liable for Grave Misconduct and Knowingly Rendering an Unjust Judgment. Complainant Yu, Jr. presented no proof that Judge Mupas acted with corrupt motive, with malice or in willful disregard of the right of GSIS as a litigant.[36]

Considering that this is the first time that Judge Mupas was found guilty of gross ignorance of the law, the OCA recommended that a fine in the amount of ₱25,000.00 be imposed on him as an alternative sanction to dismissal from service or suspension.[37]

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[34] *Id*. at 171.

[35] *Id*. at 172-173.

[36] *Id*. at 173-174.

[37] *Id.*

The Court's Ruling

The Court hereby adopts the above well-reasoned OCA recommendation finding Judge Mupas guilty of gross ignorance of the law. However, the penalty should be modified.

In *Re: Anonymous Letter Dated August 12, 2010, complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga*,[38] the Court ruled that:

> "To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence." **Judges are also** "**expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith.**" Judges are "likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith."
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> **We have previously held that when a law or a rule is basic, judges owe it to their office to simply apply the law. "Anything less is gross ignorance of the law."** There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption.[39]

Here, Judge Mupas hastily dismissed the subject case without regard to the basic rules of procedure and the circumstances evident on records.

To recall, the assailed February 4, 2009 Order dismissed the subject case pursuant to Section l(h), Rule 16 and Section 3, Rule 17 of the Rules of Court. However, Section 2, Rule 16 plainly provides that a dismissal of the case pursuant thereto requires a hearing, wherein "the parties shall submit their arguments on the question of law and their evidence on the

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[38] 696 Phil. 21 (2012).

[39] *Id*. at 26-28. Emphasis supplied.

questions of fact involved" in the case. Only after the requisite hearing may the court dismiss the action or claim. Instead of conducting a preliminary hearing, Judge Mupas dismissed the subject case based on Mendoza's mere allegation that his loan obligation has been fully satisfied.

In *Bautista v. Causapin, Jr.*,[40] the Court categorically ruled that the failure of Judge Causapin to conduct a preliminary hearing on the motion to dismiss the complaint under Rule 16, amounts to gross ignorance of law which makes a judge subject to disciplinary action:

> Without notice and hearing, Judge Causapin dismissed the complaint in the said civil case because of the purported defect in the certificate of non-forum shopping. Thus, plaintiffs were not afforded the opportunity to explain, justify, and prove that the circumstances in Cavile are also present in Civil Case No. 1387-G.
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> x x x Defendants in Civil Case No. 1387-G incorporated their motion to dismiss into their answer with counterclaim. They actually raised the defect in plaintiffs' certificate of non-forum shopping as a special and affirmative defense. This calls for the application of Rule 16, Section 6 of the Rules of Court which reads:
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> > SEC. 6. *Pleading grounds as affirmative defenses.* — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
> >
> > The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.
>
> Going by the foregoing rule, Judge Causapin had the discretion in Civil Case No. 1387-G of either (1) setting a preliminary hearing specifically on the defect in the plaintiffs' certificate of non-forum shopping; or (2) proceeding with the trial of the case and tackling the issue in the course thereof. In both instances, parties are given

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[40] 667 Phil. 574 (2011).

the chance to submit arguments and evidence for or against the dismissal of the complaint. Judge Causapin neither conducted such a preliminary hearing [n]or trial on the merits prior to dismissing Civil Case No. 1387-G.

Where the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. **The mistake committed by respondent Judge is not a mere error of judgment that can be brushed aside for being minor. The disregard of established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action.**[41]

Moreover, as correctly noted by the OCA, records of the case negate dismissal under Section 3, Rule 17, because GSIS was never remiss in its duty to prosecute the case. In fact, GSIS earnestly availed itself of all legal remedies available and proceeded to present its evidence *ex parte* upon the order of Judge Mupas.

Verily, for carelessly dismissing the subject case in utter disregard of elementary rules of procedure, Judge Mupas acted in gross ignorance of the law. Under Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is a serious charge with a penalty ranging from a fine of more than ₱20,000.00 but not exceeding ₱40,000.00 to dismissal.

In this regard, it is relevant to note that this is not the first time that the Court has held Judge Mupas administratively liable. In *Mina v. Mupas*,[42] the Court fined Judge Mupas ₱10,000.00 for undue delay in rendering an order. In view thereof, a fine of ₱35,000.00 would be more appropriate.

At this juncture, Judge Mupas is strongly reminded of the Court's pronouncement in *Chua Keng Sin v. Mangente*,[43] *viz.*:

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[41] *Id*. at 588-589. Emphasis supplied.

[42] 578 Phil. 41 (2008).

[43] 753 Phil. 447 (2015).

Judges are to be reminded that it is the height of incompetence to dispense cases callously and in utter disregard of procedural rules. Whether the resort to shortcuts is borne out of ignorance or convenience is immaterial. Judges took an oath to dispense their duties with competence and integrity; to fall short would be a disservice not only to the entire judicial system, but more importantly, to the public.[44]

WHEREFORE, the Court hereby finds Judge Jesus B. Mupas **GUILTY** of gross ignorance of the law under Section 8, Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, and is hereby ordered to **PAY A FINE** of Thirty-Five Thousand Pesos (₱35,000.00), with a **STERN WARNING** that a repetition of the same or any similar infraction shall be dealt with more severely.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 195905. July 4, 2018]

THE CITY GOVERNMENT OF BAGUIO represented by MAURICIO G. DOMOGAN, City Mayor, CITY BUILDINGS AND ARCHITECTURE OFFICE represented by OSCAR FLORES, and PUBLIC ORDER AND SAFETY DIVISION represented by FERNANDO MOYAEN and CITY DEMOLITION TEAM represented by NAZITA BAÑEZ, *petitioners, vs.* **ATTY. BRAIN MASWENG, Regional Hearing Officer-National Commission on Indigenous Peoples-Cordillera Administrative Region, MAGDALENA GUMANGAN,**

[44] *Id*. at 455.

MARION T. POOL, LOURDES C. HERMOGENO, JOSEPH LEGASPI, JOSEPH BASATAN, MARCELINO BASATAN, JOSEPHINE LEGASPI, LANSIGAN BAWAS, ALEXANDER AMPAGUEY, JULIO DALUYEN, SR., CONCEPCION PADANG and CARMEN PANAYO, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; MOOT AND ACADEMIC CASES; AS A GENERAL RULE, THE COURT NO LONGER ENTERTAINS PETITIONS WHICH HAVE BEEN RENDERED MOOT; EXCEPTIONS.—** As a general rule, the Court no longer entertains petitions which have been rendered moot. After all, the decision would have no practical value. Nevertheless, there are exceptions where the Court resolves moot and academic cases, *viz:* (a) there was a grave violation of the Constitution; (b) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review. In the case at bar, there are exceptions warranting an affirmative action from the Court. The case definitely involves paramount public interest as it pertains to the Busol Water Reserve, a source of basic necessity of the people of Baguio and other neighboring communities. In addition, the present issues are likely to be repeated especially considering the other cases involving land claimants over the Busol Water Reserve.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS.—** A petition for certiorari is resorted to whenever a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. It is an extraordinary remedy available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In other words, *certiorari* is a solution of last resort availed of after all possible legal processes have been exhausted. Thus, it is

axiomatic that a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*. This is so considering that the said motion is an existing remedy under the rules for a party to assail a decision or ruling adverse to it. Nonetheless, the rule requiring a motion for reconsideration to be filed before a petition for certiorari is available admits of exception. In *Republic of the Philippines v. Pantranco North Express, Inc.*, the Court recognized the following exceptions: 1. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction; 2. Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; 3. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or the petitioner or the subject matter of the petition is perishable; 4. Where, under the circumstances, a motion for reconsideration would be useless; 5. Where the petitioner was deprived of due process and there is extreme urgency for relief; 6. Where, in a criminal case, a relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; 7. Where the proceedings in the lower court are a nullity for lack of due process; 8. Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and 9. Where the issue raised is one purely of law or public interest is involved.

3. **ID.; CIVIL PROCEDURE; RULE ON FORUM SHOPPING; ELEMENTS OF FORUM SHOPPING.—** Forum shopping exists when a party, against whom an adverse judgment or order has been rendered in one forum, seeks a favorable opinion in another forum, other than by appeal or special civil action for certiorari—it is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The following are the elements of forum shopping: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

4. ID.; ID.; ID.; ID.; IDENTITY OF THE ACTIONS THAT JUDGMENT RENDERED IN THE OTHER WILL AMOUNT TO *RES JUDICATA* IN THE ACTION UNDER CONSIDERATION; ELEMENTS OF *RES JUDICATA*.— To invoke *res judicata*, the following elements must concur: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) the disposition of the case must be a judgment on the merits; and (d) there must be, as between the first and second actions, identity of parties, subject matter and causes of action. As stated, the petition for certiorari assailed the propriety of the issuance of provisional remedies while the motion to dismiss attacked the principal action of private respondents. Evidently, the petition for certiorari and the motion to dismiss had different causes of action especially since the grant or denial of the provisional remedies does not necessarily mean that the main action would have the same conclusion.

5. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is an equitable and extraordinary peremptory remedy to be exercised with caution as it affects the parties' respective rights. Under Section 3, Rule 58 of the Rules of Court, x x x the following requisites must concur before a preliminary injunction is issued: (1) the invasion of a right sought to be protected is material and substantial; (2) the right of the complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

6. ID.; *STARE DECISIS VIS-A-VIS RES JUDICATA*; CASE AT BAR.— In *City Government of Baguio* [*v. Masweng*], it was recognized that the NCIP is empowered to issue TROs and writs of injunction. Nevertheless, the said case ruled that therein respondents were not entitled to an injunctive relief because they failed to prove their definite right over the properties they claimed. The circumstances in *City Government of Baguio* and the present case are similar. In both cases, the claimants principally rely on Proclamation No. 15 as basis for their ancestral land claims in the Busol Forest Reserve. Unfortunately,

> it was ruled that the said proclamation is not a definitive recognition of their ancestral land claims as it only identifies their predecessors-in-interest as claimants. x x x Respondents argue that petitioners erred in relying on *City Government of Baguio* in that *res judicata* did not arise considering that they were not parties to the said case and that only parties may be bound by the decision. [W]hile *res judicata* may be inapplicable, the ruling in *City Government of Baguio* still finds relevance under *stare decisis*. The said doctrine states that when the Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same, regardless whether the parties and property are the same. *Stare decisis* differs from *res judicata* in that the former is based upon the legal principle or rule involved while the latter is based upon the judgment itself.

APPEARANCES OF COUNSEL

Baguio City Legal Office for petitioners.

The Law Firm of Aroco Milio Pascual & Panhon for private respondents Gumangan, et al.

The Law Firm of Avila Reyes Licnachan Maceda Lim Arevalo Libiran for private respondents Ampaguey, et al.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 5 August 2010 Decision[1] and 31 January 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 110598.

The present controversy stemmed from the various orders issued by the National Commission on Indigenous Peoples-

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[1] *Rollo*, pp. 60-80.

[2] *Id*. at 81-82.

Cordillera Administrative Region *(NCIP-CAR)* in NCIP Case Nos. 29-CAR-09 and 31-CAR-09.

THE FACTS

The Petitions

Private respondents Magdalena Gumangan, Marion T. Pool, Lourdes C. Hermogeno, Bernardo Simon, Joseph Legaspi, Joseph Basatan, Marcelino Basatan, Josephine Legaspi, and Lansigan Bawas *(Gumangan petition)* are the petitioners in NCIP Case No. 29-CAR-09. In their petition,[3] filed on 23 July 2009, they prayed that their ancestral lands in the Busol Forest Reserve be identified, delineated, and recognized and that the corresponding Certificate of Ancestral Land Title *(CALT)* be issued. In addition, the Gumangan petition sought to restrain the City Government of Baguio, et al., *(petitioners)* from enforcing demolition orders and to prevent the destruction of their residential houses at the Busol Forest Reserve pending their application for identification of their ancestral lands before the NCIP Ancestral Domains Office.

On the other hand, private respondents Alexander Ampaguey, Sr., Julio Daluyen, Sr., Concepcion Padang, and Carmen Panayo *(Ampaguey petition)* are the petitioners in NCIP Case No. 31-CAR-09. In their petition,[4] filed on 23 July 2009, they prayed that the petitioners be enjoined from enforcing the demolition orders affecting their properties inside the Busol Forest Reserve. The Ampaguey Petition claimed that they have pending applications for their ancestral land claims before the NCIP.

Both the Gumangan and Ampaguey petitions assail that petitioners have no right to enforce the demolition orders and to evict them from their properties. They aver that their claims over their ancestral lands are protected and recognized under Republic Act *(R.A.)* No. 8371 or the Indigenous Peoples Rights Act of 1997 *(IPRA)*.

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[3] CA *rollo*, pp. 517-527.

[4] *Id*. at 76-83.

Proceedings before the NCIP-CAR

In his 27 July 2009 Order,[5] public respondent Atty. Brain Masweng *(Atty. Masweng)*, NCIP-CAR Hearing Officer, issued a 72-Hour Temporary Restraining Order *(TRO)* on the Gumangan petition. On the same date, he issued another order[6] for a 72-Hour TRO on the Ampaguey petition. On 14 August 2009, Atty. Masweng issued a writ of preliminary injunction in NCIP Case Nos. 29-CAR-09[7] and 31-CAR-09.[8]

Aggrieved, petitioners filed a petition for certiorari[9] before the CA assailing the TRO and preliminary injunction issued by Atty. Masweng in the above NCIP case.

The CA Ruling

In its 5 August 2010 decision, the CA dismissed petitioners' petition for certiorari for being procedurally flawed because they did not file a motion for reconsideration before the NCIP. The appellate court elucidated that the present petition constituted forum shopping because petitioners had a pending motion to dismiss before the NCIP. Further, the CA ruled that the NCIP had the power to issue the injunctive relief noting that the NCIP did not act with grave abuse of discretion because the issuances were in accordance with law. It ruled:

WHEREFORE, the petition is **DISMISSSED**. The assailed issuances **STAND**. Costs against Petitioners.[10]

Petitioners moved for reconsideration, but the same was denied by the CA in its assailed 31 January 2011 resolution.

Hence, this present petition raising the following:

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[5] *Id*. at 430-432.

[6] *Rollo*, pp. 107-108.

[7] *Id*. at 105-106.

[8] *Id*. at 129-130.

[9] CA *rollo*, pp. 3-26.

[10] *Rollo*, pp. 48-49.

ISSUES

I.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI FOR BEING PROCEDURALLY DEFECTIVE; AND

II.

WHETHER PRIVATE RESPONDENTS WERE ENTITLED TO INJUNCTIVE RELIEF.

THE COURT'S RULING

The petition is meritorious.

Before proceeding to the merits of the case, a resolution of certain procedural matters is in order.

Case mooted due to supervening events

At the onset, the present case has been rendered moot and academic. A moot and academic case is one that ceases to present a justifiable controversy by virtue of supervening events, so that declaration thereon would be of no practical value.[11] In *City Government of Baguio v. Atty. Masweng (contempt case)*,[12] the Court set aside the provisional remedies Atty. Masweng issued in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 after he was found guilty of indirect contempt, to wit:

> In this case, respondent was charged with indirect contempt for issuing the subject orders enjoining the implementation of demolition orders against illegal structures constructed on a portion of the Busol Watershed Reservation located at Aurora Hill, Baguio City.
>
> x x x x x x x x x
>
> The said orders clearly contravene our ruling in G.R. No. 180206 that those owners of houses and structures covered by the demolition orders issued by petitioner are not entitled to the injunctive relief previously granted by respondent.

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[11] *Gunsi, Sr. v. Commission on Elections*, 599 Phil. 223, 229 (2009).

[12] 727 Phil. 540 (2014).

x x x x x x x x x

As mentioned earlier, the Court while recognizing that the NCIP is empowered to issue temporary restraining orders and writs of preliminary injunction, nevertheless ruled that petitioners in the injunction case seeking to restrain the implementation of the subject demolition order are not entitled to such relief. Petitioner City Government of Baguio in issuing the demolition advices are simply enforcing the previous demolition orders against the same occupants or claimants or their agents and successors-in-interest, only to be thwarted anew by the injunctive orders and writs issued by respondent. Despite the Court's pronouncements in G.R. No. 180206 that no such clear legal right exists in favor of those occupants or claimants to restrain the enforcement of the demolition orders issued by petitioner, and hence there remains no legal impediment to bar their implementation, respondent still issued the temporary restraining orders and writs of preliminary injunction. x x x

x x x x x x x x x

WHEREFORE, the petition for contempt is **GRANTED**. The assailed Temporary Restraining Order dated July 27, 2009, Order dated July 31, 2009, and Writ of Preliminary Injunction in NCIP Case No. 31-CAR-09, and Temporary Restraining Order dated July 27, 2009, Order dated July 31, 2009 and Writ of Preliminary Injunction in NCIP Case No. 29-CAR-09 are hereby all **LIFTED and SET ASIDE**.[13]

As a general rule, the Court no longer entertains petitions which have been rendered moot. After all, the decision would have no practical value. Nevertheless, there are exceptions where the Court resolves moot and academic cases, *viz:* (a) there was a grave violation of the Constitution; (b) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review.[14]

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[13] *Id*. at 549-555.

[14] *Timbol v. Commission on Elections*, 754 Phil. 578, 585 (2015) citing *ARARO Party-List v. Commission on Elections*, 723 Phil. 160, 184 (2013).

In the case at bar, there are exceptions warranting an affirmative action from the Court. The case definitely involves paramount public interest as it pertains to the Busol Water Reserve, a source of basic necessity of the people of Baguio and other neighboring communities. In addition, the present issues are likely to be repeated especially considering the other cases involving land claimants over the Busol Water Reserve.

Exceptions to the requirement of a motion for reconsideration in petitions for certiorari

A petition for certiorari is resorted to whenever a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[15] It is an extraordinary remedy available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[16] In other words, *certiorari* is a solution of last resort availed of after all possible legal processes have been exhausted.

Thus, it is axiomatic that a motion for reconsideration is a condition precedent to the filing of a petition for certiorari.[17] This is so considering that the said motion is an existing remedy under the rules for a party to assail a decision or ruling adverse to it. Nonetheless, the rule requiring a motion for reconsideration to be filed before a petition for certiorari is available admits of exception. In *Republic of the Philippines v. Pantranco North Express, Inc.*,[18] the Court recognized the following exceptions:

1. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
2. Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

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[15] Rules of Court, Rule 65, Section 1.

[16] *Bergonia v. CA*, 680 Phil. 334, 339 (2012).

[17] *Castro v. Guevarra*, 686 Phil. 1125, 1137 (2012).

[18] 682 Phil. 186 (2012).

3. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or the petitioner or the subject matter of the petition is perishable;
4. Where, under the circumstances, a motion for reconsideration would be useless;
5. Where the petitioner was deprived of due process and there is extreme urgency for relief;
6. Where, in a criminal case, a relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
7. Where the proceedings in the lower court are a nullity for lack of due process;
8. Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
9. Where the issue raised is one purely of law or public interest is involved.[19]

The Court finds that exceptions exist to warrant petitioners' direct resort to a petition for certiorari before the CA notwithstanding its lack of a motion for reconsideration filed before the NCIP. *First*, the issues had been duly raised before the NCIP especially considering that petitioner had presented similar arguments or opposition from the TRO initially issued by the NCIP until the grant of the writ of preliminary injunction. *Second*, there is urgency in the petition because petitioners seek to implement its demolition orders with the goal of preserving the Busol Forest Reserve, Baguio's primary forest and watershed. It cannot be gainsaid that any delay may greatly prejudice the government as the Busol Forest Reserve may be further compromised. *Third*, the preservation of the Busol Forest Reserve involves public interest as it would have a significant impact on the water supply for the City of Baguio.

No forum shopping if different reliefs are prayed for

The CA also found petitioners' petition for certiorari dismissible for violating the rule on forum shopping. It opined

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[19] *Id*. at 194.

that a ruling on the said petition for certiorari would amount to *res judicata* in view of the petitioners' motion to dismiss filed before the NCIP.

Forum shopping exists when a party, against whom an adverse judgment or order has been rendered in one forum, seeks a favorable opinion in another forum, other than by appeal or special civil action for certiorari—it is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[20] The following are the elements of forum shopping: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[21]

The petition for certiorari filed before the CA did not amount to forum shopping despite the existence of the motion to dismiss before the NCIP. The two actions involved different reliefs based on different facts. In their petition, petitioners questioned the issuance of provisional remedies by the NCIP and prayed that these be dismissed for lack of a clear legal right to be protected. On the other hand, the motion to dismiss filed before the NCIP sought the dismissal of the main complaint of private respondents for the issuance of a permanent injunction to enjoin the demolition orders and/or to recognize their purported native title over the land involved.

In addition, judgment rendered in the petition would not amount to *res judicata* with respect to the motion to dismiss, and vice versa. To invoke *res judicata*, the following elements must concur: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;

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[20] *Cruz v. Caraos*, 550 Phil. 98, 107 (2007).

[21] *Heirs of Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

(c) the disposition of the case must be a judgment on the merits; and (d) there must be, as between the first and second actions, identity of parties, subject matter and causes of action.[22] As stated, the petition for certiorari assailed the propriety of the issuance of provisional remedies while the motion to dismiss attacked the principal action of private respondents. Evidently, the petition for certiorari and the motion to dismiss had different causes of action especially since the grant or denial of the provisional remedies does not necessarily mean that the main action would have the same conclusion.

Having settled the procedural matters, we now address the merits of the case.

Clear legal right and irreparable injury

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.[23] It is an equitable and extraordinary peremptory remedy to be exercised with caution as it affects the parties' respective rights.[24]

Under Section 3, Rule 58 of the Rules of Court, a preliminary injunction may be granted when it is established that: (a) 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) 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) a party, court, agency or a person is doing, threatening or 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

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[22] *Republic of the Philippines v. Yu*, 519 Phil. 391, 396 (2006).

[23] Rules of Court, Rule 58, Section 1.

[24] *China Banking Corporation v. Ciriaco*, 690 Phil. 480, 486 (2012).

of the action or proceeding and tending to render the judgment ineffectual.

In other words, the following requisites must concur before a preliminary injunction is issued: (1) the invasion of a right sought to be protected is material and substantial; (2) the right of the complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.[25]

Before the preventive writ may be issued, first and foremost there must be a clear showing by the complainant that there is an existing right to be protected, a clear and unmistakable right at that.[26] Thus, it is incumbent upon private respondents to establish that their rights over the land in the Busol Forest Reserve are unequivocal and indisputable. They, however, admit that their claims for recognition are still pending before the NCIP; they are but mere expectations—short of the required present and unmistakable right for the grant of the issuance of the provisional remedy of injunction.[27]

Private respondents also bewail that it would be more prudent that the injunctive writs be issued to prevent the baseless or unnecessary demolition of their house should their land claims be ultimately recognized. While the Court understands their predicament, there is still no basis for the issuance of the injunctive writs because it can be compensable through the award of damages. A clear and unmistakable right is not enough to justify the issuance of a writ of preliminary injunction as there must be a showing that the applicant would suffer irreparable injury. Thus, the Court in *Power Sites and Signs, Inc. v. United Neon*[28] ruled:

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[25] *Lukang v. Pagbilao Development Corporation*, 728 Phil. 608, 617-618 (2014).

[26] *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, 485 Phil. 699, 726 (2004).

[27] *The City Mayor of Baguio v. Masweng*, 625 Phil. 179, 183 (2010).

[28] 620 Phil. 205 (2009).

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial and demonstrable. Here, there is no irreparable injury as understood in law. Rather, the damages alleged by the petitioner, namely, immense loss in profit and possible damage claims from clients and the cost of the billboard which is a considerable amount of money is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in Social Security Commission v. Bayona:

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement. An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.[29] (emphasis omitted)

More importantly, their continued occupation absent any clear legal right cannot be countenanced because of the threat it poses to the Busol Water Reserve. In *Province of Rizal v. Executive Secretary*,[30] the Court emphasized the importance of preserving watersheds, to wit:

> This brings us to the second self-evident point. **Water is life, and must be saved at all costs**. In *Collado v. Court of Appeals*, we had occasion to reaffirm our previous discussion in *Sta. Rosa Realty Development Corporation v. Court of Appeals*, on the primordial importance of watershed areas, thus: **The most important product of a watershed is water, which is one of the most important human necessities**. The protection of watersheds ensures an adequate supply of water for future generations and the control of flash floods that

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[29] *Id*. at 219.

[30] 513 Phil. 557 (2005).

not only damage property but also cause[s] loss of lives. Protection of watersheds is an intergenerational responsibility that needs to be answered now.[31] (emphasis and underlining supplied)

While the Court does not discount the possible loss private respondents may suffer should their land claims be recognized with finality, still it bears reiterating that they failed to show that they are entitled to an injunctive relief. In summary, private respondents do not have a clear and unmistakable legal right because their land claims are still pending recognition and any loss or injury they may suffer can be compensable by damages. To add, their occupation of the Busol Water Reserve poses a continuing threat of damaging the preservation or viability of the watershed. Any danger to the sustainability of the Busol Water Reserve affects not only individuals or families inside the watershed but also the entire community relying on it as a source of a basic human necessity—water. Furthermore, unlike the injury private respondents may suffer, any damage to the Busol Water Reserve is irreversible and may not only affect the present generation but also those to come.

Stare decisis vis-à-vis res judicata

In its assailed decision, the CA ruled that the NCIP did not act with grave abuse of discretion because its actions were in accordance with law as it complied with the IPRA and its implementing rules and regulations. Still, it must be remembered that judicial decisions form part of the law of the land.[32]

In *The City Government of Baguio v. Atty. Masweng (City Government of Baguio)*,[33] the Court explained that Proclamation No. 15 is not a definitive recognition of land claims over portions of the Busol Forest Reserve, to wit:

The foregoing provision indeed states that Baguio City is governed by its own charter. Its exemption from the IPRA, however, cannot

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[31] *Id*. at 582-583.

[32] Article 8 of the Civil Code.

[33] 597 Phil. 668 (2009).

ipso facto be deduced because the law concedes the validity of prior land rights recognized or acquired through any process before its effectivity. The IPRA demands that the city's charter respect the validity of these recognized land rights and titles.

The crucial question to be asked then is whether private respondents' ancestral land claim was indeed recognized by Proclamation No. 15, in which case, their right thereto may be protected by an injunctive writ. After all, before a writ of preliminary injunction may be issued, petitioners must show that there exists a right to be protected and that the acts against which injunction is directed are violative of said right.

Proclamation No. 15, however, does not appear to be a definitive recognition of private respondents ancestral land claim. The proclamation merely identifies the Molintas and Gumangan families, the predecessor-in-interest of private respondents, as claimants of a portion of the Busol Forest Reservation but does not acknowledge vested rights over the same.

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The fact remains, too, that the Busol Forest Reservation was declared by the Court as inalienable in *Heirs of Gumangan v. Court of Appeals*. The declaration of the Busol Forest Reservation as such precludes its conversion into private property. Relatedly, the courts are not endowed with jurisdictional competence to adjudicate forest lands.[34]

In *City Government of Baguio*, it was recognized that the NCIP is empowered to issue TROs and writs of injunction. Nevertheless, the said case ruled that therein respondents were not entitled to an injunctive relief because they failed to prove their definite right over the properties they claimed. The circumstances in *City Government of Baguio* and the present case are similar. In both cases, the claimants principally rely on Proclamation No. 15 as basis for their ancestral land claims in the Busol Forest Reserve. Unfortunately, it was ruled that the said proclamation is not a definitive recognition of their ancestral land claims as it only identifies their predecessors-in-interest as claimants.

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[34] *Id*. at 678-679.

Thus, it is quite unfortunate that the CA found that the actions of the NCIP were in accordance with law. A cursory reading of the decision indicates that it merely relied on the applicable statute without regard to the doctrines and principles settled by the Court. The pronouncements in *City Government of Baguio* should have put the appellate court on notice that the actions of the NCIP were baseless because it settled that claimants of lands in the Busol Water Reserve cannot rely on anticipatory claims for the issuance of the preventive writ. It befuddles the Court why the CA did not bother to address the said ruling in its discussions and perfunctorily relied on the statute alone.

On the other hand, respondents argue that petitioners erred in relying on *City Government of Baguio* in that *res judicata* did not arise considering that they were not parties to the said case and that only parties may be bound by the decision.

Nevertheless, while *res judicata* may be inapplicable, the ruling in *City Government of Baguio* still finds relevance under *stare decisis*. The said doctrine states that when the Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same, regardless whether the parties and property are the same.[35] *Stare decisis* differs from *res judicata* in that the former is based upon the legal principle or rule involved while the latter is based upon the judgment itself.[36]

Thus, the Court in *The Baguio Regreening Movement, Inc. v. Masweng (Baguio Regreening)*[37] held:

> Lastly, however, this Court ruled that although the NCIP has the authority to issue temporary restraining orders and writs of injunction, it was not convinced that private respondents were entitled to the relief granted by the Commission. Proclamation No. 15 does not appear to be a definitive recognition of private respondents' ancestral

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[35] *Ty v. Banco Filipino Savings and Mortgage Bank*, 689 Phil. 603 (2012).

[36] *Id*. at 613.

[37] *The Baguio Regreening Movement, Inc. v. Masweng*, 705 Phil. 103 (2013).

land claim, as it merely identifies the Molintas and Gumangan families as claimants of a portion of the Busol Forest Reservation, but does not acknowledge vested rights over the same. Since it is required before the issuance of a writ of preliminary injunction that claimants show the existence of a right to be protected, this Court, in G.R. No. 180206, ultimately granted the petition of the City Government of Baguio and set aside the writ of preliminary injunction issued therein.

In the case at bar, petitioners and private respondents present the very same arguments and counter-arguments with respect to the writ of injunction against fencing of the Busol Watershed Reservation. The same legal issues are thus being litigated in G.R. No. 180206 and in the case at bar, except that different writs of injunction are being assailed. In both cases, petitioners claim (1) that Atty. Masweng is prohibited from issuing temporary restraining orders and writs of preliminary injunction against government infrastructure projects; (2) that Baguio City is beyond the ambit of the IPRA; and (3) that private respondents have not shown a clear right to be protected. Private respondents, on the other hand, presented the same allegations in their Petition for Injunction, particularly the alleged recognition made under Proclamation No. 15 in favor of their ancestors. While *res judicata* does not apply on account of the different subject matters of the case at bar and G.R. No. 180206 (they assail different writs of injunction, albeit issued by the same hearing officer), we are constrained by the principle of *stare decisis* to grant the instant petition.[38]

Like the private respondents in *City Government of Baguio* and in *Baguio Regreening*, herein claimants principally rely on Proclamation No. 15 as basis for their ancestral land claims in the Busol Forest Reserve. Thus, the Court is constrained to similarly rule that the injunctive relief issued in the present case are without basis because the applicants failed to establish a clear and legal right. After all, it has been settled that Proclamation No. 15 is not a definite recognition of their ancestral land claims.

It is noteworthy that in the *contempt case*, Atty. Masweng was cited for indirect contempt for issuing TROs and preliminary injunctions in NCIP Case Nos. 29-CAR-09 and 31-CAR-09.

[38] *Id.* at 117-118.

He was found in indirect contempt because the Court had already ruled that the occupants in the Busol Water Reserve had no clear legal right warranting the issuance of preventive remedies. In the present case, the preventive writs issued in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 themselves are being questioned. Thus, the Court had, on more than one occasion, found occupants of the Busol Watershed Reservation not entitled to the preventive writ for lack of a clear legal right, considering that their recognition claims were still pending before the NCIP.

Taking into account all the cases involving land claims over the Busol Water Reserve, it is settled that Proclamation No. 15 and the IPRA, notwithstanding, provisional remedies such as TROs and writs of preliminary injunction should not *ipso facto* be issued to individuals who have ancestral claims over Busol. It is imperative that there is a showing of a clear and unmistakable legal right for their issuance because a pending or contingent right is insufficient. Nevertheless, the grant or denial of these provisional remedies should not affect their ancestral land claim as the applicants are not barred from proving their rights in an appropriate proceeding.

WHEREFORE, the petition is **GRANTED**. The 5 August 2010 Decision and 31 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 110598 are **REVERSED**. The Temporary Restraining Order and the Writ of Preliminary Injunction issued by the National Commission on Indigenous Peoples—Cordillera Administrative Region in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 are hereby **SET ASIDE.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 197908. July 4, 2018]

VISITACION R. REBULTAN, CECILOU R. BAYONA, CECILIO REBULTAN, JR., and VILNA R. LABRADOR, *petitioners, vs.* **SPOUSES EDMUNDO DAGANTA and MARVELYN P. DAGANTA, and WILLIE VILORIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS OF FACT BY THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE AND MAY NOT BE REVIEWED UNDER A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTION, WHEN THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS HAVE CONTRADICTORY FACTUAL FINDINGS; CASE AT BAR.— Prefatorily, we reiterate that in a petition for review under Rule 45, only questions of law may be raised. Our jurisdiction is limited to reviewing only errors of law, and not weighing all over again evidence already considered in the proceedings below. The resolution of factual issues is the function of lower courts, whose findings are accorded with respect, unless certain exceptions are present to warrant review of these findings. The issue of negligence is factual. Nevertheless, we find that there are exceptions to the rule that the CA's findings of fact are generally conclusive and may not be reviewed under a petition for review on *certiorari* under Rule 45. Evidently, the RTC and the CA have contradictory factual findings: the former found that Viloria was negligent, while the latter adjudged that it was Lomotos who was negligent. Our examination of the records shows that the CA made an inference from its findings of fact that is manifestly mistaken.

2. CIVIL LAW; REPUBLIC ACT NO. 4136 (TRANSPORTATION AND TRAFFIC CODE); RIGHT OF WAY; THE VEHICLE MAKING A TURN TO THE LEFT IS UNDER THE DUTY TO YIELD TO THE VEHICLE APPROACHING FROM THE OPPOSITE LANE ON THE RIGHT; APPLICATION IN CASE AT BAR.— The CA's bases in concluding that

Lomotos did not yield to Viloria because the latter had the right of way are paragraphs (a) and (b), Section 42 of R.A. No. 4136, and *Caminos, Jr. v. People*. x x x In interpreting Section 42(a) and (b) of R.A. No. 4136, we clearly said in *Caminos, Jr.* that the vehicle making a turn to the left is under the duty to yield to the vehicle approaching from the opposite lane on the right: x x x Thus, the CA clearly misconstrued *Caminos, Jr.* and erred when it held that the import of our pronouncement is that the driver turning left at the intersection had the right of way. x x x Otherwise stated, the driver who has a favored status is not relieved from the duty of driving with due regard for the safety of other vehicles and from refraining from an "arbitrary exercise of such right of way." Applying *Caminos, Jr.*, it is apparent that it is the Kia Ceres which had the right of way. The jeepney driver making a turn on the left had the duty of yielding to the vehicle on his right, the approaching Kia Ceres driven by Lomotos. Similarly with Vehicle A in *Caminos, Jr.*, the jeepney does not have the right of way. Additionally, we do not find the CA's conclusion that the jeepney was already at the intersection, making him the favored driver, to be supported by the records. Thus, we find that the CA erred in holding that it was Viloria, as the jeepney's driver, who had the right of way. Nevertheless, we still find Lomotos negligent. Similar to *Caminos, Jr.*, records show that Lomotos drove the Kia Ceres at an unlawful speed. Traffic Accident Report No. 99002 supports that Lomotos was guilty of "overspeeding," and his error is listed as driving "too fast." x x x Thus, we affirm the CA's conclusion that Lomotos was negligent at the time of the collision.

3. ID.; ID.; RECKLESS DRIVING; ALL MOTORISTS ARE EXPECTED TO EXERCISE REASONABLE CAUTION IN OPERATING HIS VEHICLE; FAILURE TO OBSERVE IN CASE AT BAR.— All motorists are expected to exercise reasonable caution in operating his vehicle. This duty is found in Section 48 of R.A. No. 4136: x x x Records support the claim that Viloria, while driving the jeepney, was also committing a traffic violation. As found by the RTC, Viloria's admission that he did not look to his right and continuously drove, despite being required by law to give way, confirms that he is negligent in making a turn. He further admitted that he did not bother to look at the south to see if there were other vehicles. In fact, his penchant for disregarding traffic rules is shown by how he approached the intersection. Just a short distance from

approaching the intersection, he was reported to have overtaken a mini-bus as evidenced by the Traffic Accident Report No. 99002. It is apparent to this Court that the accident would have been avoided had Viloria, the jeepney driver, carefully approached and made a left turn in the intersection, with due regard to the right of way accorded in favor of Lomotos or anyone coming from the latter's direction. Regardless of whether Lomotos was overspeeding, Viloria ought to have exercised the prudence of a diligent driver in making a turn at a danger zone. This omission on his part constituted negligence.

4. ID.; ID.; DAMAGES; THE CONTRIBUTORY NEGLIGENCE OF DRIVERS DOES NOT BAR THE PASSENGERS OR THEIR HEIRS FROM RECOVERING DAMAGES FROM THOSE WHO WERE AT FAULT; CASE AT BAR.— The concurring negligence of Lomotos, as the driver of the Kia Ceres wherein Rebultan, Sr. was the passenger, does not foreclose the latter's heirs from recovering damages from Viloria. As early as 1933, in *Junio v. Manila Railroad Co.*, we already clarified that the contributory negligence of drivers does not bar the passengers or their heirs from recovering damages from those who were at fault: x x x As long as it is shown that no control is exercised by the passenger in the concept of a master or principal, the negligence of the driver cannot be imputed to the passenger and bar the latter from claiming damages. x x x In sum, we hold that both drivers were negligent when they failed to observe basic traffic rules designed for the safety of their fellow motorists and passengers. This makes them joint tortfeasors who are solidarily liable to the heirs of the deceased. However, since the dismissal of the third-party complaint against Lomotos was not appealed by respondents, and Lomotos is not party to the case before us, we have no authority to render judgment against him.

APPEARANCES OF COUNSEL

Bart Q. Dalangin, Jr. for petitioners.
Sancho A. Abasta, Jr. for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] seeking to nullify the April 26, 2011 Decision[2] and July 20, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 92218 (collectively, Assailed Decision). The CA reversed the July 24, 2008 Decision[4] of Branch 70 of the Regional Trial Court (RTC) of Iba, Zambales in Civil Case No. RTC-1668-I, a case for damages.[5]

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[1] *Rollo*, pp. 4-33.

[2] *Id.* at 34-47; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino.

[3] *Id.* at 48-49.

[4] *Id.* at 59-71; rendered by Judge Clodualdo M. Monta.

[5] The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Ordering the defendant driver Willie Viloria and his employers the spouses Edmundo Daganta and Marvelyn P. Daganta to pay unto the heirs of Cecilio Rebultan Sr. actual damages in the total amount of Php71,857.15, moral damages in the amount of Php50,000.00, and the unearned income of the said deceased victim in the amount of Php1,552,731.72. The responsibility of defendant driver Willie Viloria and his employers, the defendants spouses Edmundo Daganta and Marvelyn P. Daganta to pay the damages herein claimed is solidary (*Metro Manila Transit Corporation vs. Court of Appeals*, 298 SCRA 495; *Philtranco Service Enterprises, Inc. et al. vs. Court of Appeals*, G.R. No. 120553, June 17, 1997)[;]
2. Ordering the same defendants to pay to the heirs of Cecilio Rebultan, Sr. attorney's fees in the amount of Php50,000.00, and the costs of this suit;
3. As to the third party complaint of the defendants against Jaime Lomotos, the driver of the KIA CERES service vehicle of the deceased Cecilio Rebulan, Sr., the same is hereby dismissed by reason of this Court's findings of the recklessness of the jeepney driver defendant Willie Viloria.

SO ORDERED. *Id.* at 71.

On May 3, 1999, at about 6:30 in the morning, along the National Highway in Barangay Mabanglit, Cabangan, Zambales, Cecilio Rebultan, Sr. (Rebultan, Sr.) and his driver, Jaime Lomotos (Lomotos), were on board a Kia Ceres, on their way to report for work in the Department of Environment and Natural Resources (DENR) in Masinloc, Zambales when they figured in a vehicular accident with an Isuzu-powered passenger jeepney driven by Willie Viloria (Viloria).[6] The Kia Ceres was traveling northbound to Iba, Zambales, while the jeepney was traveling southbound to Cabangan, Zambales.[7] The powerful impact resulted in serious physical injuries to Rebultan, Sr. and Lomotos, as well as physical damage to both vehicles. Rebultan, Sr., who was 60 years old[8] at that time, later died from his injuries.[9]

On February 15, 2000, the heirs of Rebultan, Sr. (petitioners) filed a complaint[10] for damages against Viloria, and Spouses Edmundo and Marvelyn P. Daganta (spouses Daganta) as the owners of the jeepney (collectively, respondents). Petitioners prayed for compensation for the loss of life and earning capacity of Rebultan, Sr., actual and moral damages, attorney's and appearance fees, as well as other just and equitable reliefs.[11]

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[6] *Id.* at 35.

[7] *Id.* at 39.

[8] Records, p. 329.

[9] *Rollo*, pp. 7, 35.

[10] *Id.* at 50-52.

[11] They prayed for the following reliefs:

a) Ordering the defendants jointly and severally to pay plaintiffs as follows[:]

1. ₱50,000 for the loss of life of Engr. Cecilio Rebultan, Sr.;
2. ₱900,000.00 for the lost earnings for 4 years until the age of 65 years old of compulsory retirement by way of salary and allowances.

b) Ordering the defendants to pay ₱120,000.00 for burial and actual expenses in connection with the death of Cecilio Rebultan, Sr.;

c) Ordering defendants to pay plaintiffs the sum of ₱200,000.00 for moral damages;

d) Ordering defendants to pay plaintiffs the sum of ₱30,000.00 for attorney[']s fees and ₱1,000.00 as appearance fee;

e) Such other relief[s] as are just an[d] equitable are likewise prayed [for]. *Id.* at 51-52.

In their answer with counterclaims,[12] respondents alleged that it was the driver of the Kia Ceres who was negligent, and who should be held responsible for the death of Rebultan, Sr. and the damages to the motor vehicles. As counterclaim, respondents sought the payment of: (1) ₱123,550.00 for the repair of the jeepney; (2) ₱700.00 per day beginning May 3, 1999 as lost income of Viloria; (3) ₱20,000.00 and ₱1,000.00 per hearing, as attorney's and appearance fees, respectively; and (4) ₱5,000.00 as miscellaneous expenses.[13]

Subsequently, respondents spouses Daganta filed a third-party complaint[14] against Lomotos. Lomotos denied liability and prayed for the dismissal of the third-party complaint. As counterclaim, he sought the payment for moral damages, appearance fees, and attorney's fees.[15]

After trial, the RTC issued its Decision[16] dated July 24, 2008 finding Viloria negligent in driving the jeepney which led to the death of Rebultan, Sr. Spouses Daganta were found vicariously liable as the employers of Viloria. Together, they were held solidarily liable to pay the heirs of Rebultan, Sr. the following sums: (a) ₱71,857.15 as actual damages; (b) ₱50,000.00 as moral damages; (c) ₱1,552.731.72 as loss of earning capacity; and (d) ₱50,000.00 as attorney's fees. The RTC concluded that Viloria's continuous driving even when turning left going to a street is the proximate cause of the accident. It dismissed the third-party complaint against Lomotos.[17]

Respondents appealed the Decision before the CA but only as to the finding of negligence on the part of Viloria. They no longer appealed the dismissal of the third-party complaint.[18]

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[12] *Id.* at 53-56.

[13] *Id.* at 55.

[14] Records, pp. 25-28.

[15] *Id.* at 57-61.

[16] *Supra* note 4.

[17] *Rollo*, pp. 67-71.

[18] See CA *rollo*, pp. 33-45.

In its Assailed Decision, the CA reversed the RTC ruling and dismissed the complaint.[19] It ruled that it was Lomotos (not Viloria) who was negligent. Under Section 42(a) and (b), Article III, Chapter IV of Republic Act No. 4136[20] (R.A. No. 4136), Viloria had the right of way, being the driver of the vehicle on the right, and because he had already turned towards the left of the intersection.[21] This, according to the CA, is the import of the ruling in *Caminos, Jr. v. People*[22] which it found squarely applicable to this case. It held that Lomotos, being in violation of a traffic regulation, is presumed to be negligent under Article 2185 of the Civil Code.[23] There being no negligence on the part of Viloria, the spouses Daganta's vicarious liability cannot be imposed.[24] The CA noted that while respondents filed a third-party complaint against Lomotos, it cannot reverse its dismissal because respondents did not appeal the same.[25]

The CA likewise denied the petitioners' motion for reconsideration.[26]

Hence, this petition where petitioners argue that the CA erred in finding no negligence on the part of Viloria despite the following: (1) the conflicting testimony of Viloria shows that he had not yet made a left turn towards the barangay road;[27]

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[19] The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is ***GRANTED*** and the Decision dated July 24, 2008, issued by the Regional Trial Court of Iba, Zambales, Branch 70, in Civil Case No. RTC-1668-1 is ***REVERSED AND SET ASIDE***. The Complaint dated February 15, 2000 is ***DISMISSED***.

SO ORDERED. *Rollo*, p. 46.

[20] Land Transportation and Traffic Code.

[21] *Rollo*, p. 42.

[22] G.R. No. 147437, May 8, 2009, 587 SCRA 348.

[23] *Rollo*, pp. 42-45.

[24] *Id.* at 45.

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

[26] *Supra* note 3.

[27] *Rollo*, pp. 16-17.

(2) the testimony of Lomotos established that Viloria was racing a mini-bus and abruptly swerved to the left, which was corroborated by Traffic Accident Report No. 99002[28] dated May 3, 1999;[29] (3) the sketch relied upon by the CA was prepared by respondents' counsel and only to confirm the jeepney's location at the time of the accident;[30] (4) the photographs, which were taken only after the collision when both vehicles were already found on the same side of the highway, were not authenticated by the person or persons who took them;[31] (5) the inconsistency in Viloria's testimony as to the reason why he was turning left confirms that it was a mere afterthought to avoid the approaching Kia Ceres;[32] and (6) the evidence shows that Lomotos was driving the Kia Ceres along the proper lane, while Viloria had overtaken a bigger vehicle in disregard of the law against reckless driving.[33]

In their comment,[34] respondents manifested that there being no new matters raised by petitioners, they are adopting their previous arguments in their "Opposition"[35] dated May 30, 2011 filed before the CA.

Petitioners, by way of reply,[36] reiterate that the traffic accident report and the testimonial evidence show that Viloria was negligent when he recklessly overtook a mini-bus, and only maneuvered the jeepney to the left side of the road to avoid collision with the on-coming Kia Ceres.

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[28] Records, p. 336.

[29] *Rollo*, p. 18.

[30] *Id.* at 19.

[31] *Id.* at 20.

[32] *Id.* at 26-27.

[33] *Id.* at 28.

[34] *Id.* at 76-78.

[35] CA *rollo*, pp. 79-80. The "Opposition" referred to is actually the "Objection to the Complainant's Motion for Reconsideration" dated May 30, 2011.

[36] *Rollo*, pp. 94-97.

The issue before us is whether Viloria was negligent in driving the jeepney at the time of the collision.

We grant the petition.

I

Prefatorily, we reiterate that in a petition for review under Rule 45, only questions of law may be raised. Our jurisdiction is limited to reviewing only errors of law, and not weighing all over again evidence already considered in the proceedings below. The resolution of factual issues is the function of lower courts, whose findings are accorded with respect, unless certain exceptions are present to warrant review of these findings.[37]

The issue of negligence is factual.[38] Nevertheless, we find that there are exceptions to the rule that the CA's findings of fact are generally conclusive and may not be reviewed under a petition for review on *certiorari* under Rule 45. Evidently, the RTC and the CA have contradictory factual findings: the former found that Viloria was negligent, while the latter adjudged that it was Lomotos who was negligent. Our examination of

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[37] See *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 294. It reads:

> The above rule, however, admits of certain exceptions. The findings of fact of the Court of Appeals x x x may be reviewed [in a Rule 45 petition] when: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. (Citation omitted.)

[38] *Id.*

the records shows that the CA made an inference from its findings of fact that is manifestly mistaken.

The CA's bases in concluding that Lomotos did not yield to Viloria because the latter had the right of way are paragraphs (a) and (b), Section 42 of R.A. No. 4136, and *Caminos, Jr. v. People*.[39] Section 42(a) and (b) of R.A. No. 4136 states:

ARTICLE III

Right of Way and Signals

Sec. 42. Right of Way. — (a) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise hereinafter provided. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder.

(b) The driver of a vehicle approaching but not having entered an intersection, shall yield the right of way to a vehicle within such intersection or turning therein to the left across the line of travel of such first-mentioned vehicle, provided the driver of the vehicle turning left has given a plainly visible signal of intention to turn as required in this Act.

Caminos, Jr., on the other hand, involved a criminal case of reckless imprudence resulting in damage to property. In that case, a vehicular accident happened in the intersection of Ortigas Avenue and Columbia Street. The vehicles that collided were traversing Ortigas Avenue in separate directions: Vehicle A was going towards the direction of Epifanio Delos Santos Avenue (EDSA), while Vehicle B was going towards the direction of San Juan. As Vehicle A was about to make a left turn in Columbia Street, Vehicle B rammed into its right-hand side. Per the traffic report, Vehicle A, which was turning left towards EDSA, had "no right of way," while the vehicle going straight "was exceeding at lawful speed." The driver of Vehicle B raised the defense that he had the right of way, to which Vehicle A's driver must yield to.[40]

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[39] *Supra* note 22.

[40] *Id.* at 351-353.

In interpreting Section 42(a) and (b) of R.A. No. 4136, we clearly said in *Caminos, Jr.* that the vehicle making a turn to the left is under the duty to yield to the vehicle approaching from the opposite lane on the right:

> The provision [Section 42 (a) and (b) of R.A. No. 4136] governs the situation when two vehicles approach the intersection from the same direction and one of them intends [to] make a turn on either side of the road. But the rule embodied in the said provision, also prevalent in traffic statutes in the United States, has also been liberally applied to a situation in which two vehicles approach an intersection from directly opposite directions at approximately the same time on the same street and one of them attempts to make a left-hand turn into the intersecting street, so as to put the other upon his right, **the vehicle making the turn being under the duty of yielding to the other**.[41] (Emphasis supplied; citation omitted.)

Thus, the CA clearly misconstrued *Caminos, Jr.* and erred when it held that the import of our pronouncement is that the driver turning left at the intersection had the right of way.

In affirming that the driver of Vehicle B was guilty of reckless imprudence, we ruled that even if he had in his favor the right of way, he was still negligent for his failure to observe the proper speed limit. We said further in *Caminos, Jr.* that the invocation of the statutory right of way is not a magic word that gives one who has it unbridled discretion in driving and the opposite party the complete duty to be on the lookout. It does not relieve the driver in whose favor the right of way is given from his obligation to exercise prudence in his driving, with due regard to all circumstances and road conditions:

> Nevertheless, the right of way accorded to vehicles approaching an intersection is not absolute in terms. It is actually subject to and is affected by the relative distances of the vehicles from the point of intersection. Thus, whether one of the drivers has the right of way or, as sometimes stated, has the status of a favored driver on the highway, is a question that permeates a situation where the vehicles approach the crossing so nearly at the same time and at such distances

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[41] *Id.* at 365-366.

and speed that if either of them proceeds without regard to the other a collision is likely to occur. Otherwise stated, the statutory right of way rule under Section 42 of our traffic law applies only where the vehicles are approaching the intersection at approximately the same time and not where one of the vehicles enter the junction substantially in advance of the other.

Whether two vehicles are approaching the intersection at the same time does not necessarily depend on which of the vehicles enters the intersection first. Rather, it is determined by the imminence of collision when the relative distances and speeds of the two vehicles are considered. It is said that two vehicles are approaching the intersection at approximately the same time where it would appear to a reasonable person of ordinary prudence in the position of the driver approaching from the left of another vehicle that if the two vehicles continued on their courses at their speed, a collision would likely occur, hence, the driver of the vehicle approaching from the left must give the right of precedence to the driver of the vehicle on his right.

Nevertheless, **the rule requiring the driver on the left to yield the right of way to the driver on the right on approach to the intersection, no duty is imposed on the driver on the left to come to a dead stop, but he is merely required to approach the intersection with his vehicle *under control* so that he may yield the right of way to a vehicle within the danger zone on his right.** He is not bound to wait until there is no other vehicle on his right in sight before proceeding to the intersection but only until it is reasonably safe to proceed. Thus, in *Adzuara v. Court of Appeals*, it was established that a motorist crossing a thru-stop street has the right of way over the one making a turn; but if the person making the turn has already negotiated half of the turn and is almost on the other side so that he is already visible to the person on the thru-street, he is bound to give way to the former.[42] (Emphasis and italics supplied; citations omitted.)

Otherwise stated, the driver who has a favored status is not relieved from the duty of driving with due regard for the safety of other vehicles and from refraining from an "arbitrary exercise of such right of way."

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[42] *Id.* at 366-367.

Applying *Caminos, Jr.*, it is apparent that it is the Kia Ceres which had the right of way. The jeepney driver making a turn on the left had the duty of yielding to the vehicle on his right, the approaching Kia Ceres driven by Lomotos. Similarly with Vehicle A in *Caminos, Jr.*, the jeepney does not have the right of way. Additionally, we do not find the CA's conclusion that the jeepney was already at the intersection, making him the favored driver, to be supported by the records. Thus, we find that the CA erred in holding that it was Viloria, as the jeepney's driver, who had the right of way.

Nevertheless, we still find Lomotos negligent.

Similar to *Caminos, Jr.*, records show that Lomotos drove the Kia Ceres at an unlawful speed. Traffic Accident Report No. 99002 supports that Lomotos was guilty of "overspeeding," and his error is listed as driving "too fast."[43] This was corroborated by respondents' witness, Ronald Vivero, who relayed that the Kia Ceres was approaching fast and that it made a loud screech due to its break[44] which indicated the high speed at which it approached the intersection. Thus, we affirm the CA's conclusion that Lomotos was negligent at the time of the collision.

II

We find, however, that Viloria's negligence contributed to the accident.

All motorists are expected to exercise reasonable caution in operating his vehicle. This duty is found in Section 48 of R.A. No. 4136:

> Sec. 48. Reckless Driving.— No person shall operate a motor vehicle on any highway recklessly or without reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or so as to endanger the property or the safety or rights of any person or so as to cause excessive or unreasonable damage to the highway.

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[43] Records, p. 337.

[44] *Id.* at 18; TSN, January 25, 2006, pp. 5-6.

Records support the claim that Viloria, while driving the jeepney, was also committing a traffic violation. As found by the RTC, Viloria's admission that he did not look to his right and continuously drove, despite being required by law to give way, confirms that he is negligent in making a turn.[45] He further admitted that he did not bother to look at the south to see if there were other vehicles.[46] In fact, his penchant for disregarding traffic rules is shown by how he approached the intersection. Just a short distance from approaching the intersection, he was reported to have overtaken a mini-bus as evidenced by the Traffic Accident Report No. 99002.

It is apparent to this Court that the accident would have been avoided had Viloria, the jeepney driver, carefully approached and made a left turn in the intersection, with due regard to the right of way accorded in favor of Lomotos or anyone coming from the latter's direction. Regardless of whether Lomotos was overspeeding, Viloria ought to have exercised the prudence of a diligent driver in making a turn at a danger zone. This omission on his part constituted negligence.

III

The concurring negligence of Lomotos, as the driver of the Kia Ceres wherein Rebultan, Sr. was the passenger, does not foreclose the latter's heirs from recovering damages from Viloria. As early as 1933, in *Junio v. Manila Railroad Co.*,[47] we already clarified that the contributory negligence of drivers does not bar the passengers or their heirs from recovering damages from those who were at fault:

> The driver was, likewise, negligent because he did not comply with his duty to slacken the speed of the car and to "look and listen" before crossing the intersection and, above all, because he did not maintain a reasonable speed so as to permit him to stop any moment if it were necessary in order to avoid an accident. If, in the present

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[45] TSN, May 17, 2005, p. 10.

[46] *Id.*

[47] 58 Phil. 176 (1933).

case, the car had been running at a reasonable speed, there is no doubt that he could have stopped it instantly upon seeing the train from a distance of five meters.

If the action for damages were brought by the driver, it is certain that it would not prosper in view of that fact that he had incurred in a notorious contributory negligence. **But the persons who instituted the action are the appellants who were mere passengers of the car. Therefore, the question raised is whether the driver's negligence is imputable to them so as to bar them from the right to recover damages suffered by them by reason of the accident.**

Although this question is, perhaps, raised in this jurisdiction for the first time, **it is, nevertheless, a well recognized principle of law that the negligence of a driver, who, in turn, is guilty of contributory negligence, cannot be imputed to a passenger who has no control over him in the management of the vehicle and with whom he sustains no relation of master and servant.** This rule is applied more strictly when, as in the present case, hired cars or those engaged in public service, are involved.[48] (Emphasis supplied.)

As long as it is shown that no control is exercised by the passenger in the concept of a master or principal, the negligence of the driver cannot be imputed to the passenger and bar the latter from claiming damages. We note that Lomotos acted as the designated driver of Rebultan, Sr. in his service vehicle provided by the DENR. Thus, the real employer of Lomotos is the DENR, and Rebultan, Sr. is merely an intermediate and superior employee or agent.[49] While it may be inferred that Rebultan, Sr. had authority to give instructions to Lomotos, "no negligence may be imputed against a fellow employee although the person may have the right to control the manner of the vehicle's operation."[50]

In sum, we hold that both drivers were negligent when they failed to observe basic traffic rules designed for the safety of

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[48] *Id.* at 179-180.

[49] See *Jayme v. Apostol*, G.R. No. 163609, November 27, 2008, 572 SCRA 41, 52-54.

[50] *Id.* at 53.

their fellow motorists and passengers. This makes them joint tortfeasors who are solidarily liable to the heirs of the deceased.[51] However, since the dismissal of the third-party complaint against Lomotos was not appealed by respondents, and Lomotos is not party to the case before us, we have no authority to render judgment against him.

WHEREFORE, the petition is **GRANTED**. The Court of Appeal's Decision dated April 26, 2011 and Resolution dated July 20, 2011 in CA-G.R. CV No. 92218 are **REVERSED** and **SET ASIDE.** The Decision dated July 24, 2008 of Branch 70 of the Regional Trial Court of Iba, Zambales in Civil Case No. RTC-1668-I is **REINSTATED**. No costs.

SO ORDERED.

Del Castillo (Chairperson), Tijam, and *Gesmundo, JJ.,* concur.

Leonardo-de Castro, J., on official leave.

THIRD DIVISION

[G.R. No. 199162. July 4, 2018]

PHIL-MAN MARINE AGENCY, INC., and DOHLE (IOM) LIMITED, *petitioners, vs.* **ANIANO P. DEDACE, JR., substituted by his spouse LUCENA CAJES DEDACE, for and in behalf of their three [3] children, namely, ANGELICA, ANGELO AND STEVE MAC, all surnamed DEDACE,** *respondent.*

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[51] See *Dy Teban Trading, Inc. v. Ching*, G.R. No. 161803, February 4, 2008, 543 SCRA 560, 580-581.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20(B) REQUIRES AN EMPLOYER TO COMPENSATE HIS EMPLOYEE WHO SUFFERS FROM WORK-RELATED DISEASE OR INJURY DURING THE TERM OF HIS EMPLOYMENT CONTRACT; ILLNESS NOT LISTED UNDER SECTION 32 ARE DISPUTABLY PRESUMED AS WORK-RELATED.— Every employment contract between a Filipino seafarer and his employer is governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, which contains the Standard Terms and Conditions Governing The Employment of Filipino Seafarers On-Board Ocean-Going Vessels. The provisions of the POEA-SEC are mandated to be integrated in every Filipino seafarer's contract. In this regard, Section 20(B) of the 2000 POEA-SEC requires an employer to compensate his employee who suffers from work-related disease or injury during the term of his employment contract x x x The POEA-SEC defines work-related injury as "injuries resulting in disability or death arising out of and in the course of employment." On the other hand, work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related. This disputable presumption operates in favor of the employee as the burden rests upon his employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer, this disputable presumption stands.

2. ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN IS REQUIRED TO MAKE AN ASSESSMENT ON THE MEDICAL CONDITION OF THE SEAFARER WITHIN 120 DAYS FROM THE SEAFARER'S REPATRIATION; FAILURE THEREOF, THE SEAFARER SHALL BE

DEEMED TOTALLY AND PERMANENTLY DISABLED. — The POEA-SEC requires the company-designated physician to make an assessment on the medical condition of the seafarer within one hundred twenty (120) days from the seafarer's repatriation. Otherwise, the seafarer shall be deemed totally and permanently disabled. x x x Upon his repatriation to the Philippines, Dedace immediately submitted himself to Dr. Cruz, the company-designated physician, for his post-employment examination. x x x However, even after undergoing several medical tests and consultations, Dedace was not issued a medical certificate to show Dr. Cruz's final medical assessment on him. x x x The Court had already stressed the importance of making a full, complete, and categorical medical assessment. x x x [That] [w]hile the company-designated physician must declare the nature of a seafarer's disability, the former's declaration is not conclusive and final upon the latter or the court. Its inherent merit will still be weighed and duly considered. For this reason, it is not enough that the company-designated physician merely state or claim that the illness is not work-related, or that the seafarer is fit for sea duties. He must justify said assessment using the medical findings he had gathered during his treatment of the patient-seafarer. x x x Considering that the company-designated physician effectively failed to make an assessment, Dedace is deemed totally and permanently disabled as of the date of the expiration of the 120-day period counted from his repatriation to the Philippines. Consequently, there could no longer be any issue on whether his illness is work-related or not. x x x [Also,] Dedace was under no obligation to consult with a physician of his own choice under the given circumstances.

3. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER IN LABOR CASES WHERE EMPLOYEE WAS FORCED TO LITIGATE TO PROTECT HIS RIGHTS AND INTEREST.**— Attorney's fees may be classified into two kinds: ordinary and extraordinary. Attorney's fees in its ordinary sense is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. Its basis is the fact of the lawyer's employment by and his agreement with his client. On the other hand, attorney's fees in its extraordinary concept refers to the indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article

> 2208 of the Civil Code, specifically paragraph 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. It is the extraordinary concept of attorney's fees which is contemplated by Article 111 of the Labor Code. The award of attorney's fees in labor cases, however, are not limited to those expressly covered by Article 111 of the Labor Code which states that attorney's fees may be awarded in cases of unlawful withholding of wages. The Court has repeatedly held that the award of attorney's fees is legally and morally justifiable, not only in actions for recovery of wages, but also where an employee was forced to litigate and thus incur expenses to protect his rights and interest. x x x Dedace is entitled to attorney's fees equivalent to ten percent (10%) of his total monetary award.

APPEARANCES OF COUNSEL

Tarriela Tagao Ona & Associates for petitioners.
Linsangan Linsangan & Linsangan for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the 11 May 2011 Decision[1] and 24 October 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 102527, which set aside the 6 March 2007[3] and 22 October 2007[4]

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[1] *Rollo*, pp. 34-49; penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justice Fernanda Lampas Peralta, and Associate Justice Agnes Reyes-Carpio.

[2] *Id*. at 51-52.

[3] CA *rollo*, pp. 24-30; penned by Commissioner Angelita A. Gacutan, and concurred in by Presiding Commissioner Raul T. Aquino.

[4] *Id*. at 31-32; penned by Commissioner Angelita A. Gacutan, and concurred in by Presiding Commissioner Raul T. Aquino, and Commissioner Victoriano R. Calaycay.

Resolutions of the National Labor Relations Commission *(NLRC)* in NLRC-NCR CA No. 046726-05 which, in turn, affirmed the 12 October 2005 Decision[5] of the Labor Arbiter *(LA)* in NLRC-NCR Case No. OFW(M)-04-07-07888-00, a claim for permanent and total disability benefits by a seafarer.

THE FACTS

On 18 June 2003, petitioner Phil-Man Marine Agency, Inc. (*Phil-Man*), a domestic corporation, engaged the services of respondent Aniano P. Dedace, Jr. (*Dedace*) to work on board the vessel *M/V APL Shanghai* for and on behalf of its principal, the petitioner Dohle (IOM) Limited (*Dohle*), under the following terms and conditions:

Duration of the Contract	:	Nine Months
Position	:	Able Seaman
Basic Monthly Salary	:	USD 465.00/mo.
Hours of Work	:	48 hrs./Week
Overtime	:	USD 2.79/hr.
Vacation Leave with Pay	:	USD 78.00/mo.[6]

On 26 July 2003, Dedace boarded *M/V APL Shanghai* and performed his tasks thereon as an Able Seaman.[7]

Sometime in January 2004, Dedace started feeling frequent intermittent pains on his lower right abdomen and left groin. On 20 February 2004, he was admitted to the Gleneagles Maritime Medical Centre *(GMMC)* in Singapore where he was examined and attended to by Dr. Lee Choi Kheong *(Dr. CK Lee)*,[8] whose initial diagnosis was as follows:

> Multiple (3) Right Liver Nodules – Suspected Haemangiomata – need to establish definitive diagnosis.
>
> Right Kidney Cyst – benign and need not be operated.

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[5] *Id*. at 34-38; penned by Labor Arbiter Eduardo G. Magno.

[6] *Id*. at 33; Contract of Employment dated 18 June 2003.

[7] *Id*. at 40; Position Paper for the [Respondent].

[8] *Id*. at 51.

He is sent for CT Scan of the Abdomen this morning and tomorrow we will know more about his condition. At the moment there is no need for any operation and further tests will be performed.[9]

After undergoing further tests and Computed Tomography *(CT)* Scan, Dr. CK Lee diagnosed Dedace to be suffering from Disseminated Sepsis with Multiple Liver Abscesses. In his Medical Report, Dr. CK Lee elaborated:

This is the reason of the toxic and recurring attacks of fever and abdominal pain which fail to resolved [sic] with previous simple medication given before we managed him. Although at this stage we could not absolutely and conclusively exclude the possibility of Malignancy, there are [sic] strong evidence that he is improving with antibiotics therapy started on admission. The three lesions detected at first by Ultrasound of the liver has reduced to two meaning one has [been] resolved completely and the sizes of the lesions have [been] reduced from 2.21 cm to 1.7 cm.

We will need to continue the present treatment until 1st March 2003 by intravenous medication and thereafter his medication can be changed to oral route. On that day he can be discharged with medication to take with him for further treatment at home.[10]

Consequently, Dedace was repatriated to the Philippines on 1 March 2004,[11] and was referred to Dr. Nicomedes G. Cruz *(Dr. Cruz)*. On 27 March 2004, the radiologist, Dr. Cesar S. Co, performed Magnetic Resonance Imaging *(MRI)* on Dedace, which revealed the following findings:

Two lesions are noted in the right lobe of the liver measuring 1.7 x 1.6 cm and 1.3 x 1.0 cm. It is hypointense on TI and hyperintense on T2 sequences and shows enhancement after contrast infusions.

Gallbladder, ducts, pancreas and spleen are unremarkable.

A 1.3 x 1 cm lesion is seen in the mid-portion of the right kidney, which did not enhance on contrast study.[12]

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[9] *Id*.

[10] *Id*. at 52.

[11] *Id*. at 62; Position Paper for the [Petitioners].

[12] *Id*. at 53.

It appeared that Phil-Man inquired from Dr. Cruz on whether Dedace's illness was work-related. In his Reply, dated 20 May 2004, Dr. Cruz stated that their gastroenterologist was of the opinion that Dedace's illness is not work-related, to wit:

> This is the response of our gastroenterologist further to your inquiry regarding Mr. Dedace, Jr.
>
> 1) Question: Is the illness of Mr. Dedace work-related or not and the specific basis thereof.
>
> Answer: Mr. Dedace has two benign nodules in the liver which were noted by CT scan and fine needle aspiration biopsy. Our gastroenterologist opined that these lesions are not work[-]related.
>
> DIAGNOSIS:
>
> Disseminated sepsis with multiple liver abscess.
> Liver nodules, benign.[13]

On 7 June 2004, Phil-Man, through its President/General Manager, Captain Manolo T. Gacutan wrote a letter to Dedace informing him that his illness is not work-related and therefore not compensable. Dedace was further informed that all payments and treatment will be stopped and any further claims with regard to his condition shall likewise be denied.[14]

This denial prompted Dedace to file his claims before the NLRC.

The LA Ruling

In its decision, the LA ruled that Dedace's illness was not work-related. It observed that Dedace failed to prove that his Disseminated Sepsis with Multiple Liver Abscesses is among the compensable occupational diseases listed under Section 32-A of the 2000 Philippine Overseas Employment Administration–Standard Employment Contract for Filipino Seafarers *(POEA–SEC)*. As such, there is neither factual nor legal basis for the claim of total and permanent disability benefits.

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[13] *Id*. at 75.

[14] *Id*. at 54.

Nevertheless, the LA awarded Dedace sickness allowance equivalent to thirty (30) days of pay. It reasoned that while there was no basis for total and permanent disability benefits, it is undisputed that Dedace suffered from some illness, for which Phil-Man even paid him sickness allowance in an amount equivalent to ninety (90) days of his salary. Thus, considering that Section 20(B), paragraph 3 of the POEA-SEC allows payment equivalent to an amount not exceeding one hundred and twenty (120) days of salary, the LA deemed it proper to award Dedace an amount equivalent to the remaining thirty (30) days of his salary. The dispositive portion of the decision states:

> **WHEREFORE**, respondents are hereby ordered to pay complainant the amount of US$465.00 as sickness allowance plus attorney's fees equivalent to US$46.50 or its equivalent in Philippine peso at the time of payment.
>
> The other money claims are hereby DENIED for lack of merit.[15]

Unsatisfied, Dedace appealed before the NLRC.

The NLRC Ruling

In its 6 March 2007 resolution, the NLRC affirmed the decision of the LA. It observed that while Dedace's illness was disputably presumed to be work-related under Section 20(B), paragraph 4 of the POEA–SEC, such disputable presumption was overcome when Dr. Cruz declared said illness was not work-related. The NLRC further stated that Phil-Man's payment of Dedace's sickness allowance and medical expenses did not amount to recognition that his illness was work-related. The decretal portion of the resolution reads:

> **WHEREFORE**, premises considered complainant's appeal is hereby dismissed for lack of merit and the Decision appealed from [is] **AFFIRMED** in toto.[16]

Dedace moved for reconsideration, but the same was denied by the NLRC in its 22 October 2007 resolution.

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[15] *Id*. at 38.

[16] *Id*. at 29.

Aggrieved, Dedace filed a petition for certiorari before the CA.

The CA Ruling

In its assailed decision, the CA granted Dedace's petition. The CA opined that the petitioners failed to overcome the disputable presumption that Dedace's illness was work-related. It held that Dr. Cruz neither explained nor specified how he arrived at his conclusion that Dedace's illness was not work-related. Thus, it held that the NLRC gravely abused its discretion when it grossly misapprehended the facts of the case. The *fallo* states:

> **IN VIEW OF THE FOREGOING**, the petition is **GRANTED**. The challenged Resolutions of respondent NLRC are **NULLIFIED** in so far as they denied petitioner's prayer for permanent disability benefits.
>
> Accordingly, private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US$60,000.00 at its peso equivalent at the time of actual payment; b) sickness allowance equivalent to thirty (30) days or one (1) month amounting to Four Hundred Sixty Five U.S. Dollars (U.S.$465.00); and c) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.[17]

The petitioners moved for reconsideration, but the same was denied by the CA in its 24 October 2011 resolution.

Hence, this petition for review alleging the following:

ISSUES

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN REVERSING BOTH THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION AND THE LABOR ARBITER AND IN AWARDING RESPONDENT ANIANO P. DEDACE, JR. TOTAL PERMANENT DISABILITY BENEFITS.

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[17] *Rollo*, p. 48.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN RULING THAT ANIANO P. DEDACE, JR. IS ENTITLED TO ATTORNEY'S FEES.[18]

The petitioners assail the CA's decision for being erroneous. They argue that since Dedace's illness, *Sepsis*, is neither listed as a disability under Section 32 of the 2000 POEA-SEC nor listed as an occupational disease under Section 32-A of the same rule, the burden is upon Dedace to present substantial evidence which would show that there is causal connection between his illness and the nature of his employment. The petitioners aver that Dedace failed to discharge this burden. They point out that the records show Dedace did not, by way of a contrary medical finding, contest the medical assessment made by the company-designated physician. The petitioners invoked the case of *Magsaysay Maritime Corporation v. NLRC*[19] to support their stand.

The petitioners further argue that the CA erred when it awarded attorney's fees in favor of Dedace as the same lacks legal basis. They posit that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.

In his Comment,[20] dated 2 April 2012, Dedace maintained that the CA did not commit any error. He pointed out that the CA resolved the case in his favor because the company-designated physician failed to explain his assessment that his illness was not work-related. Dedace also contended that the CA properly awarded attorney's fees as he was forced to retain the services of a counsel in order to protect his rights which the petitioners refused to recognize.

With the submissions by the parties, the Court is essentially tasked to resolve the following issues: (i) whether the CA erred

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[18] *Id*. at 14.

[19] 630 Phil. 352 (2010).

[20] *Rollo*, pp. 345-361.

when it ruled that Dedace's illness was work-related and therefore compensable; and (ii) whether the CA erred when it awarded Dedace attorney's fees.

OUR RULING

The petition lacks merit.

Dedace's illness is work-related; The company-designated physician failed to make an assessment within the 120-day period.

Every employment contract between a Filipino seafarer and his employer is governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, which contains the Standard Terms and Conditions Governing The Employment of Filipino Seafarers On-Board Ocean-Going Vessels. The provisions of the POEA-SEC are mandated to be integrated in every Filipino seafarer's contract.[21]

In this regard, Section 20(B) of the 2000 POEA-SEC requires an employer to compensate his employee who suffers from work-related disease or injury during the term of his employment contract, to quote:

Section 20

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his

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[21] *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374, 385 (2014).

> benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness. The POEA-SEC defines work-related injury as "injuries resulting in disability or death arising out of and in the course of employment." On the other hand, work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related.

This disputable presumption operates in favor of the employee as the burden rests upon his employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer, this disputable presumption stands.[22]

In this case, the Court agrees with the CA that the petitioners failed to overcome the presumption that Dedace's illness is work-related. Dr. Cruz's reply, dated 20 May 2004, in response to Phil-Man's query on whether Dedace's illness is work-related, cannot be considered as an effective assessment for purposes of the POEA-SEC.

The POEA-SEC requires the company-designated physician to make an assessment on the medical condition of the seafarer within one hundred twenty (120) days from the seafarer's repatriation. Otherwise, the seafarer shall be deemed totally and permanently disabled. Section 20(B)(3) of the POEA-SEC provides:

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[22] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210, 227-228 (2013).

Section 20.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. **Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.**

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

Upon his repatriation to the Philippines, Dedace immediately submitted himself to Dr. Cruz, the company-designated physician, for his post-employment examination. He also submitted himself to several tests under the care of other doctors assisting Dr. Cruz to fully determine his medical condition and the degree of his illness. However, even after undergoing several medical tests and consultations, Dedace was not issued a medical certificate to show Dr. Cruz's final medical assessment on him. The records show only Dr. Cruz's 20 May 2004 letter which was not even addressed to Dedace.

Even assuming, for the sake of argument, that Dr. Cruz's 20 May 2004 letter may be considered as his assessment on Dedace's medical condition and fitness to work, the same would be

inadequate to overthrow the disputable presumption in favor of Dedace for being incomplete and uncertain. The Court had already stressed the importance of making a full, complete, and categorical medical assessment.

In *Libang, Jr. v. Indochina Ship Management, Inc*,[23] the company-designated physician stated in his medical certificate that the seafarer's illness "could be pre-existing" and that "it was difficult to say whether his diabetes mellitus and small pontine infarct are pre-existing or not." In ruling for the seafarer, the Court opined that the company-designated physician breached his obligation under Section 20(B)(3) of the POEA-SEC when he failed to give a definite assessment, thus:

> Rather than making a full assessment of Libang's health condition, disability or fitness, Dr. Lim only reasoned in his medical certificate dated August 13, 2003, that "[Libang's] hypertension could be pre-existing" and that "it [was] difficult to say whether [his diabetes mellitus and small pontine infarct] are pre-existing or not." **His assessment was evidently uncertain and the extent of his examination for a proper medical diagnosis was incomplete.** The alleged concealment by Libang of his hypertension during his pre-employment medical examination was also unsubstantiated, but was a mere hearsay purportedly relayed to Dr. Lim by one Dr. Aileen Corbilla, his co-attending physician. A categorical statement from Dr. Lim that Libang's illnesses were pre-existing and non-work-related was made only in his affidavit dated July 16, 2004, or after the subject labor complaint had been filed. Still, Dr. Lim gave no explanation for his statement that Libang's illnesses were not work-related.
>
> x x x x x x x x x
>
> Clearly, there was a breach by Dr. Lim of his obligation as the company-designated physician. Although Libang repeatedly argued that Dr. Lim failed to give an assessment of his illness, herein respondents and Dr. Lim failed to explain and justify such failure. **In *Kestrel Shipping Co., Inc. v. Munar*, the Court emphasized that the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness or permanent disability within the 120 or 240 days, as the case may be; otherwise,**

[23] 743 Phil. 286, 299 (2014).

he shall be deemed totally and permanently disabled. The Court shall, nonetheless, not make such a declaration in this case because by Libang's plea for a reinstatement of the labor tribunals' rulings, he was of the position that his disability was not total and permanent.[24] (emphases supplied)

A similar observation obtains in this case. While the letter, dated 20 May 2004, stated that Dedace's illness is not work-related, nothing would suggest that the same is Dr. Cruz's definite medical assessment. In the first place, the said statement was based merely on the opinion of another specialist, a gastroenterologist, who was not even named. Certainly, Dr. Cruz did not even offer his own opinion on the matter. Furthermore, the records do not show that Dedace was examined by or was placed under the care of any gastroenterologist. Thus, the unnamed gastroenterologist's opinion on Dedace's illness is immaterial in this case.

Finally, neither Dr. Cruz nor the unnamed gastroenterologist gave an explanation for the statement that Dedace's illness is not work-related. While the company-designated physician must declare the nature of a seafarer's disability, the former's declaration is not conclusive and final upon the latter or the court. Its inherent merit will still be weighed and duly considered.[25] For this reason, it is not enough that the company-designated physician merely state or claim that the illness is not work-related, or that the seafarer is fit for sea duties. He must justify said assessment using the medical findings he had gathered during his treatment of the patient-seafarer. Surely, the POEA-SEC requires a medical assessment, not a bare claim. An unsubstantiated assessment, even if made by the company-designated physician, is tantamount to a bare claim which must be rejected by the courts.

Considering that the company-designated physician effectively failed to make an assessment, Dedace is deemed totally and

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[24] *Id.* at 299-300.

[25] *Dohle-Philman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan*, 760 Phil. 861, 880 (2015).

permanently disabled as of the date of the expiration of the 120-day period counted from his repatriation to the Philippines. Consequently, there could no longer be any issue on whether his illness is work-related or not.

The Court is not oblivious of the pronouncements made in several cases to the effect that notwithstanding the presumption in favor of compensability, on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.[26] Indeed, in *Magsaysay Maritime Corporation v. NLRC*,[27] the case invoked by the petitioners, it was held that the claimant-seafarer has the burden of presenting substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. A careful analysis of these cases would reveal, however, that the pronouncements made therein do not apply to the present case.

For instance, in *Magsaysay*, the company-designated physician was able to give a full, complete, and categorical medical assessment on the illness of the seafarer. It was noted therein that:

> While it is true that medical reports issued by the company-designated physicians do not bind the courts, our examination of Dr. Ong-Salvador's Initial Medical Report leads us to agree with her findings. **Dr. Ong-Salvador was able to sufficiently explain her basis in concluding that the respondent's illness was not work-related: she found the respondent not to have been exposed to any carcinogenic fumes, or to any viral infection in his workplace**. Her findings were arrived at after the respondent was made to undergo a physical, neurological and laboratory examination, taking into consideration his (respondent's) past medical history, family history,

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[26] *De Leon v. Maunlad Trans, Inc.*, G.R. No. 215293, 8 February 2017; *Philippine Transmarine Carriers, Inc. v. Aligway,* 769 Phil. 792, 802-803 (2015).

[27] *Supra* note 19 at 365.

and social history. In addition, the respondent was evaluated by a specialist, a surgeon and an oncologist. The series of tests and evaluations show that Dr. Ong-Salvador's findings were not arrived at arbitrarily; neither were they biased in the company's favor.[28] (emphasis supplied)

Unfortunately for the petitioners, the same could not be said in this case. As already shown, the statement that Dedace's illness is not work-related was not sufficiently explained. The aforesaid statement was unsubstantial to support respondents' position that Dedace's illness is not compensable. All told, the Court finds that the petitioners failed to present sufficient controverting evidence to overthrow the disputable presumption that Dedace's illness is work-related. To rule otherwise would render the statutory presumption under Section 20 of the POEA-SEC nugatory.

Moreover, Dedace was under no obligation to consult with a physician of his choice under the given circumstances. It must be stressed that the duty of a seafarer to consult with his own physician arises only if the company-designated physician was able to issue an assessment within 120-days from the date of his repatriation. In this case, since the petitioners' company-designated physician, Dr. Cruz, failed to make an assessment within the aforesaid period, Dedace's failure to adduce a medical certificate from a physician of his choice is not fatal to his cause. It is not the issuance of a medical certificate showing that the seafarer's illness is work-related or that he is totally and permanently unfit for sea duties which makes the employer liable. A seafarer's cause of action for total and permanent disability benefits accrues when, among others, the company-designated physician fails to issue a declaration as to his fitness to engage in sea duty or disability rating even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability.[29]

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[28] *Id.*

[29] *C.F. Sharp Crew Management, Inc. v. Taok,* 691 Phil. 521, 538 (2012).

In fine, the Court finds no error on the part of the CA when it reversed the ruling of the NLRC. The CA correctly ruled that the NLRC committed grave abuse of discretion when it grossly misapprehended the facts of the case. The awards of permanent total disability benefits and sickness allowance are proper.

The CA properly awarded attorney's fees.

Attorney's fees may be classified into two kinds: ordinary and extraordinary. Attorney's fees in its ordinary sense is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. Its basis is the fact of the lawyer's employment by and his agreement with his client. On the other hand, attorney's fees in its extraordinary concept refers to the indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically paragraph 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. It is the extraordinary concept of attorney's fees which is contemplated by Article 111 of the Labor Code.[30]

The award of attorney's fees in labor cases, however, are not limited to those expressly covered by Article 111 of the Labor Code which states that attorney's fees may be awarded in cases of unlawful withholding of wages. The Court has repeatedly held that the award of attorney's fees is legally and morally justifiable, not only in actions for recovery of wages, but also where an employee was forced to litigate and thus incur expenses to protect his rights and interest.[31]

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[30] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. citing *Reyes v. CA*, 456 Phil. 520, 539-540 (2003).

[31] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 448 (2014) citing *Aliling v. Feliciano*, 686 Phil. 889, 923 (2012).

The propriety of the award of attorney's fees in this case is clear. It could not be denied Dedace was forced to litigate and retain the services of his counsel thereby incurring expenses as a result of petitioners' refusal to pay the disability benefits rightfully due him. Dedace is therefore entitled to attorney's fees equivalent to ten percent (10%) of his total monetary award.

In fine, the Court holds that the CA correctly found Dedace to be entitled to sickness allowance, permanent total disability benefits, and attorney's fees equivalent to ten percent (10%) of the total monetary awards.

WHEREFORE, the petition is **DENIED**. The Decision, dated 11 May 2011, and Resolution, dated 24 October 2011, of the Court of Appeals in CA-G.R. SP No. 102527 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 200712. July 4, 2018]

MARIO A. ABUDA, RODOLFO DEL REMEDIOS, EDWARDO DEL REMEDIOS, RODOLFO L. ZAMORA, DIONISIO ADLAWAN, ELPIDIO GARCIA, JR., ROGELIO ZAMORA, SR., JIMMY TORRES, POLICARPIO OBANEL, JOSE FERNANDO, JOHNNY BETACHE, JAYSON GARCIA, EDWIN ESPE, NEMENCIO CRUZ, LARRY ABAÑES, ROLANDO SALEN, JOSEPH TORRES, FRANCISCO LIM, ARNALDO GARCIA, WILFREDO BROÑOLA, GLENN MORAN, JOSE GONZALES, ROGER MARTINEZ,

JAIME CAPELLAN, RICHARD ORING, JEREMIAS CAPELLAN, ARNEL CAPELLAN, MELCHOR CAPELLAN, ROLLY PUGOY, JOEY GADONES, ARIES CATIANG, LEONEL LATUGA, VICENTE GO, TEMMIE C. NAWAL, and EDUARDO A. CAPILLAN, *petitioners, vs.* **L. NATIVIDAD POULTRY FARMS, JULIANA NATIVIDAD, and MERLINDA NATIVIDAD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM A DECISION OF THE COURT OF APPEALS ON A LABOR CASE DECIDED UNDER RULE 65.— When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under Rule 45, the general rule is that this Court may only pass upon questions of law. x x x Furthermore, judicial review under Rule 45 is confined to the question of whether or not the Court of Appeals correctly "determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it and not on the basis of whether the [National Labor Relations Commission] decision on the merits of the case was correct."

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; EMPLOYER-EMPLOYEE RELATIONSHIP; CONSIDERING THE PRESENCE OF THE FOUR (4)-FOLD TEST, PAKYAW WORKERS CONSIDERED REGULAR EMPLOYEES IN CASE AT BAR.— A *pakyaw* or task basis arrangement defines the manner of payment of wages and not the relationship between the parties. x x x [T]he four (4)-fold test [for employer-employee relationship are:] "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct." Respondents hired petitioners directly or through petitioner Del Remedios, a supervisor at respondents' farm. They likewise paid petitioners' wages, as seen by the vouchers issued to Del Remedios and San Mateo. They also had the power of dismissal inherent in their power to select and engage their employees. Most importantly though, they controlled petitioners and their work output by maintaining an

attendance sheet and by giving them specific tasks and assignments. x x x *Gapayao v. Fulo* categorically stated that *pakyaw* workers may be considered as regular employees provided that their employers exercised control over them. Thus, while petitioners may have been paid on *pakyaw* or task basis, their mode of compensation did not preclude them from being regular employees.

3. ID.; ID.; ID.; REGULAR EMPLOYEE; INCLUDES AN EMPLOYEE WHO HAS BEEN ON THE JOB FOR ONE YEAR, EVEN IF THE PERFORMANCE OF THE JOB IS INTERMITTENT.— A regular employee is an employee who is: 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) *has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed* and his employment continues as long as such activity exists.

4. ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AWARD OF MORAL AND EXEMPLARY DAMAGES NOT PROPER WHERE DISMISSAL WAS NOT OPPRESSIVE TO LABOR.— [T]he prayer for moral and exemplary damages must be denied. The termination of employment without just cause or due process does not immediately justify the award of moral and exemplary damages. x x x It is not enough that they were dismissed without due process. Additional acts of the employers must also be pleaded and proved to show that their dismissal was tainted with bad faith or fraud, was oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Petitioners failed to allege any acts by respondents which would justify the award of moral or exemplary damages.

APPEARANCES OF COUNSEL

Nova SJ Delas Armas for petitioners.
Panganiban & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

The necessity or desirability of the work performed by an employee can be inferred from the length of time that an employee has been performing this work. If an employee has been employed for at least one (1) year, he or she is considered a regular employee by operation of law.

This resolves the Petition for Review[1] filed by Mario A. Abuda, Rodolfo Del Remedios, Edwardo Del Remedios, Rodolfo L. Zamora, Dionisio Adlawan, Elpidio Garcia, Jr., Rogelio Zamora, Sr., Jimmy Torres, Policarpio Obanel, Jose Fernando, Johnny Betache, Jayson Garcia, Edwin Espe, Nemencio Cruz, Larry Abañes, Rolando Salen, Joseph Torres, Francisco Lim, Arnaldo Garcia, Wilfredo Broñola, Glenn Moran, Jose Gonzales, Roger Martinez, Jaime Capellan, Richard Oring, Jeremias Capellan, Arnel Capellan, Melchor Capellan, Rolly Pugoy, Joey Gadones, Aries Catiang, Leonel Latuga, Vicente Go, Temmie C. Nawal, and Eduardo A. Capillan (collectively, workers), assailing the October 11, 2011 Decision[2] and February 8, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 117681.

The workers of L. Natividad Poultry Farms (L. Natividad) filed complaints for "illegal dismissal, unfair labor practice, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, thirteenth month pay, and moral

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[1] *Rollo,* pp. 12-47.

[2] *Id*. at 49-74. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 76. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro of the Former Special Fourth Division, Court of Appeals, Manila.

and exemplary damages"[4] against it and its owner, Juliana Natividad (Juliana), and manager, Merlinda Natividad (Merlinda).[5]

The workers claimed that L. Natividad employed and terminated their employment after several years of employment. The dates they were hired and terminated are as follows:

NAME	POSITION	DATE OF HIRING	DATE OF TERMINATION
Arnaldo Garcia	Maintenance Personnel	May 1997	June 2005
Dionisio Adlawan	Maintenance Personnel	January 1991	November 2005
Edwardo Del Remedios	Maintenance Personnel	1990	April 2005
Edwin Espe	Maintenance Personnel	January 1997	April 2006
Elpidio Garcia, Jr.	Maintenance Personnel	March 1990	February 2006
Francisco Lim	Maintenance Personnel	May 1997	March 2007
Jayson Garcia	Maintenance Personnel	March 1998	June 2005
Jimmy Torres	Maintenance Personnel	May 1990	November 2006
Johnny Betache	Maintenance Personnel	May 1990	March 2005
Jose Fernando	Maintenance Personnel	February 1999	March 2007
Larry Abañe[s]	Maintenance Personnel	April 1997	April 2005
Mario A. Abuda	Maintenance Personnel	September 2004	January 2007
Nemencio Cruz	Maintenance Personnel	April 1990	May 2006
Policarpio Obanel	Maintenance Personnel	January 1991	September 2005
Rodolfo Del Remedios	Maintenance Personnel	March 1990	March 2007
Rodolfo L. Zamora	Maintenance Personnel	January 1999	March 2005
Rogelio Zamora, Sr.	Maintenance Personnel	March 1995	September 2005
Rolando Salen	Maintenance Personnel	1997	2005
Jose Gonzales	Poultry & Livestock Feed Mixers	1989	May 2007
Roger Martinez	Poultry & Livestock Feed Mixers	July 2002	May 2007

[4] *Id*. at 50.

[5] *Id*.

Wilfredo Broñola	Poultry & Livestock Feed Mixers	April 1995	May 2007
Arnel Capellan	Delivery Helper	December 2004	January 2006
Eduardo A. Cap[i]llan	Checker	March 1989	November 2006
Jeremias Capellan	Security Guard	February 2003	December 2006
Temmie C. Nawal	Poultry Helper	April 2000	August 2000[6]

On May 13, 2009, Labor Arbiter Robert A. Jerez (Labor Arbiter Jerez) dismissed the complaint due to lack of employer-employee relationship between the workers and L. Natividad. He ruled that San Mateo General Services (San Mateo), Wilfredo Broñola (Broñola), and Rodolfo Del Remedios (Del Remedios) were the real employers as they were the ones who employed the workers, not L. Natividad.[7]

The workers appealed Labor Arbiter Jerez's Decision, and on August 31, 2010, the National Labor Relations Commission modified the assailed Decision.[8]

The National Labor Relations Commission found that the workers were hired as maintenance personnel by San Mateo and Del Remedios on *pakyaw* basis to perform specific services for L. Natividad. Furthermore, it ruled that Jose Gonzales (Gonzales) and Roger Martinez (Martinez) could not be considered as regular employees because their jobs as poultry livestock mixers were not necessary in L. Natividad's line of business. However, it found Broñola, Jeremias Capellan (Jeremias), Arnel Capellan (Arnel), Temmie Nawal (Nawal), and Eduardo Capillan (Eduardo) to be regular employees and ordered L. Natividad to reinstate them and pay their thirteenth month pay and service incentive leave pay.[9]

The dispositive portion of the National Labor Relations Commission August 31, 2010 Decision read:

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[6] *Id*. at 50-51. CA Decision. Larry Abañes is sometimes referred to as "Larry Abañez" and Eduardo Capillan as "Eduardo Capellan."

[7] *Id*. at 55-57.

[8] *Id*. at 57.

[9] *Id*. at 57-58.

WHEREFORE, the Decision dated May 13, 2009 is hereby MODIFIED. Complainants Wilfredo Bronola, Jeremias Capellan, Arnel Capellan, Temmie Nawal, and Eduardo Capellan, are hereby declared regular employees of respondent L. Natividad Poultry Farms. However, considering that the above-named complainants were not illegally dismissed by the respondents and the former's intention to be reinstated to work, respondents L. Natividad Poultry Farms through respondents Juliana Natividad and Merlinda Natividad are hereby directed to reinstate the above-named complainants to their former position or substantially equivalent position without backwages. Respondent [L. Natividad] is also directed to pay their respective 13th month pays and service incentive leave pays as follows:

Name	13th Month Pay	Service Incentive Leave Pay (SILP)	Total Amount
Wilfredo Bronola	₱20,690.77	Not Entitled/Supervisor	₱20,690.77
Jeremias Capellan	₱14,952.60	₱2,875.50	₱17,828.10
Arnel Capellan	₱5,687.05	₱1,093.66	₱6,780.71
Temmie Nawal	₱9,143.90	₱1,758.44	₱10,902.34
Eduardo Capellan	₱15,274.53	₱2,937.41	₱18,211.94
	TOTAL	**AWARDS**	**₱74,413.86**

For failure to comply with the requisites of Article 106 of the Labor Code on permissible job contracting, third party respondents San Mateo General Services and Rodolfo Del Remedios are hereby declared to be engaged in labor-only contracting. No employer-employee relationship existed, however, between respondent [L. Natividad] and the following complainants: Rodolfo Del Remedios, Edward Del Remedios, Dionisio Adlawan, Elpidio Garcia, Jr., Rogelio Zamora, Sr., Jimmy Torres, Policarpio Obanel, Jose Fernando, Johnny Betache, Jayson Garcia, Edwin Espe, Nemencio Cruz, Larry Aba[ñ]es, Rolando Salen, Francisco Lim, Arnold Garcia, Mario Abuda, Rodolfo Zamora, Jose Gonzales and Roger Martinez, as they performed tasks not usually necessary or desirable in the business of respondent [L. Natividad]. Thus, it is hereby declared that the above-named complainants were engaged on pakyaw basis and not regular employees of the latter.

All other claims of the complainants are hereby dismissed for lack of merit.

SO ORDERED.[10]

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

The workers moved to reconsider the National Labor Relations Commission August 31, 2010 Decision, but this was denied by the National Labor Relations Commission in its October 26, 2010 Resolution.[11]

The workers filed a Petition for Review on Certiorari[12] before the Court of Appeals.

On October 11, 2011, the Court of Appeals[13] modified the National Labor Relations Commission's assailed Decision and ruled that San Mateo and Del Remedios were labor-only contractors, and as such, they must be considered as L. Natividad's agents.[14]

The Court of Appeals also reversed the National Labor Relations Commission's ruling on Gonzales' and Martinez's employment status since as poultry and livestock feed mixers, they performed tasks which were necessary and desirable to L. Natividad's business and were not mere helpers. It deemed them to be L. Natividad's regular employees.[15]

However, the Court of Appeals upheld the National Labor Relations Commission's finding that the maintenance personnel were only hired on a *pakyaw* basis to perform necessary repairs or construction within the farm as the need arose.[16]

As for the issue of illegal dismissal, the Court of Appeals also affirmed the National Labor Relations Commission's finding that the workers failed to substantiate their bare allegation that L. Natividad verbally notified them of their dismissal.[17]

The dispositive portion of the Court of Appeals October 11, 2011 Decision read:

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[11] *Id*. at 59.

[12] *Id*. at 77-107.

[13] *Id*. at 49-74.

[14] *Id*. at 67.

[15] *Id*. at 71.

[16] *Id*. at 68-69.

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

ACCORDINGLY, the petition is **PARTLY GRANTED** and the Decision dated August 31, 2010, **MODIFIED**. Petitioners Jose Gonzales and Roger Martinez are **DECLARED** regular employees of respondent L. Natividad Poultry Farms; and the latter, **DIRECTED** to reinstate Jose Gonzales and Roger Martinez without backwages and to pay their 13th month and service incentive leave pay.

No costs.

SO ORDERED.[18]

On October 24, 2011, the workers moved for the reconsideration of the Court of Appeals Decision, but their motion was denied in the Court of Appeals February 8, 2012 Resolution.[19]

On March 27, 2012, the workers filed their Petition for Review on Certiorari before this Court.[20]

In their Petition, petitioners claim that as maintenance personnel assigned to respondent L. Natividad's farms and sales outlets, they performed functions that were necessary and desirable to L. Natividad's usual business.[21] They assert that they have been continuously employed by L. Natividad for a period ranging from more than one (1) year to 17 years.[22]

Petitioners also state that as maintenance personnel, they repaired and maintained L. Natividad's livestock and poultry houses, facilities, and sales outlets.[23] They worked from Monday to Saturday, from 7:15 a.m. to 5:15 p.m., with their attendance checked by the guard on duty.[24]

Petitioners stress that L. Natividad provided all the tools, equipment, and materials they used as maintenance personnel.

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[18] *Id*. at 73.

[19] *Id*. at 76.

[20] *Id*. at 12-47.

[21] *Id*. at 26-27.

[22] *Id*. at 34.

[23] *Id*. at 26-27.

[24] *Id*. at 16.

Respondents Juliana and Merlinda then gave them specific tasks and supervised their work.[25]

Petitioners argue that even if they were mere project employees as respondents claim, respondents failed to present any service contract executed between them.[26]

Petitioners point out that respondents used the supposed contracting arrangement with petitioner Del Remedios to prevent them from becoming L. Natividad's regular employees. They also highlight that the Court of Appeals ruled that petitioner Del Remedios was engaged in labor-only contracting. Thus, they declare that this should have already been equivalent to a finding of an employer-employee relationship between them and L. Natividad[27] and that they were illegally dismissed.[28]

In their Comment,[29] respondents claim to be engaged in the business of livestock and poultry production.[30] They also aver to have engaged San Mateo's services to clean-up the poultry farm, and to repair and maintain their chicken pens.[31]

Respondents likewise state that they engaged petitioner Del Remedios to provide carpentry services. They assert that petitioners who claim to be maintenance personnel were actually carpenters or masons deployed by petitioner Del Remedios for his own account.[32]

Respondents refer to the statements of petitioners Rolando Salen and Larry Abañes as proof that the maintenance personnel were employees of Del Remedios:

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[25] *Id*. at 16-17.

[26] *Id*. at 34-35.

[27] *Id*. at 36-39.

[28] *Id*. at 39-41.

[29] *Id*. at 181-201.

[30] *Id*. at 181.

[31] *Id*. at 181-182.

[32] *Id*. at 182.

4.1.17. It must be also be (sic) pointed out that two (2) of the named petitioners, namely: ROLANDO SALEN and LARRY ABA[Ñ]E[S], who were supposed to be among the "Maintenance Personnel" after re-thinking their stance in the present controversy, in their own handwriting submitted their statements, narrated and admitted that they were indeed the former employees of Rodolfo Del Remedios and from whom they drew their respective salaries. And, that when they signed the complaint, they were only forced by Rodolfo Del Remedios to do so. These two supposed petitioners are apologetic to Respondent and that they were withdrawing their respective complaints as indicated in their written statements. They should therefore be taken out from the list of the petitioners. The written retraction of Rolando Salen is reproduced as follows:

> "Ako po si Rolando A. Salen, dating tauhan ni Rody Del Remedios kusang loob na pumunta ditto (sic) sa opisina ng L. Natividad Poultry Farms Corporation upang kami ay humingi ng tawad sa aming ginawa sa pagsama sa pagrereklamo nila sa Labor. Ako po ay sumama lamang sa kadahilanang ako ay pinilit lamang na sumama sa kanila.
>
> Alam ko po naman na si Rody Del Remedios an[g] siyang tumangap at humanap sa amin upang magtrabaho at siya rin ang nagpapasahod sa amin, hindi ang L. Natividad Poultry Farms Corporation.
>
> Hindi na po ako sasama sa kanilang paghahabla o pagrereklamo sa Labor. Kusang loob po akong bumibitiw sa kagustuhan ni Rody Del Remedios na magreklamo laban sa kanila.
>
> SGD. ROLANDO A. SALEN"

(underscoring supplied)

Larry Aba[ñ]es' written retraction is similar with that of Rolando Salen.[33]

Respondents further assert that carpentry and masonry cannot be considered as necessary or desirable in their business of livestock and poultry production. They point out that petitioners, through petitioner Del Remedios, were only occasionally

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[33] *Id*. at 187-188.

deployed as needed to repair and maintain their farm and sales outlets as needed.[34]

Respondents then state that they engaged the services of petitioner Broñola to mix feeds for a specific number of tons or on a *pakyaw* system. They assert that petitioners Gonzales and Martinez were Broñola's employees, whom he hired specifically to help him mix feeds.[35]

Respondents deny that petitioners were illegally dismissed and contend that their contracts were merely not renewed.[36]

Nonetheless, respondents state that pursuant to the National Labor Relations Commission August 31, 2010 Decision, they sent return to work notices to petitioners Jeremias, Arnel, Nawal, Eduardo, and Broñola; however, they failed to return to work.[37]

In their Reply,[38] petitioners who claim to be maintenance personnel deny lodging their applications with petitioner Del Remedios, who was then employed as L. Natividad's supervisor. They point out that petitioner Del Remedios was included in the employees' payroll, therefore, disputing L. Natividad's assertion that he was engaged as a contractor.[39]

Petitioners then reiterate that they were illegally dismissed and are entitled to damages.[40]

The primary issue for the resolution of this Court is whether or not the maintenance personnel in L. Natividad Poultry Farms can be considered as its regular employees.

When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under

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[34] *Id*. at 185.

[35] *Id*. at 182.

[36] *Id*. at 182-183.

[37] *Id*. at 183.

[38] *Id*. at 252-270.

[39] *Id*. at 253-254.

[40] *Id*. at 264-267.

Rule 45, the general rule is that this Court may only pass upon questions of law. *Meralco Industrial Engineering Services Corp. v. National Labor Relations Commission*[41] emphasized as follows:

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the [National Labor Relations Commission], when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[42]

Furthermore, judicial review under Rule 45 is confined to the question of whether or not the Court of Appeals correctly "determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it and not on the basis of whether the [National Labor Relations Commission] decision on the merits of the case was correct."[43]

Respondents deny that the petitioners, who claim to be maintenance personnel are their employees and declare that they were hired by independent contractors, who exercised control over them and paid their wages.

Respondents fail to convince.

Permissible contracting or subcontracting, and labor-only contracting is provided for under Article 106 of the Labor Code:

> Article 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's

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[41] 572 Phil. 94 (2008) [Per J. Chico-Nazario, Third Division].

[42] *Id*. at 117 citing *Ramos v. Court of Appeals,* 77 Phil. 205, 211 (2004) [Per J. Corona, Third Division].

[43] *David v. Macasio*, 738 Phil. 293, 204 (2014) [Per J. Brion, Second Division] citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696 (2009) [Per J. Brion, Second Division].

subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Labor-only contracting is prohibited as it is seen as a circumvention of labor laws; thus, the labor-only contractor is treated as a mere agent or intermediary of its principal.[44]

The Court of Appeals found that San Mateo and petitioner Del Remedios were not independent contractors but labor-only contractors since they did not have substantial investment in the form of tools, equipment, or work premises.[45] As labor-

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[44] *Maraguinot, Jr. v. National Labor Relations Commission,* 348 Phil. 580, 596 (1998) [Per. J. Davide, Jr., First Division].

[45] *Rollo,* p. 67.

only contractors, they were considered to be agents of respondent L. Natividad:

> The fact, however, that neither of the contractors [San Mateo] and Rodolfo Del Remedios had substantial investment in the form of tools, equipment and even work premises, nor were the services performed by their workers, i.e. carpentry and masonry works, directly related to and usually necessary and desirable in [L. Natividad]'s main business of livestock and poultry production showed that they were merely engaged in "labor-only" contracting. As "labor-only" contractors, [San Mateo] and Rodolfo Del Remedios are considered as agents of the employer, [L. Natividad]. Liability, therefore, if any, must be shouldered by either one or shared by both. As it was, however, petitioners failed to prove any unpaid claims against [L. Natividad].[46]

However, the Court of Appeals ruled that even if petitioners were L. Natividad's employees, they still cannot be considered as regular employees because there was no reasonable connection between the nature of their carpentry and masonry work and respondents' usual business in poultry and livestock production, sale, and distribution. It also found that the maintenance personnel were hired on a piece rate or *pakyaw* basis about once or thrice a year, to perform repair or maintenance works; thus, they could not be considered as regular employees.[47]

The Court of Appeals is mistaken.

A *pakyaw* or task basis arrangement defines the manner of payment of wages and not the relationship between the parties.[48] Payment through *pakyaw* or task basis is provided for in Articles 97(f) and 101 of the Labor Code:

> Article 97. Definitions. — As used in this Title:
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> . . . . . .

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[46] *Id*.

[47] *Id*. at 68.

[48] *David v. Macasio*, 738 Phil. 293, 305-306 (2014) [Per *J*. Brion, Second Division].

(f) "Wage" paid to any employee shall mean the *remuneration or earnings*, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, *task, piece*, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer.

. . . . . .

Article 101. Payment by results. — (a) The Secretary of Labor and Employment shall regulate the payment of wages by results, including pakyao, piecework, and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employers' organizations.

Both the National Labor Relations Commission and the Court of Appeals found respondent L. Natividad to be petitioners' real employer, in light of the labor-only contracting arrangement between respondents, San Mateo, and petitioner Del Remedios. This Court sees no reason to disturb their findings since their findings are supported by substantial evidence.

Furthermore, a resort to the four (4)-fold test of "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct"[49] also strengthens the finding that respondent L. Natividad is petitioners' employer.

Respondents hired petitioners directly or through petitioner Del Remedios, a supervisor at respondents' farm.[50] They likewise paid petitioners' wages, as seen by the vouchers[51] issued to

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[49] *Rhone-Poulenc Agrochemicals Phil., Inc. v. National Labor Relations Commission*, 291 Phil. 251, 259 (1993) [Per *J.* Gutierrez, Jr., Third Division] (citations omitted).

[50] *Rollo,* pp. 27-28.

[51] *Id*. at 63-64.

Del Remedios and San Mateo. They also had the power of dismissal inherent in their power to select and engage their employees. Most importantly though, they controlled petitioners and their work output by maintaining an attendance sheet and by giving them specific tasks and assignments.[52]

With an employer-employee relationship between respondent L. Natividad and petitioners duly established, the next question for resolution is whether petitioners can be considered to be regular employees.

A regular employee is an employee who is:

1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) *has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed* and his employment continues as long as such activity exists.[53] (Emphasis supplied, citation omitted)

This finds basis in Article 280 of the Labor Code which provides:

Article 295. [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.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, that any employee who has

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[52] *Id*. at 16-17.

[53] *Vicmar Development Corp. v. Elarcosa*, 775 Phil. 218, 232 (2015) [Per *J*. Del Castillo, Second Division].

rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

De Leon v. National Labor Relations Commission[54] instructs that "[t]he primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer."[55] The connection is determined by considering the nature of the work performed vis-à-vis the entirety of the business or trade. Likewise, if an employee has been on the job for at least one (1) year, even if the performance of the job is intermittent, the repeated and continuous need for the employee's services is sufficient evidence of the indispensability of his or her services to the employer's business.[56]

Respondents did not refute petitioners' claims that they continuously worked for respondents for a period ranging from three (3) years to 17 years.[57] Thus, even if the Court of Appeals is of the opinion that carpentry and masonry are not necessary or desirable to the business of livestock and poultry production,[58] the nature of their employment could have been characterized as being under the second paragraph of Article 280. Thus, petitioners' service of more than one (1) year to respondents has made them regular employees for so long as the activities they were required to do subsist.

Nonetheless, a careful review of petitioners' activity as maintenance personnel and of the entirety of respondents' business convinces this Court that they performed activities which were necessary and desirable to respondents' business of poultry and livestock production.

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[54] 257 Phil. 626 (1989) [Per *C.J.* Fernan, Third Division].

[55] *Id*. at 632.

[56] *Id*. at 632-633.

[57] *Rollo,* p. 16.

As maintenance personnel, petitioners performed "repair works and maintenance services such as fixing livestock and poultry houses and facilities as well as doing construction activities within the premises of [L. Natividad's] farms and other sales outlets for an uninterrupted period of three (3) to seventeen (17) years."[59] Respondents had several farms and offices in Quezon City and Montalban, including Patiis Farm, where petitioners were regularly deployed to perform repair and maintenance work.[60]

At first glance it may appear that maintenance personnel are not necessary to a poultry and livestock business. However, in this case, respondents kept several farms, offices, and sales outlets, meaning that they had animal houses and other related structures necessary to their business that needed constant repair and maintenance. In petitioner Del Remedios' sworn affidavit:

> 1. RODOLFO DEL REMEDIOS — Noong Marso 1990, ako ay direktang tinanggap at nagtrabaho sa malawak na farm ng L. Natividad Poultry Farms sa San Mateo Rizal na pagmamay-ari ni Gng. Juliana Natividad at pinamamahalaan ng kanyang anak na si Merlinda Natividad. *Ako ang nangangasiwa sa pagkukumpuni sa mga sirang bahay ng mga manok, baboy atbp., gumawa at tumulong sa construction ng mga ito at magmentina ng mga pasilidad sa loob ng farm at maging sa mga sales outlets nito sa iba't ibang lugar*. Ako ay isa lamang empleyado ng L. Natividad Poultry Farms at kasamang sumasahod ng iba pang mga trabahador. Ang lahat ng gamit o materyales sa paggawa at pagkukumpuni ng mga bahay ng mga manok, baboy atbp. ay nanggagaling sa L. Natividad Poultry Farms.[61] (Emphasis supplied)

Gapayao v. Fulo[62] likewise categorically stated that *pakyaw* workers may be considered as regular employees provided that

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[58] *Id*. at 68.

[59] *Id*. at 26-27.

[60] *Id*. at 34.

[61] *Id*. at 29.

[62] 711 Phil. 179, 195-196 (2013) [Per *C.J.* Sereno, First Division].

their employers exercised control over them. Thus, while petitioners may have been paid on *pakyaw* or task basis, their mode of compensation did not preclude them from being regular employees.

Being regular employees, petitioners, who were maintenance personnel, enjoyed security of tenure[63] and the termination of their services without just cause entitles them to reinstatement and full backwages, inclusive of allowances and other benefits.

Nonetheless, the prayer for moral and exemplary damages must be denied. The termination of employment without just cause or due process does not immediately justify the award of moral and exemplary damages. *Philippine School of Business Administration v. National Labor Relations Commission*[64] stated:

> This Court however cannot sustain the award of moral and exemplary damages in favor of private respondents. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proved to warrant the grant of moral damages under the Civil Code. The act of dismissal must be attended with bad faith, or fraud or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and, of course, that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner.[65] (Citations omitted)

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[63] LABOR CODE, Art. 279 provides:

> Article 294. [279] Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[64] 329 Phil. 932 (1996) [Per *J*. Bellosillo, First Division].

[65] *Id*. at 940.

Petitioners maintain that their employments were terminated by respondents in an "oppressive, malicious and unjustified manner,"[66] yet they failed to explain or illustrate how their dismissal was oppressive, malicious, or unjustified. It is not enough that they were dismissed without due process. Additional acts of the employers must also be pleaded and proved to show that their dismissal was tainted with bad faith or fraud, was oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Petitioners failed to allege any acts by respondents which would justify the award of moral or exemplary damages.

As for petitioners Broñola, Gonzales, Martinez, Jeremias, Arnel, Nawal, and Eduardo, although the Court of Appeals reversed the labor tribunals' decisions and held them to be regular employees, it nonetheless upheld the findings of both Labor Arbiter Jerez and the National Labor Relations Commission that they failed to support their allegation that they were illegally dismissed, thus:

> In illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal. Here, [the National Labor Relations Commission] found no dismissal, much less, an illegal one as petitioners failed to substantiate their bare allegation that [L. Natividad] verbally notified them of their dismissal. It is settled that in the absence of proof of dismissal, the remedy is reinstatement without backwages.[67]

Illegal dismissal is essentially a factual issue,[68] and therefore, not proper in a Rule 45 petition. This Court does not try facts.[69] Moreover, the labor tribunals and the Court of Appeals

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[66] *Rollo,* p. 41.

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

[68] *Cañedo v. Kampilan Security and Detective Agency, Inc*., 715 Phil. 625, 635 (2013) [Per *J*. Del Castillo, Second Division].

[69] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212 (2005) [Per *J*. Garcia, Third Division].

unanimously held that petitioners were not illegally dismissed. This Court sees no reason to overturn their findings as it is settled that:

> [T]he findings of facts and conclusion of the [National Labor Relations Commission] are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the [National Labor Relations Commission], are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[70] (Citations omitted)

WHEREFORE, this Court resolves to **PARTIALLY GRANT** the petition. The assailed October 11, 2011 Decision and February 8, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 117681 are **AFFIRMED** with **MODIFICATION.** The following petitioners are **DECLARED** to be regular employees of L. Natividad Poultry Farms and are **ORDERED** to be **REINSTATED** to their former positions and to be **PAID** their backwages, allowances, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement:

a) Rodolfo Del Remedios
b) Edwardo Del Remedios
c) Dionisio Adlawan
d) Elpidio Garcia, Jr.
e) Rogelio Zamora, Sr.
f) Jimmy Torres
g) Policarpio Obanel
h) Jose Fernando
i) Johnny Betache
j) Jayson Garcia
k) Edwin Espe
l) Nemencio Cruz

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[70] *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007) [Per J. Chico-Nazario, Third Division].

m) Larry Abañes
n) Rolando Salen
o) Francisco Lim
p) Arnaldo Garcia
q) Mario Abuda
r) Rodolfo Zamora[71]

The monetary awards shall bear the legal interest rate of six percent (6%) per annum to be computed from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter for the computation of backwages and other monetary awards due to petitioners.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 204361. July 4, 2018]

CECILIA T. JAVELOSA, represented by her attorney-in-fact, MA. DIANA J. JIMENEZ, *petitioner, vs.* **EZEQUIEL TAPUS, MARIO MADRIAGA, DANNY M. TAPUZ,[1] JUANITA TAPUS and AURORA MADRIAGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; JURISDICTION OF THE

[71] *Rollo,* pp. 15-16.

[1] Name was spelled as "Tapuz" in the *rollo* cover.

COURT IS LIMITED ONLY TO REVIEWING ERRORS OF LAW, NOT OF FACT; QUESTION OF LAW, DISTINGUISHED FROM QUESTION OF FACT; ISSUE OF WHO BETWEEN THE PARTIES HAS A BETTER RIGHT OF POSSESSION IS A QUESTION OF FACT.— [T]he jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact. A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Essentially, the issue as to who between the parties has a better right of possession will necessarily entail a review of the evidence presented, which is beyond the province of a petition for review on *certiorari* under Rule 45.

2. **CIVIL LAW; PROPERTY; OWNERSHIP; AN ATTRIBUTE THEREOF IS ENTITLEMENT TO THE POSSESSION OF THE REAL PROPERTY; IF THE REAL PROPERTY IS POSSESSED BY ANY OTHER PERSON THAN THE OWNER, THE LATTER CANNOT SIMPLY WREST POSSESSION FROM THE OCCUPANT BUT MUST FIRST RESORT TO THE PROPER JUDICIAL REMEDY, SATISFYING ALL THE CONDITIONS NECESSARY FOR SUCH ACTION TO PROSPER.—** It is an elementary principle of civil law that the owner of real property is entitled to the possession thereof as an attribute of his or her ownership. In fact, the holder of a Torrens Title is the rightful owner of the property thereby covered, and is entitled to its possession. This notwithstanding, "the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property." Rather, to recover possession, the owner must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions necessary for such action to prosper.

3. **ID.; ID.; ID.; ID.; THREE KINDS OF ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY.—** [T]he owner may choose among three kinds of actions to recover possession of real property — an *accion interdictal, accion*

publiciana or an *accion reivindicatoria*. Notably, an *accion interdictal* is summary in nature, and is cognizable by the proper municipal trial court or metropolitan trial court. It comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*). In forcible entry, one is deprived of the physical possession of real property by means of force, intimidation, strategy, threats, or stealth, whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. An action for forcible entry is distinguished from an unlawful detainer case, such that in the former, the possession of the defendant is illegal from the very beginning, whereas in the latter action, the possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The only issue in said cases is the right to physical possession. On the other hand, an *accion publiciana* is the plenary action to recover the right of possession, which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. Lastly, an *accion reivindicatoria* is an action to recover ownership, also brought in the proper RTC in an ordinary civil proceeding.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JURISDICTIONAL FACTS TO BE PROVED; OCCUPATION OF THE SUBJECT PROPERTY BY TOLERANCE; NOT ESTABLISHED IN CASE AT BAR.— In the case at bar, the petitioner, claiming to be the owner of the subject property, elected to file an action for unlawful detainer. In making this choice, she bore the correlative burden to sufficiently allege, and thereafter prove by a preponderance of evidence all the jurisdictional facts in the said type of action. Specifically, the petitioner was charged with proving the following jurisdictional facts, to wit: (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the

> enjoyment thereof; and (iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. x x x [I]n order for the petitioner to successfully prosecute her case for unlawful detainer, it is imperative upon her to prove all the assertions in her complaint. After all, "the basic rule is that mere allegation is not evidence and is not equivalent to proof." This, the petitioner failed to do. As correctly observed by the CA, the petitioner failed to adduce evidence to establish that the respondents' occupation of the subject property was actually effected through her tolerance or permission. x x x It cannot be gainsaid that the fact of tolerance is of utmost importance in an action for unlawful detainer. Without proof that the possession was legal at the outset, the logical conclusion would be that the defendant's possession of the subject property will be deemed illegal from the very beginning, for which, the action for unlawful detainer shall be dismissed.

APPEARANCES OF COUNSEL

Advincula Law Office for petitioner.
Nelson A. Loyola for respondents.

D E C I S I O N

REYES, JR., *J.*:

Under the law and the Rules of Court, an owner is given an assortment of legal remedies to recover possession of real property from the illegal occupant. The choice of which action to pursue rests on the owner. Should he/she elect to file a summary action for unlawful detainer, he/she must prove all the essential jurisdictional facts for such action to prosper. The most important of which, is the fact that the respondent's entry into the land was lawful and based on the former's permission or tolerance. Absent this essential jurisdictional fact, the action for unlawful detainer must be dismissed.

This treats of the Petition for Review on *Certiorari*[2] under Rule 45 of the Revised Rules of Court seeking the reversal of

[2] *Rollo*, pp. 3-32.

the Decision[3] dated March 30, 2012, and Resolution[4] dated October 30, 2012, rendered by the Court of Appeals (CA) in CA-G.R. CEB-SP No. 03115, which dismissed the case for unlawful detainer filed by Cecilia T. Javelosa (petitioner).

The Antecedents

The petitioner is the registered owner of a parcel of land located at Sitio Pinaungon, Barangay Balabag, Boracay Island, Malay, Aklan (subject property). The subject property contains an area of 10,198 square meters, more or less, and is covered by Transfer Certificate of Title (TCT) No. T-35394.[5] The subject property was originally covered by Original Certificate of Title (OCT) No. 2222, which the petitioner acquired by donation from her predecessor-in-interest Ciriaco Tirol (Tirol).[6]

The subject property was occupied by Ezequiel Tapus (Ezequiel), Mario Madriaga (Mario), Danny M. Tapuz (Danny), Juanita Tapus (Juanita) and Aurora Madriaga (Aurora) (collectively referred to as the respondents). Allegedly, the respondents' predecessor was assigned as a caretaker of the subject property, and therefore possessed and occupied a portion thereof upon the tolerance and permission of Tirol.[7]

Sometime in 2003, the petitioner's daughter, Diane J. Jimenez (Jimenez), learned that Expedito Tapus, Jr., a relative of the respondents offered the subject property for sale.[8] Alarmed, Jimenez sought the assistance of the Office of Barangay Balabag, Boracay Island, Malay, Aklan. Thereafter, the case was referred to the Office of the *Lupong Tagapamayapa* for a possible

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[3] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes, concurring; *id*. at 33-43.

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

[5] *Id*. at 9.

[6] *Id*. at 50.

[7] *Id*. at 9.

[8] *Id*.

alternative resolution of the conflict. However, the parties failed to reach an amicable settlement.[9]

In October 2003, the petitioner sent a demand letter to the respondents ordering them to vacate the subject property. The demand was unheeded.[10] This prompted the petitioner to file a case for unlawful detainer.

Juanita filed her Answer[11] claiming that she and her predecessors-in-interest have been occupying the subject property since time immemorial. She emphasized that they are actual, adverse and exclusive possessors under a claim of ownership. She further averred that they are indigenous occupants and tribal settlers of the land in dispute, and hence their rights are protected by law. In contrast, the petitioner and Jimenez have never even set foot on the property.

The other respondents, Ezequiel, Mario, Danny and Aurora, filed a separate Answer with Counterclaim and Motion to Dismiss[12] dated March 18, 2004. They claimed that they inherited the subject property from their late grandfather Antonio Tapus. Consequently, they are the lawful and actual possessors of the subject property. In fact, they have been occupying the said property for 60 years. They likewise claimed that the petitioner and her predecessors are land grabbers, whose title over the property was fake and spurious.[13]

Ruling of the Municipal Circuit Trial Court

In its Decision[14] on November 18, 2005, the Municipal Circuit Trial Court (MCTC) awarded the subject property in favor of the petitioner, and consequently, ordered the respondents to vacate, and pay the petitioner a monthly rental of Php 500.00. To properly determine the issue of possession, the MCTC first

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[9] *Id*. at 10.

[10] *Id*.

[11] *Id*. at 83-103.

[12] *Id*. at 104-108.

[13] *Id*. at 106.

[14] Rendered by Presiding Judge Raul C. Barrios; *id*. at 52-62.

provisionally delved into the issue of ownership. In this regard, the MCTC held that the petitioner, being the registered owner of the subject property is entitled to its possession.[15]

Likewise, the MCTC gave credence to the petitioner's contention that the respondents' stay in the subject property was merely upon the permission granted by her predecessor to the respondents. Accordingly, the respondents' possession became illegal from the moment the petitioner ordered them to vacate.[16]

Moreover, the MCTC noted that the respondents did not submit any proof to establish their purported claim of ownership. Neither were they able to prove their allegation that the source of the petitioner's title was spurious. At any rate, the MCTC held that such a defense constituted a collateral attack on the petitioner's title, which shall not be permitted in an action for unlawful detainer. Consequently, the MCTC regarded the petitioner's title as valid, unless declared null and void by a court of competent jurisdiction.[17]

The dispositive portion of the MCTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring that the [petitioner] has a better right to physical possession of the land in question;

2. Ordering the [respondents] and all other persons claiming rights under them to immediately vacate the land in question designated as Lot 30-G-5 in the Commissioner's Sketch and to turn over the possession thereof to the [petitioner].

3. Ordering the [respondents] to pay the [petitioner] monthly rental of Php 500.00, reckoned from the filing of the complaint on February 27, 2004, until the [petitioner] shall have been completely restored in actual possession thereof; and

4. Ordering the [respondents] to pay the [petitioner] the sum of Php 10,000.00 as attorney's fees.

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[15] *Id*. at 58.

[16] *Id*. at 59.

[17] *Id*. at 58.

SO ORDERED.[18]

Aggrieved, the respondents filed an appeal against the MCTC decision.

Ruling of the Regional Trial Court

On August 8, 2007, the Regional Trial Court (RTC) rendered a Decision[19] affirming the ruling of the MCTC.

First, the RTC affirmed the jurisdiction of the MCTC over the case. It observed that the allegations of the complaint sufficiently made out a case for unlawful detainer. As to the merits of the case, the RTC agreed with the MCTC's conclusion that the petitioner, being the owner of the subject property is entitled to possess the same. It noted that the respondents merely occupied the subject property upon the tolerance of the petitioner. Consequently, they must vacate as soon as the said permission was withdrawn.[20]

The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered and finding no reversible error, the decision appealed from is hereby affirmed *in toto*.

SO ORDERED.[21]

Dissatisfied with the ruling, the respondents filed an appeal before the CA.

Ruling of the CA

On March 30, 2012, the CA rendered the assailed Decision,[22] reversing the disquisitions of the MCTC and the RTC.

The CA ratiocinated that although the MCTC had jurisdiction over the unlawful detainer case, the trial court however erred

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[18] *Id*. at 61-62.

[19] Rendered by Presiding Judge Ledelia P. Aragona-Biliran; *id.* at 48-51.

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

[21] *Id*. at 51.

[22] *Id*. at 33-42.

in upholding the petitioner's right to possess the subject property. The CA pointed out that the petitioner failed to prove the fact that the respondents indeed occupied the subject property through her permission and tolerance. It stressed that to make out a case for unlawful detainer, the petitioner must concomitantly prove that the respondents' prior lawful possession has become unlawful due to the expiration of the right to possess the property. The petitioner failed to show that the respondents occupied the subject property pursuant to her tolerance, and that such permission was present from the very start of their occupation. Absent the fact of tolerance, the remedy of unlawful detainer would be inappropriate.[23]

The decretal portion of the assailed CA decision reads:

WHEREFORE, premises considered, the petition is hereby **GRANTED** and the Decision, dated August 8, 2007, of the RTC Kalibo, Aklan, Branch 2 relative to Civil Case No. 7652 for Unlawful Detainer is **NULLIFIED** and **SET ASIDE**. A new one is entered in its stead declaring respondent's case as **DISMISSED**.

SO ORDERED.[24]

Aggrieved by the ruling of the CA, the petitioner filed a Motion for Reconsideration, which was denied by the CA in its Resolution[25] dated October 30, 2012.

Undeterred, the petitioner filed the instant Petition for Review on *Certiorari*[26] before the Court.

The Issues

The main issue raised for the Court's resolution is whether or not the CA erred in dismissing the case for unlawful detainer.

In praying for the reversal of the assailed CA decision, the petitioner claims that she had proven her ownership of the subject

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[23] *Id*. at 39-41.

[24] *Id*. at 42.

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

[26] *Id*. at 3-32.

property, and consequently, her right to possess the same.[27] She points out that she submitted a verified consolidated position paper, which supported the allegations in her complaint, as well as copies of TCT No. T-35394 and OCT No. 2222, which established her ownership over the subject property.[28] The petitioner bewails that in contrast to the evidence she submitted, the respondents failed to present affidavits of their witnesses or any evidence- documentary or otherwise, that would prove their right to possess the subject property.[29] Aside from the photocopy of a Sketch Plan, the respondents did not have any evidence to support their claim of purported ownership of over 60 years.[30] Also, the respondents' prior physical possession does not automatically entitle them to the subject property, especially as against her- the lawful owner of the same.[31]

Likewise, the petitioner avers that her failure to reside in the property should not be taken against her. The subject property was an agricultural land, which was not meant for residential purposes. In fact, it was precisely for this purpose that the respondents' predecessors-in-interest were employed as caretakers of the land.[32] Finally, the petitioner asserts that her tolerance of the respondents' occupation was obvious from the fact that she allowed them to stay in the subject property for several years, without ordering them to vacate the premises, or filing an action to eject them. This allegedly proves her acquiescence to the respondents' occupation.[33]

On the other hand, the respondents pray for the outright dismissal of the instant petition due to the petitioners' failure to raise a question of law, and show that the CA committed a

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[27] *Id*. at 23.

[28] *Id*. at 16-17.

[29] *Id*. at 17.

[30] *Id*. at 19.

[31] *Id*. at 22.

[32] *Id*. at 21.

[33] *Id*. at 27-28.

reversible error.[34] Particularly, the CA correctly ruled that the petitioner failed to prove her supposed tolerance of the respondents' stay in the subject property.[35] In fact, the respondents point out that the purported tolerance by the petitioner of their occupation for over 71 years is contrary to human experience.[36] The respondents further aver that tolerance can only exist insofar as there is a recognition of the right asserted by the tolerating party.[37] Their predecessor-in-interest never recognized the ownership of the petitioner or any of her predecessors-in-interest.[38]

Similarly, the respondents counter that the petitioner could not acquire a better right to possess, as she has in fact never been in actual physical possession of the subject property, while they have been occupying the same property since time immemorial.[39] The petitioner anchors her claim from the right of her predecessor-in-interest Tirol, who himself never occupied the subject property.[40]

Finally, the respondents claim that the MCTC should have dismissed the action for unlawful detainer considering that the principal issue determined before the MCTC was the ownership of the property. As such, jurisdiction should have been with the RTC considering that the assessed value of the subject property exceeded Php 20,000.00.[41]

Ruling of the Court

The instant petition is bereft of merit.

It must be noted at the outset that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of

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[34] *Id*. at 169-170.

[35] *Id*. at 170.

[36] *Id*.

[37] *Id*. at 197.

[38] *Id*.

[39] *Id*. at 176.

[40] *Id*. at 198.

[41] *Id*. at 196.

the Revised Rules of Court is limited only to reviewing errors of law, not of fact.[42] A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[43] Essentially, the issue as to who between the parties has a better right of possession will necessarily entail a review of the evidence presented, which is beyond the province of a petition for review on *certiorari* under Rule 45.

At any rate, the CA did not commit any error that would warrant a reversal of its assailed decision.

The owner of real property cannot wrest possession from the occupant, through the simple expedient of filing an action for unlawful detainer without sufficiently proving the essential requisites for such action to prosper.

It is an elementary principle of civil law that the owner of real property is entitled to the possession thereof as an attribute of his or her ownership. In fact, the holder of a Torrens Title is the rightful owner of the property thereby covered, and is entitled to its possession.[44] This notwithstanding, "the owner cannot simply wrest possession thereof from whoever is in actual

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[43] *Tongonan Holdings and Dev't. Corp. v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011), citing *Rep. of the Phils. v. Malabanan, et al.*, 646 Phil. 631, 637-638 (2010).

[44] *Quijano v. Atty. Amante*, 745 Phil. 40, 51-52 (2014), citing *Sps. Beltran v. Nieves*, 648 Phil. 460, 466 (2010); *Manila Electric Co. v. Heirs of Sps. Deloy*, 710 Phil. 427, 443 (2013); *Sps. Pascual v. Sps. Coronel*, 554 Phil. 351, 356 (2007).

occupation of the property."[45] Rather, to recover possession, the owner must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions necessary for such action to prosper.[46]

Accordingly, the owner may choose among three kinds of actions to recover possession of real property — an *accion interdictal, accion publiciana* or an *accion reivindicatoria*.

Notably, an *accion interdictal* is summary in nature, and is cognizable by the proper municipal trial court or metropolitan trial court. It comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*). In forcible entry, one is deprived of the physical possession of real property by means of force, intimidation, strategy, threats, or stealth, whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. An action for forcible entry is distinguished from an unlawful detainer case, such that in the former, the possession of the defendant is illegal from the very beginning, whereas in the latter action, the possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The only issue in said cases is the right to physical possession.[47]

On the other hand, an *accion publiciana* is the plenary action to recover the right of possession, which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[48]

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[45] *Suarez v. Sps. Emboy*, 729 Phil. 315, 329 (2014).

[46] *Id.*

[47] *Id.*

[48] *Id*. at 329-330.

Lastly, an *accion reivindicatoria* is an action to recover ownership, also brought in the proper RTC in an ordinary civil proceeding.[49]

In the case at bar, the petitioner, claiming to be the owner of the subject property, elected to file an action for unlawful detainer. In making this choice, she bore the correlative burden to sufficiently allege, and thereafter prove by a preponderance of evidence all the jurisdictional facts in the said type of action. Specifically, the petitioner was charged with proving the following jurisdictional facts, to wit:

(i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[50]

Particularly, the complaint stated that (i) the respondents occupied the subject property upon the tolerance of the petitioner; (ii) the petitioner sent the respondents a demand to vacate sometime in October 2003; (iii) the same demand was unheeded; and (iv) the action for unlawful detainer was filed within one year from the date of the demand.[51] Verily, the following jurisdictional facts properly vested the MCTC of Buruanga, Aklan, with jurisdiction over the case.

However, in order for the petitioner to successfully prosecute her case for unlawful detainer, it is imperative upon her to prove all the assertions in her complaint. After all, "the basic rule is that mere allegation is not evidence and is not equivalent to

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[49] *Id*.

[50] *Id*. at 330.

[51] *Rollo*, pp. 112-113.

proof."[52] This, the petitioner failed to do. As correctly observed by the CA, the petitioner failed to adduce evidence to establish that the respondents' occupation of the subject property was actually effected through her tolerance or permission. Unfortunately, the petitioner failed to prove how and when the respondents entered the subject lot, as well as how and when the permission to occupy was purportedly given. In fact, she was conspicuously silent about the details on how the permission to enter was given, save for her bare assertion that the respondents' occupied the premises as caretakers thereof. The absence of such essential details is especially troubling considering that the respondents have been occupying the subject property for more than 70 years, a fact which was not disputed by the petitioner. In this regard, it is must be shown that the respondents first came into the property due to the permission given by the petitioner or her predecessors.

It cannot be gainsaid that the fact of tolerance is of utmost importance in an action for unlawful detainer. Without proof that the possession was legal at the outset, the logical conclusion would be that the defendant's possession of the subject property will be deemed illegal from the very beginning, for which, the action for unlawful detainer shall be dismissed.[53]

Remarkably, in *Quijano v. Atty. Amante*,[54] the Court ruled that in an action for unlawful detainer, the plaintiff must show that the possession was initially lawful, and thereafter, establish the basis of such lawful possession. Similarly, should the plaintiff claim that the respondent's possession was by his/her tolerance, then such acts of tolerance must be proved. A bare allegation of tolerance will not suffice. At least, the plaintiff must point to the overt acts indicative of his/her or predecessor's permission to occupy the disputed property. Failing in this regard, the occupant's possession could then be deemed to have been illegal from the beginning. Consequently, the action for unlawful

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[52] *ECE Realty and Development Inc. v. Mandap*, 742 Phil. 164, 171 (2014).

[53] *Quijano v. Atty. Amante*, *supra* note 44, at 42.

[54] 745 Phil. 40 (2014).

detainer will fail. Neither may the ejectment suit be treated as one for forcible entry in the absence of averments that the entry in the property had been effected through force, intimidation, threats, strategy or stealth.[55]

Similarly, in *Suarez v. Sps. Emboy*,[56] the Court warned that "when the complaint fails to aver the facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*."[57]

The same ruling was rendered in the case of *Dr. Carbonilla v. Abiera, et al.*,[58] where the Court laid the important dictum that the supposed acts of tolerance should have been present right from the very start of the possession—from entry to the property. "Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy."[59] This same ruling was echoed in *Jose v. Alfuerto, et al.*,[60] where the Court even emphasized its consistent and strict holding that in an unlawful detainer case, "tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed."[61]

Perforce, guided by all the foregoing cases, an action for unlawful detainer fails in the absence of proof of tolerance, coupled with evidence of how the entry of the respondents was effected, or how and when the dispossession started.[62] This rule

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[55] *Id*. at 42.

[56] 729 Phil. 315 (2014).

[57] *Id*. at 325.

[58] 639 Phil. 473 (2010).

[59] *Id*. at 482.

[60] 699 Phil. 307 (2012).

[61] *Id*. at 319.

[62] *Dr. Carbonilla v. Abiera, et al*., *supra* note 58, at 482.

is so stringent such that the Court categorically declared in *Go, Jr. v. CA*[63] that tolerance cannot be presumed from the owner's failure to eject the occupants from the land.[64] Rather, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance."[65] On this score, the petitioner's tenacious claim that the fact of tolerance may be surmised from her refusal for many years to file an action to evict the respondents is obviously flawed.

Furthermore, it must be stressed that the fact that the petitioner possesses a Torrens Title does not automatically give her unbridled authority to immediately wrest possession. It goes without saying that even the owner of the property cannot wrest possession from its current possessor. This was precisely the Court's ruling in *Spouses Munoz v. CA*,[66] *viz.*:

> If the private respondent is indeed the owner of the premises and that possession thereof was deprived from him for more than twelve years, he should present his claim before the Regional Trial Court in an *accion publiciana* or an *accion reivindicatoria* and not before the Municipal Trial Court in a summary proceeding of unlawful detainer or forcible entry. **For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment.**
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> Although admittedly petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. **It must be stated that regardless of actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself.** Whatever may

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[63] 415 Phil. 172 (2001).

[64] *Id*. at 181.

[65] *Dr. Carbonilla v. Abiera, et al.*, *supra* note 58, at 482.

[66] 288 Phil. 1001 (1992).

be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right by *accion publiciana* or *accion reivindicatoria*.[67] (Citations omitted and emphasis and underscoring Ours)

As a final note, an important caveat must be laid down. The Court's ruling should not in any way be misconstrued as coddling the occupant of the property, at the expense of the lawful owner. Rather, what this resolution seeks to impress is that even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent which, the owner would be in a better position by pursuing other more appropriate legal remedies. As eloquently stated by Associate Justice Lucas P. Bersamin in the case of *Quijano*,[68] "*the issue of possession between the parties will still remain. To finally resolve such issue, they should review their options and decide on their proper recourses. In the meantime, it is wise for the Court to leave the door open to them in that respect. For now, therefore, this recourse of the petitioner has to be dismissed.*"[69]

WHEREFORE, premises considered, the Petition is **DENIED for lack of merit**. Accordingly, the Decision dated March 30, 2012, and Resolution dated October 30, 2012, rendered by the Court of Appeals in CA-G.R. CEB-SP No. 03115, are hereby **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[67] *Id*. at 1011-1012.

[68] *Supra* note 54.

[69] *Id*. at 53.

THIRD DIVISION

[G.R. No. 205294. July 4, 2018]

ELMER P. LEE, *petitioner, vs.* **ESTELLA V. SALES, DEPUTY COMMISSIONER LEGAL AND INSPECTION GROUP; EFREN P. MARTINEZ, CHIEF PERSONNEL INQUIRY DIVISION; NESTOR S. VALEROSO, REGIONAL DIRECTOR, REVENUE REGION NO. 8; and ALL OF THE BIR AND ALL PERSONS ACTING ON THEIR ORDERS OR BEHALF,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; A PENDING MOTION FOR RECONSIDERATION OF A DECISION ISSUED BY THE OFFICE OF THE OMBUDSMAN DOES NOT STAY ITS IMMEDIATE EXECUTION; RATIONALE.—** A pending motion for reconsideration of a decision issued by the Office of the Ombudsman does not stay its immediate execution. This is clear under the rules of the Office of the Ombudsman and our jurisprudence. x x x. [A]fter a ruling supported by evidence has been rendered and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.

2. **ID.; ID.; ID.; THE COURT ADOPTS A GENERAL POLICY OF NON-INTERFERENCE WITH THE EXERCISE OF THE OMBUDSMAN OF ITS PROSECUTORIAL AND INVESTIGATORY POWERS; FOR THE COURT TO NOT GIVE DEFERENCE TO THE OMBUDSMAN'S DISCRETION WOULD BE TO INTERFERE WITH ITS CONSTITUTIONAL POWER TO PROMULGATE ITS OWN RULES FOR THE EXECUTION OF ITS**

DECISIONS.— Both Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006 were issued by the Ombudsman, an independent Constitutional office, pursuant to its rule-making power under the 1987 Constitution and Republic Act No. 6770 to effectively exercise its mandate to investigate any act or omission of any public official, employee, office, or agency, when this act or omission appears to be illegal, unjust, improper, or inefficient. For this Court to not give deference to the Ombudsman's discretion would be to interfere with its Constitutional power to promulgate its own rules for the execution of its decisions. The Ombudsman is the Constitutional body tasked to preserve the integrity of public service, and must be beholden to no one. To uphold its independence, this Court has adopted a general policy of non-interference with the exercise of the Ombudsman of its prosecutorial and investigatory powers. The execution of its decisions is part of the exercise of these powers to which this Court gives deference.

3. ID.; ID.; ID.; NO SUBSTANTIAL PREJUDICE IS CAUSED TO THE PUBLIC OFFICIAL SHOULD THE DECISION OF THE OMBUDSMAN BE IMMEDIATELY EXECUTED, AS THE SUSPENDED OR REMOVED PUBLIC OFFICIAL SHALL BE ENTITLED TO HIS SALARY AND SUCH OTHER EMOLUMENTS NOT RECEIVED DURING THE PERIOD OF SUSPENSION OR REMOVAL, SHOULD HE BE EXONERATED ON APPEAL.— Public office is a public trust. There is no vested right to a public office or an absolute right to remain in office that would be violated should the decision of the Ombudsman be immediately executed. In case the suspended or removed public official is exonerated on appeal, Administrative Order No. 17, Rule III, Section 7 itself provides for the remedial measure of payment of salary and such other emoluments not received during the period of suspension or removal. No substantial prejudice is caused to the public official. Notably, at the time the Office of the Ombudsman's July 16, 2012 Decision was issued in this case, the amendatory Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006, had already been issued. Thus, respondents did not err in implementing petitioner's dismissal from office.

4. ID.; ID.; ID.; ID.; WHEN TWO RULES APPLY TO A PARTICULAR CASE, THAT WHICH WAS SPECIALLY

DESIGNED FOR THE SAID CASE MUST PREVAIL OVER THE OTHER; RULING IN THE CASE OF *COBARDE-GAMALLO V. ESCANDOR* (G.R. NOS. 184464 AND 184469) APPLICABLE TO THE CASE AT BAR.— The facts in this case are similar as to those in *Cobarde-Gamallo v. Escandor,* in which respondent Jose Romeo C. Escandor filed a petition for injunction with the regular courts to stop his dismissal from service, on the ground that he had a pending motion for reconsideration of the decision of the Office of the Ombudsman. This Court held in that case: Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. *As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.* x x x. Petitioner relies on *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.* to support his claim that a motion for reconsideration stays an execution pending appeal, but that case is inapplicable here. *JP Latex Technology, Inc.* involved the execution of a decision of a Regional Trial Court in a civil case, which is governed by the Rules of Court, specifically Rule 39. Here, petitioner's case is an administrative action specifically governed by the special rules of procedure issued by the Office of the Ombudsman. "[W]hen two rules apply to a particular case, that which was specially designed for the said case must prevail over the other." Petitioner does not present any reason for this Court to reexamine the doctrine established in the above-cited cases.

5. ID.; ID.; ID.; THE DECISIONS OF THE OMBUDSMAN MAY NOT BE STAYED BY THE ISSUANCE OF AN INJUNCTIVE WRIT.— Since decisions of the Ombudsman are immediately executory even pending appeal, it follows that they may not be stayed by the issuance of an injunctive writ. It bears noting that for an injunction to issue, the right of the person seeking its issuance must be clear and unmistakable. However, no such right of petitioner exists to stay the execution of the penalty of dismissal. There is no vested

interest in an office, or an absolute right to hold office. Petitioner is deemed preventively suspended and should his motion for reconsideration be granted or his eventual appeal won, he will be entitled to the salary and emoluments he did not receive in the meantime.

6. **ID.; ID.; ID.; ID.; AN OFFICER WHO REFUSES OR FAILS TO COMPLY WITH THE OMBUDSMAN'S ORDER TO DISMISS AN EMPLOYEE FROM SERVICE WOULD BE LIABLE FOR DISCIPLINARY ACTION.—** [I]t is the legally mandated duty of respondents to implement the Office of the Ombudsman's decision. If they refused or failed to comply with the Ombudsman's order to dismiss petitioner from service, then they would be liable for disciplinary action, pursuant to Rule III, Section 7 of Administrative Order No. 07, as amended.

7. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PROPER REMEDY TO COMPEL THE OMBUDSMAN TO RESOLVE THE PARTY'S MOTION FOR RECONSIDERATION WITHIN THE PRESCRIBED PERIOD.—** As correctly ruled by the Regional Court, petitioner's proper recourse should have been to file a petition for mandamus to compel the Ombudsman to resolve his motion for reconsideration within the five (5)-day period prescribed in the Rules of Procedure of the Office of the Ombudsman. Otherwise, he should have awaited the Ombudsman's ruling on his motion for reconsideration, then, in the event of a denial, file a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.

APPEARANCES OF COUNSEL

Real Brotarlo & Real Law Firm for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

The pendency of a motion for reconsideration of a decision of the Office of the Ombudsman does not stay the immediate

execution of the penalty of dismissal imposed upon a public office.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the January 16, 2013 Order[2] of Branch 105, Regional Trial Court, Quezon City in Civil Case No. Q-12-72104. The Regional Trial Court dismissed the petition for injunction and/or prohibition and damages, with prayer for writ of preliminary mandatory injunction and/or writ of preliminary injunction[3] filed by Elmer P. Lee (Elmer) against Estela V. Sales (Sales), Efren P. Martinez (Martinez), Nestor S. Valeroso (Valeroso), and all of the Bureau of Internal Revenue and all persons acting on their orders or behalf (collectively, respondents). Elmer sought to enjoin the immediate execution of the Office of the Ombudsman's July 16, 2012 Decision[4] dismissing him from his position as Revenue Officer 1.

In a June 11, 2010 Complaint,[5] the Field Investigation Office, Office of the Ombudsman, through Associate Graft Investigation Officer I Dennis G. Buenaventura, charged the spouses Elmer and Mary Ramirez Lee (collectively, the Spouses Lee) with dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.[6] The Spouses Lee were both employed at the Bureau of Internal Revenue as Revenue Officer I.[7]

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[1] *Rollo*, pp. 3-34.

[2] *Id*. at 35-41. The Order was penned by Presiding Judge Rosa M. Samson.

[3] *Id*. at 131-144.

[4] *Id*. at 58-93. The Decision, docketed as OMB-C-A-10-0598-L (LSC), was penned by Assistant Special Prosecutor III Pilarita T. Lapitan, recommended for approval by Director Nellie P. Boguen-Golez and Deputy Special Prosecutor Jesus A. Micael, and approved by the Ombudsman Conchita Carpio Morales.

[5] *Id*. at 44-50.

[6] *Id*. at 59. As defined in Section 3(f) of Civil Service Commission Resolution No. 060538, titled "Rules on the Administrative Offense of Dishonesty," and Section 52, Nos. 3 and 20 of Civil Service Resolution No. 991936, titled "Uniform Rules on Administrative Cases in the Civil Service."

[7] *Id*. at 58.

The Complaint charged that the Spouses Lee were members, stockholders, or incorporators of four (4) corporations, but did not disclose their interest in these corporations in their 2001 to 2006 Statements of Assets, Liabilities and Net Worth (SALN).[8] The Spouses Lee also allegedly declared certain vehicles in their SALNs, but there were no documents to validate these vehicles' existence. However, the Land Transportation Office system database disclosed that one (1) vehicle was registered under their names.[9]

The Complaint alleged that the Spouses Lee acquired wealth in the amounts of ₱ 2,353,785.93 and US$13,414.17, which were disproportionate to their legitimate incomes. It claimed that in 2002, the Spouses Lee had a total aggregate income of ₱252,840.00 but had cash in bank amounting to ₱334,929.93 and US$8,414.17, and a declared vehicle worth ₱640,000.00. In 2004, they had a total aggregate income of ₱259,152.00 but had cash in bank in the amounts of ₱380,000.00 and US$3,000.00, an ₱800,000.00 vehicle, and personal effects amounting to ₱150,000.00. In 2005, they had a total aggregate income of ₱259,152.00 but had cash in bank in the amounts of ₱290,000.00 and US$2,000.00, a ₱500,000.00 vehicle, and personal effects amounting to ₱30,000.00.[10]

In its July 16, 2012 Decision, the Ombudsman found the Spouses Lee guilty of dishonesty and grave misconduct. It found that they separately filed their SALNs from 2001 to 2006, apart from 2003 for which they filed a joint SALN. However, even though they filed separate SALNs in 2001 and 2002, the entries on the assets, real and personal liabilities, and business interests and financial connections were the same. This proved that they commonly owned the assets in the SALNs, and confirmed the regime of absolute community of property controlling their property relations.[11]

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[8] *Id*. at 59.

[9] *Id*. at 61.

[10] *Id*. at 63. The Office of the Ombudsman's narration mentioned a ₱5,000.00 vehicle for 2005 but its summary table showed ₱500,000.00. See *rollo*, p. 62.

[11] *Id*. at 74-76.

In their 2004 to 2006 SALNs, the entries were entirely different, which could be explained by their claim that they separately owned those real and personal assets. But, despite the separate filings of SALNs and their claim that they were separated, there was no evidence on record of any judicial decree of separation that would have dissolved the absolute community of property. The Ombudsman found that they were not legally separated and that they continued to be governed by the same property regime. Further, they failed to declare their business interests and financial corporations in all the SALNs they filed, whether jointly or separately.[12]

The Ombudsman held that they had the willful intent to violate Section 7 of Republic Act No. 3019, in relation to Section 8 of Republic Act No. 1379, when they failed to declare their true, detailed, and sworn statements of their business and financial interests. They did not initiate to correct their earlier non-declaration of these interests in their subsequent SALNs, which confirmed their persistent disregard of the existing laws. The Ombudsman found that these acts amounted to gross misconduct, and ordered them to be "dismissed from service effective immediately with forfeiture of all of their benefits, except accrued leave credits, if any, with prejudice to their reemployment in the government."[13]

On September 11, 2012, Elmer filed a Motion for Reconsideration[14] of the Office of the Ombudsman's Decision. While the motion was still pending, he received a September 18, 2012 letter from Martinez, Chief of the Personnel Inquiry Division of the Bureau of Internal Revenue, through Regional Director Valeroso.[15] The letter directed Elmer, among others, to turn over all government assets and documents to the head office, transfer his accountabilities, and surrender his Bureau

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[12] *Id*.

[13] *Id*. at 91-92.

[14] *Id*. at 94-103.

[15] *Id*. at 104-105.

of Internal Revenue Identification Card to the Human Resource Management Unit in the Regional Office. It further prohibited him from reporting to the office, representing the office, instructing staff members on official matters, and signing any documents, among others.[16] In an October 1, 2012 letter, Elmer informed Martinez and Valeroso of his pending motion for reconsideration, and that the Office of the Ombudsman's July 16, 2012 Decision was not yet final and executory.[17] However, Sales, the Deputy Commissioner of the Legal Inspection Group, as well as Martinez, insisted on Elmer's dismissal.[18]

On October 12, 2012, Elmer filed a Petition for Injunction and/or Prohibition and Damages with Prayer for Writ of Preliminary Mandatory Injunction and/or Writ of Preliminary Injunction, docketed as Civil Case No. Q-12-72104, with Branch 105, Regional Trial Court, Quezon City.[19] He prayed for the trial court to enjoin herein respondents from executing his dismissal from service. He claimed that the Office of the Ombudsman's Decision was not yet final and executory due to his pending motion for reconsideration, as the Ombudsman's Administrative Order No. 07 did not categorically state the effects of the filing of a motion for reconsideration.[20] He claimed that his dismissal pre-empted and rendered moot his motion for reconsideration.[21]

In its January 16, 2013 Order,[22] the Regional Trial Court denied Elmer's prayer for writ of preliminary mandatory injunction and/or writ of preliminary injunction, and dismissed the case for injunction and/or prohibition. The Regional Trial Court found that since there was a five (5)-day period within

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[16] *Id*.

[17] *Id*. at 106-110.

[18] *Id*. at 127-129.

[19] *Id*. at 131-144.

[20] *Id*. at 134.

[21] *Id*. at 138.

[22] *Id*. at 35-41.

which the Ombudsman must resolve a motion for reconsideration, his remedy should have been a petition for mandamus to compel the Ombudsman to resolve his motion.[23] Moreover, in the Office of the Ombudsman's Memorandum Circular No. 01, Series of 2006, decisions and resolutions of the Ombudsman shall not be stayed by a motion for reconsideration or petition for review filed before it.[24]

Since the Office of the Ombudsman's July 16, 2012 Decision was immediately executory, Elmer was not entitled to a writ of preliminary injunction. The Regional Trial Court held that it could not interfere with the Ombudsman's judgments or orders by way of injunction, citing *Office of the Ombudsman v. Samaniego*.[25]

On February 6, 2013, Elmer filed a Petition for Review[26] under Rule 45 of the Rules of Court before this Court, assailing the January 16, 2013 Order of the Regional Trial Court.

Petitioner argues that the Regional Trial Court erred in finding that a motion for reconsideration does not stay the execution of a decision of the Office of the Ombudsman.[27]

First, he claims that direct resort to this Court, without filing any motion for reconsideration with the trial court, is proper. He argues that he raises only pure questions of law, and that his Petition is consistent with *Metropolitan Bank and Trust Company v. International Exchange Bank*.[28]

Second, he claims that since Administrative Order No. 07[29] did not expressly state the effects of filing a motion for

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[23] *Id*. at 38-39.

[24] *Id*. at 39.

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

[26] *Id*. at 3-34.

[27] *Id.*

[28] *Id.* at 5.

[29] The relevant provisions of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the Ombudsman, state:

reconsideration, then the Rules of Court should apply in a suppletory manner. Applying by analogy Rule 37, Sections 1 and 2 of the Rules of Court,[30] in relation to Rule 39, Section

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RULE III

Procedure in Administrative Cases

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Section 7. *Finality of decision*. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

Section 8. *Motion for reconsideration or reinvestigation; Grounds*. — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision by the respondent on any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision.

b) Errors of facts or law or irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the hearing officer shall resolve the same within five (5) days from receipt thereof.

[30] RULES OF COURT, RULE 37, Secs. 1 and 2 state:

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

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

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

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

1 of the Rules of Court,[31] the Office of the Ombudsman's July 16, 2012 Decision was not yet final and executory due to Elmer's pending motion for reconsideration.[32] He argues that *Samaniego* is inapplicable, since in that case, this Court ruled that "[t]he decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ."[33] Here, Elmer claims that his case was not yet pending appeal, but only pending a motion

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Section 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 counter-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.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

[31] RULES OF COURT, Rule 39, Sec. 1 states:

Section 1. *Execution Upon Judgments or Final Orders.*— Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

[32] *Rollo*, pp. 14-16.

[33] *Id*. at 16.

for reconsideration. Further, citing *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*, he claims that the pendency of a motion for reconsideration prevents the period to appeal from even commencing.[34]

Third, he claims that the Regional Trial Court has jurisdiction over his Petition for Injunction and/or Prohibition. He points out that the case was directed against the officials of the Bureau of Internal Revenue, and not against the Office the Ombudsman.[35]

Finally, he alleges that he is entitled to a writ of preliminary mandatory injunction for his reinstatement to the Bureau of Internal Revenue's payroll, and a writ of preliminary injunction to enjoin the Bureau of Internal Revenue from implementing the Office of the Ombudsman's July 16, 2012 Decision.[36]

On August 15, 2013, respondents filed their Comment[37] to the Petition, in accordance with this Court's February 18, 2013 Resolution.[38]

Respondents contend that Administrative Order No. 07 was amended by Administrative Order No. 17,[39] and now provides

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[34] *Id*. at 16-17.

[35] *Id*. at 24.

[36] *Id*. at 25-27.

[37] *Id*. at 246-267.

[38] *Id*. at 215.

[39] The relevant provision of Administrative Order No. 17, which amended Rule III of Administrative Order No. 07, states:

Section 7. *Finality and execution of decision.*— Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he

for the immediate execution of the decisions of the Ombudsman. They further point to Memorandum Circular No. 01, Series of 2006, which clarifies that the filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not stay the implementation of its decisions, orders, or resolutions.[40] They argue that *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.* and *Lapid v. Court of Appeals* as cited by Elmer are inapplicable. They claim that *Lapid* has already been superseded by, among others, *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH* and *Ombudsman v. Court of Appeals and Macabulos*.[41] Moreover, *Samaniego* applies to this case since both involve the immediate execution of the Ombudsman's decisions.[42]

As to the Regional Trial Court's jurisdiction, respondents argue that the relief Elmer sought in his petition for injunction and/or prohibition was tantamount to a prayer for the reversal of the Office of the Ombudsman's decision on the merits.[43] They claim that he should have awaited the notice of the Ombudsman's denial of his motion for reconsideration and thereafter file a petition for review under Rule 43 of the Rules of Court. However, an application for injunctive relief before the appellate court should also be denied, following *Samaniego*.[44]

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shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

[40] *Id*. at 252-254.

[41] *Id*. at 256.

[42] *Id*. at 261-262.

[43] *Id*. at 263.

[44] *Id*. at 263-264.

Finally, respondents claim that Elmer was not entitled to a temporary restraining order and/or writ of preliminary injunction as he had no clear legal right to a stay of the enforcement of the Ombudsman's decision.[45]

On September 3, 2013, Elmer filed his Reply[46] to the Comment.

On August 6, 2014, this Court issued a Resolution[47] giving due course to the Petition and ordering the parties to submit their memoranda. Respondents filed their Memorandum on October 9, 2014,[48] while Elmer submitted his Memorandum on October 23, 2014.[49] These Memoranda were noted in this Court's January 12, 2015 Resolution.[50]

The issues to be resolved by this Court are as follows:

First, whether or not a pending motion for reconsideration stays the execution of a decision of the Ombudsman dismissing a public officer from service; and

Second, whether or not a Regional Trial Court has jurisdiction over a petition for prohibition or injunction directed against the execution of a decision of the Ombudsman.

I

A pending motion for reconsideration of a decision issued by the Office of the Ombudsman does not stay its immediate execution. This is clear under the rules of the Office of the Ombudsman and our jurisprudence.

The Office of the Ombudsman issued Administrative Order No. 7, as amended by Administrative Order No. 17, Rule III, Section 7, which states:

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[45] *Id*. at 264-265.

[46] *Id*. at 271-282.

[47] *Id*. at 286.

[48] *Id*. at 289-314.

[49] *Id*. at 315-339.

[50] *Id*. at 341.

Section 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Moreover, Ombudsman Memorandum Circular No. 01, Series of 2006, provides:

Section 7 Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays

the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Both Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006 were issued by the Ombudsman, an independent Constitutional office, pursuant to its rule-making power under the 1987 Constitution[51] and Republic Act No. 6770[52] to effectively exercise its mandate to investigate any act or omission of any public official, employee, office, or agency, when this act or omission appears to be illegal, unjust, improper, or inefficient.[53] For this Court to not give deference to the Ombudsman's discretion would be to interfere with its Constitutional power to promulgate its own rules for the execution of its decisions.[54]

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[51] CONST, ART. XI, Sec. 13 states, in part:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

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(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[52] Rep. Act No. 6770, Sec. 18 states:

Section 18. Rules of Procedure. — (1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties.

(2) The rules of procedure shall include a provision whereby the Rules of Court are made suppletory.

(3) The rules shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language.

[53] Const, Art. XI, Sec. 13(1) states, in part:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[54] *Ombudsman v. Samaniego*, 646 Phil. 445 (2010) [Per *C.J.* Corona, *En Banc*].

The Ombudsman is the Constitutional body tasked to preserve the integrity of public service, and must be beholden to no one.[55] To uphold its independence,[56] this Court has adopted a general policy of non-interference with the exercise of the Ombudsman of its prosecutorial and investigatory powers.[57] The execution of its decisions is part of the exercise of these powers to which this Court gives deference.

Further, after a ruling supported by evidence has been rendered and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.[58]

Moreover, public office is a public trust.[59] There is no vested right to a public office or an absolute right to remain in office

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[55] *Alba v. Nitorreda*, 325 Phil. 229 (1996) [Per J. Francisco, *En Banc*].

[56] *Dichaves v. Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> [Per J. Leonen, Second Division]; *Dimayuga v. Ombudsman*, 528 Phil. 42 (2006) [Per J. Azcuna, Second Division].

[57] *Reyes v. Ombudsman*, G.R. No. 208243, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf> [Per J. Leonen, Second Division]; *Joson v. Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf> [Per J. Leonen, Second Division]; *Purisima v. Carpio-Morales*, G.R. No. 219501, July 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/219501.pdf> [Per J. Perlas-Bernabe, First Division]; *Kara-An v. Ombudsman*, 476 Phil. 536 (2004) [Per J. Carpio, First Division].

[58] *Pimentel v. Gachitorena*, 284 Phil. 233 (1992) [Per J. Griño-Aquino, *En Banc*].

[59] CONST. ART. XI, Sec. 1 states:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost

that would be violated should the decision of the Ombudsman be immediately executed.[60] In case the suspended or removed public official is exonerated on appeal, Administrative Order No. 17, Rule III, Section 7 itself provides for the remedial measure of payment of salary and such other emoluments not received during the period of suspension or removal. No substantial prejudice is caused to the public official.[61]

Notably, at the time the Office of the Ombudsman's July 16, 2012 Decision was issued in this case, the amendatory Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006, had already been issued. Thus, respondents did not err in implementing petitioner's dismissal from office.

Likewise, *Lapid v. Court of Appeals*,[62] as cited by petitioner, has already been overturned by the subsequent cases of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,[63] *Buencamino v. Court of Appeals*,[64] *Ombudsman v. Samaniego*,[65] *Ombudsman v. Valencerina*,[66] and *Villaseñor v. Ombudsman*,[67] among others.

As ruled in *Buencamino v. Court of Appeals*:[68]

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responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[60] *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, 529 Phil. 619 (2006) [Per *J.* Ynares-Santiago, First Division].

[61] *Ombudsman v. Valencerina*, 739 Phil. 11 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[62] 390 Phil. 236 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[63] 529 Phil. 619 (2006) [Per *J.* Ynares-Santiago, First Division].

[64] 549 Phil. 511 (2006) [Per *J.* Sandoval-Gutierrez, First Division].

[65] 646 Phil. 445 (2010) [Per *C.J.* Corona, *En Banc*].

[66] 739 Phil. 11 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[67] 735 Phil. 409 (2014) [Per *J.* Mendoza, Third Division].

[68] 549 Phil. 511 (2006) [Per *J.* Sandoval-Gutierrez, First Division].

Hence, the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. Petitioner alleged therein that in denying his application for a preliminary injunction, the Court of Appeals gravely abused its discretion; that pursuant to Section 7, Rule III of Administrative Order No. 07, the Decision of the Office of the Ombudsman suspending him from office is not immediately executory; and that in enforcing its Decision suspending him from the service during the pendency of his appeal, the Office of the Ombudsman violated Section 27 of R.A. No. 6770 (Ombudsman Act of 1989) and the rulings of this Court in *Lapid v. Court of Appeals; Lopez v. Court of Appeals,* and *Ombudsman v. Laja.*

In its comment, the Office of the Ombudsman countered that the Court of Appeals did not gravely abuse its discretion in issuing the assailed Resolutions; and that the cases cited by petitioner are not applicable to this case, the same having been overturned by the ruling of this Court in "*In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*" and that Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

> . . . this Honorable Court emphatically declared that Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was already amended by Administrative Order No. 17 wherein the pertinent provision on the execution of the Ombudsman's decision pending appeal is now similar to Section 47 of the "Uniform Rules on Administrative Cases in the Civil Service" — that is, **decisions of the Ombudsman are immediately executory even pending appeal.**

We agree.

Section 7, Rule III of Administrative Order No. 07, relied upon by petitioner, provides:

> Sec. 7. *Finality of Decision*. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari, shall have been filed by him as prescribed in Section 27 of R.A. 6770.

In interpreting the above provision, this Court held in *Laja*, citing *Lopez*, that "only orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalties of public censure, reprimand or suspension of not more than one month or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision. It is only then that execution shall perforce issue as a matter of right.** The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory."

However, as aptly stated by the Office of the Ombudsman in its comment, Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

> Sec. 7. ***Finality and execution of decision***. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> **An appeal shall not stop the decision from being executory.** In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.
>
> **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.**

> The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Clearly, considering that an appeal under Administrative Order No. 17, the amendatory rule, shall not stop the Decision of the Office of the Ombudsman from being executory, we hold that the Court of Appeals did not commit grave abuse of discretion in denying petitioner's application for injunctive relief.[69] (Emphasis and underlining in the original, citations omitted)

The facts in this case are similar as to those in *Cobarde-Gamallo v. Escandor,*[70] in which respondent Jose Romeo C. Escandor filed a petition for injunction with the regular courts to stop his dismissal from service, on the ground that he had a pending motion for reconsideration of the decision of the Office of the Ombudsman. This Court held in that case:

> Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. *As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.*
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> Further, in applying Section 7, there is no vested right that is violated as the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that

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[69] *Id.* at 514-516.

[70] G.R. Nos. 184464 and 184469, June 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf> [Per J. Velasco, Third Division].

he did not receive by reason of the suspension or removal. To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and emoluments that he did not receive, by reason of his dismissal from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal.[71] (Emphasis supplied, citations omitted)

Petitioner relies on *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*[72] to support his claim that a motion for reconsideration stays an execution pending appeal, but that case is inapplicable here. *JP Latex Technology, Inc.* involved the execution of a decision of a Regional Trial Court in a civil case, which is governed by the Rules of Court, specifically Rule 39. Here, petitioner's case is an administrative action specifically governed by the special rules of procedure issued by the Office of the Ombudsman. "[W]hen two rules apply to a particular case, that which was specially designed for the said case must prevail over the other."[73] Petitioner does not present any reason for this Court to reexamine the doctrine established in the above-cited cases.

II

Since decisions of the Ombudsman are immediately executory even pending appeal, it follows that they may not be stayed by the issuance of an injunctive writ.[74] It bears noting that for an injunction to issue, the right of the person seeking its issuance

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[71] *Id*. at 5-6.

[72] 600 Phil. 600 (2009) [Per *J*. Tinga, Second Division].

[73] *Ombudsman v. Valencerina,* 739 Phil. 11, 21 (2014) [Per *J*. Perlas-Bernabe, Second Division].

[74] *Facura v. Court of Appeals*, 658 Phil. 554 (2011) [Per *J*. Mendoza, Second Division].

must be clear and unmistakable.[75] However, no such right of petitioner exists to stay the execution of the penalty of dismissal. There is no vested interest in an office, or an absolute right to hold office.[76] Petitioner is deemed preventively suspended and should his motion for reconsideration be granted or his eventual appeal won, he will be entitled to the salary and emoluments he did not receive in the meantime.[77]

Further, it is the legally mandated duty of respondents to implement the Office of the Ombudsman's decision. If they refused or failed to comply with the Ombudsman's order to dismiss petitioner from service, then they would be liable for disciplinary action, pursuant to Rule III, Section 7 of Administrative Order No. 07, as amended.

As correctly ruled by the Regional Court, petitioner's proper recourse should have been to file a petition for mandamus to compel the Ombudsman to resolve his motion for reconsideration within the five (5)-day period prescribed in the Rules of Procedure of the Office of the Ombudsman.[78] Otherwise, he should have

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[75] *Ombudsman v. De Chavez,* 713 Phil. 211 (2013) [Per J. Peralta, Third Division].

[76] *Cobarde-Gamallo v. Escandor*, G.R. Nos. 184464 & 184469, June 21, 2017<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf> [Per J. Velasco, Jr., Third Division].

[77] *Id.*

[78] Adm. Order No. 7, Rule III, Sec. 8, as amended, states:

Section 8. *Motion for reconsideration or reinvestigation; Grounds*— Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

awaited the Ombudsman's ruling on his motion for reconsideration, then, in the event of a denial, file a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The January 16, 2013 Order of Branch 105, Regional Trial Court, Quezon City in Civil Case No. Q-12-72104 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 205688. July 4, 2018]

VALENTINO S. LINGAT and APRONIANO ALTOVEROS, *petitioners, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC., MONTE DAPPLES TRADING, and DAVID LYONS,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DETERMINATION OF WHETHER AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN THE PARTIES INVOLVES FACTUAL MATTERS THAT ARE GENERALLY BEYOND THE AMBIT OF A PETITION FOR REVIEW ON *CERTIORARI* AS ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN, EXCEPT WHERE THE FACTUAL FINDINGS OF THE COURTS OR TRIBUNALS BELOW ARE CONFLICTING.— As a rule,

[*] Lyon in some parts of the records.

the determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on *certiorari.* However, this rule allows certain exceptions, which include an instance where the factual findings of the courts or tribunals below are conflicting. Given the situation here where the factual findings of the NLRC and the CA are divergent from those of the LA, the Court deems it proper to re-assess and review these findings in order to arrive at a just resolution of the issues on hand.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYMENT; REGULAR EMPLOYMENT; A REGULAR EMPLOYEE IS ONE THAT HAS BEEN ENGAGED TO PERFORM TASKS USUALLY NECESSARY OR DESIRABLE IN THE EMPLOYER'S USUAL BUSINESS OR TRADE – WITHOUT FALLING WITHIN THE CATEGORY OF EITHER A FIXED OR A PROJECT OR A SEASONAL EMPLOYEE, OR ONE THAT HAS BEEN ENGAGED FOR AT LEAST ONE YEAR, WHETHER HIS OR HER SERVICE IS CONTINUOUS OR NOT, WITH RESPECT TO SUCH ACTIVITY HE OR SHE IS ENGAGED; PETITIONERS' DUTIES WERE REASONABLY CONNECTED AND INDISPENSABLE TO THE BUSINESS OF RESPONDENT CORPORATION.— x x x [P]ursuant to Article 295 of the Labor Code, as amended and renumbered, a regular employee is a) one that has been engaged to perform tasks usually necessary or desirable in the employer's usual business or trade — without falling within the category of either a fixed or a project or a seasonal employee; or b) one that has been engaged for at least one year, whether his or her service is continuous or not, with respect to such activity he or she is engaged, and the work of the employee remains while such activity exists. x x x. To ascertain if one is a regular employee, it is primordial to determine the reasonable connection between the activity he or she performs and its relation to the trade or business of the supposed employer. Relating petitioners' tasks to the nature of the business of CCBPI — which involved the manufacture, distribution, and sale of soft drinks and other beverages — it cannot be denied that mixing and segregating as well as loading and bringing of CCBPI's products to its customers involved distribution and sale of these items. Simply put, petitioners' duties were reasonably connected

to the very business of CCBPI. They were indispensable to such business because without them the products of CCBPI would not reach its customers.

3. ID.; ID.; ID.; LABOR-ONLY CONTRACTOR AND LEGITIMATE JOB CONTRACTOR, DISTINGUISHED.— x x x [C]CBPI and Lyons' contention that MDTC was a legitimate labor contractor and was the actual employer of petitioners does not hold water. A labor-only contractor is one who enters into an agreement with the principal employer to act as the agent in the recruitment, supply, or placement of workers for the latter. A labor-only contractor 1) does not have substantial capital or investment in tools, equipment, work premises, among others, and the recruited employees perform tasks necessary to the main business of the principal; or 2) does not exercise any right of control anent the performance of the contractual employee. In such case, where a labor-only contracting exists, the principal shall be deemed the employer of the contractual employee; and the principal and the labor-only contractor shall be solidarily liable for any violation of the Labor Code. On the other hand, a legitimate job contractor enters into an agreement with the employer for the supply of workers for the latter but the "employer-employee relationship between the employer and the contractor's employees [is] only for a limited purpose, *i.e.*, to ensure that the employees are paid their wages." In *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, the Court distinguished a labor-only contractor and a legitimate job contractor in this wise: The Omnibus Rules Implementing the Labor Code distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met: (a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business. In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to

supply workers to an employer: (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

4. **ID.; ID.; ID.; EMPLOYEES WHOSE WORK ARE DIRECTLY CONNECTED TO THE ACHIEVEMENT OF THE PURPOSES FOR WHICH THE COMPANY WAS INCORPORATED ARE REGULAR EMPLOYEES OF THE LATTER.—** x x x [C]CBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.

5. **ID.; ID.; ID.; TO DETERMINE WHETHER A PERSON OR ENTITY IS INDEED A LEGITIMATE LABOR CONTRACTOR, IT IS NECESSARY TO PROVE NOT ONLY SUBSTANTIAL CAPITAL OR INVESTMENT IN TOOLS, EQUIPMENT, WORK PREMISES, BUT ALSO THAT THE WORK OF THE EMPLOYEE IS DIRECTLY RELATED TO THE WORK THAT CONTRACTOR IS REQUIRED TO PERFORM FOR THE PRINCIPAL.—** [W]e disagree with the CA when it heavily relied on MDTC's alleged substantial capital in order to conclude that it was an independent labor contractor. To note, in *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.,* the Court ruled that "the possession of substantial capital is only one element." To determine whether a person or entity is indeed a legitimate labor contractor, it is necessary to prove not only substantial capital or investment in tools, equipment, work premises, among others, but also that the work of the employee is directly related to the work that contractor is required to perform for the principal. Evidently, the latter requirement is wanting in the case at bench.

6. **ID.; ID.; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYEES MAY BE DISMISSED ONLY FOR CAUSE AND WITH DUE PROCESS; CONTRACT EXPIRATION**

IS NOT A VALID BASIS TO DISMISS REGULAR EMPLOYEES FROM SERVICE.— x x x [A]s regular employees, petitioners may be dismissed only for cause and with due process. These requirements were not complied with here. It was not disputed that petitioners ceased to perform their work when they were no longer given any new assignment upon the alleged termination of the Warehousing Management Agreement between CCBPI and MDTC. However, this is not a just or authorized cause to terminate petitioners' services. Otherwise stated, the contract expiration was not a valid basis to dismiss petitioners from service. At the same time, there was no clear showing that petitioners were afforded due process when they were terminated. Therefore, their dismissal was without valid cause and due process of law; as such, the same was illegal.

7. ID.; ID.; ID.; THE PRINCIPAL EMPLOYER AND THE LABOR-ONLY CONTRACTOR ARE SOLIDARILY LIABLE FOR THE RIGHTFUL CLAIMS OF ILLEGALLY DISMISSED EMPLOYEES; SEPARATION PAY, IN LIEU OF REINSTATEMENT, ATTORNEY'S FEES AND LEGAL INTEREST, AWARDED TO THE ILLEGALLY DISMISSED EMPLOYEES IN CASE AT BAR.— Considering that petitioners were illegally terminated, CCBPI and MDTC are solidarily liable for the rightful claims of petitioners. Moreover, by reason of the lapse of more than 10 years since the inception of this case on May 5, 2008, the Court deems it more practical and would serve the best interest of the parties to award separation pay to petitioners, in lieu of reinstatement. Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is given them. The legal interest of 6% *per annum* shall be imposed on all the monetary grants from the finality of the Decision until paid in full.

APPEARANCES OF COUNSEL

Legal Advocates for Worker's Interest (LAWIN) for petitioners.

Angara Abello Concepcion Regala & Cruz for respondents CCBPI and David Lyons.

D E C I S I O N

DEL CASTILLO,[**] ***J.*:**

This Petition for Review on *Certiorari* assails the July 4, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R SP No. 112829, which modified the July 7, 2009 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000855-09. Also challenged is the January 16, 2013 CA Resolution[3] which denied petitioners Valentino S. Lingat (Lingat) and Aproniano Altoveros' (Altoveros) (petitioners) Motion for Reconsideration.

Factual Antecedents

On May 5, 2008, petitioners filed a Complaint[4] for illegal dismissal, moral and exemplary damages, and attorney's fees against Coca-Cola Bottlers Phils., Inc. (CCBPI), Monte Dapples Trading Corp. (MDTC), and David Lyons (Lyons) (respondents).

Petitioners averred in their Position Paper[5] and Reply[6] that, in August 1993 and January 1996, CCBPI employed Lingat and Altoveros as plant driver and forklift operator, and segregator/mixer respectively. They added that they had continually worked for CCBPI until their illegal dismissal in April 2005 (Lingat) and December 2005 (Altoveros).

[**] Per Special Order No. 2562 dated June 20, 2018.

[1] *Rollo*, Vol. I, pp. 627-644; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison.

[2] *Id*. at 206-216; penned by Presiding Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena.

[3] *Id*. at 700-701.

[4] *Id*. at 53-55.

[5] *Id*. at 56-71.

[6] *Id*. at 112-118.

According to petitioners, they were regular employees of CCBPI because it engaged them to perform tasks necessary and desirable in its business or trade. They explained that CCBPI made them part of its operations, and without them its products would not reach its clients. They asserted that their work was the link between CCBPI and its sales force.

Petitioners alleged that CCBPI engaged Lingat primarily as a plant driver but he also worked as forklift operator. In particular, he drove CCBPI's truck loaded with softdrinks and its other products, and thereafter, returned the empty bottles as well as the unsold softdrinks back to the plant of CCBPI. On the other hand, as segregator/mixer of softdrinks, Altoveros was required to segregate softdrinks based on the orders of the customers. Altoveros declared, that when a customer needed cases of softdrinks, such need was relayed to him since no sales personnel was allowed in the loading area.

Petitioners further stated, that after becoming regular employees (as they had been employed for more than a year), and by way of a *modus operandi*, CCBPI transferred them from one agency to another. These agencies included Lipercon Services, Inc., People Services, Inc., Interserve Management and Manpower Resources, Inc. The latest agency to where they were transferred was MDTC. They claimed that such transfer was a scheme to avoid their regularization in CCBPI.

In addition, petitioners stressed that the aforesaid agencies were labor-only contractors which did not have any equipment, machinery, and work premises for warehousing purposes. They insisted that CCBPI owned the warehouse where they worked; the supervisors thereat were CCBPI's employees; and petitioners themselves worked for CCBPI, not for any agency. In fine, they maintained that they were regular employees of CCBPI because:

> [Petitioners] worked within the premises of [CCBPI,] use the equipment, the facilities, cater on [its] products, [and served] the Sales Forces x x x. In other words, while at work, [petitioners] were under the direction, control and supervision of respondent Coca-Cola's regular employees. The situation calls for the over-all control

of the operations by Coca-Cola employees as [petitioners] perform[ed] their work with x x x Coca-Cola and [its] premises. x x x[7]

Finally, petitioners argued that CCBPI dismissed them after it found out that they were "overstaying." As such, they posited that they were illegally dismissed as their termination was without cause and due process of law.

For their part, CCBPI and Lyons, its President/Chief Executive Officer, countered in their Position Paper[8] and Reply[9] that this case must be dismissed because the Labor Arbiter (LA) lacked jurisdiction, there being no employer-employee relationship between the parties.

CCBPI and Lyons declared that CCBPI was engaged in the business of manufacturing, distributing, and marketing of softdrinks and other beverage products. By reason of its business, CCBPI entered into a Warehousing Management Agreement[10] with MDTC for the latter to perform warehousing and inventory functions for the former.

CCBPI and Lyons insisted that MDTC was a legitimate and independent contractor, which only assigned petitioners at CCBPI's plant in Otis, Manila. They posited that MDTC carried on a distinct and independent business; catered to other clients, aside from CCBPI; and possessed sufficient capital and investment in machinery and equipment for the conduct of its business as well as an office building.

CCBPI and Lyons likewise stressed that petitioners were employees of MDTC, not CCBPI. They averred that MDTC was the one who engaged petitioners and paid their salaries. They also claimed that CCBPI only coordinated with the Operations Manager of MDTC in order to monitor the end results

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[7] *Id*. at 115-116.

[8] *Id*. at 74-105.

[9] *Id*. at 127-141.

[10] *Id*. at 343-349.

[11] *Id*. at 146.

of the services rendered by the employees of MDTC. They added that it was MDTC which imposed corrective action upon its employees when disciplinary matters arose.

Finally, CCBPI and Lyons averred that when the Warehousing Management Agreement between CCBPI and MDTC expired, the parties no longer renewed the same. Consequently, it came as a surprise to CCBPI that petitioners filed this complaint considering that CCBPI was not their employer, but MDTC.

Meanwhile, LA Catalino R. Laderas declared that despite notice, MDTC failed to file its position paper on this case.[11]

Ruling of the Labor Arbiter

On December 9, 2008, the LA ruled for the petitioners, the dispositive portion of his Decision reads:

> WHEREFORE, premised on the foregoing considerations[,] judgment is hereby rendered declaring that complainants were ILLEGALLY DISMISSED from their employment.
>
> Respondent CCBPI is hereby ordered, viz.:
>
> 1. To reinstate complainants to their former positions without loss of seniority rights and privileges and to pay complainants backwages from the time they were illegally dismissed up to the time of this decision.
>
> The computation unit of this Office is hereby directed to compute the monetary award of the complainant[s] which forms part of this decision.
>
> Other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[12]

The LA ruled that respondents failed to refute that petitioners were employees of CCBPI and the latter undermined their regular status by transferring them to an agency. The LA decreed that, per the identification cards (IDs) of petitioners, CCBPI hired Lingat in 1993, and Altoveros in 1996. Moreover, as plant driver, and segregator/mixer, petitioners performed activities necessary

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[12] *Id*. at 151-152.

in the usual business or trade of CCBPI; and, their continued employment for more than one year proved that they were regular employees of CCBPI.

The LA likewise ratiocinated that the contracts of employment which petitioners may have entered with CCBPI's contractors could not undermine their (petitioners) tenure arising from their regular status with CCBPI.

In sum, the LA decreed that, since respondents failed to debunk the allegations raised by petitioners, then judgment must be rendered in favor of petitioners.

Ruling of the National Labor Relations Commission

On appeal, the NLRC dismissed the illegal dismissal case. It, nonetheless, ordered MDTC to pay Altoveros separation pay amounting to ₱10,725.00.

According to the NLRC, Lingat stated that CCBPI illegally dismissed him in April 2005. However, he only filed his complaint for illegal dismissal on May 5, 2008, which was beyond three years from his dismissal. Thus, Lingat's complaint must be dismissed on the ground of prescription.

Also, the NLRC decreed that the complaint of Altoveros was bereft of merit. It explained that per Altoveros' ID, CCBPI employed him in January 1996 until September 19, 1996; thereafter, he was employed by Genesis Logistics and Warehouse Corporation; and, on April 7, 2003, MDTC hired him and assigned him as loader/mixer at CCBPI's warehouse in Paco, Manila until December 2005 when MDTC's contract with CCBPI expired.

In ruling that Altoveros was an employee of MDTC, the NLRC gave credence to the Warehousing Management Agreement between MDTC and CCBPI as well as to MDTC's Amended Articles of Incorporation. It held that MDTC did not appear to be a mere agent of CCBPI but was one that provided stock handling and storage services to CCBPI. It held that, considering MDTC was the employer of Altoveros, then it must pay him separation pay of 1/2 month pay for every year of his service.

On November 4, 2009, the NLRC denied[13] petitioners' Motion for Reconsideration prompting them to file a Petition for *Certiorari* with the CA.

Ruling of the Court of Appeals

On July 4, 2012, the CA modified the NLRC Decision in that it ordered MDTC to pay separation pay to both petitioners.

Contrary to the finding of the NLRC, the CA found that the illegal dismissal case filed by Lingat had not yet prescribed. It held that, aside from money claims, Lingat prayed for reinstatement, as such, pursuant to Article 1146 of the Civil Code, Lingat had four years within which to file his case. It noted that Lingat filed this suit on May 5, 2008 or only three years and one day from his alleged illegal dismissal; thus, he timely filed his case against respondents.

Nevertheless, the CA agreed with the NLRC that MDTC was an independent contractor and the employer of petitioners. It gave weight to petitioners' latest IDs, which were issued by MDTC as well as to the Articles of Incorporation of MDTC, which indicated that its secondary purpose was "to engage in the business of land transportation" and "the business of warehousing services." It further ruled that MDTC had substantial capital stock, as well as properties and equipment, which supported the conclusion that MDTC was a legitimate labor contractor.

On January 16, 2013, the CA denied the Motion for Reconsideration on the assailed Decision.

Issues

Undaunted, petitioners filed this Petition raising these issues:

1. Whether or not there exists [an] employer-employ[ee] relationship between Petitioners and Respondent CCBPI;

2. Whether or not Petitioner Lingat's complaint is barred by prescription;

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[13] *Id*. at 249-250.

3. Whether or not the Court of Appeals gravely erred in declaring [that] Petitioners [were] not regular employees of Respondent CCBPI;

4. Whether or not Petitioners were dismissed without cause and due process;

5. Whether or not moral and exemplary damages lie; and

6. Whether or not the Petitioners are entitled to attorney's fees.[14]

Petitioners maintain that they were regular employees of CCBPI. They insist that their engagement by CCBPI in 1993 (Lingat) and 1996 (Altoveros) proved that they were its employees from the beginning. They also aver that they worked at CCBPI's warehouse, wore its uniforms, operated its machinery, and were under the direct control and supervision of CCBPI. They likewise contend that CCBPI illegally dismissed them from work. On this, they insist that respondents themselves admitted that petitioners' employment contract expired; and thereafter, they were no longer given any new assignments. They remain firm that such termination of contract was not a valid cause for their dismissal from work.

CCBPI and Lyons, for their part, counter that this Petition was not a proper recourse because petitioners seek a recalibration of facts and evidence which is not within the scope of the Petition because only pure questions of law may be raised herein. They add that MDTC was a legitimate and independent job contractor and was the employer of petitioners, not CCBPI.

Our Ruling

The Petition is impressed with merit.

As a rule, the determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on *certiorari*. However, this rule allows certain exceptions, which include an instance where the factual findings of the courts or

[14] *Id*. at 11.

tribunals below are conflicting. Given the situation here where the factual findings of the NLRC and the CA are divergent from those of the LA, the Court deems it proper to re-assess and review these findings in order to arrive at a just resolution of the issues on hand.[15]

Moreover, pursuant to Article 295 of the Labor Code, as amended and renumbered, a regular employee is a) one that has been engaged to perform tasks usually necessary or desirable in the employer's usual business or trade – without falling within the category of either a fixed or a project or a seasonal employee; or b) one that has been engaged for at least one year, whether his or her service is continuous or not, with respect to such activity he or she is engaged, and the work of the employee remains while such activity exists.

In this case, petitioners described their respective duties at CCBPI in this manner:

> x x x I, V. Lingat, x x x was also engaged as forklift operator [but] my main work as plant driver [required me] to take out truck loaded with softdrinks/Coca-Cola products after the same has been checked by the checker area; [I also] drive back Coca-Cola trucks loaded with empty bottles or sometimes x x x unsold softdrinks x x x This represented [my] daily chores while employed at Coca-Cola[.]
>
> x x x I, A. Altoveros, was with the latest work as segregator/mixer of softdrinks according to the demands of the customers, that is, when a customer needed ten (10) cases of Royal Tru-Orange or five (5) cases of Coke Sakto, the same is relayed to me in the loading area (as no sales personnel is allowed therein)[.] I have to segregate softdrinks accordingly to fill up the order of [the] customer.[16]

To ascertain if one is a regular employee, it is primordial to determine the reasonable connection between the activity he or she performs and its relation to the trade or business of the supposed employer.[17]

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[15] *Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil. 323, 337-338 (2008).

[16] *Rollo*, p. 72.

[17] *Vicmar Development Corporation v. Elarcosa*, 775 Phil. 218, 235 (2015).

Relating petitioners' tasks to the nature of the business of CCBPI — which involved the manufacture, distribution, and sale of soft drinks and other beverages — it cannot be denied that mixing and segregating as well as loading and bringing of CCBPI's products to its customers involved distribution and sale of these items. Simply put, petitioners' duties were reasonably connected to the very business of CCBPI. They were indispensable to such business because without them the products of CCBPI would not reach its customers.

Interestingly, in *Coca-Cola Bottlers Philippines, Inc. v. Agito*,[18] the Court held that respondents salesmen therein were regular employees of CCBPI as their work constituted distribution and sale of its products. The Court also stressed in *Agito* that the repeated rehiring of those salesmen bolstered the indispensability of their work to the business of CCBPI.

Similarly, herein petitioners have worked for CCBPI since 1993 (Lingat) and 1996 (Altoveros) until the non-renewal of their contracts in 2005. Aside from the fact that their work involved the distribution and sale of the products of CCBPI, they remained to be working for CCBPI despite having been transferred from one agency to another. Hence, such repeated re-hiring of petitioners, and the performance of the same tasks for CCBPI established the necessity and the indispensability of their activities in its business.

In addition, in *Pacquing v. Coca-Cola Philippines, Inc.*,[19] the Court ruled that the sales route helpers of CCBPI were its regular employees. In this case, petitioners had similarly undertook to bring CCBPI's products to its customers at their delivery points. In *Pacquing*, it was even stated that therein sales route helpers "were part of a complement of three personnel comprised of a driver, a salesman and a regular route helper, for every delivery truck."[20] As such, it would be absurd for the

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[18] 598 Phil. 909, 925-926 (2009).

[19] *Supra* note 15.

[20] *Id*. at 328.

Court to hold those helpers as regular employees of CCBPI without giving the same status to its plant driver, including its segregator of softdrinks, whose work also had reasonable connection to CCBPI's business of distribution and sale of soft drinks and other beverage products.

Furthermore, in *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*,[21] therein route helpers, like petitioners, were tasked to distribute CCBPI's products and were likewise successively transferred to agencies after having been initially employed by CCBPI. The Court decreed therein that said helpers were regular employees of CCBPI notwithstanding the fact that they were transferred to agencies while working for CCBPI. In the same vein, the transfer of herein petitioners from one agency to another did not adversely affect their regular employment status. Such was the case because they continued to perform the same tasks for CCBPI even if they were placed under certain agencies, the last of which was MDTC.

Moreover, CCBPI and Lyons' contention that MDTC was a legitimate labor contractor and was the actual employer of petitioners does not hold water.

A labor-only contractor is one who enters into an agreement with the principal employer to act as the agent in the recruitment, supply, or placement of workers for the latter. A labor-only contractor 1) does not have substantial capital or investment in tools, equipment, work premises, among others, and the recruited employees perform tasks necessary to the main business of the principal; or 2) does not exercise any right of control anent the performance of the contractual employee. In such case, where a labor-only contracting exists, the principal shall be deemed the employer of the contractual employee; and the principal and the labor-only contractor shall be solidarily liable for any violation of the Labor Code. On the other hand, a legitimate job contractor enters into an agreement with the employer for the supply of workers for the latter but the "employer-employee relationship between the employer and

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[21] G.R. No. 210565, June 28, 2016, 794 SCRA 654.

the contractor's employees [is] only for a limited purpose, *i.e.*, to ensure that the employees are paid their wages."[22]

In *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*,[23] the Court distinguished a labor-only contractor and a legitimate job contractor in this wise:

> The Omnibus Rules Implementing the Labor Code distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met:
>
> (a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
>
> (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.
>
> In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to supply workers to an employer:
>
> (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

Here, based on their Warehousing Management Agreement, CCBPI hired MDTC to perform warehousing management services, which it claimed did not directly relate to its (CCBPI's)

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[22] *Coca-Cola Bottlers Philippines, Inc. v. Agito*, *supra* note 18 at 923.

[23] 778 Phil. 72, 87-88 (2016).

manufacturing operations.[24] However, it must be stressed that CCBPI's business *not* only involved the manufacture of its products but also included their distribution and sale. Thus, CCBPI's argument that petitioners were employees of MDTC because they performed tasks directly related to "warehousing management services," lacks merit. On the contrary, records show that petitioners were performing tasks directly related to CCBPI's distribution and sale aspects of its business.

To reiterate, CCBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.

Moreover, we disagree with the CA when it heavily relied on MDTC's alleged substantial capital in order to conclude that it was an independent labor contractor.

To note, in *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*,[25] the Court ruled that "the possession of substantial capital is only one element."[26] To determine whether a person or entity is indeed a legitimate labor contractor, it is necessary to prove not only substantial capital or investment in tools, equipment, work premises, among others, but also that the work of the employee is directly related to the work that contractor is required to perform for the principal.[27] Evidently, the latter requirement is wanting in the case at bench.

Finally, as regular employees, petitioners may be dismissed only for cause and with due process. These requirements were not complied with here.

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[24] *Rollo*, p. 343.

[25] *Supra* note 21.

[26] *Id*. at 681.

[27] *Id*. at 682.

It was not disputed that petitioners ceased to perform their work when they were no longer given any new assignment upon the alleged termination of the Warehousing Management Agreement between CCBPI and MDTC. However, this is not a just or authorized cause to terminate petitioners' services. Otherwise stated, the contract expiration was not a valid basis to dismiss petitioners from service. At the same time, there was no clear showing that petitioners were afforded due process when they were terminated. Therefore, their dismissal was without valid cause and due process of law; as such, the same was illegal.

Considering that petitioners were illegally terminated, CCBPI and MDTC are solidarily liable for the rightful claims of petitioners.[28]

Moreover, by reason of the lapse of more than 10 years since the inception of this case on May 5, 2008, the Court deems it more practical and would serve the best interest of the parties to award separation pay to petitioners, in lieu of reinstatement.[29] Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is given them. The legal interest of 6% *per annum* shall be imposed on all the monetary grants from the finality of the Decision until paid in full.[30]

WHEREFORE, the Petition is **GRANTED**. The July 4, 2012 Decision and January 16, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 112829 are **REVERSED and SET ASIDE**. Accordingly, the December 9, 2008 Decision of the Labor Arbiter is **REINSTATED WITH MODIFICATIONS** in that separation pay, in lieu of reinstatement, and attorney's fees equivalent to 10% of the monetary grants are awarded to petitioners. All monetary awards shall earn interest at the legal rate of 6% per annum from the finality of this Decision until fully paid.

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[28] *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, *supra* note 23 at 87.

[29] *Bank of Lubao, Inc. v. Manabat*, 680 Phil. 792, 801 (2012).

[30] See *Brown v. Marswin Marketing, Inc.*, G.R. No. 206891, March 15, 2017.

SO ORDERED.

Peralta,[***] *Tijam*, and *Gesmundo,*[****] *JJ.*, concur.

Leonardo-de Castro, J., on official leave.

FIRST DIVISION

[G.R. No. 207040. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SHELDON ALCANTARA *y* LI, JUNNELYN ILLO *y* YAN, NATIVIDAD ZULUETA *y* YALDUA, MA. REYNA OCAMPO *y* CRUZ, MAILA TO *y* MOVILLON, MA. VICTORIA GONZALES *y* DE DIOS, ELENA PASCUAL *y* ROQUE, MARY ANGELIN ROMERO *y* BISNAR and NOEMI VILLEGAS *y* BATHAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANT OF ARREST; A TRIAL COURT JUDGE HAS JURISDICTION TO DETERMINE PROBABLE CAUSE FOR THE PURPOSE OF ISSUING A WARRANT OF ARREST; THE EXECUTIVE AND THE JUDICIAL DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED.— The fact that Judge Calpatura has jurisdiction to determine probable cause for the purpose of issuing a warrant of arrest has long been settled. In the recent case of *Liza L. Maza, et al. v. Hon. Evelyn A. Turla, et al.*, this Court reiterated that: Upon filing of an information in court, trial

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[***] Per Raffle dated February 7, 2018.

[****] Per Special Order No. 2560 dated may 11, 2018.

court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence. x x x. It must, however, be emphasized that the determination of probable cause has two separate and distinct kinds — an executive function and a judicial function. In the case of *Mendoza v. People, et al*., this Court distinguished the two, thus: There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e*., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.

2. ID.; ID.; ID.; ID.; THE TRIAL COURT JUDGE'S DETERMINATION OF PROBABLE CAUSE FOR THE PURPOSE OF ISSUING A WARRANT OF ARREST DOES NOT MEAN THAT HE/SHE BECOMES AN APPELLATE COURT FOR PURPOSES OF ASSAILING THE DETERMINATION OF PROBABLE CAUSE OF THE PROSECUTOR, AS THE PROPER REMEDY TO QUESTION THE RESOLUTION OF THE PROSECUTOR

AS TO HIS FINDING OF PROBABLE CAUSE IS TO APPEAL THE SAME TO THE SECRETARY OF JUSTICE. — The determination of the judge of the probable cause for the purpose of issuing a warrant of arrest does not mean, however, that the trial court judge becomes an appellate court for purposes of assailing the determination of probable cause of the prosecutor. The proper remedy to question the resolution of the prosecutor as to his finding of probable cause is to appeal the same to the Secretary of Justice. If the Information is valid on its face and the prosecutor made no manifest error or his findings of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts. The settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor the determination of what constitutes sufficient evidence to establish probable cause for the purpose of filing an information to the court. Courts can neither override their determination nor substitute their own judgment for that of the latter; they cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.

3. ID.; ID.; PROSECUTION OF OFFENSES; PROBABLE CAUSE, DEFINED; ELABORATED.— "Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof." In the case of *People of the Philippines v. Borje, Jr., et al.*, we held that: For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. x x x.

4. ID.; ID.; ID.; ABSENT GRAVE ABUSE OF DISCRETION, THE PROSECUTOR'S FINDING OF PROBABLE CAUSE, BEING PRIMARILY LODGED WITH HIM, SHOULD NOT BE INTERFERED WITH BY THE COURTS. — Here, the records do not disclose that the prosecutor's finding of probable cause was done in a capricious and whimsical manner evidencing grave abuse of discretion. As such, his finding of probable cause, being primarily lodge with him, should not be interfered with by the courts. Clearly, Judge Calpatura erred when he dismissed the case against the respondents for lack of probable cause. To note, Judge Calpatura stated that the prosecution failed to show that there was actual sexual intercourse or lascivious conduct being committed on the day of the raid. Further, Judge Calpatura reasoned that there was no evidence of payment of money for the alleged "extra services," since the money used to pay the same was not marked, recorded in the logbook and dusted in chemical to make it identifiable. The said reason of Judge Calpatura in dismissing the case for lack of probable cause are evidentiary matters which should be properly ventilated during the trial. Thus, it was clearly premature for Judge Calpatura and the CA to make a definitive finding that there was no illegal trafficking of persons simply for the reason that no actual sexual intercourse or lascivious conduct was committed at the time of the raid, and the police authorities failed to mark the money used to pay for the alleged "extra services." To reiterate, "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits."

APPEARANCES OF COUNSEL

RRV Legal Consultancy Firm for respondents.
The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

Before us is a Petition for Review on *Certiorari*[1] filed by the People of the Philippines, through the Office of the Solicitor

[1] *Rollo*, pp. 7-30.

General (OSG), assailing the Decision[2] dated April 26, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123672 dismissing the Petition for *Certiorari* filed by the OSG, which affirmed the Order dated October 20, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 145, in Criminal Case No. 11-2408.

The Antecedent Facts

On September 20, 2011, the members of the Criminal Investigation and Detection Group-Women and Children Protection Division (CIDG-WCPD) received information that Pharaoh KTV and Entertainment Centre (Pharaoh), a KTV bar, was being used as a front for sexual exploitation, wherein young students were being employed as entertainers. An ABS-CBN News program called "XXX" recorded the same by means of a hidden camera used by their asset. As such, the CIDG-WCPD conducted a series of surveillance operations.[3]

On September 20, 2011, the members of CIDG-WCPD, with Senior Police Officer 3 Leopoldo Platilla (SPO3 Platilla) acting as the poseur-customer, went inside Pharaoh together with four other members of the entrapment team. The other team members remained outside the establishment in order to cordon off the area and act as the raiding team.[4]

Once inside, SPO3 Platilla and his four companions were met by Winchel Alega *y* Aganan (Aganan), the receptionist. Aganan led them to the 3rd floor, where they were met by the floor manager, Junnelyn Illo (Illo). Illo accompanied SPO3 Platilla to the aquarium room with a huge one-way mirror where women, dressed in cocktail dresses, were displayed. SPO3 Platilla and his companions selected their respective partners. The team then paid ₱5,000.00 per hour for the rent of the VIP room and

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[2] Penned by Associate Justice Samuel H. Gaerlan, concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.; *id.* at 33-43.

[3] *Id.* at 34.

[4] *Id.* at 46.

₱10,400.00 for each woman. The said amount allegedly entitled them to avail of "extra services" in the form of sexual intercourse with their respective selected partners. The team then proceeded to a VIP room.[5]

Upon reaching the VIP room, SPO3 Platilla asked Illo if there were available rooms where they can avail the "extra services." Illo replied that the hotel rooms at the 2nd floor of the building were available. Thereafter, their selected partners arrived, still dressed in cocktail dresses, but allegedly without any underwears.[6]

SPO3 Platilla texted the overall ground commander to proceed with the raid. During the raid, Illo, Sheldon Alcantara *y* Li, Natividad Zulueta *y* Yaldua, Ma. Reyna Ocampo *y* Cruz, Maila To *y* Movillon, Ma. Victoria Gonzales *y* De Dios, Elena Pascual *y* Roque, Mary Angelin Romero *y* Bisnar and Noemi Villegas *y* Bathan (collectively, the respondents), who were floor managers, were arrested.[7]

Among the women rescued by the CIDG-WCPD were Ailyn Almoroto Regacion, Jocelyn Toralba Melano, Hazelyn Jane Dela Cruz Isidro, and Garian Delas Penas Edayan[8] (complainants), who executed a *Sinumpaang Salaysay*. In their *Sinumpaang Salaysay*, complainants alleged that the VIP room contains a karaoke and sofa. They claimed that they only serve guests inside the VIP room, sing and/or eat with them. Some guests tried to touch parts of their body but they claimed that "*ito'y pinipilit na maiwasan at mapigilan*."[9] However, during the preliminary investigation, complainants withdrew their *Sinumpaang Salaysay*, and claimed that "they never wanted to execute any statement and that they do not want to put their co-employees and friends from Pharaoh in trouble."[10]

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[5] *Id.*

[6] *Id*. at 47.

[7] *Id*.

[8] *Id*. at 50.

[9] *Id*. at 50-51.

[10] *Id*. at 51.

Respondents, on the other hand, denied that Pharaoh was being used as a front for prostitution and sexual exploitation. They further claimed that the complainants and other Customer Liaison Entertainment Officers (CLEOs) were never recruited since they came voluntarily to Pharaoh.[11]

On October 4, 2011, a Resolution[12] was issued by the Assistant State Prosecutor and Prosecution Attorney of the Department of Justice (DOJ) finding probable cause for charging respondents with violation of Section 4(a) and (e),[13] in relation to Section 6(c)[14] of Republic Act (R.A.) No. 9208,[15] also known as the Anti-Trafficking in Persons Act of 2003. As such, an Information[16]

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[11] *Id*. at 53-56.

[12] *Id*. at 44-61.

[13] **Sec. 4.** *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography[.]

[14] **Sec. 6.** *Qualified Trafficking in Persons*. – The following are considered as qualified trafficking:

x x x x x x x x x

(*c*) when the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

[15] AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER. Approved on May 26, 2003.

[16] *Rollo*, pp. 63-64.

charging the respondents with qualified trafficking of persons was filed in court.

Respondents filed an Urgent Motion for Judicial Determination of Probable Cause[17] before the RTC of Makati City, Branch 145 presided by Judge Carlito B. Calpatura (Judge Calpatura).

On October 20, 2011, the RTC issued its Order finding no probable cause for the indictment of the respondents, thus:

> WHEREFORE, for lack of probable cause, the information in this case filed against all the [respondents]:
>
> SHELDON ALCANTARA y LI,
> JUNNELYN ILLO y YAN,
> NATIVIDAD ZULUETA y YALDUA,
> MA. REYNA OCAMPO y CRUZ,
> MAILA TO y MOVILLON,
> MA. VICTORIA GONZALES y DE DIOS,
> ELENA PASCUAL y ROQUE,
> MARY ANGELIN ROMERO y BISNAR and
> NOEMI VILLEGAS y BATHAN
>
> is ordered DISMISSED. The [respondents] are ordered released from custody unless they or any of them are detained for some other legal cause or causes.
>
> SO ORDERED.[18]

In issuing the assailed order, the RTC reasoned as follows:

> The court has closely examined the evidence and found that no factual bases sufficient to support the existence of probable cause of the acts being charged. To illustrate, there is no evidence that the named women were vulnerable for recruitment, hiring, or to be received or maintained as CLEO for purposes of prostitution or pornography. On the contrary, all the said women were in unison in claiming that they were not recruited by the [respondents] or any of the officers or authorized agents of Pharaoh KTV. It is also their claim that they applied with Pharaoh KTV at their own free will and volition. No evidence appears on record to contradict their claim.

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[17] *Id*. at 66-92.

[18] *Id*. at 35.

On the aspect of pornography as an ingredient of the offense charged, there is nothing in the "Affidavit of Arrest" of the arresting officers nor in the affidavits of the witnesses for the state which would suggest acts of pornography as defined under Sec. 3(h) of R.A. [No.] 9208. x x x

On the aspect of prostitution, Sec. 3-c of the same law defines the same as referring to 'any act, transaction, scheme or design involving the use of person by another, for sexual intercourse or lascivious conduct in exchange of money, profit or any other consideration. x x x

Again, going over the affidavits of the arresting officers, and the supposed victims, there is nothing which would indicate that there was sexual intercourse or lascivious conduct being actually performed or about to be performed when the raid took place. x x x

x x x x x x x x x

Lastly, there is also no evidence of the alleged payment of money for the alleged "extra service". In entrapment, it is the normal procedure which can be taken judicial notices of by judges by reason of judicial function, that the money should be properly marked, recorded in the logbook of the operatives, dusted in chemical to make it sure it will be identifiable as to who received it. This procedure will ensure the integrity of the money as object evidence. This was also not done.[19]

Aggrieved, the OSG filed a Petition for *Certiorari* before the CA alleging that Judge Calpatura gravely abused his discretion in taking cognizance of the motion to determine probable cause as the same is an executive function that belongs to the prosecutor. Further, the OSG alleged that Judge Calpatura gravely abused his discretion when it found that no probable cause exists for the filing of charges against respondents.

On April 26, 2013, the CA rendered the Decision[20] dismissing the Petition for *Certiorari* and affirming the RTC's ruling that no probable exist to charge the respondents.

Hence, this petition.

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

[20] *Id*. at 33-43.

Arguments of the OSG

The OSG claimed that the determination of probable cause to hold a person for trial is a function that belongs to the public prosecutor. The correctness of the existence of which is a matter that the trial court cannot pass upon.[21] If there was palpable error or grave abuse of discretion in the public prosecutor's finding of probable cause, the remedy should be to appeal such finding to the Secretary of Justice. In this case, the Information has already been filed with the court and instead of appealing the resolution of the prosecutor, the respondents opted to file a motion for judicial determination of probable cause.[22]

Issues

Ultimately, the issues to be resolved are: 1) whether Judge Calpatura can determine the existence of probable cause; and 2) whether Judge Calpatura was correct in ordering the dismissal of the case for lack of probable cause.

Ruling of the Court

Judge Calpatura can personally determine the existence of probable cause for the purpose of issuing a warrant of arrest

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure provides that:

> **Sec. 6.** *When warrant of arrest may issue*. — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, **the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information

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[21] *Id*. at 16.

[22] *Id*. at 16-17.

was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

The fact that Judge Calpatura has jurisdiction to determine probable cause for the purpose of issuing a warrant of arrest has long been settled. In the recent case of *Liza L. Maza, et al. v. Hon. Evelyn A. Turla, et al.*,[23] this Court reiterated that:

Upon filing of an information in court, trial court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence.[24] x x x.

It must, however, be emphasized that the determination of probable cause has two separate and distinct kinds—an executive function and a judicial function. In the case of *Mendoza v. People, et al.*,[25] this Court distinguished the two, thus:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself

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[23] G.R. No. 187094, February 15, 2017.

[24] *Id*.

[25] 733 Phil. 603 (2014).

that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.[26] (Citations omitted)

The determination of the judge of the probable cause for the purpose of issuing a warrant of arrest does not mean, however, that the trial court judge becomes an appellate court for purposes of assailing the determination of probable cause of the prosecutor.[27] The proper remedy to question the resolution of the prosecutor as to his finding of probable cause is to appeal the same to the Secretary of Justice.[28] If the Information is valid on its face and the prosecutor made no manifest error or his finding of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts.[29] The settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor the determination of what constitutes sufficient evidence to establish probable cause for the purpose of filing an information to the court. Courts can neither override their determination nor substitute their own judgment for that of the latter; they cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.[30]

Judge Calpatura erred when he dismissed the case for lack of probable cause

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[26] *Id*. at 610, citing *People v. Castillo, et al.*, 607 Phil. 754, 764-765 (2009).

[27] *Id*. at 611.

[28] *Filadams Pharma, Inc. v. Court of Appeals, et al.*, 470 Phil. 290, 300 (2004).

[29] *Mendoza v. People, et al.*, *supra* at 612.

[30] *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 492-493 (2014).

"Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof."[31] In the case of *People of the Philippines v. Borje, Jr., et al.*,[32] we held that:

> For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. x x x.[33] (Citations omitted)

Here, the records do not disclose that the prosecutor's finding of probable cause was done in a capricious and whimsical manner evidencing grave abuse of discretion. As such, his finding of probable cause, being primarily lodge with him, should not be interfered with by the courts. Clearly, Judge Calpatura erred when he dismissed the case against the respondents for lack of probable cause. To note, Judge Calpatura stated that the prosecution failed to show that there was actual sexual intercourse or lascivious conduct being committed on the day of the raid. Further, Judge Calpatura reasoned that there was no evidence of payment of money for the alleged "extra services," since the money used to pay the same was not marked, recorded in the logbook and dusted in chemical to make it identifiable.[34]

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[31] *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 185 (2013).

[32] 749 Phil. 719 (2014).

[33] *Id*. at 728.

[34] *Rollo*, p. 41.

The said reasons of Judge Calpatura in dismissing the case for lack of probable cause are evidentiary matters which should be properly ventilated during the trial.[35] Thus, it was clearly premature for Judge Calpatura and the CA to make a definitive finding that there was no illegal trafficking of persons simply for the reason that no actual sexual intercourse or lascivious conduct was committed at the time of the raid, and the police authorities failed to mark the money used to pay for the alleged "extra services." To reiterate, "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits."[36]

WHEREFORE, the petition is **GRANTED**. The Decision dated April 26, 2013 of the Court of Appeals in CA-G.R. SP No. 123672 is hereby **REVERSED and SET ASIDE**. Accordingly, this case is **REMANDED** to the Regional Trial Court of Makati City, Branch 145 in Criminal Case No. 11-2408 for appropriate proceedings.

SO ORDERED.

Peralta,[*] *del Castillo*[**] (*Acting Chairperson*), and *Gesmundo*,[***] *JJ.*, concur.

Leonardo-de Castro, J.,[****] on official leave.

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[35] *People v. Engr. Yecyec, et al.*, 746 Phil. 634, 648 (2014).

[36] *Id*.

[*] Designated as additional Member per Raffle dated August 9, 2017 *vice* Associate Justice Francis H. Jarde1eza.

[**] Designated as Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[***] Designated as additional Member per Special Order No. 2560 dated May 11, 2018.

[****] Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

THIRD DIVISION

[G.R. No. 216999. July 4, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **RONALD M. COSALAN,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; THE INDIGENOUS PEOPLES RIGHTS OF 1997 OR THE IPRA LAW (REPUBLIC ACT NO. 8371); FOREST LAND LOCATED WITHIN THE CENTRAL CORDILLERA FOREST RESERVE CANNOT BE A SUBJECT OF PRIVATE APPROPRIATION AND REGISTRATION, EXCEPT WHERE THE PARTY PROVED THAT THE SUBJECT LAND WAS AN ANCESTRAL LAND, AND HAD BEEN OPENLY AND CONTINUOUSLY OCCUPIED BY HIM AND HIS PREDECESSORS IN-INTEREST, WHO WERE MEMBERS OF THE INDIGENOUS CULTURAL COMMUNITIES (ICCS) OR INDIGENOUS PEOPLES (IPS).—** As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. Respondent, however, was able to prove that the subject land was an ancestral land, and had been openly and continuously occupied by him and his predecessors in-interest, who were members of the ICCs/IPs.

2. **ID.; ID.; ID.; CONCEPT OF NATIVE TITLE; ANCESTRAL LANDS ARE COVERED BY THE CONCEPT OF NATIVE TITLE, THUS, ARE CONSIDERED AN EXCEPTION TO THE *REGALIAN DOCTRINE*.—** Section 3 (b) of Republic Act (*R.A.*) No. 8371 otherwise known as *The Indigenous Peoples Rights Act of 1997 (IPRA Law)* defined ancestral lands x x x. Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way. The CA

has correctly relied on the case of *Cruz v. Secretary of DENR*, which institutionalized the concept of native title. Thus: Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land**. From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.

3. ID.; ID.; ID.; INDIVIDUALLY-OWNED ANCESTRAL LANDS, WHICH ARE AGRICULTURAL IN CHARACTER AND ACTUALLY USED FOR AGRICULTURAL, RESIDENTIAL, PASTURE, AND TREE FARMING PURPOSES, INCLUDING THOSE WITH A SLOPE OF EIGHTEEN PERCENT (18%) OR MORE, ARE CLASSIFIED AS ALIENABLE AND DISPOSABLE AGRICULTURAL LANDS.— [R]espondent's application for registration under Section 12 of the IPRA Law in relation to Section 48 of the CA No. 141 was correct. Section 12, Chapter III of IPRA Law states that individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands. [R]espondent and his witnesses were able to prove that the subject land had been used for agricultural purposes even prior to its declaration as part of the Central Cordillera Forest Reserve. The subject land had been actually utilized for dry land agriculture where camote, corn and vegetables were planted and some parts of which were used for grazing farm animals, horses and cattle. Moreover, several improvements have been introduced like the 200-meter road and the levelling of areas for future construction, gardening, planting of more pine trees, coffee and bamboo.

4. ID.; ID.; ID.; THE PROVISIONS OF THE PUBLIC LAND ACT OR COMMONWEALTH ACT NO. 141 GOVERN THE

REGISTRATION OF ANCESTRAL LANDS WHICH ARE CONSIDERED PUBLIC AGRICULTURAL LANDS; REGISTRATION OF THE SUBJECT LAND IN FAVOR OF RESPONDENT PROPER AS THE SAME PROVED THAT HE AND HIS PREDECESSORS-IN-INTEREST HAD BEEN IN OPEN AND CONTINUOUS POSSESSION OF THE SUBJECT LAND SINCE TIME IMMEMORIAL EVEN BEFORE IT WAS DECLARED PART OF THE CENTRAL CORDILLERA FOREST RESERVE UNDER PROCLAMATION NO. 217. — [A]s the IPRA Law expressly provides that ancestral lands are considered public agricultural lands, the provisions of the Public Land Act or C.A. No. 141 govern the registration of the subject land. Also, Section 48 (b) and (c) of the same Act declares who may apply for judicial confirmation of imperfect or incomplete titles x x x. In *Heirs of Gamos v. Heirs of Frando*, it was held that where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VIII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the court — an application therefore being sufficient. Certainly, it has been proven that respondent and his predecessors-in-interest had been in open and continuous possession of the subject land since time immemorial even before it was declared part of the Central Cordillera Forest Reserve under Proclamation No. 217. Thus, the registration of the subject land in favor of respondent is proper.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Francisco B.A. Saavedra for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the August 27, 2014 Decision[1] and the February 4, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 98224 which affirmed *in toto* the July 29, 2011 Decision[3] of the Regional Trial Court, La Trinidad, Benguet (*RTC*), Branch 10, granting the application for registration of title filed by Ronald M. Cosalan (*respondent*).

The Antecedents

The controversy involves a parcel of land located in Sitio Adabong, Barrio Kapunga, Municipality of Tublay, Benguet, with an area of 98,205 square meters, more or less, under an approved Survey Plan PSU-204810, issued by the Bureau of Lands on March 12, 1964.

Respondent alleged that the Cosalan clan came from the Ibaloi Tribe of Bokod and Tublay, Benguet; that he was the eldest son of Andres Acop Cosalan (*Andres*), the youngest son of Fernando Cosalan (*Fernando*), also a member of the said tribe; that he was four generations away from his great-grandparents, Opilis and Adonis, who owned a vast tract of land in Tublay, Benguet; that this property was passed on to their daughter Peran who married Bangkilay Acop (*Bangkilay*) in 1858; that the couple then settled, developed and farmed the said property; that Acop enlarged the inherited landholdings, and utilized the same for agricultural purposes, principally as pasture land for their hundreds of cattle;[4] that at that time, Benguet was a cattle country with Mateo Cariño (*Mateo*) of the landmark case *Cariño*

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[1] *Id.* at 50-63; penned by Associate Justice Socorro B. Inting with Associate Justices Jose C. Reyes, Jr., and Mario V. Lopez, concurring.

[2] *Id.* at 64-65.

[3] *Id.* at 72-80.

[4] *Id.* at 122; par. no. 7 of Respondent's Comment.

v. Insular Government,[5] having his ranch in what became Baguio City, while Acop established his ranch in Betdi, later known as Acop's Place in Tublay Benguet, that Mateo and Acop were contemporaries, and became "*abalayans*" (in-laws) as the eldest son of Mateo, named Sioco, married Guilata, the eldest daughter of Acop; and that Guilata was the sister of Aguinaya Acop Cosalan (*Aguinaya*), the grandmother of respondent.[6]

Respondent also alleged that Peran and Bangkilay had been in possession of the land under claim of ownership since their marriage in 1858 until Bangkilay died in 1918; that when Bangkilay died, the ownership and possession of the land was passed on to their children, one of whom was Aguinaya who married Fernando; that Acop's children continued to utilize part of the land for agriculture, while the other parts for grazing of work animals, horses and family cattle; that when Fernando and Aguinaya died in 1945 and 1950, respectively, their children, Nieves Cosalan Ramos (*Nieves*), Enrique Cosalan (*Enrique*), and Andres inherited their share of the land; that Nieves registered her share consisting of 107,219 square meters under Free Patent No. 576952, and was issued Original Certificate of Title (*OCT*) No. P-776;[7] that Enrique, on the other hand, registered his share consisting of 212,688 square meters through judicial process, docketed as Land Registration Case (*LRC*) No. N-87, which was granted by then Court of First Instance (*CFI*) of Baguio and Benguet, Branch 3, and was affirmed by the Court in its Decision[8] dated May 7, 1992, and that OCT No. O-238 was issued in his favor.[9]

Similarly, Andres sought the registration of his share (now the subject land) consisting of 98,205 square meters, more or

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[5] 8 Phil. 150 (1907).

[6] *Rollo*, p. 122; par. no. 5 of Respondent's Comment.

[7] *Id*. at 307-308.

[8] Docketed as G.R. No. L-38810, entitled *Republic of the Philippines v. CA*, 284 Phil. 575 (1992).

[9] Records, pp. 309-310.

less, through judicial process. He had the subject land surveyed and was subsequently issued by the Director of Lands the Surveyor's Certificate[10] dated March 12, 1964. Thereafter, he filed a case for registration, docketed as LRC Case No. N-422 (37), Record No. N54212, before RTC Branch 8. The case, which was archived on August 23, 1983, was dismissed on motion of Andres in the Order[11] dated November 13, 2004.

In 1994, Andres sold the subject land to his son, respondent, for the sum of ₱300,000.00, evidenced by the Deed of Absolute Sale of Unregistered Land[12] dated August 31, 1994.

On February 8, 2005, respondent filed an application for registration of title of the subject land before RTC Branch 10.[13] Respondent presented himself and Andres as principal witnesses and the owners of the properties adjoining the subject land namely, Priscilla Baban (*Priscilla*) and Bangilan Acop (*Bangilan*).

Respondent in his application alleged, among others, that he acquired the subject land in open, continuous, exclusive, peaceful, notorious and adverse occupation, cultivation and actual possession, in the concept of an owner, by himself and through his predecessors-in-interest since time immemorial; that he occupied the said land which was an ancestral land; that he was a member of the cultural minorities belonging to the Ibaloi Tribe;[14] that he took possession of the subject land and performed acts of dominion over the area by fencing it with barbed wires, constructing a 200-meter road, levelling some areas for gardening and future construction and planted pine trees, coffee and bamboos; and that he declared the subject land for taxation purposes and paid taxes regularly and continuously.[15]

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[10] *Id*. at 291-292.

[11] *Id*. at 329.

[12] *Id*. at 294-295.

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

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

[15] *Id*. at 121.

Priscilla, the maternal first cousin of Andres, testified that she was born in Acop, Tublay, Benguet on January 15, 1919 to parents Domingo Sapang and Margarina Acop (*Margarina*); that she inherited the property adjacent to the subject land from Margarina who, in turn, inherited it from her father Bangkilay; that her property and the subject land used to be parts of the vast tract of land owned by Bangkilay; that when Bangkilay died, the property was inherited by his children; that one of his daughters, Aguinaya, took possession of her share of the property; that Aguinaya and her husband Fernando then used the land for vegetation, raising cattle and agricultural planting; that when spouses Aguinaya and Fernando died, Andres took possession of the subject land and planted pine trees which he sold as Christmas trees, but when the sale of pine trees was banned, he allowed other people to use the trees for firewood; and that Andres thereafter sold the property to respondent.[16]

Bangilan, on the other hand, testified that he was 73 years old; that he had been residing in Barangay Adabong since he was seven (7) years old; that his father Cid Acop inherited the property adjoining the subject land; and that his fathers property was issued a certificate of title.[17]

The Department of Environment and Natural Resources (*DENR*) - Cordillera Administrative Region (*CAR*), opposed the application filed by respondent on the ground that the subject land was part of the Central Cordillera Forest Reserve established under Proclamation No. 217.

The RTC Ruling

On July 29, 2011, the RTC approved respondent's application for registration. It held that the subject land was owned and possessed by his ancestors and predecessors even before the land was declared part of the forest reserve by virtue of Proclamation No. 217.

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[16] TSN, dated January 26, 2009.

[17] *Id.*

The RTC took note of the fact that the DENR itself issued free patent titles to lands within the Central Cordillera Forest Reserve. Specifically, the properties of Nieves and Cid Acop, which were immediately adjacent to the subject land had been granted torrens titles by the DENR though similarly located within the forest reserve. The decretal portion of the decision reads:

> WHEREFORE, this Court hereby approves this application for registration and thus places the land described under approved Survey Plan PSU-204810 issued by the Bureau of Lands on March 12, 1964 containing an area of 98,205 square meters, more or less under the operation of P.D. 1529, otherwise known as Property Registration Law, as supported by its technical description, in the name of Ronald M. Cosalan.
>
> Upon finality of this Decision, let the corresponding decree of registration be issued.
>
> SO ORDERED.[18]

Aggrieved, petitioner appealed before the CA.

The CA Ruling

In its decision dated August 27, 2014, the CA affirmed *in toto* the ruling of the RTC. It held that "[a]ncestral lands which are owned by individual members of Indigenous Cultural Communities (*ICCs*) or Indigenous Peoples (*IPs*) who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than 30 years, which claims are uncontested by the members of the same ICCs/IPs, may be registered under C.A. 141, otherwise known as the *Public Land Act* or Act 496, the *Land Registration Act*."[19]

Also, the CA stated that "while the Government has the right to classify portions of public land, the primary right of a private

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[18] *Rollo*, p. 80.

[19] *Rollo*, p. 61.

individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated ... Government in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made."[20]

Petitioner filed a motion for reconsideration[21] but it was denied by the CA in its resolution dated February 4, 2015.

Hence, this petition.

The grounds for the allowance of the petition are:

THE ASSAILED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE, CONSIDERING THAT:

I

THE SUBJECT LAND IS A FOREST LAND WITHIN THE CENTRAL CORDILLERA FOREST RESERVE. IT WAS CONSIDERED A FOREST LAND EVEN PRIOR TO ITS DECLARATION AS SPECIAL FOREST RESERVE UNDER PROCLAMATION NO. 217. THEREFORE, IT IS NOT REGISTRABLE.

II

THE COURT OF APPEALS' RELIANCE IN *CRUZ VS. SECRETARY OF DENR* AND *CARIÑO V. INSULAR GOVERNMENT* IS MISPLACED.

III

THE COURT OF APPEALS' DECISION GRANTING RESPONDENT'S APPLICATION BASED ON *OH CHO VS. THE DIRECTOR OF LANDS, RAMOS VS. THE DIRECTOR OF LANDS,* AND *REPUBLIC VS. COURT OF APPEALS AND ENRIQUE COSALAN* ARE ERRONEOUS CONSIDERING

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[20] *Rollo*, pp. 61-62, quoting *Ankron v. Government of the Philippine Island*, 10 Phil. 10 (1919).

[21] *Id*. at 66-70.

THAT SAID CASES ARE NOT APPLICABLE TO THE INSTANT CASE. WHAT IS MORE, THE COURT OF APPEALS' DECISION IS IN DIRECT CONTRAVENTION OF THE PREVAILING DOCTRINE ENUNCIATED BY THIS HONORABLE COURT IN *DIRECTOR OF LAND MANAGEMENT AND DIRECTOR OF FOREST DEVELOPMENT VS. COURT OF APPEALS AND HILARIO*.

IV

RESPONDENT'S APPLICATION FOR REGISTRATION UNDER SECTION 12 OF THE IPRA LAW IN RELATION TO SECTION 48 OF THE COMMONWEALTH ACT NO. 141 IS COMPLETELY ERRONEOUS. COMMONWEALTH ACT NO. 141 APPLIES EXCLUSIVELY TO AGRICULTURAL PUBLIC LANDS.[22]

Petitioner's Arguments

Petitioner insists that the subject land is a forest land even prior to the enactment of Proclamation No. 217. Respondent's father even admitted that the subject land was in an elevated area of the forest reserve, which explains the absence of permanent improvements thereon and was utilized only for "*kaingin*."[23] According to petitioner, the fact that the land was subjected to the *kaingin* system does not deprive it of its character as forest land.[24]

Petitioner claims that it is only the Executive Department, not the courts, which has authority to reclassify lands of public domain into alienable and disposable lands.[25]

Respondent's Arguments

In his Comment,[26] respondent countered that the subject land was an ancestral land and had been and was still being used for

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[22] *Rollo*, pp. 17-19.

[23] *Id*. at 20.

[24] *Id*. at 21-22.

[25] *Id*. at 23.

[26] *Id*. at 120-147.

agricultural purposes; and that it had been officially delineated and recognized when the Director of the Bureau of Lands approved the survey plan for the land claimed by his predecessors and issued PSU-204810 on March 12, 1964.[27] He averred that the subject land was openly and continuously occupied by him and his predecessors-in-interest since time immemorial, and was cultivated or used by them for their own benefit.[28]

Respondent claimed that though the subject land was located in an elevated area, it had been used for dry land agriculture where camote, corn and vegetables were planted, for grazing of farm animals, and cattle; some portions were subjected to tree farming and several improvements have been introduced like the construction of a 200-meter roads and the levelling of other areas for future construction, gardening, and planting of more pine trees, coffee and bamboo.[29]

The Court's Ruling

The petition is not meritorious.

As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. Respondent, however, was able to prove that the subject land was an ancestral land, and had been openly and continuously occupied by him and his predecessors in-interest, who were members of the ICCs/IPs.

Section 3 (b) of Republic Act (*R.A.*) No. 8371[30] otherwise known as *The Indigenous Peoples Rights Act of 1997 (IPRA Law)* defined ancestral lands as follows:

Section 3 *(b) Ancestral Lands* – Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and

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[27] *Id*. at 126.

[28] *Id*. at 128.

[29] *Id*. at 129.

[30] An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, creating a National Commission on Indigenous Peoples, establishing implementing mechanisms, appropriating funds therefore, and other purposes.

clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots[.]

Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest."[31] To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.

The CA has correctly relied on the case of *Cruz v. Secretary of DENR*,[32] which institutionalized the concept of native title. Thus:

> Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land**.[33] (emphasis supplied)

From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.[34]

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[31] Section 3 (1), of R.A. No. 8371 otherwise known as the IPRA Law.

[32] 400 Phil. 904 (2000).

[33] Citing *Cariño v. Insular Government*, 41 Phil. 935, 941 (1909).

[34] *Republic of the Philippines v. Heirs of Sin*, 730 Phil. 414, 423 (2014), citing *Valiao, et al. v. Republic of the Philippines, et al.*, 677 Phil. 318, 326 (2011).

The possession of the subject land by respondent's predecessors-in-interest had been settled in the case of *Republic v. CA and Cosalan*[35] filed by respondent's uncle, Enrique Cosalan. In the said case, Aguinaya, the mother of Enrique, and grandmother of respondent, filed an application for free patent on the parcels of land which included the subject land as early as 1933. The Court held that Enrique and his predecessors-in-interest had been in continuous possession and occupation of the land since the 1840s, long before the subject land was declared part of a forest reserve.[36] Moreover, the CA in its decision noted that Nieves and Cid Acop, whose lands were adjacent to the subject land, were awarded titles to their respective lands despite being located within the same forest reserve as the subject land.

Petitioner's reliance on the ruling of *Director of Land Management and Director of Forest Development v. CA and Hilario*[37] is misplaced. The said case is not on all fours with the present case as the evidence presented in this case sufficiently established that private interests had intervened even prior to the declaration of the subject land as part of a forest reserve. As discussed in *Republic v. CA and Cosalan*:[38]

> The present case, however, admits of a certain twist as compared to the case of *Director of Lands, supra*, in that evidence in this case shows that as early as 1933, Aguinaya, mother of petitioner has filed an Application for Free Patent for the same piece of land. In the said application, Aguinaya claimed to have been in possession of the property for 25 years prior to her application and that she inherited the land from her father, named Acop, who himself had been in possession of the same for 60 years before the same was transferred to her.
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> **It appears, therefore, that respondent Cosalan and his predecessors-in-interest have been in continuous possession and**

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[35] 284 Phil. 575 (1992).

[36] *Id*. at 579-580.

[37] 254 Phil. 456 (1989).

[38] *Supra* note 35.

occupation of the land since the 1840s. Moreover, as observed by the appellate court, the application of Aguinaya was returned to her, not due to lack of merit, but —

> "As the land applied for has been occupied and cultivated prior to July 26, 1894, title thereto should be perfected thru judicial proceedings in accordance with Section 45 (b) of the Public Land Act No. 2874, as amended."

Despite the general rule that forest lands cannot be appropriated by private ownership, it has been previously held that "while the Government has the right to classify portions of public land, **the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated** ... Government in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made.[39] (emphases supplied)

Hence, respondent's application for registration under Section 12 of the IPRA Law in relation to Section 48 of the CA No. 141 was correct. Section 12, Chapter III of IPRA Law states that individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

As stated, respondent and his witnesses were able to prove that the subject land had been used for agricultural purposes even prior to its declaration as part of the Central Cordillera Forest Reserve. The subject land had been actually utilized for dry land agriculture where camote, corn and vegetables were planted and some parts of which were used for grazing farm animals, horses and cattle. Moreover, several improvements have been introduced like the 200-meter road and the levelling of areas for future construction, gardening, planting of more pine trees, coffee and bamboo.

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[39] *Id*.

Verily, as the IPRA Law expressly provides that ancestral lands are considered public agricultural lands, the provisions of the Public Land Act or C.A. No. 141 govern the registration of the subject land. Also, Section 48 (b) and (c) of the same Act declares who may apply for judicial confirmation of imperfect or incomplete titles to wit:

> SEC. 48. The following described citizens of the Philippines, occupying lands of public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors in interest, have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.
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> (c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of ownership, since June 12, 1945 (As amended by PD. No. 1073, dated January 25, 1997).

In *Heirs of Gamos v. Heirs of Frando*,[40] it was held that where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VIII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is

[40] 488 Phil. 140 (2004).

deemed to have already acquired by operation of law not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the court — an application therefore being sufficient.[41]

Certainly, it has been proven that respondent and his predecessors-in-interest had been in open and continuous possession of the subject land since time immemorial even before it was declared part of the Central Cordillera Forest Reserve under Proclamation No. 217. Thus, the registration of the subject land in favor of respondent is proper.

WHEREFORE, the petition is **DENIED**. The August 27, 2014 Decision and the February 4, 2015 Resolution of the Court of Appeals in CA- G.R. CV No. 98224 are **AFFIRMED** *in toto*.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Martires, JJ.,* concur.

SECOND DIVISION

[G.R. No. 219291. July 4, 2018]

MICHAEL V. RACION, *petitioner, vs.* **MST MARINE SERVICES PHILIPPINES, INC., ALFONSO RANJO DEL CASTILLO and/or THOME SHIP MANAGEMENT PTE. LTD.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL OF PETITION PROPER FOR

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[41] *Id*. at 152-153, citing *Susi v. Razon, et al.*, 48 Phil. 424 (1925).

FAILURE TO EXECUTE A CERTIFICATE OF NON-FORUM SHOPPING; EXECUTION OF THE CERTIFICATE BY PETITIONER'S COUNSEL IS A DEFECTIVE CERTIFICATION.— As the CA correctly held, the Court had ruled in *Vda. De Formoso v. Philippine National Bank* that "[*c*]*ertiorari* is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law." Further, "[t]he acceptance of a petition for *certiorari* as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the court has absolute discretion to reject and dismiss a petition for *certiorari*, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars." Here, x x x petitioner failed to execute a certificate of non-forum shopping. Section 1, Rule 65 of the Rules of Court directs that a petition should be accompanied by a certificate of non-forum shopping in accordance with Section 3, Rule 46 also of the Rules of Court, x x x The execution of the certificate by petitioner's counsel is a defective certification, which amounts to non-compliance with the requirement of a certificate of non-forum shopping. This is sufficient ground for the dismissal of the petition.

2. **ID.; ID.; ID.; DISMISSAL PROPER FOR FAILURE TO ALLEGE THE ACTUAL ADDRESSES OF ALL THE PETITIONERS AND RESPONDENTS.—** [P]etitioner also failed to comply with the requirement in Section 3, Rule 46 on alleging the actual addresses of all the petitioners and respondents as he failed to indicate his own actual address and that of respondent Del Castillo. Once more, the CA was correct in citing *Cendaña v. Avila*, where the Court held that: "[t]he requirement that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory. Petitioner's failure to comply with the said requirement is sufficient ground for the dismissal of his petition.

3. **ID.; LIBERAL APPLICATION OF THE RULES MUST BE SUFFICIENTLY JUSTIFIED.—** Petitioner cannot simply ask the Court to liberally apply the rules without providing any justification for it. His claim of inadvertence is flimsy, not

weighty and not persuasive as to give it reprieve from the strict application of the rules. For indeed, "[p]rocedural 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 except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not proportionate with the degree of his thoughtlessness in not complying with the procedure prescribed."

APPEARANCES OF COUNSEL

Bantog And Andaya Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Petitioner Michael V. Racion filed a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court assailing the twin Resolutions dated August 22, 2014[2] (2014 Resolution) and July 2, 2015[3] (2015 Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 136124. The CA dismissed the petition for *certiorari* because of the lack of authority of the counsel of petitioner to sign the certificate of non-forum shopping and the failure to state the addresses of petitioner and respondent Alfonso Ranjo Del Castillo (Del Castillo).

Facts

Petitioner was hired as a GP1/MTM by respondent MST Marine Services Philippines, Inc. (MST Marine) on November 22, 2011.[4]

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[1] *Rollo*, pp. 19-27.

[2] *Id.* at 34-36. Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 38-40.

[4] *Id.* at 21.

During his employment, petitioner suffered an accidental fall and was found to have suffered from a left knee ligament strain.[5] Petitioner was subsequently repatriated on medical grounds on July 5, 2012.[6]

It is not clear from the submissions of the parties as to the doctor who examined petitioner when he arrived, and the conclusions arrived at by the doctor. But it would seem that petitioner filed a claim for disability benefits, refund of medical expenses, sickness allowances, damages, and attorney's fees on August 17, 2012.[7]

As respondents alleged: in a Decision dated March 25, 2013, the Labor Arbiter (LA) dismissed petitioner's complaint for lack of merit.[8] Petitioner then filed an appeal with the National Labor Relations Commission (NLRC), which denied the appeal but modified the LA's decision by directing MST Marine and/or Thome Ship Management PTE. Ltd. to pay petitioner the amount of Fifty Thousand Pesos (₱50,000.00) as financial assistance.[9]

Petitioner then filed a petition for *certiorari* before the CA questioning the NLRC's decision. In its 2014 Resolution, the CA dismissed the petition outright because it was petitioner's counsel who signed the certificate on non-forum shopping, without authority from petitioner through a Special Power of Attorney (SPA), and without any explanation for petitioner's failure to execute the certificate.[10] The CA also ruled that petitioner failed to comply with paragraph 1, Section 3, Rule 46 of the Rules of Court when he failed to indicate his own actual address and that of respondent Del Castillo.[11]

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[5] *Id.*

[6] *Id*.

[7] *Id*. at 58.

[8] *Id.*

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

[10] *Id*. at 35.

[11] *Id*. at 35-36.

The CA reasoned that a petition for *certiorari* is an extraordinary remedy and that the party availing of the remedy must strictly observe the procedural rules laid down by law.[12] For the CA, the procedural rules may not be brushed aside as mere technicality and the decision of whether or not to accept a petition is generally addressed to the sound discretion of the court.[13]

Petitioner moved for reconsideration, but the CA denied it in its 2015 Resolution. The CA ruled that the liberal application of the rules may be done only if there are justifiable causes for non-compliance, and that petitioner failed to show the existence of such justifiable cause as he only claimed that his failure to comply was due to inadvertence.[14] The CA also found that there was nothing on record that constituted compelling reason for a liberal application of procedural rules.[15]

Aggrieved, petitioner thus filed this petition.

Issue

The sole issue is whether the CA erred in dismissing the petition for *certiorari* outright.

The Court's Ruling

The CA was correct in dismissing the petition for *certiorari* outright.

As the CA correctly held, the Court had ruled in *Vda. De Formoso v. Philippine National Bank*[16] that "[*c*]*ertiorari* is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law."[17]

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[12] *Id*. at 36.

[13] *Id*.

[14] *Id*. at 39.

[15] *Id*.

[16] 665 Phil. 184 (2011).

[17] *Id*. at 189.

Further, "[t]he acceptance of a petition for *certiorari* as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the court has absolute discretion to reject and dismiss a petition for *certiorari*, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars."[18]

Here, the CA was correct in dismissing the petition for *certiorari* as it was beset with procedural errors arising from violations of the Rules of Court.

First, petitioner failed to execute a certificate of non-forum shopping. Section 1, Rule 65 of the Rules of Court directs that a petition should be accompanied by a certificate of non-forum shopping in accordance with Section 3, Rule 46 also of the Rules of Court, which states:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
>
> x x x x x x x x x
>
> **The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different**

[18] *Athena Computers, Inc. v. Reyes*, 559 Phil. 123, 129-130 (2007).

divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (n) (Emphasis supplied)

The execution of the certificate by petitioner's counsel is a defective certification, which amounts to non-compliance with the requirement of a certificate of non-forum shopping. This is sufficient ground for the dismissal of the petition.[19]

The issue of a counsel executing a certificate of non-forum shopping has been settled in *Suzuki v. de Guzman*,[20] where the Court affirmed the CA's dismissal of a petition for *certiorari* because the certificate was signed by counsel and not by the petitioners themselves. The Court ruled:

The Court also cannot accept the signature of petitioners' counsel as substantial compliance with the Rules. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. The fact that there are three petitioners is not valid excuse or exception to the requirement. A certification against forum shopping signed by counsel is a defective certification that is equivalent to non-compliance with the requirement and constitutes a valid cause for the dismissal of the petition.[21]

Suzuki applies squarely here, and petitioner only argues that the Court should liberally construe the rules in his favor. As will be further discussed below, this argument also fails.

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[19] See *LGU of Municipality of Hinatuan v. South Ironrock Corp.*, G.R. No. 237785, June 27, 2018, pp. 5-6, citing *Altres v. Empleo*, 594 Phil. 246, 261-262 (2008).

[20] 528 Phil. 1033 (2006).

[21] *Id*. at 1045.

Second, petitioner also failed to comply with the requirement in Section 3, Rule 46 as quoted above on alleging the actual addresses of all the petitioners and respondents as he failed to indicate his own actual address and that of respondent Del Castillo.

Once more, the CA was correct in citing *Cendaña v. Avila*,[22] where the Court held that: "[t]he requirement that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory. Petitioner's failure to comply with the said requirement is sufficient ground for the dismissal of his petition. Thus, the Court of Appeals correctly dismissed the petition for *certiorari* on the ground that the parties' actual addresses were not indicated therein."[23]

Cendeña applies squarely and petitioner, other than his plea for liberal application of the rules, has not provided any reason for not applying the doctrine in *Cendeña*.

Petitioner cannot simply ask the Court to liberally apply the rules without providing any justification for it. His claim of inadvertence is flimsy, not weighty and not persuasive as to give it reprieve from the strict application of the rules.[24] For indeed, "[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 except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not proportionate with the degree of his thoughtlessness in not complying with the procedure prescribed."[25]

Finally, even if the Court were to gloss over the technical defects, petitioner has not provided any basis for the Court to

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[22] 567 Phil. 370 (2008).

[23] *Id*. at 376.

[24] *Athena Computers, Inc. v. Reyes*, *supra* note 18, at 131.

[25] *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, 492 Phil. 698, 704 (2005).

review the findings of the NLRC and LA as he failed to attach the decisions of these tribunals.

Thus, the Court can only but affirm the CA when it applied the rules strictly. The CA was correct when it only applied the Rules of Court. For the Court to find fault in this would not only render for naught the rules the Court had promulgated but would also undermine its authority over the lower courts and even demoralize them. As held in *Indoyon, Jr. v. Court of Appeals*:[26]

> We emphasize that an appeal is not a matter of right, but of sound judicial discretion. Thus, an appeal may be availed of only in the manner provided by law and the rules. Failure to follow procedural rules merits the dismissal of the case, especially when the rules themselves expressly say so, as in the instant case. While the Court, in certain cases, applies the policy of liberal construction, this policy may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not when the application of the policy results in the utter disregard of procedural rules, as in this case.
>
> We dread to think of what message may be sent to the lower courts if the highest Court of the land finds fault with them for properly applying the rules. That action will surely demoralize them. More seriously, by rendering for naught the rules that this Court itself has set, it would be undermining its own authority over the lower courts.[27] (Citations omitted)

WHEREFORE, premises considered, the petition is **DENIED**. The assailed twin Resolutions of the Court of Appeals in CA-G.R. SP No. 136124 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

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[26] 706 Phil. 200 (2013).

[27] *Id*. at 212.

FIRST DIVISION

[G.R. No. 221439. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RASHID BINASING *y* DISALUNGAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165, AS AMENDED); SECTION 21, ARTICLE II THEREOF; MANDATORY REQUIREMENTS IN THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, AND/OR SURRENDERED DANGEROUS DRUGS; FAILURE TO STRICTLY COMPLY WITH THE RULE DOES NOT *IPSO FACTO* INVALIDATE OR RENDER VOID THE SEIZURE AND CUSTODY OVER THE ITEMS AS LONG AS THE PROSECUTION IS ABLE TO SHOW THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— x x x [Section 21, Article II of RA 9165, as amended by RA 10640] clearly requires the apprehending team to mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel and the insulating witnesses, namely, any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence. Failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had

nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist."

2. ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO OFFER ANY JUSTIFIABLE EXPLANATION FOR ITS NON-COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF SECTION 21 OF RA 9165 CREATES REASONABLE DOUBT IN THE CONVICTION OF THE ACCUSED FOR VIOLATION OF SECTION 5, ARTICLE II OF RA 9165.— In this case, the marking and physical inventory, as well as the taking of the photograph of the seized items were not done in the presence of the insulating witnesses. And since no explanation was offered to justify the non-compliance, the Court finds that the prosecution failed to show that the seized substance from the accused were the same substances offered in court. Thus, the integrity of the *corpus delicti* was not properly established. In addition, although the Seizure Receipt bore the signature of the accused his presence during the marking and the physical inventory of the seized item was likewise not established as the prosecution's witnesses failed to categorically state that the marking and the physical inventory were done in the presence of the accused or his representative or counsel. x x x. The Court has ruled that the failure of the prosecution to offer any justifiable explanation for its non-compliance with the mandatory requirements of Section 21 of RA 9165 creates reasonable doubt in the conviction of the accused for violation of Section 5, Article II of RA 9165.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IRRECONCILABLE INCONSISTENCIES ON MATERIAL FACTS DIMINISH, OR EVEN DESTROY, THE VERACITY OF THE TESTIMONIES OF THE WITNESSES.— As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies. In this case, a careful review of the transcript of stenographic notes reveals that the prosecution's witnesses gave conflicting testimonies on material facts.

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.*:

Non-compliance with the requirements of Section 21, Republic Act (RA) No. 9165[1] casts doubt on the integrity of the seized items and creates reasonable doubt on the guilt of the accused.[2]

This is an appeal filed by appellant Rashid Binasing *y* Disalungan from the June 30, 2015 Decision[3] of the Court of Appeals (CA) in CA-G.R CR-HC No. 01089-MIN, affirming the September 26, 2012 Judgment[4] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case No. 2010-1012, finding appellant guilty beyond reasonable doubt of violation of Section 5,[5] Article II of RA 9165.

The Factual Antecedents

Appellant was charged under the following Information:

That on or about September 28, 2010 at 2:15 in the afternoon x x x more or less, at Vamenta Subd., Barra, Opol, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver, and gave away to the poseur-buyer, during buy-bust operation, two

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[*] Acting Chairperson, Per Special Order No. 2562 dated June 20, 2018.

[1] Otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

[2] *People v. Jaafar,* G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33.

[3] *Rollo*, pp. 3-10; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Pablito A. Perez.

[4] CA, *rollo*, pp. 70-77; penned by Presiding Judge Arthur L. Abundiente.

[5] Illegal Sale of Dangerous Drugs.

(2) pieces of [heat]-sealed transparent plastic sachet containing 0.02 and 0.01 [gram] of Shabu — a dangerous drug after receipt of the marked money.

Contrary to Section 5 of Article II of RA. No. 9165.[6]

Version of the Prosecution

During the trial, the prosecution presented the testimonies of Police Senior Inspector (PSI) Charity Peralta Caceres (PSI Caceres), SPO3[7] Allan Payla (SPO3 Payla), SPO1 Roy Sabaldana (SPO1 Sabaldana), and Police Inspector Rogelio Labor (PI Labor).

The version of the prosecution as summarized by the CA is as follows:

On September 27, 2010, SPO3 Payla received a report from a civilian informant (CI) that a person [appellant] was selling shabu at Vamenta Subdivision, Barra, Opol, Misamis Oriental. SPO3 Payla relayed the information to his superior, PI Labor, who immediately instructed him to conduct surveillance. Thereafter, SPO3 Payla and the CI proceeded to the area. There, they were able to confirm that [appellant] was selling drugs in his house.

At about 1 o'clock in the afternoon of the following day, PI Labor, in coordination with the Philippine Drug Enforcement Agency (PDEA), formed a buy-bust team, composed of SPO3 Payla, SPO1 Sabaldana, PO3 Eva Española and the CI. They prepared four (4) 50-peso bills dusted with ultraviolet fluorescent powder as buy-bust money and then, on board two vehicles, the team proceeded to Vamenta Subdivision.

When the team arrived at the target area, SPO3 Payla gave the buy-bust money to the CI and instructed him to give a signal should the transaction be positive. The rest of the team remained inside the vehicles which were parked just about five (5) to six (6) meters from [appellant's] house. The CI alighted from the vehicle and headed towards the house. Upon reaching his destination, the CI waved at [appellant], then, the two had a conversation outside the house. Later, [appellant] went inside the house, came out again and delivered a transparent plastic sachet containing a white crystalline substance

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[6] Records, p. 3.

[7] Referred as SPO4 in the TSN dated September 21, 2011.

to the CI in exchange of the buy-bust money. Immediately after the transaction, the CI gave the pre-arranged signal. SPO3 Payla and SPO1 Sabaldana then came out of the vehicle and arrested [appellant]. The CI handed the plastic sachet to SPO3 Payla while SPO1 Sabaldana frisked [appellant] and found another transparent plastic sachet in his pocket. SPO1 Sabaldana recovered the buy-bust money and the other plastic sachet from [appellant] and turned over the same to SPO3 Payla.

At the police station, SPO3 Payla marked the sachet received from the CI as ASP-1, and the sachet received from SPO1 Sabaldana as ASP-2. Then, SPO3 Payla requested for the laboratory examination of the seized items and personally delivered the same to the PNP Crime Laboratory. An examination, conducted by Forensic Chemist Charity Caceres, tested the seized items positive for methamphetamine hydrochloride or *shabu*. Likewise, [appellant] tested positive for the presence of green ultraviolet fluorescent powder on the dorsal and palmar aspects of both his left and right hands.[8]

Version of the Appellant

Appellant, on the other hand, testified that while he was inside the house watching a movie with his wife and Ibrahim Sultan (Sultan), six men barged inside, identifying themselves as police officers.[9] They claimed that they were able to purchase *shabu* from him and conducted a search of the house but found nothing.[10] He and Sultan were then brought to the police station.[11] Sultan, however, was later released.[12] Appellant, on the other hand, was asked to give ₱100,000.00.[13] But since he did not have that amount of money, he was arrested and brought to the Crime Laboratory, where he was made to hold four pieces of ₱50.00 bills.[14] To corroborate his testimony, appellant presented Sultan as witness.

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[8] *Rollo*, pp. 5-6.

[9] *Id*. at 6.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

Ruling of the Regional Trial Court

On September 26, 2012, the RTC rendered a Judgment finding the appellant guilty of violating Section 5, Article II of RA 9165, the *fallo* of which reads:

> WHEREFORE, premises considered, this Court hereby finds the [appellant] RASHID BINASING y DISALUNGAN GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of One Million Pesos [₱1,000,000.00].
>
> Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that crime does not pay, and that the pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.
>
> SO ORDERED.[15]

Ruling of the Court of Appeals

Appellant appealed the case to the CA.

On June 30, 2015, the CA rendered the assailed Decision, denying the appeal and thus, affirming the Judgment *in toto*.

Hence, appellant filed the instant appeal.

The Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.

The Court's Ruling

In assailing his conviction, appellant puts in issue the failure of the apprehending team to comply with the procedural safeguards laid down in Section 21, Article II of RA 9165

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[15] CA *rollo*, pp. 76-77.

as well as the conflicting testimonies of the prosecution's witnesses.[16]

The appeal is meritorious.

The apprehending team failed to comply with Section 21, Article II of RA 9165.

Section 21, Article II of RA 9165, as amended by RA 10640,[17] reads:

> Section 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[16] *Id*. at 65-68.

[17] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved July 15, 2014.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results x x x shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, x x x does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

The said provision clearly requires the apprehending team to mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel and the insulating witnesses, namely, any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[18] Failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non- compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[19] However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist."[20]

In this case, the marking and physical inventory, as well as the taking of the photograph of the seized items were not done

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[18] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

[19] *People v. Geronimo*, G.R. No. 225500, September 11, 2017.

[20] *Id*.

in the presence of the insulating witnesses. And since no explanation was offered to justify the non-compliance, the Court finds that the prosecution failed to show that the seized substance from the accused were the same substances offered in court. Thus, the integrity of the *corpus delicti* was not properly established.

In addition, although the Seizure Receipt[21] bore the signature of the accused, his presence during the marking and the physical inventory of the seized items was likewise not established as the prosecution's witnesses failed to categorically state that the marking and the physical inventory were done in the presence of the accused or his representative or counsel. Pertinent portions of the testimony of SPO3 Payla read:

x x x x x x x x x

Q: So, after that, what happened next?
A: After taking these items and the accused, we immediately left the area Sir, because we were afraid considering that it is a Muslim area.

Q: After you left, where did you proceed?
A: We proceeded to our Office.

Q: And then at your office, what did you do?
A: I personally marked the items.

Q: What markings did you make?
A: 'ASP'

Q: I am showing to you certain items marked as ASP-1 and ASP-2, please tell us whether these are the same items that you marked?
A: Yes, Sir.

APP LLOREN: We manifest, Your Honor, that the witness is identifying Exhibit[s] A and B.

COURT:
(to the witness)

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[21] Records, p. 21.

Q: What does 'ASP' [mean]?
A: Allan S. Payla, Your Honor.

Q: When you say 'ASP-1', from whom did you get that?
A: From our civilian asset, Your Honor.

COURT:
(to APP Lloren)
Please proceed.

APP LLOREN:
(to the witness, continuing)

Q: I am showing you Exhibit B which you identified as ASP-2, where did you get this?
A: From Roy Sabaldana, Sir.

Q: Why is it that you are so sure that ASP-1 was the one given by the CI and ASP-2 was the one given by SPO1 Roy Sabaldana?
A: I am sure that these items marked as ASP-1 and ASP-2 were the items turned over to me because when I received them, I separately placed them in different pockets.

Q: After that, what happened?
A: I personally proceeded to the PNP Crime Lab for examination.

x x x x x x x x x

Q: Before you brought the accused to the PNP Crime Lab, at your office, did you make any inventory?
A: Yes, Sir.

Q: I am showing to you a certain Seizure Receipt, is this the same inventory that you are talking about?
A: Yes, Sir. This is my signature.

x x x x x x x x x

Q: Now, you mentioned, Mr. Witness, that you only marked the drugs in your office, is that correct?
A: Yes, Sir.

Q: And you also prepared the Seizure Receipt only at your office?
A: Yes, Sir.

Q: Why did you prepare it only at your office and not at the place where you arrested the accused?

A: We opted to prepare the inventory in our office because there were many people already surrounding us and we are not sure of our safety because this is a Muslim area.[22]

The Court has ruled that the failure of the prosecution to offer any justifiable explanation for its non-compliance with the mandatory requirements of Section 21 of RA 9165 creates reasonable doubt in the conviction of the accused for violation of Section 5, Article II of RA 9165.[23]

The prosecution's witnesses gave conflicting testimonies on material facts.

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses.[24] However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.[25]

In this case, a careful review of the transcript of stenographic notes reveals that the prosecution's witnesses gave conflicting testimonies on material facts.

First. As to the place where the physical inventory was done, SPO3 Payla, the one who prepared the Seizure Receipt, testified that he marked the seized items and conducted the physical inventory in their office, to wit:

Q: Now, you mentioned, Mr.Witness, that you only marked the drugs in your office, is that correct?
A: Yes, Sir.

Q: And you also prepared the Seizure Receipt only at your office?
A: Yes, Sir.[26]

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[22] TSN, September 21, 2011, pp. 11-19.

[23] *People v. Jaafar*, *supra* note 2 at 31-33.

[24] *People v. Hilet*, 450 Phil. 481, 490 (2003).

[25] *People v. Decillo*, 395 Phil. 812, 821 (2000).

[26] TSN, September 21, 2011, p. 18.

His testimony, however, contradicted the testimony of SPO1 Sabaldana, one of the apprehending officers who signed as a witness in the Seizure Receipt, because according to him, the physical inventory was done at the house of the suspect. Pertinent portions of his testimony read:

Q: After you gave the sachet to [S]PO3 Payla, what happened next?
A: We immediately [made] a Seizure Receipt and informed him that these two were recovered from him.

Q: Where did you make the Seizure Receipt?
A: At his residence, at the house of the suspect.

Q: Aside from making the Seizure Receipt, what else did you do at the house of the accused?
A: We [went] inside his house and we informed him that these two sachets were taken from him and then after that we brought him to the station.[27]

x x x x x x x x x

Q: You also did not make the Seizure Receipt in the scene of the crime?
A: We made, Sir.

Q: [Did] you [make] it [at] the scene of the crime?
A: Yes, Sir.

Q: In what particular part of the scene of the crime?
A: At his residence, Sir.

Q: You mean inside his residence?
A: Yes, Sir.[28]

Second As to the pre-arranged signal, the prosecution's witnesses gave different answers. SPO3 Payla testified that their pre-arranged signal was for the CA to remove his hat and nod his head.[29] SPO1 Sabaldana, however, testified that their pre-

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[27] TSN, November 23, 2011, pp. 10-11.

[28] *Id*. at 27.

[29] TSN, September 21, 2011, p. 8.

arranged signal was for the CI to raise his left hand.[30] Still, PI Labor testified that their agreement was for the CI to wave his hands twice.[31]

Considering the non-compliance of the apprehending team with the procedural safeguards laid down in Section 21, Article II of RA 9165 and considering further the conflicting testimonies of the prosecution's witnesses on material facts, the Court finds that the prosecution failed to prove its case. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed June 30, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01089-MIN, which affirmed the September 26, 2012 Judgment of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 2010-1012, is hereby **REVERSED and SET ASIDE**.

Accordingly, appellant Rashid Binasing *y* Disalungan is **ACQUITTED** based on reasonable doubt.

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

SO ORDERED.

Del Castillo (Acting Chairperson), Caguioa,[**] *Tijam*, and *Gesmundo,*[***] *JJ.*, concur.

Leonardo-de Castro, J., on official leave.

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[30] TSN, November 23, 2011, p. 7.

[31] TSN, January 25, 2012, pp. 11-12.

[**] Per January 17, 2018 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[***] Per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 221624. July 4, 2018]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **MA. MAGDALENA LOURDES LACSON-DE LEON, MA. ELIZABETH JOSEPHINE L. DE LEON, RAMON LUIS EUGENIO L. DE LEON, MA. TERESA CECILIA L. DE LEON, MA. BARBARA KATHLEEN L. DE LEON, MARY GRACE HELENE L. DE LEON, JOSE MARIA LEANDRO L. DE LEON, MA. MARGARETHE ROSE OLSON, and HILDEGARDE MARIE OLSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; MUST BE BASED ON THE SELLING PRICE OF SIMILAR LANDS IN THE VICINITY AT THE TIME OF TAKING; CASE AT BAR.— Section 4, Rule 67 of the Rules of Court reckons the determination of just compensation on either the date of taking or date of filing of the complaint, whichever is earlier, x x x [Here,] Based on the Narrative Report, the highest and best use of the Montinola Subdivision is residential, while that of Victorina Heights Subdivision and Green Acres Subdivision is residential and commercial. In other words, the three subdivisions are **not** similar lands in the vicinity of the property to be expropriated. Getting the average of their current selling prices to arrive at the just compensation for a purely residential property is bereft of basis. Considering that the land classification of the property to be expropriated is residential, then its fair market value must be pegged at the raw land value of the adjacent property of the same character. Hence, the Court fixes just compensation for the property at PhP600.00 per square meter, being the raw land value of Montinola Subdivision.

2. ID.; ID.; ID.; ID.; CONSEQUENTIAL DAMAGES ARE AWARDED IF AS A RESULT OF THE EXPROPRIATION, THE REMAINING PROPERTY OF THE OWNER SUFFERS FROM AN IMPAIRMENT OR DECREASE IN

VALUE; CASE AT BAR.— Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. In *NAPOCOR v. Marasigan,* the Court awarded consequential damages equivalent to 50% of the BIR zonal valuation of the property segregated by the electric transmission lines. x x x Here, while the area of the property subject of expropriation was 39,347 square meters, the parcel of land is part of a much bigger lot with a total area of 874,450 square meters. In their Narrative Report, the board of commissioners justified the award of consequential damages to respondents because of the insignificant consequential benefit, if at all, and the harm posed by the electric transmission lines. In the estimate of the commissioners, **about one-third of the total area was prejudiced,** but the determination of the actual consequential damages was left to a licensed geodetic engineer after the conduct of a survey. The trial court adopted the recommendation of the commissioners and gave credence to the submission of respondents that 310,908 square meters of their lot would be rendered useless by the construction of high-voltage electric transmission lines. x x x While the award of consequential damages is proper, the Court finds the amount of 10% of the fair market value of the segregated property without basis. Rather, the more reasonable computation is the one laid down in *NAPOCOR v. Marasigan,* which is 50% of the BIR zonal valuation of the affected property.

3. ID.; ID.; ID.; ID.; LEGAL INTEREST AT THE RATE OF 12% PER ANNUM SHALL BE IMPOSED ON THE UNPAID BALANCE OF THE JUST COMPENSATION AND AMOUNT OF CONSEQUENTIAL DAMAGES FROM THE DATE OF ACTUAL TAKING ON FEBRUARY 2, 2004 TO JUNE 30, 2013, AND 6% PER ANNUM HENCEFORTH UNTIL FULL PAYMENT.— In *Evergreen Manufacturing Corporation v. Republic,* the Court categorically declared that the delay in the payment of just compensation is a forbearance of money. Accordingly, the delay in payment is entitled to earn legal interest at the rate of 12% per annum from the time of actual taking up to 30 June 2013 and 6% per annum from 1 July 2013 until full payment, x x x Here, the Writ of Possession was issued on 12 December 2003, but petitioner only took actual possession of the property on 2 February 2004. Because the total amount of just compensation remains unpaid, legal interest

at the rate of 12% per annum shall accrue from 2 February 2004 to 30 June 2013. Further, pursuant to BSP Circular No. 799, the reduced legal interest of 6% per annum shall be the applicable rate from 1 July 2013 until full payment. The same rates shall also apply to the award of consequential damages.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Valencia Ciocon Dabao Valencia Dionela Pandan Rubica & Garcia Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on certiorari assails the Decision dated 12 November 2014[1] and Resolution dated 18 November 2015[2] in CA-G.R. CV No. 02423, raising the sole issue of just compensation in a special civil action for expropriation. The Court of Appeals affirmed with modification the Decision dated 15 October 2007[3] of the Regional Trial Court of Bacolod City, Branch 49 (trial court) and ordered National Power Corporation (NAPOCOR), the original plaintiff, to pay the following: (a) just compensation in the amount of Twenty-Eight Million Four Hundred Twenty-Eight Thousand Two Hundred Seven Pesos and Fifty Centavos (PhP28,428,207.50), at 12% per annum from 2 February 2004 until full payment is made; and (b) consequential damages in the amount of Twenty-Two Million Four Hundred Sixty-Three Thousand One Hundred Three Pesos (PhP22, 463,103.00).

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[1] *Rollo*, pp. 45-59. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

[2] *Id*. at 61-63.

[3] *Id*. at 116-127, 167-180.

The Antecedent Facts

On 28 February 2002, NAPOCOR filed with the trial court a complaint against Maria Teresa Lacson De Leon for the expropriation of a parcel of land measuring 39, 347 square meters located in Barangay Vista Alegre, Bacolod City. NAPOCOR wanted to acquire an easement of right-of-way over the property for the construction and maintenance of the Bacolod-Cadiz 138 KV SC/ST Transmission Line for the Negros IV-Panay IV Project. The property subject of expropriation forms part of a much bigger lot denominated as Lot No. 1074-B, covered by Transfer Certificate of Title No. T-428 and with a total area of 874,450 square meters.

Invoking failure to state a cause of action, Maria Teresa Lacson De Leon filed on 20 March 2002 a Motion to Dismiss, alleging that the registered owner of Lot No. 1074-B is not her, but her nine children (respondents). On 3 July 2002, the trial court issued an Order, directing NAPOCOR to amend its complaint by impleading the real parties-in-interest. On 17 July 2002, NAPOCOR filed a motion to admit, with the amended complaint attached. However, summons was successfully served upon Jose Ma. Leandro L. De Leon only as the whereabouts of the other respondents were unknown. On 16 August 2002, Jose Ma. Leandro L. De Leon filed an Answer. Meanwhile, the trial court caused the service of summons by publication to the remaining respondents. Upon motion by NAPOCOR, the trial court ordered on 15 October 2002 that Maria Teresa Lacson De Leon be dropped from being a party to the case.

On 4 December 2002, the eight respondents whose whereabouts were initially unknown, filed an Answer and Manifestation, alleging that they were adopting the responsive pleading filed by Jose Ma. Leandro L. De Leon. In their Answer, respondents argued that the Amended Complaint failed to establish public use for which expropriation was being sought. Further, respondents claimed that the expropriation was confiscatory because the property was valued as agricultural notwithstanding its classification as residential by both national and local governments. On 5 December 2002, the parties

submitted a Joint Manifestation, alleging their agreement to terminate the pre-trial conference and to adopt the issues raised in Civil Case No. 01-11482,[4] a similar case but involving an adjacent property. The parties also manifested that the same issues shall be submitted to the commissioners who were already appointed in Civil Case No. 01-11482.

On 12 December 2003, the trial court, upon motion by NAPOCOR, issued an Order directing the issuance of a Writ of Possession in favor of NAPOCOR upon proof that an amount equivalent to 100% of the value of the property based on the current zonal valuation by the Bureau of Internal Revenue (BIR) was deposited with the Land Bank of the Philippines in the name of respondents. On 2 February 2004, the delivery of possession of the property was made by the trial court sheriff.

The board of commissioners filed a Manifestation dated 7 October 2004[5] in both the case concerning respondents' property and Civil Case No. 01-11482. Attached was a Narrative Report[6] containing their findings based on their ocular inspection and research personally made on the two properties subject of expropriation, as well as comparable properties within the five-kilometer vicinity.[7] Citing Section 7(a) of the Implementing Rules and Regulations of Republic Act No. 8974,[8] the commissioners gave more credence to the Certification dated 27 July 1995 issued by the City Planning and Development Office classifying respondents' property as residential over the tax declarations classifying it as agricultural.[9] Further, the commissioners did not consider the zonal valuation by the BIR

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[4] Entitled *NAPOCOR v. Equitable-PCI Bank.*

[5] *Rollo,* p. 109.

[6] *Id*. at 110-115.

[7] *Id*. at 110.

[8] Entitled "An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Project and for Other Purposes," effective on 26 November 2000.

[9] *Rollo,* pp. 112-113.

and recommended instead PhP722.50 per square meter as the fair market value of the property based on the average raw land value of the following three subdivisions: (a) Montinola Subdivision, whose highest and best use is **residential,** and with a raw land value of PhP600.00 per square meter; (b) Victorina Heights Subdivision, whose highest and best use is **residential and commercial,** and with a raw land value of PhP890.00 per square meter; and (c) Green Acres Subdivision, whose highest and best use is **residential and commercial,** and with a raw land value of PhP677.50 per square meter.[10] On the consequential benefits and damages, the commissioners found that there was "very little or none at all of consequential benefits but rather more o[f] consequential damages to the owners"[11] due to the construction of high-tension transmission lines shunning prospective buyers for perceived radiation and electrocution risks.[12] The commissioners estimated that **about one-third of the total area was prejudiced,** but left the determination of the actual consequential damages to a licensed geodetic engineer.[13]

The Decision of the Trial Court

Adopting the findings of the board of commissioners, the trial court ordered NAPOCOR to pay respondents just compensation, consequential damages and attorney's fees. The dispositive portion of the Decision dated 15 October 2007 reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendants, namely x x x Ma. Magdalena Lourdes L. De Leon, Ma. Elizabeth Josephine L. De Leon, Ramon Luis Eugenio L. De Leon, Ma. Teresa Cecilia L. De Leon, Ma. Barbara Kathleen L. De Leon, Mary Grace Helen[e] L. De Leon, Jose Maria Leandro L. De Leon, Ma. Margarethe Rose Olson and Hildegarde Marie Olson and against plaintiff National Power Corporation (NAPOCOR), as follows:

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[10] *Id*. at 113.

[11] *Id.*

[12] *Id.*

[13] *Id.*

1. Ordering plaintiff to pay defendants afore-named the sum of Twenty Eight Million Four Hundred Twenty Eight Thousand Two Hundred Seven Pesos and 50/100 (₱28,428,207.50) representing the just compensation for the latter's property consisting of thirty nine thousand three hundred forty seven (39,347) square meters which is a portion of Lot No. 1074-B covered by Transfer Certificate of Title No. T-438;

2. Ordering plaintiff to pay defendants the sum of Twenty Two Million Four Hundred Sixty Three Thousand One Hundred Three [Pesos] (₱22,463,103.00) representing ten percent (10%) of the price difference or reduction of value of the fair market value of three hundred ten thousand nine hundred eight (310,908) square meters of the western portion of their property which is adversely affected by the presence of the plaintiff's posts and high tension transmission lines; [and]

3. Ordering the plaintiff to pay the defendants the sum of One Hundred Thousand Pesos (₱100,000.00) as attorney's fees.

SO ORDERED.[14]

On 26 November 2007, NAPOCOR filed a Notice of Appeal, and subsequently, a Record on Appeal, both of which were duly approved by the trial court. NAPOCOR raised just compensation as the sole issue before the Court of Appeals.

The Decision of the Court of Appeals

The Court of Appeals affirmed with modification the Decision dated 15 October 2007 of the trial court by deleting the award of attorney's fees and imposing an interest at the rate of 12% per annum on the award of just compensation from 2 February 2004 until full payment. The dispositive portion of the Decision dated 12 November 2014 reads:

WHEREFORE, the instant appeal is hereby DENIED.

Accordingly, the *Decision dated 15 October 2007* rendered by Branch 49, Regional Trial Court of Bacolod City in Civil Case No. 02-11651 is AFFIRMED subject to the following MODIFICATIONS:

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[14] *Id*. at 180.

(1) the award of attorney's fees is ORDERED deleted.

(2) NAPOCOR is ORDERED to pay defendants-appellees interest at the rate of twelve (12) percent per *annum,* on the amount of Twenty Eight Million Four Hundred Twenty Eight Thousand Two Hundred Seven Pesos and Fifty Centavos (₱28,428,207.50) representing the just compensation of the subject property, from 02 February 2004 until full payment is made.

SO ORDERED.[15]

NAPOCOR filed a Motion for Reconsideration. NAPOCOR, along with National Transmission Corporation (petitioner), then filed a Joint Motion for Substitution of Parties and of Counsel. In its Resolution dated 18 November 2015, the Court of Appeals denied the Motion for Reconsideration, and granted the Joint Motion of NAPOCOR and petitioner:

WHEREFORE, the *Motion for Reconsideration* filed by appellants is hereby DENIED and the *Joint Motion for the Substitution of Parties and of Counsel* filed by NAPOCOR and TRANSCO is GRANTED.

x x x x x x x x x

SO ORDERED.[16]

The Issues

The issues raised by the parties can be summed up as follows:

(1) Whether the determination of just compensation has factual basis;

(2) Whether the amount of consequential damages is justified; and

(3) Whether the imposition of interest at the rate of 12% per annum on the just compensation is proper.

The Ruling of this Court

The petition is partly meritorious.

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

[16] *Id*. at 63.

Preliminarily, and as a matter of procedure, only questions of law can be raised in a petition for review on certiorari under Rule 45.[17] Factual findings of the lower courts will generally *not* be disturbed.[18] An exception is when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken,[19] as in the present case. At the same time, while remanding the case for the reception of evidence would enable the trial court to clearly determine the amount of just compensation and consequential damages, doing so would only prejudice both the government and respondents. On the part of the government, the amount of interest would continue to accrue; on the part of respondents, the payment of just compensation would unnecessarily be delayed.[20] Thus, the Court finds that a finding of just compensation and consequential damages based on available records would be most beneficial to both parties.

Just compensation must be based on the selling price of similar lands in the vicinity at the time of taking.

Petitioner assails the amount of PhP722.50 per square meter as just compensation for three reasons. *First,* just compensation must be determined at the time of taking, which in turn, is reckoned at the time of filing of the complaint, having occurred earlier than the time of possession by the government. *Second,* the property to be expropriated is agricultural based on the tax declarations and actual use, notwithstanding its classification as residential by the local government. *Third,* the amount of PhP722.50 per square meter is not supported by evidence.

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[17] *Spouses Plaza v. Lustiva,* 728 Phil. 359 (2014), citing *Calanasan v. Spouses Dolorito,* 722 Phil. 1 (2013).

[18] *Id.*

[19] *Dadis v. Spouses De Guzman,* G.R. No. 206008, 7 June 2017, citing *Claudio v. Saraza,* G.R. No. 213286, 26 August 2015, 768 SCRA 356, 364-365.

[20] *Evergreen Manufacturing Corporation v. Republic of the Philippines,* G.R. No. 218628, 6 September 2017.

The Court agrees in part with petitioner.

Section 4, Rule 67 of the Rules of Court reckons the determination of just compensation on either the date of taking or date of filing of the complaint, whichever is earlier, thus:

> SECTION 4. *Order of Expropriation.* — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of **just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.** (Emphasis supplied)

Here, petitioner filed with the trial court the complaint on 28 February 2002, and was issued a writ of possession on 12 December 2003. Since the filing of the complaint came first, then just compensation must be determined as of that date, or 28 February 2002.

In this regard, when the board of commissioners made a valuation of the property, they filed with the trial court a Manifestation dated 7 October 2004, to which was attached a Narrative Report containing their recommendation and factual findings. According to the commissioners, their Narrative Report was based on "current ocular inspection, investigations and research personally made on subject properties."[21] While the Narrative Report was undated, the valuation of the property could safely be presumed to have been made by the commissioners no later than 7 October 2004, or **two years and seven months** after the filing of the complaint. Assuming that the valuation of the property was not made on the date of filing of the complaint, to the mind of the Court, no significant change in the fair market value could have happened between 28 February 2002 and 7 October 2004, or less than three years. Hence, the Court sees no reason to deviate from the

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[21] *Rollo,* p. 110.

recommendation and factual findings of the board of commissioners.

As regards the land classification of the property, both the Court of Appeals and the trial court correctly gave more credence to the Certification dated 27 July 1995 by the City Planning and Development Office and two city council resolutions over the tax declarations and actual use of the property. In *NAPOCOR v. Marasigan,*[22] the Court categorically clarified that while the determination of just compensation is a judicial function, the power to reclassify and convert lands remains with the local government:

> Here, NPC assails the valuation assigned to the subject properties for being contrary to its alleged classification as agricultural as appearing on the tax declarations attached to its expropriation complaint.
>
> However, the insistence of NPC to base the value of the properties solely on the tax declarations is misplaced considering that such is only one of the several factors which the court may consider to facilitate the determination of just compensation. Indeed, courts enjoy sufficient judicial discretion to determine the classification of lands, because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings. It bears to emphasize, however, that the court's discretion in classifying the expropriated land is only for the purpose of determining just compensation and is not meant to substitute that of the local government's power to reclassify and convert lands through local ordinance.
>
> The subject properties in this case had been reclassified as residential, commercial and industrial several years before the expropriation complaint was filed. If NPC contests the reclassification of the subject properties, the expropriation case is not the proper venue to do so. As such, the RTC and the CA did not err in abiding by the classification of the subject properties as residential, commercial and industrial as reclassified under Sangguniang Bayan Resolution No. 17 and Municipal Ordinance No.7 dated February 1, 1993 and as certified to by the Municipal Assessor of Pili, Camarines Sur.

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[22] G.R. No. 220367, 20 November 2017.

Here, the trial court based its ruling on the following documentary evidence adduced by respondents to prove the classification of the property as residential: (a) the Certification dated 27 July 1995 by Salvador S. Malibong, Bacolod City Zoning Administrator certifying that the property was classified as residential under the updated Land Use Plan (Exhibit "2"); (b) Resolution No. 373 promulgated by the city council on 3 September 1992 approving the Updated Land Use Plan (Exhibit "3"); and (c) Resolution No. 5153-A, series of 1976, promulgated by the city council approving the 1976 Framework Plan. Hence, both the Court of Appeals and the trial court justifiably adopted the recommendation of the commissioners in treating respondents' property as residential.

As for the amount of just compensation fixed at PhP722.50 per square meter, the Court agrees with petitioner that the rate is not supported by evidence. While the use of the current selling price of **similar** lands in the vicinity finds basis in Section 5(d) of RA 8974, the commissioners erred when they computed for the average of three nearby subdivisions to determine just compensation. Based on the Narrative Report, the highest and best use of the Montinola Subdivision is residential, while that of Victorina Heights Subdivision and Green Acres Subdivision is residential and commercial. In other words, the three subdivisions are **not** similar lands in the vicinity of the property to be expropriated. Getting the average of their current selling prices to arrive at the just compensation for a purely residential property is bereft of basis. Considering that the land classification of the property to be expropriated is residential, then its fair market value must be pegged at the raw land value of the adjacent property of the same character. Hence, the Court fixes just compensation for the property at PhP600.00 per square meter, being the raw land value of Montinola Subdivision.

The award of consequential damages is limited to 50% of the BIR zonal valuation of the property segregated by the electric transmission lines.

Petitioner assails the award of consequential damages for being speculative. On the other hand, respondents maintain that the award is justified because of the reduction in the value of the land owing to the electric transmission lines traversing the middle of the lot, which the property subject of expropriation forms part of.

The Court agrees in part with petitioner.

Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value.[23] In *NAPOCOR v. Marasigan,*[24] the Court awarded consequential damages equivalent to 50% of the BIR zonal valuation of the property segregated by the electric transmission lines, thus:

> Thus, if as a result of expropriation, the remaining portion of the property suffers from impairment or decrease in value, the award of consequential damages is proper.
>
> Respondents in this case claim consequential damages for the areas in between the transmission lines which were rendered unfit for use. "Dangling" areas, as defined under National Power Board Resolution No. 94-313, refer to those remaining small portions of the land not traversed by the transmission line project but which are nevertheless rendered useless in view of the presence of the transmission lines. The appraisal committee determined the total dangling area to be 41,867 square meters and consequently recommended the payment of consequential damages equivalent to **50% of the BIR zonal value per square meter** or for a total amount of PhP22,227,800.
>
> In arriving at its recommendation to pay consequential damages, the appraisal committee conducted an ocular inspection of the properties and observed that the areas before and behind the transmission lines could no longer be used either for commercial or residential purposes. Despite this determination, NPC insists that the affected areas cannot be considered as "dangling" as these may still be used for agricultural purposes. In so arguing, NPC loses sight of the undisputed fact that the transmission lines conveying high-

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[23] *Republic v. Court of Appeals,* 612 Phil. 965, 980-981 (2009).

[24] *Supra* note 22.

tension current posed danger to the lives and limbs of respondents and to potential farm workers, making the affected areas no longer suitable even for agricultural production. Thus, the Court finds no reason to depart from the assessment of the appraisal committee, as affirmed and adopted by the RTC.

NPC's contention that the consequential benefits should have canceled the consequential damages likewise deserve[s] no merit. It is true that if the expropriation resulted in benefits to the remaining lot, such consequential benefits may be deducted from the consequential damages or from the value of the expropriated property. However, such consequential benefits refer to the actual benefits derived by the landowner which are the direct and proximate results of the improvements as a consequence of the expropriation and not to the general benefits which the landowner may receive in common with the community. Here, it was not shown by NPC how the alleged "tremendous increase" in the value of the remaining portions of the properties could have been directly caused by the construction of the transmission lines. If at all, any appreciation in the value of the properties is caused by the consequent increase in land value over time and not by the mere presence of the transmission lines. (Emphasis supplied)

Here, while the area of the property subject of expropriation was 39,347 square meters, the parcel of land is part of a much bigger lot with a total area of 874,450 square meters. In their Narrative Report, the board of commissioners justified the award of consequential damages to respondents because of the insignificant consequential benefit, if at all, and the harm posed by the electric transmission lines. In the estimate of the commissioners, **about one-third of the total area was prejudiced,** but the determination of the actual consequential damages was left to a licensed geodetic engineer after the conduct of a survey.

The trial court adopted the recommendation of the commissioners and gave credence to the submission of respondents that 310,908 square meters of their lot would be rendered useless by the construction of high-voltage electric transmission lines. Hence, the trial court awarded consequential damages in the amount of Twenty-Two Million Four Hundred Sixty-Three Thousand One Hundred Three Pesos (PhP22,463,103.00), representing 10% of the fair market value

of the 310,908-square meter segregated area. The Decision dated 15 October 2007 reads in pertinent part:

> Defendants argue that under the Sketch Plan (Exh. "7") submitted by plaintiff showing the property in question and Exh. "7-a" indicating the actual layout of their tower and transmission lines as shown by the green line, the area below the transmission lines to the west thereof with an area of 310,908 sq. m. had adversely affected the market value of the land situated as potential buyers of defendants' property subdivision would shy away from building their houses in the proximity of such high voltage transmission lines. x x x.
>
> x x x x x x x x x
>
> The Court is not inclined to grant the claim of the defendants in the astronomical amount of ₱224,631,030.00 as consequential damages because it would practically [amount] to compelling plaintiff to buy the additional western portion of the defendants' property with an area of 310,908 [square meters] which is not needed in plaintiff's project. However, in [the] exercise of sound discretion, the Court shares defendants' thesis that the existence of the plaintiff's posts and high tension transmission lines which traversed defendants' property almost in the middle would impair its price or value to some extent more specifically that of the western portion thereof. If at all, the Court's conservative assessment of the price difference or reduction of value of the portion of defendants' property that is adversely affected by the presence of plaintiff's posts and high tension transmission wires would not be more than ten percent (10%), that is to say, based on the price or fair market value fixed by the Board of Commissioners which ₱772.00 [sic] per square meter, the award of Twenty Two Million Four Hundred Sixty Three Thousand One Hundred Three (₱22,463,103.00) Pesos, as consequential damages is considered just, fair and reasonable.[25]

While the award of consequential damages is proper, the Court finds the amount of 10% of the fair market value of the segregated property without basis. Rather, the more reasonable computation is the one laid down in *NAPOCOR v. Marasigan*,[26] which is 50% of the BIR zonal valuation of the affected property.

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[25] *Rollo,* pp. 179-180.

[26] *Supra* note 22.

To recall, when the trial court granted petitioner's motion for the issuance of a writ of possession, petitioner deposited an amount equivalent to 100% of the value of the property based on the BIR zonal valuation pegged at PhP17.50 per square meter.[27] Hence, the amount of consequential damages is limited to 50% of the value of the 310,908-square meter property at PhP17.50 per square meter, or Two Million Seven Hundred Twenty Thousand Four Hundred Forty-Five Pesos (PhP2,720,445.00).

Legal interest at the rate of 12% per annum shall be imposed on the unpaid balance of the just compensation and amount of consequential damages from the date of actual taking on 2 February 2004 to 30 June 2013, and 6% per annum henceforth until full payment.

As regards the imposable interest, petitioner invokes Circular No. 799, series of 2013 issued by the Bangko Sentral ng Pilipinas (BSP), reducing the rate of interest to 6% per annum for the forbearance of money. Respondents argue otherwise and claim that the legal interest of 12% per annum is the prevailing rate because the complaint was filed prior to the effectivity of BSP Circular No. 799.

Petitioner is correct.

In *Evergreen Manufacturing Corporation v. Republic,*[28] the Court categorically declared that the delay in the payment of just compensation is a forbearance of money. Accordingly, the delay in payment is entitled to earn legal interest at the rate of 12% per annum from the time of actual taking up to 30 June 2013 and 6% per annum from 1 July 2013 until full payment, thus:

x x x. The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The

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[27] *Rollo*, pp.15, 186.

[28] *Supra* note 20.

difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. In *Republic v. Mupas,* we stated clearly:

x x x x x x x x x

With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals,* and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.

In the present case, Republic-DPWH filed the expropriation complaint on 22 March 2004. As this preceded the actual taking of the property, the just compensation shall be appraised as of this date. No interest shall accrue as the government did not take possession of the Subject Premises. Republic-DPWH was able to take possession of the property on 21 April 2006 upon the agreement of the parties. Thus, a legal interest of 12% per annum on the difference between the final amount adjudged by the Court and the initial payment made shall accrue from 21 April 2006 until 30 June 2013. From 1 July 2013 until the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

Here, the Writ of Possession was issued on 12 December 2003, but petitioner only took actual possession of the property on 2 February 2004. Because the total amount of just compensation remains unpaid, legal interest at the rate of 12% per annum shall accrue from 2 February 2004 to 30 June 2013. Further, pursuant to BSP Circular No. 799, the reduced legal interest of 6% per annum shall be the applicable rate from 1 July 2013 until full payment.

The same rates shall also apply to the award of consequential damages. In *NAPOCOR v. Marasigan*[29] the Court thus explained:

> However, interest should be imposed on the award of consequential damages as it is a component of just compensation. x x x. Here, when the RTC pegged the amount of PhP47,064,400 for the expropriated 49,173 square meters, the consequential damages was not yet included. The total just compensation should therefore be the total of PhP47,064,400 and PhP22,227,800. Considering that the amount of PhP22,227,800 as consequential damages was not yet paid, such amount should earn interest at the rate of 12% per annum from January 23, 2006 until June 30, 2013 and the interest rate of 6% per annum is imposed from July 1, 2013 until fully paid.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated 12 November 2014 of the Court of Appeals in CA-G.R. CV No. 02423 is **AFFIRMED** with **MODIFICATIONS** and petitioner is directed to pay respondents the following amounts:

(1) The sum of Twenty-Three Million Six Hundred Eight Thousand Two Hundred Pesos (PhP23,608,200.00), representing just compensation for the 39,347-square meter property at PhP600.00 per square meter;

(2) The sum of Two Million Seven Hundred Twenty Thousand Four Hundred Forty-Five Pesos (PhP2,720,445.00), representing consequential damages equivalent to 50% of the BIR zonal valuation of the 310,908-square meter segregated area at PhP17.50 per square meter;

(3) Legal interest at the rate of 12% per annum from the date of taking or 2 February 2004 to 30 June 2013 on the difference between the final amount of just compensation and the initial deposit made by petitioner. From 1 July 2013 until the finality of this Decision, the difference shall earn legal interest at the rate of 6% per annum. Further, the total amount of just compensation

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[29] *Supra* note 22.

shall earn legal interest at the rate of 6% per annum from the finality of this Decision until full payment; and

(4) The award of consequential damages shall earn interest at the rate of 12% per annum from 2 February 2004 until 30 June 2013 and the interest rate of 6% per annum is imposed from 1 July 2013 until fully paid.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 223553. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO BAGUION a.k.a. "ROGEL,"** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; ESTABLISHED.— Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. As to the first element, AAA' s age at the time of the commission of the offense is uncontroverted. Her

birth certificate, which was duly presented and offered in evidence, shows that she was born on 17 January 1999, thus, she was only 10 years and 8 months old at the time she was raped. As regards the second and third elements, AAA positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incidence of rape.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE LONE, UNCORROBORATED TESTIMONY OF THE VICTIM, IS SUFFICIENT FOR A CONVICTION, WHERE SUCH TESTIMONY IS CLEAR, CONVINCING, AND OTHERWISE CONSISTENT WITH HUMAN NATURE.—** AAA' s testimony is sufficient to convict accused-appellant of statutory rape. The nature of the crime of rape often entails reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature. Questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied the appellate courts. The rule is even more stringently applied if the appellate court has concurred with the trial court.

3. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; CARNAL KNOWLEDGE DOES NOT REQUIRE FULL PENILE PENETRATION OF THE FEMALE, AS THE MERE TOUCHING OF THE EXTERNAL GENITALIA BY A PENIS CAPABLE OF CONSUMMATING THE SEXUAL ACT IS SUFFICIENT TO CONSTITUTE CARNAL KNOWLEDGE.—** During her examination of AAA, Dr. Cam found redness on the victim's labia majora. Dr. Cam opined that such injury was possibly caused by consistent rubbing through sexual abuse. Although such medical finding, left alone, was susceptible of different interpretations, AAA's testimonial narration about how accused-appellant had sexually assaulted her, including how his penis had only slightly penetrated her vagina, confirmed that he had carnal knowledge of her. In *People v. Teodoro*, the Court explained: In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. The Court has clarified in People *v*. Campuhan that the mere touching of the external

genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. x x x. In the case at bar, there is no dispute that there was no full penile penetration of the victim's vagina as narrated by AAA herself. However, it is also undisputed that accused-appellant's erect penis touched the victim's labia majora as corroborated by the medical findings. Thus, the Court finds no reason to reverse the conviction of accused-appellant of statutory rape.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; DENIAL IS AN INTRINSICALLY WEAK DEFENSE WHICH MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY, WHILE 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; ELEMENTS OF ALIBI TO PROSPER, NOT ESTABLISHED. — It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility." Alibi, on the other hand, 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, it is imperative that the accused establishes two elements: (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." Accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was at his house, suffering from arthritis. This testimony is uncorroborated. Hence, in contrast to AAA's direct, positive, and categorical testimony, accused-appellant's defense will not stand.

5. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PROOF OF FORCE, INTIMIDATION OR CONSENT IS UNNECESSARY, AS WHAT THE LAW

PUNISHES IN STATUTORY RAPE IS CARNAL KNOWLEDGE OF A WOMAN BELOW TWELVE YEARS OLD.— Accused-appellant's insistence that AAA's lack of resistance negates the commission of rape is nothing but a futile and desperate attempt to reverse his conviction. In addition, no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape. Even the lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. It is worth emphasizing that in statutory rape, proof of force, intimidation or consent is unnecessary. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — The Court finds that pursuant to *People v. Jugueta*, the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. In addition, all the damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for defendant-appellant.

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the Decision,[1] dated 29 October 2015, of the Court of Appeals in CA-G.R. CR.-H.C. No. 01840 which affirmed with modification the Decision,[2] dated 28 March 2014,

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Renato C. Francisco with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring.

[2] CA *rollo*, pp. 25-34; penned by Presiding Judge James Clinton R. C. Nuevo.

of the Regional Trial Court, Branch 12, [XXX][3] (*RTC*), in Criminal Case No. R-ORM-10-00085-HC, finding Rogelio Baguion a.k.a. Rogel (*accused-appellant*) guilty of Statutory Rape.

THE FACTS

In an Information, dated 11 May 2010, accused-appellant was charged with statutory rape. The information reads:

> That on or about the 8th day of October 2009, at around 11:50 in the morning at [XXX], and within the jurisdiction of this Honorable Court, the above-named accused: ROGELIO BAGUION @ "Rogel," armed with a "MACHETE," by means of force, threat and intimidation, with lewd design and taking advantage of the innocence and minority of the complainant, did then and there wilfully, unlawfully, and feloniously had carnal knowledge of said victim "AAA,"[4] 10 years of age, without her consent, against her will, and to the prejudice of her development and well-being as a child.
>
> In violation of Article 266-A, RPC as amended by RA 8353.[5]

Accused-appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the victim AAA, her mother BBB, and Dr. Amelia C. Cam (*Dr. Cam*) as witnesses. Their combined testimony tended to establish the following:

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[3] The city where the crime was committed is blotted to protect the identity of the rape victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

[4] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (*Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*); R.A. No. 8505 (*Rape Victim Assistance and Protection Act of 1998*); R.A. No. 9208 (*Anti-Trafficking in Persons Act of 2003*); R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*).

[5] Records, p. 2.

At 11:50 a.m., on 8 October 2009, and while she was home alone and fast asleep, AAA was awakened by accused-appellant, who was a neighbor and whom she called "Tiyo Roel." With a machete in his hand, accused-appellant threatened AAA not to do anything, otherwise, he would kill her and her nephew. He then held AAA and forced her to go with him to his house, which was eight (8) meters away from AAA's.[6]

At his house, accused-appellant undressed himself and AAA and thereafter he performed the push-and-pull motion on her, but his erect penis failed to fully penetrate AAA's genitalia. Despite the lack of full penetration, AAA still felt severe pain.[7]

Accused-appellant then closed down his house and went out to gather *tuba*. AAA, whom accused-appellant left behind, found a hole at the *bangera* or wash area, through which she went out and returned home. AAA did not immediately report the incident to her mother out of fear that accused-appellant would kill her and her nephew.[8]

On 14 October 2009, Francisco Cabusas (*Cabusas*) and accused-appellant were drinking at AAA's house. Sometime during the drinking session, the two fought and they accused one another of molesting AAA. BBB, mother of AAA, then asked the latter who molested her. AAA, who was already crying at that time, told BBB that it was accused-appellant who threatened her with a machete and forcibly brought her to his house where she was raped.[9]

The following morning, on 15 October 2009, AAA and BBB went to the Department of Social Welfare and Development (*DSWD*), and proceeded to report the incident likewise to the police authorities.[10] On the same day, AAA was subjected to

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[6] TSN, 25 April 2011, pp. 5-6, 10.

[7] *Id*. at 7-9.

[8] *Id*. at 7-8, 10.

[9] TSN, 29 April 2011, pp. 5-6.

[10] *Id*. at 6-7.

physical examination by Dr. Cam who testified later: that there was redness in the perihymenal area, i.e., surrounding the hymen; that there was no laceration or injury noted at the time of the examination; that the redness in said area of the vagina was not normal but it may disappear in three (3) days; that there was a possibility that the redness was caused by consistent rubbing, sexual abuse or application of external force; and that it was possible that even if the incident occurred on 8 October 2009, the redness would have still persisted up to 15 October 2009, the date of AAA's examination.[11]

Version of the Defense

Accused-appellant denied the allegations against him, saying on 8 October 2009, he stayed at home as he was ill due to his arthritis. On 13 October 2009, he went to a nearby store to buy milk. On his way, he saw AAA being cradled by Cabusas. When he admonished the latter for embracing the child, Cabusas got angry and threatened him that a case would be filed against him. The following day, BBB called him up and told him that a case for rape would be filed against him.[12]

The RTC Ruling

In its decision, the RTC found accused-appellant guilty of statutory rape. It ruled that AAA was credible as she positively identified accused-appellant as the one who raped her. The RTC added that even if there was no rupture of the hymen, this did not negate the commission of the crime of rape; for it is already a well-settled rule that full penile penetration is not an element in the crime of rape. The *fallo* reads:

> WHEREFORE, accused ROGELIO BAGUION @ "Rogel" is found guilty beyond reasonable doubt of Statutory Rape as penalized under the Revised Penal Code as amended by R.A. 8353 and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the victim AAA fifty thousand pesos (₱50,000.00) as moral

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[11] TSN, 28 March 2011, pp. 5-10.

[12] TSN, 21 February 2012, pp. 5-18.

damages, and twenty-five thousand pesos (₱25,000.00) as exemplary damages, and to pay the costs.

SO ORDERED.[13]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It held that where the victim was threatened with bodily injury, as when the rapist was armed with a deadly weapon, such constituted intimidation sufficient to bring the victim to submission to the lustful desires of the rapist. The CA opined that although the victim testified that accused-appellant's erect penis did not penetrate her vagina, the prosecution was able to establish that his penis touched the labia of the victim. It noted that AAA felt pain because the penis of accused- appellant touched her vagina while the former was performing push-and-pull movements; and that AAA's testimony was corroborated by Dr. Cam when she testified that the victim suffered redness in the area of her labia minora. The appellate court declared that rape is consummated by the slightest penile penetration of the labia; thus, it concluded that accused-appellant committed statutory rape against the victim who was 10 years old at the time of the incident. The CA disposed of the case in this wise:

WHEREFORE, the appeal is hereby DENIED. The Regional Trial Court's Judgment finding accused-appellant ROGELIO BAGUION @ "ROGEL" guilty beyond reasonable doubt of statutory rape is AFFIRMED with MODIFICATION. Accused-appellant is sentenced to reclusion perpetua and ordered to pay AAA the sums of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, with an interest of 6% per annum from the finality of this decision until its full satisfaction.

SO ORDERED.[14]

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[13] CA *rollo*, p. 34.

[14] *Rollo*, p. 14.

ISSUE

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, *viz*:

THE COURT A QUO ERRED IN PRONOUNCING THE GUILT OF ROGELIO BAGUION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[15]

Accused-appellant asserts that he could not have abducted AAA because his house was surrounded by the houses of AAA's relatives; that if indeed a sexual intercourse occurred, AAA could have yelled for help even while the aggressor was still making his advances; and that her relatives would surely have noticed when she was being forcibly brought out from her house.[16]

THE COURT'S RULING

The appeal is bereft of merit.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[17]

As to the first element, AAA's age at the time of the commission of the offense is uncontroverted. Her birth certificate, which was duly presented and offered in evidence, shows that

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[15] CA *rollo*, p. 18.

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

[17] *People v. Garcia*, 695 Phil. 576, 587 (2012).

she was born on 17 January 1999,[18] thus, she was only 10 years and 8 months old at the time she was raped.

As regards the second and third elements, AAA positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incidence of rape as follows:

[Prosecutor Encina]: Do you remember AAA if anything happened to you on October 8, 2009?

[AAA]: Yes, [sir]. I can remember.

Q: On this date October 8, 2009 at around 11:50 in the morning, where were you?
A: I was at home asleep, Ma'am.

Q: Who was with you at that time?
A: I was alone, Ma'am.

x x x x x x x x x

Q: When you said you fall asleep AAA, what happened next?
A: Somebody awaken me, Ma'am.

Q: What did somebody do to wake you up?
A: I heard a voice saying "hoy" 3x and when I woke up I saw a person named "Tiyo Roel," Ma'am.

Q: Who is this "Tiyo Roel" you are referring to?
A: Our neighbor, Ma'am.

Q: Is he the same as the accused in this case Rogelio Baguion?
A: Yes, Ma'am. He is the one.

Q: Have you known this Rogelio Baguion for a long time AAA?
A: Yes, Ma'am.

Q: When you said you saw him when you opened your eyes, what was he doing?
A: He told me should I tell anybody what will happen next he will kill me and my nephew, Ma'am.

Q: What was he carrying at that time while he was telling you that?
A: A machete, Ma'am.

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[18] Records, p. 11.

Q: After saying "don't do anything," what else did he do?
A: He forced me, Ma'am, to go with him to his residence?

Q: How far is his residence from your house?
A: To the front walling of this Court which distance is estimated to 8 meters, more or less, Ma'am.

Q: Did you resist at that time AAA?
A: I resisted, Ma'am.

Q: At that time while he was forcing you to go with him to his house he was holding his machete?
A: Not anymore, Ma'am. He put it down.

Q: Was he holding you?
A: Yes, Ma'am.

Q: Were you able to reach his house AAA?
A: Yes, Ma'am.

Q: What did he say when you reached his house?
A: He undressed me, Ma'am.

Q: How about himself, did he also undress himself?
A: Yes, Ma'am.

Q: After he undressed himself and he undressed you, what did he do?
A: "Iya gi saghid-saghid ang iya oten sa ako bisong ug naa mi gawas na puti sa iya oten" which means that he rubbed his penis on my vagina and a little while he ejaculated a white substance, Ma'am.

Q: When he made "saghid-saghid" movement AAA was his penis erected?
A: Yes, Ma'am. It was.

Q: You also said that he ejaculated a white substance, what happened next?
A: He closed the whole house and thereafter he went out and gathered "tuba," Ma'am.

Q: How about you where were you?
A: He left me behind and I found a little hole at a "bangera" where I egret [sic] and proceeded to my residence, Ma'am.

Q: Did he threaten you again after he ejaculated?
A: No, Ma'am. Not anymore.

[Court]: Ms. Witness, you said that the accused penis was erected, did that penis touch your vagina?

A: Yes, your Honor.

Q: In what manner did the accused let his penis touch your vagina?
A: "Sakyod-sakyod" meaning he was then performing a push and pull motion, your Honor.

Q: When you say "saghid-saghid" is that the same thing as "sakyod-sakyod?"
A: Yes, your Honor.

Q: What do you mean by or the meaning of "saghid-saghid," is that similar by touching your vagina by that penis without getting inside your vagina or when you say "sakyod-sakyod" which means push and pull motion, is that penis really penetrates to your vagina?
A: His erected penis only touches my vagina but it did not penetrate, your Honor. x x x[19]

AAA' s testimony is sufficient to convict accused-appellant of statutory rape. The nature of the crime of rape often entails reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature.[20] Questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied the appellate courts. The rule is even more stringently applied if the appellate court has concurred with the trial court.[21]

During her examination of AAA, Dr. Cam found redness on the victim's labia majora. Dr. Cam opined that such injury was possibly caused by consistent rubbing through sexual abuse.[22]

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[19] TSN, 25 April 2011, pp. 5-8.

[20] *People v. Olimba*, 645 Phil. 468, 480 (2010).

[21] *People v. Barcela*, 734 Phil. 332, 342-343 (2014).

[22] TSN, 28 March 2011, pp. 5-6.

Although such medical finding, left alone, was susceptible of different interpretations, AAA's testimonial narration about how accused-appellant had sexually assaulted her, including how his penis had only slightly penetrated her vagina, confirmed that he had carnal knowledge of her.

In *People v. Teodoro*,[23] the Court explained:

> In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. The Court has clarified in People v. Campuhan that the mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. As the Court has explained in People v. Bali-balita, the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, but rather the erect penis touching the labias or sliding into the female genitalia. Accordingly, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape proceeds from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the labias must be sufficiently and convincingly established.[24]

In the case at bar, there is no dispute that there was no full penile penetration of the victim's vagina as narrated by AAA herself. However, it is also undisputed that accused-appellant's erect penis touched the victim's labia majora as corroborated by the medical findings. Thus, the Court finds no reason to reverse the conviction of accused-appellant of statutory rape.

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[23] 704 Phil. 335 (2013).

[24] *Id*. at 352-353.

Accused-appellant's defense of denial and alibi are inherently weak.

It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility."[25] Alibi, on the other hand, 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, it is imperative that the accused establishes two elements: (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."[26]

Accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was at his house, suffering from arthritis. This testimony is uncorroborated. Hence, in contrast to AAA's direct, positive, and categorical testimony, accused-appellant's defense will not stand.

Accused-appellant's insistence that AAA's lack of resistance negates the commission of rape is nothing but a futile and desperate attempt to reverse his conviction. In addition, no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape. Even the lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused.[27] It is worth emphasizing that in statutory rape, proof of force, intimidation or consent is unnecessary. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old.[28]

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[25] *People v. Deliola*, 794 Phil. 194, 209 (2016).

[26] *Id*.

[27] *People v. Pareja*, 724 Phil. 759, 778 (2014).

[28] *People v. Arpon*, 678 Phil. 752, 772 (2011).

As regards the contention that AAA's house is surrounded by the houses of her relatives, as such, they could have seen accused-appellant bringing AAA to his house, it is pure speculation. AAA's relatives may not have been at home at that time or they could have been inside having their lunch considering that the incident occurred around noontime.

Based on the foregoing, it is clear that all the elements of statutory rape have been proven in the instant case. The conviction of accused-appellant must be upheld.

Pecuniary liability

The Court finds that pursuant to *People v. Jugueta*,[29] the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. In addition, all the damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The 29 October 2015 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01840 is **AFFIRMED WITH MODIFICATION** as to the amount of damages. Accused-appellant Rogelio Baguion is **GUILTY BEYOND REASONABLE DOUBT of STATUTORY RAPE** and is hereby sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole**. Accused-appellant is ordered to pay AAA the following amounts: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen*, and *Gesmundo, JJ.*, concur.

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[29] 783 Phil. 806 (2016).

THIRD DIVISION

[G.R. No. 224588. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODEL BELMONTE *y* SAA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTION; IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED IS PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED; THE PROSECUTION BEARS THE BURDEN TO OVERCOME SUCH PRESUMPTION; OTHERWISE, THE ACCUSED DESERVES A JUDGMENT OF ACQUITTAL.—** Basic in all criminal prosecutions is the presumption that the accused is innocent until the contrary is proved. Thus, the well-established jurisprudence is that the prosecution bears the burden to overcome such presumption; otherwise, the accused deserves a judgment of acquittal. Concomitant thereto, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense. Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. To stress, "(W)hile not impelling such a degree of proof impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience."

2. **ID.; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW AND, THUS, IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.—** The Court is aware that the teaching well-established in our jurisprudence is that unless some facts or circumstances of weight

and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. It is noteworthy, however, that this teaching admits of jurisprudentially recognized exceptions considering that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. It is pursuant to this Court's full jurisdiction that it scrupulously reviewed the records of these appealed cases and arrived at the conclusion that it cannot agree with the findings of the RTC and the CA.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In Crim. Case No. 2010-713, the accused-appellant was charged and convicted with violation of Sec. 11, Art. II of R.A. No. 9165, the elements of which are as follows: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. In Crim. Case No. 2010-714, in which the accused-appellant was convicted for violation of Sec. 5, Art. II of R.A. No. 9165, both the RTC and the CA found that the elements of the crime had been established, viz: (a) the identity of the buyer and the seller, the object of the sale and its consideration; and (b) the delivery of the thing sold and the payment therefor.

4. ID.; ID.; ID.; IN ALL PROSECUTIONS FOR VIOLATIONS OF R.A. NO. 9165, THE *CORPUS DELICTI* IS THE DANGEROUS DRUG ITSELF, THE EXISTENCE OF WHICH IS ESSENTIAL TO A JUDGMENT OF CONVICTION; THUS, ITS IDENTITY MUST BE CLEARLY ESTABLISHED; RATIONALE.— In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential

to a judgment of conviction; thus, its identity must be clearly established. The strict requirement in clearly establishing the identity of the corpus delicti was explained as follows: Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.

5. ID.; ID.; SECTION 21 THEREOF; CRITICAL LINKS IN THE CHAIN OF CUSTODY OF THE DANGEROUS DRUGS.— Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "*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." In relation to the first two links, the stringent requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, x x x. The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides the proper procedure to be followed in Sec. 21(a) of the Act x x x. Unmistakably, Sec. 21 of the Act firmly requires that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the confiscated items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative each 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 of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

6. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE

LAID OUT IN SEC. 21 OF R.A. NO. 9165 AND ITS IRR DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NONCOMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — While strict compliance with this requirement has been recognized to be not plausible in all instances, Sec. 21 (a) of the IRR of R.A. No. 9165 clearly provides that noncompliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 — under justifiable grounds — will not render void the confiscation of the items provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. "In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved."

7. **ID.; ID.; ID.; ID.; THE MARKING OF THE SEIZED DRUGS ALONE BY THE LAW ENFORCERS IS NOT SUFFICENT COMPLIANCE WITH THE REQUIREMENTS OF MARKING AFTER SEIZURE.—** Of importance is that "(M)arking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence." Even granting that there was truth that Carna marked the confiscated items at the police station in the presence of the accused-appellant, Sabellina, and the station commander, jurisprudence however dictates that marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165."

8. ID.; ID.; ID.; ID.; THE ENTRY IN THE BLOTTER RELATIVE TO A BUY-BUST OPERATION IS NOT A VALID SUBSTITUTE FOR THE REQUIREMENT OF AN INVENTORY AND TAKING OF PHOTOGRAPHS OF THE SEIZED ITEMS.— Carna claimed that it was at the police station that the inventory and the taking of pictures of the confiscated items took place. Records, however, do not show any inventory or pictures of the seized items. In fact, the prosecution did not offer any physical evidence to justify Carna's claim that there were an inventory and photographs of the seized items. On the one hand, Sabellina admitted that, instead of an inventory and pictures taken of the seized items, the fact that there were items confiscated from the accused-appellant during the buy-bust operation was entered in the blotter. It must be noted however, that Sec. 21(a) of the IRR of R.A. No. 9165 does not provide that the entry in the blotter relative to a buy-bust operation is a valid substitute for the requirement of an inventory and taking of photographs of the seized items.

9. ID.; ID.; ID.; ID.; THE JUSTIFIABLE GROUND FOR NONCOMPLIANCE WITH THE PROCEDURAL REQUIREMENTS MUST BE PROVEN AS A FACT, BECAUSE THE COURT CANNOT PRESUME WHAT THESE GROUNDS ARE OR THAT THEY EXIST. — Considering that the police officers in these cases had obviously failed to comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR, the burden is with the prosecution to prove that there was justifiable ground for the noncompliance by the police officers, and that the integrity and evidentiary value of the confiscated items were properly preserved. A review of the records will show that the prosecution was unsuccessful in eliciting from its witnesses the justification for their apparent failure to comply with Sec. 21 of the Act and its IRR. It must be emphasized that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

10. ID.; ID.; ID.; THE CONFLICTING TESTIMONIES OF THE APPREHENDING TEAM AS TO WHO HAD CUSTODY OF THE CONFISCATED ITEMS FROM THE POLICE STATION TO THE LABORATORY GENERATE UNCERTAINTY AS TO THE WHEREABOUTS OF THESE ITEMS, AND THUS CREATE DOUBT ON WHETHER

THE EVIDENCE PRESENTED BEFORE THE TRIAL COURT WERE EXACTLY THE SAME ITEMS SEIZED FROM THE ACCUSED-APPELLANT. — It must be stressed that the "chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt by the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized items shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition." The conflicting testimonies of the apprehending team as to who had custody of the confiscated items from the police station to the laboratory generate uncertainty as to the whereabouts of these items that corollary thereto create doubt on whether the evidence presented before the RTC were exactly the same items seized from the accused-appellant.

11. **ID.; ID.; ID.; IN ORDER THAT THE SEIZED ITEMS MAY BE ADMISSIBLE, THE PROSECUTION MUST SHOW BY RECORDS OR TESTIMONY THE CONTINUOUS WHEREABOUTS OF THE EXHIBIT AT LEAST BETWEEN THE TIMES IT CAME INTO POSSESSION OF THE POLICE OFFICERS UNTIL IT WAS TESTED IN THE LABORATORY TO DETERMINE ITS COMPOSITION UP TO THE TIME IT WAS OFFERED IN EVIDENCE.—** On the fourth link, the obvious failure of the prosecution to establish through its witnesses the manner by which the confiscated items were delivered by the forensic chemist to the RTC for presentation during the trial, reinforces the conclusion that the integrity and evidentiary value of the seized items had been compromised. To emphasize, in order that the seized items may be admissible, the prosecution must show by records or testimony the continuous whereabouts of the exhibit at least between the times it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. Such showing, however, was conspicuously absent in these cases.

12. **ID.; ID.; ID.; THE PROCEDURE UNDER SEC. 21, ART. II OF R.A. NO. 9165 IS A MATTER OF SUBSTANTIVE LAW,**

AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY, OR IGNORED AS AN IMPEDIMENT TO THE CONVICTION OF ILLEGAL DRUG SUSPECTS.— Contrary to the findings of the CA, the deviations by the police officers from the guidelines in R.A. No. 9165 do not relate to minor procedural matters that would not result to the nullification of the arrest of the accused-appellant and the seizure of the *shabu*. It is well-settled that the procedure under Sec. 21, Art. II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. Additionally, the blunders committed by the police officers relative to these guidelines cannot qualify as mere insignificant departure from the law but rather were gross disregard of the procedural safeguards prescribed in the substantive law, thus, "serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence."

13. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE REGULARITY IN THE PERFORMANCE OF DUTY COULD NOT BE PROPERLY PRESUMED IN FAVOR OF THE POLICE OFFICERS WHERE THE RECORDS ARE REPLETE WITH INDICIA OF THEIR SERIOUS LAPSES.— The Court cannot agree to uphold the presumption of regularity in the performance of official duties by the police officers in these cases. The conclusion that can only be arrived at from a reading of the records was that the police officers who entrapped the accused-appellant and confiscated the dangerous drug from him failed to offer any justifiable ground for their patent failure to establish each of the required links in the chain of custody; thus, compromising the integrity and evidentiary value of the confiscated items. Simply put, the regularity in the performance of duty could not be properly presumed in favor of the police officers because the records were replete with indicia of their serious lapses. "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."

14. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES COULD

NOT PREVAIL OVER THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.— To stress, the legal teaching consistently upheld in our jurisprudence is that "proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court. This is a pre-condition for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist." Let it be underscored that the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption: and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence.

15. ID.; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; PRESUMPTION OF INNOCENCE; PROOF BEYOND REASONABLE DOUBT, OR THAT QUANTUM OF PROOF SUFFICIENT TO PRODUCE MORAL CERTAINTY THAT WOULD CONVINCE AND SATISFY THE CONSCIENCE OF THOSE WHO ACT IN JUDGMENT, IS INDISPENSABLE TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.— It would not be tiresome for the Court to reiterate its declaration in *People v. Pagaduan* if only to show that it will unceasingly uphold the right of the accused to be presumed innocent in the absence of proof beyond reasonable doubt to convict him, viz: We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the *corpus delicti,* then the appellant deserves no less than an acquittal.

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

MARTIRES, *J.*:

For resolution is the appeal of accused-appellant Rodel Belmonte *y* Saa assailing the 21 January 2016 Decision[1] of the Court of Appeals *(CA),* Twenty-First Division, in CA-G.R. CR HC No. 01147-MIN which affirmed, with modification as to imposable penalty in Criminal *(Crim.)* Case Nos. 2010-713 and 2010-714, the 18 February 2013 Judgment[2] of the Regional Trial Court, *(RTC)* Branch 25, Misamis Oriental, finding him guilty beyond reasonable doubt of Violation of Sections *(Sec.)* 11 and 5, Article *(Art.)* II of Republic Act *(R.A.)* No. 9165.[3]

THE FACTS

The accused-appellant was charged before the RTC of Misamis Oriental with violation of R.A. No. 9165, viz:

CRIM. CASE NO. 2010-713

That on or about 12:50 p.m. of July 3, 2010 at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drug, did then and there wilfully, unlawfully, criminally, and knowingly have in his possession, custody, and control, two heat-sealed transparent plastic sachets containing methamphetamine hydrochloride weighing 0.05 gram and

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[1] CA *rollo,* pp. 118-131. Penned by Associate Justice Ronaldo B. Martin and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

[2] Records, pp. 84-93. Penned by Judge Arthur L. Abundiente.

[3] Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes" dated 7 June 2002.

0.05 gram, respectively, accused well knowing that the substances recovered from his possession were dangerous drugs.

Contrary to Sec. 11, paragraph 2(3), Art II of R.A. No. 9165.[4]

CRIM. CASE NO. 2010-714

That on or about 12:50 p.m. of July 3, 2010 at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drugs, did then and there wilfully, unlawfully, criminally, and knowingly sell and/or offer for sale, and give away to a poseur-buyer one small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram, accused knowing the same to be a dangerous drug, in consideration of ₱500.00.

Contrary to Sec. 5, Art. II of R.A. No. 9165.[5]

When arraigned, the accused-appellant pleaded not guilty[6] on both charges hence, joint trial proceeded.

To prove the charges against the accused-appellant, the prosecution called to the witness stand SPO1 Gilbert Sabellina *(Sabellina),* PO1 Linard Carna *(Carna),* and PO2 Jonrey Satur *(Satur).*

The accused-appellant testified in his own defense.

The Version of the Prosecution

On 3 July 2010, a confidential informant *(informant)* came to the Philippine National Police *(PNP),* Station 5, Macabalan, Cagayan de Oro City, to inform precinct commander Gilbert Mejares Rollen *(Rollen)* that the accused-appellant was engaged in the selling of drugs in Barra, Macabalan. Upon receipt of the information, Rollen instructed the above police officers to conduct a buy-bust operation. In preparation for the operation,

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[4] Records, Crim. Case No. 2010-713, p. 3.

[5] Records, Crim. Case No. 2010-714, p. 3.

[6] *Id.* at 14.

Sabellina affixed his signature on the ₱500.00[7] bill with serial number ZG385391 to be used as buy-bust money, while Carna recorded[8] in the police blotter the use of the said marked money for the buy-bust. The pre-operation report[9] was also prepared and submitted to the Philippine Drug Enforcement Agency *(PDEA).*[10]

At about 1:30 p.m. of that same day, the police officers and the informant proceeded to Barra. When they arrived there, Sabellina positioned himself about ten meters away from Carna and the informant while Satur, who would act as backup, stayed at a distance. When the informant saw the accused-appellant, he approached him and asked if he would buy ₱500.00 worth of shabu. After receiving the ₱500.00 buy-bust money from the informant, the accused-appellant got a sachet containing a white crystalline substance from his right pocket and gave it to the informant. At that instance, Carna, who was beside the informant, introduced himself as a police officer to the accused-appellant while Sabellina and Satur advanced toward them. The accused-appellant was handcuffed and bodily frisked by Carna who found the following: from his right pocket, two sachets containing a white crystalline substance and the ₱500.00 buy-bust money; and from his left pocket, another four sachets containing traces of a white crystalline substance. The accused-appellant sat between Carna and Sabellina on the latter's motorcycle going back to the police station; the informant rode on Cama's motorcycle. Carna was in possession of the confiscated items from the scene of the crime until they reached the police station.[11]

At the police station, Carna, in the presence of Sabellina, Rollen, and the accused-appellant, placed the markings "A

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[7] *Id*. at 71; Exh. "F".

[8] *Id*. at 72; Exh. "G".

[9] *Id*. at 74; Exh. "H".

[10] TSN, 1 July 2011, pp. 2-6.

[11] *Id*. at 7-10.

LBC"[12] on the sachet handed by the accused-appellant to the informant; "B LBC"[13] and "B1 LBC"[14] on the two sachets found in the accused-appellant's right pocket; and "C LBC", "C1 LBC", "C2 LBC", and "C3 LBC" on the four sachets found in his left pocket. The letters "LBC" stood for Carna's initials, i.e., "Linard Bahian Carna." Instead of the inventory and the taking of pictures of the confiscated items, Carna recorded in the police blotter the buy-bust operation report.[15] Thereafter, Rollen signed the requests[16] for the laboratory examination of the seven confiscated sachets and the urine test of the accused-appellant. The requests and the confiscated items were delivered by Carna and Satur to the crime laboratory *(laboratory)* at Camp Evangelista, Patag, Cagayan de Oro. Carna was in possession of the confiscated items from the police station to the laboratory. However, because Carna was not in uniform that time, Satur[17] had the items received by the laboratory. At the police station, Carna and Sabellina executed their joint affidavit[18] pertinent to the buy-bust operation.[19]

On that same day, Police Senior Inspector Emma C. Salvacion completed her examination on the confiscated items. Her findings, contained in Chemistry Report No. D-139-2010,[20] are:

A- Three heat-sealed transparent sachets with markings "A LBC," "B LBC," and "B1 LBC" all with signatures and each contains white crystalline substance with the following corresponding net weights"

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[12] Records, p. 21; Documentary Exhibits, Exh. "B".

[13] *Id*. Exh. "B-1".

[14] *Id*. Exh. "B-2".

[15] Records, p. 73; Exh. "G-1".

[16] *Id*. at 65-66; Exh. "A" and "A-2".

[17] *Id*.; Exh. "A-1" and "A-3".

[18] *Id*. at 69-70; Exh. "E".

[19] TSN, 1 July 2011, pp. 11-13.

[20] Records, p. 67; Exh. "C".

A-1 (A LBC) = 0.04 gram A-2 (B-LBC) = 0.05 gram A-3 (B1 LBC) = 0.05 gram

B – Four unsealed transparent plastic sachets with markings "C LBC," "C1 LBC," "C2 LBC," and "C3 LBC" all with signatures and each contains traces of white crystalline substance further marked as B-1 to B-4, respectively. x x x

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimens all gave POSITIVE results to the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

The Version of the Defense

At about 11:30 a.m. on 3 July 2010, the accused-appellant was at his mother's house at Barra to pawn his live-in partner's cellphone. When his mother declined as she did not have any money, the accused-appellant proceeded to his cousin's house which was adjacent to his mother's house. While the accused-appellant was waiting inside his cousin's house, Sabellina started kicking the door from the outside and thereafter entered the house with Carna and Satur. Carna hit the accused-appellant in his stomach and asked him, "Where is the *shabu?"* The accused-appellant was frisked but when the three police officers did not find anything on him, they proceeded to his cousin's bedroom and upon coming out therefrom showed him three empty sachets. The police officers asked the accused-appellant about the contents of the sachets. When he answered that he did not know anything about it, he was handcuffed and brought to the police station where he was questioned as to his personal circumstances. As the accused-appellant was stating his full name, Sabellina inquired how he was related to Barangay Kagawad Ruben Saa *(Ruben)* of Macabalan. When he informed them that Ruben was his mother's cousin, he was forced to contact Ruben; when he refused, the police officers left him at the station.[21]

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[21] TSN, 13 March 2012, pp. 5-9.

After a few minutes, Sabellina came back to the police station; later, Carna and Satur arrived informing him that they found three sachets of *shabu* in the accused-appellant's house. The sachets, which were wrapped in cellophane, had markings on them. The police officers asked ₱30,000.00 from him for his release; when he refused to give in to their demand, he was brought to the crime laboratory.[22]

The Ruling of the RTC

The RTC held that the prosecution was able to prove the elements of the charges against the accused-appellant. It ruled that the testimony of Carna and Sabellina deserved full faith and credence. Moreover, in view of the conflicting versions between the police officers and that of the accused-appellant, the RTC gave credence to the former who were presumed to have regularly performed their duties, especially in the absence of any evidence that they were inspired by improper motive or were not properly performing their duties.[23]

On the one hand, the RTC found that the accused-appellant's denial was not credible. The RTC noted that he did not even attempt to present a character witness to prove that he was a good person and was not engaged in any wrongdoing.[24]

In view of these findings, the RTC resolved the cases against the accused-appellant as follows:

WHEREFORE, premises considered, this Court hereby finds:

In Criminal Case No. 2010-713, accused **RODEL BELMONTE *y* SAA GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. No. 9165, and hereby sentences him to an imprisonment ranging from twelve (12) years and one (1) day to thirteen (13) years, and to pay a fine in the amount of ₱300,000.00 without subsidiary imprisonment in case of non-payment of fine.

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[22] *Id*. at 9-10.

[23] Records, pp. 90-91.

[24] *Id*.

In Criminal Case No. 2010-714, accused **RODEL BELMONTE y SAA GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under Section 5, Article II of R.A. No. 9165 as charged in the information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of non-payment of fine. The period of his detention shall be credited in full for the purpose of service of his sentence.

Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act that no man is above the law, and that crime does not pay. The pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act No. 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.[25]

Not satisfied with the decision of the RTC, the accused-appellant appealed before the CA.

The Ruling of the CA

The CA did not find the accused-appellant's appeal meritorious. It ruled that, despite the fact that Sec. 21, Art. II of R.A. No. 9165 was not strictly followed, the police officers substantially complied with the requirements under the said Act and sufficiently established the crucial links in the chain of custody. Furthermore, the noncompliance with some of the requirements did not affect the evidentiary weight of the drugs seized as the chain of custody of the evidence was shown and proven to be unbroken. The CA held that the prosecution had proven that a valid and legitimate buy-bust operation was conducted and that the sachets confiscated were confirmed to contain *shabu* which, when presented before the trial court, were positively identified by the prosecution witnesses. Thus, the CA ruled that the integrity and evidentiary value of the

[25] Records, p. 92.

seized illegal drugs were properly preserved and remained unimpaired.[26]

The decretal portion of the CA decision reads:

> **WHEREFORE,** premises considered, the instant appeal is **DENIED.** The assailed Decision dated February 8, 2013 of the Regional Trial Court, Branch 25 of Cagayan de Oro City finding accused-appellant Rodel Belmonte y Saa guilty beyond reasonable doubt for violation of Sections 11 and 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, Republic act No. 9165 in Criminal Case Nos. 2010-713 and 2010-714 is **AFFIRMED with MODIFICATION** with respect to Criminal Case No. 2010-714 wherein appellant is sentenced to serve the penalty of reclusion perpetua in its entire duration and full extent.
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> SO ORDERED.[27]

ISSUE

WHETHER THE GUILT OF THE ACCUSED-APPELLANT WAS ESTABLISHED BEYOND REASONABLE DOUBT.[28]

OUR RULING

The appeal is impressed with merit.

An accused is presumed innocent until his guilt is proven beyond reasonable doubt.

Basic in all criminal prosecutions is the presumption that the accused is innocent until the contrary is proved.[29] Thus, the well-established jurisprudence is that the prosecution bears the burden to overcome such presumption; otherwise, the accused deserves a judgment of acquittal.[30] Concomitant thereto, the

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[26] CA *rollo*, pp. 125-126.

[27] *Id*. at 130.

[28] *Id*. at 38.

[29] Sec. 14(2), Art. III of the 1987 Constitution.

[30] *People v. Hilario,* G.R. No. 210610, 11 January 2018.

evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.[31] Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. To stress, "(W)hile not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience."[32]

The Court is aware that the teaching well-established in our jurisprudence is that unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.[33] It is noteworthy, however, that this teaching admits of jurisprudentially recognized exceptions considering that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[34] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[35] It is pursuant to this Court's full jurisdiction that

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[31] *People v. Santos,* G.R. No. 223142, 17 January 2018.

[32] *Daayata v. People,* G.R. No. 205745, 8 March 2017.

[33] *People v. Arposeple,* G.R. No. 205787, 22 November 2017.

[34] *Peple v. Crispo,* G.R. No. 230065, 14 March 2018.

[35] *People v. Lumaya,* G.R. No. 231983, 7 March 2018.

it scrupulously reviewed the records of these appealed cases and arrived at the conclusion that it cannot agree with the findings of the RTC and the CA.

The identity of the corpus delicti was not clearly established; there was a broken chain in the custody of the confiscated items.

In Crim. Case No. 2010-713, the accused-appellant was charged and convicted with violation of Sec. 11,[36] Art. II of R.A. No. 9165, the elements of which are as follows: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[37]

In Crim. Case No. 2010-714, in which the accused-appellant was convicted for violation of Sec. 5,[38] Art. II of R.A. No. 9165,

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[36] Sec. 11. *Possession of Dangerous Drugs.* — x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB. and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[37] *People v. Lumaya, supra* note 35.

[38] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

both the RTC and the CA found that the elements of the crime had been established, viz: (a) the identity of the buyer and the seller, the object of the sale and its consideration; and (b) the delivery of the thing sold and the payment therefor.[39]

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established.[40] The strict requirement in clearly establishing the identity of the corpus delicti was explained as follows:

> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[41]

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "*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."[42]

In relation to the first two links, the stringent requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, viz:

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[39] *People v. Lumaya, supra* note 35.

[40] *People v. Jaafar,* G.R. No. 219829, 18 January 2017.

[41] *Id.*

[42] *People v. Macud,* G.R. No. 219175, 14 December 2017.

Section 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:

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

The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides the proper procedure to be followed in Sec. 21(a) of the Act, viz:

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

Unmistakably, Sec. 21 of the Act firmly requires that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph

the confiscated items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative each 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 of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[43]

While strict compliance with this requirement has been recognized to be not plausible in all instances, Sec. 21 (a) of the IRR of R.A. No. 9165 clearly provides that noncompliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 — under justifiable grounds — will not render void the confiscation of the items provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. "In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved."[44]

Of importance is that "(M)arking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence."[45] Even granting that there was truth that Carna marked the confiscated items at the police station in the presence of the accused-appellant, Sabellina,

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[43] *People v. Crispo, supra* note 34.

[44] *People v. Ceralde,* G.R. No. 228894, 7 August 2017.

[45] *People v. Ismael,* G.R. No. 208093, 20 February 2017.

and the station commander, jurisprudence however dictates that marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165."[46]

Carna claimed that it was at the police station that the inventory and the taking of pictures of the confiscated items took place.[47] Records, however, do not show any inventory or pictures of the seized items. In fact, the prosecution did not offer any physical evidence to justify Carna's claim that there were an inventory and photographs of the seized items.

On the one hand, Sabellina admitted that, instead of an inventory and pictures taken of the seized items, the fact that there were items confiscated from the accused-appellant during the buy-bust operation was entered in the blotter.[48] It must be noted however, that Sec. 21(a) of the IRR of R.A. No. 9165 does not provide that the entry in the blotter relative to a buy-bust operation is a valid substitute for the requirement of an inventory and taking of photographs of the seized items.

Considering that the police officers in these cases had obviously failed to comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR, the burden is with the prosecution to prove that there was justifiable ground for the noncompliance by the police officers, and that the integrity and evidentiary value of the confiscated items were properly preserved.

A review of the records will show that the prosecution was unsuccessful in eliciting from its witnesses the justification for their apparent failure to comply with Sec. 21 of the Act and its IRR. It must be emphasized that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[49]

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[46] *People v. Holgado,* 741 Phil. 78, 94 (2014).

[47] TSN, 1 July 2011, pp. 20-21.

[48] TSN, 24 January 2011, pp. 18-19.

[49] *People v. Macapundag,* G.R. No. 225965, 13 March 2017.

On the one hand, the testimony of the prosecution witnesses undoubtedly buttresses the fact that the integrity and evidentiary value of the seized items were compromised. It will be noted that the prosecution witnesses were unanimous in their claim that it was Carna who was in possession of the confiscated items from the time these were seized at the crime scene to the police station. At the police station, Carna placed the markings on the seized items but, noteworthily, he could no longer distinguish the sealed sachet handed by the accused-appellant as a result of the sale transaction with the informant, with the two other sealed sachets found in the accused-appellant's right pocket, especially that the three sachets contain almost the same weight of shabu, i.e., A-1 (A LBC) 0.04 gram,[50] A-2 (B LBC) 0.05 gram,[51] and A-3 (B1 LBC) = 0.05 gram.[52]

An established fact that casts doubt on the integrity of the seized items was that the buy-bust operation report entered in the blotter, which the apprehending team intended as substitute for the inventory required and photographs of the sachets, never mentioned whether the items were actually marked and what were the corresponding markings. The report plainly reads:

X X X A CERTAIN RODEL BELMONTE Y SAA X X X WAS CAUGHT IN THE ACT OF SELLING SHABU FOR AND IN CONSIDERATION OF ₱500.00 (MARKED MONEY) X X X. BOUGHT FROM THE SUSPECT ONE (1) HEAT SEALED TRANSPARENT SACHET CONTAINING WHITE CRYSTALLINE SUBSTANCE BELIEVED TO BE SHABU, AND CONFISCATED FROM HIS POSSESSION, CUSTODY, AND CONTROL TWO (2) HEAT-SEALED SACHETS OF ALLEGED SHABU, FOUR (4) OPENED TRANSPARENT SACHETS WITH TRACES OF ALLEGED SHABU, AND THE MARKED MONEY OF ONE (1) ₱500.00 BILL X X X. SPECIMENS CONFISCATED SUBMITTED FOR LABORATORY EXAMINATION AT PNP CRIME LAB OFFICE WHILE SUSPECT ALSO SUBMITTED FOR URINE TEST.[53]

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[50] Records, p. 67; enumerated in the Chemistry Report; Exh. "C".

[51] *Id*.

[52] *Id*.

[53] Records, p. 73; Exh. "G-1".

On the third link, Carna firmly stated that he was in possession of the confiscated items when he and Satur went to the laboratory to submit these for examination. Carna further claimed that because he was not in uniform, it was Satur who surrendered the items to the laboratory,[54] as confirmed by the receiving stamps[55] on each of the requests, i.e., "Delivered by PO2 Satur." Carna's testimony however, contradicts that of Satur's who stated that he was the one who was in possession of the seized items when these were delivered to the laboratory from the police station, *viz:*

ACP LALIA

Q. I am showing you a copy of the request for laboratory examination. Please tell the Honorable Court if this is the same copy of the request?

A. Yes, sir.

Q. And I am inviting your attention to the upper portion of this request which bears a rubber stamp, tell us what is this rubber stamp?

A. I was one of those who brought this to the PNP crime lab.

Q. But my question is, who was in actual possession of the specimen mentioned in the request at the time that it was brought to the PNP crime lab?

A. Maybe, I was the one, sir.

Q. You mean you are sure whether you were the one who was in actual possession?

COURT (to the witness)

Q. PO2 Satur, that is a very light object, the paper and the object, right?

A. Yes, your Honor.

Q. Now, who brought that or who actually carried it from your office to the crime laboratory, you or any other person?

A. I was the one your Honor.

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[54] TSN, 1 July 2011, pp. 12-13.

[55] Records, pp. 65-66; Exhs. "A-1" and "A-3".

Q. Are you sure?
A. Yes, your Honor.[56] (emphasis supplied)

Satur's admission that he was in possession of the seized items when these were brought to the laboratory from the police station finds support in the testimony of Sabellina who stated that Satur was instructed by the station commander to bring the suspect and the items to the laboratory while he and Carna stayed behind at the police station. His testimony reads:

ACP VICENTE

Q. At the upper portion of this exhibit, there is a rubber stamp here delivered by PO2 Satur and received by PCI Salvacion/ PI Gamaya, where was this stamped?
A. At the crime lab.

Q. Who is this PO2 Satur?
A. Our companion.

Q. Why was he the one who filed this?
A. Because he was the one assigned to bring it there including the suspect.

Q. Who brought the sachets of shabu from the table of your office to the PNP crime lab?
A. PO2 Satur.

Q. Who was with him when he delivered it?
A. The driver.

Q. How about Carna?
A. Both of us did not go with them, sir.

Q. How did you know that it was Satur who got it from the table and brought to the crime lab?
A. I was present when our station commander instructed him to bring the specimen to the crime lab.[57] (emphasis supplied)

It must be stressed that the "chain of custody means the duly recorded authorized movements and custody of seized drugs

[56] TSN, 27 October 2011, pp. 8-9.

[57] TSN, 24 January 2011, pp. 20-21.

or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt by the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized items shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."[58]

The conflicting testimonies of the apprehending team as to who had custody of the confiscated items from the police station to the laboratory generate uncertainty as to the whereabouts of these items that corollary thereto create doubt on whether the evidence presented before the RTC were exactly the same items seized from the accused-appellant.

On the fourth link, the obvious failure of the prosecution to establish through its witnesses the manner by which the confiscated items were delivered by the forensic chemist to the RTC for presentation during the trial, reinforces the conclusion that the integrity and evidentiary value of the seized items had been compromised. To emphasize, in order that the seized items may be admissible, the prosecution must show by records or testimony the continuous whereabouts of the exhibit at least between the times it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[59] Such showing, however, was conspicuously absent in these cases.

Significantly, in *Mallillin v. People,*[60] the Court was more definite in qualifying the method of authenticating evidence through marking, *viz:* "(I)t would include testimony about every link in the chain, from the moment the item was picked up to

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[58] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

[59] *People v. Arposeple, supra* note 33.

[60] 576 Phil. 576-594 (2008); cited in *People v. Ismael, supra* note 45.

the time it is offered into evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession; the condition in which it was received and the condition in which it was delivered to the next link in the chain."[61] The only logical conclusion that can be arrived at after a review of the records was that the prosecution miserably failed in establishing with firm accuracy that the dangerous drugs presented in court as evidence against the accused were the same as those seized from him in the first place.[62]

Contrary to the findings of the CA, the deviations by the police officers from the guidelines in R.A. No. 9165 do not relate to minor procedural matters that would not result to the nullification of the arrest of the accused-appellant and the seizure of the *shabu.* It is well-settled that the procedure under Sec. 21, Art. II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[63] Additionally, the blunders committed by the police officers relative to these guidelines cannot qualify as mere insignificant departure from the law but rather were gross disregard of the procedural safeguards prescribed in the substantive law, thus, "serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence."[64]

The presumption of regularity in the performance of duty by the police officers cannot prevail over the accused-appellant's constitutional right to be presumed innocent.

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[61] *Id*. at 587.

[62] *People v. Calvelo,* G.R. No. 223526, 6 December 2017.

[63] *People v. Año,* G.R. No. 230070, 14 March 2018.

[64] *People v. Segundo,* G.R. No. 205614, 26 July 2017.

Despite the blatant and serious noncompliance by the apprehending team with Sec. 21 of R.A. No. 9165, both the RTC and the CA gave weight to the presumption that the police officers had regularly discharged their duties.

The Court cannot agree to uphold the presumption of regularity in the performance of official duties by the police officers in these cases. The conclusion that can only be arrived at from a reading of the records was that the police officers who entrapped the accused-appellant and confiscated the dangerous drug from him failed to offer any justifiable ground for their patent failure to establish each of the required links in the chain of custody; thus, compromising the integrity and evidentiary value of the confiscated items. Simply put, the regularity in the performance of duty could not be properly presumed in favor of the police officers because the records were replete with indicia of their serious lapses.[65] "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."[66]

To stress, the legal teaching consistently upheld in our jurisprudence is that "proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court. This is a pre-condition for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."[67] Let it be underscored that the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption: and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence.[68]

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[65] *People v. Arposeple, supra* note 33.

[66] *People v. Gayoso,* G.R. No. 206590, 27 March 2017.

[67] *People v. Holgado, supra* note 46 at 93.

[68] *People v. Mirondo,* 771 Phil. 345, 362 (2015).

It would not be tiresome for the Court to reiterate its declaration in *People v. Pagaduan*[69] if only to show that it will unceasingly uphold the right of the accused to be presumed innocent in the absence of proof beyond reasonable doubt to convict him, viz:

> We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the *corpus delicti,* then the appellant deserves no less than an acquittal.[70]

WHEREFORE, the appeal is **GRANTED.** The Decision dated 21 January 2016, of the Court of Appeals in CA-G.R. CR HC No. 01147-MIN, is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Rodel Belmonte *y* Saa is **ACQUITTED** of the crimes charged. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Penal Superintendent of the Davao Prison and Penal Farm, Davao del Norte, for immediate implementation. The Penal Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[69] 641 Phil. 432, 450-451 (2010).

[70] *People v. Hilario, supra* note 30.

THIRD DIVISION

[G.R. No. 225322. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONELO BERMUDO *y* MARCELLANO, ROMMEL BERMUDO *y* CAPISTRANO and ROLANDO BERMUDO *y* CAPISTRANO,** *accused,* **ROMMEL BERMUDO *y* CAPISTRANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE APPRECIATION MADE BY THE TRIAL COURTS AS TO THE CREDIBILITY AND PROBATIVE VALUE OF THE TESTIMONY OF WITNESSES IS ACCORDED FINALITY, PROVIDED THAT THERE IS NO SHOWING THAT THE TRIAL COURT HAD OVERLOOKED OR MISINTERPRETED SOME MATERIAL FACTS WHICH COULD MATERIALLY AFFECT THE OUTCOME OF THE CASE. — It is axiomatic that the appreciation made by the trial courts as to the credibility and probative value of the testimony of witnesses is accorded finality, provided that there is no showing that the trial court had overlooked or misinterpreted some material facts which could materially affect the outcome of the case. In the present case, Rommel assails Philip and Grace's credibility claiming that their motive is questionable because they are Gilberto's relative. He finds it suspicious that Philip could identify the assailants in view of his position at the crime scene and his intoxication at that time. On the other hand, Rommel argues that Grace never actually witnessed the crime and that her testimony was inconsistent. After a close perusal of the records, the Court finds no reason to reverse the assessment of the courts *a quo* as to the credibility and probative value of the testimony of the prosecution witnesses. Both Philip and Grace categorically and consistently identified Rommel as one of those who attacked Gilberto. Their narrations are so interwoven that when taken together, Gilberto's demise at the hands of Rommel and his co-accused is clearly illustrated.

2. ID.; ID.; ID.; ABSENT SATISFACTORY PROOF THAT THE WITNESS' INTOXICATION HAD CLOUDED HIS SENSE AND PERCEPTION RENDERING HIS TESTIMONY UNRELIABLE, IT SHOULD BE PRESUMED THAT THE WITNESS WAS SOBER ENOUGH TO HAVE PROCESSED AND TO VIVIDLY RECALL THE GRUESOME INCIDENT HE HAD WITNESSED.— The certification and Philip's testimony, however, do not prove that Philip was such in a drunken stupor that his faculties had been greatly impaired or diminished. In *People v. Dee*, the Court explained that a witness being positive for alcohol breath does not detract his positive identification of the accused there was no showing that the level of intoxication impaired his senses and prevented him from positively identifying the accused – the law presumes every person is of sound mind unless proven otherwise. Even assuming that Philip's testimony is an admission of drunkenness at the time of the incident; still, in the absence of satisfactory proof that his intoxication had clouded his sense and perception rendering his testimony unreliable, it should be presumed that Philip was sober enough to have processed and to vividly recall the gruesome incident he had witnessed.

3. ID.; ID.; ID.; RELATIONSHIP ALONE DOES NOT NECESSARILY PREJUDICE THE CREDIBILITY OF THE WITNESSES.— Rommel also assails that Philip and Grace's testimonies were biased because of their close relationship with Gilberto. Nonetheless, such relationship alone does not necessarily prejudice the credibility of the witnesses. In *People v. Guillera*, the Court explained that filial relations could in fact bolster the credibility of witnesses, to wit: Neither did Geraldine's relationship with Enrique impair her credibility since it is a basic precept that relationship per se of a witness with the victim does not necessarily mean that the witness is biased. Close or blood relationship alone, does not, by itself, impair a witness' credibility. On the contrary, it could even strengthen the witness' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender. Thus, Philip and Grace's relationship with Gilberto does not *ipso facto* render their testimony unworthy of credence. This is especially true since they were steadfast in pointing at Rommel as one of the persons who mauled Gilberto.

Such unflinching testimony leads to no other conclusion but that Philip and Grace witnesses their own relative's demise at the hands of Rommel and his co-accused.

4. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; PROVED.— Based on Philip and Grace's testimony, all the elements of the crime of murder were proven beyond reasonable doubt, *viz*: (1) a person was killed; (2) the accused killed the victim; (3) the killing was attended by any of the qualifying circumstance in Article 248 of the Revised Penal Code, i.e., treachery or *alevosia;* and (4) the killing is neither parricide nor infanticide.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; PRESENT.—Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. In turn, its elements are: (1) employment of means, method or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim; and (2) deliberate adoption of such means, method or manner of execution. In other words, the means of attack, consciously adopted by the assailant, rendered the victim defenseless. In the present case, it is readily apparent that Gilberto was completely defenseless at the time of the attack because he was surprised by Rommel with a blow to the head causing him to fall to the ground. Rommel and co-accused continued to attack him causing him multiple injuries, including the fatal ones. From the inception of the assault until the *coup de grace* was inflicted, Gilberto was never in a position to defend himself. Further, Rommel and his co-accused consciously adopted the means of attack because, as noted by the CA, they were already armed when they proceeded to the crime scene. In addition, it is noteworthy that Rommel suddenly, without warning or provocation, attacked Gilberto from behind manifesting that their actions were planned and orchestrated, and not merely impetuous.

6. ID.; ID.; CONSPIRACY; WHEN ARISES; THERE IS AN IMPLIED CONSPIRACY WHEN TWO OR MORE PERSONS AIMED BY THEIR ACTS TOWARDS THE ACCOMPLISHMENT OF THE SAME UNLAWFUL

OBJECT, EACH DOING A PART SO THAT THEIR COMBINED ACTS, THOUGH APPARENTLY INDEPENDENT, ARE IN FACT CONNECTED AND COOPERATIVE, INDICATING A CLOSENESS OF PERSONAL ASSOCIATION AND A CONCURRENCE OF SENTIMENT.— In Gilberto's death Rommel and his co-accused are equally guilty of murder as conspirators. Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. While there was no express agreement between the malefactors, their concerted actions indicate that they conspired with each other. There is an implied conspiracy when two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. In other words, there must be unity of purpose and unity in the execution of the unlawful objective. In this case, Rommel and his co-accused clearly acted with a common purpose to kill Gilberto as manifested by their coordinated actions. Accused-appellant initiated the assault and assisted his co-accused in accomplishing their goal. It must be remembered that when Philip tried to help Gilberto, Rommel swung an axe at him and, with a horrified Grace nearby, urged and encouraged Ronelo to kill the victim. Thus, even if there is no direct evidence to establish who among the culprits inflicted the mortal blow, they are all guilty of murder as conspirators because their mutual purpose impelled them to execute their harmonized attack on Gilberto.

7. ID.; ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The trial court awarded to Gilberto's heirs: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as nominal damages, ₱25,000.00 as exemplary damages, and ₱25,000.00 as attorney's fees. In *People v. Jugueta*, the Court set the standard for the award of damages in certain heinous crimes, increasing to ₱75,000.00 the award of exemplary damages in murder punishable by *reclusion perpetua*. Consequently, the damages awarded should be modified to conform to recent jurisprudence.

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

MARTIRES, *J.*:

This is an appeal from the 26 June 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06615, which affirmed with modification the 27 January 2014 Judgment[2] of the Regional Trial Court, Branch 23, Naga City *(RTC)*, in Criminal Case No. 2012-0116, finding accused-appellant Rommel Bermudo *y* Capistrano *(Rommel)* guilty beyond reasonable doubt of Murder.

THE FACTS

In an Amended Information[3] dated 10 April 2012, Rommel, together with his co-accused Ronelo Bermudo *y* Marcellano *(Ronelo)* and Rolando Bermudo *y* Capistrano *(Rolando)* were charged with murder for the death of Gilberto Bedrero *(Gilberto)* defined and penalized under Article 248 of the Revised Penal Code *(RPC)*. The accusatory portion of the information reads:

> That [at] or about 8:30 PM of March 7, 2012 in Barangay San Francisco, Municipality of Canaman, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, while armed with deadly weapons, did then and there willfully, unlawfully and feloniously assault, attack and hack one GILBERTO BEDRERO *y* REGACHUELO, and with treachery and evident premeditation and superior strength, hitting the latter

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Pedro B. Corales.

[2] CA *rollo*, pp. 51-72; penned by Presiding Judge Valentin E. Pura, Jr.

[3] Records (Volume I), p. 54.

on the different parts of his body, thereby inflicting upon him several stab/hack wounds which caused his death, to the damage and prejudice of his heirs.

On 11 April 2012, Ronelo and Rommel pleaded not guilty during their arraignment.[4] Rolando remains at large.[5]

Version of the Prosecution

The prosecution presented Gilberto's cousin Philip Bedrero *(Philip)*, Gilberto's niece Grace Bedrero *(Grace)*, Gilberto's wife Lolita Bedrero *(Lolita)*, Dr. Geyser H. Agustin *(Dr. Agustin)*, Dr. Raoul V. Alcantara *(Dr. Alcantara),* and PO3 Manuel San Agustin, Jr., as witnesses. Their testimonies sought to establish the following:

On 7 March 2012, at around 6:30 P.M., Ronelo and Philip were arguing in front of the latter's house about George, the latter's nephew, for supposedly wrecking the former's bike. After the argument, both parties parted ways and returned to their homes. At around 8:30 P.M. of the same day, Ronelo, this time armed with a bolo, stood in front of Philip's house demanding the latter to come out so he could kill him. Unfazed, Philip went outside to have a word with Ronelo. George's father, Gilberto, decided to come out of his house and tried to pacify Ronelo telling him that they would fix his bike the next day.[6]

Suddenly, Rommel and Rolando rushed towards Gilberto and, without warning, Rommel struck Gilberto on the head with a small ax which made the latter fall. As Gilberto lay prostrate, Ronelo hacked him in the stomach while Rolando beat him with a piece of wood and stabbed him with a bolo. Philip tried to help Gilberto but Rommel swung his ax at him injuring his upper lip causing him to retreat to his house.[7]

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[4] *Id*. at 58.

[5] *Id*. at 4.

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

[7] *Id*. at 4.

Thereafter, Grace ran towards a bloodied Gilberto and cradled him. Ronelo ordered her to leave forcing her to step away from them. At this point, Ronelo continued to assault Gilberto by hacking him in the chest and striking his face with a piece of wood. Rommel and Rolando urged him to finish Gilberto.[8]

After the assailants had left, Gilberto was eventually brought to the Bicol Medical Center *(BMC)*, where Philip was also being treated for his wounds. Unfortunately, the former died after several hours of treatment due to cardio-pulmonary arrest, hemorrhagic shock, and hack wound in the chest. At the hospital, Philip also saw Ronelo receiving treatment for his wounds. He notified police that the latter was one of those who attacked Gilberto; consequently, Ronelo was brought to the police station. On the other hand, Rommel was brought to the precinct after he was identified at the crime scene as one of the suspects — Rolando eluded arrest and is still at-large. After the testimony of the medico-legal, Gilberto's body was exhumed. According to Dr. Alcantara's findings, Gilberto died of asphyxia by manual strangulation and a stab wound in the chest.[9]

Version of the Accused-Appellant

Rommel presented himself, Ipecris Bermudo *(Ipecris)* and Mario Pasibe as his witnesses. Their testimonies sought to establish the following:

On 7 March 2012, at around 5:00 P.M., Rommel and Ipecris were drinking with their friends in the house of a certain Jimmy Peñalosa. Later that evening, at around 8:30 P.M., they decided to go to Rommel's house for a videoke session; Ipecris left ahead to get some money.[10]

Along the way, Ipecris saw Ronelo challenging Philip with a bolo. When Ronelo was hit with a stone that Philip threw at him, he retaliated by striking the latter with a bolo hitting Philip's

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[8] *Id*.

[9] *Id*. at 4-7.

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

upper lip prompting him to retreat. At this point, Gilberto came out of his house armed with a weapon. Ronelo hacked him and continued to do so even when he was already on the ground.[11]

When Ronelo fled, Philip rushed out again from his house to aid Gilberto. At this time, Rommel arrived together with his friends on the way to a videoke session. Philip then challenged Rommel to a fight while brandishing his bolo making him run away towards his house. A few minutes later, policemen arrived at Rommel's house and invited him to the police station. There, he was identified as one of Gilberto's assailants.[12]

The RTC Ruling

In its 27 January 2014 judgment, the RTC found Rommel guilty of murder. It highlighted the prosecution witnesses' categorical identification of Rommel and Ronelo as the ones who assaulted Gilberto and described their respective participation in the death of the victim. The trial court found that Rommel conspired with his co-accused because the manner by which Gilberto was attacked demonstrated unity of purpose and community of design. In addition, the RTC ruled that Gilberto's killing was attended by the qualifying circumstances of treachery and abuse of superior strength. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused, ROMMEL BERMUDO *Y* CAPISTRANO and RONELO BERMUDO *Y* MARCELLANO, GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, sentencing them to suffer the penalty of Reclusion Perpetua and to pay the Heirs of Gilberto Bedrero, jointly and severally, the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as nominal damages, ₱25,000.00 as exemplary damages, ₱25,000.00 as attorney's fees and litigation expenses.
>
> In the service of their sentence, the said accused shall be credited with the periods of their preventive imprisonment pursuant to the provision of Article 29 of the Revised Penal Code, as amended.

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[11] *Id*. at 8-9.

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

This case, in so far as accused Rolando Bermudo *y* Capistrano is concerned, is hereby ordered archived the same to be revived after his arrest.

SO ORDERED.[13]

Aggrieved, Rommel appealed before the CA.

The CA Ruling

In its 26 June 2015 decision, the CA affirmed the RTC judgment. The appellate court explained that it was constrained to sustain the RTC's findings as to the credibility and weight of the testimony of the witnesses absent any evidence showing that some facts had been overlooked or misapplied. It concurred that the prosecution witnesses positively identified Rommel as one of the malefactors in the killing of Gilberto. The CA pointed out that their testimony was corroborated on material points by physical evidence. The appellate court agreed that Rommel conspired with his co-accused as manifested by their actions. Nevertheless, it disagreed that abuse of superior physical strength should be appreciated on account of the presence of treachery. The CA clarified that when abuse of superior strength concurs with treachery, the former is absorbed in the latter. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, the present appeal is hereby **DISMISSED** and the assailed Judgment dated January 27, 2014 **AFFIRMED IN TOTO**.

IT IS SO ORDERED.[14]

Aggrieved, Rommel appealed before the Court raising:

ISSUE

WHETHER THE ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF MURDER

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[13] CA *rollo*, pp. 71-72.

[14] *Rollo*, p. 17.

THE COURT'S RULING

The appeal has no merit.

It is axiomatic that the appreciation made by the trial courts as to the credibility and probative value of the testimony of witnesses is accorded finality, provided that there is no showing that the trial court had overlooked or misinterpreted some material facts which could materially affect the outcome of the case.[15] In the present case, Rommel assails Philip and Grace's credibility claiming that their motive is questionable because they are Gilberto's relatives. He finds it suspicious that Philip could identify the assailants in view of his position at the crime scene and his intoxication at that time. On the other hand, Rommel argues that Grace never actually witnessed the crime and that her testimony was inconsistent.

After a closer perusal of the records, the Court finds no reason to reverse the assessment of the courts *a quo* as to the credibility and probative value of the testimony of the prosecution witnesses.

Both Philip and Grace categorically and consistently identified Rommel as one of those who attacked Gilberto. Their narrations are so interwoven that when taken together, Gilberto's demise at the hands of Rommel and his co-accused is clearly illustrated.

According to Philip, he witnessed how Rommel and his co-accused commenced their assault on Gilberto. He, however, fled the scene when Rommel attacked him after he tried to help Gilberto. Philip recalled thus:

ATTY. NATE

Q: So what happened to Gilberto Bedrero when he came out from his residence also?

A: When Manoy Gilbert went out of his residence, I saw two (2) men running towards the direction of Manoy Gilbert coming from behind.

Q: Do you know the names or identity of these two (2) persons who were rushing at the back of Gilberto Bedrero?

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[15] *People v. Bautista*, 665 Phil. 815, 826 (2011), citing *People v. Gabrino*, 660 Phil. 485, 493 (2011).

A: Yes, sir. Rommel Bermudo and Rolando Bermudo. They are siblings.

x x x x x x x x x

Q: You said that this Rommel and Rolando came and went at the back of Gilberto Bermudo. When these two (2) went at the back of Gilberto, what happened next, if any?
A: Rommel struck Gilberto with an axe on his head.

Q: When Gilberto was axed by Rommel, what happened to Gilberto?
A: Gilberto fell to the ground and after that Ronelo rushed to him and hacked him.

Q: To your recollection, was Gilberto hit when he was hacked by Ronelo?
A: Yes, sir, with a bolo.

Q: What portion or what part of the body of Gilberto was hit by Ronelo when he was hacked?
A: He was hit on the stomach.

Q: After that, what happened next if any?
A: Rolando struck Gilberto Bedrero with a piece of wood and stabbed him with a bolo.

Q: At that moment, what did you do when you saw that incident?
A: I came near them to pacify them but Rommel tried to strike me with an axe also.

x x x x x x x x x

Q: So, when you were hit by Rommel Bermudo, what did you do if any?
A: After I fell, I stood up and [ran] towards our house.[16]

On the other hand, Grace witnessed how Rommel and his co-accused continued to maul Gilberto after he was already lying on the ground. She narrated:

ATTY. NATE

Q: So when Philip Bedrero and Ronelo Bermudo were having an altercation, what transpired next?
A: I saw "Papa Gilbert" came out, Sir.

[16] TSN, 7 June 2012, pp. 5-12.

Q: What is the name of your Papa Gilbert who came out to the open?
A: Gilberto Bedrero, Sir.

Q: When Gilberto Bedrero went outside from where he came, what transpired next?
A: I saw Rommel Bermudo and Rolando Bermudo approaching, Sir.

Q: So what happened when Rommel and Rolando Bermudo came?
A: When I saw them, I immediately asked for help, Sir.

Q: So what is the reason why you were then asking for assistance or help?
A: I was frightened because I saw that Manoy Philip and Ronelo were having an altercation and my Manoy Gilbert also came out, that's why I asked for help, Sir.

x x x x x x x x x

Q: So after seeking assistance, what transpired next?
A: Nobody came to help me and when I went back to the place, I saw my Uncle already lying on the ground blooded, Sir.

Q: So when you saw your Uncle blooded, what did you do after seeing such circumstance?
A: I took pity on him so I went to him and I cradled him, Sir.

Q: So at that moment when you saw your Uncle, do you recall where were these persons of Ronelo, Rommel and Rolando Bermudo at that time?
A: They were just there standing near Uncle Gilbert, Sir.

Q: And likewise, where was Philip Bedrero at that time when you came back to the scene?
A: I did not see him anymore, Sir.

Q: While thereat Madam witness, while you were embracing your Uncle Gilbert, what transpired next?
A: Ronelo asked me to leave because he will hack again Uncle Gilbert, Sir.

x x x x x x x x x

Q: When you were asked by Ronelo to leave, what did you do?
A: Because of fear I left but I stayed close to where my Uncle Gilbert was because I tripped, Sir.

Q: Could you estimate the distance when you moved away when you were asked by Ronelo to leave?
A: About three (3) meters, Sir.

Q: When you were at that distance of 3 meters away from Gilberto Bedrero, what transpired next?
A: I saw Ronelo hacked (sic) my Uncle Gilbert and then strucked him with a piece of wood on his face, Sir. (Witness pointing to her forehead)

Q: When you said Gilbert was hacked by Ronelo, to your reflection, what portion of his body was hit?
A: Here Sir. (Witness pointing on the lower portion of his chest).

x x x x x x x x x

Q: When Ronelo hacked Gilberto with a bolo and strucked him with a piece of wood, where were these two (2) persons of Rommel and Rolando?
A: They were just standing there, Sir.

Q: To your reflection, what were these two persons doing aside from standing?
A: They were telling Ronelo "sige tagaa na 'yan, gadana na 'yan."

Q: After Ronelo was being instructed or directed by these two persons to struck (sic) or to kill Gilberto, what transpired next?
A: They left and then the members of the Brgy. Tanod arrived Sir.[17]

Philip and Grace's testimony corroborate each other on material points. They both saw Rommel and Rolando rush towards Gilberto — Philip saw Rommel hit Gilberto's head while Grace fled to get help. Once Gilberto was down on the ground, Ronelo and Rolando continued to stab and hack him. Philip tried to intervene but was forced to flee after Rommel swung an axe at him. When Grace returned, she hurriedly went to the side of a bloodied Gilberto. However, Ronelo instructed her to leave as he would hack and stab Gilberto again as his two companions encouraged him to finish the victim off.

[17] TSN, 5 July 2012, pp. 4-8.

Rommel's attempt to discredit the prosecution witnesses has no leg to stand on. Philip consistently identified Rommel and his co-accused as Gilberto's attackers and even described their respective participations. Notwithstanding that he was at a lower elevation, he could clearly see Gilberto and his attackers because of his proximity to the parties involved in the scuffle and the presence of sufficient illumination. Further, Rommel is mistaken in claiming that Grace's testimony was inconsistent because she first said that she did not see who hacked Gilberto but later on recalled that it was Ronelo. A deeper scrutiny of her testimony reveals that it is true that she did not see who initially attacked Gilberto because when she came back he was already bloodied on the ground. Nevertheless, once she tried to comfort the victim, Ronelo told her to leave Gilberto's side so he could hack him again.

Much ado is made about Philip's alleged intoxication. Rommel highlights that according to the BMC Medical Certificate,[18] he was drunk at that time the incident happened and he even admitted the same during his testimony. As such, accused-appellant believes that Philip's credibility is questionable in the light of his condition.

It is noteworthy that the medical certificate merely noted that Philip's breath smelled of alcohol. No other tests were conducted on him to determine his blood alcohol level, which could help establish his degree of intoxication. In addition, Philip merely testified[19] that he was drunk because he had imbibed some alcoholic beverage that night.

The certification and Philip's testimony, however, do not prove that Philip was such in a drunken stupor that his faculties had been greatly impaired or diminished. In *People v. Dee*,[20] the Court explained that a witness being positive for alcohol breath does not detract his positive identification of the accused

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[18] Records, p. 35.

[19] TSN, 7 June 2012, p. 22.

[20] 396 Phil. 274 (2000).

because there was no showing that the level of intoxication impaired his senses and prevented him from positively identifying the accused — the law presumes every person is of sound mind unless proven otherwise.[21] Even assuming that Philip's testimony is an admission of drunkenness at the time of the incident; still, in the absence of satisfactory proof that his intoxication had clouded his sense and perception rendering his testimony unreliable, it should be presumed that Philip was sober enough to have processed and to vividly recall the gruesome incident he had witnessed.

Likewise, Rommel bewails that Philip and Grace's testimonies were contrary to the physical evidence. He notes that the medical report suggests that Gilberto died because of asphyxiation through manual strangulation, yet, none of them testified that they had seen someone choke Gilberto. Such conclusion, however, is gravely erroneous. According to the physician who exhumed Gilberto's remains, the cause of death may have been asphyxiation through manual strangulation or the effect of the stab wound in the lower right portion of his chest.

Thus, contrary to Rommel's position, the physical evidence supported the testimony of the eyewitnesses. Both Philip and Grace saw Ronelo stab Philip in the chest and their narration of the assault that took place was consistent with the injuries suffered by the victim. Further, it can be easily explained why neither Philip nor Grace testified seeing someone choke Gilberto considering that at the time Grace returned to the crime scene, Philip had already fled. As such, the choking, if it indeed occurred, could have happened during the interim period where both Philip and Grace were not around. Still, it does not detract from the fact that they saw Rommel's co-accused inflict the fatal blow to Gilberto's chest.

Rommel also assails that Philip and Grace's testimonies were biased because of their close relationship with Gilberto. Nonetheless, such relationship alone does not necessarily prejudice the credibility of the witnesses. In *People v.*

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[21] *Id*. at 284-285.

Guillera,[22] the Court explained that filial relations could in fact bolster the credibility of witnesses, to wit:

> Neither did Geraldine's relationship with Enrique impair her credibility since it is a basic precept that relationship per se of a witness with the victim does not necessarily mean that the witness is biased. Close or blood relationship alone, does not, by itself, impair a witness' credibility. On the contrary, it could even strengthen the witness' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender.[23]

Thus, Philip and Grace's relationship with Gilberto does not *ipso facto* render their testimony unworthy of credence. This is especially true since they were steadfast in pointing at Rommel as one of the persons who mauled Gilberto. Such unflinching testimony leads to no other conclusion but that Philip and Grace witnessed their own relative's demise at the hands of Rommel and his co-accused.

Based on Philip and Grace's testimony, all the elements of the crime of murder were proven beyond reasonable doubt, *viz:* (1) a person was killed; (2) the accused killed the victim; (3) the killing was attended by any of the qualifying circumstance in Article 248 of the Revised Penal Code, i.e., treachery or *alevosia*; and (4) the killing is neither parricide nor infanticide.[24]

Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[25] In turn, its elements are: (1) employment of means, method or manner of execution which will ensure the safety of the malefactor from

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[22] 601 Phil. 155 (2009).

[23] *Id*. at 164.

[24] *People v. Lagman*, 685 Phil. 733, 743 (2012).

[25] Article 14(16) of the Revised Penal Code.

defensive or retaliating acts on the part of the victim; and (2) deliberate adoption of such means, method or manner of execution.[26] In other words, the means of attack, consciously adopted by the assailant, rendered the victim defenseless.

In the present case, it is readily apparent that Gilberto was completely defenseless at the time of the attack because he was surprised by Rommel with a blow to the head causing him to fall to the ground. Rommel and co-accused continued to attack him causing him multiple injuries, including the fatal ones. From the inception of the assault until the *coup de grace* was inflicted, Gilberto was never in a position to defend himself. Further, Rommel and his co-accused consciously adopted the means of attack because, as noted by the CA, they were already armed when they proceeded to the crime scene. In addition, it is noteworthy that Rommel suddenly, without warning or provocation, attacked Gilberto from behind manifesting that their actions were planned and orchestrated, and not merely impetuous.

In Gilberto's death, Rommel and his co-accused are equally guilty of murder as conspirators. Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[27] While there was no express agreement between the malefactors, their concerted actions indicate that they conspired with each other. There is an implied conspiracy when two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.[28] In other words, there must be unity of purpose and unity in the execution of the unlawful objective.[29]

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[26] *Cirera v. People*, 739 Phil. 25, 44-45 (2014).

[27] Article 8 of the Revised Penal Code.

[28] *People v. de Leon*, 608 Phil. 701, 718-719 (2009).

[29] Reyes, *The Revised Penal Code* (2008 Ed.), p. 127.

In this case, Rommel and his co-accused clearly acted with a common purpose to kill Gilberto as manifested by their coordinated actions. Accused-appellant initiated the assault and assisted his co-accused in accomplishing their goal. It must be remembered that when Philip tried to help Gilberto, Rommel swung an axe at him and, with a horrified Grace nearby, urged and encouraged Ronelo to kill the victim. Thus, even if there is no direct evidence to establish who among the culprits inflicted the mortal blow, they are all guilty of murder as conspirators because their mutual purpose impelled them to execute their harmonized attack on Gilberto.

Damages modified

The trial court awarded to Gilberto's heirs: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as nominal damages, ₱25,000.00 as exemplary damages, and ₱25,000.00 as attorney's fees. In *People v. Jugueta*,[30] the Court set the standard for the award of damages in certain heinous crimes, increasing to ₱75,000.00 the award of exemplary damages in murder punishable by *reclusion perpetua*. Consequently, the damages awarded should be modified to conform to recent jurisprudence.

WHEREFORE, the 26 June 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06615 is **AFFIRMED with MODIFICATION**. The exemplary damages awarded to the heirs of Gilberto Bedrero is increased to ₱75,000.00. All damages shall earn interest at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[30] 783 Phil. 806 (2016).

SECOND DIVISION

[G.R. No. 227216. July 4, 2018]

YIALOS MANNING SERVICES, INC., OVERSEAS SHIPMANAGEMENT S.A., RAUL VICENTE PEREZ, and MINERVA ALFONSO, *petitioners, vs.* **RAMIL G. BORJA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION'S STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SEAFARERS; CONFLICT-RESOLUTION PROCEDURE; IN CASE THERE ARE CONFLICTING FINDINGS AS TO THE HEALTH CONDITION OF THE SEAFARER, A THIRD DOCTOR MAY BE JOINTLY AGREED UPON BY THE PARTIES WHOSE FINDINGS SHALL BE FINAL AND BINDING.— Borja's employment with petitioners is covered by the Philippine Overseas Employment Administration's Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships, commonly referred to as the POEA-SEC, which both parties signed on April 8, 2010. As a contract, the same is considered the law between the parties. The last paragraph of Section 20 (B)(3) of the POEA-SEC provides for the solution to this common dispute: Section 20. B. Compensation and Benefits for Injury or Illness x x x 3. x x x For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company designated physician within three working days upon his return x x x. **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and seafarer. The third doctor's decision shall be final and binding on both parties.** Thus, in case there are conflicting findings as to the health condition of the seafarer, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding.

2. ID.; ID.; ID.; ID.; THE REFERRAL TO A THIRD DOCTOR IS MANDATORY WHEN THERE IS A VALID AND TIMELY ASSESSMENT BY THE COMPANY-

DESIGNATED PHYSICIAN AND THE APPOINTED DOCTOR OF THE SEAFARER REFUTED SUCH ASSESSMENT.— In *Marlow Navigation Philippines, Inc. v. Osias*, the Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment. In view of this, the NLRC promulgated NLRC *En Banc* Resolution No. 008-14, which directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

3. **ID.; ID.; ID.; ID.; THE SEAFARER HAS THE DUTY TO SIGNIFY THE INTENTION TO RESOLVE THE CONFLICT BY REFERRAL TO A THIRD DOCTOR AS HE IS THE ONE CONTESTING THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN; WITHOUT THE REFERRAL TO A THIRD DOCTOR, THE MEDICAL PRONOUNCEMENT OF THE COMPANY-DESIGNATED PHYSICIAN MUST BE UPHELD.—** The duty to signify the intention to resolve the conflict by referral to a third doctor is upon the seafarer as he is the one contesting the findings of the company-designated physician. x x x. Thus, without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld.

4. **ID.; ID.; ID.; ID.; THE LAPSE OF THE 120-DAY OR 240-DAY PERIOD DOES NOT AUTOMATICALLY ENTITLE THE SEAFARER TO A TOTAL PERMANENT DISABILITY, AS IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO WILL CERTIFY HIM AS EITHER FIT TO WORK OR CLASSIFY HIS CONDITION AS PARTIAL OR TOTAL PERMANENT DISABILITY WITHIN THE SAID PERIODS.—** Under Section 32 of the POEA-SEC, only those illnesses or injuries classified as Grade 1 shall constitute **total permanent disability**. Thus, those from Grade 2 to Grade 14 are considered as **partial permanent disability**, subject to the schedule of rates also provided in the POEA-SEC. The lapse of the 120-day or 240-day period does not automatically

entitle the seafarer to a **total permanent disability**. It is the company-designated physician who will certify him as either fit to work or classify his condition as partial or total permanent disability within the said periods.

5. ID.; ID.; ID.; ID.; ASSESSMENT OF SEAFARER'S CONDITION, APPLICABLE PROCEDURE AND PERIODS THEREOF, CLARIFIED.— The applicable procedure and periods have been clarified in the case of *Vergara*: [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period **until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally**, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** In other words, the seafarer's condition is considered to be **temporary total disability** for the duration of his treatment which shall have an initial maximum period of 120 days. If the seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician must make an assessment of the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's disability has become partial or total permanent.

6. ID.; ID.; ID.; ID.; THE CONCLUSIVE PRESUMPTION THAT THE SEAFARER IS TOTALLY AND PERMANENTLY DISABLED ARISES ONLY, IF AFTER THE LAPSE OF 240 DAYS, THE SEAFARER IS STILL INCAPACITATED TO PERFORM HIS USUAL SEA DUTIES AND THE COMPANY-DESIGNATED PHYSICIAN HAS NOT MADE ANY ASSESSMENT WHETHER THE SEAFARER IS FIT TO WORK OR WHETHER HIS PERMANENT DISABILITY IS PARTIAL OR TOTAL.— [T]he POEA-SEC

itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. x x x. However, if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties **and** the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises. x x x. In the present case, Borja arrived in the Philippines on November 25, 2010. He had continuous check-ups at Marine Medical Services of Metropolitan Medical Center (MMC). On March 11, 2011, he had a follow-up check-up where he was advised to continue physical therapy and medications. He was advised to return on April 1, 2011 for re-evaluation. Thus, the 120-day period (ending on March 25, 2011) was justifiably extended as Borja required further medical treatment. On April 15, 2011 the company-designated physician, Dr. William Chuasuan, Orthopedic Surgeon of MMC, issued a disability rating of "Grade 11 — slight rigidity of 1/3 loss of motion or lifting power of the trunk" after Borja's follow up check-up. Thus, the company-designated physician's assessment was made within the allowed 240-day period. Based on the foregoing jurisprudence, therefore, such assessment must be upheld, in the absence of a contrary finding from a third doctor agreed upon by both parties.

7. ID.; ID.; ID.; ID.; THE OPINION OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS WHERE THE SEAFARER REFUSED THE REFERRAL TO A THIRD DOCTOR.— [T]he Court echoes its ruling in *INC Shipmanagement, Inc. v. Rosales:* It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days. In light of these distinctions, to confuse the concepts of **permanent** and **total** disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable

award of permanent total disability benefits. The rulings of the LA and the NLRC were seriously flawed because they were issued in complete disregard of the conflict-resolution procedure laid down in the POEA-SEC. This case could have been resolved at the conciliation stage with the referral of the matter to a third doctor whose findings would be binding on both parties. And, if the seafarer refused the referral to a third doctor, the complaint should have been dismissed because it is the company-designated physician's opinion that prevails. Significantly, the LA and NLRC decisions did not discuss the disregard of the procedure in obtaining a third opinion. In turn, in affirming the findings of the labor tribunals, the CA committed reversible error. Thus, the Court is compelled to grant the Petition.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Bermejo Laurino-Bermejo Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition) filed by Yialos Manning Services, Inc. (YMSI), Overseas Shipmanagement S.A. (OSSA), Raul Vicente Perez, and Minerva Alfonso, (collectively, petitioners), assails the Decision[2] dated May 18, 2016 (Assailed Decision) and Resolution[3] dated September 14, 2016 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 126554, which affirmed the Resolutions dated May 15, 2012[4] and July 9, 2012[5] of the National Labor

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[1] *Rollo*, pp. 25-62.

[2] *Id*. at 64-73. Penned by Associate Justice Myra V. Garcia Fernandez, with Associate Justices Rosmari D. Carandang and Mario V. Lopez concurring.

[3] *Id*. at 75-76.

[4] CA *rollo*, pp. 34-47. Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino concurring.

[5] *Id.* at 48-49.

Relations Commission[6] (NLRC) granting permanent total disability benefits and attorney's fees to herein respondent Ramil G. Borja (Borja).

The Facts

The facts, as summarized by the CA, are as follows:

> [Borja] was employed as oiler by YMSI, for and on behalf of its principal OSSA, for a period of nine (9) months. He boarded the vessel M/V Thetis on April 20, 2010. On November 9, 2010, after doing maintenance work and lifting a metal plate, he felt "pain in the buttocks radiating down the back of his leg." He was referred to a company physician in Taixing, China, who diagnosed him to have inter-vertebral protrusion. He was declared unfit to work for three (3) months and was advised for "temporary palliative care" or bed rest for one month. He was medically repatriated on November 25, 2010.
>
> [Borja] reported to YMSFs office, and he was referred to Marine Medical Services in Metropolitan Medical Center (MMC) on November 27, 2010 and was diagnosed by Dr. Robert D. Lim to have "lumbar strain." He was advised to continue with his medication and to undergo physical therapy in a hospital nearer to his place of residence or at University of Perpetual Help - Dr. Jose Tamayo Medical Center (UPH-DJTMC) in Binan, Laguna, but he reported to Dr. Lim every month for re-evaluation. Respondent also underwent electromyograph (EMG) test at the UPH-DJTMC on January 27, 2011 with the following findings: "chronic bilateral L5-S1 radiculopathies probably secondary to a lumbar canal strenosis."
>
> On April 15, 2011, Dr. William Chuasuan of MMC issued a disability rating "grade 11 — slight rigidity of 1/3 [loss of] motion or lifting power of the trunk." [Borja], nevertheless, continued his therapy at UPH-DJTMC because he was still suffering from back pain. He then demanded for reimbursement of his medical expenses and for payment of total permanent disability, but YMSI denied the claims. Hence, private respondent filed a complaint for payment of salaries/wages for the unexpired portion of the contract, disability benefits and for moral and exemplary damages, as well as, attorney's fees against petitioners with the Labor Arbiter on July 7, 2011.

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[6] NLRC LAC No. 03-000281-12/NLRC OFW CASE No. (M) 07-10393-11.

During the conciliation hearing, the parties agreed to refer private respondent for a third (3rd) medical opinion but private respondent allegedly backed out of the agreement.

On August 20, 2011, private respondent consulted Dr. Manuel C. Jacinto, Jr. at Sta. Teresita General Hospital, Quezon City, who diagnosed him with "chronic low back pain with L5-S1 radiculopathy (9 months)." He was advised for "continuous therapy and repeat MRI" and declared "physically unfit to return to work" or suffering from "total permanent disability."

x x x x x x x x x

On February 9, 2012, Labor Arbiter Cheryl M. Ampil rendered a decision granting [Borja]'s claim for total permanent disability. The Labor Arbiter held that the test of determining permanent total disability is the inability to perform customary work for more than 120 days, which may be extended until 240 days at the option of the petitioner or the company-designated physician; that petitioners did not extend the period of [Borja]'s medical treatment, but his disability was assessed only on April 15, 2011 or 149 days after repatriation, hence, [Borja] is entitled to permanent total disability of US$60,000.00 as well as to attorney's fees, because he was compelled to litigate and to incur expenses by reason of petitioner's failure to pay the disability benefits. x x x

x x x x x x x x x

Petitioners appealed to the NLRC asserting that [Borja]'s disability is not determined by mere lapse of the number of days, but by medical findings, by law, and contracts; that the disability grading of the company designated physician is the standard in measuring the disability of a seafarer; that the POEA Standard Employment Contract does not embody a permanent unfitness clause that would entitle the seafarer to full disability; that the fact that complainant was constrained to litigate to protect his interest does not justify the award of attorney's fees in the absence of malice or bad faith, hence, petitioners prayed for the reversal of the decision and dismissal of the complaint.

The NLRC dismissed the appeal on May 15, 2012. It sustained [Borja]'s entitlement to total and permanent disability and attorney's fees. A motion for reconsideration was filed, but the NLRC denied the same on July 9, 2012.[7]

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[7] *Rollo*, pp. 65-68.

Aggrieved, petitioners elevated the case to the CA via petition for *certiorari*.

The CA Decision

In the Assailed Decision, the CA dismissed the *certiorari* petition finding no grave abuse of discretion on the part of the NLRC. Citing *Kestrel Shipping Co. v. Munar*,[8] the CA held that Borja's disability was considered total and permanent as he was still undergoing therapy even after the expiration of the 240-day period. There was no showing that he was able to resume sea duty or became employed after filing the complaint. Due to his medical condition, Borja was unable to engage in gainful employment for more than 240 days.

On the issue of attorney's fees, the CA affirmed the NLRC findings that Borja was entitled thereto as he was compelled to litigate due to petitioners' failure to satisfy his valid claim for permanent total disability benefits.

The Petition

Thus, petitioners elevated the case before the Court. Petitioners maintain that Borja is not entitled to total permanent disability benefits as his disability is only grade 11, as certified by the company-designated physician. The petitioners argue that the CA committed reversible error in holding that Borja was entitled to total permanent disability benefits merely because the medical certification was issued after the 120 days.

Borja filed his Comment[9] on June 19, 2017, maintaining his entitlement to total permanent disability benefits and attorneys' fees.

Issue

Whether Borja is entitled to total permanent disability benefits.

The Court's Ruling

The Court is once again presented with the issue of seafarer's disability compensation when the medical pronouncements of

[8] 702 Phil. 717 (2013).

[9] *Rollo*, pp. 115-142.

the company-designated physician and the seafarer-appointed physician are conflicting.

There is no dispute as to whether Borja's condition is work-related. The pivotal issue for resolution is the degree of disability to determine the amount of benefits due to him. Borja claims that his disability is total and permanent, as certified by his appointed physician. On the other hand, petitioners claim that Borja's ailment is only "Grade 11" as diagnosed by the company-designated physician.

Borja's employment with petitioners is covered by the Philippine Overseas Employment Administration's Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships, commonly referred to as the POEA-SEC, which both parties signed on April 8, 2010.[10] As a contract, the same is considered the law between the parties.[11]

The last paragraph of Section 20(B)(3) of the POEA-SEC provides for the solution to this common dispute:

Section 20.

B. Compensation and Benefits for Injury or Illness

x x x x x x x x x

3. x x x For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company designated physician within three working days upon his return x x x.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and seafarer. The third doctor's decision shall be final and binding on both parties.

Thus, in case there are conflicting findings as to the health condition of the seafarer, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding.

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[10] CA *rollo*, pp. 111-117.

[11] *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839 (2008).

In *Marlow Navigation Philippines, Inc. v. Osias*,[12] the Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

In view of this, the NLRC promulgated NLRC *En Banc* Resolution No. 008-14,[13] which directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

The duty to signify the intention to resolve the conflict by referral to a third doctor is upon the seafarer as he is the one contesting the findings of the company-designated physician. In *Bahia Shipping Services, Inc. v. Constantino*,[14] the Court held:

> As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.
>
> In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr. Lim's assessment of Constantino's health should stand. Thus, the CA's conclusion that Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.[15]

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[12] 773 Phil. 428 (2015).

[13] Directing Labor Arbiters to Give Parties 15 Days to Secure the Services of a Third Doctor and 30 Days for Doctor to Submit Reassessment, dated November 12, 2014.

[14] 738 Phil. 564 (2014).

[15] *Id*. at 576.

Thus, without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld. The Court ruled similarly in *Vergara v. Hammonia Maritime Services, Inc*.[16] (*Vergara*):

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
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> Thus, while petitioner had the right to seek a second and even a third opinion, **the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail**.[17] (Emphasis supplied)

In the Petition,[18] petitioners allege that the parties agreed during the mandatory conference before the Labor Arbiter to seek the opinion of a third doctor. However, this did not materialize because on the next scheduled conference, Borja refused to submit to a third doctor and demanded the payment of total permanent disability benefits. Thus, the conciliation proceedings were terminated, and the parties were directed to submit their position papers.

In his Comment[19] to the Petition, Borja did not deny this. However, he reasoned that he was not obliged to comply with

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[16] 588 Phil. 895 (2008).

[17] *Id*. at 914.

[18] *Rollo*, pp. 30-31.

[19] *Id*. at 134-137.

the conflict-resolution procedure under Section 20 (B)(3) of the POEA-SEC because he is already considered totally and permanently disabled by operation of law because the company-designated physician did not declare him fit to work within the 120-day and 240-day periods.

Borja's contention is untenable. Under Section 32 of the POEA-SEC, only those illnesses or injuries classified as Grade 1 shall constitute **total permanent disability**. Thus, those from Grade 2 to Grade 14 are considered as **partial permanent disability**, subject to the schedule of rates also provided in the POEA-SEC. The lapse of the 120-day or 240-day period does not automatically entitle the seafarer to a **total permanent disability**. It is the company-designated physician who will certify him as either fit to work or classify his condition as partial or total permanent disability within the said periods.

The applicable procedure and periods have been clarified in the case of *Vergara*:

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period **until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally**, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.**[20] (Emphasis supplied)

In other words, the seafarer's condition is considered to be **temporary total disability** for the duration of his treatment which shall have an initial maximum period of 120 days. If the

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[20] *Supra* note 16, at 912.

seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician must make an assessment of the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's disability has become partial or total permanent.

Notably, the POEA-SEC itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. Section 20(B)(6) thereof provides:

> In case of permanent total or partial disability of the seafarer caused by either injury or illness **the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this contract**. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphasis supplied)

However, if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties **and** the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises. In *Vergara*, the Court held:

> [A] temporary total disability only becomes permanent **when so declared by the company physician within the periods** he is allowed to do so, **or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability**.[21] (Emphasis and underscoring supplied)

In the present case, Borja arrived in the Philippines on November 25, 2010. He had continuous check-ups at Marine Medical Services of Metropolitan Medical Center (MMC). On March 11, 2011, he had a follow-up check-up where he was advised to continue physical therapy and medications. He was advised to

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[21] *Id*. at 913.

return on April 1, 2011 for re-evaluation.[22] Thus, the 120-day period (ending on March 25, 2011) was justifiably extended as Borja required further medical treatment. On April 15, 2011 the company-designated physician, Dr. William Chuasuan, Orthopedic Surgeon of MMC, issued a disability rating of "Grade 11 — slight rigidity of 1/3 loss of motion or lifting power of the trunk" after Borja's follow up check-up.[23] Thus, the company-designated physician's assessment was made within the allowed 240-day period. Based on the foregoing jurisprudence, therefore, such assessment must be upheld, in the absence of a contrary finding from a third doctor agreed upon by both parties.

On this note, the Court echoes its ruling in *INC Shipmanagement, Inc. v. Rosales*[24]:

> It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.
>
> In light of these distinctions, to confuse the concepts of **permanent** and **total** disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits.[25]

The rulings of the LA and the NLRC were seriously flawed because they were issued in complete disregard of the conflict-resolution procedure laid down in the POEA-SEC. This case could have been resolved at the conciliation stage with the referral of the matter to a third doctor whose findings would be binding on both parties. And, if the seafarer refused the referral to a

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[22] CA *rollo*, p. 86.

[23] *Id*. at 87.

[24] 744 Phil. 774 (2014).

[25] *Id*. at 786.

third doctor, the complaint should have been dismissed because it is the company-designated physician's opinion that prevails. Significantly, the LA and NLRC decisions did not discuss the disregard of the procedure in obtaining a third opinion. In turn, in affirming the findings of the labor tribunals, the CA committed reversible error.

Thus, the Court is compelled to grant the Petition. In summary, in case there is a conflict between the medical findings of the company-designated physician and the seafarer-appointed physician as to the disability rating of the seafarer, the parties must comply with the conflict-resolution procedure mandated under the POEA-SEC. The seafarer must be the one to signify his intent to refer to a third doctor as he is the party contesting the findings of the company-designated physician. Without the opinion of the third doctor, the medical pronouncements of the company-designated physician prevail.

As certified by the company-designated physician, Borja's disability is Grade 11, "slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk." Accordingly, under the Schedule of Disability of Allowances in Section 32 of the POEA-SEC, the compensation for such disability rating is 14.93% of US$50,000.00 or US$7,465.00.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The Decision dated May 18, 2016 and Resolution dated September 14, 2016 of the Court of Appeals in CA-G.R. SP No. 126554 are **SET ASIDE**. The respondent is **DECLARED** to be entitled to, and petitioners Yialos Manning Services, Inc. and Overseas Shipmanagement S.A., are adjudged solidarily liable for, the amount of **US$7,465.00**, or its peso equivalent. The respondent is hereby **DIRECTED** to return to the petitioners any amount received in excess thereof.

SO ORDERED.

Carpio[*]*, Senior Associate Justice* (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

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[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

SECOND DIVISION

[G.R. No. 229920. July 4, 2018]

SAMUEL MAMARIL, *petitioner, vs.* **THE RED SYSTEM COMPANY, INC., DANILO PADRIGON, AGNES TUNPALAN, ALEJANDRO ALVAREZ, JODERICK LOZANO, ENRIQUE ROMMEL MIRAFLORES, and DOMINGO RIVERO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES WHICH CHIEFLY PERTAIN TO THE LEGALITY OF THE EMPLOYEE'S DISMISSAL INVOLVE A CALIBRATION AND RE-EVALUATION OF THE EVIDENCE PRESENTED BY THE PARTIES, WHICH IS OUTSIDE THE PROVINCE OF A PETITION FOR REVIEW ON *CERTIORARI*.—** It must be noted at the outset that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. The Court finds that none of the mentioned circumstances are present to warrant a review of the factual findings of the case. Furthermore, the issues raised in the case at bar, which chiefly pertain to the legality of Mamaril's dismissal, involve a calibration and re-evaluation of the evidence presented by the parties, which is outside the province of a petition for review under Rule 45 of the Revised Rules of Court.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MANAGEMENT PREROGATIVE; AN EMPLOYER HAS FREE REIGN OVER EVERY ASPECT OF ITS BUSINESS, INCLUDING THE DISMISSAL OF ITS EMPLOYEES, AS LONG AS THE EXERCISE OF ITS MANAGEMENT PREROGATIVE IS DONE REASONABLY, IN GOOD FAITH, AND IN A MANNER NOT OTHERWISE INTENDED TO DEFEAT OR CIRCUMVENT THE RIGHTS OF WORKERS.—**

Remarkably, "the law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life." However, this constitutional commitment to the policy of social justice does not mean that every labor dispute shall be automatically decided in favor of labor. It must also be remembered that in protecting the rights of the workers, the law does not authorize the oppression of the employer. Hence, due regard is likewise given to the right of an employer to manage its operations according to reasonable standards and norms of fair play. This means that an employer has free reign over every aspect of its business, including the dismissal of its employees, as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL ON GROUND OF WILLFUL DISOBEDIENCE; TO BE VALID, THE EMPLOYER MUST PROVE BY SUBSTANTIAL EVIDENCE THAT THE EMPLOYEE'S ASSAILED CONDUCT MUST HAVE BEEN WILLFUL OR INTENTIONAL, THE WILLFULNESS BEING CHARACTERIZED BY A WRONGFUL AND PERVERSE ATTITUDE, AND THE ORDER VIOLATED MUST HAVE BEEN REASONABLE, LAWFUL, MADE KNOWN TO THE EMPLOYEE AND MUST PERTAIN TO THE DUTIES WHICH HE HAD BEEN ENGAGED TO DISCHARGE.— [A]rticle 297 of the Labor Code affirms the right of an employer to dismiss a miscreant employee on account of the latter's willful disobedience x x x. Significantly, jurisprudence ordains that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (i) "the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (ii) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge."

4. ID.; ID.; ID.; ID.; THE EMPLOYEE'S FLAGRANT VIOLATION OF THE COMPANY RULES, COUPLED

WITH THE PERVERSITY OF CONCEALING THE INCIDENTS, WARRANTS A PENALTY OF DISMISSAL FOR WILLFUL DISOBEDIENCE OF THE EMPLOYER'S LAWFUL ORDERS.— Mamaril's acts constituted a violation of Red System's company policy. Rule 5, Section 2(b)(3) of Red System's Code of Conduct penalizes other acts of negligence or inefficiency in the performance of duties or in the care, custody and/or use of company property, funds and/or equipment, where the amount of loss or damage amounts of more than Php 25,000.00. A violation of such rule warrants a penalty of dismissal. Notably, Mamaril violated Red System's safety rules twice, and caused damage amounting to over Php 40,000.00. To make matters worse, he even deliberately and willfully concealed his transgressions. Such flagrant violation of the rules, coupled with the perversity of concealing the incidents, patently show a wrongful and perverse mental attitude rendering Mamaril's acts inconsistent with proper subordination. Indubitably, this shows that Mamaril was indeed guilty of willful disobedience of Red System's lawful orders.

5. ID.; ID.; ID.; ID.; THE DELIBERATE DISREGARD OR DISOBEDIENCE BY AN EMPLOYEE OF THE COMPANY RULES SHALL NOT BE COUNTENANCED, AS IT MAY ENCOURAGE HIM OR HER TO DO EVEN WORSE AND WILL RENDER A MOCKERY OF THE RULES OF DISCIPLINE THAT EMPLOYEES ARE REQUIRED TO OBSERVE; DISMISSAL OF THE PETITIONER, UPHELD. — It must likewise be noted that the Court will not condone Mamaril's acts in exchange for his admission of his mistakes and his willingness to pay for the damage he caused. Guided by the Court's ruling in *St. Luke's Medical Center, Inc. v. Sanchez,* the deliberate disregard or disobedience by an employee of the rules, shall not be countenanced, as it may encourage him or her to do even worse and will render a mockery of the rules of discipline that employees are required to observe. To allow a recalcitrant employee like Mamaril to remain in Red System's employ shall amount to coddling an obstinate employee at the expense of the employer. Thus, taking all the circumstances collectively, the Court is convinced that Red System had sufficient and valid reason for terminating Mamaril's services, as his continued employment would be patently inimical to its interest. It is evident from the circumstances that Red System's decision to terminate Mamaril was exercised in good faith, for

the advancement of its interest and not for the purpose of defeating or circumventing the latter's rights. This valid exercise of management prerogative must be upheld.

6. **ID.; ID.; PREVENTIVE SUSPENSION; AN EMPLOYEE MAY BE PLACED UNDER PREVENTIVE SUSPENSION DURING THE PENDENCY OF AN INVESTIGATION AGAINST HIM WHERE HIS/HER CONTINUED EMPLOYMENT POSES A SERIOUS AND IMMINENT THREAT TO THE EMPLOYER'S LIFE OR PROPERTY OR OF HIS CO-WORKERS.—** [M]amaril's initial suspension was a preventive suspension that was necessary to protect Red System's equipment and personnel. Significantly, "[p]reventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers." An employee may be placed under preventive suspension during the pendency of an investigation against him. In fact, the employer's right to place an employee under preventive suspension is recognized in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code x x x. In the case at bar, Mamaril was placed under preventive suspension considering that during the pendency of the administrative hearings, he was noticed to have several near-accident misses and he had exhibited a lack of concern for his work. His inattentiveness posed a serious threat to the safety of the company equipment and personnel. This is especially true considering that he was driving trucks loaded with fragile products.

7. **ID.; ID.; ID.; THE PREVENTIVE SUSPENSION OF THE ERRANT EMPLOYEE EIGHT MONTHS AFTER THE INCIDENT DOES NOT RENDER THE SAME QUESTIONABLE, WHERE THE ERRANT EMPLOYEE'S CONTINUED EMPLOYMENT POSED A THREAT TO THE COMPANY'S PROPERTIES AND PERSONNEL.—** Mamaril further questions the propriety of his preventive suspension, by claiming that the timing of its imposition was suspect, as he even continued working for Red System for eight months after the incident. According to Mamaril, this fact belied Red System's claim that he was a threat to the company's safety. This same argument was struck down by the Court in the case of *Bluer Than Blue Ventures Company, et al. v. Esteban,* where

it held that even if the errant employee committed the acts complained of almost a year before the investigation was conducted, the employer shall not be estopped from placing the former under preventive suspension, if the employee still performs functions that involve handling the employer's property and funds. The employer still has every right to protect its assets and operations pending the employee's investigation. Applying this to the case at bar, Red System's decision to place Mamaril on preventive suspension eight months after the incident does not in any way render the said decision questionable. What matters is that Mamaril's continued employment posed a threat to the company's properties and personnel. It would be at the height of inequity to prevent Red System from enacting measures to protect its own equipment pending the administrative investigation.

8. **ID.; ID.; ID.; MONETARY CLAIMS; IN CLAIMS FOR 13TH MONTH PAY AND SERVICE INCENTIVE LEAVE PAY, THE BURDEN RESTS ON THE EMPLOYER TO PROVE THE FACT OF PAYMENT, RATHER THAN ON THE EMPLOYEE TO PROVE NON-PAYMENT.—** [I]t is settled that in claims for 13th month pay and SIL pay, the burden rests on the employer to prove the fact of payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment, considering that all pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that the claims of workers have been paid — are not in the possession of the worker but are in the custody and control of the employer. In the instant case, Red System failed to present proof showing that it had indeed paid Mamaril his 13th month pay and SIL pay, thereby entitling the latter to the same monetary claims. All amounts due shall earn legal interest of six percent (6%) *per annum* from the finality of this ruling until full satisfaction.

9. **ID.; ID.; ID.; THE COURT SHALL NOT INTERFERE WITH THE EMPLOYER'S RIGHT TO DISMISS AN EMPLOYEE FOUND TO HAVE WILLFULLY VIOLATED ITS RULES AND REGULATIONS.—** [M]amaril's dismissal from Red System was valid pursuant to Article 297(a) of the Labor Code. Mamaril willfully violated Red System's safety instructions. Precisely, these safety instructions were lawful and reasonable

and most importantly, were essentially for the safe discharge of his duties. It bears stressing that while the law imposes a heavy burden on the employer to respect its employees' security of tenure, the law likewise protects the employer's right to expect from its employees efficient service, diligence, and good conduct. Thus, the Court shall not interfere with the employer's right to dismiss an employee found to have willfully violated its rules and regulations.

APPEARANCES OF COUNSEL

Federation of Free Workers-FFW Legal Center for petitioner.
Hapitan Law Office for respondents.

D E C I S I O N

REYES, JR., *J.*:

An employee's tenurial security shall not be used as a shield to force the hand of an employer to maintain a recalcitrant employee, whose continued employment is patently inimical to the employer's interest. Accordingly, an employee who is found to be willfully disobedient of the employer's lawful and reasonable rules and regulations may be dismissed from service.

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[2] dated September 9, 2016, and Resolution[3] dated January 30, 2017, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 06413-MIN, which dismissed the complaint for illegal dismissal filed by petitioner Samuel Mamaril (Mamaril) against respondent The Red System Company, Inc. (Red System).

[1] *Rollo,* pp. 8-27.

[2] Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring; *id*. at 221-232.

[3] *Id.* at 250-251.

The Antecedents

Red System is a company engaged in the business of transporting Coca Cola Products from Coca-Cola warehouses to its various customers.[4] Red System owns and operates several delivery trucks.[5]

On June 1, 2011, Red System employed Mamaril as a delivery service representative. Mamaril was assigned in Davao and was tasked to transport goods from various depots to the end users.[6] He received a daily wage of Php 301.00.[7]

Prior to his employment as a delivery service representative, Mamaril was required to undergo seminars to orient him on the rules and regulations of Red System. During the orientation, drivers like Mamaril, were reminded to always observe the following safety rules, namely, to put a tire choke *(kalso),* engage the hand brake, and shift the transmission to first gear, before leaving the parked vehicle. These safeguards were necessary to prevent the movement of the truck while pushed by a forklift during loading and unloading operations.[8]

Meanwhile, on November 9, 2011, Red System conducted an administrative hearing to determine Mamaril's complicity in fraudulent and anomalous re-fueling charges on the truck he was driving. However, when asked if he had violated any other company regulations, or if he had met an accident that caused any damage to the truck, Mamaril admitted that he had met an accident in the past.[9]

Apparently, three days after Mamaril's employment, he failed to put a tire choke, and worse, shifted the gear to neutral after

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[4] *Id*. at 282.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 47.

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

[9] *Id*. at 284.

parking the truck he was driving. This caused the truck to move, which caused damage to Coca-Cola products valued at Php 14,556.00. Mamaril did not report the incident, and even concealed the matter.[10]

Upon discovering Mamaril's mishap, Red System immediately re-assigned the former as a warehouse yard driver.[11] As a yard driver, Mamaril was tasked to maneuver trucks to ensure their proper parking in preparation for the safe and efficient loading and unloading of products.[12]

However, days after Mamaril's transfer, he was involved in yet another accident. On November 12, 2011, Mamaril parked the truck with plate number PIK 726, without again putting a tire choke and engaging the hand break. As a result, the parked truck moved and hit another vehicle, causing damage amounting to Php 25,500.00. In addition, Mamaril caused an undetermined amount of damage to the vehicle hit by his truck.[13] Mamaril again concealed the incident.

Sometime in February 2012, Red System suddenly received a Job Order amounting to Php 25,500.00, for the repair of the truck with plate number PIK 726, from Motormall Davao Corporation.[14] Surprised and curious as to how the truck incurred such heavy damage, Red System conducted an investigation. The investigation pointed to Mamaril as the person responsible for the damage.[15]

Consequently, on April 10, 2012, Red System sent Mamaril a Notice to Explain.[16] In the said Notice, Mamaril was likewise

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[10] *Id*. at 283-284.

[11] *Id*. at 285.

[12] *Id*. at 132.

[13] *Id*. at 285.

[14] *Id*.

[15] *Id*. at 133.

[16] *Id*. at 90.

apprised that the charges against him were serious and may warrant the penalty of dismissal.[17]

On May 3, 2012, Mamaril submitted his written explanation, where he admitted that he violated the safety rules, which caused damage to the truck.[18]

Thereafter, on June 8, 2012, Red System held an administrative hearing. Mamaril admitted that his failure to engage the hand brake and put a tire choke on the vehicle resulted to damage.[19] Additionally, Red System discovered during the investigation that Mamaril had also committed several other infractions that were not reported to the company, such as pilferage, tardiness and other violations of the company's safety rules.[20]

Meanwhile, during the pendency of the administrative hearing against Mamaril, Red Systems' officers noticed that the former encountered several near-accident misses and exhibited a lack of concern towards his work. Consequently, Mamaril was advised to be more focused on his duties. However, the advice remained unheeded. Thus, to protect the safety of the company personnel and equipment, Red System placed Mamaril under preventive suspension for a period of one month, which took effect on August 3, 2012. Nina Kathrina Sordan, Red System's Site Human Resource Officer, and Ruselo Raga (Raga), Mamaril's supervisor, explained to Mamaril the nature and duration of his preventive suspension.[21]

Subsequently, prior to the expiration of the 30-day preventive suspension, Raga contacted Mamaril and told him to report for work on September 4, 2012. Mamaril did not comply with the directive, and belatedly returned on September 18, 2012.[22]

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[17] *Id*. at 286.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 134.

[21] *Id*. at 288.

[22] *Id*. at 288-289.

After the completion of the administrative investigation, Red System found Mamaril guilty of violating the Company Code of Conduct, particularly, Article 4 or Unacceptable Conduct and Behavior, as well as Rule 5, Section 2, pertaining to "Other Offenses or Other Acts of Negligence, Inefficiency in the Performance of Duties or in the Care, Custody/or Use of Company Property, Funds or Equipment Where the Amount of Loss or Damage to the company amounted to more than Php 25,000.00." Accordingly, Mamaril was terminated for willful disobedience and willful breach of trust as provided under Article 297 of the Labor Code.[23]

Aggrieved, Mamaril filed a Complaint for illegal dismissal with damages and attorney's fees. In his Position Paper,[24] he claimed that he was illegally dismissed by Red System. He asserted that his termination from employment was too harsh as it was manifestly disproportionate to his infractions. He sought for his reinstatement and the payment of his backwages and other benefits and privileges from the time of his illegal dismissal until his reinstatement. He likewise prayed for moral damages, exemplary damages and attorney's fees, assailing Red System's unjust and oppressive dismissal, which purportedly caused him mental anguish, social humiliation and a besmirched reputation.[25]

Ruling of the Labor Arbiter

In its Decision[26] on November 20, 2013, the Labor Arbiter (LA) dismissed the complaint for illegal dismissal. The LA ratiocinated that Mamaril was validly dismissed, as he was found to have been negligent, for failing to follow Red System's safety instructions. In fact, Mamaril admitted his complicity in such negligence. The LA held that Mamaril's propensity to violate the company's safety rules and conceal his misdeeds show that he is unfit to remain in Red System's service.[27]

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[23] *Id*. at 112-113.

[24] *Id*. at 47-56.

[25] *Id*. at 50-52.

[26] Rendered by Labor Arbiter Joseph Martin R. Castillo; *id*. at 136.

[27] *Id*. at 134-135.

Likewise, the LA refused to award Mamaril his 13th month pay and service incentive leave (SIL) pay considering that they were never substantiated, properly discussed and included in Mamaril's position paper.

The dispositive portion of the LA decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for Illegal Dismissal for lack of merit.
>
> All other claims are likewise DENIED for failure to substantiate and lack of merit.
>
> SO ORDERED.[28]

Dissatisfied with the LA's ruling, Mamaril filed a Memorandum of Appeal[29] with the National Labor Relations Commission (NLRC).

Ruling of the NLRC

On April 24, 2014, the NLRC issued a Resolution[30] affirming the LA's decision with modification. Echoing the ruling of the LA, the NLRC held that Mamaril was validly dismissed from employment, as he was proven to be guilty of violating Red System's Code of Conduct. Considering that his dismissal was warranted under the circumstances, his claims for reinstatement and backwages have no leg to stand on. In the same vein, the NLRC rejected Mamaril's claim for moral and exemplary damages due to his failure to present evidence showing that Red System acted with malice or bad faith in effecting his dismissal. The NLRC also denied Mamaril's claim for attorney's fees for lack of legal and factual basis.[31]

In addition, the NLRC rejected Mamaril's claim that he was meted with a "double penalty," for having been suspended, and thereafter terminated from employment. The NLRC clarified

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[28] *Id*. at 136.

[29] *Id*. at 137-152.

[30] *Id*. at 172-186.

[31] *Id*. at 184-185.

that what was initially imposed upon Mamaril was a preventive suspension, which was a disciplinary measure resorted to by Red System, pending the investigation of the former's offenses.[32]

However, the NLRC awarded 13th month pay and SIL pay in favor of Mamaril. It noted that Red System failed to present any document proving that it had indeed paid Mamaril his 13th month pay and SIL pay. Nevertheless, the NLRC limited the award to three (3) years prior to the filing of the complaint, pursuant to Article 291 of the Labor Code.[33]

The dispositive portion of the NLRC decision reads:

> WHEREFORE, [Mamaril's] appeal is PARTIALLY GRANTED.
>
> Accordingly, the decision of [LA] Joseph Martin R. Castillo dated November 20, 2013 is AFFIRMED with modification. [Red System], through its responsible officers, is directed to pay [Mamaril] his 13th month pay and [SIL] pay limited only to three (3) years from the filing of the instant complaint pursuant to Article 291 of the Labor Code.
>
> The rest of [Mamaril's] money claims are dismissed for lack of factual and/or legal basis.
>
> The computation of [Mamaril's] money claims shall be done at the Regional Arbitration Branch *a quo* during the pre-execution proceedings.
>
> SO ORDERED.[34]

Mamaril filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court with the CA.

Ruling of the CA

On September 9, 2016, the CA rendered the assailed Decision[35] affirming the NLRC resolution. The CA found no reason to

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[32] *Id*. at 181-182.

[33] *Id*. at 184.

[34] *Id*. at 185.

[35] *Id*. at 221-232.

reverse the findings of the LA and the NLRC holding that Mamaril was validly terminated by Red System. The CA ratiocinated that Mamaril's repeated failure to comply with Red System's safety instructions constituted a just cause for his dismissal.[36] His acts caused loss and damage to Red System, and constituted willful disobedience, negligence and willful breach of trust, which are just causes for termination under the Labor Code.[37]

Likewise, the CA agreed with the NLRC's finding that the suspension imposed on Mamaril was merely a preventive suspension and not a penalty.[38] Hence, Red System cannot be held guilty for imposing a double penalty against Mamaril.[39]

The CA also affirmed the NLRC's award of 13th month pay and SIL pay in favor of Mamaril.[40]

The decretal portion of the assailed CA decision reads:

WHEREFORE, the petition is **DENIED.** The Resolutions dated April 24, 2014 and June 30, 2014 of the [NLRC], Eighth Division, are hereby **AFFIRMED.**

SO ORDERED.[41]

Undeterred, Mamaril filed the instant Petition for Review on *Certiorari*[42] under Rule 45 of the Revised Rules of Court.

The Issues

The issues raised for the Court's resolution pertain to: (i) whether or not Mamaril was illegally dismissed by Red System, and is consequently entitled to reinstatement and full

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[36] *Id*. at 228.

[37] *Id*. at 230.

[38] *Id*. at 226.

[39] *Id*. at 228.

[40] *Id*. at 230.

[41] *Id*. at 231.

[42] *Id*. at 8-27.

backwages; and (ii) whether or not Red System was guilty of imposing a double penalty against Mamaril.

Mamaril tenaciously maintains that he was illegally dismissed from his employment. He claims that he was even subjected to a double penalty that was harsh and excessive, as he was initially placed under suspension and thereafter dismissed, based on the same infraction. He avers that his initial suspension could not have been a preventive suspension, considering that the incident subject of the administrative complaint took place in February 2012 while the administrative hearing belatedly followed on June 8, 2012, and he was suspended only in September 2012. He even continued to work for Red System from February to September 2012, which proves that he was not a threat to Red System's property and personnel.[43] According to Mamaril, this clearly shows that the imposition of the preventive suspension was unnecessary and hence, unjustified.[44] Furthermore, he bewails that the penalty of dismissal was too harsh and excessive for the infraction he committed. He points out that he readily admitted his misdeed and even offered to pay the cost of the damage, which are circumstances that warrant the imposition of a lesser penalty.[45]

On the other hand, Red System counters that Mamaril's claim that his preventive suspension already constituted a penalty is unfounded and without legal basis. Red System points out that Mamaril was given a Notice of Preventive Suspension, which clearly indicated that he was being placed on suspension, pending the investigation of the charges against him. In fact, his supervisor and the Human Resource Department even separately met with him to discuss the nature and duration of his preventive suspension. Red System stresses that it was imperative to place Mamaril under preventive suspension due to the threat he posed to the former's property and personnel. Red System further avers that even assuming that the preventive suspension was

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[43] *Id*. at 17.

[44] *Id*.

[45] *Id*. at 20.

illegal, his dismissal was nonetheless valid. He was terminated after the completion of the administrative investigation, where he was found to have committed a grave and blatant violation of the company's safety rules. Besides, Mamaril's conduct during his two-year employment with Red System revealed a pattern of flagrant and repeated violations of safety rules, notorious tardiness and involvement in several anomalies. These transgressions clearly justified his termination from employment.[46]

Ruling of the Court

The instant petition is bereft of merit.

It must be noted at the outset that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.[47] The Court finds that none of the mentioned circumstances are present to warrant a review of the factual findings of the case. Furthermore, the issues raised in the case at bar, which chiefly pertain to the legality of Mamaril's dismissal, involve a calibration and re-evaluation of the evidence presented by the parties, which is outside the province of a petition for review under Rule 45 of the Revised Rules of Court.

At any rate, the CA did not commit any reversible error that would warrant the reversal of its assailed decision.

Mamaril was validly dismissed on account of his willful disobedience of the lawful orders of Red System.

Remarkably, "the law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the

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[46] *Id*. at 291-295.

[47] *Tenazas, et al. v. R. Villegas Taxi Transport, et al.,* 731 Phil. 217, 228 (2014), citing *"J" Marketing Corp. v. Taran,* 607 Phil. 414, 424-425 (2009).

working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life."[48] However, this constitutional commitment to the policy of social justice does not mean that every labor dispute shall be automatically decided in favor of labor.[49] It must also be remembered that in protecting the rights of the workers, the law does not authorize the oppression of the employer.[50] Hence, due regard is likewise given to the right of an employer to manage its operations according to reasonable standards and norms of fair play.[51] This means that an employer has free reign over every aspect of its business, including the dismissal of its employees, as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.[52]

Accordingly, Article 297 of the Labor Code affirms the right of an employer to dismiss a miscreant employee on account of the latter's willful disobedience, *to wit:*

Article 282. (now Article 297) Termination *by employer*. An employer may terminate an employment for any of the following causes:

1. **Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**
2. Gross and habitual neglect by the employee of his duties;
3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
4. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
5. **Other causes analogous to the foregoing."** (Emphasis Ours)

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[48] *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 178-179 (2014).

[49] *Id*. at 179.

[50] *Id*.

[51] *Id.*

[52] *Id*. at 179-180.

Significantly, jurisprudence ordains that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (i) "the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (ii) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge."[53]

In the case at bar, it bears noting that the lifeblood of Red System's business is the safe transport and delivery of Coca-Cola products from the warehouse to the customers. As such, Red System imposed stringent guidelines to ensure the safe and efficient delivery of all the products. Specifically, drivers were repeatedly reminded to place a tire choke, shift the engine to first gear, and pull the hand brake, upon parking the truck. Compliance with these safety measures was essential to prevent the sudden movement of the truck while parked and pushed by a forklift during loading and unloading operations. Likewise, caution was necessary to avoid damage to the new trucks. Moreover, extra-care was mandated in hauling Coca-Cola products to avoid accidents which would result in needless delays and unnecessary expenses and ruin Red System's good will.[54]

It bears noting that Red System was not remiss in reminding its drivers of the importance of abiding by their safety regulations. To ensure a strict observance of the rules, the company required its drivers to attend various safety seminars, in addition to a mandated pre-employment orientation. In fact, Mamaril attended a pre-orientation seminar and five safety seminars over the course of his two-year stint with Red System.[55] Added to this, the safety rules were also written in Red System's Code of Conduct. There can be no doubt as to the lawfulness, reasonableness and necessity of Red System's safety instructions. Moreover, the rules pertained to the duties performed by Mamaril. Accordingly, Mamaril was

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[53] *Realda v. New Age Graphics, Inc., et al.,* 686 Phil. 1110, 1114 (2012).

[54] *Rollo,* p. 282.

[55] *Id*. at 283.

duty-bound to comply with such safety orders, as his main task consisted in driving and delivering fragile products. This notwithstanding, Mamaril still willfully and negligently failed to abide by the safety rules.

The records show that three days after Mamaril was employed, he failed to put a tire choke, and worse, shifted the truck's gear to neutral. As a result, the parked vehicle moved causing damage to Coca-Cola products valued at Php 14,556.00, in addition to the damage he caused to the truck. To make matters worse, instead of reporting the incident to his supervisor, as mandated under Red System's rules, Mamaril deliberately concealed the incident. If not for his belated admission in an administrative hearing on a different incident, Red System would not have learned about his prior misdeed.[56]

To make matters worse, Mamaril was again found to have committed the same violation of Red System's safety rules. On November 12, 2011, Mamaril parked the truck with plate number PIK 726, without again putting a tire choke and engaging the hand brake. Due to his failure to perform the required safety standards, the truck moved backwards and hit another vehicle. This caused damage amounting to Php 25,500.00. Brazenly, Mamaril again purposely concealed the incident. Red System belatedly learned of the accident only after conducting an investigation, after it was surprised to receive Job Order from Motormall Davao Corporation for the repair of the said truck.[57]

Clearly, Mamaril's acts constituted a violation of Red System's company policy. Rule 5, Section 2(b)(3) of Red System's Code of Conduct penalizes other acts of negligence or inefficiency in the performance of duties or in the care, custody and/or use of company property, funds and/or equipment, where the amount of loss or damage amounts of more than Php 25,000.00. A violation of such rule warrants a penalty of dismissal.[58]

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[56] *Id*. at 283-284.

[57] *Id*. at 284-285.

[58] *Id*. at 90.

Notably, Mamaril violated Red System's safety rules twice, and caused damage amounting to over Php 40,000.00. To make matters worse, he even deliberately and willfully concealed his transgressions. Such flagrant violation of the rules, coupled with the perversity of concealing the incidents, patently show a wrongful and perverse mental attitude rendering Mamaril's acts inconsistent with proper subordination. Indubitably, this shows that Mamaril was indeed guilty of willful disobedience of Red System's lawful orders.

It must likewise be noted that the Court will not condone Mamaril's acts in exchange for his admission of his mistakes and his willingness to pay for the damage he caused. Guided by the Court's ruling in *St. Luke's Medical Center, Inc. v. Sanchez,*[59] the deliberate disregard or disobedience by an employee of the rules, shall not be countenanced, as it may encourage him or her to do even worse and will render a mockery of the rules of discipline that employees are required to observe.[60] To allow a recalcitrant employee like Mamaril to remain in Red System's employ shall amount to coddling an obstinate employee at the expense of the employer.

Thus, taking all the circumstances collectively, the Court is convinced that Red System had sufficient and valid reason for terminating Mamaril's services, as his continued employment would be patently inimical to its interest. It is evident from the circumstances that Red System's decision to terminate Mamaril was exercised in good faith, for the advancement of its interest and not for the purpose of defeating or circumventing the latter's rights. This valid exercise of management prerogative must be upheld.

Mamaril's preventive suspension and subsequent dismissal from the service do not partake of a double penalty; neither may his dismissal be regarded as harsh and excessive.

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[59] 755 Phil. 910 (2015).

[60] *Id*. at 924.

Mamaril claims that he was subjected to a "double penalty," for having been initially placed under preventive suspension, and thereafter dismissed from the service.

The Court is not persuaded.

To begin with, Mamaril's initial suspension was a preventive suspension that was necessary to protect Red System's equipment and personnel.

Significantly, "[p]reventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers."[61] An employee may be placed under preventive suspension during the pendency of an investigation against him.[62]

In fact, the employer's right to place an employee under preventive suspension is recognized in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which states:

> SEC. 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.
>
> SEC. 9. Period of suspension. — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

In the case at bar, Mamaril was placed under preventive suspension considering that during the pendency of the

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[61] *Bluer Than Blue Joint Ventures Company, et al. v. Esteban,* 731 Phil. 502, 513-514 (2014).

[62] *Id.*

administrative hearings, he was noticed to have several near-accident misses and he had exhibited a lack of concern for his work. His inattentiveness posed a serious threat to the safety of the company equipment and personnel. This is especially true considering that he was driving trucks loaded with fragile products.

Mamaril further questions the propriety of his preventive suspension, by claiming that the timing of its imposition was suspect, as he even continued working for Red System for eight months after the incident. According to Mamaril, this fact belied Red System's claim that he was a threat to the company's safety.

This same argument was struck down by the Court in the case of *Bluer Than Blue Ventures Company, et al. v. Esteban*,[63] where it held that even if the errant employee committed the acts complained of almost a year before the investigation was conducted, the employer shall not be estopped from placing the former under preventive suspension, if the employee still performs functions that involve handling the employer's property and funds. The employer still has every right to protect its assets and operations pending the employee's investigation.[64] Applying this to the case at bar, Red System's decision to place Mamaril on preventive suspension eight months after the incident does not in any way render the said decision questionable. What matters is that Mamaril's continued employment posed a threat to the company's properties and personnel. It would be at the height of inequity to prevent Red System from enacting measures to protect its own equipment pending the administrative investigation.

Thus, having settled that Mamaril's one-month suspension was in fact a preventive suspension, there was nothing excessive or harsh about Red System's decision to subsequently dismiss Mamaril after finding him guilty of willful disobedience of its lawful and reasonable orders.

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[63] 731 Phil. 502 (2014).

[64] *Id*. at 513-514.

Mamaril is Entitled to 13th Month Pay and SIL Pay

Essentially, it is settled that in claims for 13th month pay and SIL pay, the burden rests on the employer to prove the fact of payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment, considering that all pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that the claims of workers have been paid — are not in the possession of the worker but are in the custody and control of the employer.[65] In the instant case, Red System failed to present proof showing that it had indeed paid Mamaril his 13th month pay and SIL pay, thereby entitling the latter to the same monetary claims. All amounts due shall earn legal interest of six percent (6%) *per annum* from the finality of this ruling until full satisfaction.

All told, Mamaril's dismissal from Red System was valid pursuant to Article 297(a) of the Labor Code. Mamaril willfully violated Red System's safety instructions. Precisely, these safety instructions were lawful and reasonable and most importantly, were essentially for the safe discharge of his duties. It bears stressing that while the law imposes a heavy burden on the employer to respect its employees' security of tenure, the law likewise protects the employer's right to expect from its employees efficient service, diligence, and good conduct.[66] Thus, the Court shall not interfere with the employer's right to dismiss an employee found to have willfully violated its rules and regulations.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED for lack of merit.** The Decision dated September 9, 2016, and Resolution dated January 30, 2017, rendered by the Court of Appeals in CA-G.R. SP No. 06413-MIN,

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[65] *Loon, et al. v. Power Master, Inc., et al.,* 723 Phil. 515, 531-532 (2013).

[66] *Peckson v. Robinsons Supermarket Corp., et al.,* 713 Phil. 471, 480-481 (2013).

are **AFFIRMED with modification,** such that the total amount due to petitioner Samuel Mamaril shall be subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction.

SO ORDERED.

Carpio[*]*, Senior Associate Justice* (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 237804. July 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MERCINDO BOBOTIOK, JR.** ***y*** **LONTOC,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL DELIVERY OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.— As correctly found by the appellate court, accused-appellant could not be charged or convicted for the illegal sale of dangerous drugs due to the fact that the poseur-buyer, PO1 Balbin, failed to effect payment for the drugs handed to him by accused-appellant. It appears that PO1 Balbin was caught off-guard when it was accused-appellant who approached them and handed over the plastic sachet containing a white crystalline substance, when he was expecting a person named Zenell Cruz. In the confusion, PO1 Balbin immediately executed the pre-arranged hand signal and proceeded to arrest the accused-appellant without giving the latter the opportunity to ask for payment or to receive the market

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[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

money as payment. Nevertheless, we agree with the findings of the CA that accused-appellant's actions may still be prosecuted under Section 5 as the prohibited act of delivering or distributing prohibited drugs. The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration. In the present case, the prosecution was able to establish that accused-appellant knowingly delivered the prohibited substance methylamphetamine hydrochloride (*shabu*) to the poseur-buyer without any authorization by law and that the police operatives confiscated the same.

2. **ID.; ID.; ID.; DEFENSE OF "FRAME UP" HOLDS NO WATER WHERE THE ACCUSED-APPELLANT FAILED TO PROVE ANY ILL MOTIVE ON THE PART OF THE APPREHENDING OFFICERS TO INCRIMINATE HIM FOR THE CRIME CHARGED.—** Accused-appellant's defense of "frame up" holds no water since he failed to prove any ill motive on the part of the apprehending officers so as to incriminate him for the crime charged. While the defense presented the testimony of Rexel Laqui who was supposedly the driver of the tricycle which accused-appellant claims to have been riding at the time of his arrest, it did not prove the alleged "frame-up." Instead, it cast even more doubt on the credibility of the defense since nowhere in Laqui's testimony was it mentioned that accused-appellant had a companion at the time he was arrested. On this point, Laqui's testimony contradicted accused-appellant's own testimony, instead of corroborating the latter.

3. **ID.; ID.; SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY, DEFINED; PRESCRIBED PROCEDURES IN THE HANDLING OF SEIZED ILLEGAL DRUGS TO PRESERVE THEIR IDENTITY, INTEGRITY, AND EVIDENTIARY VALUE UNDER SECTION 21, NOT COMPLIED WITH.—** Chain of custody is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction. Section 21, Article II of RA 9165 outlines the procedural safeguards that police officers

must follow in handling seized illegal drugs to preserve their identity, integrity, and evidentiary value x x x. In the case before Us, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par. 1.

4. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENT, UNDER JUSTIFIABLE REASONS, SHALL NOT RENDER VOID THE SEIZURE OF THE ILLEGAL DRUGS, PROVIDED THE PROSECUTION EXPLAINS ITS FAILURE TO ABIDE BY SUCH PROCEDURAL REQUIREMENT, AND SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM WAS PRESERVED.— Even assuming *arguendo* that the buy-bust team's act of conducting the inventory and photographing of the seized drugs at the police station was justified, it still suffered from a major procedural lapse since it was not done in the presence of any elected public official, a representative of the National Prosecution Service, or the media. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved.

5. ID.; ID.; ID.; THE GAPS IN THE CHAIN OF CUSTODY CREATE DOUBT AS TO WHETHER THE *CORPUS DELICTI* OF THE CRIME HAD BEEN PROPERLY PRESERVED.— In dispensing with the testimonies of Forensic Chemical Officer PCI Mangalip, Investigating Officer PO2 Medrano, and PO2 del Rosario, the prosecution failed to show every link of the chain of custody. Without the testimonies or stipulations stating the details on when and how the seized plastic sachet was brought to the crime laboratory, and thereafter, to the court for the prosecution's presentation of evidence, the Court cannot ascertain whether the seized drug presented in evidence during trial was the same item seized from accused-appellant when he was arrested. These gaps in the chain of custody create doubt as to whether the *corpus delicti* of the crime had been properly preserved. Time and again, this Court had taken judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool for extortion." Considering the gravity of the crime and the corresponding penalties thereof, procedural safeguards such

as those specified under Section 21 of RA 9165 are provided in cases involving dangerous drugs in order to protect the innocent from abuse and to ensure the preservation of the integrity of evidence.

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

VELASCO JR., *J.*:

The Case

Before the Court is an ordinary appeal[1] filed by accused-appellant Mercindo Bobotiok, Jr. y Lontoc (Bobotiok, Jr.) assailing the Decision[2] dated December 11, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 09066, which affirmed with modification the Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City, finding accused-appellant guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information[3] dated February 2, 2011, accused-appellant was charged with violation of Section 5, paragraph 1, Article II of RA 9165, the accusatory portion of which reads:

That, on or about the 1st day of February 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable

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[1] See Notice of Appeal dated January 4, 2018; *rollo*, pp. 102-103.

[2] *Rollo*, pp. 2-18. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh.

[3] Records, p. 1.

Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to **PO1 Jerry V. Balbin**, who acted as police poseur buyer, one (1) small heat-sealed transparent plastic sachet, marked with **JVB-010211** containing **zero point thirteen (0.13) grams**, of white crystalline substance, for and in consideration of the amount of **Php.500.00**, which substance was found positive to the test for ***Methylamphetamine hydrochloride***, commonly known as ***"Shabu"***[,] a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

During arraignment, accused-appellant, assisted by his counsel *de oficio*, entered a plea of not guilty to the charge.[5] The mandatory pre-trial conference was terminated on March 14, 2011 and trial on the merits ensued thereafter.[6]

Version of the Prosecution

The prosecution presented four (4) witnesses, namely: 1) Police Officer 1 (PO1) Jerry Balbin, the poseur-buyer; 2) Police Chief Inspector (PCI) Richard Allan Mangalip, the Forensic Chemical Officer; 3) Police Officer 2 (PO2) Roel Medrano; and 4) PO2 Vergelio del Rosario, the police investigator. The testimony of PCI Mangalip was, however, dispensed with in view of the stipulation of facts entered into by the public prosecutor and the defense counsel.[7] Similarly, the testimonies of PO2 Medrano and PO2 del Rosario were likewise dispensed with, but this time, for being merely corroborative of the testimony of PO1 Balbin.[8]

PO1 Balbin testified that sometime around 9 o'clock in the morning of February 1, 2011, a confidential informant went to the office of the Station Anti-Illegal Drug Special Operation Task Group (SAID SOTG) of Taguig City Police Station to

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[4] *Id*.

[5] *Id*. at 30.

[6] *Id*. at 39.

[7] Transcript of Stenographic Notes (TSN) dated May 11, 2011, pp. 1-7.

[8] *Rollo*, pp. 4-6.

report the illegal drug activities of a certain Zenell Cruz along Dr. Natividad Street in Tipas, Taguig City.[9] The confidential informant spoke with Team Leader PCI Mihilan Abu Payao, who then conducted a briefing with the other members of the buy-bust team, namely: SPO2 Sanchez, PO3 Medrano, PO3 Antillon, PO3 Briones, PO3 More, and PO1 Balbin.[10]

Coordination with the Philippine Drug Enforcement Agency (PDEA) was made by the buy-bust team whereby a Pre-Operation Report and a Coordination Form were prepared and sent to the PDEA. Upon receipt of the documents, the PDEA faxed Control Number MMRO-0211-00007 authorizing the buy-bust team to proceed with the operation.[11]

During the briefing, PO1 Balbin was assigned as the poseur-buyer and was given one (1) Five Hundred Peso (₱500.00) bill marked with "MP" to be used as the buy-bust money. PO2 Medrano was assigned as the immediate back-up of PO1 Balbin who would await the pre-arranged signal and assist in arresting the accused, while the others served as perimeter back-up. The pre-arranged signal was the scratching at the back of the head of PO1 Balbin. They also discussed the jump-off of the buy-bust team, wherein they would be using four vehicles to proceed to the area.[12]

PO1 Balbin narrated how the confidential informant arranged through text messages the meeting with Zenell Cruz. Upon receiving the go signal from Zenell Cruz sometime around 6:45 that night, the buy-bust team proceeded to the meeting place at Ibayo, Tipas, Taguig City and arrived at the area at around 7:00 p.m. PO1 Balbin and the confidential informant alighted from the vehicle and walked about fifty meters along Dr. Natividad Street.[13]

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[9] TSN, June 13, 2013, pp. 4-6.

[10] *Id*. at 4, 6.

[11] *Id*. at 9-10; TSN, March 3, 2016, p. 3; TSN, August 18, 2016, p. 7.

[12] TSN, June 13, 2013, pp. 7-10.

[13] *Id*. at 11-12.

Before they could make a turn into an alley to meet Zenell Cruz, a male person, who was subsequently identified as accused-appellant, approached and asked them if they were the ones whom Zenell Cruz were texting with, to which the confidential informant replied, "*Oo, kami po*." Accused-appellant told them, "*Wala si Zenell. May pinuntahang importante*," then he handed a small transparent plastic sachet containing white crystalline substance to PO1 Balbin. PO1 Balbin pinched the plastic sachet to find out if it was brittle. Upon verification of the contents thereof, PO1 Balbin scratched the back of his head prompting PO2 Medrano to rush towards the crime. scene. PO1 Balbin immediately grabbed accused-appellant, introduced himself as a police officer, and apprised accused-appellant of his constitutional rights.[14] PO1 Balbin then marked the plastic sachet with "JVB-010211," representing his initials and the date of the incident, while in the presence of accused-appellant. The buy bust team then brought the accused-appellant and the confiscated dangerous drugs to their office.[15]

Upon arrival at the police station, PO1 Balbin made the inventory in the presence of accused-appellant and the buy-bust team, then accomplished the Chain of Custody Form and the Turnover of Arrested Suspect. He thereafter turned over the confiscated drugs to investigator PO2 Vergelio P. del Rosario who prepared a Spot Report, Booking and Information Sheet, and an Affidavit of Arrest duly signed by PO1 Balbin and PO2 Medrano.[16] PO2 Del Rosario also took photographs of the seized dangerous drugs, as witnessed by PO1 Balbin.[17]

Based on the stipulations by the parties, it appears that PO3 Del Rosario prepared the affidavit of arrest of accused-appellant, as well as the request for laboratory examination of the confiscated white crystalline substance and the drug test of

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[14] *Id*. at 13-16.

[15] *Id*. at 19-20.

[16] TSN, July 30, 2014, pp. 3-7.

[17] *Id*. at 8-9.

accused-appellant,[18] addressed to the Southern Police District Crime Laboratory Office to determine the presence of any form of dangerous drugs in the seized item.[19] PO2 del Rosario, accompanied by PO1 Balbin and in the presence of accused-appellant, personally delivered the letter-request and the confiscated item to the PNP Crime Laboratory where they were received at 10:00 p.m. of February 1, 2011.[20]

The specimen was turned over to the Forensic Chemical Officer, PCI Mangalip, whose testimony was dispensed with after the stipulations by the parties. The parties stipulated, among others, that PCI Mangalip conducted a laboratory examination on one heat-sealed transparent plastic sachet marked as "JVB-010211" containing 0.13 gram of white crystalline substance and that Physical Science Report No. D-053-11S dated February 2, 2011 showed that the specimen gave a positive result for the presence of methylamphetamine hydrochloride or *shabu*.[21]

Version of the Defense

The defense presented accused-appellant and Rexel Lagui as their witnesses.

Accused-appellant testified that at 4:30 in the afternoon of January 30, 2011, he was with a certain Andrian Lizertiguez betting at the Pateros Cockpit where he was serving as a *kristo*. On their way home, after accused-appellant and his companion had boarded a tricycle, two armed men in civilian clothes rode on the back portion of the vehicle. Accused-appellant later discovered that the two men were police officers.[22]

As the tricycle approached the Garden of Memories, along the boundary of Pateros and Taguig, accused-appellant and Lizertiguez were asked to alight from the tricycle and were

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[18] TSN, August 18, 2016, pp. 3-4.

[19] *Id*. at 8-9.

[20] TSN, July 30, 2014, p. 10.

[21] TSN, May 11, 2011, pp. 2-6.

[22] TSN, October 6, 2016, pp. 3-4.

frisked by the police officers. They were then handcuffed and transferred to the vehicle which arrived and were brought to the Drug Enforcement Unit Office at the Taguig City Hall.[23]

Accused-appellant claimed that while at the Taguig City Hall, the police officers demanded Php100,000.00 from them, with a warning that if they fail to produce such amount, they will be charged with violation of Section 5, Article II of R.A. 9165. While both of them were not able to give the money, only Lizertiguez was allowed to go home while accused-appellant remained in detention. According to accused-appellant, the police officers let his companion leave so that the latter could inform the wife of accused-appellant of his arrest and the amount which needed to be paid.[24]

Rexel Lagui, the purported driver of the tricycle which accused-appellant claims to have boarded at the time of the incident, confirmed that accused-appellant was his passenger in the afternoon of January 3, 2011 when two men suddenly boarded the vehicle and ordered him to stop at the Garden of Memories. Once stopped, a red vehicle arrived and accused-appellant was dragged inside the vehicle.[25]

Ruling of the Regional Trial Court

In a Judgment[26] dated January 30, 2017, the trial court found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs, the dispositive portion of which reads:

> WHEREFORE, based on the foregoing dissertation of the court, the court finds accused Mercindo Bobotiok, Jr. y Lontoc **Guilty** beyond reasonable doubt for violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165 under Criminal Case No. 17417-D-TG and judgment is hereby rendered that he should suffer the penalty of **Life Imprisonment** and to pay a **Fine** in the amount of Five Hundred Thousand Pesos (Php500,000.00).

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[23] *Id*. at 5-6.

[24] *Id*. at 7-9.

[25] TSN, December 12, 2016, pp. 4-6.

[26] Records, pp. 161-172. Rendered by Judge Antonio M. Olivete.

The Jail Warden of the Taguig City Jail is hereby directed to commit the above named accused to the custody of the Bureau of Prisons, Muntinlupa City.

Let the illegal drugs subject of the instant case be turned over to the PDEA to be destroyed in the manner provided by law.

SO ORDERED.

The trial court ruled that all elements of illegal sale of dangerous drugs were present in this case. It found credibility in the testimony of prosecution witnesses PO1 Balbin and PO3 Medrano, that accused-appellant, whose identity was then unknown to them, sold to PO1 Balbin and the confidential informant an illegal drug contained in a transparent plastic sachet sometime between 6:00 and 7:00 in the evening of February 1, 2011. Even though PO1 Balbin was unable to give the marked money to accused-appellant, the trial court held that the omission was not fatal since PO1 Balbin was ready to hand over the same at that time except that he may have forgotten to do so.[27]

Aside from this, the trial court found that the prosecution was able to establish that the chain of custody of the seized drugs remained unbroken, as evidenced by the duly signed Chain of Custody Form. Although the inventory lacked the required witnesses, the trial court ruled that there was sufficient justifiable ground to excuse the prosecution from compliance thereon since the police operatives exerted efforts to secure the said witnesses, albeit in vain.[28]

It further ruled that the prosecution was able to demonstrate that the integrity and evidentiary value of the evidence seized had been preserved; thus, there was no break in the chain of custody of the seized drugs. Moreover, the trial court declared that the presumption that the integrity of the evidence has been preserved will remain unless there was a showing of bad faith,

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[27] *Id*. at 167.

[28] *Id*. at 168-170.

ill will, or tampering of evidence, which was not shown or overcome by accused-appellant.[29]

Accordingly, accused-appellant elevated the case on appeal to the CA.

Ruling of the Court of Appeals

In the assailed Decision, the CA affirmed the findings of the trial court, to wit:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED**. The Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City is **AFFIRMED with MODIFICATION** in that appellant Mercindo Bobotiok, Jr. y Lontoc is found guilty beyond reasonable doubt of illegal delivery of shabu penalized under Section 5, Article II of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
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> **SO ORDERED.**[30]

The CA sustained the conviction of accused-appellant under Section 5, Article II of RA 9165, albeit on a different ground. Based on the evidence presented, the CA found that accused-appellant cannot be convicted of illegal sale of dangerous drugs since PO1 Balbin failed to effect payment and no sale was consummated. Instead, the CA declared that accused-appellant may still be convicted for the illegal delivery of shabu under the same provision of law, the elements of which were found by the appellate court to be present in this case.[31]

As for the claim that the prosecution failed to establish the chain of custody and that there was a non-compliance with the requirements set forth under Section 21 of RA 9165, the appellate court held that there was no break in the chain of custody of the seized dangerous drugs and that its integrity and evidentiary

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[29] *Id*. at 21-22.

[30] *Rollo*, p. 18.

[31] *Id*. at 13-14.

value was properly preserved. Finally, the CA affirmed the penalty imposed by the trial court despite the modification in the crime charged.[32]

Hence, this appeal.

The Issue

The issue in this case is whether the CA erred in affirming accused-appellant's conviction.

The Court's Ruling

We find the appeal meritorious.

The elements of illegal delivery of dangerous drugs are present in the instant case

Accused-appellant was charged with selling, delivering, and giving away dangerous drugs under Section 5, Article II of RA 9165, which reads:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, **deliver, give away to another**, distribute dispatch in transit or transport **any dangerous drug**, including any and all species of opium poppy **regardless of the quantity and purity involved**, or shall act as a broker in any of such transactions. x x x (emphasis supplied)

As correctly found by the appellate court, accused-appellant could not be charged or convicted for the illegal sale of dangerous drugs due to the fact that the poseur-buyer, PO1 Balbin, failed to effect payment for the drugs handed to him by accused-appellant. It appears that PO1 Balbin was caught off-guard when it was accused-appellant who approached them and handed over

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[32] *Id*. at 15-17.

the plastic sachet containing a white crystalline substance, when he was expecting a person named Zenell Cruz. In the confusion, PO1 Balbin immediately executed the pre-arranged hand signal and proceeded to arrest the accused-appellant without giving the latter the opportunity to ask for payment or to receive the marked money as payment.

Nevertheless, We agree with the findings of the CA that accused-appellant's actions may still be prosecuted under Section 5 as the prohibited act of delivering or distributing prohibited drugs. The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.[33]

In the present case, the prosecution was able to establish that accused-appellant knowingly delivered the prohibited substance methylamphetamine hydrochloride (*shabu*) to the poseur-buyer without any authorization by law and that the police operatives confiscated the same. This was clear in the testimony of prosecution witness PO1 Balbin, *viz*:

PROSECUTOR VILLENA:		And after that, what happened?
	A:	After that, somebody approached us. Before we went to an alley going to the house of Zenell Cruz, we were met by a male person, sir.
PROSECUTOR VILLENA:		What did this male guy tell you or your informant?
	A:	We were told na wala daw po si Zenell Cruz at ipinagbilin na lang ni Zenell Cruz na may iniwan at ibigay sa amin, sir.

[33] *People of the Philippines v. Michael Maongco y Yumonda and Phans Bandali y Simpal*, G.R. No. 196966, October 23, 2013.

PROSECUTOR VILLENA: What was your response?

A: I told him na yong binilin niya ay kukunin na lang namin.

x x x x x x x x x

PROSECUTOR VILLENA: This person knew your informant?

A: No, sir. Si Zenell Cruz po, sir, ay may taong pinagbilinan at 'yon po ang sumalubong sa amin.

x x x x x x x x x

PROSECUTOR VILLENA: What was your conversation? Okay, so you saw this person.

A: When we arrived there, he asked us if we were the textmates of Zenell.

PROSECUTOR VILLENA: You were asked. And what was your response?

A: The informant told him, "Oo, kami po".

PROSECUTOR VILLENA: After that, what did the person tell you?

A: He told us, "Wala si Zenell. May pinuntahang importante" and then **he gave us the shabu**.

PROSECUTOR VILLENA: To whom did this person give the drugs?

A: I was the one who got the shabu.

PROSECUTOR VILLENA: What was the exact item that was given to you? How did it look like?

A: Small transparent plastic sachet.

PROSECUTOR VILLENA: So the contents, how did it look like?

A: White crystalline substance, sir.

PROSECUTOR VILLENA: What exactly did you do after receiving that?

A:	I pinched it, sir.
PROSECUTOR VILLENA:	Why did you pinch it?
A:	I tried to see if it's brittle. When I found out that it's brittle, I executed the pre-arranged signal.
PROSECUTOR VILLENA:	When it's brittle, what would it signify?
A:	Shabu is brittle, sir.[34] (emphasis supplied)

From PO1 Balbin's testimony, it is clear that accused-appellant deliberately sought out the confidential informant for the purpose of handing over the small transparent plastic sachet containing the white crystalline substance which was later proven to be *shabu*. When he confirmed that the confidential informant and PO1 Balbin were the ones whom Zenell Cruz was supposed to meet with, he voluntarily gave them the dangerous drugs, although he had no authority under the law to deliver or distribute the same.

Accused-appellant's defense of "frame up" holds no water since he failed to prove any ill motive on the part of the apprehending officers so as to incriminate him for the crime charged. While the defense presented the testimony of Rexel Laqui who was supposedly the driver of the tricycle which accused-appellant claims to have been riding at the time of his arrest, it did not prove the alleged "frame-up." Instead, it cast even more doubt on the credibility of the defense since nowhere in Laqui's testimony was it mentioned that accused-appellant had a companion at the time he was arrested. On this point, Laqui's testimony contradicted accused-appellant's own testimony, instead of corroborating the latter.

Based on the foregoing, We find that the CA was correct in ruling that crime of illegal delivery of dangerous drugs under Section 5, Article II of RA 9165 was committed by accused-

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[34] TSN, June 13, 2013, pp. 13-15.

appellant. However, this Court finds that there were missing links in the chain of custody of the seized items.

The prosecution did not establish compliance with the chain of custody rule and Section 21 of RA 9165

Accused-appellant hinges his appeal on the alleged failure of the prosecution to establish a continuous and unbroken chain of custody of the seized illegal drug and the lack of integrity of the evidence in view of the non-compliance with Section 21, Article II of RA 9165.

Chain of custody is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.[35]

Section 21, Article II of RA 9165 outlines the procedural safeguards that police officers must follow in handling seized illegal drugs to preserve their identity, integrity, and evidentiary value, the pertinent portions of which read:

> Section 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs x x x shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and**

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[35] *People of the Philippines v. Myrna Gayoso y Arguelles*, G.R. No. 206590, March 27, 2017, citing *People of the Philippines v. Fernando Ranche Havana a.k.a. Fernando Ranche Abana*, G.R. No. 198450, January 11, 2016, 778 SCRA 524, 534-535.

photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided,finally*, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**. (emphasis supplied)

In the case before Us, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par. 1. To explain the procedure undertaken by the buy-bust team, PO1 Balbin testified, thus:

PROSECUTOR VILLENA:	What did you do upon your arrival in your office?
A:	I made the inventory, sir, and then, after the inventory sir, I turned over the chain of custody, sir, then the arrested suspect, sir.
PROSECUTOR VILLENA:	Why did you opt to make your inventory in your office rather than in the place where you arrested the accused?
A:	Because it's a little bit dark in the area.
PROSECUTOR VILLENA:	What's wrong with the darkness surrounding that place?
A:	We cannot clearly see what's around us.
PROSECUTOR VILLENA:	Okay and for what purpose you have to see those people around you?

A:	For security reason, sir.
PROSECUTOR VILLENA:	So for security?
A:	Yes, sir.
PROSECUTOR VILLENA:	So, who were present at the time you made your inventory in the office?
A:	Our team leader, sir, the suspect, the investigator and our teammates, sir.
PROSECUTOR VILLENA:	**Why only those persons that you have mentioned were present during the inventory and no other persons like media representatives elective officials or DOJ representatives**
A:	**None, sir, because our team leader P/Cinsp. Payao tried to call the media and the Barangay but no one arrived at our office.**
PROSECUTOR VILLENA:	**So how long did you wait for their arrival before you conducted your inventory?**
A:	**Almost thirty (30) minutes, sir.**[36] (emphasis supplied)

The prosecution justified the conduct of the inventory and photograph of the seized item at the police station instead of the place of the buy-bust operation by raising the issue of security. However, a reading of the transcript of PO1 Balbin's testimony reveals that this justification is a mere afterthought since his initial reason is the darkness of the place of arrest. It was only after the diligent prodding by the public prosecutor that PO1 Balbin mentioned the risk of security. Other than this statement, nowhere in the records was it shown that there was any actual threat or risk taken by the buy-bust team during the arrest that

[36] TSN, July 30, 2014, pp. 3-4.

had actually prevented them from conducting the inventory and photographing of the seized drugs.

Even assuming *arguendo* that the buy-bust team's act of conducting the inventory and photographing of the seized drugs at the police station was justified, it still suffered from a major procedural lapse since it was not done in the presence of any elected public official, a representative of the National Prosecution Service, or the media. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved.

When asked the reason for the non-compliance with the requirement of witnesses, PO1 Balbin reasoned that his team leader called the Barangay and the media, but no one arrived despite waiting for their arrival for 30 minutes. While there may have been an effort to contact the media and the Barangay, it was never mentioned, however, if the buy-bust team had also requested for the presence of a representative from the Department of Justice. On this matter, no such explanation was offered by the prosecution for its non-compliance with Section 21 of RA 9165.

The Court notes that the buy-bust team had more than thirty minutes to secure the attendance of the required witnesses during the inventory and photographing of the seized items. As testified by PO1 Balbin, the confidential informant arrived at the SAID-SOTG office as early as 9:00 o'clock in the morning of February 1, 2011. However, the actual buy-bust operation was conducted at 7:00 o'clock in the evening of the same day. Thus, they had at least ten hours from the time they received the tip until the buy-bust team proceeded to the agreed location. This appears to be more than enough time for the buy-bust team to contact and request for the presence of the required witnesses.

Another missing link in the chain of custody in the present case is the details on the preservation of the seized item from its turnover from the police station to the crime laboratory, and the turnover and submission of the same

from the crime laboratory to the court, as only the following facts were stipulated:

At today's hearing, the parties appeared.

The witness for the prosecution was PCI Richard Allan Mangalip. The witness did not anymore take the witness stand and the parties have agreed to stipulate on the nature of his testimony. The parties have stipulated on the following: that the witness is a bonafide member of the Philippine National Police assigned at Crime Laboratory Office of the Southern Police District; that he is an expert witness in the field of examination of dangerous drugs particularly methylamphetamine hydrochloride; that on February 1, 2011, his office received a request for laboratory examination from the Station Anti-Illegal Drugs, Special Operation Task Group of the Taguig City Police Station; that upon receipt of the request, said witness subjected the specimen contained in one (1) heat-sealed transparent plastic sachet with markings "JVB-010211" containing 0.13 gram of white crystalline substance for qualitative examination that the result gave positive result to the test for methylamphetamine hydrochloride; and that the findings of the witness was reduced into writing under Physical Science Report No. D-053-11S. For his part and by way of counter stipulation, Atty. Rommel Asuncion manifested that the said witness has no personal knowledge as to the commission of the crime and that he has also no personal knowledge that those items examined were the same shabu recovered from the accused.[37]

At today's hearing, the parties appeared.

PO3 Roel Medrano was the witness for the prosecution. He was the immediate back-up officer in the buy bust operation conducted in the herein case.

Considering his participation as a back-up officer, the parties decided to stipulate on the nature of his testimony, as follows:

x x x x x x x x x

12. That he was also present during the time that the poseur buyer conducted the inventory which inventory is marked as **Exhibit "D"**;

13. That he also saw the poseur buyer, who was in custody of the drugs, turned over the same to PO2 Vergelio del Rosario, who was the Investigator-on-Case;

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[37] Records, p. 43; Order dated May 11, 2011.

14. That he was also present when photos were taken which photos were marked as **Exhibits "J"** to **"J-1"**;

15. That he was also present during the inquest proceedings;

16. That the drugs the witness saw the poseur buyer, PO1 Jerry Balbin, already in possession when he responded to the pre-arranged signal and the drugs that he saw PO1 Balbin turning over to their investigation are the same drugs subject-matter of this case x x x.[38]

At today's hearing, the parties appeared.

The witness for the prosecution was PO3 Vergelio Del Rosario.

Being the investigator on the case, the parties agreed to stipulate on his intended testimony. They stipulated as follows: x x x that he was the designated investigator with whom the accused was presented for investigation after his apprehension; that in the course of the investigation conducted by the said witness, he prepared the affidavit of arrest of arresting officer marked as Exhibit "A" during the pre-trial; that the witness likewise made the request for laboratory examination and drug test of the accused, the laboratory examination was marked as Exhibit "M" whereas, the drug test was marked as Exhibit "L" during the pre-trial; that the witness also prepared the chain of custody form marked as Exhibit "G", the turn-over of arrested suspect marked as Exhibit "F", the turn-over of evidence marked as Exhibit "E", the inventory of seized and/or properties from the accused marked as Exhibit "D" including the affidavit of attestation which was marked as Exhibit "K"; that the witness also prepared the coordination form marked as Exhibit "C" and the pre-operation report marked as Exhibit "B"; that the witness also prepared the spot report marked as Exhibit "H", the booking sheet pertaining to Bobotiok marked as Exhibit "I" and he was the person who took the photograph of the accused including the evidence recovered from him marked as Exhibits "J" and "J-1". The defense admitted the same. The defense on the other hand offered as counter-stipulation, that the witness has no personal knowledge as to the arrest of the accused and as to the source of the illegal drugs turned-over to him.[39] x x x

In dispensing with the testimonies of Forensic Chemical Officer PCI Mangalip, Investigating Officer PO2 Medrano, and PO2 del Rosario, the prosecution failed to show every link of

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[38] *Id*. at 125-126; Order dated March 3, 2016.

[39] *Id*. at 151-152; Order dated August 18, 2016.

the chain of custody. Without the testimonies or stipulations stating the details on when and how the seized plastic sachet was brought to the crime laboratory, and thereafter, to the court for the prosecution's presentation of evidence, the Court cannot ascertain whether the seized drug presented in evidence during trial was the same item seized from accused-appellant when he was arrested. These gaps in the chain of custody create doubt as to whether the *corpus delicti* of the crime had been properly preserved.

Time and again, this Court had taken judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool for extortion." Considering the gravity of the crime and the corresponding penalties thereof, procedural safeguards such as those specified under Section 21 of RA 9165 are provided in cases involving dangerous drugs in order to protect the innocent from abuse and to ensure the preservation of the integrity of evidence.[40]

WHEREFORE, the appeal is **GRANTED**. The Decision dated December 11, 2017 of the Court of Appeals in CA-G.R. CR No. 09066, which affirmed with modification the Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City in Criminal Case No. 17417-D-TG, is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Mercindo Bobotiok, Jr. *y* Lontoc is **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. His immediate **RELEASE** from detention is hereby ordered, unless he is being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.*, concur.

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[40] *People of the Philippines v. Eddie Barte y Mendoza*, G.R. No. 179749, March 1, 2017.

SECOND DIVISION

[A.C. No. 8962. July 9, 2018]

JILDO A. GUBATON, *complainant, vs.* **ATTY. AUGUSTUS SERAFIN D. AMADOR,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGE OF GROSS IMMORALITY; THE QUANTUM OF PROOF IN ADMINISTRATIVE CASE IS SUBSTANTIAL EVIDENCE OR THAT AMOUNT OF RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, EVEN IF OTHER MINDS, EQUALLY REASONABLE, MIGHT CONCEIVABLY OPINE OTHERWISE.— It is fundamental that the quantum of proof in administrative cases is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

2. ID.; ID.; ID.; COMPLAINANT'S IMPUTATIONS AGAINST RESPONDENT ARE CREDIBLE WHERE HE HAS NO ILL MOTIVE TO ACCUSE HIM OF A SERIOUS CHARGE, UNLESS THE SAME IS INDEED TRUE.— As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him. The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge — much more a personal scandal involving his own wife — unless the same were indeed true.

3. ID.; ID.; ID.; DECLARATIONS OF A NEUTRAL AND DISINTERESTED WITNESS DESERVE AMPLE

CONSIDERATION.— Complainant's statements were corroborated by the affidavit executed by Navarez, who works in BIR, Malaybalay City as a messenger and therefore, goes around the city in relation to his work. Navarez categorically stated that respondent and Bernadette have been carrying on an illicit affair while complainant was in the USA, and further averred that he had seen them together on different intimate occasions. He even saw them kissing each other at one instance. Notably, it must be highlighted that Navarez is a neutral and disinterested witness and hence, his declarations deserve ample consideration.

4. ID.; ID.; ID.; UNDER THE DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS, CONVERSATIONS COMMUNICATED TO A WITNESS BY A THIRD PERSON MAY BE ADMITTED AS PROOF THAT, REGARDLESS OF THEIR TRUTH OR FALSITY, THEY WERE ACTUALLY MADE; DOCTRINE APPLIED TO THE CASE AT BAR.— [I]t should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (*a*) constitutes a fact in issue or (*b*) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply, and hence, the statements are admissible as evidence. Verily, complainant personally attests that the information about the illicit affair between respondent and his wife have been relayed to him by complainant's house helper and Bernadette's clinic secretary. Clearly, the making of such statements is circumstantially relevant to this case and therefore, may be considered in evidence against respondent. Besides, in *Re: Verified Complaint dated July 13, 2015 of Umali, Jr. v. Hernandez*: x x x. **It was emphasized that [t]o satify the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and**

corroborated by other evidence that are not hearsay. Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

5. **ID.; ID.; ID.; TO MERIT CREDIBILITY, DENIAL MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY, FOR IF IT IS UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE IT IS NEGATIVE AND SELF-SERVING, DESERVING NO GREATER VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.—** Suffice it to say that "[d]enial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence [as in this case] it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters." In any event, the Court observes that the alleged "accidental" and "innocent" encounters of respondent and Bernadette are much too many for comfort and coincidence. Such encounters actually buttress the allegations of the witnesses that they carried on an illicit affair.

6. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; POSSESSION OF GOOD MORAL CHARACTER IS BOTH A CONDITION PRECEDENT AND A CONTINUING REQUIREMENT TO WARRANT ADMISSION TO THE BAR AND TO RETAIN MEMBERSHIP IN THE LEGAL PROFESSION.—** The Court finds that substantial evidence – which only entails "evidence to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise" – exist to prove complainant's accusation of gross immorality against respondent. Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality , the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. This is because possession of good moral character is both a condition

precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. Under the Code of Professional Responsibility: Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar. Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

7. **ID.; ID.; ID.; ID.; THE PENALTY FOR MAINTAINING AN ILLICIT RELATIONSHIP MAY EITHER BE SUSPENSION OR DISBARMENT; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE (1) YEAR IMPOSED AGAINST THE RESPONDENT FOR GROSS IMMORALITY.—** The penalty for maintaining an illicit relationship may either be suspension or disbarment, depending on the circumstances of the case. In case of suspension, the period would range from one year to indefinite suspension. Under the given circumstances, the Court sees fit to impose on respondent a penalty of suspension from the practice of law for a period of one (1) year.

APPEARANCES OF COUNSEL

Fidel P. Aquino for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case arose from an affidavit-complaint[1] for disbarment filed by complainant Jildo A. Gubaton (complainant) against respondent Atty. Augustus Serafin D. Amador (respondent) on the ground of gross immoral conduct and/or immorality.

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[1] Dated January 17, 2011. *Rollo*, pp. 3-7.

The Facts

Complainant alleged that respondent, a former Assistant Prosecutor at the City Prosecutor's Office in Malaybalay City, Bukidnon, was having an illicit romantic relationship with his wife, Ma. Bernadette R. Tenorio-Gubaton (Bernadette), since 2005 up to the present.[2]

He averred that it was in the early part of 2008, while working in the United States of America (USA), when he discovered the illicit relationship. Complainant and Bernadette's house helper informed him through a phone call that a man whom she knows to be "Fiscal Amador"often visits Bernadette. The house helper also told him that respondent spends nights at their house and stays with Bernadette in their bedroom. When complainant called Bernadette's dental clinic to verify the information, it was the secretary who took his call. Upon inquiry, the latter confirmed that respondent and Bernadette have been carrying on an illicit affair.[3]

Sometime in August 2009, complainant returned to the country. On his first night home, despite his pleas, Bernadette refused to lie and sleep with him; instead, she demanded that he sleep in another room, to which he acceded in order to avoid any argument. Since then, Bernadette has refused to sleep with him. Further, complainant discovered some birth-control pills and condoms in their house, in Bernadette's dental clinic, and in her handbag. When he confronted her about it, she merely denied ownership thereof. He also alleged that Bernadette wrote love letters/notes[4] to respondent, as in fact, one of these letters had the word "fiscal"[5] on it.[6]

Complainant likewise alleged that he personally saw respondent and Bernadette together in various places in

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[2] *Id*. at 3.

[3] See *id*. at 5.

[4] *Id*. at 11-15.

[5] *Id*. at 11.

[6] See *id*. at 5-6.

Malaybalay City. At one instance, he saw them kissing while inside a vehicle; when he approached to confront them, respondent ran away.[7]

The illicit affair of respondent and Bernadette was known to other people as well. Complainant's sister, Nila Canoy,[8] told him about it during phone calls while he was still in the USA,[9] as narrated in her affidavit.[10] Likewise, Carlos Delgado (Delgado), Chief of Barangay Public Safety Office in Poblacion, Malaybalay City, and one Edgar Navarez (Navarez), an employee of the Bureau of Internal Revenue (BIR) and a resident of Casisang, Malaybalay City, knew of the affair and executed their respective affidavits[11] relative thereto.

In defense,[12] respondent denied all the allegations against him. He claimed that he was merely acquainted with Bernadette and they would only see each other on various occasions and social gatherings. He also denied the incident where complainant allegedly saw him and Bernadette kissing inside a vehicle.[13]

The IBP's Report and Recommendation

After due proceedings, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), through Commissioner Jose Alfonso M. Gomos (Commissioner Gomos), issued a Report and Recommendation[14] dated June 27, 2012 recommending the dismissal of the affidavit-complaint for insufficiency of evidence.

Commissioner Gomos found that the information supplied by complainant and Bernandette's house helper, Bernadette's

[7] See *id*. at 6.

[8] "Nila Gubaton" in the affidavit-complaint; *id*. at 5.

[9] See *id*. at 5.

[10] Dated January 18, 2011. *Id*. at 20-21.

[11] *Id*. at 16-19.

[12] *Id*. at 54-58.

[13] See *id*. at 55.

[14] *Id*. at 100-114.

clinic secretary, and complainant's sister, Nila, about the alleged illicit affair were purely hearsay. Likewise, the supposed love letters/notes offered in evidence did not prove that the same were written by Bernadette to respondent. Similarly, the affidavit executed by Delgado did not positively refer to respondent, while that of Navarez contained general statements of an affair between respondent and Bernadette.[15] As for the affidavit executed by Nila, the same is clearly biased in view of the latter's relationship with complainant.[16] Finally, with respect to the incident where complainant allegedly saw respondent and Bernadette kissing inside a vehicle and attempted to confront them, Commissioner Gomos found the same to be contrary to human experience, reasoning that an offended husband would be expected to do more than just confront them under the circumstances.[17]

In a Resolution[18] dated June 22, 2013, however, the IBP Board of Governors reversed the June 27, 2012 Report and Recommendation, and instead, suspended respondent from the practice of law for a period of two (2) years. Respondent moved for reconsideration,[19] which was denied in a Resolution[20] dated April 20, 2017.

The Issue Before the Court

The sole issue for the Court's consideration is whether or not grounds exist to hold respondent administratively liable.

The Court's Ruling

The Court concurs with the conclusion of the IBP Board of Governors that respondent should be held administratively liable with modification, however, as regards the penalty to be imposed.

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[15] See *id.* at 110-112.

[16] *Id.* at 112.

[17] See *id.* at 111.

[18] See Notice of Resolution in Resolution No. XX-2013-787 issued by National Secretary Nasser A. Marohomsalic; *id.* at 99, including dorsal portion.

[19] See motion for reconsideration dated November 13, 2013; *id*. at 115-122.

[20] See Notice of Resolution in Resolution No. XXII-2017-1296 issued by National Secretary Patricia-ann T. Prodigalidad; *id.* at 158-159.

It is fundamental that the quantum of proof in administrative cases is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[21]

In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him.[22] The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge — much more a personal scandal involving his own wife — unless the same were indeed true.

Complainant's statements were corroborated by the affidavit executed by Navarez, who works in BIR, Malaybalay City as a messenger and therefore, goes around the city in relation to his work. Navarez categorically stated that respondent and Bernadette have been carrying on an illicit affair while complainant was in the USA, and further averred that he had seen them together on different intimate occasions. He even saw them kissing each other at one instance.[23] Notably, it must be highlighted that Navarez is a neutral and disinterested witness and hence, his declarations deserve ample consideration.

Moreover, complainant's sister, Nila, described to complainant, while the latter was in the USA, how respondent would often visit Bernadette and spend the night in their

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[21] See *Torres v. Dalangin,* A.C. No. 10758, December 5, 2017, citing *Reyes v. Nieva*, 794 Phil. 360, 379 (2016). See also *Advincula v. Macabata*, 546 Phil. 431, 445-446 (2007).

[22] *Rollo*, p. 6.

[23] *Id*. at 18.

residence, while she was still living with Bernadette and their children thereat. She narrated that Bernadette first introduced respondent to her as a "cousin" from Davao City. However, the two would oftenhave lunch in the house and thereafter, respondent would even spend some time with Bernadette inside the latter's bedroom. Nila likewise recounted that whenever the two of them arrived home in one vehicle, they would kiss each other before alighting therefrom.[24]

In this relation, it may not be amiss to point out that complainant offered in evidence love letters/notes supposedly written by Bernadette to respondent to prove the existence of their illicit relationship. The authenticity of these love letters/notes, although not expressly shown to be written by Bernadette or received by respondent,were not refuted. Consequently, they lend credibility to complainant's claim.

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (*a*) constitutes a fact in issue or (*b*) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply, and hence, the statements are admissible as evidence.[25] Verily, complainant personally attests that the information about the illicit affair between respondent and his wife have been relayed to him by complainant's house helper and Bernadette's clinic secretary. Clearly, the making of such statements is

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[24] *Id*. at 20.

[25] See *People v. Lobrigas*, 442 Phil. 382, 392 (2002).

circumstantially relevant to this case and therefore, may be considered in evidence against respondent. Besides, in *Re: Verified Complaint dated July 13, 2015 of Umali, Jr. v. Hernandez*:[26]

> The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place *when the circumstances — including those derived from hearsay evidence — sufficiently prove its occurrence.* **It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay**.[27] (Emphasis and underscoring supplied)

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

For his part, respondent only proffered a bare denial of the imputed affair. He insists that he was merely acquainted with Bernadette and that they would only see each other during social gatherings or by pure accident. The thrust of his denial was that, although they would see each other on occasion, such meetings were innocent, as in instances when she gave him a short ride from his office to the trial court, the times when he visited her dental clinic for a procedure and during its anniversary celebration, and when he "bumped" into her at a department store and she apologized to him for her husband's jealousy.[28]

Suffice it to say that "[d]enial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence

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[26] 781 Phil. 375 (2016).

[27] *Id.* at 389.

[28] Rollo, pp. 54-57.

of non-culpability. If unsubstantiated by clear and convincing evidence [as in this case] it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters."[29] In any event, the Court observes that the alleged "accidental" and "innocent" encounters of respondent and Bernadette are much too many for comfort and coincidence. Such encounters actually buttress the allegations of the witnesses that they carried on an illicit affair.

All told, the Court finds that substantial evidence — which only entail "evidence to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise" — exist to prove complainant's accusation of gross immorality against respondent.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment.[30] This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession.[31] Under the Code of Professional Responsibility:

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

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[29] See *People v. Pulgo*, G.R. No. 218205, July 5, 2017.

[30] See *Torres v. Dalangin*, *supra* note 21.

[31] *Valdez v. Dabon, Jr.,* 773 Phil. 109, 121 (2015).

The penalty for maintaining an illicit relationship may either be suspension or disbarment, depending on the circumstances of the case. In case of suspension, the period would range from one year[32] to indefinite suspension.[33] Under the given circumstances, the Court sees fit to impose on respondent a penalty of suspension from the practice of law for a period of one (1) year.[34]

WHEREFORE, respondent Atty. Augustus Serafin D. Amador is found guilty of gross immorality. Accordingly, he is **SUSPENDED** from the practice of law for a period of one (1) year, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Respondent's suspension from the practice of law shall take effect immediately upon his receipt of this Decision. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal records as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Carpio[*]*, Senior Associate Justice* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[32] *Ferancullo v. Ferrancullo, Jr.*, 538 Phil. 501, 517 (2006), citing *Re: Initial Reports on the Grenade Incident*, 419 Phil. 267 (2001).

[33] *Valdez v. Dabon, Jr., supra* note 31.

[34] *Tanieza-Calayoan v. Calayoan,* 767 Phil. 215 (2015); *Salana-Abbu v. Laurenciana-Huraño*, 558 Phil. 25 (2007); and *Re: Initial Reports on the Grenade Incident*, *supra* note 32.

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

FIRST DIVISION

[A.C. No. 12137. July 9, 2018]

PHENINAH[*] D.F. WASHINGTON, *complainant, vs.* **ATTY. SAMUEL D. DICEN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 8 THEREOF; A LAWYER'S ARGUMENTS IN HIS PLEADINGS SHOULD BE *GRACIOUS* TO BOTH THE COURT AND HIS OPPOSING COUNSEL, AND MUST BE OF SUCH WORDS AS MAY BE PROPERLY ADDRESSED BY ONE GENTLEMAN TO ANOTHER. —** "The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. *Any* violation of these standards exposes the lawyer to administrative liability." Canon 8 of the CPR in particular, instructs that a lawyer's arguments in his pleadings should be *gracious* to both the court and his opposing counsel, and must be of such words as may be properly addressed by one gentleman to another. "The language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive." Rule 8.01, Canon 8 of the CPR provides: Ru1e 8.01. — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper. A thorough review of the records clearly shows that Atty. Dicen had resorted to the use of *derogatory* language in his pleadings filed before the IBP in order to rebut the allegations hurled against him.

2. **ID.; ID.; ID.; ID.; THOUGH A LAWYER'S LANGUAGE MAY BE FORCEFUL AND EMPHATIC, IT SHOULD ALWAYS BE DIGNIFIED AND RESPECTFUL, BEFITTING THE DIGNITY OF THE LEGAL PROFESSION, AS THE USE OF INTEMPERATE LANGUAGE AND UNKIND ASCRIPTIONS HAS NO PLACE IN THE DIGNITY OF JUDICIAL FORUM.—** x x x. The totality of [the] circumstances leads the Court to inevitably conclude that Atty. Dicen violated

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[*] Referred to as "Pheninahn" and "Penny" in some parts of the records.

> Rule 8.01, Canon 8 of the CPR for his use of language that not only **maligned complainant's character**, but also **imputed a crime against her**, *i.e.*, that she was committing *adultery* against her husband who was, at the time, living in the United States. Indeed, Atty. Dicen could have simply stated the ultimate facts relative to complainant's allegations against him, explained his participation (or the lack of it) in the latter's arrest and detention, and refrained from resorting to name-calling and personal attacks in order to get his point across. After all, "[t]hough a lawyer's language may be forceful and emphatic, **it should always be dignified and respectful**, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."

R E S O L U T I O N

DEL CASTILLO, *J.*:

This administrative case is rooted on a Letter-Complaint[1] dated September 21, 2015 filed by Pheninah D.F. Washington (complainant) against respondent Atty. Samuel D. Dicen (Atty. Dicen) for "unethical practice of law, [and] abuse of [the] privilege and power vested upon him as a lawyer."[2]

The Antecedent Facts

In her Letter-Complaint, complainant alleged that on August 14, 2015, she went to her house in Dumaguete City, then occupied by the family of her niece, Roselyn R. Toralde (Roselyn), in order to perform necessary repairs thereon after discovering that said house was in a dilapidated state and badly infested by termites.[3] The repairs, however, did not push through as planned because the police arrived in the premises and arrested complainant and her companions.[4] Complainant claimed that it was Atty. Dicen, Roselyn's uncle and her first cousin, who

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[1] *Rollo*, pp. 13-16.

[2] *Id.* at 13.

[3] *Id.* at 14.

[4] *Id.* at 14-15.

had ordered her to be arrested for trespassing even though she was the lawful owner of the property in question.[5]

In his defense, Atty. Dicen strongly denied that he had given the police officers an order to arrest complainant, as he had no power or authority to do so.[6] He argued that complainant was arrested after she was caught in *flagrante delicto* committing acts of coercion by removing the G.I. sheet roofing of Roselyn's house to force the latter and her family to move out.[7]

The IBP's Report and Recommendation

In its Report and Recommendation[8] dated January 20,2017, the Integrated Bar of the Philippines (IBP) — Commission on Bar Discipline (CBD), through Commissioner Jose Alfonso M. Gomos, found no merit in the allegations of unethical practice of law against Atty. Dicen. Nevertheless, it recommended that Atty. Dicen be **admonished** "to be gracious, courteous, dignified, civil and temperate (*even if forceful*) in his language."[9]

The IBP pointed to: *(a)* Atty. Dicen's Manifestation[10] dated October 19, 2016 where he described complainant's actions as having "no sane purpose,"[11] and meant only to "satisfy her crazy quest for revenge,"[12] and even characterized complainant as a "lunatic;"[13] and *(b)* Atty. Dicen's Position Paper[14] dated November 28, 2016 where he stated:

It is the observation of the respondent that complainant is no longer thinking on her own but has become fixated on her illicit and immoral,

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[5] *Id*.

[6] *Id*. at 274.

[7] *Id*. at 275.

[8] *Id*. at 307-315.

[9] *Id*. at 315.

[10] *Id*. at 207-208.

[11] *Id*. at 208.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 273-277.

if not adulterous relationship with her ex-husband, Martin Vince, (while current husband is in the [United States] reportedly recuperating from a surgery), a foreigner who by the latter's manipulation caused her to be estranged from the entire Flores-Dicen clan.[15]

The IBP thus concluded that Atty. Dicen had failed to adhere to the duty imposed upon lawyers not to use language "which is abusive, offensive or otherwise improper."[16] It noted that Atty. Dicen's use of offensive language "and his resort to gossip to prove a point, fell short of the gracious, gentlemanly, courteous, dignified, civil and temperate (*even if forceful*) language required of him as a lawyer."[17]

The IBP Board of Governors, in its Resolution No. XXII-2017-1185[18] dated June 17, 2017, resolved to adopt and approve the January 20, 2017 Report and Recommendation of the IBP-CBD to admonish Atty. Dicen.

The Issue

The issue for the Court's resolution is whether Atty. Dicen should be held administratively liable for violating Rule 8.01, Canon 8 of the Code of Professional Responsibility (CPR) for his use of intemperate language in his pleadings.

The Court's Ruling

The Court has examined the records of this case and concurs with the findings and recommendations of the IBP Board of Governors.

"The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. *Any* violation of these standards exposes the lawyer to administrative liability."[19]

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[15] *Id*. at 276.

[16] *Id*. at 314.

[17] *Id.*

[18] *Id*. at 305.

[19] *Atty. Barandon, Jr. v. Atty. Ferrer, Sr.*, 630 Phil. 524, 530 (2010). Italics supplied.

Canon 8 of the CPR, in particular, instructs that a lawyer's arguments in his pleadings should be *gracious* to both the court and his opposing counsel, and must be of such words as may be properly addressed by one gentleman to another.[20] "The language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive."[21]

Rule 8.01, Canon 8 of the CPR provides:

Ru1e 8.01. A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

A thorough review of the records clearly shows that Atty. Dicen had resorted to the use of *derogatory* language in his pleadings filed before the IBP in order to rebut the allegations hurled against him.

For instance, in his Manifestation[22] dated October 19, 2016, Atty. Dicen referred to complainant as a "lunatic" who was on a "crazy quest for revenge" against him, *viz.*:

That evidently, if this affidavit has also been filed with this Honorable Commission, the purpose can only be to misle[a]d and muddle its findings of facts; otherwise, then it has **no sane purpose** except to persecute respondent and satisfy her **crazy quest for revenge** against respondent who she wants to answer for her arrest and detention when she was caught by police officers in the act of demolishing the house of her niece, Roselyn Toralde;

That these puzzling moves of the complainant, *i.e.*, demolishing (against the advice of her counsel) the house of her niece to evict her despite the pendency of an unlawful detainer case and the filing of an administrative case before [the] IBP x x x because she was unlawfully arrested and detained by the police for her attempt at demolishing a house appear to be **lunatic**; x x x[23] (Emphasis supplied)

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[20] *Atty. Torres v. Atty. Javier*, 501 Phil. 397, 408-409 (2005).

[21] *Id*. at 409.

[22] *Rollo*, pp. 207-208.

[23] *Id*. at 208.

In the same pleading, Atty. Dicen also called complainant "a puppet and a milking cow" of a certain Martin, who he suggested was complainant's lover in the Philippines while her husband was in the United States:

> That[,] in fact[,] this [sic] puzzling acts of complainant finds some rationality if eyes are set beyond the complainant and focus[ed] on the man that has made her **a puppet and a milking cow**.
>
> This man is a certain Martin, a foreigner, [living] with her in her "home alone" while her husband is in the U.S. reportedly recuperating from some surgery. Since then[,] complainant has become aggressive in pursuing her vendetta against all her siblings and relatives for imagined ungrateful acts, claiming that their lives have become better because of her, and therefore should kowtow to her every whims and caprices.[24]

To make matters worse, Atty. Dicen continued his personal tirades against complainant in his Position Paper[25] dated November 28, 2016 where he stated that:

> It is the observation of the respondent that complainant is **no longer thinking on her own** but has become **fixated on her illicit and immoral, if not adulterous[,] relationship** with her ex-husband, Martin Vince, (while current husband is in the [United States] reportedly recuperating from a surgery), a foreigner who[,] by the latter's manipulation[,] caused her to be estranged from the entire Flores-Dicen Clan.
>
> Blinded by manipulative lover[,] Martin[,] she had become so **hostile and unreasonable**, if not **unchristian**[,] to her relatives who are members of the Seventh-Day Adventist Church. x x x[26] (Emphasis supplied)

The totality of these circumstances leads the Court to inevitably conclude that Atty. Dicen violated Rule 8.01, Canon 8 of the CPR for his use of language that not only **maligned**

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[24] *Id.*

[25] *Id*. at 273-277.

[26] *Id*. at 276.

complainant's character, but also **imputed a crime against her**, *i.e.*, that she was committing *adultery* against her husband who was, at the time, living in the United States.

Indeed, Atty. Dicen could have simply stated the ultimate facts relative to complainant's allegations against him, explained his participation (or the lack of it) in the latter's arrest and detention, and refrained from resorting to name-calling and personal attacks in order to get his point across. After all, "[t]hough a lawyer's language may be forceful and emphatic, **it should always be dignified and respectful**, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."[27]

WHEREFORE, respondent Atty. Samuel D. Dicen is found **GUILTY** of violating Rule 8.01, Canon 8 of the Code of Professional Responsibility. He is hereby **ADMONISHED** to refrain from using language that is abusive, offensive or otherwise improper in his pleadings, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*),[**] *Jardeleza, Tijam*, and *Gesmundo,*[***] *JJ*., concur.

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[27] *Spouses Nuezca v. Atty. Villagarcia*, 792 Phil. 535, 540 (2016).

[**] Per Special Order No. 2559 dated May 11, 2018.

[***] Per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 189800. July 9, 2018]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **HON. MA. MERCEDITAS GUTIERREZ, in her capacity as Ombudsman, RENATO D. TAYAG, ISMAEL REINOSO, JUAN TRIVINO, JUAN PONCE ENRILE, MARIO ORTIZ, GENEROSO TANSECO, FAUSTINO SY CHANGCO, VICENTE ABAD SANTOS, EUSEBIO VILLATUYA, MANUEL MORALES, JOSE ROÑO, TROADIO T. QUIAZON, RUBEN ANCHETA, FERNANDO MARAMAG, JR., GERONIMO VELASCO, EDGARDO L. TORDESILLAS, JAIME C. LAYA, GERARDO P. SICAT, ARTURO R. TANCO, JR., PLACIDO L. MAPA, JR., GILBERTO TEODORO, PANFILO DOMINGO, VICTORINO L. OJEDA, TEODORO DE VERA, ALEJANDRO LUKBAN, JR., ROMEO TAN, LUIS RECATO, BENITO S. DYCHIAO, ELPIDIO M. BORJA,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); PRESCRIPTIVE PERIOD; THE PERIOD OF PRESCRIPTION FOR OFFENSES PUNISHABLE UNDER RA NO. 3019 IS TEN (YEARS) IF COMMITTED PRIOR TO THE PASSAGE OF BATAS PAMBANSA (B.P.) BLG. 195, WHILE OFFENSES COMMITTED AFTER THE EFFECTIVITY OF B.P. BLG. 195 SHALL PRESCRIBE IN FIFTEEN (15) YEARS; 10-YEAR PRESCRIPTIVE PERIOD APPLIED TO CASE AT BAR.— At the outset, it should be stressed that R.A. No. 3019, Section 11 provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195, which took effect on March 16, 1982. When the subject transactions took place, the period of prescription for all offenses punishable under R.A. No. 3019 was ten (10) years. As to

which of the two periods should apply, the Court in *People v. Pacificador* explained that in the prescription of crimes, the period which appears more favorable to the accused is to be adopted, *viz.*: It can be gleaned from the Information that the respondent Pacificador allegedly committed the crime charged on or about during the period from December 6, 1975 to January 6, 1976. Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976. The loan transactions subject of this case were granted by the PNB to BISUDECO from 1977-1985. Applying this Court's pronouncement in *Pacificador*, the period of prescription for offenses committed prior to the passage of B.P. Blg. 195 is ten (10) years. The new 15-year period cannot be applied to acts done prior to its effectivity in 1982 because to do so would violate the prohibition against *ex post facto* laws. Transactions entered into and consummated prior to the effectivity of B.P. Blg. 195 on March 16, 1982 are exempt from its amendments. The new 15-year period shall only be applied to acts done after its effectivity.

2. ID.; ID.; ID.; ID; "BLAMELESS IGNORANCE" DOCTRINE; PRESCRIPTION SHALL BEGIN TO RUN FROM THE DAY OF THE COMMISSION OF THE VIOLATION OF THE LAW, AND IF THE SAME BE NOT KNOWN AT THE TIME, FROM THE DISCOVERY THEREOF.— While R.A. No. 3019 is silent as to when the period of prescription begins to run, R.A. No. 3326, specifically Section 2 thereof fills the gap. Section 2 provides in part: **Sec. 2**. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof** and the institution of judicial proceeding for its investigation and punishment. x x x In the 1999 and 2011 cases of *Presidential Ad Hoc Fact-Finding Committee on Behest*

Loans, et al. v. Hon. Desierto, et al., the Court ruled that the prescriptive period began to ran **from the date of discovery** of the subject transactions and not from the time the behest loans were transacted. In the 2011 *Desierto* case, the Court ruled that the "blameless ignorance" doctrine applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action, *viz.*: Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." x x x. Applying this to the present case, the date of discovery was April 4, 1994, the date of the Terminal Report that was submitted to President Fidel V. Ramos. The Terminal Report classified the subject BISUDECO loans as behest loans. Records show that the PCGG filed its affidavit-complaint before the Ombudsman only on January 28, 2005 or a little more than 10 years from the date of discovery. Clearly, the crimes imputed to private respondents for loans transacted in the years 1971 to 1981 have already prescribed. As to the loans covered by the years 1982 to 1985, the 15-year prescriptive period shall apply since B.P. Blg. 195 was then already in effect. Thus, insofar as the 1982 to 1985 loan transactions are concerned, the complaint was filed on time and without a doubt, within the prescriptive period.

3. ID.; ID.; SECTION 3 (e) THEREOF; GIVING UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE TO A PRIVATE PARTY; ELEMENTS.— To justify an indictment under Section 3(e), the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) he or she causes any undue injury to any party, whether the government or a private party; (3) the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (4) such undue injury is caused by

giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

4. ID.; ID.; SECTION 3 (g) THEREOF; ENTERING INTO A CONTRACT OR TRANSACTION WHICH IS MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT; ELEMENTS.— [S]ection 3(g) of R.A. No. 3019 lists the following elements: (1) the accused is a public officer; (2) he or she enters into a contract or transaction, on behalf of the Government; (3) such contract or transaction is manifestly and grossly disadvantageous to the Government, regardless of whether or not the public officer profited therefrom.

5. ID.; ID.; PROBABLE CAUSE, DEFINED; THE APPROVAL OF A LOAN DURING INCUMBENCY AS DIRECTOR DOES NOT AUTOMATICALLY ESTABLISH PROBABLE CAUSE ABSENT A SHOWING OF PERSONAL PARTICIPATION IN ANY IRREGULARITY AS REGARDS APPROVAL OF THE LOAN.— In the case of *Buchanan v. Viuda De Esteban,* probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of. In the case of *Kara-an v. Office of the Ombudsman,* the Court ruled that approval of a loan during incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan.

6. COMMERCIAL LAW; CORPORATIONS; A CORPORATION HAS A SEPARATE AND DISTINCT PERSONALITY FROM THOSE WHO REPRESENT IT, AS SUCH, PERSONAL LIABILITY WILL ONLY ATTACH TO A DIRECTOR OR OFFICER IF THEY ARE GUILTY OF WILLFULLY OR KNOWINGLY VOTE OR ASSENT TO

PATENTLY UNLAWFUL ACTS OF THE CORPORATION, OR GROSS NEGLIGENCE OR BAD FAITH.— As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code. The liability of the officers must be proven by evidence sufficient to overcome the burden of proof borne by the plaintiff. x x x. x x x [P]ersonal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith. PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof.

7. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); PRIVATE PERSONS WHO CONSPIRE WITH PUBLIC OFFICERS MAY BE INDICTED AND, IF FOUND GUILTY, HELD LIABLE FOR VIOLATION OF SECTION 3(e) AND (g) OF R.A. NO. 3019, BUT IF THERE WAS NO PROBABLE CAUSE TO CHARGE THE PUBLIC OFFICER WITH VIOLATION OF SECTION 3(e) AND (g), PRIVATE PARTIES WHO ALLEGEDLY CONSPIRE WITH THE SAID PUBLIC OFFICER ARE LIKEWISE CLEARED OF CRIMINAL LIABILITY.— Insofar as criminal liability of the BISUDECO officers is concerned, the Court likewise rules in the negative. Private respondents Ojeda, De Vera, Lukban, Tan, Recato, Dychiao, Borja and Cea (deceased) are not criminally liable under Section 3(g) and (e). The relevant provisions of R.A. No. 3019 and the Court's ruling in the cases of *Singian, Jr. v. Sandiganbayan (Third Division)* and *Domingo v. Sandiganbayan*, clarified that private persons who conspire with public officers may be indicted and, if found guilty, held liable for violation of Section 3(g) of R.A. No. 3019. In the case at bench, no violation was proven because there was no probable cause to charge the private respondents in the first place. Thus, there being no probable cause to charge the public officer involved herein with violation of Section 3(e) and (g),

private respondents who acted in their capacities as Officers of BISUDECO are likewise cleared of any criminal liability.

8. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE SUPREME COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE ABSENT A SHOWING OF GRAVE ABUSE OF DISCRETION COMMITTED BY THE LATTER; RATIONALE.— In *Dichaves v. Office of the Ombudsman*, the Court reiterated the rule on non-interference with the Ombudsman's determination of probable cause absent a showing of grave abuse of discretion committed by the latter, *viz.*: As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]" x x x. The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman. It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to Complaints filed before it, to determine if there is probable cause.

APPEARANCES OF COUNSEL

M.M. Lazaro and Associates for respondents Sicat and Mapa, *Jr.*

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile.

Jaromay Laurente Pamaos Law Offices for respondent Lukban, Jr.

Office of the Solicitor General for petitioner.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court, as amended. The petition seeks to nullify and set aside the Resolution[2] dated June 23, 2006 of the Office of the Ombudsman in OMB-C-C-05-0153-D, dismissing the complaint filed against Renato D. Tayag, Ismael Reinoso, Juan Trivino, Juan Ponce Enrile (Enrile), Mario Ortiz, Generoso Tanseco, Faustino Sy Changco, Vicente Abad Santos, Eusebio Villatuya, Manuel Morales, Jose Roño, Troadio T. Quiazon, Ruben Ancheta, Fernando Maramag, Jr., Geronimo Velasco, Edgardo L. Tordesillas, Jaime C. Laya, Gerardo P. Sicat, Arturo R. Tanco, Jr., Placido L. Mapa, Jr. (Mapa), Gilberto Teodoro, Panfilo Domingo, Victorino L. Ojeda (Ojeda), Teodoro De Vera (De Vera), Alejandro Lukban, Jr. (Lukban), Romeo Tan (Tan), Luis Recato (Recato), Benito S. Dychiao (Dychiao), Elpidio M. Borja (Borja) (collectively referred to as the private respondents), and the Order[3] dated January 7, 2009 which denied petitioner Presidential Commission on Good Government's (PCGG) Motion for Reconsideration.

The Facts

Bicolandia Sugar Development Corporation (BISUDECO) is a domestic corporation engaged in the business of sugarcane

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[1] *Rollo*, pp. 2-24.

[2] *Id.* at 29-41.

[3] *Id.* at 42-44.

milling. It was incorporated on September 30, 1970, with an initial authorized capital stock worth ₱10,000,000.00 of which ₱2,010,000.00 worth of shares were subscribed and ₱510,000.00 worth were paid up. Its incorporators were private respondents Ojeda, de Vera, Lukban, Tan, Recato, Dychiao, Borja, and Edmund Cea (Cea) (Deceased).[4]

On August 12, 1972, BISUDECO's authorized capital stock was increased to ₱36,300,000.00, of which ₱5,260,000.00 worth of shares were subscribed and ₱1,315,000.00 worth were paid up.[5]

In 1971, BISUDECO filed a loan request with Philippine National Bank (PNB) for the issuance of a stand-by letter of credit. The loan request in the total amount of ₱172,583,125.00 was recommended to the PNB Board of Directors and was approved under PNB Resolution No. 157-D dated October 27, 1971. Allegedly, at this time, BISUDECO had no sufficient capital and collateral, and had assets amounting to only ₱510,000.00 as reflected in its Balance Sheet dated December 31, 1971.[6]

When BISUDECO failed to comply with the conditions imposed on the grant of loan, that it must have sufficient capital and collateral, it requested for modifications in the guarantee conditions, *viz.*:

WHEREAS, the above corporation (BISUDECO) has requested for the following:

I. That the aforequoted condition be amended so as to allow them to deposit only ₱500,000 before L/C opening, the balance of ₱15.1 million to be put up during the construction period as the need arises; and

II. That the bank accept as collateral for the accommodations their plant site, sugar mill machinery and equipment, farm equipment and implements and other assets to be acquired; and assignment of proceeds of their share in their sugar and molasses produced.[7]

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[4] *Id*. at 6.

[5] *Id*. at 7.

[6] *Id*.

[7] *Id*. at 80.

PNB approved the requested modifications under Resolution No. 141-C.[8] Despite the amendments made, BISUDECO still failed to submit and comply with the guarantee conditions. Nonetheless, PNB further accommodated BISUDECO and passed PNB Resolution No. 137-C[9] approving modifications in the terms and conditions and facilitating the implementation and opening of the letter of credit, *viz.*:

RESOLVED, that in order to avoid further delay and to take advantage of the beneficial terms and conditions of the contract which they have entered into with its supplier, further amendment of the aforesaid resolution be approved as requested by BISUDECO:

1. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to increase its authorized capital of ₱36.3 Million;

2. To delete the requirement for the joint and several signatures of BISUDECO's principal officers and stockholders, provided that BISUDECO will guarantee that it will pay its obligations to the bank to the extent of its interest in BISUDECO;

3. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to deposit with the [PNB] the sum of ₱500,000.00, provided that they will execute a Deed of Undertaking that they are holding the aforementioned sum in trust for the Bank with the written conformity of depository bank and will turn over the money within said period;

4. That BISUDECO shall execute a Deed of Undertaking to mortgage to the Bank the aforesaid 111.3165 Has. of land in Himaao, Pili, Camarines Sur, free from all liens and encumbrances;

5. That BISUDECO shall submit to the Bank a copy of the Deed of Sale with assumption of mortgage covering the aforementioned property; and

6. That BISUDECO shall make an immediate payment of the encumbrance annotated at the back of the title of the property in favor of the [PNB].

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[8] *Id*. at 79.

[9] *Id*. at 81.

All the terms and conditions of Res. No. 141-C of December 15, 1971 referred to above, not in conflict herewith, to remain in full force and effect.[10]

PCGG claims that despite continuously incurring losses in its milling operations resulting to capital deficiency, BISUDECO was extended by PNB undue and unwarranted accommodations from 1977 to 1985 by way of grant of the following loans:[11]

Resolution under which loan was granted	**Date**	**Amount of Loan**
Resolution #337	November 9, 1977	₱ 6,047,500.00
Resolution #449	March 19, 1979	₱ 7,750.000.00
(not indicated)	1979	₱26,100,000.00
Resolution #538	September 28, 1981	₱ 5,610,000.00
(not indicated)	1982	₱ 1,240,000.00
(not indicated)	1983	₱ 4,824,000.00
Resolution #155	January 9, 1984	₱18,470,000.00
Resolution #375	March 26, 1984	₱ 4,590,000.00
Resolution #517	July 23, 1984	₱15,040,000.00
Resolution #46	January 21, 1985	₱21,840,000.00

On February 27, 1987, PNB's rights, titles and interests were transferred to the Philippine Government through a Deed of Transfer, including the account of BISUDECO. In 1994, after study and investigation, the Presidential Ad Hoc Fact Finding Committee (Committee), in reference to Memorandum No. 61,[12] found that the loan accounts of BISUDECO were behest loans due to the following characteristics: a) the accounts were under collateralized; and b) the borrower corporation was undercapitalized.[13]

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[10] *Id*.

[11] *Id*. at 32-33.

[12] *Broadening the Scope of the Ad-Hoc Fact Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, Dated 8 October 1992.*

[13] *Rollo*, p. 13.

Thus, on January 28, 2005, PCGG filed with the Ombudsman a complaint against private respondents (in their capacities as members of PNB's Board of Directors and Officers of BISUDECO) for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

In its Resolution[14] dated June 23, 2006, the Ombudsman dismissed the Complaint on the grounds of lack of probable cause and prescription. The pertinent portions of the assailed resolution read as follows:

> Before the passage of Batas Pambansa Bilang 195 on 16 March 1982, the prescription of offenses punishable under the Anti-Graft and Corrupt Practices Act was ten (10) years. The Supreme Court in the case of "***People vs. The Hon. Sandiganbayan and Ceferino S. Paredes, Jr.***" in ruling that the new prescriptive period cannot be given retroactive effect succinctly stated that Batas Pambansa Bilang 195 which was approved on March 16, 1982 amending Section 11 of RA 3019 by increasing from ten (10) to fifteen (15) years the period for the prescription or extinguishment of a violation of the Anti-Graft and Corrupt Practices Act, may not be given retroactive application to the crime which was committed by Paredes in January 1976 yet, for it would be prejudicial to the accused. It would deprive him of the substantive benefit of the shorter (10 years) prescriptive period under Section 11 of RA 3019 which was an essential element of the crime at the time he committed it.
>
> x x x x x x x x x
>
> Therefore, applying the two rulings of the Supreme Court mentioned earlier, the loans granted by the PNB to BISUDECO from 1971 to 1981 are already barred by prescription with respect to the criminal liability of the respondents.
>
> As to the other loans/accommodations extended by PNB to BISUDECO, the complaint and its supporting papers do not show the individual or collective participation of the respondents in the acts complained of.
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> x x x x x x x x x

[14] *Id*. at 29-40.

WHEREFORE, the foregoing considered, it is respectfully recommended that the Complaint for violation of Section 3 (e) and (g) of RA 3019 filed against all respondents be dismissed.

SO RESOLVED.[15]

PCGG filed a Motion for Reconsideration but the same was denied by the Ombudsman in an Order[16] dated January 7, 2009.

Hence, the instant Petition.

The Issue

For resolution is the issue on whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing PCGG's Complaint on the ground of (a) prescription and (b) lack of probable cause.

Ruling of the Court

At the outset, it should be stressed that R.A. No. 3019, Section 11[17] provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195,[18] which took effect on March 16, 1982.

When the subject transactions took place, the period of prescription for all offenses punishable under R.A. No. 3019 was ten (10) years. As to which of the two periods should apply, the Court in *People v. Pacificador*[19] explained that in the prescription of crimes, the period which appears more favorable to the accused is to be adopted, *viz.*:

It can be gleaned from the Information that the respondent Pacificador allegedly committed the crime charged on or about during

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[15] *Id.*

[16] *Id.* at 42-44.

[17] **Sec. 11**. *Prescription of Offenses*. — All offenses punishable under this Act shall prescribe in ten years.

[18] Please note that as of July 21, 2016, R.A. No. 10910 has increased the period of prescription to twenty (20) years.

[19] 406 Phil. 774 (2001).

the period from December 6, 1975 to January 6, 1976. Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.[20]

The loan transactions subject of this case were granted by the PNB to BISUDECO from 1977-1985. Applying this Court's pronouncement in *Pacificador*, the period of prescription for offenses committed prior to the passage of B.P. Blg. 195 is ten (10) years. The new 15-year period cannot be applied to acts done prior to its effectivity in 1982 because to do so would violate the prohibition against *ex post facto* laws. Transactions entered into and consummated prior to the effectivity of B.P. Blg. 195 on March 16, 1982 are exempt from its amendments. The new 15-year period shall only be applied to acts done after its effectivity.

When does the 10-year period begin to run?

While R.A. No. 3019 is silent as to when the period of prescription begins to run, R.A. No. 3326,[21] specifically Section 2 thereof fills the gap. Section 2 provides in part:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof** and the institution of judicial proceeding for its investigation and punishment. x x x (Emphasis Ours)

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[20] *Id*. at 782.

[21] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN. Approved on December 4, 1926.

In the 1999[22] and 2011[23] cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Desierto, et al.*, the Court ruled that the prescriptive period began to ran **from the date of discovery** of the subject transactions and not from the time the behest loans were transacted. In the 2011 *Desierto* case, the Court ruled that the "blameless ignorance" doctrine applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action, *viz.*:

> Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "blameless ignorance" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.[24]

In *Disini v. Sandiganbayan*,[25] the Court reiterated that the prescriptive period commenced to run not on the date of commission of the crime or offense, rather, from the discovery

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[22] 375 Phil. 697 (1999).

[23] 664 Phil. 16 (2011).

[24] *Id*. at 27-28.

[25] 717 Phil. 638 (2013).

thereof, *i.e.* date of discovery of the violation after the PCGG's exhaustive investigation.

In the more recent case of *PCGG v. The Ombudsman, et al.*[26] likewise involving behest loans, the Court applied the same rule in determining whether or not prescription had already set in, *viz.*:

> In the case at bar, involving as it does the grant of behest loans which We have recognized as a violation that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentation, the second mode applies. We, therefore, count the running of the prescriptive period from the date of discovery thereof on January 4, 1993, when the Presidential Ad Hoc Fact-Finding Committee reported to the President its findings and conclusions anent RHC's loans. This being the case, the filing by the PCGG of its Affidavit-Complaint before the Office of the Ombudsman on January 6, 2003, a little over ten (10) years from the date of the discovery of the crimes, is clearly belated. Undoubtedly, the ten-year period within which to institute the action has already lapsed, making it proper for the Ombudsman to dismiss petitioner's complaint on the ground of prescription.[27]

Applying this to the present case, the date of discovery was April 4, 1994, the date of the Terminal Report that was submitted to President Fidel V. Ramos. The Terminal Report classified the subject BISUDECO loans as behest loans. Records show that the PCGG filed its affidavit-complaint before the Ombudsman only on January 28, 2005 or a little more than 10 years from the date of discovery. Clearly, the crimes imputed to private respondents for loans transacted in the years 1971 to 1981 have already prescribed. As to the loans covered by the years 1982 to 1985, the 15-year prescriptive period shall apply since B.P. Blg. 195 was then already in effect. Thus, insofar as the 1982 to 1985 loan transactions are concerned, the complaint was filed on time and without a doubt, within the prescriptive period.

It bears stressing, however, that the crux of the present petition is the propriety of the Ombudsman's dismissal of PCGG's

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[26] 746 Phil. 995 (2014).

[27] *Id.* at 1009.

complaint on the ground that there was no probable cause to indict respondents for alleged violation of R.A. No. 3019.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[28]

When the Ombudsman dismissed the case for lack of probable cause, it explained that the Complaint and its supporting papers failed to establish probable cause both as to the commission of the crime and the guilt of the private respondents, to wit:

> As to the other loans/accommodations extended by PNB to BISUDECO, the complaint and its supporting papers do not show the individual or collective participation of the respondents in the acts complained of. As a matter of fact, they do not show the names of the members of the PNB Board who approved said loans/ accommodations in favor of BISUDECO. Paragraph "16" of the complaint merely provided the names of the members of the PNB Board at the time of the application and approval of the loans, and its Annex "K" listed the names of the PNB Board from 1964 to 1986. Moreover, there is no copy of the PNB Board Resolution in the record. The Board Resolutions referred to by the complainant in the complaint are actually excerpts of the Minute of the Board Meetings during which the Resolutions were approved. Thus, we cannot make a presumption that all the members of the PNB Board from 1964 to 1986 unanimously approved the loan in favor of BISUDECO.[29]

To recapitulate, the private respondents were charged with violation of Sections 3(e) and (g) of R.A. No. 3019 which provides:

> **Sec. 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 x x x x x

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[28] *Principio v. Judge Barrientos*, 514 Phil. 799, 811 (2005).

[29] *Rollo*, pp. 37-38.

e. Causing 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.

x x x x x x x x x

g. Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.[30]

To justify an indictment under Section 3(e), the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) he or she causes any undue injury to any party, whether the government or a private party; (3) the said public officer commits the prohibited acts during the performance of his or her official

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[30] In *Singian, Jr. v. Sandiganbayan (Third Division),* 514 Phil. 536, 546-547 (2005), we enumerated the elements of these offenses:

The elements of the offense defined under Section 3(e) of Rep. Act No. 3019 are the following:

1) that the accused are public officers or private persons charged in conspiracy with them;

2) that the prohibited act/s were done in the discharge of the public officer's official, administrative or judicial, functions;

3) that they cause undue injury to any party, whether Government or a private person;

4) that such injury is caused by giving any unwarranted benefits, advantage or preference to such party; and

5) that the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.

To be indicted of the offense under Section 3(g) of Rep Act No. 3019, the following elements must be present:

1) that the accused is a public officer;

2) that he entered into a contract or transaction on behalf of the government; and

3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

duties or in relation to his or her public positions; (4) such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

On the other hand, Section 3(g) of R.A. No. 3019 lists the following elements: (1) the accused is a public officer; (2) he or she enters into a contract or transaction, on behalf of the Government; (3) such contract or transaction is manifestly and grossly disadvantageous to the Government, regardless of whether or not the public officer profited therefrom.

Private respondents Mapa and Enrile, in their respective Comments,[31] maintain that the complaint failed to state the particular acts for which they are individually or collectively liable as Directors of PNB. PCGG, however, insists that there is probable cause to hold the private respondents liable and that it was capricious for the Ombudsman to require that they indicate the participation of every private respondent in the commission of the offense- preliminary investigation not being the occasion for the full and exhaustive display of the parties' evidence.

In the case of *Buchanan v. Viuda De Esteban,*[32] probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[33]

A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of.

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[31] *Rollo*, pp. 1043-1049, 1411-1423.

[32] 32 Phil. 365 (1915).

[33] *Id.*

In the case of *Kara-an v. Office of the Ombudsman,*[34] the Court ruled that approval of a loan during incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan, *viz.*:

> The Court cannot likewise sustain petitioner's contention that the Ombudsman gravely abused his discretion in dismissing the charge against Farouk A. Carpizo (Carpizo). The Ombudsman explained his reasons for finding that there was no sufficient ground to engender a well-founded belief that Carpizo is liable under RA 3019. True, Carpizo, who was appointed in March 1981, was already a director when the Islamic Bank approved the CAMEC loan in 1986. However, the fact that the Islamic Bank processed and approved the CAMEC loan during his incumbency as director does not automatically establish probable cause against him absent a showing that he personally participated in any irregularity in the processing and approval of the loan. As the Ombudsman stated in the assailed Order, there were subordinate officials who studied and favorably endorsed the loan to the Banks Board for approval.[35]

As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code. The liability of the officers must be proven by evidence sufficient to overcome the burden of proof borne by the plaintiff.[36]

Section 31 of the Corporation Code states:

> Sec. 31. *Liability of Directors, Trustees or Officers.*— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such

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[34] 476 Phil. 536 (2004).

[35] *Id.* at 550.

[36] *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*, 763 Phil. 428, 436 (2015), citing *Solidbank Corporation v. Mindanao Ferroalloy Corporation,* 502 Phil. 651, 664 (2005).

directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

From the foregoing it can be deduced that personal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith.

PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof.

In its Resolution[37] dated June 23, 2006, the Ombudsman likewise observed that the affiant seemed to have no personal knowledge of the allegations in the complaint. The relevant portion of the resolution reads as follows:

> Finally, it appears that the Affiant has no personal knowledge of the allegations in the complaint as its penultimate paragraph states that "The foregoing may be attested to by, among others, PCGG Legal Counsel Orlando L. Salvador and/or PCGG Director Danilo R. Daniel, PCGG members of the TWG that examined the foregoing accounts." None of the above-mentioned personalities executed an Affidavit to attest to the allegations in the complaint.[38]

Insofar as criminal liability of the BISUDECO officers is concerned, the Court likewise rules in the negative. Private respondents Ojeda, De Vera, Lukban, Tan, Recato, Dychiao, Borja and Cea (deceased) are not criminally liable under Section 3(g) and (e).

The relevant provisions of R.A. No. 3019 and the Court's ruling in the cases of *Singian, Jr. v. Sandiganbayan (Third*

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[37] *Rollo*, pp. 29-40.

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

Division)[39] and *Domingo v. Sandiganbayan*,[40] clarified that private persons who conspire with public officers may be indicted and, if found guilty, held liable for violation of Section 3(g) of R.A. No. 3019. In the case at bench, no violation was proven because there was no probable cause to charge the private respondents in the first place. Thus, there being no probable cause to charge the public officer involved herein with violation of Section 3(e) and (g), private respondents who acted in their capacities as Officers of BISUDECO are likewise cleared of any criminal liability.

Although the Court has ruled in previous cases that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, the particular act or omission constituting the offense charged must still be alleged in the complaint otherwise it would amount to nothing more than a fishing expedition. Simply put, the evidence adduced by PCGG was not sufficient to establish probable cause.

In *Dichaves v. Office of the Ombudsman*,[41] the Court reiterated the rule on non-interference with the Ombudsman's determination of probable cause absent a showing of grave abuse of discretion committed by the latter, *viz.*:

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
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> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant

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[39] 514 Phil. 536 (2005).

[40] 510 Phil. 691 (2005).

[41] G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273.

the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor,* that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[42] (Citations omitted)

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to Complaints filed before it, to determine if there is probable cause.[43]

WHEREFORE, the petition for *certiorari* is **DISMISSED.** The Office of the Ombudsman's Resolution dated June 23, 2006 and Order dated January 7, 2009 in OMB-C-C-05-0153-D are hereby **AFFIRMED.**

SO ORDERED.

Peralta (*Acting Chairperson*), *Bersamin,*[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[42] *Id*. at 297-299.

[43] *Galario v. Office of the Ombudsman (Mindanao)*, 554 Phil. 86, 103 (2007).

[*] Designated as additional member per Raffle dated July 9, 2018 *vice* Associatee Justice Francis H. Jardeleza.

FIRST DIVISION

[G.R. No. 197831. July 9, 2018]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES ANGEL AND BUENVENIDA ANAY, and SPOUSES FRANCISCO AND DOLORES LEE,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE; THE DOCTRINE OF MORTGAGEE IN GOOD FAITH PRESUPPOSES THAT THE MORTGAGOR, WHO IS NOT THE RIGHTFUL OWNER OF THE PROPERTY, HAS ALREADY SUCCEEDED IN OBTAINING TORRENS TITLE OVER THE PROPERTY IN HIS NAME AND THAT, AFTER OBTAINING THE SAID TITLE, HE SUCCEEDS IN MORTGAGING THE PROPERTY TO ANOTHER WHO RELIES ON WHAT APPEARS ON THE TITLE; NOT APPLICABLE TO CASE AT BAR.— Settled is the fact that the Spouses Anay's consent to the SPA was vitiated. This, as much, was not contested by PNB. Nevertheless, PNB seeks protection as mortgagee in good faith as it allegedly had no hand in the fraud or bad faith perpetrated by the Spouses Lee in securing the SPA. The doctrine of a mortgagee in good faith finds similar basis on the rule that persons dealing with property covered by a Torrens Certificates of Title, either as buyers or as mortgagees, are not required to go beyond what appears on the face of the title. This doctrine, however, does not apply in the instant case. For one, the issue of being a mortgagee in good faith is a factual matter, which cannot be raised in this petition. For another, the doctrine of mortgagee in good faith "presupposes that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title." Such is not the case here as the fact that the Spouses Anay were the registered owners of the subject property was never disputed, thus the genuineness of the latter's title was never an issue. What is controversial is the authority of the Spouses Lee to mortgage the property of the Spouses Anay.

2. ID.; ID.; ID.; A MORTGAGEE IN BAD FAITH IS NOT ENTITLED TO PROTECTION.— Based on the testimonial evidence offered by PNB itself through PNB Inspector Abucay, when the Spouses Anay were made to sign the previously prepared SPA, the husband was already bedridden, half-blind, not able to recognize, cannot read the SPA, and his hand had to be moved by Marietta to approximate the act of signing. PNB Inspector Abucay further testified that he did not hear whether Marietta explained the contents of the document to the Spouses Anay before she made them sign. PNB's theory of being a mortgagee in good faith is therefore unavailing. On the contrary, what appears to be evident is that PNB itself connived with the Spouses Lee if only to ensure that signatures of the Spouses Anay on the SPA were secured. Since PNB is not a mortgagee in good faith, it is not entitles to protection.

3. ID.; ID.; ID.; A SPECIAL POWER OF ATTORNEY (SPA) WHICH WAS SECURED THROUGH VITIATED CONSENT IS VOID; EFFECT THEREOF.— It having been established that the SPA was secured through vitiated consent and there being no ratification on the part of the Spouses Anay, the SPA is consequently void. As such, the SPA cannot be the basis of a valid mortgage contract, nor of the subsequent foreclosure and consolidation of title in favor of PNB.

4. ID.; LAND REGISTRATION; CERTIFICATE OF TITLE; THE CANCELLATION OF PETITIONER'S CERTIFICATE OF TITLE DOES NOT CONSTITUTE AN INDIRECT ATTACK AS THE SAID TITLE WAS IRREGULARLY AND ILLEGALLY ISSUED.— [P]NB insists that its certificate of title cannot be indirectly attacked. The Complaint *a quo* does not constitute an indirect attack on PNB's title which was irregularly and illegally issued to begin with. On the contrary, since the RTC acquired jurisdiction not only over the subject matter of the case but also over the parties thereto, it was unnecessary to institute a separate action to nullify PNB's title insofar as the property of the Spouses Anay is concerned. Considering further that it was not shown that PNB had transferred the subject property to an innocent purchaser for value, it is but proper that the subject property be retained by the Spouses Anay.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; CLAIM FOR RESTITUTION AND DAMAGES SHALL BE DENIED

WHERE THE SAME WAS NEVER RAISED BEFORE THE REGIONAL TRIAL COURT. — [W]e find no reason to depart from the CA's denial of PNB's claim for restitution and damages against the Spouses Lee. The CA is correct in holding that this issue was never raised before the RTC and as such, the Spouses Lee could not have been afforded the opportunity to rebut PNB's claims. Further, as aptly observed by the CA, PNB itself failed to file the necessary cross-claim against the Spouses Lee, as such, PNB cannot belatedly complain on appeal.

APPEARANCES OF COUNSEL

Franc Evan L. Dandoy for petitioner.
Casiano A. Gamotin, Jr. for respondent Sps. Anay.

D E C I S I O N

TIJAM, *J.*:

Through this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Philippine National Bank (PNB) seeks to modify the Decision[2] dated October 19, 2010 and Resolution[3] dated July 11, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 01140-MIN which affirmed the Decision[4] dated October 17, 2006 of the Regional Trial Court (RTC), Branch 23, Cagayan de Oro City. The CA affirmed the RTC which ordered, among others, the cancellation of PNB's title insofar as it covered the property of respondents Spouses Angel and Buenvenida Anay (Spouses Anay). While PNB no longer disputes the exclusion of the property of the Spouses

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[1] *Rollo*, pp. 22-50, With Annexes.

[2] Penned by Associate Justice Edgardo T. Lloren, concurred in by Associate Justices Romulo V. Borja and Ramon Paul L. Hernando. *Id*. at 8-16.

[3] Penned by Associate Justice Edgardo T. Lloren, concurred in by Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, vice Associate Justice Paul L. Hernando. *Id*. at 17-18.

[4] Penned by Presiding Judge Ma. Anita M. Esguerra-Lucagbo. *Id*. at 67-81.

Anay from the foreclosed properties, it nevertheless seeks that respondents Spouses Francisco and Dolores Lee (Spouses Lee), as debtors-mortgagors, be ordered to restitute to PNB the value of the excluded property.

The Antecedents

The facts are largely undisputed. The Spouses Lee obtained a loan from PNB initially in the amount of ₱400,000.00 but which was later on increased to ₱7,500,000.00 under a Revolving Credit Line.[5] To cover the increased credit accommodation, the Spouses Lee offered additional securities which included a parcel of land registered in the name of the Spouses Anay located at Iponan, Cagayan de Oro City with an area of 5,503 square meters and covered by Transfer Certificate of Title (TCT) No. T- 25805. For this purpose, the Spouses Anay executed a Special Power of Attorney (SPA) in favor of the Spouses Lee, authorizing the latter to use the subject property as security for the loan.[6]

The Spouses Lee failed to pay their loan obligations. Consequently, PNB initiated extrajudicial foreclosure proceedings against the mortgaged properties, including that of the Spouses Anay. PNB emerged as the highest bidder in the auction sale and a Sheriff's Certificate of Sale was thereafter issued. When the redemption period expired without the Spouses Lee or the Spouses Anay having exercised the right of redemption, PNB consolidated its title over the foreclosed properties. As such, TCT No. T-25805 was canceled and in lieu thereof, a new title, TCT No. T-120269, was issued in PNB's name.[7]

The Spouses Anay filed a Complaint against the Spouses Lee and PNB for annulment of the SPA, foreclosure proceedings and the Sheriff's Certificate of Sale on the ground of vitiated consent. It appears that the Spouses Lee urged Marietta Anay Cabinatan (Marietta), a daughter of the Spouses Anay, to let them borrow the latter's property to be used as additional security

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[5] *Id*. at 8-9 and 26.

[6] *Id*. at 9 and 26.

[7] *Id*. at 9 and 26-27.

to cover their increased loan with the PNB.[8] Marietta could not refuse since the Spouses Lee were her employers. At that time, the Spouses Anay were both of old age, weak, hard of hearing and could barely see.[9] So much so that Marietta had to move her father's hand to sign[10] and had to hold her mother's hand while affixing her thumbmark on the SPA.[11] The contents of the SPA were neither explained to the poor couple as Marietta summarily told them to "just sign" the SPA.[12] The Spouses Anay also did not receive any amount out of the loan obtained by the Spouses Lee from PNB.[13] Dolores Lee herself similarly testified as to the same factual circumstances and further testified that she does not mind losing all her properties as she was bothered by her conscience because they only borrowed the Spouses Anay's property.[14] In all, the RTC reached the conclusion that the Spouses Anay's consent to the SPA were vitiated, if not totally absent and thus disposed:

> The FOREGOING MATTERS CONSIDERED, the Court finds overwhelming evidence to NULLIFY the Special Power of Attorney (Exh. "C") and so the Court HOLDS and DECREES the Special Power of Attorney NULL and VOID and of no force and effect.
>
> EX NIHILO NIHIL FIT. From nothing comes nothing. It follows that all the other documents which caused the foreclosure of the property and the transfer of the [S]pouses Anays' title to other persons, among which documents are the Supplemental to Existing Real Estate Mortgage (Exh. "D"), the Sheriffs Certificate of Sale (Exh. "F") are likewise declared NULL and VOID.
>
> The nullity of Exhs. "D" and "F" affects only the mortgaged and foreclosed property of Angel and Buenvenida Anay covered by TCT No. T-25805.

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[8] *Id*. at 69.

[9] *Id*. at 71.

[10] *Id*. at 73.

[11] *Id*. at 70.

[12] *Id*. at 71.

[13] *Id*. at 74.

[14] *Id*. at 71.

Exhs. "D" and "F" remain VALID and BINDING as to the other properties enumerated and specified in said exhibits, particularly those owned by Francisco and Dolores Lee who acknowledged their indebtedness to PNB.

The Register of Deeds of Cagayan de Oro is hereby ORDERED and DIRECTED to cancel, invalidate or withdraw and render of no force and effect, all titles issued subsequent to and arising out of TCT No. T-25805 as a consequence of the Special Power of Attorney under Entry No. 205817, including TCT No. T-120269 and all such subsequent titles issued, are also hereby declared as void and of no effect.

The same office is directed to reinstate TCT No. T-25805 in the name of the Heirs of Angel Anay, it appearing that he died on May 16, 2004, provided that the heirs comply with all the legal requirements.

NO PRONOUNCEMENT AS TO COST.

SO ORDERED.[15]

PNB's motion for reconsideration was denied,[16] prompting an appeal before the CA.

In its Appeal,[17] PNB reasoned that the cancellation of its title, TCT No. T-120269, as a result of the nullity of the SPA, constitutes a collateral attack which is proscribed under Section 48[18] of Presidential Decree No. 1529.[19] It is also the PNB's position that the Spouses Lee should be made liable for restitution and damages considering the overwhelming evidence of their bad faith.[20]

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

[16] *Id*. at 86.

[17] *Id*. at 87-100.

[18] **Section 48.** *Certificate not subject to collateral attack.* A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.

[19] PROPERTY REGISTRATION DECREE.

[20] *Rollo*, p. 106.

In dismissing PNB's appeal, the CA held that the cancellation of PNB's title does not constitute an indirect or collateral attack because said title was irregularly and illegally issued to begin with, it having emanated from an annulled SPA.[21] The CA likewise denied PNB's claim for restitution and damages for PNB's failure to timely raise this issue before the RTC and for failure to file the necessary cross-claim against the Spouses Lee. The CA accordingly held in disposal:

> WHEREFORE, the instant appeal is hereby DISMISSED. The Decision dated October 17, 2006 is AFFIRMED *in toto*.[22]

PNB's motion for reconsideration met similar denial. Hence, this petition.

Reiterating its arguments before the CA, PNB maintains that it is a mortgagee in good faith and as such, its title cannot be subjected to collateral attack. In any case, PNB argues, the Spouses Lee should be made liable for damages and restitution to PNB for having acted in bad faith.

The Ruling of the Court

We deny the petition.

Settled is the fact that the Spouses Anay's consent to the SPA was vitiated. This, as much, was not contested by PNB. Nevertheless, PNB seeks protection as mortgagee in good faith as it allegedly had no hand in the fraud or bad faith perpetrated by the Spouses Lee in securing the SPA.

The doctrine of a mortgagee in good faith finds similar basis on the rule that persons dealing with property covered by a Torrens Certificates of Title, either as buyers or as mortgagees, are not required to go beyond what appears on the face of the title.[23] This doctrine, however, does not apply in the instant case.

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[21] *Id*. at 107.

[22] *Id.* at 109.

[23] *Ereña v. Querrer-Kauffman*, 525 Phil. 381, 403 (2006).

For one, the issue of being a mortgagee in good faith is a factual matter, which cannot be raised in this petition.[24] For another, the doctrine of mortgagee in good faith "presupposes that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title."[25] Such is not the case here as the fact that the Spouses Anay were the registered owners of the subject property was never disputed, thus the genuineness of the latter's title was never an issue. What is controversial is the authority of the Spouses Lee to mortgage the property of the Spouses Anay.

It is in this regard that PNB denies having knowledge of, or participation in the manner and the circumstances surrounding the execution of the SPA. PNB's self-serving claim is, however, easily dispelled by the testimony of its very own employee, PNB Inspector Marcial Abucay (PNB Inspector Abucay) who was present, together with another PNB employee Jun Abella, at the time of the signing of the SPA.

Based on the testimonial evidence offered by PNB itself through PNB Inspector Abucay, when the Spouses Anay were made to sign the previously prepared SPA, the husband was already bedridden, half-blind, not able to recognize, cannot read the SPA, and his hand had to be moved by Marietta to approximate the act of signing.[26] PNB Inspector Abucay further testified that he did not hear whether Marietta explained the contents of the document to the Spouses Anay before she made them sign.[27] PNB's theory of being a mortgagee in good faith is therefore unavailing. On the contrary, what appears to be evident is that PNB itself connived with the Spouses Lee if

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[24] *PNB v. Heirs of Militar*, 504 Phil. 634 (2005), citing S*ps. Uy v. Court of Appeals*, 411 Phil. 788 (2001).

[25] *Bank of Commerce v. Spouses San Pablo, Jr*., 550 Phil. 805, 821 (2007).

[26] *Rollo*, pp. 72-73.

[27] *Id*. at 73.

only to ensure that the signatures of the Spouses Anay on the SPA were secured. Since PNB is not a mortgagee in good faith, it is not entitled to protection.[28]

It having been established that the SPA was secured through vitiated consent and there being no ratification on the part of the Spouses Anay, the SPA is, consequently void. As such, the SPA cannot be the basis of a valid mortgage contract, nor of the subsequent foreclosure and consolidation of title in favor of PNB.[29]

Despite the foregoing, PNB insists that its certificate of title cannot be indirectly attacked. The Complaint *a quo* does not constitute an indirect attack on PNB's title which was irregularly and illegally issued to begin with.[30] On the contrary, since the RTC acquired jurisdiction not only over the subject matter of the case but also over the parties thereto, it was unnecessary to institute a separate action to nullify PNB's title insofar as the property of the Spouses Anay is concerned.[31] Considering further that it was not shown that PNB had transferred the subject property to an innocent purchaser for value, it is but proper that the subject property be retained by the Spouses Anay.[32]

Finally, We find no reason to depart from the CA's denial of PNB's claim for restitution and damages against the Spouses Lee. The CA is correct in holding that this issue was never raised before the RTC and as such, the Spouses Lee could not have been afforded the opportunity to rebut PNB's claims. Further, as aptly observed by the CA, PNB itself failed to file the necessary cross-claim against the Spouses Lee, as such, PNB cannot belatedly complain on appeal.

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[28] See *Land Bank of the Philippines v. Poblete*, 704 Phil. 610 (2013).

[29] *Lao v. Villones-Lao,* 366 Phil. 49 (1999).

[30] See *Gregorio Araneta University Foundation v. RTC of Kalookan City, Br. 120, et al*., 599 Phil. 677 (2009).

[31] *Id.*

[32] See *Bank of Commerce v. Spouses San Pablo, Jr*., *supra* note 25.

WHEREFORE, the petition is **DENIED**. The Decision dated October 19, 2010 and Resolution dated July 11, 2011 of the Court of Appeals in CA-G.R. CV No. 01140-MIN are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson)*, *del Castillo, Jardeleza*, and *Gesmundo,*[**] *JJ*., concur.

FIRST DIVISION

[G.R. No. 197945. July 9, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

[G.R. Nos. 204119-20. July 9, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION and PETRON CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; THE RE-LITIGATION OF AN ISSUE WHICH HAD ALREADY BEEN SETTLED WITH FINALITY BY THE COURT IS PRECLUDED BY *RES*

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[*] Designated as Acting Chairperson of the First Division pursuant to Special Order No. 2559, dated May 11, 2018.

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.

***JUDICATA* IN THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT; LITIGATING THE ISSUES ON THE VALIDITY OF TRANSFERRED TAX CREDIT CERTIFICATES (TCCS) AND RESPONDENTS' QUALIFICATIONS AS TRANSFEREES HAD BEEN FINALLY SETTLED IN THE 2007 SHELL CASE (565 PHIL. 613 [2007]) AND 2010 PETRON CASE (640 PHIL. 163 [2010]) WHICH ARE CONCLUSIVE AND BINDING UPON THE COURT. —** [P]etitioner asserts his right to collect as excise tax deficiencies the excise tax liabilities which respondents had previously settled using the transferred TCCs, impugning the TCCs' validity on account of fraud as well as respondents' qualifications as transferees of said TCCs. However, respondents already raised the same arguments and the Court definitely ruled thereon in its final and executory decisions in the *2007 Shell Case* and *2010 Petron Case.* The re-litigation of these issue in the present petitions, when said issues had already been settled with finality in the *2007 Shell Case* and *2010 Petron Case,* is precluded by *res judicata* in the concept of "conclusiveness of judgment." x x x. The Court's x x x findings in the *2007 Shell Case* and *2010 Petron Case* are conclusive and binding upon this Court in the petitions at bar. *Res judicata* by conclusiveness of judgment bars the Court from re-litigating the issues on the TCCs' validity and respondents' qualifications as transferees in these cases. As a result of such findings in the *2007 Shell Case* and *2010 Petron Case*, then respondents could not have had excise tax deficiencies for the Covered Years as they had validly paid for and settled their excise tax liabilities using the transferee TCCs.

2. **ID.; ID.; ID.; ID.; CONCEPT OF "CONCLUSIVENESS OF JUDGMENT," EXPLAINED.—** In *Ocho v. Calos*, the Court extensively explained the doctrine of *res judicata* in the concept of "conclusiveness of judgment," thus x x x. In the present case, the second concept — conclusiveness of judgment — applies. The said concept is explained in this manner: **[A] fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of**

concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, **it is essential that the issue be identical.** If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be **final and conclusive** in the second if that same point or question was in issue and adjudicated in the first suit. x x x.

3. **TAXATION; 1977 NATIONAL INTERNAL REVENUE CODE (NIRC); TAX ADMINISTRATION AND ENFORCEMENT; SUMMARY ADMINISTRATIVE REMEDIES AND JUDICIAL REMEDIES, DISTINGUISHED; TAXES MUST BE COLLECTED REASONABLY AND IN ACCORDANCE WITH THE PRESCRIBED PROCEDURE, AND NON-COMPLIANCE THEREOF CONSTITUTES A VIOLATION OF THE TAXPAYERS' RIGHT TO DUE PROCESS.—** The Court dismisses the present petitions for it cannot allow petitioner to collect any excise tax deficiency from respondents by mere issuance of the 1998 and 2002 Collection Letters. Petitioner had failed to comply with the prescribed procedure for collection of unpaid taxes through summary administrative remedies and, thus, violated respondents' right to due process. That taxation is an essential attribute of sovereignty and the lifeblood of every nation are doctrine well-entrenched in our jurisdiction. Taxes are the government's primary means to generate funds needed to fulfill its mandate of promoting the general welfare and well-being of the people and so should be collected without unnecessary hindrance. While taxation *per se* is generally legislative in nature, collection of tax is administrative in character. Thus, Congress delegated the assessment and collection of all nation internal revenue taxes, fees, and charges to the BIR. And as the BIR's chief, the CIR has the power to make assessments and prescribe additional requirements for tax administration and enforcement. The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) ***summary administrative remedies,*** such as the distraint and/or levy of taxpayer's property; and/or (b) ***judicial remedies,*** such as the filing of a criminal or civil action against the erring taxpayer. Verily, pursuant to the lifeblood doctrine, the Court

has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes,** with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**

4. **ID.; ID.; ID.; THE BUREAU OF INTERNAL REVENUE MAY SUMMARILY ENFORCE COLLECTION ONLY WHEN IT HAS ACCORDED THE TAXPAYER ADMINISTRATIVE DUE PROCESS, WHICH INCLUDES THE ISSUANCE OF A VALID ASSESSMENT.—** In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. "An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential** to warrant distraint, if still feasible, and, also, to establish a cause for judicial action." The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.

5. **ID.; ID.; ID.; ABSENT A PREVIOUSLY ISSUED VALID ASSESSMENT, THE COLLECTION OF DEFICIENCY EXCISE TAXES THROUGH COLLECTION LETTERS, AND WARRANTS OF GARNISHMENT AND DISTRAINT AND/OR LEVY ARE VOID AND INEFFECTUAL.—** In the instant cases, petitioner did not issue at all an assessment against respondents prior to his issuance of the 1998 and 2002 Collection Letters. Thus, there is even more reason for the Court to bar petitioner's attempts to collect the alleged deficiency excise taxes through any summary administrative remedy. In the present case, it is clear from the wording of the 1998 and 2002 Collection Letter that petitioner intended to pursue, through said collection letters, **summary administrative remedies** for

the collection of respondents' alleged excise tax deficiencies for the Covered Years. In fact, in the respondent Shell's case, the collection letters were already followed by the BIR's issuance of Warrants of Garnishment and Distraint and/or Levy against it. x x x Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrant of Garnishment and Distraint and/or Levy are void and ineffectual. If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.

6. ID.; ID.; ID.; PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION; THE BUREAU OF INTERNAL REVENUE HAS FIVE YEARS FROM THE TIME THE TAXPAYERS FILED THEIR EXCISE TAX RETURNS TO ISSUE AN ASSESSMENT, AND/OR FILE A COURT ACTION FOR COLLECTION WITHOUT AN ASSESSMENT; WITHOUT A VALID ASSESSMENT, THE FIVE-YEAR PRESCRIPTIVE PERIOD TO ASSESS CONTINUES TO RUN.— The alleged deficiency excise petitioner seeks to collect from respondents in the cases at bar pertain to the Covered Years, *i.e.*, 1992 to 1997, during which, the National Internal Revenue Code of the Philippines of 1977 (1977 NIRC) was the governing law. x x x. Under Section 318 of the 1977 NIRC, petitioner had five years from the time respondents filed their excise tax returns in question to: (a) issue an assessment; and/or (b) file a court action for collection without an assessment. In the petitions at bar, respondent filed their returns for the Covered Years from 1992 to 1997, and the five-year prescriptive period under Section 319 of the 1977 NIRC would have prescribed accordingly from 1997 to 2002. As the Court has explicitly found herein as well as in the *2007 Shell Case* and *2010 Petron Case*, petitioner failed to issue any valid assessment against respondents for the latter's alleged deficiency excise taxes for the Covered Years. Without a valid assessment, the five-year prescriptive period **to assess** continued to run and had, in fact, expired in these cases. Irrefragably, petitioner is already barred by prescription from issuing an assessment against respondents for deficiency excise taxes for the Covered Years. Resultantly, this also bars petitioner from undertaking any **summary administrative remedies,** *i.e.,*

distraint and/or levy, against respondents for collection of the same taxes.

7. ID.; ID.; ID.; ID.; THE COURT PROCEEDINGS FOR COLLECTION OF TAXES WITHOUT ASSESSMENT MUST BE INSTITUTED WITHIN FIVE YEARS FROM THE FILING OF THE TAX RETURN AND 10 YEARS FROM THE DISCOVERY OF FALSITY, FRAUD, OR OMISSION, RESPECTIVELY; JUDICIAL ACTION FOR THE COLLECTION OF TAXES, HOW INSTITUTED.— Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318 and 319(a) of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively. A judicial action for the collection of a tax is begun: (a) by the **filing of a complaint** with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by **filing an answer to the taxpayer's petition for review** wherein payment of the tax is prayed for. From respondents' filing of their excise tax returns in the years 1992 to 1997 until the lapse of the five-year prescriptive period under Section 318 of the 1977 NIRC in the years 1997 to 2002, **petitioner did not institute any judicial action for collection of tax** as aforedescribed. Instead, petitioner relied solely on summary administrative remedies by issuing the collection letters and warrants of garnishment and distraint and/or levy without prior assessment against respondents. Sifting through records, it can be said that petitioner's earliest attempts to **judicially** enforce collection of respondents' alleged deficiency excise taxes were his **Answers** to respondents' Petitions for Review filed before the CTA in Case Nos. 5657, 5728, and 6547 on August 6, 1998, March 2, 1999, and November 29, 2002, respectively.

8. ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD FOR THE COLLECTION OF DEFICIENCY TAX THROUGH INSTITUTION OF A COURT PROCEEDING, WHEN IT STOPS TO RUN; THE COMMISSIONER OF INTERNAL REVENUE'S POWER TO INSTITUTE A COURT PROCEEDING FOR THE COLLECTION OF

TAXPAYERS' DEFICIENCY TAXES WITHOUT AN ASSESSMENT HAS ALREADY PRESCRIBED, WHERE IT FAILED EITHER TO FILE A FORMAL TAX COLLECTION SUIT BEFORE THE COURT OF COMPETENT JURISDICTION OR AN ANSWER DEEMED AS A JUDICIAL ACTION FOR COLLECTION OF TAX WITHIN THE PRESCRIBED FIVE-YEAR PERIOD.— Verily, in a long line of jurisprudence, the Court deemed the filing of such pleadings as effective tax collection suits so as to stop the running of the prescriptive period in cases where: (a) the CIR issued an assessment and the taxpayer appealed the same to the CTA; (b) the CIR filed the answer praying for the payment of tax within five years after the issuance of the assessment; and (c) at the time of its filing, jurisdiction over judicial actions for collection of internal revenue taxes was vested in the CTA, not in the regular courts. However, judging by the foregoing conditions, even petitioner's Answers in CTA Case Nos. 5657, 5728, and 6547 cannot be deemed judicial actions for collection of tax. *First*, CTA Case Nos. 5657, 5728, and 6547 were not appeals of assessments. Respondents went before the CTA to challenge the 1998 and 2002 Collection Letters, which, by petitioner's own admission, are not assessments. *Second*, by the time petitioner filed his Answers before the CTA on August 6, 1998, March 2, 1999, and November 29, 2002, his power to collect alleged deficiency excise taxes, the returns for which were filed from 1992 to 1997, had already partially prescribed, particularly those pertaining to the earlier portion of the Covered Years. *Third*, at the time petitioner filed his Answers before the CTA, the jurisdiction over judicial actions for collection of internal revenue taxes was vested in the regular courts, not the CTA. Original jurisdiction over collection cases was transferred to the CTA only on April 23, 2004, upon the effectivity of Republic Act No. 9282. Without either a **formal tax collection suit** filed before the court of competent jurisdiction or an **answer** deemed as a judicial action for collection of tax within the prescribed five-year period under Section 318 of the 1977 NIRC, petitioner's **power to institute a court proceeding for the collection of respondents' alleged deficiency excise taxes without an assessment had already prescribed** in 1997 to 2002.

9. ID.; ID.; ID.; ID.; IN CASE OF FALSITY, FRAUD, OR OMISSION IN THE TAXPAYER'S RETURN, THE

COMMISSIONER OF INTERNAL REVENUE MUST ISSUE AN ASSESSMENT, AND/OR FILE A COURT ACTION FOR COLLECTION WITHOUT AN ASSESSMENT, WITHIN 10 YEARS AFTER THE DISCOVERY OF THE FALSITY, FRAUD, OR OMISSION IN THE TAXPAYER'S RETURN.—The Court's ruling remains the same even if the 10-year prescriptive period under Section 319(a) of the 1977 NIRC, in case of falsity, fraud, or omission in the taxpayer's return, is applied to the present cases. Even if the Court concedes, for the sake of argument, that respondents' returns for the Covered Years were false or fraudulent, Section 319(a) of the 1977 NIRC similarly required petitioner to (a) issue an assessment; and/or (b) file a court action for collection without an assessment, but within 10 years after the discovery of the falsity, fraud, or omission in the taxpayer's return. As early as the 1998 Collection Letters, petitioner could already be charged with knowledge of the alleged falsity or fraud in respondents' excise tax returns, which precisely led petitioner to invalidate respondents' payments using the transferred TCCs and to demand payment of deficiency excise taxes through said letters. The 10-year prescriptive period under Section 319(a) of the 1977 NIRC wholly expired in 2008 without petitioner issuing a valid assessment or instituting judicial action for collection.

10. **ID.; ID.; ID.; ID.; WHILE TAXES ARE THE LIFEBLOOD OF THE NATION, THE COURT CANNOT ALLOW TAX AUTHORITIES INDEFINITE PERIODS TO ASSESS AND/OR COLLECT ALLEGED UNPAID TAXES, AS IT IS AN INJUSTICE TO LEAVE ANY TAXPAYER IN PERPETUAL UNCERTAINTY WHETHER HE WILL BE MADE LIABLE FOR DEFICIENCY OR DELINQUENT TAXES.—** The Court cannot countenance the tax authorities' non-performance of their duties in the present cases. The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. While taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Marcelo & Tenefrancia for Pilipinas Shell Petroleum Corp.
Belo Gozon Elma Parel Asuncion & Lucila for Petron Corporation.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, as amended, filed by petitioner Commissioner of Internal Revenue (CIR):

1. **G.R. No. 197945** assailing the Decision[1] dated February 22, 2011 and Resolution[2] dated July 27, 2011 of the Court of Tax Appeals (CTA) in CTA *En Banc* Case No. 535; and

2. **G.R. Nos. 204119-20** assailing the Decision[3] dated March 21, 2012 and Resolution[4] dated October 10, 2012 of the Court of Appeals in CA-G.R. SP Nos. 55329-30.

Respondents Pilipinas Shell Petroleum Corporation (Shell) and Petron Corporation (Petron) are domestic corporations engaged in the production of petroleum products and are duly

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[*] Per Special Order No. 2559 dated May 11, 2018.

[1] *Rollo* (G.R. No. 197945), pp. 62-109; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas concurring.

[2] *Id.* at 110-117.

[3] *Rollo* (G.R. Nos. 204119-20), pp. 52-68; penned by Associate Justice Ramon A. Cruz with Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor concurring.

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

registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987.[5]

On different occasions during 1988 to 1996, respondents separately sold bunker oil and other fuel products to other BOT-registered entities engaged in the export of their own manufactured goods (BOI export entities).[6] These BOT-registered export entities used Tax Credit Certificates (TCCs) originally issued in their name to pay for these purchases.

To proceed with this mode of payment, the BOT-registered export entities executed Deeds of Assignment in favor of respondents, transferring the TCCs to the latter. Subsequently, the Department of Finance (DOF), through its One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), approved the Deeds of Assignment.[7]

Thereafter, respondents sought the DOF Center's permission to use the assigned TCCs in settling respondents' own excise tax liabilities. The DOF Center issued Tax Debit Memoranda (DOF TDMs) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR),[8] allowing respondents to do so.

Thus, to pay for their excise tax liabilities from 1992 to 1997 (Covered Years),[9] respondents presented the DOF TDMs to the BIR. The BIR accepted the TDMs and issued the following: (a) TDMs signed by the BIR Assistant Commissioner for Collection Service[10] (BIR TDMs); (b) Authorities to Accept

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[5] Executive Order No. 226 dated July 16, 1987.

[6] *Rollo* (G.R. Nos. 204119-20), p. 213.

[7] The DOF Center was created pursuant to Administrative Order No. 266 dated February 7, 1992, in relation to EO 226, to centralize tax credit availment processing. It is composed of representatives from the DOF, the BOI, the Bureau of Customs, and the Bureau of Internal Revenue.

[8] *See* Joint Stipulation of Facts and Issues in CTA Case No. 5728; *rollo* (G.R. Nos. 204119-20), pp. 579-580.

[9] Inclusive of the years 1992, 1994 to 1997 for respondent Shell and 1993 to 1997 for respondent Petron.

[10] *See* Joint Stipulation of Facts and Issues in CTA Case No. 5728; *rollo* (G.R. Nos. 204119-20), p. 579, and Amended Joint Stipulation of Facts

Payment for Excise Taxes (ATAPETs) signed by the BIR Regional District Officer; and (c) corresponding instructions to BIR's authorized agent banks to accept respondents' payments in the form of BIR TDMs.[11]

Three significant incidents arising from the foregoing antecedents resulted in the filing of several petitions before this Court, *viz.*:

Significant Incidents	Resultant Petition/s before the Court
(a) 1998 Collection Letters issued by the BIR against respondents	G.R. Nos. 204119-20 (one of the present petitions)
(b) 1999 Assessments issued by the BIR against respondents	*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007 (*2007 Shell Case*) *Petron Corporation v. Commissioner of Internal Revenue*, G.R. No. 180385, July 28, 2010 (*2010 Petron Case*)
(c) 2002 Collection Letter issued by the BIR against respondent Shell	G.R. No. 197945 (one of the present petitions)

Said incidents and petitions are discussed in detail below.

A. 1998 Collection Letters (G.R. Nos. 204119-20)

In its collection letters[12] dated April 22, 1998 (1998 Collection Letters) addressed to respondents' respective presidents, the BIR[13] pointed out that respondents partly paid for their excise tax liabilities during the Covered Years using TCCs issued in the names of other companies; invalidated respondents' tax payments using said TCCs; and requested respondent Shell and

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and Issues in CTA Case No. 6547; *rollo* (G.R. No. 197945), p. 882. *See* also petitioner's Memorandum dated April 27, 2015; *rollo* (G.R. No. 197945), pp. 931, 934.

[11] *See* Amended Joint Stipulation of Facts and Issues in CTA Case No. 6547; *rollo* (G.R. No. 197945), p. 883.

[12] *Rollo* (G.R. Nos. 204119-20), pp. 141, 269.

[13] Through its Revenue District Officer Ruperto P. Somera.

respondent Petron to pay their delinquent tax liabilities amounting to ₱1,705,028,008.06 and ₱1,107,542,547.08, respectively. The 1998 Collection Letters similarly read:

> Our records show that for the years x x x, you have been paying part of your excise tax liabilities in the form of Tax Credit Certificate (TCC) which bear the name of a company other than yours in violation of Rule IX of the Rules and Regulations issued by the Board of Investments to implement P.D. No. 1789 and B.P. 391. **Accordingly, your payment through the aforesaid TCC's are considered invalid and therefore, you are hereby requested to pay** the amount of x x x inclusive of delinquency for late payments as of even date, covering the years heretofore mentioned within thirty days (30) from receipt hereof, **lest we will be constrained to resort to administrative and legal remedies available in accordance with law**. (Emphasis supplied.)

Respondents separately filed their administrative protests[14] against the 1998 Collection Letters, but the BIR denied[15] said protests. The BIR maintained that the transfers of the TCCs from the BOI-registered export entities to respondents and the use of the same TCCs by respondents to pay for their self-assessed specific tax liabilities were invalid, and reiterated its demand that respondents pay their delinquent taxes.

This prompted respondent Petron to file a Petition for Review[16] before the CTA docketed as CTA Case No. 5657.

As for respondent Shell, it first requested for reconsideration of the denial of its protest by the BIR.[17] However, while said request for reconsideration was pending, the BIR issued a Warrant of Garnishment[18] against respondent Shell. Taking this as a denial of its request for reconsideration, respondent Shell likewise

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[14] *Rollo* (G.R. Nos. 204119-20), pp. 152-156, 289-301, and 302-307.

[15] *Id*. at 161, 308-318.

[16] *Id*. at 247-266.

[17] *Id*. at 161-165.

[18] Signed by BIR Regional Director Antonio I. Ortega and received by Shell on July 17, 1998. (*Id*. at 166.)

filed a Petition for Review[19] before the CTA docketed as CTA Case No. 5728.

In their respective petitions before the CTA, respondents raised similar arguments against petitioner, to wit: (a) The collection of tax without prior assessment was a denial of the taxpayer's right to due process; (b) The use of TCCs as payment of excise tax liabilities was valid; (c) Since the BIR approved the transfers and subsequent use of the TCCs, it was estopped from questioning the validity thereof; and (d) The BIR's right to collect the alleged delinquent taxes had already prescribed.

The CTA granted respondents' petitions in separate Decisions both dated July 23, 1999, decreeing as follows:

CTA Case No. 5657

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. The collection of the alleged delinquent excise taxes in the amount of ₱1,107,542,547.08 is hereby CANCELLED AND SET ASIDE for being contrary to law. Accordingly, [herein petitioner and BIR Regional Director of Makati, Region No. 8] are ENJOINED from collecting the said amount of taxes against [herein respondent Petron].[20]

CTA Case No. 5728

IN LIGHT OF ALL THE FOREGOING, the instant petition for review is GRANTED. The collection letter issued by [herein petitioner] dated April 22, 1998 is considered withdrawn and he is ENJOINED from any attempts to collect from [herein respondent Shell] the specific tax, surcharge and interest subject of this petition.[21]

In both Decisions, the CTA upheld the validity of the TCC transfers from the BOI-registered export entities to respondents, the latter having complied with the requirements of transferability. The CTA further ruled that the BIR's attempt to collect taxes without an assessment was a denial of due process and a violation

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[19] *Id*. at 113-140.

[20] *Id*. at 477.

[21] *Id*. at 109.

of Section 228[22] of the National Internal Revenue Code of the Philippines of 1997 (Tax Code). The CTA also noted that the BIR might have purposely avoided the issuance of a formal assessment because its right to assess majority of respondents' alleged delinquent taxes had already prescribed.

Petitioner's motions for reconsideration of the above-mentioned decisions were denied by the CTA.[23] Thus, petitioner CIR sought recourse before the Court of Appeals[24] through the consolidated petitions docketed as CA-G.R. SP Nos. 55329-30.

However, the Court of Appeals dismissed the petitions and found the transfer and utilization of the subject TCCs were valid, in accordance with the *2007 Shell Case*.[25] The appellate court eventually denied petitioner's motion for reconsideration.

Undaunted, petitioner CIR filed the present petition docketed as G.R. Nos. 204119-20.

B. 1999 Assessments (The *2007 Shell Case* and *2010 Petron Case*)

During the pendency of the consolidated petitions in CA-G.R. SP Nos. 55329-30 before the Court of Appeals, the DOF Center conducted separate post-audit procedures[26] on all of the TCCs acquired and used by respondents during the Covered Years, requiring them to submit documents to support their

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[22] As amended by the Tax Reform Act of 1997, Republic Act No. 8424 (December 11, 1997).

[23] In Resolutions dated September 7, 1999. *Rollo* (G.R. Nos. 204119-20), pp. 112 and 246.

[24] Prior to the effectivity of Republic Act No. 9282, a CTA decision is appealable to the Court of Appeals. After its enactment, the CTA became an appellate court of equal rank to the Court of Appeals. Thus, a decision of a CTA Division is appealable to the CTA *En Banc*.

[25] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, 565 Phil. 613 (2007).

[26] In letters dated August 31, 1999 and September 1, 1999 [*Rollo* (G.R. No. 197945), pp. 732-734].

acquisition of the TCCs from the BOI-registered export entities. As a result of its post-audit procedures, the DOF Center cancelled the first batch of the transferred TCCs[27] used by respondent Shell and Petron, with aggregate amount of ₱830,560,791.00 and ₱284,390,845.00, respectively.

Following the cancellation of the TCCs, petitioner issued separate assessment letters to respondents in November 1999 (1999 Assessments) for the payment of deficiency excise taxes, surcharges, and interest for the Covered Years, which were also covered by the 1998 Collection Letters. Respondents filed their respective administrative protests against said assessments. While petitioner denied respondent Shell's protest, he did not act upon that of respondent Petron.

B.1 The *2007 Shell Case*

Respondent Shell raised petitioner's denial of its protest through a petition for review before the CTA, docketed as CTA Case No. 6003. The CTA Division rendered a Decision dated August 2, 2004 granting said petition and cancelled and set aside the assessment against respondent Shell; but then the CTA *en banc*, in its Decision dated April 28, 2006, set aside the CTA Division's judgment and ordered respondent Shell to pay petitioner deficiency excise tax, surcharges, and interest. Hence, respondent Shell filed a petition for review before this Court docketed as G.R. No. 172598, the *2007 Shell Case*.

In its Decision in the *2007 Shell Case*, the Court cancelled the 1999 assessment against respondent Shell and disposed thus:

> WHEREFORE, the petition is GRANTED. The April 28, 2006 CTA *En Banc* Decision in CTA EB No. 64 is hereby REVERSED and SET ASIDE, and the August 2, 2004 CTA Decision in CTA Case No. 6003 disallowing the assessment is hereby REINSTATED. The assessment of respondent for deficiency excise taxes against petitioner for 1992 and 1994 to 1997 inclusive contained in the April

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[27] In a letter addressed to respondent Shell dated November 3, 1999 [*Rollo* (G.R. No. 197945), pp. 736-742] and a letter addressed to respondent Petron dated October 24, 1999.

22, 1998 letter of respondent is cancelled and declared without force and effect for lack of legal basis. No pronouncement as to costs.[28]

In nullifying petitioner's assessments, the Court upheld the TCCs' validity, respondent Shell's qualifications as transferees of said TCCs, respondent Shell's status as a transferee in good faith and for value, and respondent Shell's right to due process.

The *2007 Shell Case* became final and executory on March 17, 2008.[29]

B.2 The *2010 Petron Case*

Considering petitioner's inaction on its protest, respondent Petron likewise filed a petition for review with the CTA, docketed as CTA Case No. 6136, to challenge the assessment. In a Decision dated August 23, 2006, the CTA Division denied the petition and ordered respondent Petron to pay petitioner deficiency excise taxes, surcharges, and interest. Said judgment was subsequently affirmed by the CTA *En Banc* in its Decision dated October 30, 2007. This prompted respondent Petron to seek relief from this Court through a petition for review, docketed as G.R. No. 180385, the *2010 Petron Case*.[30]

Citing the *2007 Shell Case*, the Court similarly cancelled the 1999 assessment against respondent Petron and decided the *2010 Petron Case* as follows:

WHEREFORE, premises considered, the petition is GRANTED and the October 30, 2007 CTA *En Banc* Decision in CTA EB No. 238 is, accordingly, REVERSED and SET ASIDE. In lieu thereof, another is entered invalidating respondent's Assessment of petitioner's deficiency excise taxes for the years 1995 to 1997 for lack of legal bases. No pronouncement as to costs.[31]

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[28] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, *supra* note 25 at 657.

[29] As per Entry of Judgment, Supreme Court of the Philippines Second Division.

[30] *Petron Corporation v. Commissioner of Internal Revenue*, 640 Phil. 163 (2010).

[31] *Id*. at 188.

Entry of Judgment[32] was made in the *2010 Petron Case* on November 2, 2010.

C. 2002 Collection Letter (G.R. No. 197945)

Meanwhile, during the pendency of respondent Shell's CTA Case No. 6003 (which was eventually elevated to this Court in the *2007 Shell Case*), the BIR requested respondent Shell to pay its purported excise tax liabilities amounting to ₱234,555,275.48, in a collection letter[33] dated June 17, 2002 (2002 Collection Letter), which read:

Collection Letter

x x x x x x x x x

Our records show that a letter dated January 30, 2002 was served to you by our Collection Service, for the collection of cancelled Tax Credit Certificates and Tax Debit Memos which were used to pay your 1995 to 1998 excise tax liabilities. Said cancellation was embodied in EXCOM Resolution No. 03-05-99 of the Tax & Duty Drawback Center of the Department of Finance. Upon verification by this Office, however, some of these TCCs/TDMs were already included in the tax case previously filed in [the] Court of Tax Appeals. Accordingly, the collectible amount has been reduced from ₱691,508,005.82 to ₱234,555,275.48, the summary of which is hereto attached for your ready reference.

Basic	₱ 87,893,876.00
Surcharge	21,973,469.00
Interest	124,687,930.48
TOTAL	₱ 234,555,275.48

In view thereof, **you are hereby requested to pay the aforesaid tax liability/ties within ten (10) days from receipt** hereof thru any authorized agent bank x x x **Should you fail to do so, this Office, much to our regret, will be constrained to enforce the collection of the said amount thru the summary administrative remedies provided by law, without any further notice**. (Emphasis supplied.)

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[32] Supreme Court of the Philippines, First Division.

[33] *Rollo* (G.R. No. 197945), p. 765.

DOF Executive Committee Resolution No. 03-05-99 referred to in the aforequoted Collection Letter prescribed the guidelines and procedures for the cancellation, recall, and recovery of fraudulently-issued TCCs.

Respondent Shell filed on July 11, 2002 its administrative protest[34] to the 2002 Collection Letter. However, without resolving said protest, petitioner[35] issued a Warrant of Distraint and/or Levy dated September 12, 2002 for the satisfaction of the following alleged tax delinquency of respondent Shell:

WHEREAS, THERE IS DUE FROM:

PILIPINAS SHELL PETROLEUM CORP.

x x x x x x x x x

The sum of TWO HUNDRED THIRTY[-]FOUR MILLION FIVE HUNDRED FIFTY[-]FIVE THOUSAND TWO HUNDRED TWENTY[-] FIVE PESOS AND 48 CENTAVOS as Internal Revenue Taxes shown hereunder, plus all increments incident to delinquency.

Assessment Notice No.	:	Unnumbered
Date Issued	:	January 30, 2002
Tax Type	:	Excise Tax
Period Covered	:	Various Dates (December 18, 1995 to July 03, 1997)
Amount	:	₱234,555,275.48

WHEREAS, the said taxpayer failed and refused and still fails and refuses to pay the same notwithstanding demands made by this Office.[36]

Aggrieved, respondent Shell filed a petition for review[37] before the CTA docketed as CTA Case No. 6547, arguing that: (a) the issuance of the 2002 Collection Letter and Warrant of Distraint and/or Levy and enforcement of DOF Center's Executive

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[34] *Id*. at 767-773.

[35] Through BIR Assistant Commissioner Edwin R. Abella.

[36] *Rollo* (G.R. No. 197945), p. 731.

[37] *Id*. at 681-730.

Committee Resolution No. 03-05-99 violated its right to due process; (b) The DOF Center did not have authority to cancel the TCCs; (c) The TCCs' transfers and utilizations were valid and legal; (d) It was an innocent purchaser for value; (e) The HIR was estopped from invalidating the transfer and utilization of the TCCs; and (f) The HIR's right to collect had already prescribed.

The CTA Second Division ruled in favor of respondent Shell in its Decision[38] dated April 30, 2009:

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Collection Letters and Warrant of Distraint and/or Levy are CANCELLED and declared without force and effect for lack of legal basis.[39]

After the CTA Division denied[40] his motion for reconsideration, petitioner elevated the case to the CTA *En Banc* via a petition for review[41] docketed as CTA EB No. 535.

In its Decision dated February 22, 2011, the CTA *En Banc* denied the petition and affirmed the judgment of the CTA Division.

The CTA *En Banc* resolved the issues relying on the *2007 Shell Case*. Pursuant to this ruling, the real issue is not whether the BOI-registered export entities validly procured the TCCs from the DOF Center, but whether respondent Shell fraudulently obtained the TCCs from said BOI-registered export entities.

The CTA *En Banc* brushed aside petitioner's argument that respondent Shell was aware that the transferred TCCs were subject to post-audit procedures. It explained that the TCCs were valid and effective upon issuance and were not subject to post-audit procedures as a suspensive condition. Further, the TCCs could no longer be cancelled once these had been fully

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[38] *Id*. at 174-216.

[39] *Id*. at 215.

[40] In a Resolution dated August 18, 2009. (*Id*. at 239-242.)

[41] *Id*. at 243-301.

utilized or duly applied against any outstanding tax liability of an innocent transferee for value.

In this regard, the CTA *En Banc* found that respondent Shell did not participate in any fraud attending the issuance of the TCCs, as well as its subsequent transfers. Thus, respondent Shell is an innocent transferee in good faith and for value and could not be prejudiced by fraud attending the TCCs' procurement.

In the absence of fraud, petitioner could only reassess Shell for deficiency tax within the three-year prescriptive period under Section 203 of the Tax Code, not the 10-year period under Section 222(a) of the same Code. Further, petitioner violated respondent Shell's right to due process when he issued the 2002 Collection Letter without a Notice of Informal Conference (NIC) or a Preliminary Assessment Notice as required by Revenue Regulations No. (RR) 12-99.

The CIR moved for reconsideration but was denied.

Hence, petitioner now comes before this Court citing in the petitions at bar the following errors allegedly committed by the courts *a quo* in G.R. Nos. 204119-20 and G.R. No. 197945:

G.R. Nos. 204119-20

The Court of Appeals erred:

I.

IN NOT HOLDING THAT RESPONDENTS SHELL AND PETRON WERE NOT QUALIFIED TRANSFEREES OF THE TAX CREDIT CERTIFICATES (TCCs) SINCE THEY WERE NOT SUPPLIERS OF DOMESTIC CAPITAL EQUIPMENT OR OF RAW MATERIAL AND/OR COMPONENTS TO THEIR TRANSFERORS.

II.

IN NOT HOLDING THAT SINCE RESPONDENTS WERE NOT QUALIFIED TRANSFEREES OF THE TCCs, THE SAME COULD NOT BE VALIDLY USED IN PAYING THEIR EXCISE TAX LIABILITIES.

III.

IN NOT HOLDING THAT GOVERNMENT IS NOT ESTOPPED FROM COLLECTING TAXES DUE TO THE MISTAKES OF ITS AGENTS.

IV.

IN NOT HOLDING THAT SHELL WAS ACCORDED DUE PROCESS IN PETITIONER'S ATTEMPT TO COLLECT ITS EXCISE TAX LIABILITIES.[42]

G.R. No. 197945

I. The CTA *EN BANC* COMMITTED GRIEVOUS ERROR IN NOT RULING ON THE VALIDITY OF THE TCCs AND ITS CONSEQUENT EFFECTS ON THE RIGHTS AND OBLIGATIONS ASSUMED BY RESPONDENT.

II. THE CTA *EN BANC* COMMITTED GRIEVOUS ERROR IN HOLDING THAT RESPONDENT IS AN INNOCENT TRANSFEREE OF THE DISPUTED TCCs IN GOOD FAITH.

III. THE CTA *EN BANC* COMMITTED GRIEVOUS ERROR IN RULING THAT RESPONDENT IS NOT LIABLE TO PAY EXCISE TAXES.

IV. THE CTA *EN BANC* COMMITTED GRIEVOUS ERROR IN HOLDING THAT THE GOVERNMENT IS ESTOPPED FROM NULLIFYING THE TCCs, AND DECLARING THEIR USE, TRANSFER AND UTILIZATION AS FRAUDULENT.

V. THE CTA *EN BANC* COMMITTED GRIEVOUS ERROR IN RULING THAT RESPONDENT WAS DENIED DUE PROCESS.

VI. THE CTA *EN BANC* COMMITTED A GRIEVOUS ERROR IN DECLARING THAT THE PERIOD TO COLLECT RESPONDENT'S UNPAID EXCISE TAXES HAS ALREADY PRESCRIBED.

VII. THE CTA *EN BANC* COMMITTED A GRIEVOUS ERROR IN RULING THAT RESPONDENT IS NOT LIABLE TO PAY SURCHARGES AND INTERESTS.[43]

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[42] *Rollo* (G.R. Nos. 204119-20), pp. 24-25.

[43] *Rollo* (G.R. No. 197945), pp. 25-26.

The Ruling of the Court

The petitions are without merit.

The issues concerning the transferred TCCs' validity, respondents' qualifications as transferees of said TCCs, and the respondents' valid use of the TCCs to pay for their excise tax liabilities for the Covered Years had been finally settled in the 2007 Shell Case and 2010 Petron Case and are already barred from being re-litigated herein by the doctrine of res judicata in the concept of conclusiveness of judgment.

While the present petitions, on one hand, and the *2007 Shell Case* and *2010 Petron Case*, on the other hand, involve identical parties and originate from the same factual antecedents, there are also substantial distinctions between these cases, for which reason, the Court cannot simply dismiss the former on account of the latter based on the doctrine of *res judicata* in the concept of "bar by prior judgment."

The *2007 Shell Case* and *2010 Petron Case* were assessment cases. These initiated from respondents' protests of the **1999 Assessments** issued by petitioner CIR against them for deficiency excise taxes, surcharges, and interest, following cancellation of the transferred TCCs and the corresponding TDMs which respondents used to pay for said excise taxes. Said cases were primarily concerned with the legality and propriety of petitioner's issuance of the 1999 Assessments against respondents.

In contrast, the consolidated petitions now before the Court arose from respondents' protests of petitioner's **1998 and 2002 Collection Letters** for essentially the same excise tax deficiencies covered by the 1999 Assessments, but apparently issued and pursued by the petitioner and BIR separately from and concurrently with the assessment cases. At the crux of these cases is petitioner's right to collect the deficiency excise taxes from respondents.

In the instant petitions, petitioner asserts his right to collect as excise tax deficiencies the excise tax liabilities which respondents had previously settled using the transferred TCCs, impugning the TCCs' validity on account of fraud as well as respondents' qualifications as transferees of said TCCs. However, respondents already raised the same arguments and the Court definitively ruled thereon in its final and executory decisions in the *2007 Shell Case* and *2010 Petron Case*.

The re-litigation of these issues in the present petitions, when said issues had already been settled with finality in the *2007 Shell Case* and *2010 Petron Case*, is precluded by *res judicata* in the concept of "conclusiveness of judgment."

In *Ocho v. Calos*,[44] the Court extensively explained the doctrine of *res judicata* in the concept of "conclusiveness of judgment," thus:

> The doctrine of *res judicata* as embodied in Section 47, Rule 39 of the Rules of Court states:
>
> > SECTION 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
> >
> > x x x x x x x x x
> >
> > (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
> >
> > (c) In any other litigation between the same parties or their successors-in-interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[44] 399 Phil. 205, 215-218 (2000).

It must be pointed out at this point that, contrary to the insistence of the Caloses, the doctrine of *res judicata* applies to both judicial and quasi-judicial proceedings. The doctrine actually embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47, and the second is "**conclusiveness of judgment**" **under paragraph (c)** thereof. In the present case, the second concept — conclusiveness of judgment — applies. The said concept is explained in this manner:

> **[A] fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority.** It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, **it is essential that the issue be identical**. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be **final and conclusive** in the second if that same point or question was in issue and adjudicated in the first suit. x x x.

Although the action instituted by the Caloses in Adm. Case No. 006-90 (Anomalies/Irregularities in OLT Transfer Action and Other Related Activities) is different from the action in Adm. Case No. (X)-014 (Annulment of Deeds of Assignment, Emancipation Patents and Transfer Certificate of Titles, Retention and Recovery of Possession and Ownership), the concept of conclusiveness of judgment still applies because under this principle "**the identity of causes of action is not required but merely identity of issues**."

[Simply] put, **conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action**. In *Lopez vs. Reyes*, we expounded on the concept of conclusiveness of judgment as follows:

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former

action are commonly applied to all matters essentially connected with the subject matter of litigation. Thus it extends to questions necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion upon which such conclusion is based is as effectually passed upon as the ultimate question which is solved.

x x x x x x x x x

As held in *Legarda vs. Savellano*:

x x x It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural system. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

The findings of the Hearing Officer in Adm. Case No. 006-90, which had long attained finality, that petitioner is not the owner of other agricultural lands foreclosed any inquiry on the same issue involving the same parties and property. The CA thus erred in still making a finding that petitioner is not qualified to be a farmer-beneficiary because he owns other agricultural lands. (Emphases supplied, citations omitted.)

In the *2007 Shell Case*, the Court affirmed the validity of the TCCs, the transfer of the TCCs to respondent Shell, and the use of the transferred TCCs by respondent Shell to partly pay for its excise tax liabilities for the Covered Years. The Court ratiocinated as follows: ***First***, the results of post-audit procedures conducted in connection with the TCCs should not operate as a suspensive condition to the TCCs' validity. ***Second***, while it was one of the conditions appearing on the face of the TCCs, the post-audit contemplated therein did not pertain to the TCCs' genuineness or validity, but to computational discrepancies that might have resulted from their utilization and transfer. ***Third***, the DOF Center or DOF could not compel respondent Shell to submit sales documents for the purported post-audit. As a BOI-registered enterprise, respondent Shell was a qualified transferee of the subject TCCs, pursuant to existing rules and regulations.[45] ***Fourth***, respondent Shell was a transferee in good faith and for value as it secured the necessary approvals from various government agencies before it used and applied the transferred TCCs against its tax liabilities and it did not participate in the perpetuation of fraudulent acts in the procurement of the said TCCs. As a transferee in good faith, respondent Shell could not be prejudiced with a re-assessment of excise tax liabilities it had already settled when due using the subject TCCs nor by any fraud attending the procurement of the subject TCCs. ***Fifth***, while the DOF Center was authorized to cancel TCCs it might have erroneously issued, it could no longer exercise such authority after the subject TCCs have already been utilized and accepted as payment for respondent Shell's excise tax liabilities. What had been used up, debited, and cancelled could no longer be voided and cancelled anew. While the State was not estopped by the neglect or omission of its agents, this principle could not be applied to the prejudice of an innocent transferee in good faith and for value.

And ***finally***, the Court found in the *2007 Shell Case* that respondent Shell's right to due process was violated. Petitioner

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[45] October 5, 1982 Memorandum of Agreement between DOF and BOI, and the rules implementing the Omnibus Investments Code of 1987.

did not issue a Notice of Informal Conference (NIC) and Preliminary Assessment Notice (PAN) to respondent Shell, in violation of the formal assessment procedure required by Revenue Regulations No. (RR) 12-99.[46] Petitioner merely relied on the DOF Center's findings supporting the cancellation of respondent Shell's TCCs. Thus, the Court voided the assessment dated November 15, 1999 issued by the CIR against herein respondent Shell.

On the other hand, the Court resolved the *2010 Petron Case* in accordance with its ruling in the *2007 Shell Case*, reiterating that: ***First***, the subject TCCs' validity and effectivity should be immediate and should not be dependent on the outcome of a post-audit as a suspensive condition. ***Second***, respondent Petron could not be prejudiced by fraud alleged to have attended such issuance as it was not privy to the issuance of the subject TCCs and it had already used said TCCs in settling its tax liabilities. ***Third***, respondent Petron was also an innocent transferee in good faith and for value because it was a qualified transferee of the TCCs based on existing rules and regulations and the TCCs' transfers were approved by the appropriate government agencies. And ***fourth***, while the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents, the rights of a transferee in good faith and for value should be protected.

The Court's aforementioned findings in the *2007 Shell Case* and *2010 Petron Case* are conclusive and binding upon this Court in the petitions at bar. *Res judicata* by conclusiveness of judgment bars the Court from re-litigating the issues on the TCCs' validity and respondents' qualifications as transferees in these cases. As a result of such findings in the *2007 Shell Case* and *2010 Petron Case*, then respondents could not have had excise tax deficiencies for the Covered Years as they had

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[46] Dated September 6, 1999. Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

validly paid for and settled their excise tax liabilities using the transferred TCCs.

In any case, the present petitions are dismissed as petitioner violated respondents' right to due process for failing to observe the prescribed procedure for collection of unpaid taxes through summary administrative remedies.

The Court dismisses the present petitions for it cannot allow petitioner to collect any excise tax deficiency from respondents by mere issuance of the 1998 and 2002 Collection Letters. Petitioner had failed to comply with the prescribed procedure for collection of unpaid taxes through summary administrative remedies and, thus, violated respondents' right to due process.

That taxation is an essential attribute of sovereignty and the lifeblood of every nation are doctrines well-entrenched in our jurisdiction. Taxes are the government's primary means to generate funds needed to fulfill its mandate of promoting the general welfare and well-being of the people[47] and so should be collected without unnecessary hindrance.[48]

While taxation *per se* is generally legislative in nature, collection of tax is administrative in character.[49] Thus, Congress delegated the assessment and collection of all national internal revenue taxes, fees, and charges to the BIR.[50] And as the BIR's

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[47] See *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 927 (1999); *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 549 Phil. 886, 903 (2007).

[48] *Commissioner of Internal Revenue v. Algue, Inc.*, 241 Phil. 829, 830 (1988).

[49] De Leon, Hector S., *Fundamentals of Taxation* (2004 Ed.), p. 7.

[50] Section 2 of the Tax Code provides, **"Powers and Duties of the Bureau of Internal Revenue.** — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures,

chief, the CIR has the power to make assessments and prescribe additional requirements for tax administration and enforcement.[51]

The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) ***summary administrative remedies***, such as the distraint and/or levy of taxpayer's property;[52] and/or (b) ***judicial remedies***, such as the filing of a criminal or civil action against the erring taxpayer.[53]

Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes,[54] **including summary processes**, with as little interference as possible.[55] However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process.[56] The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law.[57] **The rule is that taxes**

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penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws." This section amended Section 3 of the National Internal Revenue Code of the Philippines of 1977.

[51] Section 6, Tax Code.

[52] See Section 207, Tax Code. Formerly Sections 304 and 310 of the National Internal Revenue Code of the Philippines of 1977.

[53] See Sections 203 and 220, Tax Code. Formerly Sections 318 and 319 of the National Internal Revenue Code of the Philippines of 1977.

[54] *Commissioner of Internal Revenue v. Pineda*, 128 Phil. 146, 150 (1967).

[55] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, *supra* note 47 at 927.

[56] See *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 188 (2010), *Commissioner of Internal Revenue v. Algue, Inc.*, *supra* note 48 at 836; *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 190 (2006); *Commissioner of Internal Revenue v. BASF Coating + INKS Phils., Inc.*, 748 Phil. 760, 772 (2014).

[57] See Article III, Section 1, 1987 Constitution. Also see *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, *id*. at 187.

must be collected reasonably and in accordance with the prescribed procedure.[58]

In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. "An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential** to warrant distraint, if still feasible, and, also, to establish a cause for judicial action."[59] The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment.[60] A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.

In *Commissioner of Internal Revenue v. Reyes*[61] (*Reyes Case*), the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts — which involved, among other things, the successive issuances of a collection letter, a final notice before

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[58] See *Commissioner of Internal Revenue v. BASF Coating + INKS Phils., Inc.*, *supra* note 56 at 772 citing *Commissioner of Internal Revenue v. Algue, Inc.*, *supra* note 48 at 836.

[59] *Alhambra Cigar & Cigarette Manufacturing Co. v. Collector of Internal Revenue*, 105 Phil. 1337 (1959), as quoted in *Republic v. De Yu*, 119 Phil. 1013, 1017 (1964).

[60] *Commissioner of Internal Revenue v. BASF Coating + INKS Phils., Inc.*, *supra* note 56. Also see *Remedies of the Bureau in the Audit Process and Collection of Delinquent Accounts*, https://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html#remedies-of-the-bureau-in-the-audit-process-and-collection-of-delinquent-accounts. (Last visited January 11, 2018.)

[61] *Supra* note 56.

seizure, and a warrant of distraint and/or levy against the taxpayer estate — and declared that:

> x x x [P]etitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.
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> **The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.**In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.
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> Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[62] (Emphasis supplied.)

The Court similarly found that there was no valid assessment in *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[63] (*BASF Coating Case*) as the assessment notice therein was sent to the taxpayer company's former address. Without a valid assessment, the Court pronounced that petitioner's issuance of a First Notice Before Issuance of Warrant of Distraint and Levy to be in violation of the taxpayer company's right to due process and effectively blocked any

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[62] *Id*. at 189-190.

[63] *Supra* note 56.

further efforts by petitioner to collect by virtue thereof. The Court ratiocinated that:

> It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.
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> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[64]

It is worthy to note that in the *Reyes Case* and *BASF Coating Case*, there were assessments actually issued against the taxpayers therein, except that said assessments were adjudged invalid for different reasons (*i.e.*, for failing to state the factual and legal bases for the assessment in the *Reyes Case* and for sending the assessment to the wrong address in the *BASF Coating Case*). In the instant cases, petitioner did not issue at all an assessment against respondents prior to his issuance of the 1998 and 2002 Collection Letters. Thus, there is even more reason for the Court to bar petitioner's attempts to collect the alleged deficiency excise taxes through any summary administrative remedy.

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[64] *Id*. at 771-772.

In the present case, it is clear from the wording of the 1998 and 2002 Collection Letters that petitioner intended to pursue, through said collection letters, **summary administrative remedies** for the collection of respondents' alleged excise tax deficiencies for the Covered Years. In fact, in the respondent Shell's case, the collection letters were already followed by the BIR's issuance of Warrants of Garnishment and Distraint and/or Levy against it.

That the BIR proceeded with the collection of respondents' alleged unpaid taxes **without a previous valid assessment** is evident from the following: *First*, petitioner admitted in CTA Case Nos. 5728[65] and 6547 that: (a) the collections letters were not tax assessment notices; (b) the letters were issued solely based on the DOF Center's findings; and (c) the BIR never issued any preliminary assessment notice prior to the issuance of the collection letters. *Second*, although the 1998 and 2002 Collection Letters and the 1999 Assessments against respondents were for the same excise taxes for the Covered Years, the former were evidently not based on the latter. The 1998 Collection Letters against respondents were issued prior to the 1999 Assessments; while the 2002 Collection Letter against respondent Shell was issued even while respondent Shell's protest of the 1999 Assessment was still pending before the CTA. And *third*, assuming *arguendo* that the 1998 and 2002 Collection Letters were intended to implement the 1999 Assessments against respondents, the 1999 Assessments were already nullified in the *2007 Shell Case* and *2010 Petron Case*.

Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.

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[65] *Rollo* (G.R. Nos. 204119-20), p. 580.

The period for petitioner to collect the alleged deficiency excise taxes from respondents through judicial remedies had already prescribed.

After establishing that petitioner could not collect respondents' alleged deficiency excise taxes for the covered years through summary administrative remedies without a valid assessment, the Court next determines whether petitioner could still resort to judicial remedies to enforce collection.

The Court answers in the negative as the period for collection of the respondents' alleged deficiency excise taxes for the Covered Years through judicial remedies had already prescribed.

The alleged deficiency excise taxes petitioner seeks to collect from respondents in the cases at bar pertain to the Covered Years, *i.e.*, 1992 to 1997, during which, the National Internal Revenue Code of the Philippines of 1977[66] (1977 NIRC) was the governing law. Pertinent provisions of the 1977 NIRC read:

> Sec. 318. *Period of Limitation Upon Assessment and Collection*. — Except as provided in the succeeding section, internal-revenue taxes shall be assessed **within five years** after the return was filed, and **no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code. (Emphasis Supplied)
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> Sec. 319. *Exceptions as to period of limitation of assessment and collection of taxes*. — (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a **proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission:** *Provided*,

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[66] Section 318 of the National Internal Revenue Code of 1977 (Presidential Decree No. 1158, [June 3, 1977]) was previously Section 331 of the National Internal Revenue Code of 1939 (Commonwealth Act No. 466, [June 15, 1939]).

That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if began (1) within five years after assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Under Section 318 of the 1977 NIRC, petitioner had five years[67] from the time respondents filed their excise tax returns in question to: (a) issue an assessment; and/or (b) file a court action for collection without an assessment. In the petitions at bar, respondents filed their returns for the Covered Years from 1992 to 1997, and the five-year prescriptive period under Section 319 of the 1977 NIRC would have prescribed accordingly from 1997 to 2002.

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[67] Section 318 was amended by Republic Act No. 8424, shortening the prescriptive period to assess and collect national internal revenue taxes from five to three years, to quote: "SECTION 203. *Period of Limitation Upon Assessment and Collection*. — Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Emphasis supplied.)

As the Court has explicitly found herein as well as in the *2007 Shell Case* and *2010 Petron Case*, petitioner failed to issue any valid assessment against respondents for the latter's alleged deficiency excise taxes for the Covered Years. Without a valid assessment, the five-year prescriptive period **to assess** continued to run and had, in fact, expired in these cases. Irrefragably, petitioner is already barred by prescription from issuing an assessment against respondents for deficiency excise taxes for the Covered Years. Resultantly, this also bars petitioner from undertaking any **summary administrative remedies**, *i.e.*, distraint and/or levy, against respondents for collection of the same taxes.

Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment**. Sections 318 and 319(a) of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.[68]

A judicial action for the collection of a tax is begun: (a) by the **filing of a complaint** with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by **filing an answer to the taxpayer's petition for review** wherein payment of the tax is prayed for.[69]

From respondents' filing of their excise tax returns in the years 1992 to 1997 until the lapse of the five-year prescriptive period under Section 318 of the 1977 NIRC in the years 1997 to 2002, **petitioner did not institute any judicial action for collection of tax** as aforedescribed. Instead, petitioner relied

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[68] In case an assessment had been timely issued, Section 319(c) of the 1977 NIRC provided: "Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if began (1) within five years after assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. x x x"

[69] *Palanca v. Commissioner of Internal Revenue*, 114 Phil. 203, 207 (1962).

solely on summary administrative remedies by issuing the collection letters and warrants of garnishment and distraint and/or levy without prior assessment against respondents. Sifting through records, it can be said that petitioner's earliest attempts to **judicially** enforce collection of respondents' alleged deficiency excise taxes were his **Answers** to respondents' Petitions for Review filed before the CTA in Case Nos. 5657, 5728, and 6547 on August 6, 1998,[70] March 2, 1999,[71] and November 29, 2002,[72] respectively.

Verily, in a long line of jurisprudence, the Court deemed the filing of such pleadings as effective tax collection suits so as to stop the running of the prescriptive period in cases where: (a) the CIR issued an assessment and the taxpayer appealed the same to the CTA;[73] (b) the CIR filed the answer praying for the payment of tax within five years after the issuance of the assessment;[74] and (c) at the time of its filing, jurisdiction over judicial actions for collection of internal revenue taxes was vested in the CTA, not in the regular courts.[75]

However, judging by the foregoing conditions, even petitioner's Answers in CTA Case Nos. 5657, 5728, and 6547 cannot be deemed judicial actions for collection of tax. *First*, CTA Case Nos. 5657, 5728, and 6547 were not appeals of assessments. Respondents went before the CTA to challenge the 1998 and 2002 Collection Letters, which, by petitioner's

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[70] *Rollo* (G.R. Nos. 204119-20), p. 199.

[71] *Id*. at 72.

[72] *Rollo* (G.R. No. 197945), p. 181.

[73] See *Philippine National Oil Company v. Court of Appeals*, 496 Phil. 506 (2005); *Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue*, 140 Phil. 31, 47 (1969); *Palanca v. Commissioner of Internal Revenue*, *supra* note 69.

[74] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 510 Phil. 1 (2005).

[75] *China Banking Corporation v. Commissioner of Internal Revenue*, 753 Phil. 58 (2015).

own admission, are not assessments. *Second*, by the time petitioner filed his Answers before the CTA on August 6, 1998, March 2, 1999, and November 29, 2002, his power to collect alleged deficiency excise taxes, the returns for which were filed from 1992 to 1997, had already partially prescribed, particularly those pertaining to the earlier portion of the Covered Years. *Third*, at the time petitioner filed his Answers before the CTA, the jurisdiction over judicial actions for collection of internal revenue taxes was vested in the regular courts, not the CTA.[76] Original jurisdiction over collection cases[77] was transferred to the CTA only on April 23, 2004, upon the effectivity of Republic Act No. 9282.[78]

Without either a **formal tax collection suit** filed before the court of competent jurisdiction or an **answer** deemed as a judicial action for collection of tax within the prescribed five-year period under Section 318 of the 1977 NIRC, petitioner's **power to institute a court proceeding for the collection of respondents' alleged deficiency excise taxes without an assessment had already prescribed** in 1997 to 2002.

The Court's ruling remains the same even if the 10-year prescriptive period under Section 319(a) of the 1977 NIRC, in case of falsity, fraud, or omission in the taxpayer's return, is applied to the present cases.

Even if the Court concedes, for the sake of argument, that respondents' returns for the Covered Years were false or fraudulent, Section 319(a) of the 1977 NIRC similarly required petitioner to (a) issue an assessment; and/or (b) file a court action for collection without an assessment, but within 10 years

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[76] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, *supra* note 74.

[77] In which the principal amount involved is one million pesos or more.

[78] Entitled, "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."

after the discovery of the falsity, fraud, or omission in the taxpayer's return. As early as the 1998 Collection Letters, petitioner could already be charged with knowledge of the alleged falsity or fraud in respondents' excise tax returns, which precisely led petitioner to invalidate respondents' payments using the transferred TCCs and to demand payment of deficiency excise taxes through said letters. The 10-year prescriptive period under Section 319(a) of the 1977 NIRC wholly expired in 2008 without petitioner issuing a valid assessment or instituting judicial action for collection.

The Court cannot countenance the tax authorities' non-performance of their duties in the present cases. The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation.[79] While taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.

In sum, petitioner's attempts to collect the alleged deficiency excise taxes from respondents are void and ineffectual because (a) the issues regarding the transferred TCCs' validity, respondents' qualifications as transferees of said TCCs, and respondents' use of the TCCs to pay for their excise tax liabilities for the Covered Years, had already been settled with finality in the *2007 Shell Case* and *2010 Petron Case*, and could no longer be re-litigated on the ground of *res judicata* in the concept of conclusiveness of judgment; (b) petitioner's resort to summary administrative remedies without a valid assessment was not in accordance with the prescribed procedure and was in violation of respondents' right to substantive due process; and (c) none of petitioner's collection efforts constitute a valid institution of a judicial remedy for collection of taxes without an assessment, and any such judicial remedy is now barred by prescription.

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[79] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 229-230 (2004).

WHEREFORE, premises considered, the Court **DENIES** the petition of the Commissioner of Internal Revenue in G.R. No. 197945 and **AFFIRMS** the Decision dated February 22, 2011 and Resolution dated July 27, 2011 of the Court of Tax Appeals *en banc* in CTA *En Banc* Case No. 535.

The Court likewise **DENIES** the petition of the Commissioner of Internal Revenue in G.R. Nos. 204119-20 and **AFFIRMS** the Decision dated March 21, 2012 and Resolution dated October 10, 2012 of the Court of Appeals in CA-G.R. SP Nos. 55329-30.

SO ORDERED.

Peralta,[**] *del Castillo, Tijam*, and *Gesmundo*,[***] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 209166. July 9, 2018]

DEMETRIO ELLAO *y* DELA VEGA, *petitioner, vs.* **BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), RAQUEL ROWENA RODRIGUEZ, BOARD PRESIDENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 269, AS AMENDED (NATIONAL ELECTRIFICATION ADMINISTRATION DECREE); ELECTRIC COOPERATIVES ENJOY POWERS AND CORPORATE EXISTENCE AKIN TO A CORPORATION. — Ellao's main resistance to the regional trial court's exercise

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[**] Per Raffle dated February 26, 2018.

[***] Per Special Order No. 2560 dated May 11, 2018.

of jurisdiction over his complaint for illegal dismissal rests on his theory that BATELEC I, as a cooperative, is not a corporation registered with the SEC. Registration with the SEC, however, is not the operative factor in determining whether or not the latter enjoys jurisdiction over a certain dispute or controversy. To lend proper context, it is well to recall that a cooperative, as defined under P.D. 269, refers to a "*corporation* organized under Republic Act No. 6038 or [under P.D. 269] a cooperative supplying or empowered to supply service which has heretofore been organized under the Philippine Non-Agricultural Cooperative Act, whether covered under this Decree or not." P.D. 269 further provides that "[c]ooperative non-stock, non-profit membership *corporations* may be organized, and *electric cooperative corporations* heretofore formed or registered under the Philippine non-Agricultural Cooperative Act may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations." Likewise, by express provision of PD 269, an electric cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its *corporate* purpose. Consistently, an electric cooperative is defined under Republic Act No. 9136 (R.A. 9136 as a "distribution utility organized pursuant to [P.D.269]), as amended x x x." Thus, organization under P.D. 269 sufficiently vests upon electric cooperatives' juridical personality enjoying corporate powers. Registration with the SEC becomes relevant only when a non-stock, non-profit electric cooperative decides to convert into and register as a stock corporation. As such, and even without choosing to convert and register as a stock corporation, electric cooperatives already enjoy powers and corporate existence *akin* to a corporation.

2. ID.; THE SECURITIES REGULATION CODE (REPUBLIC ACT NO. 8799); THE ILLEGAL DISMISSAL OF AN OFFICER OR OTHER EMPLOYEE OF A PRIVATE EMPLOYER IS PROPERLY COGNIZABLE BY THE LABOR ARBITER WHILE A COMPLAINT FOR ILLEGAL DISMISSAL INVOLVING A CORPORATE OFFICER IS TREATED AS AN INTRA-CORPORATE DISPUTE WHICH FALLS UNDER THE JURISDICTION OF THE REGIONAL TRIAL COURTS; "OFFICERS"

DISTINGUISHED FROM "EMPLOYEES".— By jurisprudence, termination disputes involving corporate officers are treated differently from illegal dismissal cases lodged by ordinary employees. Oft-cited is the case of *Tabang v. NLRC* distinguishing between "officers" and "employees" as follows: x x x an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the labor arbiter pursuant to Article 217(a)2 of the Labor Code, as amended. By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. With the advent of Republic Act No. 8799 (R.A. 8799) or The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the regional trial courts. Since Ellao filed his Complaint for illegal dismissal on February 23, 2011, after the passage and approval of R.A. 8799, his complaint may either fall under the jurisdiction of the labor arbiter or the regional trial courts, depending on his position. If Ellao is determined to be a corporate officer then jurisdiction over his complaint for illegal dismissal is to be treated as an intra-corporate dispute, hence jurisdiction belongs to the regional trial courts.

3. ID.; CORPORATION CODE; THE CREATION OF AN OFFICE PURSUANT TO OR UNDER A BY-LAW ENABLING PROVISION IS NOT ENOUGH TO MAKE A POSITION A CORPORATE OFFICE, FOR TO BE CONSIDERED AS A CORPORATE OFFICE, A POSITION

MUST BE EXPRESSLY MENTIONED IN THE BY-LAWS.— In *Matling Industrial and Commercial Corporation, et al. v. Ricardo Coros*, the Court held that in conformity with Section 25 of the Corporation Code, "a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office." Citing *Guerrea v. Lezama, et al., Matling* held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws so much so that the rest of the corporate officers could be considered only as employees or subordinate officials. Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws x x x. Evidently, the functions of the office of the General Manager, *i.e.*, management of the Coorperative and to keep the Board fully informed of all aspects of the operations and activities of the Cooperative are specifically laid down under BATELEC I's By-laws itself. It is therefore beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy; it involves a dispute between a cooperative officer on one hand, and the Board of Directors, on the other.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 269, AS AMENDED (NATIONAL ELECTRIFICATION ADMINISTRATION DECREE); AN OFFICER'S DISMISSAL IS A MATTER THAT COMES WITH THE CONDUCT AND MANAGEMENT OF THE AFFAIRS OF A COOPERATIVE, AND AN INTRA-COOPERATIVE CONTROVERSY THAT IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT; DISMISSAL OF THE COMPLAINT FOR ILLEGAL DISMISSAL, AFFIRMED.—** [T]he Court's pronouncement in *Celso F. Pascual, Sr. and Serafin Terencio v. Caniogan Credit and Development Cooperative*, finds suitable application: Petitioners clarify that they do not take issue on the power of the Board of Directors to remove them. Rather, they dispute the "manner, cause[,] and legality" of their removal from their respective offices as General Manager and Collection Manager. Even so, we hold that an officer's dismissal is a matter that comes with the conduct and management of the affairs of a

cooperative and/or an intra-cooperative controversy, and that nature is not altered by reason or wisdom that the Board of Directors may have in taking such action. Accordingly, the case a quo is not a labor dispute requiring the expertise of the Labor Arbiter or of the National Labor Relations Commission. It is an intra-cooperative dispute that is within the jurisdiction of the Regional Trial Court x x x. As such, the CA committed no reversible error when it ordered the dismissal of Ellao's Complaint for illegal dismissal without prejudice to the latter's filing of his complaint at the proper forum. Considering that the Labor Arbiter and the NLRC were without ample jurisdiction to take cognizance of Ellao's Complaint, the labor tribunals' rulings therein made are resultantly void.

APPEARANCES OF COUNSEL

Macababbad Law Office for petitioner.
De Castro & Cagampang-de Castro Law Firm for respondents.

D E C I S I O N

TIJAM, *J.*:

Through this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Demetrio V. Ellao (Ellao) seeks to annul the Decision[2] dated April 26, 2013 and Resolution[3] dated August 28, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 127281 which reversed the decisions of both the National Labor Relations Commission and the Labor Arbiter on the ground of lack of jurisdiction. The CA ruled that Ellao, as General Manager of respondent Batangas I Electric Cooperative, Inc., (BATELEC I), is a corporate officer and his dismissal is regarded as an intra-corporate controversy, the

[1] *Rollo*, pp. 8-49, With Annexes.

[2] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela; *Id*. at 56-67.

[3] *Id*. at 69-70.

jurisdiction over which belongs to the Securities and Exchange Commission (SEC), now with the regional trial courts, and not the labor tribunals.

The Antecedents

BATELEC I is an electric cooperative organized and existing under Presidential Decree No. 269 (P.D. 269) and is engaged in the business of distributing electric power or energy in the province of Batangas, specifically in Nasugbu, Tuy, Calaca, Balayan, Lemery, San Nicolas, Sta. Teresita, San Luis, Calatagan, Lian and Agoncillo. At the time material to this petition, respondent Raquel Rowena Rodriguez is the President of BATELEC I's Board of Directors.[4] Ellao was employed by BATELEC I initially as Office Supplies and Equipment Control Officer on January 4, 1982 until he was appointed as General Manager on June 1, 2006.[5]

On February 12, 2009, a complaint was filed by Nestor de Sagun and Conrado Cornejo against Ellao, charging him of committing irregularities[6] in the discharge of his functions as

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[4] *Id.* at 428.

[5] *Id.* at 57.

[6] These alleged irregularities, as enumerated under the assailed CA Decision, are as follows:

"(1) He entered into a contract with Interlink Power Corp. in the construction of a 69KV transmission lines for the development of Costa del Hamilo by Manila Southcoast Dev. Corp. (MSDC), without public bidding involving the amount of Php44,027,993.66;

(2) He entered into a contract with NGC Enterprises for the outsourcing of meter reading, billing, collection and disconnection services without conducting any study or the cost-benefit analysis involving the amount of Php14,994,347.46;

(3) He entered into a contract with Mlies Power Supply for the supposed clearing of obstruction along BATELEC I distribution lines (payment of which was to the prejudice of the cooperative involving the amount of Php4,911,409.00);

(4) He unilaterally implemented the membership ID program with insurance program involving the amount of Php11,785,344.00, without prior imprimatur from the Board of Directors of the company;

General Manager.[7] A fact-finding body was created to investigate these charges and in the meantime, Ellao was placed under preventive suspension.[8]

Ellao submitted his explanation refuting the charges against him, after which the matter was set for hearing. However, the scheduled hearing was postponed at Ellao's instance. The re-scheduled hearing did not push through, and instead, the fact-finding body issued a report recommending Ellao's termination. On March 13, 2009, the Board of Directors adopted and issued Board Resolution No. 24-09 terminating Ellao as General Manager on the grounds of gross and habitual neglect of duties and responsibilities and willful disobedience or insubordination resulting to loss of trust and confidence.[9] On October 2, 2009, Ellao was formally informed of his dismissal from employment made effective on October 1, 2009.[10] On December 9, 2009, the National Electrification Administration (NEA) confirmed BATELEC I's Board Resolution No. 24-09 and approved Ellao's termination.[11]

On February 23, 2011, Ellao filed a Complaint for illegal dismissal and money claims before the Labor Arbiter against

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(5) He unilaterally entered into a contract with J-MARRU MKTG and Cons. Corp. for the installation/customization of the existing accounting system with a repair order Php 160,000.00 and the amount involved is Php5,250,000.00;

(6) He entered into a contract with Interlink Power Corporation without public bidding involving the amount of Php55,535,991.01;

(7) He managed the company with very weak accounting and internal control; and

(8) He implemented Board Resolution No. 33-07, a lawyering agreement which has been determined by the NEA to be exhorbitant, to the disadvantage and damage of BATELEC I."; *Rollo*, p. 59.

[7] *Id*. at 57-58.

[8] *Id*. at 59.

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

[10] *Id*. at 59.

[11] *Id.*

BATELEC I and/or its President Rowena A. Rodriguez. Alleging illegal dismissal, Ellao complained that the charges against him were unsubstantiated and that there was no compliance with procedural due process as he was not afforded the opportunity to explain and there was no written notice of termination specifying the grounds of his termination.[12]

BATELEC I, on the other hand, moved to dismiss Ellao's complaint on the ground that it is the NEA and not the NLRC which has jurisdiction over the complaint. Assuming the NLRC enjoys jurisdiction, BATELEC I nevertheless asserts that Ellao was validly dismissed.[13]

The Labor Arbiter rendered his Decision[14] affirming jurisdiction over the complaint. He held that while Presidential Decree No. 279 (P.D. 279), the law creating the NEA, as amended by Presidential Decree No. 1645 (P.D. 1645), granted NEA the power to suspend or dismiss any employee of electric cooperatives, the same does not authorize NEA to hear and decide a labor termination case which power is exclusively vested by Presidential Decree No. 442 or the Labor Code, to Labor Arbiters.[15] Thus, assuming jurisdiction over the Complaint, the Labor Arbiter held that Ellao was illegally dismissed as the grounds for his dismissal were unsubstantiated.[16]

In disposal, the Labor Arbiter held:

> WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment by the respondents. Concomitantly, the respondents are hereby ordered to reinstate him to his prior position as General manager, without loss of seniority rights and with full backwages which, on date of this Decision is computed at ₱1,499,106.00 (his monthly salary of ₱62,462.75 multiplied by twenty four (24) months). If the complainant should

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[12] *Id*. at 60.

[13] *Id.*

[14] Penned by Labor Arbiter Edgar B. Bisana; *Id*. at 298-310.

[15] *Id*. at 302-303.

[16] *Id*. at 303-307.

reject reinstatement, the respondents are ordered to pay him, in addition to full backwages, a separation pay computed at a full month's pay for every year of service or the amount of ₱1,686,494.25 (₱62,462.75 multiplied by his 27 years of service).

The respondents are further ordered to pay complainant one million pesos in moral damages plus ten percent of the total financial award as attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.[17]

BATELEC I interposed its appeal[18] before the NLRC while Ellao filed a partial appeal.[19] BATELEC I maintains that it is the NEA which has jurisdiction over Ellao's complaint and that in any case, Ellao was validly dismissed. In its supplemental appeal,[20] BATELEC I argued that jurisdiction over the subject matter belongs to the regional trial court pursuant to Presidential Decree No. 902-A as amended by Republic Act No. 8799 and Administrative Matter No. 00-11-03-SC which provides that jurisdiction over intra-corporate disputes are with the regional trial courts.

The NLRC held that BATELEC I is not a corporation registered with the SEC, but that it was formed and organized pursuant to P.D. 269 and that Ellao is not an officer but a mere employee.[21] Accordingly, the NLRC, in its Decision[22] dated May 21, 2012 denied BATELEC I's appeal and partly granted that of Ellao's, disposing as follows:

WHEREFORE, premises considered, the appeal of respondents is denied for lack of merit. The partial appeal of complainant is Partly

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[17] *Id*. at 309-310.

[18] *Id*. at 311-317.

[19] *Id*. at 330-343.

[20] *Id*. at 344-366.

[21] *Id*. at 419.

[22] *Id*. at 403-421.

Granted in that the cost of living allowance must be included in the computation of his backwages and separation pay and that he must be paid his proportionate 13th month pay for the year 2009 and the moral and exemplary damages awarded in his favor is reduced to ₱100,000.00.

All other dispositions not affected by the modification stands.

SO ORDERED.[23]

BATELEC I's motion for reconsideration met similar denial from the NLRC in its Resolution[24] dated September 28, 2012. Undaunted, BATELEC I interposed its *certiorari* petition[25] before the CA reiterating its argument that the Labor Arbiter and the NLRC lacked jurisdiction over Ellao's complaint, the latter being a corporate officer.

The Ruling of the Court of Appeals

The CA found merit in BATELEC I's *certiorari* petition and found that Ellao, as BATELEC I's General Manager, is a corporate officer. The CA found that under BATELEC I's By-laws, its Board of Directors is authorized to appoint such officers as it may deem necessary. It noted that Ellao was appointed as General Manager by virtue of a board resolution and that Ellao's appointment was duly approved by the NEA Administrator.[26] The CA also found that the position of General Manager is specifically provided for under BATELEC I's By-laws. As such, the CA concluded that Ellao's dismissal is considered an intra-corporate controversy which falls under the jurisdiction of the SEC, now the RTC's, and not with the NLRC.

In disposal, the CA pronounced:

WHEREFORE, in view of the foregoing premises, the instant petition for certiorari is hereby **GRANTED** and the assailed May 21, 2012 Decision and September 28, 2012 Resolution of the National

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[23] *Id*. at 420.

[24] *Id*. at 423-426.

[25] *Id*. at 427-491.

[26] *Id*. at 64.

Labor Relations Commission, Sixth Division in NLRC LAC No. 01-000260-12 (NLRC RABIV Case No. 02-00265-11-B) as well as the October 28, 2011 Decision of the Labor Arbiter are hereby declared as **NULL and VOID** and consequently, **SET ASIDE**. The illegal dismissal complaint of Demetrio Ellao is hereby dismissed without prejudice to his seeking recourse in the appropriate forum.

SO ORDERED.[27]

Ellao's motion for reconsideration met similar rebuke from the CA. Hence, resort to the present petition.

The Issue

Ellao presently imputes error on the part of the CA when the latter held that the RTC enjoys jurisdiction based on the CA's alleged erroneous findings that Ellao is a corporate officer and that the controversy involves an intra-corporate dispute. Simply, the issue to be resolved by the Court is whether or not jurisdiction over Ellao's complaint for illegal dismissal belong to the labor tribunals.

The Ruling of the Court

We deny the petition.

Complaints for illegal dismissal filed by a cooperative officer constitute an intra-cooperative controversy, jurisdiction over which belongs to the regional trial courts.

Ellao's main resistance to the regional trial court's exercise of jurisdiction over his complaint for illegal dismissal rests on his theory that BATELEC I, as a cooperative, is not a corporation registered with the SEC. Registration with the SEC, however, is not the operative factor in determining whether or not the latter enjoys jurisdiction over a certain dispute or controversy.

To lend proper context, it is well to recall that a cooperative, as defined under P.D. 269[28], refers to a "*corporation* organized

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[27] *Id*. at 66.

[28] CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES,

under Republic Act No. 6038[29] or [under P.D. 269] a cooperative supplying or empowered to supply service which has heretofore been organized under the Philippine Non-Agricultural Cooperative Act, whether covered under this Decree or not."[30] P.D. 269 further provides that "[c]ooperative non-stock, non-profit membership *corporations* may be organized, and *electric cooperative corporations* heretofore formed or registered under the Philippine non-Agricultural Cooperative Act may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations."[31] Likewise, by express provision of PD 269, an electric cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its *corporate* purpose.[32] Consistently, an electric cooperative is defined under Republic Act No. 9136[33] (R.A. 9136) as a

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APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES. August 6, 1973.

[29] AN ACT DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, PROVIDING FOR THE ORGANIZATION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATION, THE REPEAL OF R.A. NO. 2717, AND FOR OTHER PURPOSES. July 28, 1969.

[30] Chapter I, Section 3(b).

[31] Chapter III, Section 15.

[32] Chapter III, Section 16.

[33] AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND

"distribution utility organized pursuant to [P.D. 269], as amended, x x x."[34]

Thus, organization under P.D. 269 sufficiently vests upon electric cooperatives' juridical personality enjoying corporate powers. Registration with the SEC becomes relevant only when a non-stock, non-profit electric cooperative decides to convert into and register as a stock corporation.[35] As such, and even without choosing to convert and register as a stock corporation, electric cooperatives already enjoy powers and corporate existence *akin* to a corporation.

By jurisprudence, termination disputes involving corporate officers are treated differently from illegal dismissal cases lodged by ordinary employees. Oft-cited is the case of *Tabang v. NLRC*[36] distinguishing between "officers" and "employees" as follows:

> x x x an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[37]

FOR OTHER PURPOSES otherwise known as the "Electric Power Industry Reform Act of 2001" or "EPIRA".

[34] Section 4(q), RA 9136.

[35] Section 12 of RA 10531 or AN ACT STRENGTHENING THE NATIONAL ELECTRIFICATION ADMINISTRATION, FURTHER AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 269, AS AMENDED, OTHERWISE KNOWN AS THE "NATIONAL ELECTRIFICATION ADMINISTRATION DECREE", Approved on May 7, 2013, provides:

"Section 12. Section 32 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows:

"SEC. 32. *Registration of All Electric Cooperatives.*— All electric cooperatives may choose to remain as a non-stock, non-profit cooperative or convert into and register as: (a) a stock cooperative under the CDA; or (b) a stock corporation under the SEC, in accordance with the guidelines to be included in the IRR of this Act.

x x x x x x x x x"

[36] 334 Phil. 424 (1997).

[37] *Id*. at 429.

As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the labor arbiter pursuant to Article 217 (a)2[38] of the Labor Code, as amended.

By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and

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[38] Article 217. *Jurisdiction of the Labor Arbiters and the Commission*. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989).

the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association.[39] With the advent of Republic Act No. 8799[40] (R.A. 8799) or The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the regional trial courts.[41] Since Ellao filed his Complaint for illegal dismissal on February 23, 2011, after the passage and approval of R.A. 8799, his complaint may either fall under the jurisdiction of the labor arbiter or the regional trial courts, depending on his position. If Ellao is determined to be a corporate officer then jurisdiction over his complaint for illegal dismissal is to be treated as an intra-corporate dispute, hence jurisdiction belongs to the regional trial courts.

In *Matling Industrial and Commercial Corporation, et al. v. Ricardo Coros*,[42] the Court held that in conformity with Section 25[43] of the Corporation Code, "a position must be expressly

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[39] Section 5 of Presidential Decree No. 902-A.

[40] Approved on July 19, 2000.

[41] Section 5.2 of RA No. 8799, provides:

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

[42] 647 Phil. 324, 342-343 (2010).

[43] Section 25. *Corporate officers, quorum.*— Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, **and such other officers as may be provided for in the by-laws**. Any two (2) or more positions may be held concurrently by the same person, except

mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office." Citing *Guerrea v. Lezama, et al*.,[44] Matling held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws so much so that the rest of the corporate officers could be considered only as employees or subordinate officials.

Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws, enumerating the cooperative offices as follows:

ARTICLE VI- OFFICERS

x x x x x x x x x

SECTION 10. General Manager

a. The management of the Cooperative shall be vested in a General Manager who shall be appointed by the Board and who shall be responsible to the Board for performance of his duties as set forth in a position description adopted by the Board, in conformance with guidelines established by the National Electrification Administration. It is incumbent upon the Manager to keep the Board fully informed of all aspects of the operations and activities of the Cooperative. The appointment and dismissal of the General Manager shall require approval of NEA.

b. No member of the board may hold or apply for the position of General Manager while serving as a Director or within twelve months following his resignation or the termination of his tenure.[45]

Evidently, the functions of the office of the General Manager, *i.e.*, management of the Cooperative and to keep the Board fully informed of all aspects of the operations and activities of

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that no one shall act as president and secretary or as president and treasurer at the same time. (Emphasis Ours)

x x x x x x x x x

[44] 103 Phil. 553, 555-556 (1958).

[45] *Rollo*, p. 569.

the Cooperative are specifically laid down under BATELEC I's By-laws itself. It is therefore beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy; it involves a dispute between a cooperative officer on one hand, and the Board of Directors, on the other.

On this score, the Court's pronouncement in *Celso F. Pascual, Sr. and Serafin Terencio v. Caniogan Credit and Development Cooperative*,[46] finds suitable application:

> Petitioners clarify that they do not take issue on the power of the Board of Directors to remove them. Rather, they dispute the "manner, cause[,] and legality" of their removal from their respective offices as General Manager and Collection Manager. Even so, we hold that an officer's dismissal is a matter that comes with the conduct and management of the affairs of a cooperative and/or an intra-cooperative controversy, and that nature is not altered by reason or wisdom that the Board of Directors may have in taking such action. Accordingly, the case a quo is not a labor dispute requiring the expertise of the Labor Arbiter or of the National Labor Relations Commission. It is an intra-cooperative dispute that is within the jurisdiction of the Regional Trial Court x x x.[47]

As such, the CA committed no reversible error when it ordered the dismissal of Ellao's Complaint for illegal dismissal without prejudice to the latter's filing of his complaint at the proper forum. Considering that the Labor Arbiter and the NLRC were without ample jurisdiction to take cognizance of Ellao's Complaint, the labor tribunals' rulings therein made are resultantly void. There is therefore no need to discuss the issue on illegal dismissal and monetary claims at this point.

WHEREFORE, the petition is **DENIED**. The Decision dated April 26, 2013 and Resolution dated August 28, 2013 of the Court of Appeals in CA-G.R. SP No. 127281 are **AFFIRMED**.

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[46] 764 Phil. 477 (2015).

[47] *Id*. at 487.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), del Castillo, Jardeleza*, and *Gesmundo*,[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 209289. July 9, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE SECRETARY OF JUSTICE and METROPOLITAN CEBU WATER DISTRICT (MCWD),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHERE THE DECISION OF THE COURT OF APPEALS IN A PETITION FOR *CERTIORARI* WAS BROUGHT BEFORE THE SUPREME COURT THROUGH A PETITION FOR REVIEW ON *CERTIORARI*, THE COURT MUST DETERMINE WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING ANY GRAVE ABUSE OF DISCRETION ON THE PART OF THE SECRETARY OF JUSTICE (SOJ) IN RENDERING THE ASSAILED DECISION.— We must emphasize that the decision of the SOJ was reviewed by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. As such, the CA must resolve the question of whether the SOJ committed grave abuse of discretion amounting to lack of excess of jurisdiction necessitating the reversal of the same. Necessarily, when the

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[*] Designated as Acting Chairperson of the First Division pursuant to Special Order No. 2559, dated May 11, 2018.

[**] Designated as Acting Member pursuant to Special Order No. 2560, dated May 11, 2018.

CA Decision is brought before Us through a petition for review on *certiorari* under Rule 45 of the Rules of Court, We must determine whether the CA erred in not finding any grave abuse of discretion on the part of the SOJ in rendering the assailed decision. We hold that the CA correctly ruled that the SOJ did not commit any grave abuse of discretion in holding that the dispute between the CIR and the respondent is properly within the jurisdiction of the SOJ.

2. ID.; ID.; COURTS; JURISDICTION; A PARTY CANNOT INVOKE JURISDICTION AT ONE TIME AND REJECT IT AT ANOTHER TIME IN THE SAME CONTROVERSY TO SUIT ITS INTERESTS AND CONVENIENCE, AS JURISDICTION IS CONFERRED BY LAW AND CANNOT BE MADE DEPENDENT ON THE WHIMS AND CAPRICES OF A PARTY.— [R]espondent filed a protest with the CIR to assail the tax assessment issued to respondent. For failure of the CIR to act within 180 days from submission of the supporting documents, respondent filed a petition for review before the CTA. Interestingly, the CIR filed a motion to dismiss the petition for review on the ground that the CTA has no jurisdiction to resolve the said matter since the SOJ has exclusive jurisdiction over all disputes between the government and GOCCs pursuant to Section 66 and 67, Chapter 14, Book IV of the Administrative Code of 1987. As a result, the CTA dismissed the petition. When the SOJ assumed jurisdiction over the petition for arbitration filed by the respondent, the CIR, completely changed its stand and claimed that the SOJ has no jurisdiction over the case. This turnaround by the CIR cannot be countenanced. The CIR cannot invoke jurisdiction of the SOJ and then completely reject the same. "A party cannot invoke jurisdiction at one time and reject it at another time in the same controversy to suit its interests and convenience." Jurisdiction is conferred by law and cannot be made dependent on the whims and caprices of a party. "Jurisdiction, once acquired, continues until the case is finally terminated." Thus, the SOJ having acquired jurisdiction over the dispute between the CIR and the respondent, continues to exercise the same until the termination of the case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE 242; ALL DISPUTES, CLAIMS AND CONTROVERSIES SOLELY BETWEEN OR AMONG

THE DEPARTMENTS, BUREAUS, OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT, INCLUDING CONSTITUTIONAL OFFICES OR AGENCIES, INVOLVING ONLY QUESTIONS OF LAW FALL WITHIN THE JURISDICTION OF THE SECRETARY OF JUSTICE.— [T]he SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, to wit x x x. However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. x x x. Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.

4. **ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE DECISION OF THE SECRETARY OF JUSTICE MUST BE FIRST APPEALED TO THE OFFICE OF THE PRESIDENT BEFORE RESORT TO THE COURT, AS ONLY AFTER THE PRESIDENT HAS DECIDED THE DISPUTE BETWEEN GOVERNMENT OFFICES AND AGENCIES CAN THE LOSING PARTY RESORT TO THE COURTS; OTHERWISE, A RESORT TO THE COURTS WOULD BE PREMATURE FOR FAILURE TO EXHAUST**

ADMINISTRATIVE REMEDIES.— In the case of *Power Sector Assets and Liabilities Management Corporation*, this Court held that: **Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction.** A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action, which is one of the grounds for the dismissal of a complaint. Under Section 70, Chapter 14, Book IV of the Administrative Code of 1987, it is provided that where the amount of the claim exceeds, one million pesos, the decision of the SOJ should be appealed to the Office of the President (OP). Here, the value subject of the case is ₱70,660,389.00. As such, the CIR should have first appealed the decision of the SOJ to the OP rather than to file a Petition for *Certiorari* to the CA.

5. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; MAY BE RESORTED TO ONLY IN THE ABSENCE OF APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.—** [T]he petition for *certiorari* filed by the CIR before the CA is dismissible on the ground that the same is not a plain, speedy, and adequate remedy granted to the CIR. It is well settled that a petition for *certiorari* can be availed of when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. As such, the same "may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the

ordinary course of law." In the present case, there is a plain, speedy and adequate remedy in the ordinary course of law which is available to the CIR, which is an appeal to the OP. The CIR, however, failed to avail the same through its own fault.

APPEARANCES OF COUNSEL

Cornelio Chito M. Dela Peña for petitioner.
Office of the Government Corporate Counsel for respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision[2] dated January 23, 2013 and Resolution[3] dated August 29, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117577 dismissing the petition for *certiorari* filed by CIR.

The Antecedent Facts

Metropolitan Cebu Water District (respondent) received a Preliminary Assessment Notice from the Bureau of Internal Revenue (BIR) for alleged tax deficiencies for the year 2000 in the total amount of ₱70,660,389.00, representing alleged deficiency income, franchise and value added taxes with surcharge and interest, as well as compromise penalties.[4]

Respondent filed a formal protest with the Regional Director, BIR Revenue Region No. 13. The CIR however failed to act on the protest within 180 days from submission of the supporting documents. Thus, respondent filed a Petition for Review before the Court of Tax Appeals (CTA). The CIR however opposed

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[1] *Rollo*, pp. 10-32.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr, concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion; *id*. at 35-47.

[3] *Id*. at 48-49.

[4] *Id*. at 36.

the said petition on the ground that the Secretary of Justice (SOJ) has jurisdiction over the dispute considering that respondent is a government-owned or controlled corporation (GOCC). As such, the CTA dismissed the petition.[5]

Respondent then filed a Petition for Arbitration before the SOJ. In a complete turnaround, the CIR claimed that the SOJ has no jurisdiction over the case since the issue in dispute is the validity of the tax assessment against respondent.[6]

The case proceeded and the SOJ rendered its Decision[7] dated April 23, 2010 disposing as follows:

> **WHEREFORE**, premises considered, MCWD is declared (a) exempt from payment of income tax from gross income pursuant to Section 32(B)(7)(b) of the National Internal Revenue Code of 1997, (b) liable for franchise tax of two percent (2%) of its gross receipts, (c) exempt from value-added tax, and (d) not liable to pay surcharge, interest, and compromise penalty on the deficiency taxes.
>
> No cost.
>
> SO ORDERED.[8]

The motion for reconsideration of the CIR was likewise denied by the SOJ in the Order dated August 20, 2010.[9]

Aggrieved, the CIR filed a Petition for *Certiorari* before the CA imputing grave abuse of discretion on the SOJ for assuming jurisdiction over the case.

The CA, in its Decision[10] dated January 23, 2013, dismissed the petition for *certiorari*. The motion for reconsideration was also denied in the CA Resolution[11] dated August 29, 2013.

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[5] *Id*.

[6] *Id*. at 36-37.

[7] *Id*. at 84-94.

[8] *Id*. at 93.

[9] *Id*. at 37.

[10] *Id*. at 35-47.

[11] *Id*. at 48-49.

Thus, the CIR comes before Us claiming that the SOJ has no jurisdiction to decide the Petition for Arbitration filed by respondent which assails the tax assessment issued by the BIR.

Ruling of the Court

The petition is denied.

At the outset, We must emphasize that the decision of the SOJ was reviewed by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. As such, the CA must resolve the question of whether the SOJ committed grave abuse of discretion amounting to lack of excess of jurisdiction necessitating the reversal of the same. Necessarily, when the CA Decision is brought before Us through a petition for review on *certiorari* under Rule 45 of the Rules of Court, We must determine whether the CA erred in not finding any grave abuse of discretion on the part of the SOJ in rendering the assailed decision.

We hold that the CA correctly ruled that the SOJ did not commit any grave abuse of discretion in holding that the dispute between the CIR and the respondent is properly within the jurisdiction of the SOJ.

The SOJ has jurisdiction to decide the case

Here, respondent filed a protest with the CIR to assail the tax assessment issued to respondent. For failure of the CIR to act within 180 days from submission of the supporting documents, respondent filed a petition for review before the CTA. Interestingly, the CIR filed a motion to dismiss the petition for review on the ground that the CTA has no jurisdiction to resolve the said matter since the SOJ has exclusive jurisdiction over all disputes between the government and GOCCs pursuant to Sections 66[12]

[12] **SEC. 66.** *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively

and 67,[13] Chapter 14, Book IV of the Administrative Code of 1987. As a result, the CTA dismissed the petition. When the SOJ assumed jurisdiction over the petition for arbitration filed by the respondent, the CIR, completely changed its stand and claimed that the SOJ has no jurisdiction over the case.

This turnaround by the CIR cannot be countenanced. The CIR cannot invoke jurisdiction of the SOJ and then completely reject the same. "A party cannot invoke jurisdiction at one time and reject it at another time in the same controversy to suit its interests and convenience."[14] Jurisdiction is conferred by law and cannot be made dependent on the whims and caprices of a party.[15] "Jurisdiction, once acquired, continues until the case is finally terminated."[16] Thus, the SOJ having acquired jurisdiction over the dispute between the CIR and the respondent, continues to exercise the same until the termination of the case.

Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*,[17] to wit:

> The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

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settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

[13] **SEC. 67.** *Disputes Involving Questions of Law.* — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

[14] *Saulog Transit, Inc. v. Hon. Lazaro, etc.*, 213 Phil. 529, 539 (1984).

[15] See *Georg Grotjahn GMBH and Co. v. Judge Isnani*, 305 Phil. 231 (1994).

[16] *Ando v. Campo, et al.*, 658 Phil. 636, 645 (2011).

[17] G.R. No. 198146, August 8, 2017.

We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

> Section 1. **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, *shall* henceforth be administratively settled or adjudicated as provided hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> Section 2. **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**

> Section 3. Cases involving mixed questions of law and of fact or only factual issues *shall* be submitted to and settled or adjudicated by:
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> (a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;
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> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
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> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). x x x

The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers **"*all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means all, without exception. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for **a speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.**

As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*:

> Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions."
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> PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**
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> x x x x x x x x x.[18]

(Emphasis in the original)

P.D. No. 242[19] is now embodied in Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987. The pertinent provisions of which provides:

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[18] *Id.*

[19] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR

SEC. 66. *How Settled*. — **All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter.** This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 67. *Disputes Involving Questions of Law*. — **All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice** as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned. (Emphasis ours)

SEC. 68. *Disputes Involving Questions of Fact and Law*. — Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1). (Emphasis ours)

Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198,[20] also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.

AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES.

[20] DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF

The petition should be dismissed for failure of the CIR to exhaust administrative remedies

In the case of *Power Sector Assets and Liabilities Management Corporation*,[21] this Court held that:

> **Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction.** A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action, which is one of the grounds for the dismissal of a complaint.[22] (Citations omitted and emphasis in the original)

Under Section 70,[23] Chapter 14, Book IV of the Administrative Code of 1987, it is provided that where the amount of the claim exceeds, one million pesos, the decision of the SOJ should be appealed to the Office of the President (OP). Here, the value

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SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.

[21] *Supra* note 17.

[22] *Id.*

[23] Sec. 70. *Appeals*. — The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

subject of the case is ₱70,660,389.00. As such, the CIR should have first appealed the decision of the SOJ to the OP rather than to file a Petition for *Certiorari* to the CA.

In the case of *Samar II Electric Cooperative Inc. (SAMELCO), et al. v. Seludo, Jr.*,[24] this Court discussed the importance of exhausting administrative remedies, thus:

> The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of cause of action.[25] (Citations omitted)

Also, the petition for *certiorari* filed by the CIR before the CA is dismissible on the ground that the same is not a plain, speedy, and adequate remedy granted to the CIR.

It is well settled that a petition for *certiorari* can be availed of when a tribunal, board or officer *exercising* judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[26] As such, the same "may be resorted to only in the absence

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[24] 686 Phil. 786 (2012).

[25] *Id*. at 796.

[26] Section 1 of Rule 65 of the Rules of Court

> **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, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty

of appeal or any plain, speedy and adequate remedy in the ordinary course of law."[27]

In the present case, there is a plain, speedy and adequate remedy in the ordinary course of law which is available to the CIR, which is an appeal to the OP. The CIR, however, failed to avail the same through its own fault.

WHEREFORE, the petition is **DENIED.** The Decision dated January 23, 2013 and Resolution dated August 29, 2013 of the Court of Appeals in CA-G.R. SP No. 117577 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Peralta,*[**] *del Castillo,* and *Gesmundo,*[***] *JJ.,* concur.

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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.

[27] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 512 (2013).

[*] Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

[**] Designated as Additional Member per Raffle dated April 10, 2017 vice Associate Justice Francis H. Jardeleza.

[***] Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

THIRD DIVISION

[G.R. No. 222297. July 9, 2018]

FORTUNATO ANZURES, *petitioner, vs.* **SPOUSES ERLINDA VENTANILLA and ARTURO VENTANILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT WILL NOT ENTERTAIN QUESTIONS OF FACT AS THE FACTUAL FINDINGS OF THE APPELLATE COURTS ARE FINAL, BINDING OR CONCLUSIVE ON THE PARTIES AND UPON THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; PRESENT.— Under Rule 45 of the Rules of Court, only questions of law should be raised in petitions filed because the 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 court when supported by substantial evidence. As in every rule, there are exceptions which have been enunciated in a plethora of cases. These are: (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. This case falls under one of the exceptions as there are certain relevant facts that would warrant a different conclusion if properly considered.

2. ID.; ID.; ACTIONS; RECOVERY OF POSSESSION OF REAL PROPERTY; REMEDIES AVAILABLE TO A PARTY; DISTINGUISHED.— There are four (4) remedies available to one who has been deprived of possession of real property. These are: (1) an action for unlawful detainer; (2) a suit for forcible entry; (3) *accion publiciana*; and (4) *accion reinvidicatoria*. Unlawful detainer and forcible entry are summary ejectment suits where the only issue to be determined is who between the contending parties has a better possession of the contested property. On the other hand, an *accion publiciana*, also known as *accion plenaria de posesion*, is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title, while an *accion reinvidicatoria*, involves not only possession, but ownership of the property.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE SOLE ISSUE FOR RESOLUTION IN AN UNLAWFUL DETAINER CASE IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES. WHEN THE DEFENDANT, HOWEVER, RAISES THE DEFENSE OF OWNERSHIP IN HIS PLEADINGS AND THE QUESTION OF POSSESSION CANNOT BE RESOLVED WITHOUT DECIDING THE ISSUE OF OWNERSHIP, THE ISSUE OF OWNERSHIP SHALL BE RESOLVED ONLY TO DETERMINE THE ISSUE OF POSSESSION.— The present case is one for unlawful detainer, which is "an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied." In this case, respondents alleged that petitioner has been occupying their property by tolerance and has refused to vacate it despite their repeated demands. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. *When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved*

without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

4. CIVIL LAW; PROPERTY AND OWNERSHIP; CO-OWNERSHIP; A CO-OWNER OF THE PROPERTY CANNOT BE EJECTED FROM THE PROPERTY CO-OWNED, AS HE/SHE MAY USE AND ENJOY THE PROPERTY WITH NO OTHER LIMITATION THAN THAT HE/SHE SHALL NOT INJURE THE INTERESTS OF HIS CO-OWNERS. — Being a co-owner of the property as heir of Carolina, petitioner cannot be ejected from the subject property. In a co-ownership, the undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising [his] rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it. Ultimately, respondents do not have a cause of action to eject petitioner based on tolerance because the latter is also entitled to possess and enjoy the subject property. Corollarily, neither of the parties can assert exclusive ownership and possession of the same prior to any partition. If at all, the action for unlawful detainer only resulted in the recognition of co-ownership between the parties over the residential house.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; PROPER REMEDY OF CO-OWNERS OF A PROPERTY OWNED IN COMMON, IN SO FAR AS THEIR SHARES ARE CONCERNED.— The Court notes that respondents have recognized the co-ownership insofar as the parcel of land is concerned when they alleged in their complaint for unlawful detainer their intention to partition the same. They assert, however, exclusive ownership over the residential house standing thereon by virtue of the deed of donation and extrajudicial settlement of estate. The documentary evidence, however, shows that the parties are also co-owners of the residential house. The parties, being co-owners of both the land and the building, the remedy of the respondents is to file an action for partition. Article 494 of the New Civil Code reads: No co-owner shall be obliged to remain in the co-ownership. Each co-owner may

demand at any time the partition of the thing owned in common, insofar as his share is concerned.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Sinfronio A. Barranco for respondents.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the July 24, 2015 Decision[1] and the December 18, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 136514. The CA affirmed the decision of the Regional Trial Court,Branch 83, Malolos City*(RTC)* rendered in favor of the Spouses Erlinda Ventanilla *(Erlinda)* and Arturo Ventanilla *(collectively, respondents)*, in an action for unlawful detainer.

The Antecedents

On October 12, 2012, respondents filed a Complaint for Unlawful Detainer[3] before the Municipal Trial Court of Bulacan*(MTC)*against Fortunato Anzures *(petitioner)*.In their complaint, respondents alleged, among others,that they were the owners of a residential house situated in Barangay Sta. Ines, Bulakan, Bulacan; that the house had been declared for taxation purposes in their names for the year 2012;[4] that the property stands on a 289 square meters parcel of land under OCT No. 2011000008 and registered in the names of petitioner and his wife Carolina Anzures *(Carolina)*; that later, by virtue of a

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[1] *Rollo*, pp. 256-263; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Socorro B. Inting, concurring.

[2] *Id*. at 273-274.

[3] *Id*. at 52-55.

[4] *Id*. at 52.

Deed of Donation,[5] dated March 21, 2011, petitioner and his wife Carolina donated 144 square meters portion of the land in favor of respondents; that Erlinda Ventanilla "indicated to partition the said property,"[6] but the house situated on said property constitutes a stumbling block on the partition of the said property; that being the owners of the property, respondents merely tolerated the occupation of the property by petitioner; that they demanded he vacate the house to give way to the subdivision and partition of the property but to no avail; and that respondents filed a complaint with the office of the Barangay but no amicable settlement was effected.

In his Answer with Counterclaim,[7] petitioner sought the dismissal of the complaint for lack of cause of action. He averred that he and his late spouse Carolina were the owners of the residential house; that he was also the registered owner of the 289 square meters parcel of land, having bought the same from Erlinda Ventanilla for ₱150,000.00 as evidenced by the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa*,[8] dated August 2, 2000; that his possession and ownership of the land was evidenced by Original Certificate of Title *(OCT)* No. 2011000008; that he was the rightful owner of the residential house as shown by the tax receipts confirming the religious payments he made from 1998 to 2011.[9]

Petitioner also denied the genuineness and authenticity of the March 21, 2011 deed of donation because at that time, Carolina was mentally and physically incompetent to execute the same. He contended that he had no knowledge of the deed and he never affixed his signature thereon.[10]

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[5] *Id*. at 60.

[6] *Id*. at 53.

[7] *Id*. at 65-71.

[8] *Id*. at 144-145.

[9] *Id*. at 67.

[10] *Id*. at 68.

The MTC Ruling

On August 16, 2013, the MTC ruled in favor of respondents and granted their complaint for unlawful detainer against petitioner. It rendered judgment as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant ordering the latter and all persons claiming rights under him —
>
> 1. To vacate the residential house consisting of 144 square meters standing on the lot embraced in OCT No. 2911000008 (sic) situated in Sta. Ines, Bulakan, Bulacan and surrender possession thereof to plaintiffs;
> 2. To pay plaintiffs the sum of ₱1,000.00 a month as reasonable compensation for the use and occupation of the subject property from filing of the complaint (October 19, 2012), until the same is vacated or the possession thereof is surrendered to plaintiffs;
> 3. To pay plaintiffs the sum of ₱5,000.00 as attorney's fees, aside from the costs.
>
> SO ORDERED.[11]

Unconvinced, petitioner appealed to the RTC.

The RTC Ruling

On June 30, 2014, the RTC affirmed *in toto* the judgment of the MTC. It held that respondents have a better right over the subject property than petitioners. The RTC also affirmed that respondents merely tolerated the possession of petitioner. The dispositive portion of the RTC ruling reads:

> **WHEREFORE,** premises considered, the Decision rendered by the Municipal Trial Court of Bulakan, Bulacan, dated August 16, 2013 is **AFFIRMED IN TOTO**.
>
> **SO ORDERED.**[12]

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[11] *Id*. at 232.

[12] *Id*. at 249.

Aggrieved, petitioner sought relief before the CA arguing that the RTC committed grave error in affirming the MTC's decision as it is not in accord with law and jurisprudence and,if not corrected, said error will cause injustice and irreparable damage to petitioner.[13]

In his petition for review with the CA,petitioner raised two (2) points: 1] that respondents have no cause of action as they failed to sufficiently aver in their complaint the jurisdictional fact of unlawful withholding of the subject premises — when and how the matter of the entry and dispossession thereof were effected;[14] and 2] the deed of donation was a forged document as his wife Carolina was seriously ill at the time of its alleged execution.[15]

The CA Ruling

In its decision dated July 24, 2015, the CA denied the petition.

On the issue of lack of cause of action, it concluded that respondents' allegations in their complaint clearly make a case for unlawful detainer. The CA explained that the complaint sufficiently averred the unlawful withholding of the subject residential house by petitioner, constitutive of unlawful detainer, although the exact words "*unlawful withholding*" were not used.[16]

The CA also noted that respondents asserted that petitioner's occupancy was through their tolerance. Thus, it reiterated the ruling that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. Possession by tolerance is lawful, but such possession becomes unlawful when

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[13] *Id*. at 258.

[14] *Id*.

[15] *Id*. at 261.

[16] *Id*. at 260-261.

the possessor by tolerance refuses to vacate upon demand made by the owner.[17]

With regard to the forgery of the deed of donation, the CA stated that forgery cannot be presumed. It must be proved by clear, positive and convincing evidence.[18] The CA observed that not a modicum of evidence was adduced by petitioner to substantiate his claim of forgery and, thus, such claim was merely self-serving.[19]

Ultimately, the CA reiterated the oft-repeated doctrine that factual findings of the trial courts should be accorded great weight and are generally not disturbed on appeal.[20]

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE REGIONAL TRIAL COURT'S DECISION AFFIRMING THE MUNICIPAL TRIAL COURT'S DECISION THAT THE RESPONDENT SPOUSES HAVE A CAUSE OF ACTION TO EJECT PETITIONER BASED ON TOLERANCE.

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE VALIDITY OF THE DEED OF DONATION DATED MARCH 21, 2011.

The primary issue for resolution is whether or not respondents have a cause of action to eject petitioner from the subject property.

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[17] *Id.* at 261.

[18] *Id.*

[19] *Id.* at 262.

[20] *Id.*

The Court's Ruling

The petition is meritorious.

Petition for Review UnderRule 45

Under Rule 45 of the Rules of Court, only questions of law should be raised in petitions filed because the 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 court when supported by substantial evidence.[21]

As in every rule, there are exceptions which have been enunciated in a plethora of cases. These are:

(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

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[21] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

(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.[22]

This case falls under one of the exceptions as there are certain relevant facts that would warrant a different conclusion if properly considered.

Recovery of possession in general

There are four (4) remedies available to one who has been deprived of possession of real property. These are: (1) an action for unlawful detainer; (2) a suit for forcible entry; (3) *accion publiciana*; and (4) *accion reinvidicatoria*.[23]

Unlawful detainer and forcible entry are summary ejectment suits where the only issue to be determined is who between the contending parties has a better possession of the contested property.[24] On the other hand, an *accion publiciana*, also known as *accion plenaria de posesion*, is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title,[25] while an *accion reinvidicatoria*, involves not only possession, but ownership of the property.[26]

The present case is one for unlawful detainer, which is "an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied."[27] In this case, respondents alleged that petitioner has been occupying their property by tolerance and has refused to vacate it despite their repeated demands.

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[22] *Id*. at 182-183.

[23] *Bejar v. Caluag*, 544 Phil. 774, 779 (2007).

[24] *Id*. at 779.

[25] *Id*.

[26] *Id*. at 780.

[27] *Go v. Looyuko, et al.,* 713 Phil. 125, 131 (2013).

The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. *When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.*[28] (italics supplied)

The Present Controversy

In this case, both parties claim ownership over the subject property. Each presented documents to support their respective claim, enumerated in their chronological sequence as follows:

DATE	DOCUMENT	DETAILS	PRESENTED BY
May 31, 2000	Waiver of Rights over the Unregistered Parcel of Land	Executed by Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez Sta. Ana in favor of their nieces, Erlinda and Carolina	Respondents
August 2, 2000	Deed of Absolute Sale of Unregistered Land	Executed by Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez Sta. Ana in favor of their nieces, Erlinda and Carolina covering a parcel of land with improvements	-same-
	Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa	a) Waiver of rights over parcel of land in favor of Erlinda b) Absolute sale in favor of Carolina	Petitioner
October 31, 2008	Pagkakaloob ng Bahagi ng Lupa na May Kasunduan	a) Emiliano, brother of Erlinda and Carolina, was given 1/3 share of the 289 sqm. land b) All 3 siblings agreed to have the land registered under the name of Carolina	Respondents

[28] *Id.*

January 19, 2010	Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa	Emiliano waived his share in favor of his 2 siblings	-same-
September 23, 2010	OCT No. 2011000008	Registered in Carolina's name	Petitioner
March 21, 2011	Deed of Donation	Executed by Carolina in favor of Erlinda, with their respective spouses as signatories	Respondents
October 11, 2011	Extrajudicial Settlement of Estate with Waiver of Rights	Executed by Felomina and Rosalina in favor f Erlinda covering a residential house.	-same-

As can be gleaned from the records, the preponderance of the evidence shows that the property was originally owned by one Vicenta Galvez, who died intestate on October 6, 1967. After her death, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez, claiming to be her sole heirs, executed a "Waiver of Rights over the Unregistered Parcel of Land"[29] in favor of their nieces, Erlinda Rodriguez and Carolina Rodriguez on May 31, 2000. The property contains 289 square meters more or less.

To confirm and firm up the waiver and transfer, on August 2, 2000, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez executed a "Deed of Absolute Sale of Unregistered Land"[30] in favor of Erlinda and Carolina. In said document, the three sold, transferred and conveyed, absolutely and unconditionally, the subject **"parcel of land with improvements"** to the two, "their heirs or assigns, free from all liens and encumbrances."

The waiver of rights over unregistered parcel of land and the deed of absolute sale of unregistered land were both notarized by Atty. Jose S. Tayo on September 22, 2000 and were identified as Document Nos. 231 and 232, respectively, on Page No. 48; Book 31, Series of 2000, of his notarial book.

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[29] *Rollo*, pp. 107-108.

[30] *Id*. at 109.

It appears that on the same day of August 2, 2000, the three heirs of Vicenta Galvez, namely, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez, executed a *"Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa"*[31] embodying a) a waiver of rights over parcel of land in favor of Erlinda; and b) an absolute sale by Erlinda of the said parcel of land in favor of Carolina. The document was notarized by Atty. Jose S. Tayo, but the date of its notarization is unknown. It was, however, likewise identified as Document No. 231; Page No. 48, Book No. 31, Series of 2000, of his notarial book.

Based on the foregoing, the Court agrees with the MTC that as between the Waiver of Rights over Unregistered Parcel of Land and the Deed of Absolute Sale of Unregistered Land on one hand, and the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa* on the other, the two former documents prevail because they bore the rubber stamp of the notary public and the signatures appearing thereon were similar with each other.[32]

Further, the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa*, which shows that the heirs of Vicenta waived their rights over the entire parcel of land in favor of only Erlinda, who in turn sold the same to Carolina, is clearly inconsistent with the intention of the said heirs of Vicenta to absolutely and unconditionally transfer the property to both their nieces, Erlinda and Carolina.

On October 31, 2008, citing as the basis of their right the Deed of Absolute Sale of Unregistered Land,[33] Carolina and Erlinda executed a *"Pagkakaloob ng Bahagi ng Lupa na may Kasunduan,"*[34] whereby the two gave 1/3 of the subject property to their brother, Emiliano; the three siblings agreed to place

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[31] *Id*. at 144.

[32] *Id*. at 230.

[33] *Id*. at 109.

[34] *Id*. at 128.

the property in the name of Carolina; and that they stated that although the property would be registered in her name, the three of them would still be the co-owners of the property.

On January 19, 2010, Emiliano executed a "*Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa,*"[35] whereby he waived his right over 1/3 of the property in favor of Carolina and Erlinda, thus, cementing the co-ownership of the two sisters.

On September 23, 2010, the property was placed under the operation of the Torrens system of land registration with the issuance of the OCT No. 2011000008. Pursuant to their agreement, it was registered in the name of **"Carolina R. Anzures, Filipino, na may sapat na gulang, kasal kay Fortunato Anzures."**[36]

On March 21, 2011, Carolina executed a *deed of donation,*[37] which donated 144 square meters of the subject property to Erlinda as an acknowledgement of their co-ownership thereof. The donation does not appear to have been registered, but it is a recognition that they are both co-owners with equal shares.

On October 11, 2011, Filomena and Rosalina executed an "Extrajudicial Settlement of Estate with Waiver of Rights,"[38] whereby they waived their rights over the house in favor of Erlinda.

On the basis of this extrajudicial settlement of estate with waiver of rights, the respondents claim that they are the owners of the house; that the petitioner is occupying the house by virtue of their tolerance; that they have demanded that he vacate the same; and that despite demands, he refused to do so. As petitioner refuses to vacate the premises, respondents claim they were constrained to file an action for unlawful detainer.

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[35] *Id*. at 131.

[36] *Id*. at 127.

[37] *Id*. at 130.

[38] *Id*. at 114.

Carolina and Erlinda are co-owners of the house subject of litigation

From the documentary records, the property covered by OCT No. 2011000008 is co-owned by Carolina and Erlinda. Being co-owners of the property, they are also the co-owners of the improvement thereon, including the subject house. This is clear from the Deed of Absolute Sale of Unregistered Land[39] dated August 2, 2000, executed in favor of Erlinda and Carolina, whereby the three heirs of Vicenta Galvez, namely, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez sold, transferred and conveyed, absolutely and unconditionally, the subject **"parcel of land, with improvements**" to the "two," "their heirs or assigns, free from all liens and encumbrances."[40]

Respondents cannot rely on the Extrajudicial Settlement of Estate with Waiver of Rights[41] dated October 11, 2011, whereby Filomena and Rosalina waived their rights over the house in favor of Erlinda. The reason is as clear as daylight. On said date, Filomena and Rosalina no longer had the right to convey the house as they were no longer the owners thereof. As evidenced by the August 2, 2000 deed of sale of unregistered land, they already sold the property together with the improvements to the two sisters, Carolina and Erlinda. In fact, the title has been placed in Carolina's name, pursuant to their agreement, *"Pagkakaloob ng Bahagi ng Lupa na may Kasunduan."*[42] No one can give what one does not have *(Nemo dat quod non habet)*.[43]

Petitioner cannot claim sole ownership either

Although the Court found that Carolina and Erlinda are co-owners, it must also be determined whether petitioner is the

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[39] *Id*. at 109.

[40] *Id*.

[41] *Supra* note 38.

[42] *Supra* note 34.

[43] *Mahilum v. Spouses Ilano,* 761 Phil. 334, 348-349 (2015).

absolute owner of the subject property and the house erected thereon to remove all doubts.

Petitioner insists that the March 21, 2011 deed of donation allegedly executed by his wife, Carolina, in favor of Erlinda, was a forgery.

There is, however, no evidence of forgery. Thus, the Court agrees with the CA that it was a self-serving claim. The CA wrote:

> As a rule, forgery cannot be presumed. It must be proved by clear, positive and convincing evidence. Mere allegation of forgery is not evidence and the burden of proof lies on the party alleging it. 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.
>
> Here, not a modicum of evidence was adduced by petitioner to substantiate his claim of forgery. No sufficient and convincing proof was proffered to demonstrate that the signature of his wife Carolina on the Deed of Donation was not hers, and therefore forged. Perceivably, his claim of forgery is merely self-serving.[44]

Moreover, petitioner did not assail the genuineness and authenticity of the waiver of rights over the unregistered parcel of land, dated May 31, 2000, as well as the deed of absolute sale of unregistered land, dated August 2, 2000. In fact, he acknowledged that their aunts waived their rights over the parcel of land in favor of the siblings, Erlinda and Carolina, and then sold it to them.

Further, there were two (2) other documents that would disprove his claim. *First,* the *Pagkakaloob ng Bahagi ng Lupa na may Kasunduan,* dated October 31, 2008, executed by the siblings Erlinda and Carolina with their brother, Emiliano, stated the following:

> Na kami, ERLINDA R. VENTANILLA kasal kay Arturo C. Ventanilla at CAROLINA R. ANZURES kasal kay Fortunato Anzures,

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[44] *Rollo*, pp. 261-262.

mga Filipino, may mga sapat na gulang at naninirahan sa Brgy. Sta. Ines, Bulakan, Bulacan.

Na sa bisa ng "DEED OF ABSOLUTE SALE OF UNREGISTERED LAND, Doc. No. 232, Page No. 48, Book No. 31, Series of 2000, Jose S. Tayo-NP" ay kami na ang mga lihitimung nagmamay-ari ng isang (1) parsela ng lupa na matatagpuan sa Brgy. Sta. Ines, Bulakan, Bulacan na nakatala sa pangalan ni VICENTA GALVEZ na mas makikilala sa ganitong palatandaan:

Tax Declaration No. 2006-05012-00356

Lot No.:	1020	
Area:	289 sq. m.	
Boundaries:	North: Lot 1021 (039)	South: Lot 1019 (042)
	East: Rio del Barrio (Sta. Ana River)	West: Barrio Road

Na dahil at alang-alang sa pagmamahal namin sa aming kapatid na si **EMILIANO A. RODRIGUEZ** kasal kay Alicia Z. Rodriguez ay aming **PINAGKAKALOOBAN** ng **IKATLONG PARTE o 1/3 SHARE** ng karapatan sa pagmamay-ari sa lupang aming binabanggit si Emiliano A. Rodriguez.

Na kami, **ERLINDA R. VENTANILLA, CAROLINA R. ANZURES at EMILIANO A. RODRIGUEZ** ay nagkaruon ng **kasunduan** na ipangalan sa aming kapatid na si **CAROLINA R. ANZURES** ang titulo ng lupa na binabanggit sa kasulatang ito na aming kasalukuyang ina-apply sa Bureau of Lands.

Na, kahit iisang tao lamang ipapangalan ang titulo nito, ang lupang binabanggit sa kasulatang ito ay pag-aari pa rin naming tatlong (3) magkakapatid. [emphases in the original][45]

Second, the *Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa,* dated January 19, 2010, where Emiliano waived his 1/3 share in favor of his two siblings, thereby returning his share to his two sisters. In these documents, petitioner was a signatory.

Evidently, by his participation, petitioner is estopped from questioning them. He cannot be permitted to assail the genuineness of the March 21, 2011 deed of donation because the execution of the said deed by Carolina in favor of Erlinda

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[45] *Supra* note 34.

was merely in keeping with the wishes of Filomena, Enriqueta and Rosalina to transfer the property to both of them.

In sum, the totality of documentary evidence inevitably shows that Carolina and Erlinda are co-owners of the 289 square meters parcel of land with improvement thereon, as originally intended by their predecessors-in-interest, Filomena, Enriqueta and Rosalina.

Being a co-owner, petitioner cannot be ordered to vacate the house

Being a co-owner of the property as heir of Carolina, petitioner cannot be ejected from the subject property. In a co-ownership, the undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising [his] rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it.[46]

Ultimately, respondents do not have a cause of action to eject petitioner based on tolerance because the latter is also entitled to possess and enjoy the subject property. Corollarily, neither of the parties can assert exclusive ownership and possession of the same prior to any partition. If at all, the action for unlawful detainer only resulted in the recognition of co-ownership between the parties over the residential house.

The remedy of the respondents is partition

The Court notes that respondents have recognized the co-ownership insofar as the parcel of land is concerned when

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[46] *Quijano v. Atty. Amante,* 745 Phil. 40, 49 (2014).

they alleged[47] in their complaint for unlawful detainer their intention to partition the same. They assert, however, exclusive ownership over the residential house standing thereon by virtue of the deed of donation and extrajudicial settlement of estate. The documentary evidence, however,shows that the parties are also co-owners of the residential house.

The parties, being co-owners of both the land and the building, the remedy of the respondents is to file an action for partition. Article 494 of the New Civil Code reads:

> No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

WHEREFORE, the petition is **GRANTED.** The July 24, 2015 Decision and the December 18, 2015 Resolution of the Court of Appeals, in CA-G.R. SP No. 136514, are **REVERSED** and **SET ASIDE.** The complaint for unlawful detainer is **DISMISSED**, *without prejudice* to the filing of the appropriate action.

SO ORDERED.

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

Leonen, J., on official business.

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[47] *Rollo*, p. 53.

SECOND DIVISION

[G.R. No. 224972. July 9, 2018]

NG CHING TING, *petitioner, vs.* **PHILIPPINE BUSINESS BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; RULES PRESCRIBING THE TIME FOR DOING SPECIFIC ACTS OR FOR TAKING CERTAIN PROCEEDINGS ARE CONSIDERED ABSOLUTELY INDISPENSABLE TO PREVENT NEEDLESS DELAYS AND TO ORDERLY AND PROMPTLY DISCHARGE JUDICIAL BUSINESS, AND ARE REGARDED AS MANDATORY.— In *Fortich vs. Corona*, the Court elaborated on the significance of the rules of procedure, *viz.*: Procedural rules, we must stress, 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. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and **administrative bodies**, the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. Corolarilly, "rules prescribing the time for doing specific acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory."

2. ID.; ID.; RULES MUST BE COMPLIED WITH FOR THE ORDERLY ADMINISTRATION OF JUSTICE; LIBERAL APPLICATION, OR SUSPENSION OF THE APPLICATION OF PROCEDURAL RULES CAN ONLY BE UPHELD IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— Indeed, in some cases, the Court relaxed the application of procedural rules for the greater interest of substantial justice. It must be pointed out, however, that "resort to a liberal

application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice." It can only be upheld "in proper cases and under justifiable causes and circumstances." Apparently, in the present case, the respondent overlooked procedural rules more than once. *First*, it reneged on its duty to prosecute its case diligently and, *second*, it failed to file its motion for reconsideration on time.

3. ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; THE DISMISSAL OF A CASE WHETHER FOR FAILURE TO APPEAR DURING TRIAL OR PROSECUTE AN ACTION FOR AN UNREASONABLE LENGTH OF TIME RESTS ON THE SOUND DISCRETION OF THE TRIAL COURT, BUT THIS DISCRETION MUST NOT BE ABUSED AND MUST BE EXERCISED SOUNDLY.— The records bear out that the respondent went into unexplained inaction for almost a year from the time the motion to dismiss filed by the petitioner was denied by the RTC in its Order dated September 20, 2010. Despite receipt of the copy of the order, it failed to actively pursue its case or take the proper steps until the case reaches conclusion. This prompted the RTC to dismiss the complaint in its Order dated August 11, 2011, on the basis of Section 3, Rule 17 of the Rules of Court x x x. In *BPI vs. Court of Appeals*, the Court noted that dismissal based on failure to prosecute is a matter addressed to the sound discretion of the court. It was held, thus: Indeed the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case.

4. ID.; RULES OF PROCEDURE; THE INVOCATION OF SUBSTANTIAL JUSTICE IS NOT A MAGICAL INCANTATION THAT WILL AUTOMATICALLY COMPEL THIS COURT TO SUSPEND PROCEDURAL RULES; THE DESIRED LENIENCY CANNOT BE ACCORDED ABSENT VALID AND COMPELLING REASONS FOR SUCH A PROCEDURAL LAPSE.— The

Court can no less agree that the full presentation of the parties' case should be favored over termination of the proceedings on technical grounds. Ideally, "technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed." It must be emphasized, however, that the "invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights." In *Daikoku Electronics Phils., Inc. vs. Raza*, it was stressed, thus: To merit liberality, petitioner must show **reasonable cause** justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. x x x The desired leniency cannot be accorded absent **valid and compelling reasons** for such a procedural lapse. It is in the abovementioned occasion that the exercise of sound discretion is required of the judge. In doing so, he must weigh the circumstances, the merits of the case and the reason proffered for the non-compliance. He must deliberate whether relaxation of the rules is necessary in the interest of substantial justice.

5. ID.; ID.; THE RESIGNATION OF ITS IN-HOUSE COUNSELS DOES NOT EXCUSE THE PARTY FROM NON-OBSERVANCE OF PROCEDURAL RULES, AND IN ITS DUTY TO PROSECUTE ITS CASE DILIGENTLY.— In *V.C. Ponce Company, Inc. vs. Municipality of Parañaque*, the Court rejected the petitioner's plea for relaxation of the rules on the reglementary period, specifically for failing to file the motion for reconsideration on time due to lack of counsel. x x x. In the same way, in this case, the respondent cannot simply lay the blame on the resignation of its in-house counsels since it is incumbent upon it, as the complainant, to promptly hire new lawyers to represent it in the proceedings. Much vigilance and diligence are expected of it considering that it is the one who initiated the action. Upon the resignation of its in-house counsels, it should have taken immediate steps to hire replacements so it may be able to keep up with the pending incidents in the case. Surely, it cannot expect the court to wait until it has settled its predicament. It must take prompt action to keep pace with

the proceedings. As it was, however, the respondent dilly-dallied for almost a year until the court, *motu proprio*, ordered the dismissal of the case for failure to prosecute. Plainly, the resignation of its in-house counsels does not excuse the respondent from non-observance of procedural rules, much less, in its duty to prosecute its case diligently. This contingency should have prompted the respondent to be even more mindful and ensure that there will be a proper transition and transfer of responsibility from the previous counsels to the new counsels. Thus, it can reasonably impose as the employer of its in-house counsels, who had all the authority to require them to make an orderly transfer of records in their custody before they are cleared of accountabilities.

6. ID.; ID.; JUDGMENTS; FINAL AND EXECUTORY; THE FINALITY OF THE DECISION COMES BY OPERATION OF LAW AND THERE IS NO NEED FOR ANY JUDICIAL DECLARATION OR PERFORMANCE OF AN ACT BEFORE SUCH TAKES EFFECT; AFTER THIS PERIOD, THE COURT LOSES JURISDICTION OVER THE CASE AND AN APPELLATE COURT HAS NO POWER TO REVIEW A JUDGMENT THAT HAS ACQUIRED FINALITY.— In *Social Security System vs. Isip*, it was held that the "belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory. A judgment becomes final and executory by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period." To stress, the finality of the decision comes by operation of law and there is no need for any judicial declaration or performance of an act before such takes effect. x x x. That the judgment or order becomes final by *operation of law* means that no positive act is required before this consequence takes place. It can only be stalled if the proper legal remedy is taken with the prescriptive period. After this period, "the court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality." In the instant case, there are two (2) Certifications issued by the Caloocan Central Post Office, confirming that the registered mails which contained copies of the order of dismissal were sent to the respondent and its counsel and were duly received by Bilan on September 23, 2011. Thus, when respondent filed its motion for reconsideration twenty-four days after receipt, the order

of dismissal dated August 11, 2011 had already attained finality and therefore the RTC gravely abused its discretion in setting it aside.

7. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY; THE PARTY'S BARE DENIAL CANNOT STAND AGAINST THE FUNDAMENTAL RULE THAT UNLESS THE CONTRARY IS PROVEN, OFFICIAL DUTY IS PRESUMED TO HAVE BEEN PERFORMED REGULARLY; ABSENT CONTRARY PROOF, NOTICES WERE DEEMED SENT AND RECEIVED BY THE RECIPIENT ON THE DATE STATED IN THE OFFICIAL LOGBOOK OF THE REPRESENTATIVE OF THE POST OFFICE.— Verily, the respondent's bare denial cannot stand against the fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly. "As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that official duty has been regularly performed, the choice is not difficult to make." Without contrary proof, it is deemed that the notices were sent and received by the recipient on the date stated in the official logbook of the representative of the post office. On the basis of documentary evidence, copies of the order of dismissal were received on September 23, 2011 and therefore, the motion for reconsideration of the respondent was filed at the time when the order had already attained finality. As such, the order had become "immutable and unalterable."

8. ID.; ID.; ORDER; AN ORDER OF DISMISSAL WHICH HAD ALREADY BECOME FINAL AND EXECUTORY IS NO LONGER SUBJECT TO THE DISPOSAL OR DISCRETION OF ANY COURT AND MAY NOT BE SET ASIDE ON MERE PLEA FOR LIBERALITY OF THE RULES. — [T]he CA should not have upheld the RTC's reversal of its earlier order of dismissal which had already become final and executory. At that point, it is no longer subject to the disposal or discretion of any court and may not be set aside on mere plea for liberality of the rules. It is well to remember that "rules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose." Moreover, there are legal implications that result from the lapse

of reglementary periods which can sometimes be inescapable. This must place litigants on guard in order not to squander their chances for relief. For, "the laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt*."

APPEARANCES OF COUNSEL

Salva-Sia Salva Law Offices for petitioner.
Santos Bool De Pedro Narag & Associates for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Ng Ching Ting (petitioner) assailing the Decision[1] dated September 29, 2015 and Resolution[2] dated June 1, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 128864.

Antecedent Facts

On July 23, 2009, Philippine Business Bank, Inc. (respondent) filed a Complaint[3] for Recovery of Sum of Money against Jonathan Lim (Jonathan), Carolina Lim (Carolina) and Ng Ching Ting (petitioner) also known as Richard Ng, which was docketed as Civil Case No. C-22359. It appears that Jonathan, owner of Teen's Wear Fashion, obtained several loans from the respondent, which were all covered by promissory notes, in the fo1lowing amounts:[4]

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando, concurring; *rollo*, pp. 93-99.

[2] *Id.* at 101-103.

[3] *Id.* at 104-110.

[4] *Id.* at 105.

Promissory Note No.	Date Granted	Amount
001-005-008278-5	May 24,2006	₱900,000.00
001-004-011087-7	Jul. 27, 2006	₱517,152.00
001-004-011127-9	Aug. 03, 2006	₱521,800.00
001-004-011193-8	Aug. 09, 2006	₱201,573.00
001-004-011265-7	Aug. 16, 2006	₱209,582.10
001-004-011364-9	Aug. 28, 2006	₱266,428.10
001-004-011456-1	Sept. 06, 2006	₱244,321.29
001-004-011530-5	Sept. 13, 2006	₱167,935.00
001-004-011633-0	Sept. 25, 2006	₱284,820.00
001-004-011723-1	Oct. 04, 2006	₱486,588.28
001-004-011866-4	Oct. 18, 2006	₱274,995.00
001-004-011884-6	Oct. 23, 2006	₱376,753.50

As of December 17, 2007, the total outstanding obligation of Jonathan and/or Teen's Wear Fashion amounted to ₱5,183,416.40. As security thereto, a continuing suretyship agreement was executed by Carolina and the petitioner, both ensuring the prompt payment of the loans contracted by Jonathan from the respondent. To further secure the loans, Jonathan and Carolina executed a real estate mortgage over a parcel of land situated in Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. 891918, which was registered under their names.[5]

Jonathan defaulted in the payment of his monthly amortizations and failed to settle the same despite repeated demands. Thus, on November 6, 2007, the respondent bank filed a petition for extrajudicial foreclosure of the mortgaged property. Subsequently, a public auction was conducted by the Office of the Ex-Officio Sheriff of Imus, Cavite and the subject property was awarded to the highest bidder in the amount of ₱915,600.00. Since the amount realized from the auction sale was way below the amount of the obligation, the respondent, through counsel, sent a demand letter to Jonathan, Carolina and the petitioner to settle the deficiency in the amount of ₱4,267,816.40, within five (5) days from receipt thereof, but they refused to heed. By reason of said refusal to pay, the respondent filed a collection suit against Jonathan, Carolina and the petitioner.

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[5] *Id.* at 106.

On November 23, 2009, the petitioner, through counsel, filed a Motion[6] to Dismiss, alleging the following grounds: (1) that the complaint was filed with a defective certification of non-forum shopping;[7] (2) that the complaint was based on a falsified continuing suretyship agreement,[8] and; (3) that no summons was served upon the principal debtor.[9]

On September 20, 2010, the RTC issued an Order,[10] denying the motion to dismiss, the dispositive portion of which reads as follows:

> WHEREFORE, the instant Motion to Dismiss filed by [herein petitioner] Ng Ching Ting is hereby DENIED for lack of merit.
>
> SO ORDERED.[11]

Almost a year thereafter, the RTC issued an Order[12] dated August 11, 2011, *motu proprio* dismissing the case by reason of inaction of both parties. It reads, thus:

> A cursory examination of the records of this case disclosed that per Order of the Court dated September 20, 2010, the Motion to Dismiss filed by [herein petitioner] Ng Ching Ting was denied for lack of merit.
>
> Reckoned from that time, there was no action on the part of both the plaintiff and the defendants.
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> WHEREFORE, in view of the foregoing, let this case be as it is hereby ordered dismissed.
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> SO ORDERED.[13]

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[6] *Id*. at 116-127.

[7] *Id*. at 117.

[8] *Id*. at 121.

[9] *Id*. at 124.

[10] *Id*. at 140.

[11] *Id.*

[12] *Id*. at 141.

[13] *Id.*

Subsequently, a Motion for Reconsideration[14] dated October 17, 2011 was filed by the respondent bank, asseverating that they are still interested in pursuing the case and explained that the reason for their inaction was due to the resignation of its two (2) in-house counsels.

The petitioner filed an Opposition[15] to the motion for reconsideration. Shortly thereafter, he filed an Urgent Manifestation[16] and attached thereon two (2) certifications both dated February 24, 2012, which states that the respondent and its counsel received the Order dated August 11, 2011 on September 23, 2011. This being the case, it only had fifteen (15) days from September 23, 2011 or until October 8, 2011 within which to file its motion for reconsideration. Thus, when the motion for reconsideration was filed on October 17, 2011, it was already filed out of time and the order of dismissal had already become final and executory.[17]

Ruling of the RTC

In an Order[18] dated November 16, 2012, the RTC granted the respondent's motion for reconsideration, pertinently stating thus:

Be that as it may, as mentioned in the plaintiffs instant motion, right after the issuance of the Order dated September 20, 2010 issued by the Court, the previous handling lawyers for the plaintiff, Attys. Dencio Somera and Noel Aperocho, resigned from their position as in-house counsels without informing the plaintiff and its new in-house counsels of the status of the instant case. Hence, the plaintiff and its in-house counsels were surprised to receive the questioned Order dated August 11, 2011.

The argument of the oppositor [herein petitioner] Ng Ching Ting that the Order dated August 11, 2011 was received by the plaintiff and

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[14] *Id*. at 142-144.

[15] *Id*. at 145-148.

[16] *Id*. at 149-152.

[17] *Id*. at 149-150.

[18] *Id*. at 161-162.

its in-house counsels on September 23, 2011 could not be given credence because the person who received the said Order was not an employee of the plaintiff.

WHEREFORE, the instant Motion for Reconsideration of the plaintiff is hereby GRANTED and the questioned Order dated August 11, 2011 is hereby RECONSIDERED and SET ASIDE.

SO ORDERED.[19]

Unyielding, the petitioner filed a petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in granting the motion for reconsideration despite being filed out of time.[20]

Ruling of the CA

In a Decision dated September 29, 2015,[21] the CA affirmed the Order dated November 16, 2012 of the RTC, disposing thus:

WHEREFORE, the petition for *certiorari* is DENIED for lack of merit. The Order dated November 16, 2012 issued by the Regional Trial Court of Caloocan City, Branch 125 is hereby SUSTAINED.

SO ORDERED.[22]

The petitioner filed a motion for reconsideration but in a Resolution dated June 1, 2016, the CA denied the same. Hence, this petition.

Ruling of the Court

The petitioner contends that the CA acted in a manner not in accordance with the law and jurisprudence when it failed to consider that the respondent's motion for reconsideration was filed out of time. He further argues that the respondent's case does not fall under the exceptions to

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[19] *Id.*

[20] *Id*. at 169.

[21] *Id*. at 93-99.

[22] *Id*. at 98.

the general rule that a dismissal based on failure to prosecute amounts to a dismissal with prejudice.[23]

The petition is meritorious.

In *Fortich vs. Corona*,[24] the Court elaborated on the significance of the rules of procedure, *viz.*:

> Procedural rules, we must stress, 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. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and **administrative bodies**, the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules.[25]

Corolarilly, "rules prescribing the time for doing specific acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory."[26]

In the instant case, the petitioner questions the CA's affirmance of the Order dated November 16, 2012 of the RTC, setting aside the dismissal of Civil Case No. C-22359 on the ground of failure to prosecute, since there was no excusable neglect on the part of the respondent and the motion for reconsideration was filed out of time. The CA, however, justified the setting aside of the order of dismissal on the ground that substantial justice must take precedence over technical rules of procedure. It likewise ratiocinated that the dismissal of a case based on failure to prosecute is a matter addressed to the sound discretion of the trial court.[27]

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[23] *Id*. at 22.

[24] 359 Phil. 210 (1998).

[25] *Id*. at 220.

[26] *Laguna Metts Corporation v. Court of Appeals*, 611 Phil. 530, 535 (2005).

[27] *Rollo*, p. 102.

Indeed, in some cases, the Court relaxed the application of procedural rules for the greater interest of substantial justice. It must be pointed out, however, that "resort to a liberal application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice."[28] It can only be upheld "in proper cases and under justifiable causes and circumstances."[29]

Apparently, in the present case, the respondent overlooked procedural rules more than once. *First*, it reneged on its duty to prosecute its case diligently and, *second*, it failed to file its motion for reconsideration on time.

The records bear out that the respondent went into unexplained inaction for almost a year from the time the motion to dismiss filed by the petitioner was denied by the RTC in its Order dated September 20, 2010. Despite receipt of the copy of the order, it failed to actively pursue its case or take the proper steps until the case reaches conclusion. This prompted the RTC to dismiss the complaint in its Order dated August 11, 2011, on the basis of Section 3, Rule 17 of the Rules of Court, which reads as follows:

> **Section 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.

In *BPI vs. Court of Appeals*,[30] the Court noted that dismissal based on failure to prosecute is a matter addressed to the sound discretion of the court. It was held, thus:

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[28] *Building Care Corporation v. Myrna Macaraeg*, 700 Phil. 749, 755 (2012).

[29] *Romulo J. Marohomsalic v. Reynaldo D. Cole*, 570 Phil. 420, 429 (2008).

[30] 362 Phil. 362 (1999).

Indeed the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case.[31]

The Court can no less agree that the full presentation of the parties' case should be favored over termination of the proceedings on technical grounds. Ideally, "technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed."[32]

It must be emphasized, however, that the "invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights."[33] In *Daikoku Electronics Phils., Inc. vs. Raza*,[34] it was stressed, thus:

To merit liberality, petitioner must show **reasonable cause** justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. x x x The desired leniency cannot be accorded absent **valid and compelling reasons** for such a procedural lapse.[35] (Emphasis supplied)

It is in the abovementioned occasion that the exercise of sound discretion is required of the judge. In doing so, he must

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[31] *Id*. at 369.

[32] *Andrea Uy v. Arlene Villanueva*, 553 Phil. 69, 80 (2007).

[33] *Charles Cu-Unjieng v. Court of Appeals*, 515 Phil. 568, 578 (2006).

[34] 606 Phil. 796 (2009).

[35] *Id.* at 803-804.

weigh the circumstances, the merits of the case and the reason proffered for the non-compliance. He must deliberate whether relaxation of the rules is necessary in the interest of substantial justice.

Here, the respondent justified its failure to diligently prosecute by explaining that the resignation of the in-house counsels handling the case caused it to lose track of the proceedings.[36] In addition, it argued that it cannot be deemed to have been properly notified of the Order dated August 11, 2011 since the person who allegedly received the same, Shirley Bilan (Bilan), is not and has never been an employee of the bank.[37]

The RTC, exercising its discretion, reversed the dismissal of Civil Case No. C-22359 in its Order dated November 16, 2012. It accepted the explanation offered by the respondent and found it reasonable enough to warrant the setting aside of its earlier order. The CA agreed and upheld the RTC's exercise of discretion, specifically thus:

> This Court is mindful that the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal and the diligence of the plaintiff to proceed therein. Based on the appreciation of this Court, all of these factors were duly considered by the public respondent before granting the private respondent's motion for reconsideration. Thus, no grave abuse of discretion amounting to lack or excess of jurisdiction can be imputed against him for granting the said motion.[38]

After a careful examination of the records, however, the Court finds the RTC's setting aside of the order of dismissal contrary to existing rules and jurisprudence, hence, amounting to grave abuse of discretion.

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[36] *Rollo*, p. 159.

[37] *Id*. at 157.

[38] *Id*. at 102.

In *V.C. Ponce Company, Inc. vs. Municipality of Parañaque*,[39] the Court rejected the petitioner's plea for relaxation of the rules on the reglementary period, specifically for failing to file the motion for reconsideration on time due to lack of counsel. It ratiocinated, thus:

> **It is incumbent upon the client to exert all efforts to retain the services of new counsel. VCP knew since August 29, 2006, seven months before the CA rendered its Decision, that it had no counsel. Despite its knowledge, it did not immediately hire a lawyer to attend to its affairs.** Instead, it waited until the last minute, when it had already received the adverse CA Decision on April 10, 2007, to search for a counsel; and even then, VCP did not rush to meet the deadline. It asked for an extension of 30 days to file a Motion for Reconsideration. It finally retained the services of a new counsel on May 24, 2007, nine months from the time that its former counsel withdrew her appearance. VCP did not even attempt to explain its inaction. The Court cannot grant equity where it is clearly undeserved by a grossly negligent party.[40]

In the same way, in this case, the respondent cannot simply lay the blame on the resignation of its in-house counsels since it is incumbent upon it, as the complainant, to promptly hire new lawyers to represent it in the proceedings. Much vigilance and diligence are expected of it considering that it is the one who initiated the action. Upon the resignation of its in-house counsels, it should have taken immediate steps to hire replacements so it may be able to keep up with the pending incidents in the case. Surely, it cannot expect the court to wait until it has settled its predicament. It must take prompt action to keep pace with the proceedings. As it was, however, the respondent dilly-dallied for almost a year until the court, *motu proprio*, ordered the dismissal of the case for failure to prosecute.

Plainly, the resignation of its in-house counsels does not excuse the respondent from non-observance of procedural rules, much less, in its duty to prosecute its case diligently. This contingency should have prompted the respondent to be even

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[39] 698 Phil. 338, 351 (2012).

[40] *Id.*

more mindful and ensure that there will be a proper transition and transfer of responsibility from the previous counsels to the new counsels. Thus, it can reasonably impose as the employer of its in-house counsels, who had all the authority to require them to make an orderly transfer of records in their custody before they are cleared of accountabilities.

It also did not escape the attention of the Court that the respondent simply narrated this contingency in his motion for reconsideration but failed to mention what it did to address the matter. The allegations were wanting of details exhibiting its response or how it acted to remedy the situation. Without these averments, there is no basis to say that there was excusable neglect. While indeed there was a contingency, the respondent was not without any means to resolve the same. It should have done something and not merely slack and thereafter plea for the liberality from the court.

Assuming that, notwithstanding the foregoing, the RTC still finds in it good judgment that the allegations of the respondent warrant the grant of the plea for the liberal application, such exercise of discretion ends when the judgment has already attained finality.

It must be pointed out that based on the Certification[41] issued by the Caloocan Central Post Office, the respondent received the copy of the Order dated August 11, 2011 on September 23, 2011. From this date, it had only fifteen (15) days to file a motion for reconsideration.[42] Based on its own admission, however, it only filed a motion for reconsideration on October 17, 2011[43] or twenty-four (24) days after receipt of the notice of the order of dismissal, which was nine (9) days beyond the 15-day period to file the same. At that time, the order of dismissal had already lapsed into finality and is already beyond the jurisdiction or discretion of any court to modify or set aside.

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[41] *Rollo*, p. 155.

[42] Section 1, Rule 52, Rules of Court.

[43] *Id*. at 142.

In *Social Security System vs. Isip*,[44] it was held that the "belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory. A judgment becomes final and executory by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period."

To stress, the finality of the decision comes by operation of law and there is no need for any judicial declaration or performance of an act before such takes effect. The pronouncement of the Court in *Testate Estate of Maria Manuel vs. Biascan*,[45] is on point. It was held, thus:

> It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. **The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration filed after the lapse of the period for taking an appeal.** As such, it is of no moment that the opposing party failed to object to the timeliness of the motion for reconsideration or that the court denied the same on grounds other than timeliness considering that at the time the motion was filed, the Order dated April 2, 1981 had already become final and executory. Being final and executory, the trial court can no longer alter, modify, or reverse the questioned order. The subsequent filing of the motion for reconsideration cannot disturb the finality of the judgment or order.[46]

That the judgment or order becomes final by *operation of law* means that no positive act is required before this consequence takes place. It can only be stalled if the proper legal remedy is taken with the prescriptive period. After this period, "the court loses jurisdiction over the case and not even an appellate court

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[44] 549 Phil. 112, 116 (2007).

[45] 401 Phil. 49 (2000).

[46] *Id.* at 59.

would have the power to review a judgment that has acquired finality."[47]

In the instant case, there are two (2) Certifications[48] issued by the Caloocan Central Post Office, confirming that the registered mails which contained copies of the order of dismissal were sent to the respondent and its counsel and were duly received by Bilan on September 23, 2011. Thus, when respondent filed its motion for reconsideration twenty-four days after receipt, the order of dismissal dated August 11, 2011 had already attained finality and therefore the RTC gravely abused its discretion in setting it aside.

The respondent attempted to obscure this fact by stating in its motion for reconsideration that it received the copy of the order of dismissal only on October 10, 2011 which makes its filing on October 25, 2011 well-within the prescribed 15-day period. This bare allegation, however, was refuted by official certifications from the Caloocan Central Post Office to the effect that the copies of the order was received by the respondent and its counsel on September 23, 2011. The petitioner likewise submitted the Affidavit[49] executed by Garivic Rodriguez (Rodriguez), the letter-carrier of the Caloocan Central Post Office, who personally handed the registered mails to Bilan. Attached to the said affidavit is the certified true copy[50] of the portion of the logbook where Bilan affixed her signature as proof of receipt of the registered mails.

On the other hand, the respondent failed to present evidence to prove that the details in the said certifications and affidavit were incorrect or that they were mere fabrications. Instead, it simply denied that Bilan was an employee of the bank. The denial, however, invites incredulity considering that based on the affidavit of Rodriguez, Bilan was wearing the bank's uniform

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[47] *Heirs of the Late Flor Tungpalan v. Court of Appeals*, 499 Phil. 384, 389 (2005).

[48] *Rollo*, pp. 155-156.

[49] *Id*. at 187.

[50] *Id*. at 188.

at that time and was manning the section which receives notices and all kinds of correspondence. She was also the one who signed the logbook to attest to the receipt of the registered mails. Certainly, the letter-carrier or anyone in his reasonable mind would think that the person posted at the section that receives notices and even signs the logbook attesting to receipt of the same is the person authorized to receive official correspondence.

Verily, the respondent's bare denial cannot stand against the fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly. "As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that official duty has been regularly performed, the choice is not difficult to make."[51] Without contrary proof, it is deemed that the notices were sent and received by the recipient on the date stated in the official logbook of the representative of the post office. On the basis of documentary evidence, copies of the order of dismissal were received on September 23, 2011 and therefore, the motion for reconsideration of the respondent was filed at the time when the order had already attained finality. As such, the order had become "immutable and unalterable."[52] In *Mayon Estate Corporation vs. Altura*,[53] the Court stressed:

> Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[54]

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[51] *Santos v. CA,* 356 Phil. 458, 466 (1998).

[52] *Social Security System v. Ma. Fe F. Isip*, 549 Phil. 112, 116 (2007).

[53] 483 Phil. 404 (2004).

[54] *Id*. at 413.

In view of the foregoing, the CA should not have upheld the RTC's reversal of its earlier order of dismissal which had already become final and executory. At that point, it is no longer subject to the disposal or discretion of any court and may not be set aside on mere plea for liberality of the rules. It is well to remember that "rules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.''[55] Moreover, there are legal implications that result from the lapse of reglementary periods which can sometimes be inescapable. This must place litigants on guard in order not to squander their chances for relief. For, "the laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt*."[56]

WHEREFORE, the petition is **GRANTED**. The Decision dated September 29, 2015 and Resolution[57] dated June 1, 2016 of the Court of Appeals in CA-G.R. SP No. 128864 are hereby **REVERSED and SET ASIDE**. The Order dated November 16, 2012 of the RTC, Branch 125, Caloocan City, in Civil Case No. C-22359, is **DECLARED NULL and VOID**, and the Order dated August 11, 2011 is hereby **REINSTATED and AFFIRMED**.

SO ORDERED.

Carpio[*]*, Senior Associate Justice (Chairperson), Peralta, Perlas-Bernabe*, and *Caguioa, JJ*., concur.

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[55] *Bonifacio M. Mejillano v. Enrique Lucillo*, 607 Phil. 660, 668 (2009).

[56] *Supra* note 47, at 390.

[57] *Rollo*, pp. 101-103.

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

SECOND DIVISION

[G.R. No. 225199. July 9, 2018]

ALLIED BANKING CORPORATION (now PHILIPPINE NATIONAL BANK), *petitioner, vs.* **EDUARDO DE GUZMAN, SR., in his capacity as surety to the various credit accommodations granted to YESON INTERNATIONAL PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; AS A RULE, FINDINGS OF FACT OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE, AND CANNOT BE REVIEWED ON APPEAL; EXCEPTIONS, NOT ESTABLISHED IN CASE AT BAR.— In essence, the issue invoked before the Court is basically the appreciation and determination of the factual matter of whether it was sufficiently proven that the first surety agreement was, indeed, revoked. Time and again, the Court has ruled that in petitions for review on *certiorari* under Rule 45, only questions of law may be raised before this Court as We are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court, especially when affirmed by the CA, are final and conclusive, and cannot be reviewed on appeal. It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below. Petitioner insists, however, that the Court must relax the application of said general rule and apply the exception thereto, namely, that the lower courts' findings were not supported by the evidence on record, or were based on a misapprehension of facts, or that certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion. Unfortunately, the Court does not find merit in petitioner's contention for a cursory review of the findings of the RTC and CA reveals that the same were duly supported by the evidence presented by the parties.

2. ID.; EVIDENCE; PRESUMPTIONS; WHEN A MAIL MATTER WAS SENT BY REGISTERED MAIL, THERE ARISES A DISPUTABLE PRESUMPTION THAT IT WAS RECEIVED IN THE REGULAR COURSE OF MAIL; TWO FACTS TO PROVE TO RAISE THE PRESUMPTION; ESTABLISHED IN CASE AT BAR.— On the basis of Section 3(v), Rule 131, of the 1997 Rules of Court, the Court has consistently ruled that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative. x x x In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First,* it is undisputed that his letter of revocation was properly addressed to PNB. *Second,* in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.

3. ID.; CIVIL PROCEDURE; PLEADINGS; AMENDMENT TO CONFORM TO OR AUTHORIZE PRESENTATION OF EVIDENCE; AS A RULE, A PARTY IS ONLY ALLOWED TO ADD TO THE TERMS OF AN AGREEMENT IF HE HAS PUT IN ISSUE IN HIS PLEADING THE ADDITIONAL MATTERS PRESENTED BY THE ADDITIONAL EVIDENCE; HOWEVER, MATTERS NOT

RAISED IN THE PLEADING MAY BE CONSIDERED BY THE COURT IF TRIED WITH THE EXPRESS OR IMPLIED CONSENT OF THE PARTIES; CASE AT BAR.— Neither can PNB save his cause by asserting the procedural issue that the RTC and the CA should not have allowed De Guzman to present additional evidence for under the rules on evidence, a party is only allowed to add to the terms of an agreement if he has put in issue in his pleading the additional matters presented by the additional evidence. Since the matter of revocation was never raised in his pleadings, the courts below should not have considered the same. As the appellate court held, PNB failed to timely object to the presentation of said evidence at the trial. It noted that after De Guzman testified that he sent a letter of revocation, PNB proceeded to lengthily and exhaustively cross-examine him. Thus, by PNB's implied consent, said matter is treated in all respects as if it had been raised in his pleadings in accordance with Section 5, Rule 10 of the Rules of Court.

APPEARANCES OF COUNSEL

PNB Litigation Division for petitioner.
Quial Beltran & Yu for Eduardo De Guzman, Sr.

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 to reverse and set aside the Decision[1] dated November 9, 2015 and the Resolution[2] dated June 23, 2016 of the Court of Appeals *(CA)* in CA-G.R. CR. CV No. 103347, which affirmed the Decision[3] dated January

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Victoria Isabel A. Paredes, concurring; *rollo,* pp. 74-92.

[2] *Id.* at 93-94.

[3] Penned by Judge Rommel O. Baybay; *id.* at 226-237.

28, 2013 of the Regional Trial Court *(RTC)* of Makati City, in Civil Case No. 97-915 dismissing petitioner's complaint for lack of merit.

The antecedent facts are as follows:

On February 14, 1990, respondent Eduardo De Guzman, Sr., along with Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, all of whom were incorporators of Yeson International Philippines, Inc., executed a Continuing Guaranty/Comprehensive Surety wherein they bound themselves, jointly and severally, to pay any and all obligations, including all accrued interest and charges, attorney's fees, and costs of litigation, obtained by the company from petitioner Allied Banking Corporation (now Philippine National Bank) *(PNB).* The agreement provides that "this is a continuing guaranty and shall remain in full force and effect until written notice shall have been received by you *(PNB)* that it has been revoked by the undersigned." In 1992, the company, through its Import/Export Manager, Elizabeth Sy, and Bong Il Kim, executed six (6) trust receipts, in the amounts of US$141,012.00, US$16,462.68, US$19,365.07, US$59,597.56, US$27,485.26, and JPYen 2,875,000.00, to facilitate the acquisition and/or purchase of several merchandise from its suppliers. On April 30, 1993, after the company's obligation became past due, the same was repackaged and consolidated. Consequently, it executed a Promissory Note in the amount of ₱12,500.00. Thereafter, PNB required the company's directors to execute another contract of suretyship to secure the repackaged loan. Thus, the incorporators Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, together with Antonio Katigbak, executed a new Continuing Guaranty/Comprehensive Surety dated June 23, 1993. De Guzman, however, had no participation thereon.[4]

On April 29, 1997, PNB filed a Complaint for Sum of Money before the Regional Trial Court *(RTC)* of Makati City against De Guzman, Dong Hee Kim, Chul Ho Shin, Bong Il Kim, and Antonio Katigbak *(Katigbak),* as sureties of the company, contending that said company failed to pay its outstanding loan

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[4] *Id.* at 76-78.

of ₱7,335,809.99 and to return ₱5,349,149.71 arising from the six (6) trust receipts, plus interests and penalties, despite demand. In their Answer filed by their counsel Atty. Jonathan M. Polines, the defendants admitted the company's indebtedness but pointed out that in 1996, due to financial difficulties, it was constrained to file a Petition for Suspension of Payments and Appointment of a Management Committee or Rehabilitation Receiver before the Securities and Exchange Committee *(SEC),* which suspended all claims against it.[5]

In a Decision dated August 14, 2008, the RTC initially found all defendants liable as sureties and ordered them to pay the indebtedness of the company, plus interest and penalty charges. De Guzman, together with Dong Hee Kim, Chul Ho Shin, Bong Il Kim, filed a Notice of Appeal. On October 21, 2008, however, De Guzman, assisted by a new counsel, filed a Motion for Leave (1) To Withdraw Notice of Appeal and (2) To File Motion for New Trial alleging that he had no knowledge of the complaint and that summons was never personally served on his person, the jurisdiction over the same being obtained by the court by his alleged voluntary appearance when he filed responsive pleadings through Atty. Polines. But De Guzman never engaged his services nor did he authorize him to file any pleadings on his behalf. De Guzman alleged that it was only when a messenger came to his office in July 2000 asking him to sign a special power of attorney appointing Atty. Polines as his representative that he learned of the case. He was forced to sign the same because he was told that he would already be declared in default if he refused. Moreover, apart from being difficult to get in touch with, said Atty. Polines even filed a notice of appeal without De Guzman's consent. Thus, due to the fact that De Guzman was denied his day in court, he prayed to be allowed to withdraw said notice of appeal and in lieu thereof, admit the attached motion for new trial.[6]

In the interest of substantial justice, the RTC issued an Order dated January 9, 2009, granted De Guzman's motion, set aside

[5] *Id.* at 78-80.

[6] *Id.* at 80-82.

the August 14, 2008 Decision, and set the case for reception of evidence. Thereafter, De Guzman presented two (2) witnesses, namely, himself and Elizabeth Sy, the former Import/Export Manager of the company. On the one hand, De Guzman admitted to signing the first surety agreement dated February 14, 1991, during which time, he was still a stockholder and director of the company as an accommodation to his friends, Dong Hee Kim, Chul Ho Shin, Bong Il Kim, Korean nationals, who needed a Filipino businessman to establish their business. But later that same year, Bong Il Kim acceded to his request and informed him that he was no longer a board member nor a shareholder of the company, having been replaced by Katigbak. Immediately thereafter, De Guzman exercised his right to revoke his obligation as surety by sending a letter dated September 4, 1991 to PNB. Because of said revocation, De Guzman asserts that PNB can no longer hold him liable as surety for the six (6) trust receipts, the earliest of which was executed on November 7, 1991, or any other obligation after the revocation. In support thereof, De Guzman presented an original copy of the letter wherein he revoked his participation in the first surety agreement, which he sent to PNB by registered mail. Unfortunately, De Guzman could not obtain a certification from the Muntinlupa Post Office as to the delivery of the said letter because all records of dispatches for the year 1991 were already disposed by said office due to the fact that De Guzman's request in 2010 has already passed their retention period. On the other hand, Elizabeth Sy testified that when the company failed to pay its obligation to PNB, it applied that the same be repackaged and consolidated into a single obligation. As a result thereof, and of the fact that De Guzman was no longer a shareholder of the company, the first surety agreement was superseded and PNB required the execution of the second surety agreement, but this time, without De Guzman's participation.[7]

In a Decision dated January 28, 2013, the RTC affirmed its August 14, 2008 Decision, finding Dong Hee Kim, Chul Ho Shin, Bong Il Kim liable as sureties but dismissed the same as

[7] *Id.* at 82-84.

against Katigbak, who proved that his signature was a forgery, and as against De Guzman, who proved to the court's satisfaction that before the execution of the second surety agreement in June 23, 1993, he already revoked the first surety agreement through his September 4, 1991 letter.

On November 9, 2015, the CA affirmed the trial court's ruling finding no cogent reason to reverse the same. According to the appellate court, De Guzman was able to establish that he had revoked his participation in the first surety agreement by presenting an original copy of the September 4, 1991 letter of revocation and the register receipt evidencing that he sent the same via registered mail. Besides, there was no reason nor logic for De Guzman to remain as surety for the corporation when he was no longer a stockholder of the same, and thus, is no longer in a position to ensure payment of the obligation. Moreover, Elizabeth Sy's testimony sufficiently supported the fact that the second surety agreement superseded the first one, that PNB was well aware of the revocation for it would not have required the execution of a new surety agreement otherwise.[8]

Furthermore, the CA held that there is no need for the postmaster to certify that the registry notices were issued or sent to the addressee and that the latter received the same for the absence of a certification would only mean that the presumption that a letter duly directed and mailed was received in regular course of the mail would not apply. De Guzman was still able to establish, to the court's satisfaction, that he sent a letter of revocation to PNB. Moreover, the CA rejected PNB's contention that the trial court should not have considered the pieces of evidence presented by De Guzman on his belated claim of revocation since the same were never raised in the Motion to Dismiss or in the Answer. It was the lack of vigilance on the part of PNB that made the presentation of said evidence possible for as the records show, PNB failed to timely object to the presentation of the same at the trial. After De Guzman testified that he sent a letter of revocation, PNB proceeded to

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[8] *Id.* at 87-90.

lengthily and exhaustively cross-examine him. Thus, the trial court considered his defenses in accordance with Section 5, Rule 10 of the Rules of Court, which provides that when issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.[9]

On August 15, 2016, PNB filed the instant petition invoking several arguments. *First,* it faults the CA for concluding that since De Guzman is no longer a stockholder of the corporation, he can no longer be held liable under the surety agreement. This is because as the first surety agreement states, De Guzman voluntarily executed the same in his personal capacity, regardless of his status as stockholder or director of the company. *Second,* PNB claims that the RTC and the CA should not have considered Elizabeth Sy's testimony for the execution of the second surety agreement does not mean that the first had been superseded. This is due to the fact that under the rules on evidence, a party is only allowed to add to the terms of an agreement if he has put in issue in his pleading the additional matters presented by the additional evidence. Here, De Guzman did not put said matters in his pleadings which consist only of a Motion for Leave (1) To Withdraw Notice of Appeal and (2) To File Motion for New Trial with the Motion for New Trial itself. *Third,* contrary to the findings of the RTC and the CA, PNB insists that De Guzman failed to prove, by preponderance of evidence, that he sent the notice of revocation and that the same was actually received by PNB. Thus, while the PNB is mindful that the Court is not a trier of facts, the findings of the RTC and the CA are not binding as they are not based on the evidence on record. *Finally,* PNB asserts that the courts below should not have allowed De Guzman to present evidence to show revocation when said defense was never raised in his pleadings.[10]

The petition is devoid of merit.

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[9] *Id.* at 90-91.

[10] *Id.* at 51-69.

In essence, the issue invoked before the Court is basically the appreciation and determination of the factual matter of whether it was sufficiently proven that the first surety agreement was, indeed, revoked. Time and again, the Court has ruled that in petitions for review on *certiorari* under Rule 45, only questions of law may be raised before this Court as We are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court, especially when affirmed by the CA, are final and conclusive, and cannot be reviewed on appeal. It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[11]

Petitioner insists, however, that the Court must relax the application of said general rule and apply the exception thereto, namely, that the lower courts' findings were not supported by the evidence on record, or were based on a misapprehension of facts, or that certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion. Unfortunately, the Court does not find merit in petitioner's contention for a cursory review of the findings of the RTC and CA reveals that the same were duly supported by the evidence presented by the parties.

On the basis of Section 3(v),[12] Rule 131, of the 1997 Rules of Court, the Court has consistently ruled that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid;

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[11] *Mangahas, et al. v. Court of Appeals, et al.,* 588 Phil. 61, 77 (2008).

[12] Sec. 3. *Disputable presumptions.* The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(v) That a letter duly directed and mailed was received in the regular course of the mail;

and (b) that it was mailed.[13] In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[14] citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[15] the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative, to wit:

> On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, *viz.*:
>
> > Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
> >
> > The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).

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[13] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* 529 Phil. 785, 793 (2006).

[14] 652 Phil. 172, 181-182 (2010). (Emphasis supplied)

> **x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
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> x x x x x x x x x.

The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability.

Similarly, in *Mangahas v. CA,*[16] the Court has given importance to the presentation of the original registry receipt to prove the fact of mailing, even ruling that the same would have constituted the best evidence thereof. In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First,* it is undisputed that his letter of revocation was properly addressed to PNB. *Second,* in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the

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[16] *Supra* note 11.

letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.

Unfortunately for PNB, moreover, it failed to overcome said presumption. The Court had consistently ruled that when a document is shown to have been properly addressed and actually mailed, there arises a presumption that the same was duly received by the addressee, and it becomes the burden of the latter to prove otherwise.[17] Here, PNB's bare, self-serving denial, and nothing more, does little to persuade. To the Court, PNB's mere denial cannot prevail over the records presented by De Guzman such as the letter of revocation, registry receipt, and certification, which constitute documentary evidence enjoying the presumption that, absent clear and convincing evidence to the contrary, these were duly received in the regular course of mail. Thus, in view of PNB's failure to discharge its burden to overcome the presumption by sufficiet evidence, the courts below correctly found that De Guzman had, indeed, already revoked the first surety agreement. Consequently, PNB cannot held De Guzman liable for the obligations of the company thereunder, nor any other obligation thereafter.

Neither can PNB save his cause by asserting the procedural issue that the RTC and the CA should not have allowed De Guzman to present additional evidence for under the rules on evidence, a party is only allowed to add to the terms of an agreement if he has put in issue in his pleading the additional matters presented by the additional evidence. Since the matter of revocation was never raised in his pleadings, the courts below should not have considered the same. As the appellate court held, PNB failed to timely object to the presentation of said evidence at the trial. It noted that after De Guzman testified that he sent a letter of revocation, PNB proceeded to lengthily

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[17] *Palecpec, Jr. v. Hon. Davis, etc.,* 555 Phil. 675, 694-695 (2007); *Lapulapu Foundation, Inc. v. Court of Appeals,* 466 Phil. 53, 60 (2004).

and exhaustively cross-examine him. Thus, by PNB's implied consent, said matter is treated in all respects as if it had been raised in his pleadings in accordance with Section 5,[18] Rule 10 of the Rules of Court.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated November 9, 2015 and Resolution dated June 23, 2016 of the Court of Appeals in CA-G.R. CV No. 103347 are **AFFIRMED.**

SO ORDERED.

Carpio[*]*, Senior Associate Justice,(Chairperson), Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 229153. July 9, 2018]

EDILBERTO R. PALERACIO, *petitioner, vs.* **SEALANES MARINE SERVICES, INC., SPLIETHOFF GROUP MANILA, INC. and/or CHRISTOPHER DINO C. DUMATOL and CAPT. RUBEN AGMATA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED IN AND RESOLVED ON PETITIONS BROUGHT UNDER RULE 45 OF THE RULES OF COURT; EXCEPTIONS ARE, WHEN THERE IS INSUFFICIENT OR INSUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIBUNAL OR COURT BELOW, OR WHEN THE LOWER COURTS COME UP WITH CONFLICTING POSITIONS.— As a rule, only questions

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[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases, however, the Court may delve into and resolve factual issues when, among others, there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when the lower courts come up with conflicting positions, as in this case. Hence, the Court is constrained to review and resolve the factual issues in order to settle the controversy.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; REFERRAL TO A THIRD DOCTOR IS MANDATORY WHEN THERE IS A VALID AND TIMELY ASSESSMENT BY THE COMPANY-DESIGNATED PHYSICIAN AND THE APPOINTED DOCTOR OF THE SEAFARER REFUTED SUCH ASSESSMENT.— Based on the provision [Section 20 (A) of the POEA-SEC], the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician, and (2) the appointed doctor of the seafarer refuted such assessment. It was held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician. However, it should be pointed out that a seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.

3. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; THE COMPANY DESIGNATED PHYSICIAN IS EXPECTED TO ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN THE PERIOD OF 120 OR 240 DAYS; CURRENT RULE, ELUCIDATED.— The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is considered to be on temporary total disability during the 120-day period within which the seafarer is unable to work. If the temporary total disability lasted continuously for more than 120 days, except as otherwise

provided in the Rules, then it is considered as a total and permanent disability. However, the temporary total disability period may be extended up to a maximum of 240 days when the sickness still requires medical attendance beyond the 120 days but not to exceed 240 days. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period. Alternatively put, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. To avail of the extended 240-day period, company-designated physician must first perform some significant act to justify an extension, *e.g.*, when the seafarer's illness or injury would require further medical treatment or when the seafarer was uncooperative with the treatment. Should the physician fail to do so and the seafarer's medical condition remains unresolved, the seafarer's disability shall be deemed totally and permanently disabled. As it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. The Court is not unmindful of the declaration that the extent of seafarer's disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognized based on his resulting incapacity to work and earn his wages. However, the disability gradings under Section 32 of the POEA-SEC should be properly established and contained in a valid and timely medical report of a company-designated physician for it to be considered. The foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.

4. ID.; ID.; ID.; MANDATORY POST-EMPLOYMENT EXAMINATION; WHILE THE MANDATORY REPORTING REQUIREMENT OBLIGES THE SEAFARER TO BE PRESENT FOR THE POST EMPLOYMENT MEDICAL EXAMINATION, WHICH MUST BE CONDUCTED WITHIN THREE WORKING DAYS UPON THE SEAFARER'S RETURN, IT ALSO POSES THE EMPLOYER THE IMPLIED OBLIGATION TO CONDUCT A MEANINGFUL AND TIMELY EXAMINATION OF THE SEAFARER.— It was held that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment. The POEA-SEC also requires the employer to act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted **within three (3) working days** upon the seafarer's return, it also poses the employer the implied obligation to conduct a **meaningful and timely examination** of the seafarer.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; CONSIDERING THE AUTHORITY OF THE COURT TO AWARD ATTORNEY'S FEES REQUIRING FACTUAL, LEGAL AND EQUITABLE GROUNDS, AWARD IS NOT PROPER IN CASE AT BAR.— [T]he Court has consistently held that attorney's fees cannot be recovered as part of damages based on the policy that no premium should be placed on the right to litigate. The authority of the court to award attorney's fees under Article 2208 of the Civil Code requires factual, legal,

and equitable grounds. They cannot be awarded absent a showing of bad faith in a party's tenacity in pursuing his case even if his belief in his stance is specious. Verily, being compelled to litigate with third persons or to incur expenses to protect one's rights is not a sufficient reason for granting attorney's fees. Here, Paleracio was not able to prove that respondents acted in bad faith in refusing to acknowledge his claims. This Court, thus, deems it inappropriate to award attorney's fees. It is noted that in an Order dated June 16, 2014, as supported by a disbursement voucher, the LA released the amount equivalent in Philippine peso of the US$80,000.00 and the corresponding attorney's fees awarded by the NLRC to Paleracio. The attorney's fees awarded should be reimbursed in view of the finding that such award is inappropriate.

APPEARANCES OF COUNSEL

Justiniano B. Panambo, Jr. for petitioner.
Acaban & Associates for private respondents.

D E C I S I O N

PERALTA, *J.*:

For the resolution of this Court is the petition for review on *certiorari* filed by herein petitioner Edilberto R. Paleracio (*Paleracio*) assailing the Decision[1] dated June 17, 2016 and the Resolution[2] dated November 22, 2016 of the Court of Appeals (*CA*) in CA-G.R. SP No. 135418, which annulled and set aside the Decision[3] and Resolution,[4] dated January 30, 2014 and

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting concurring; *rollo*, pp. 38-51.

[2] *Id.* at 54-55.

[3] Penned by Commissioner Pablo C. Espiritu, Jr., with Commissioners Alex A. Lopez and Gregorio O. Bilog III concurring; records, pp. 170-181.

[4] Records, pp. 201-203.

February 28, 2014, respectively, of the National Labor Relations Commission (*NRLC*) in NLRC NCR CASE NO. 02-02169-13.

The facts follow.

On November 21, 2011, Sealanes Marine Service, Inc., for and on behalf of Spliethoff Beheer B.V. (*respondents*), hired Paleracio as Able Bodied Seaman for a period of ten (10) months with basic monthly salary of US$575.00.

Paleracio was on duty on September 5, 2012 when the steel chain disengaged and hit his right arm. On September 25, 2012, he was brought to the hospital in Kotka, Finland and was referred to Dr. Teemu Partanen (*Dr. Partanen*). He was found to have contusion/bruise in his upper right arm. Dr. Partanen recommended that his right antebrachium be x-rayed.[5]

Subsequently, he arrived in Manila on September 27, 2012. He reported the pain in his right arm to the manning agency and was referred to Dr. Roehl Salvador and Dr. Jose Bautista (*Dr. Bautista*) of the Manila Doctors Hospital. He underwent hematology tests[6] and x-ray. His x-ray result reads:

RIGHT RADIUS/ULNA: 08 October 2012

A dynamic compression plate anchored by 7 screws is applied to the radial shaft, rendering good anatomic alignment of the fracture fragments therein.

The rest of the visualized osseous structures and joint spaces are intact.[7]

On October 8, 2012, Paleracio was diagnosed with a neglected radial shaft fracture on his right arm with impending malunion,

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[5] Doctor's Request Form, *id.* at 47.

PAIN IN ARM.

CONTUSION/BRUISE OF THE UPPER ARM/RIGHT

ECZEMA/ALLERGY

[6] Records, pp. 49-50.

[7] *Id.* at 51.

and underwent a corrector osteotomy with radial plating on the same day. He was discharged the next day and underwent therapy under Dr. Bautista. On February 7, 2013, he consulted Dr. Misael Jonathan Ticman (*Dr. Ticman*), a private specialist, after the respondents allegedly discontinued his treatment after four months with no improvement. On February 8, 2013, he filed a complaint for total and permanent disability benefit, damages and attorney's fees against respondents. In the disability report[8] dated March 14, 2013, Dr. Ticman declared that he is unfit to work as a seaman in any capacity. A portion of the report reads:

Physical Examination

- conscious, coherent, ambulatory
- stable vital signs
- (+) surgical scar, right forearm
- (+) tenderness, right forearm on pronation-supination
- (+) difficulty in lifting heavy objects

Diagnosis

Fracture, Radial shaft, right, in impending malunion s/p ORIF, plating

DISABILITY RATING

Based on the history and physical examination on the patient, in spite of the Surgery, Physical therapy, and medications given, symptoms persist, the prognosis is not good. I am therefore recommending ***Permanent Disability*** and that he is **unfit** to work as a seaman in any capacity.

For their part, respondents denied liability for Paleracio's permanent total disability compensation. They alleged that he was repatriated due to a finished contract, and reported to them five days upon his arrival.[9] There was doubt that the pain was work-related since there was no accident report. Nevertheless, he was referred to the company-designated physicians, and was

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[8] *Id.* at 53.

[9] *Id.* at 55.

diagnosed with malunited radial shaft fracture. He filed the complaint for disability benefits while he was still under treatment. In the Medical Report[10] dated March 21, 2013, Dr. Bautista declared him fit to return to work, which reads:

21 March 2013

To: Dr. Roehl Salvador
Re: Edilberto Paleracio

Diagnosis: Malunited Radial Shaft Fracture, Right

S/P Radial Plating (8 Oct., '12)

It's been 5 ½ months since Mr. Paleracio's surgery.
He complains of occasional right forearm pain on l[i]fting heavy objects.

He has full range of motion and normal strength of the extremity.

He is fit to return to work without restrictions.

In a Decision[11] dated October 17, 2013, the Labor Arbiter (*LA*) dismissed the complaint for lack of merit. The LA held that Paleracio failed to submit himself to a medical examination within three working days upon his return as provided by the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (*POEA-SEC*). The March 14, 2013 Disability Report did not indicate the disability grading. Besides, the malunited radial shaft fracture is not a life-threatening injury and usually heals if given proper medication and treatment. Thus, the company-designated doctor's medical opinion was given more weight due to the extensive treatment given to him.

On appeal, the NLRC reversed the decision of the LA and awarded disability compensation in accordance with AMOSUP Collective Bargaining Agreement (*CBA*). It held that the findings favorable to the complainant must be adopted in case of conflict

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[10] *Id.* at 76.

[11] Penned by Labor Arbiter Gaudencio P. Demaisip, Jr.; *id.* at 137-142.

in the determination of fitness to work between the company-designated physician and the seafarer's physician. It also ruled that the disability should be understood less on its medical significance but more on the loss of earning capacity. Permanent disability means the inability of a worker to perform his job for more than 120 days. The dispositive portion of the decision reads:

> **WHEREFORE**, the October 7, 2013 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby **REVERSED** and a new Decision is hereby rendered ordering respondents-appellees, jointly and severally, to pay complainant-appellant by way of permanent and total disability compensation the amount of **US$80,000.00**, pursuant to the POEA Standard Contract in relation to the AMOSUP Collective Bargaining Agreement and attorney's fees of 10% of the total award.
>
> SO ORDERED.[12]

In the June 17, 2016 Decision, the CA granted the petition for *certiorari* filed by respondents. The CA gave more probative weight to the company-designated doctor's assessment since Dr. Ticman's disability assessment was not supported by any diagnostic test and procedures, and was apparently based only on physical examination. The non-compliance with the conflict resolution provided by the POEA-SEC results in the affirmance of the fit-to-work certification of the company-designated physician. The *fallo* of the decision reads:

> **WHEREFORE**, the instant petition is **DISMISSED**. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby **ANNULLED** and **SET ASIDE**.
>
> Private respondent's Complaint for permanent and total disability compensation is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[13]

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[12] *Id.* at 180-181. (Emphasis in the original)

[13] *Rollo*, pp. 50-51. (Emphasis in the original)

In a Resolution dated July 27, 2016, the CA amended the dispositive portion of the decision, to wit:

> **WHEREFORE**, the instant petition is **GRANTED**. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby **ANNULLED** and **SET ASIDE**.
>
> Private respondent's Complaint for permanent and total disability compensation is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[14]

Upon denial of his Motion for Reconsideration, Paleracio elevated the matters before this Court raising the issue:

> THE CA COMMITTED GRAVE ERROR IN DENYING TO PETITIONER THE PERMANENT TOTAL DISABILITY BENEFITS ON THE FOLLOWING GROUNDS:
>
> I. THE PETITIONER FAILED TO SUBSTANTIATE HIS CLAIM FOR PERMANENT DISABILITY BENEFITS;
>
> II. THE PETITIONER FAILED TO AVAIL OF THE CONFLICT RESOLUTION PRIOR TO FILING THE COMPLAINT.[15]

The Court finds the instant petition partially meritorious.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases,[16] however, the Court may delve into and resolve factual issues when, among others, there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when the lower courts come up with conflicting positions, as in this case. Hence, the Court

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[14] *Id.* at 53. (Emphasis in the original)

[15] *Id.* at 25 and 33.

[16] *Interorient Maritime Enterprises, Inc. v. Remo*, 636 Phil. 240 (2010).

is constrained to review and resolve the factual issues in order to settle the controversy.

The CA ruled that the conflict in the findings should be referred to a third doctor agreed jointly by the parties. In absence of referral to a third doctor, the findings of the company-designated physicians should be affirmed. Paleracio did not offer any reason what prevented him from following the procedure. He deprived the company-designated physicians the chance to rebut his own doctor's findings by filing the complaint a day after consulting the latter.

As per Paleracio's Contract[17] dated March 12, 2012, his employment is covered by the 2010 POEA-SEC. Pertinent portion of Section 20 (A) of the POEA-SEC reads:

Section 20-A. *Compensation and Benefits for Injury or Illness*.—

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. x x x

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

x x x x x x x x x

[17] Records, p. 29.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician, and (2) the appointed doctor of the seafarer refuted such assessment.[18]

It was held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.[19] However, it should be pointed out that a seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.[20] In this case, the Court observes that there was no referral to a third doctor, and that the private physician's disability report was issued before the company-designated physician's certification. Hence, there is a need to examine whether the fit-to-work assessment is valid and timely.

The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is considered to be on temporary total disability during the 120-day period within which the seafarer is unable to work. If the temporary total disability lasted continuously for more than 120 days, except

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[18] *Marlow Navigation Philippines, Inc., et al. v. Osias*, 773 Phil. 428, 446 (2015).

[19] *Philippine Hammonia Ship Agency, Inc., et al. v. Dumadag*, 712 Phil. 507, 521 (2013).

[20] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 737-738 (2013).

as otherwise provided in the Rules, then it is considered as a total and permanent disability.[21] However, the temporary total disability period may be extended up to a maximum of 240 days when the sickness still requires medical attendance beyond the 120 days but not to exceed 240 days.

The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability.[22] To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.[23] Alternatively put, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. To avail of the extended 240-day period, company-designated physician must first perform some significant act to justify an extension, *e.g.*, when the seafarer's illness or injury would require further medical treatment or when the seafarer was uncooperative with the treatment. Should the physician fail to do so and the seafarer's medical condition remains unresolved, the seafarer's disability shall be deemed totally and permanently disabled.[24]

As it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as

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[21] Labor Code, Article 198 (c) (1), and AREC, Rule VII, Section 2 (b).

[22] *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.*, 765 Phil. 341, 364 (2015).

[23] *Id.*

[24] *Id.* at 360.

when further medical treatment is required or when the seafarer is uncooperative.[25]

The Court is not unmindful of the declaration that the extent of seafarer's disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognized based on his resulting incapacity to work and earn his wages.[26] However, the disability gradings under Section 32 of the POEA-SEC should be properly established and contained in a valid and timely medical report of a company-designated physician for it to be considered. The foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.[27]

Paleracio consulted his physician on February 7, 2013 and secured the latter's opinion on March 14, 2013. When he filed a complaint for permanent total disability benefits on February 8, 2013, 134 days had lapsed from the time he arrived on September 27, 2012. Meanwhile, the company-designated physician issued the fit-to-work certification on March 21, 2013 or after the lapse of 175 days.

As previously stated, the company-designated physician must provide sufficient justification to extend the original 120-day period of assessment. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.[28] The Court finds that there was no other document

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[25] *Marlow Navigation Philippines, Inc., et al. v. Osias, supra* note 18, at 443.

[26] *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr., supra* note 22, at 358, citing *INC Navigation Co., Philippines, Inc., et al. v. Rosales*, 744 Phil. 774, 786 (2014).

[27] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 245 (2015).

[28] *Aldaba v. Career Philippines*, G.R. No. 218242, June 21, 2017.

to establish that the company-designated physician had declared the necessity for extension of the treatment or assessment period to address the temporary disability. In fact, there was no medical report of the treatment or the various medical tests and procedures was ever presented. Dr. Bautista's certification merely mentioned the amount of time that has lapsed since the surgery, and declared Paleracio fit to return to work without restrictions despite the latter's complaint of occasional pain when lifting heavy objects. In absence of evidence of the declaration of the need for further treatment, the period within which the company-designated physician must issue an assessment was not duly extended to 240 days. Consequently, the March 21, 2013 Certification does not matter as it was issued beyond the authorized 120-day period.

The lack of a conclusive and definite medical assessment from the company-designated physicians, which left Paleracio nothing to properly contest, negates the need to comply with the third-doctor referral provision under the POEA-SEC. Without a valid final and definite assessment from the company-designated physician, the law already steps in to consider the seafarer's disability as total and permanent.[29] He had rightfully commenced his complaint for disability compensation. One of the causes of action for total and permanent disability benefits enumerated by the Court in *C.F. Sharp Crew Management, Inc., et al. v. Taok*,[30] was if the company-designated physician failed to issue a declaration as to the seafarer's fitness to engage in sea duty or disability even after the lapse of the 120-day period and **there is no indication that further medical treatment would address his temporary total disability**, hence, justify an extension of the period to 240 days.[31]

Anent the issue on the mandatory post-employment examination, the LA dismissed the complaint, and concluded that there was no compliance with the mandatory reportorial requirement based on his allegations on the date of his arrival

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[29] *Talaroc v. Arpaphil Shipping Corp.*, G.R. No. 223731, August 30, 2017.

[30] 691 Phil. 521 (2012).

[31] *C.F. Sharp Crew Management, Inc., et al. v. Taok, supra*, at 538.

and the date he was referred to the company-designated physician. Respondents insist that Paleracio failed to report to them within three days upon his arrival.

It was held that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment.[32]

The POEA-SEC also requires the employer to act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[33] While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted **within three (3) working days** upon the seafarer's return, it also poses the employer the implied obligation to conduct a **meaningful and timely examination** of the seafarer.[34]

Respondents claimed that Paleracio came to them five days upon disembarkation. He underwent hematology test on October 7, 2012, and was referred to the company-designated physician

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[32] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc., et al.*, 758 Phil. 382, 394-395 (2015).

[33] *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 15 (2012,), citing *Cortes v. Court of Appeals*, 527 Phil. 153, 160 (2006), citing Tolentino, Arturo, *Commentaries and Jurisprudence the Civil Code of the Phils.*, Vol. IV, 1985 edition, p. 175.

[34] *Id.* (Emphasis ours)

only on October 8, 2012. As there was no evidence that he caused the delay, the LA erred in considering the said date of referral to conclude that he failed to comply with the reportorial requirement. We note that he arrived in the Philippines on a Thursday. It is emphasized that the POEA-SEC specifically provided for three working days and not calendar days. Respondents could have easily presented any proof of the normal working days of the manning agency to support their allegation that he indeed reported for post-employment medical examination beyond the authorized period. It would be highly inequitable to the State's policy on labor to resolve this doubt against him. The Court finds that although his claim that he immediately reported to the manning agency is unsubstantiated, respondents' denial is also bare. Under the evidentiary rules, a positive assertion is generally entitled to more weight than a plain denial.[35]

It is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[36] The burden to prove entitlement to disability benefits lies on Paleracio, thus, he must establish that he had suffered his injury which resulted to his disability during the term of the employment contract. The "Doctor's Requestion Form" wherein Dr. Partanen indicated that he had contusion and experienced pain in his right arm two days before his arrival, and the company-designated physician's diagnosis of neglected radial shaft fracture on his right arm on October 8, 2012 are consistent with his contention that he figured in an accident which injured his right arm on September 5, 2012. Even though he was repatriated due to a finished contract, he was able to prove that he sustained the injury during his employment.

Lastly, the Court has consistently held that attorney's fees cannot be recovered as part of damages based on the policy that no premium should be placed on the right to litigate. The

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[35] *Id.* at 14-15.

[36] *Manota, et al. v. Avantgarde Shipping Corp., et al.*, 715 Phil. 54, 63 (2013).

authority of the court to award attorney's fees under Article 2208 of the Civil Code requires factual, legal, and equitable grounds. They cannot be awarded absent a showing of bad faith in a party's tenacity in pursuing his case even if his belief in his stance is specious. Verily, being compelled to litigate with third persons or to incur expenses to protect one's rights is not a sufficient reason for granting attorney's fees.[37] Here, Paleracio was not able to prove that respondents acted in bad faith in refusing to acknowledge his claims. This Court, thus, deems it inappropriate to award attorney's fees. It is noted that in an Order[38] dated June 16, 2014, as supported by a disbursement voucher,[39] the LA released the amount equivalent in Philippine peso of the US$80,000.00 and the corresponding attorney's fees awarded by the NLRC to Paleracio. The attorney's fees awarded should be reimbursed in view of the finding that such award is inappropriate.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision dated June 17, 2016 and the Resolution dated November 22, 2016 of the Court of Appeals in CA-G.R. SP No. 135418 are hereby **REVERSED** and **SET ASIDE**. The Decision and Resolution, dated January 30, 2014 and February 28, 2014, respectively, of the National Labor Relations Commission in NLRC NCR CASE NO. 02-02169-13 are hereby **AFFIRMED WITH MODIFICATION** that the award of attorney's fees is **DELETED**. Petitioner Edilberto R. Paleracio is **ORDERED** to **RETURN** the amount he received as attorney's fees.

SO ORDERED.

Carpio[*]*, Senior Associate Justice,*(*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, Jr., JJ.*, concur.

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[37] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc., supra* note 32, at 401.

[38] Records, p. 246.

[39] *Id.* at 256.

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

SECOND DIVISION

[G.R. No. 231130. July 9, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALD TAMAYO CORDOVA and MARCIAL DAYON EGUISO,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, AS AMENDED); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [I]n order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE WITH REQUIREMENTS OF SECTION 21, ARTICLE II OF R.A. 9165, AS AMENDED, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER OR TEAM; EXPLAINED.—** [S]ection 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and**

photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

4. ID.; ID.; ID.; THE PLURALITY OF THE BREACHES OR PROCEDURE COMMITTED BY THE POLICE OFFICERS, WHICH WERE GLARINGLY UNJUSTIFIED BY THE STATE, MILITATE AGAINST THE FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST

THE ACCUSED-APPELLANT, AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED; CASE AT BAR.— In *People v. Abetong*, the Court acquitted the accused therein considering, among others, the failure of the police officers to explain the delay in the delivery of the drugs to the chemist. It was held that "[w]hile the delay in itself is not fatal to the prosecution's case as it may be excused based on a justifiable ground, it exposes the items seized to a higher probability of being handled by even more personnel and, consequently, to a higher risk of tampering or alteration," as in this case. Accordingly, the plurality of the breaches of procedure committed by the police officers, which were glaringly unjustified by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellants, as the integrity and evidentiary value of the *corpus delicti* had been compromised. As such, the Court finds accused-appellants' acquittal in order. x x x In *People v. Miranda*, prosecutors were strongly reminded that "they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."

PERALTA, *J., separate concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, AS AMENDED); CHAIN OF CUSTODY RULE; AS AMENDED BY REPUBLIC ACT NO. 10640, SECTION 21 OF R.A. 9165 NOW ONLY REQUIRES TWO WITNESSES TO BE PRESENT DURING THE CONDUCT OF

PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEM; ENUMERATED. — It bears emphasis that R.A. No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

2. **ID.; ID.; ID.; THE FAILURE TO FOLLOW THE MANDATED PROCEDURE LAID DOWN IN SECTION 21 OF R.A. NO. 9165, AS AMENDED MUST BE ADEQUATELY EXPLAINED AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULE ON EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.—** The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence. Here, the prosecution failed to discharge its burden.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; THE PRESUMPTION MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF SECTION 21 OF R.A. NO. 9165 OR WHEN THE SAVING CLAUSE FOUND IN THE IRR IS SUCCESSFULLY TRIGGERED.—** Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellants' conviction. Judicial reliance

on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an ordinary appeal[1] filed by accused-appellants Gerald Tamayo Cordova (Cordova) and Marcial Dayon Eguiso (Eguiso; collectively, accused-appellants) assailing the Decision[2] dated November 8, 2016 of the Court of Appeals (CA)in CA-G.R. CEB-CR. HC. No. 02093, which affirmed the Decision[3] dated May 18, 2015 of the Regional Trial Court of Bacolod City, Branch 47(RTC) in Crim. Case Nos. 05-27806, 05-27807, and 05-27808, finding:(*a*) accused-appellants guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous

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[1] See Notice of Appeal dated November 23, 2016; *rollo,* pp. 20-21.

[2] *Id*. at 4-19. Penned by Associate Justice Germano Francisco D. Legaspi with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap concurring.

[3] CA *rollo*, pp. 69-82. Penned by Judge Therese Blanche A. Bolunia.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

Drugs Act of 2002"; and (*b*) Cordova guilty beyond reasonable doubt of violating Section 5 of the same Act.

The Facts

An Information[5] was filed before the RTC accusing Cordova of Illegal Sale of Dangerous Drugs, and two (2)Informations[6] charging Cordova and Eguiso of Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

Crim. Case No. 05-27806

That on or about the 8th day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Cordova)], not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver, give away to a poseur-buyer one (1) small heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.02 gram, in exchange for a price of ₱200.00 in marked money consisting of two (2) one hundred peso bills with Serial Nos. DK121965 and VP 387750, in violation of the aforementioned law.

Act contrary to law.[7]

Crim. Case No. 05-27807

That on or about the 8th day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Cordova)], not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control five (5) elongated heat-sealed transparent plastic packets each containing methylamphetamine hydrochloride or shabu with a total weight of 0.15 gram, in violation of the aforementioned law.

Act contrary to law.[8]

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[5] Records (Criminal Case No. 05-27806), pp. 1-2.

[6] Records (Criminal Case No. 05-27807), pp. 1-2 and records (Criminal Case No. 05-27808), pp. 1-2.

[7] Records (Criminal Case No. 05-27806), p. 1.

[8] Records (Criminal Case No. 05-27807), p. 1.

Crim. Case No. 05-27808

That on or about the 8th day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Eguiso)], not being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) elongated heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.04 gram, in violation of the aforementioned law.

Act contrary to law.[9]

The prosecution alleged that in the afternoon of April 7, 2005, members of the City Anti-Illegal Drug-Special Operation Task Group (CAID-SOTG) of the Bacolod City Police Office received information that a certain Bobot Cordova was engaged in selling of illegal drugs and hosting pot sessions at the place rented by his sister in Purok Sigay, Barangay 2, Bacolod City.After surveillance, members of the CAID-SOTG decided to conduct a buy-bust operation at around 1:30 in the afternoon of April 8, 2005 with PO3[10] Charlie E. Sebastian (PO3 Sebastian) and the asset acting as poseur-buyers.[11]

On even date, PO3 Sebastian and the asset went to Cordova's place and were met at the door by Cordova, with Eguiso beside him holding an elongated plastic sachet containing a white crystalline substance. Cordova asked what they wanted and the asset introduced PO3 Sebastian as a buyer of *shabu*. Cordova asked how much they will buy and PO3 Sebastian answered that they want ₱200.00 worth of *shabu*. PO3 Sebastian then gave the marked money to Cordova, who then went to the kitchen and got something from the sole of his slippers. Cordova went back to PO3 Sebastian and handed him a plastic sachet containing suspected *shabu*.[12]

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[9] Records (Criminal Case No. 05-27808), p. 1.

[10] "SPO1" in some parts of the records.

[11] See *rollo*, p. 6; and CA *rollo*, pp. 71-72.

[12] See *rollo*, pp. 6-7; and CA *rollo*, p. 72.

Thereafter, PO3 Sebastian made a missed call to his colleagues, who then rushed to the scene, and announced that they are police officers. Subsequently, PO3 Sebastian frisked Cordova, which yielded five (5) more elongated plastic sachets of suspected *shabu,* empty plastic sachets, and the marked money. The team further searched the kitchen and confiscated drug repacking paraphernalia.PO3 Sebastian also collected one (1) plastic sachet containing white crystalline substance after he conducted a body search on Eguiso.[13]

Accused-appellants were arrested and PO3 Sebastian marked his initials on the confiscated sachets and prepared an inventory of the seized items in their presence.[14] After the arrest, barangay officials were informed of the buy bust operation and went to the scene. Cordova and Eguiso were later brought to the barangay hall where PO3 Sebastian took photographs of the seized items and accused-appellants.[15] PO3 Sebastian took custody of the items and kept it in his locker at their office on April 8, 2005 since allegedly there was no evidence custodian in their police station, which hence, prompted him to deliver the same on April 11, 2005 where it was received at 11:10 a.m. by a non-uniformed personnel of the crime laboratory.[16] Police Senior Inspector Alexis Guinanao (PSI Guinanao)later confirmed that the plastic sachets submitted by PO3 Sebastian all yielded positive for *methamphetamine hydrochloride*,[17] a dangerous drug.[18]

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[13] See *rollo*, p. 7; and CA *rollo*, pp. 72-73.

[14] See TSN, March 21, 2011, p. 12.

[15] Based on the records, the photographs marked as Exhibits "L" and "M" show that the *barangay* officials were with Cordova and the items seized from the latter were taken at the *barangay* hall during the signing of the certification by the *barangay* officials, while the photographs marked as Exhibits "N" and "O" show that the solo picture of accused-appellants were taken later at the police station. See *rollo*, p. 8; and records (Crim. Case No. 05-27806), p. 237.

[16] See TSN, October 9, 2008, p. 4.

[17] See Chemistry Report Nos. D-141-2005 and D-142-2005; records (Crim. Case No. 05-27806), pp. 9 and 11, respectively.

[18] See *rollo*, p. 8; and CA *rollo,* p. 75.

In their defense, Cordova claimed that he was with his girlfriend and Eguiso in the house rented by his sister when suddenly armed persons entered the house without identifying themselves. Accused-appellants claimed not knowing the armed men except PO3 Rolando Malate. Accused-appellants were threatened that if any illegal item was found, a case for violation of Section 5, Article II of RA 9165 will be filed against them, and if they surrender the drug items, only a case for Section 11 of the same Act will be filed. When a body search on Cordova yielded nothing, accused-appellants were brought to the police station and detained. Between 4:00 to 5:00 p.m., the police took Cordova to the barangay hall where he was made to sign a document and his photograph taken. Cordova claimed that there were no representatives from the media and the DOJ when the inventory was conducted and that Eguiso was not present when the alleged inventory took place.[19]

The RTC Ruling

In a Decision[20] dated May 18, 2015, the RTC found Cordova liable for the crime of Illegal Sale of Dangerous Drugs, and accordingly,sentenced him to suffer the penalty of life imprisonment, as well as ordered him to pay a fine of ₱500,000.00. It also found Cordova and Eguiso guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, and accordingly, sentenced them each to suffer the indeterminate penalty of twelve(12) years and one (1) day, as minimum, to fifteen(15) years, as maximum, as well as to each pay ₱300,000.00 as fine.[21]

The RTC ruled that the prosecution was able to establish all the elements of Illegal Sale of Dangerous Drugs as one (1) sachet of *shabu* was sold during the buy-bust operation. PO3 Sebastian positively identified and narrated in detail how Cordova handed the sachet of *shabu* to him, which was presented and duly identified in court. Moreover, the elements of Illegal

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[19] See *rollo*, pp. 9-10; and CA *rollo*, pp. 76-78.

[20] CA *rollo*, pp. 69-82.

[21] *Id*. at 81-82.

Possession of Dangerous Drugs were also established as five (5) heat-sealed plastic sachets containing white crystalline substance were recovered from the person of Cordova, while one (1) elongated plastic sachet was recovered from the person of Eguiso.[22] On the other hand, the RTC did not give merit to Cordova and Eguiso's defense of denial and frame-up for being unsubstantiated. It also found sufficient the explanation with respect to the examination of the drugs after the 24 hour mandatory period.[23]

Aggrieved, accused-appellants appealed[24] to the CA. Pending appeal, Eguiso applied for and was granted bail.[25]

The CA Ruling

In a Decision[26] dated November 8, 2016, the CA affirmed the RTC's ruling.[27] It held that the prosecution, through the testimony of PO3 Sebastian,was able to prove that Cordova committed the crime of Illegal Sale of Dangerous Drugs. It also ruled that Cordova and Eguiso's unlawful possession of the sachets of *shabu* has been duly established.[28] Anent the custody of the seized items, the CA held that the absence of the representatives from the media and the DOJ are not fatal because the integrity and evidentiary value of the seized drugs were properly preserved, in accord with the requirements of Section 21 of RA 9165.On this score, the CA noted that there was an unbroken chain of custody despite the request for examination being made on April 8, 2005 and the drugs being forwarded on April 11, 2005 — threedays after.[29]

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[22] See *id*. at 79-80.

[23] See *id*. at 80-81.

[24] See Notice of Appeal dated June 15, 2015; records (Crim. Case No. 05-27806), pp. 283-284.

[25] See Order dated June 19, 2015; *id*. at 335.

[26] *Rollo*, pp. 4-19.

[27] *Id*. at 18.

[28] See *id*. at 11-12.

[29] See *id*. at 16-18.

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[31]

Here, Cordova was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, while Eguiso was charged with the crime of Illegal Possession of Dangerous Drugs. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[32] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[33]

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[30] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[31] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[32] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[33] *People v. Bio*, 753 Phil. 730, 736 (2015).

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.[34]

Pertinently, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[35] Under the said section, prior to its amendment by RA 10640,[36] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination**.[37] In the case of *People v. Mendoza*,[38] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or**

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[34] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[35] *People v. Sumili*, *supra* note 32, at 349-350.

[36] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[37] See Section 21 (1) and (2), Article II of RA 9165.

[38] 736 Phil. 749 (2014).

contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[39]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[40] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[41] — provide that the said inventory and photography

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[39] *Id*. at 764; emphases and underscoring supplied.

[40] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[41] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read 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:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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

may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[42] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[43] In *People v. Almorfe*,[44] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[45] Also, in *People v. De Guzman*,[46] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[47]

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warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[42] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[43] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[44] 631 Phil. 51 (2010).

[45] *Id.* at 60.

[46] 630 Phil. 637 (2010).

[47] *Id.* at 649.

After a judicious study of the case, the Court finds that the deviations from the prescribed chain of custody rule were unjustified, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Cordova and Eguiso.

First. As stated-above, Section 21, Article II of RA 9165 requires that the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of, among others, the accused or the person from whom the items were seized. However, as admitted by PO3 Sebastian,Eguiso, who is one of the accused-appellants, was not present during the required photography of the seized items as shown by his absence in the photos taken, *viz.*:

> [Atty. Gene Sonota (Atty. Sonota)]: Can you explain why in Exhibit "L" only Gerarld[sic] Cordova was photographed? Where was Eguiso then?
>
> [PO3 Sebastian]: Because at that time the main subject of our drug operation was Cordova and it just so happened that Eguiso was present in the residence of Bobot Cordova during said buy-bust operation. **Maybe our office made an oversight in not including Eguiso in the picture**.[48] (Emphasis supplied)

PO3 Sebastian accounted for Eguiso's absence by claiming that "maybe our office made an oversight x x x." Clearly, this plain — and worse, even tentative — excuse of oversight cannot be taken as a justifiable reason that would excuse non-compliance with the procedure set forth by law. "It is well-settled that the procedure in Section 21[, Article II] of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances."[49]

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[48] TSN, October 11, 2010, p. 5.

[49] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

Second. Records also fail to disclose that the other required witnesses, *i.e.*, the representatives from the DOJ and the media, were present during the required inventory and photography of the seized items as required by law. As evinced by the Certification[50] signed by the barangay *kagawads*, the signatures of Eguiso, *i.e.*, the other accused-appellant, as well as the representatives from the media and the DOJ attesting to the propriety of the police action are clearly missing therefrom.

In fact, there is dearth of evidence to show that the police officers even attempted to contact and secure these witnesses, notwithstanding the fact that buy-bust operations are usually planned out ahead of time. Neither did the police officers provide any explanation for their non-compliance, such as a threat to their safety and security or the time and distance which the other witnesses would have had to consider.[51]

Finally. It appears that the chain of custody of the seized items was actually tainted by irregular circumstances.In particular, records[52] show that the time of apprehension on April 8, 2005 was at 1:50 p.m. As disclosed by PO3 Sebastian during trial, the said items were not delivered to the crime laboratory immediately because there was no chemist present in the afternoon of April 8, 2005, a Friday, *viz.*:

[Atty. Sonota]: You will agree with me that after the recovery of the items on April 8, 2005, it was only on April 11, 2005, **or three days after**, that the items were presented to the forensic chemical officer for examination of the specimens?

[PO3 Sebastian]: Yes, sir.[53]

[Prosecutor Gwendolyn Tiu]: Please tell us the reason why it took you 3 days to deliver the specimen to the laboratory?

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[50] Dated April 8, 2005. Records (Crim. Case No. 05-27806), p. 12.

[51] See *People v. Ceralde*, *supra* note 42.

[52] See Request for Laboratory Examination dated April 8, 2005; records (Crim. Case No. 05-27806), p. 232.

[53] TSN, October 11, 2010, p. 11.

[PO3 Sebastian]: It took us 3 days to submit the said specimen to the PNP Crime Laboratory because on the day of operation that was April 8, it was **Friday afternoon** and after the recovery we immediately made a request to the PNP Crime Laboratory in which after forwarding the said specimen to the said office, **there was no chemist present at that particular time and it was only on Monday morning that the chemist was present, April 11, 2005**.[54]

Based on the testimony of PSI Guinanao, there was an agreement between the crime laboratory and the police drug unit with respect to the procedure on apprehensions made on Fridays to Sundays:

[Atty. Sonota]: In short, if the apprehension happens on a Friday and Saturdays and Sundays, according to you, your office was close [sic] supposing on Monday is an official holiday this specimen cannot be delivered to your office?

[PSIGuinanao]: **We have an agreement** with the apprehending officers especially the DEU that if ever there are apprehensions on Friday we give them our cellphone number **so that they can reach us and we can open our office.**

[Atty. Sonota]: In short, for 3 days the specimen which was allegedly confiscated on April 8, 2005 remained in the possession of the apprehending officer up to the time April 11, 2005 when it was delivered to your office?

[PSIGuinanao]: That is right, sir.[55]

However, this agreement was not followed by the police officers. Instead, the items seized from Cordova and Eguiso were merely stored in the locker of PO3 Sebastian.[56] The request for laboratory examination was only received at 11:10 a.m. of April 11, 2005 by a certain non-uniformed personnel by the name of Edwin Albarico.[57] Thus, three (3) days had already passed since the items were seized from accused-appellants,

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[54] TSN, March 21, 2011, p. 22.

[55] TSN, October 9, 2008, p. 21.

[56] See CA *rollo*, pp. 74-75.

[57] TSN, October 9, 2008, p. 4.

during which they were merely stored in PO3 Sebastian's locker. To note, the prosecution failed to explain what security measures were employed to ensure that the integrity and evidentiary value of the items seized would not be compromised during the interim.

In *People v. Abetong*,[58] the Court acquitted the accused therein considering, among others, the failure of the police officers to explain the delay in the delivery of the drugs to the chemist. It was held that "[w]hile the delay in itself is not fatal to the prosecution's case as it may be excused based on a justifiable ground, it exposes the items seized to a higher probability of being handled by even more personnel and, consequently, to a higher risk of tampering or alteration,"[59] as in this case.

Accordingly, the plurality of the breaches of procedure committed by the police officers, which were glaringly unjustified by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellants, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[60] As such, the Court finds accused-appellants' acquittal in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.[61]

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[58] 735 Phil. 476 (2014).

[59] *Id.* at 488.

[60] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[61] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

In *People v. Miranda*,[62] prosecutors were strongly reminded that "they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[63]

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 8, 2016 of the Court of Appeals in CA-G.R. CEB-CR. HC. No. 02093 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Gerald Tamayo Cordova and Marcial Dayon Eguiso are **ACQUITTED** of the crimes charged.

The Director of the Bureau of Corrections is ordered to cause the immediate release of Gerald Tamayo Cordova, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio[*]*, Senior Associate Justice,*(*Chairperson*), *Caguioa,* and *Reyes, Jr., JJ.,* concur.

Peralta, J., see separate concurring opinion.

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[62] See G.R. No. 229671, January 31, 2018.

[63] See *id*.

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellants Gerald Tamayo Cordova and Marcial Dayon Eguiso of the charges of illegal sale and illegal possession of dangerous drugs or violation of Sections 5 and 11, Article II of Republic Act No. (*R.A. No.)* 9165,[1] respectively. The *ponencia* duly noted that appellant Eguiso was not present during the required photography of the seized items as shown by his absence in the photos taken, and that it was only three (3) days after the seizure of the suspected drugs that they were submitted for laboratory examination *sans* showing of measures to preserve their integrity and evidentiary value. Moreover, no justifiable reason was proffered by the prosecution as to the non-observance of Section 21[2] of R.A. No. 9165 despite the fact that the records failed to show that the representatives from the Department of Justice (DOJ) and the media were present during the requisite inventory and photography of the items seized from appellants.

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[1] "*AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.*"

[2] 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:

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

Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR)* of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

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

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

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[3] *People v. Ramirez,* G.R. No. 225690, January 17, 2018. (Emphasis ours)

[4] "*AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002*" Approved on July 15, 2014.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and ensure [its] standard implementation."[7] Senator Sotto explained why the said provision should be amended:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

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[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id.*

[7] *Id.*

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Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellants committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official

[8] *Id*. at 349-350.

who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[11] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official**

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[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena,* G.R. No. 210677, August 23, 2017.

[12] *Id.*

themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellants' conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has

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[13] **Art. 125.** ***Delay in the delivery of detained persons to the proper judicial authorities.*** — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

> Section 29**.** *Criminal Liability for Planting of Evidence*. — Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
>
> Section 32. *Liability to a Person Violating Any Regulation Issued by the Board.* — The penalty of imprisonment ranging from six (6)

[16] G.R. No. 202206, March 5, 2018.

months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 232624. July 9, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO CARIÑO *y* GOCONG and ALVIN AQUINO *y* RAGAM,**[*] *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.— Parenthetically, to sustain a conviction for robbery with homicide under Article 294 of the RPC, the prosecution must prove the existence of the following elements, namely, (i) "the taking of personal property is committed with violence or intimidation against persons; (ii) the property taken belongs to another; (iii) the taking is [with] *animo lucrandi;* and (iv) by reason of the robbery or on the occasion thereof, homicide is committed." Notably, the phrase "by reason of the robbery," covers a situation where the killing

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[*] Also referred/spelled as "RAGMA" as some parts of the *rollo*.

of the person is committed either before or after the taking of personal property. It is imperative to establish that "the intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery." Remarkably, homicide is said to be committed by reason of, or on the occasion of robbery if for instance, it was committed: (i) "to facilitate the robbery or the escape of the culprit; (ii) to preserve the possession by the culprit of the loot; (iii) to prevent discovery of the commission of the robbery; or (iv) to eliminate witnesses in the commission of the crime." Thus, a conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. Consequently, once it has been established with certainty that a person was killed on the occasion of the robbery, the accused may be convicted of robbery with homicide.

2. **ID.; ID.; ID.; CONVICTION THROUGH CIRCUMSTANTIAL EVIDENCE; REQUISITES.—** It is equally important to note that a conviction for robbery with homicide need not be proven solely through direct evidence of the malefactor's culpability. Rather, the offender's guilt may likewise be proven through circumstantial evidence, as long as the following requisites are present: (i) there must be more than one circumstance; (ii) the inference must be based on proven facts; and (iii) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused. Imperatively, all the circumstances taken together must form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime. To rule otherwise, would lead to the pernicious situation wherein felons would be set free to the detriment of the judicial system, and thereby cause danger to the community.

3. **ID.; REPUBLIC ACT NO. 6539 (THE ANTI-CARNAPPING ACT OF 1972, AS AMENDED); ELEMENTS.—** Carnapping is defined and penalized under Section 2 of R.A. No. 6539, or the Anti-Carnapping Act of 1972, as amended, as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." Notably, the elements of carnapping are: (i) the taking of a motor vehicle which belongs to another; (ii) the taking is without

the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (iii) the taking is done with intent to gain. Essentially, carnapping is the robbery or theft of a motorized vehicle. Significantly, the taking of the motor vehicle is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. The intent to gain or the *animus lucrandi,* being an internal act, is presumed from the unlawful taking of the motor vehicle. Notably, "[a]ctual gain is irrelevant as the important consideration is the intent to gain." Likewise, the term gain is not limited to a 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 already constitutes gain.

4. ID.; CONSPIRACY; DIRECT PROOF OF A PREVIOUS AGREEMENT TO COMMIT A CRIME IS NOT INDISPENSABLE IN CONSPIRACY; CASE AT BAR.— It bears stressing that direct proof of a previous agreement to commit a crime is not indispensable in conspiracy. Rather, conspiracy may be deduced from the mode and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves, when such point to a joint purpose and design. Undoubtedly, from the moment the accused-appellants met in Ortigas, went to Moeller's home, took his valuables and car, up to the time when they were both arrested in possession of the said valuables, lead to no other conclusion than that they hatched a criminal scheme, synchronized their acts for unity in its execution, and aided each other for its consummation. Consequently, once a conspiracy has been established, the act of one malefactor, is the act of all.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ASSAILANTS MADE BY A CREDIBLE WITNESS; CASE AT BAR.— Time and again, the Court has consistently ruled that a denial and alibi cannot prevail over the positive identification of the assailants made by a credible witness. In fact, a denial is often viewed with disfavor especially if it is uncorroborated. Also, an alibi will only prosper, if the accused can show that it was physically impossible for him/her to be at

the scene of the crime. Thus, as between the categorical testimony which has a ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

REYES, JR., *J.*:

This treats of the Notice of Appeal[1] under Rule 124 of the Rules of Criminal Procedure filed by Renato Cariño *y* Gocong (Cariño), and Alvin Aquino *y* Ragam (Aquino) (collectively referred as accused-appellants), seeking the reversal of the Decision[2] dated September 14, 2016, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 06217, convicting them of Robbery with Homicide under Article 294 of the Revised Penal Code (RPC), and Carnapping under Republic Act (R.A.) No. 6539,[3] as amended.

The Antecedents

An Information was filed against the accused-appellants, charging them with Robbery with Homicide under Article 294 of the RPC, committed as follows:

That on or about the 29th day of August, 2002, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent of gain, by means of force, violence and/or intimidation against person,

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[1] CA *rollo,* pp. 235-236.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Jane Aurora C. Lantion and Carmelita Salandanan-Manahan, concurring; *id*. at 200-222.

[3] AN ACT PREVENTING AND PENALIZING CARNAPPING. Approved on August 26, 1972.

did then and there, willfully, unlawfully and feloniously rob one MIRKO MOELLER of the following personal items:

One (1) cellphone, wallet, small camera, video camera and VCD player, and by reason and on the occasion of the said robbery, said accused pursuant to their conspiracy, with intent to kill, attack, assault and employ personal violence upon the person of MIRKO MOELLER by then and there mauling him with the use of a dumbbell, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said victim.

CONTRARY TO LAW.[4]

Another Information was also filed against the accused-appellants for the crime of Carnapping as defined and penalized under R.A. No. 6539, as amended, committed as follows:

That on or about the 29th day of August, 2002, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to gain and without knowledge and consent of the owner thereof, did, then and there, willfully, unlawfully and feloniously take, steal and carry away one (1) Unit of Nissan Sentra with Plate No. PN-USD-666 colored silver/pink, of undetermined amount belonging to MIRKO MOELLER, to the damage and prejudice of the said owner thereof.

CONTRARY TO LAW.[5]

The accused-appellants pleaded not guilty to the charges. Trial ensued thereafter.[6]

Evidence of the Prosecution

On August 28, 2002, Leonardo Advincula (Advincula) was driving an R&E Taxi with plate number TVH 298, and traversing through East Avenue, Quezon City, when he was flagged down by Cariño in front of the Social Security System building. Cariño asked Advincula to take him to Ortigas. Upon arriving at Ortigas,

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[4] CA *rollo,* pp. 32-33.

[5] *Id.* at 33.

[6] *Id.*

Cariño asked Advincula to stop along the corner of Julia Vargas and Meralco Avenue. While parked thereat, a silver Nissan Sentra with plate number USD 666 arrived. Cariño alighted and approached the Nissan Sentra. Upon returning to the taxi, Cariño asked Advincula to follow the Nissan Sentra. After driving for a short distance, the Nissan Sentra entered Gate 1 of the Corinthian Gardens Subdivision in Quezon City.[7]

At around 10:39 p.m. of August 28, 2002, Jimmy Caporado (Caporado), a security guard at the Corinthian Gardens Subdivision was manning Gate 1 of the said subdivision. Caporado noticed a Nissan Sentra with plate number USD 666, pass through Gate 1. Trailing behind the Nissan Sentra was an R&E taxi with plate number TVH 298. Upon passing through the gate, the driver of the Nissan Sentra, who Caporado recognized as Mirko Moeller (Moeller), a resident of the said subdivision, opened the car window to inform the former that the passenger inside the taxi was his visitor. During this time, Caporado noticed that Moeller was with Aquino. Obeying Moeller's instructions, Caporado flagged down the taxi cab to take the driver's license, and then let the taxi pass.[8] Caporado identified the passenger of the taxi as Cariño, who he pointed to in open court.[9]

Meanwhile, Advincula dropped off Cariño at No. 11 Young Street, Corinthian Gardens Subdivision. Cariño alighted from the taxi and asked Advincula to wait for his payment. Moeller, the victim, alighted from the Nissan Sentra and approached the taxi to pay for Cariño's fare.[10] Advincula drove away without a passenger.

Subsequently, at around 7:30 a.m. of August 29, 2002, Nena Taro (Taro), the housemaid of Moeller arrived at the latter's home. Taro noticed that the main gate and the door of the house

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[7] *Id*. at 36.

[8] *Id*.

[9] *Id*. at 208.

[10] *Id*. at 35-36.

were unlocked. Upon entering the house, she was surprised to see dried blood on the wall beside the light switch. She walked to the backdoor leading to the swimming pool to look for Moeller. There, she was horrified to see him lying face down in front of the swimming pool. Shocked by what she had seen, she rushed out of the house to ask for help. Moments later, the security guards and the police arrived.[11]

Months after the incident, on September 4, 2002, Senior Police Officer 4 Celso Jeresano (SPO4 Jeresano), together with other police officers, arrested the accused-appellants in Bagaquin, Baguio City. They were tipped off by an informant about the whereabouts of the said accused-appellants. During the arrest, the police recovered a camera, video camera, and charger from the accused-appellants. The police also tracked down the stolen Nissan Sentra in Isabela, after Cariño pointed to its location.[12] Cariño also surrendered the keys of the Nissan Sentra.

During the trial, Dr. Jose Arnel Marquez (Dr. Marquez), Medico-Legal Officer, testified that the victim's cause of death was intracranial hemorrhage, as a result of traumatic injuries in the head.[13]

Version of the Defense

The accused-appellants vehemently denied the charges leveled against them.

Aquino claimed that on September 4, 2002, while he was waiting for a jeepney bound for Manila, a tinted Tamaraw FX suddenly stopped in front of him. He was forced to board the said vehicle. While inside, he was handcuffed and shown a cartographic sketch, and was asked if the image was familiar. He said that he did know who the person in the sketch was. Suddenly, he was hit on his right temple and on the back of his head. This caused him to pass out. When he regained consciousness,

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[11] *Id*. at 35.

[12] *Id*. at 36.

[13] *Id.*

he found himself inside an unfamiliar small house, with his t-shirt bearing blood stains. Thereafter, he was placed inside a van, where he was subjected to physical abuse. Later on, he was brought to Camp Karingal, where he was again physically abused by the police officers. He was later on brought for inquest proceedings, where he learned that he was being charged with Robbery with Homicide.[14]

In the same vein, Cariño claimed that on September 19, 2002, between 6:00 and 7:00 a.m., a group of police officers suddenly barged inside the house where he and his girlfriend were staying. He was arrested and brought to Isabela. He was photographed while seated in a car, and was told that he stole the same. Then, he was brought to Camp Karingal where he was accused of killing a German national. Cariño denied knowing Aquino.[15]

Ruling of the Trial Court

On April 29, 2013, the Regional Trial Court (RTC) rendered a Decision[16] convicting the accused-appellants for the crimes of Robbery with Homicide, and Carnapping. The RTC concluded that there was sufficient circumstantial evidence to convict them. In particular, the RTC noted that the prosecution witnesses confirmed that the accused-appellants were the last persons to be seen with the victim.[17] Added to this, the RTC observed that the victim's stolen properties were recovered from the accused-appellants.[18] Also, when the police officer asked them about the stolen car, they were able to pinpoint its exact location.[19] Finding these as sufficient proof of their guilt, the RTC sentenced them to a penalty of *reclusion perpetua* for the crime of robbery with homicide; and the maximum sentence of life imprisonment

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[14] *Id*. at 37.

[15] *Id.*

[16] Rendered by Hon. Maria Filomena D. Singh; *id*. at 49-67.

[17] *Id*. at 54; 60.

[18] *Id*. at 60.

[19] *Id*. at 63.

for the carnapping, considering that Moeller, the owner of the vehicle, was killed on the occasion of the carnapping.[20]

The dispositive portion of the RTC decision reads:

> WHEREFORE, in Criminal Case No. Q-02-111947, judgment is hereby rendered finding [the accused-appellants] guilty beyond reasonable doubt of robbery with homicide, and imposing on said accused the penalty of reclusion perpetua.
>
> The Court likewise adjudges [the accused-appellants] jointly and severally liable to pay the heirs of the victim Mirko Moller,[21] represented by Anthony Q. Paguio, the following amounts:
>
> 1. ₱75,000.00 as civil indemnity *ex delicto.*
> 2. ₱75,000.00 as moral damages.
> 3. ₱30,000.00 as exemplary damages.
> 4. 75,000.00 as temperate damages.
> 5. The costs of suit.
>
> In Criminal Case No. Q-02-111948, judgment is also rendered finding [the accused-appellants] guilty beyond reasonable doubt of carnapping, in violation of [R.A.] No. 6539, and imposing on said accused the penalty of life imprisonment.
>
> The accused shall be fully credited with their respective periods of preventive detention, pursuant to Article 29 of the [RPC]. They shall henceforth be committed to the National Penitentiary in Muntinlupa City to commence the service of their sentence.
>
> SO ORDERED.[22]

Dissatisfied with the ruling, the accused-appellants filed an appeal with the CA.

Ruling of the CA

On September 14, 2016, the CA rendered the assailed Decision,[23] affirming the RTC's conviction against the accused-

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[20] *Id*. at 67.

[21] Spelled as Moller in the RTC decision.

[22] CA *rollo,* p. 67.

[23] *Rollo,* pp. 2-24.

appellants for Robbery with Homicide, and Carnapping. Echoing the trial court's findings, the CA affirmed that all the facts proven, and taken together, created an unbroken chain of circumstances proving their guilt beyond reasonable doubt.[24] The CA held that their defense of alibi was unavailing, and faltered against the positive identification of the prosecution witnesses.[25] Likewise, the CA found that the results of the police investigation revealed that violence was employed against the victim, which resulted to the latter's death. Also, the camera, video camera and charger, which all belonged to the victim, were found in the possession of the accused-appellants when they were arrested in Baguio City.[26] They were not able to explain the reason why they possessed the said items.[27] Added to this, they knew the location of the stolen vehicle.[28] Consequently, the CA concluded that all these established circumstances show that the accused-appellants conspired with each other to commit the crimes charged.[29]

As for the penalties, the CA affirmed the sentence of *reclusion perpetua* for the charge of Robbery with Homicide, but modified the amount of damages awarded by the RTC. Specifically, the CA deleted the award of exemplary damages finding that there were no aggravating circumstances that attended the commission of the crime. Also, the CA reduced the amount of temperate damages to Php 50,000.00, to conform with recent jurisprudence.[30]

As for the crime of Carnapping, the CA found that the RTC erred in imposing the maximum penalty for the said crime. The CA pointed out that the Information charging the accused-appellants of carnapping, failed to indicate that the victim was

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[24] CA *rollo,* p. 209.

[25] *Id*. at 208-209.

[26] *Id*. at 216.

[27] *Id.*

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

[29] *Id.* at 217-218.

[30] *Id*. at 220.

killed in the course of the commission of the carnapping or on the occasion thereof. Neither was there an allegation that the carnapping was committed with violence or intimidation of persons. The CA surmised that based on the attendant circumstances, the victim was presumably dead when the accused-appellants unlawfully took the vehicle as a means to escape the crime scene. Thus, there being no causal connection between the carnapping and the killing, the accused-appellants should be meted with the lesser sentence of fourteen (14) years and eight (8) months and not more than seventeen (17) years and four (4) months, for the crime of carnapping.[31]

The decretal portion of the assailed CA decision reads:

WHEREFORE, in view of the foregoing, the appeal is **DENIED.** The Decision dated April 29, 2013 of the Quezon City [RTC], Branch 219, in Criminal Case Nos. Q-02-111947 and Q-02-111948 is **AFFIRMED with MODIFICATION,** in that:

1.) In Criminal Case No. Q-02-111947, the award of exemplary damages is **DELETED** and the award of temperate damages is hereby **REDUCED** to **Php 50,000.00.**

In addition, accused-appellants are jointly and severally **ORDERED** to **PAY** interest on all the damages imposed at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

2.) In Criminal Case No. Q-02-111948, the accused-appellants are sentenced to suffer the indeterminate penalty of **Fourteen (14) years and Eight (8) months,** as minimum, to **Seventeen (17) years and Four (4) months,** as maximum.

All other aspects of the *fallo* of the assailed Decision **STAND.**

SO ORDERED.[32]

Aggrieved, the accused-appellants filed the instant Notice of Appeal under Rule 124 of the Rules on Criminal Procedure.

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[31] *Id*. at 221.

[32] *Id.*

The Issue

The main issue raised for the Court's resolution is whether or not the prosecution proved the guilt of the accused-appellants for the crimes of Robbery with Homicide, and Carnapping.

In a Manifestation[33] dated January 25, 2018, the accused-appellants dispensed with the filing of their Supplemental Brief, and prayed that their respective Appellant's Brief filed before the CA, be considered in lieu of their Supplemental Brief.

In support of their plea for exoneration, the accused-appellants assert that the trial court erroneously convicted them on the basis of insufficient circumstantial evidence. They point out that none of the prosecution witnesses specifically identified them as the ones who actually robbed and killed the victim, and carnapped the latter's vehicle.[34] In fact, they stress that no less than the trial court stated that no one witnessed the killing of the victim or the taking of the latter's properties.[35] They harp on the fact that the absence of any eyewitness engenders doubt on their culpability.[36]

Second, the accused-appellants claim that the trial court erred in concluding that they took the stolen articles, simply because they were found in possession thereof. Added to this, they point out that the ownership of the personal items was not even definitely determined.[37]

Third, anent their conviction for carnapping, they aver that the prosecution failed to prove the presence of all the elements of the said crime. The trial court erred in concluding that the act of changing the vehicle's plate number constitutes proof of intent to gain.[38] They posit that at most, the vehicle was merely

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[33] *Rollo,* pp. 43-44.

[34] CA *rollo,* pp. 38-39; 145-147.

[35] *Id*. at 39; 146.

[36] *Id*. at 40.

[37] *Id*. at 42; 149-150.

[38] *Id*. at 44; 150-151.

used as a means to escape.[39] Also, they question how they could be convicted of carnapping with homicide, when the victim was already dead when the car was taken.[40]

Finally, the accused-appellants bewail that there was no evidence proving that they conspired to commit the crimes. There was no showing that they were in fact motivated by a common purpose to perpetrate the crimes.[41]

On the other hand, the People, through the Office of the Solicitor General, (OSG) counters that the prosecution sufficiently proved the guilt of the accused-appellants beyond reasonable doubt. The OSG avers that the trial court correctly found the nexus between the robbery and the killing of the victim. There is no doubt that Moeller was killed. The fact of death was established through the Medico-Legal Report, and the testimony of Dr. Marquez, who described the killing of Moeller as brutal and intentional. Likewise, the OSG points out that Aquino admitted to SPO4 Jeresano that he killed Moeller.[42]

In the same vein, the OSG maintains that the trial court also correctly found Aquino guilty beyond reasonable doubt of carnapping. Records show that all the elements of carnapping were present in the instant case. Aquino, in conspiracy with Cariño, without the consent of Moeller, and with intent to gain, and by means of violence against the person of the victim, took the latter's Nissan Sentra. The OSG posits that intent to gain is evident when one takes property belonging to another against the latter's will.[43]

Ruling of the Court

The instant appeal is bereft of merit.

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[39] *Id*. at 44; 151.

[40] *Id*. at 44.

[41] *Id*. at 44; 151.

[42] *Id*. at 83.

[43] *Id*. at 84-85.

The Prosecution Established Beyond Reasonable Doubt the Guilt of the accused-appellants for the Crime of Robbery with homicide

The RPC defines and penalizes the crime of robbery as follows:

Article 293. *Who are guilty of robbery.* — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence or intimidation of any person, or using force upon anything shall be guilty of robbery.

Article 295. *Robbery with violence against or intimidation of persons; Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

Parenthetically, to sustain a conviction for robbery with homicide under Article 294 of the RPC, the prosecution must prove the existence of the following elements, namely, (i) "the taking of personal property is committed with violence or intimidation against persons; (ii) the property taken belongs to another; (iii) the taking is [with] *animo lucrandi;* and (iv) by reason of the robbery or on the occasion thereof, homicide is committed."[44]

Notably, the phrase "by reason of the robbery," covers a situation where the killing of the person is committed either before or after the taking of personal property.[45] It is imperative to establish that "the intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[46]

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[44] *People v. Barra,* 713 Phil. 698, 705 (2013), citing *People v. Quemeggen, et al.,* 611 Phil. 487, 497 (2009).

[45] *People v. Diu, et al.,* 708 Phil. 218, 236 (2013).

[46] *People v. Torres,* 743 Phil. 553, 564 (2014), citing *Crisostomo v. People,* 644 Phil. 53, 61 (2010).

Remarkably, homicide is said to be committed by reason of, or on the occasion of robbery if for instance, it was committed: (i) "to facilitate the robbery or the escape of the culprit; (ii) to preserve the possession by the culprit of the loot; (iii) to prevent discovery of the commission of the robbery; or (iv) to eliminate witnesses in the commission of the crime."[47] Thus, a conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery.[48] Consequently, once it has been established with certainty that a person was killed on the occasion of the robbery, the accused may be convicted of robbery with homicide.

It is equally important to note that a conviction for robbery with homicide need not be proven solely through direct evidence of the malefactor's culpability. Rather, the offender's guilt may likewise be proven through circumstantial evidence, as long as the following requisites are present: (i) there must be more than one circumstance; (ii) the inference must be based on proven facts; and (iii) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused.[49] Imperatively, all the circumstances taken together must form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.[50] To rule otherwise, would lead to the pernicious situation wherein felons would be set free to the detriment of the judicial system, and thereby cause danger to the community.[51]

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[47] *People v. Balute,* 751 Phil. 980, 986 (2015), citing *People v. Cachuela, et al.,* 710 Phil. 728, 743-744 (2013).

[48] *People v. Torres, et al., supra*, at 561, citing *Crisostomo v. People, supra*.

[49] REVISED RULES ON EVIDENCE, Rule 133, Section 4.

[50] *People of the Philippines v. Hermie Paris y Nicolas and Ronel Fernandez y Dela Vega,* G.R. No. 218130, February 14, 2018, citing *Dungo v. People*, 762 Phil. 630, 679 (2015).

[51] *People v. Quitola,* 790 Phil. 75, 87-88 (2016), citing *People v. Uy*, 664 Phil. 483, 499-500 (2011).

In the case at bar, the circumstances surrounding the fateful day of August 28, 2002, when the victim was robbed and killed, lead to an unbroken chain of facts, which establish beyond reasonable doubt the accused-appellants' culpability, to wit:

i. At 10:39 p.m. of August 28, 2002, security guard Caporado saw Moeller pass through Gate 1 of Corinthian Gardens Subdivision in his Nissan Sentra. Moeller was accompanied by Aquino, who Caporado recognized and identified in open court.
ii. The Nissan Sentra was trailed by the R&E taxi driven by Advincula.
iii. Caporado recognized Cariño as the passenger of the taxi.
iv. Advincula, the driver of the taxi, confirmed that Cariño was his passenger. He testified that he dropped off Cariño at the house of a foreigner in Corinthian Gardens Subdivision.
v. Moeller's Nissan Sentra was seen to have exited Gate 4 of Corinthian Gardens Subdivision at around 12:00 midnight on August 29, 2002.
vi. In the morning of August 29, 2002, Taro, the victim's housemaid, found the latter at the backyard of his home, lifeless.
vii. A dumbbell was found near the body of the victim.
viii. The Medico-Legal Report showed that Moeller died due to intra-cranial hemorrhage, which was caused by a blow inflicted using a hard and blunt object.
ix. During their arrest, Cariño and Aquino were caught in possession of a camera, video camera and charger.
x. Taro confirmed that the said items belonged to Moeller.
xi. Cariño admitted to the police officers that the Nissan Sentra was in Isabela. True enough, the said vehicle was recovered in the said location.
xii. SPO4 Jeresano testified that the accused-appellants admitted that the Nissan Sentra belonged to Moeller.
xiii. Aquino even surrendered the keys of the Nissan Sentra to the police.

The fact that the accused-appellants were the last persons seen with Moeller prior to his demise was clearly confirmed

through the testimony of the prosecution witnesses Caporado and Advincula.

Moreover, the accused-appellants' unexplained possession of the stolen articles gave rise to the presumption that they were the taker and the doer of the robbery.[52] This presumption applies considering that (i) the property was stolen; (ii) the crime was committed recently; (iii) the stolen property was found in their possession; and (iv) they were unable to explain their possession satisfactorily.[53] It must be noted that during their arrest, the police officers found Moeller's camera, video camera and charger in their hideout. They were unable to offer any satisfactory and believable explanation justifying their possession of the subject articles. All that they did to rebut this presumption was to question the ownership of the said articles. This defense fails considering that Taro identified the said items and confirmed that they indeed belonged to Moeller. Her familiarity with the said items cannot be doubted considering that she was the personal maid of the victim for several years, and had cleaned the said items on a regular basis.

The accused-appellants are also Guilty Beyond Reasonable Doubt for the Crime of Simple Carnapping

Carnapping is defined and penalized under Section 2 of R.A. No. 6539, or the Anti-Carnapping Act of 1972, as amended, as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."

Notably, the elements of carnapping are: (i) the taking of a motor vehicle which belongs to another; (ii) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and

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[52] *People of the Philippines v. Enrile Donia y Untalan,* G.R. No. 212815, March 1, 2017; RULES OF COURT, Rule 131, Section 3(j).

[53] *People v. Lagat, et al.,* 673 Phil. 351, 367 (2011), citing *Litton Mills, Inc. v. Sales,* 481 Phil. 73, 90 (2004).

(iii) the taking is done with intent to gain. Essentially, carnapping is the robbery or theft of a motorized vehicle.[54]

Significantly, the taking of the motor vehicle is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[55] The intent to gain or the *animus lucrandi,* being an internal act, is presumed from the unlawful taking of the motor vehicle.[56] Notably, "[a]ctual gain is irrelevant as the important consideration is the intent to gain."[57] Likewise, the term gain is not limited to a 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 already constitutes gain.[58]

In the case at bar, the prosecution proved the existence of all the elements of carnapping beyond reasonable doubt. The Nissan Sentra, which was owned by Moeller, was stolen by the accused-appellants from the victim's house, and brought to Isabela. To eradicate all traces of its previous ownership, the accused-appellants even changed the vehicle's plate number. However, despite their attempt to conceal their crime, the police discovered that the retrieved vehicle bore the same engine and chassis number as the victim's stolen vehicle.

Likewise, the police found the stolen vehicle in Isabela, no less from the information supplanted by Cariño himself. Certainly, Cariño's knowledge about the vehicle's exact location shows his complicity in its taking. Added to this, Cariño was in possession of the car keys, which he surrendered to the police.

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[54] *People v. Bustinera,* 475 Phil. 190, 203 (2004).

[55] *People of the Philippines v. Enrile Donio y Untalan, supra* note 52, citing *People v. Lagat, et al., supra* note 53.

[56] *People v. Bustinera, supra*, at 208 (2004), citing *People v. Obillo,* 411 Phil. 139, 150 (2001).

[57] *People v. Bustinera, id*., citing *Venturina v. Sandiganbayan,* 271 Phil. 33, 39 (1991).

[58] *People v. Bustinera, id*.

The accused-appellants Conspired and Confederated with Each Other to Commit the Said Crimes.

It becomes all too apparent that all the interwoven circumstances form a chain of events that lead to the inescapable conclusion that the accused-appellants robbed and killed Moeller, and took his Nissan Sentra. It is evident that the accused-appellants conspired and confederated with each other to commit the said horrid crimes.

It bears stressing that direct proof of a previous agreement to commit a crime is not indispensable in conspiracy. Rather, conspiracy may be deduced from the mode and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves, when such point to a joint purpose and design.[59] Undoubtedly, from the moment the accused-appellants met in Ortigas, went to Moeller's home, took his valuables and car, up to the time when they were both arrested in possession of the said valuables, lead to no other conclusion than that they hatched a criminal scheme, synchronized their acts for unity in its execution, and aided each other for its consummation. Consequently, once a conspiracy has been established, the act of one malefactor, is the act of all.[60]

The Defenses of Denial and Alibi are Weak and Easily Crumble Against the Positive Identification Made by Reliable and Credible Witnesses

In seeking exoneration from the charges filed against them, the accused-appellants interpose the defenses of denial and alibi.

The Court is not convinced.

Time and again, the Court has consistently ruled that a denial and alibi cannot prevail over the positive identification of the

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[59] *People v. Napalit,* 444 Phil. 793, 806 (2003), citing *People v. Pulusan,* 352 Phil. 953, 974-975 (1998).

[60] *People v. De Leon,* 608 Phil. 701, 720 (2009).

assailants made by a credible witness.[61] In fact, a denial is often viewed with disfavor especially if it is uncorroborated.[62] Also, an alibi will only prosper, if the accused can show that it was physically impossible for him/her to be at the scene of the crime.[63] Thus, as between the categorical testimony which has a ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[64]

This said, the accused-appellants' defenses of denial and alibi falter in light of the positive identifications made by Caporado and Advincula, who saw them at the house of Moeller on the night that the latter was killed. It bears noting that Caporado confirmed that he saw Aquino riding with Moeller in his Nissan Sentra on the fateful night of August 28, 2002. Similarly, Caporado confirmed that he saw Cariño on board the taxi that trailed the Nissan Sentra. There was no reason for Caporado, a disinterested witness, to falsely testify against the accused-appellants.

Equally telling is the fact that Advincula corroborated Caporado's testimony, by affirming that he dropped off Cariño at the victim's home in Corinthian Gardens Subdivision. In fact, Advincula related that the driver of the Nissan Sentra was a foreigner, which fit the description of the victim.

Moreover, the Court finds that Cariño lied about not knowing the victim. Taro affirmed on the witness stand that she saw Cariño one month before the victim's death, at the latter's home.[65] This fact is significant because it established the relationship between Cariño and the victim, which the former denied. Clearly, Cariño's denial is nothing but a vain attempt to exculpate himself from liability.

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[61] *People v. Peteluna, et al.,* 702 Phil. 128, 141 (2013).

[62] *Id.*

[63] *People v. Ramos, et al.,* 715 Phil. 193, 203 (2013).

[64] *People v. Piosang,* 710 Phil. 519, 527-528 (2013).

[65] CA *rollo*, p. 53.

All told, there was no reason for the prosecution witnesses to lie and falsely testify against the accused-appellants. Hence, absent any proof of ill-motive on their part, there can be no doubt that their testimonies certainly bear the earmarks of truth and candor.

The Penalty for Robbery with Homicide

The trial court correctly sentenced the accused-appellants with the penalty of *reclusion perpetua,* pursuant to Article 294, paragraph 1 of the RPC,[66] for their crime of robbery with homicide.

As for the amount of damages imposed, the Court affirms the awards of civil indemnity of Php 75,000.00, and moral damages of Php 75,000.00.[67] The Court likewise agrees that the victim's heirs should be awarded temperate damages of Php 50,000.00. Temperate damages may be recovered when some pecuniary loss has been suffered but definite proof of its amount was not presented in court.[68]

However, the Court finds that the CA erred in deleting the award of exemplary damages. Remarkably, exemplary damages should be granted as a punishment for the reprehensible act committed against the victim. This is in consonance with the Court's ruling in *People v. Jugueta,*[69] where exemplary damages worth to Php 75,000.00 was awarded to the victim's heirs.

The Penalty for Carnapping

R.A. No. 6539, as amended by Section 20 of R.A. No. 7659, provides the penalties for carnapping, as follows:

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[66] REVISED PENAL CODE.

Article 249. *Robbery with violence against or intimidation of persons; Penalties.*– Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by or on occasion of the robbery, the crime of homicide shall have been committed.

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[67] *People v. Jugueta,* 783 Phil. 807, 839 (2016).

[68] *Id*. at 846-847.

[69] 783 Phil. 807 (2016).

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 the 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 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 and underscoring Ours)

It must be noted that the Information charging the accused-appellants with carnapping under R.A. No. 6539, as amended, failed to allege that the carnapping was committed by means of violence against, or intimidation of, any person, or force upon things. While these circumstances were proven at the trial, they cannot be appreciated because they were not alleged in the Information. Hence, pursuant to the strict constitutional mandate that an accused must always be informed of the nature and the cause of the accusation against him,[70] the accused-appellants may only be convicted of simple carnapping. Accordingly, the CA was correct in modifying the maximum sentence of life imprisonment originally imposed by the RTC, and reducing the same to fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. This term of imprisonment imposed by the CA is likewise in consonance with Section 1 of the Indeterminate Sentence Law which ordains that if the offense committed is punishable by a special law, the court shall sentence the accused to an indeterminate penalty expressed at a range whose maximum term shall not exceed the maximum fixed by the special law, and the minimum term not be less than the minimum prescribed.[71]

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[70] 1987 CONSTITUTION, Article III, Section 14, paragraph 2.

[71] Act No. 4103, Section 1.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit.** Accordingly, the Decision dated September 14, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06217, convicting accused-appellants Renato Cariño *y* Gocong and Alvin Aquino *y* Ragam of the crimes of Robbery with Homicide, and Carnapping, are hereby **AFFIRMED with MODIFICATION.** In Criminal Case No. Q-02-111947 for Robbery with Homicide, the accused-appellants are ordered to pay exemplary damages worth Php 75,000.00 to the heirs of victim Mirko Moeller. All the amounts due shall earn a legal interest of six percent (6%) *per annum* from the finality of this ruling until the full satisfaction thereof. The assailed decision is affirmed in all other respects.

SO ORDERED.

Carpio[*]*, Senior Associate Justice,(Chairperson), Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 233542. July 9, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FIDEL G. LAGUERTA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— Article 266-A of the RPC, as amended by R.A. No. 8353, defines the crime of rape x x x Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely, (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of

[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

2. ID.; ID.; ID.; THE ACCUSED MAY BE CONVICTED OF RAPE BASED ON CIRCUMSTANTIAL EVIDENCE, PROVIDED THAT MORE THAN ONE CIRCUMSTANCE IS DULY PROVEN AND THAT THE TOTALITY OR THE UNBROKEN CHAIN OF THE CIRCUMSTANCES PROVEN LEAD TO NO OTHER LOGICAL CONCLUSION THAN THE APPELLANT'S GUILT OF THE CRIME CHARGED.— Parenthetically, proof of the essential elements in a conviction for rape may rest on direct as well as circumstantial evidence. "Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience." Notably, in cases where the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, the accused may be convicted based on circumstantial evidence, provided that more than one circumstance is duly proven and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged. To rule otherwise, and strictly rely on direct evidence to prove rape will lead to the pernicious result of obstructing the successful prosecution of a rapist who renders his victim unconscious before the consummation. Thus, circumstantial evidence is sufficient for conviction if the following conditions set forth in Section 4, Rule 133 of the Rules of Court are met: x x x Evidently, jurisprudence is replete with instances where the Court upheld a conviction for rape based on circumstantial evidence, where in all such cases, the accused-appellant was the only person present with the victim, and upon regaining consciousness the victims felt a sharp pain in their private organ.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT OF THE WITNESSES' CREDIBILITY IS GIVEN WEIGHT AND IS EVEN CONCLUSIVE AND BINDING FOR IT IS IN THE BEST POSITION TO OBSERVE THE WITNESSES AND TO NOTE THEIR DEMEANOR, CONDUCT AND

ATTITUDE UNDER GRILLING EXAMINATION.— x x x [T]he Court is guided by the well-entrenched rule that the trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding, for it is in the best position to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. All of these are important in determining the truthfulness of witnesses and in unearthing the truth.

4. **ID.; ID.; ID.; UNSUBSTANTIATED DENIAL AND ALIBI CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.—** x x x Laguerta's unsubstantiated denial and alibi cannot prevail against AAA's positive identification of him as her defiler. AAA was certain of Laguerta's identity, as the latter was her uncle whom she has known since she was a child. Besides, for an alibi to prosper, it is imperative for the accused to establish that he was not at the *locus delicti* at the time the offense was committed, and that it was physically impossible for him to be at the scene at the time of its commission. Although Laguerta claims that he was at his farm at the time of the rape, it was not physically impossible for him to travel quickly to AAA's house, since his farm is merely one and a half kilometers away from AAA's house. In fact, AAA's home can be reached quickly by tricycle or horse in less than 10 minutes; and easily by foot in 20 minutes.

5. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ABSENT ANY PROOF OF THE DEGREE OF THE RELATIONSHIP OF THE ACCUSED TO THE VICTIM, THE ACCUSED SHOULD ONLY BE CONVICTED OF SIMPLE RAPE.—** Indeed, Article 266-B of the RPC provides that rape is qualified if the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Although the Information alleged that AAA was a minor and that Laguerta was her uncle by affinity ("uncle-in-law"), the prosecution however failed to establish the precise nature of the relationship between Laguerta and AAA. Absent proof of the degree of the relationship between them, Laguerta should only be convicted of simple rape.

6. **ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY; CIVIL INDEMNITY IS AWARDED TO THE OFFENDED PARTY**

AS A KIND OF MONETARY RESTITUTION OR COMPENSATION TO THE VICTIM FOR THE DAMAGE OR INFRACTION INFLICTED BY THE ACCUSED; CASE AT BAR.— It must be noted that the award of civil indemnity for the commission of an offense stems from Article 100 of the RPC which states that "[e]very person criminally liable for a felony is also civilly liable." Civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction inflicted by the accused. Guided by the foregoing, an award of civil indemnity in the amount of Php 75,000.00 should be granted in favor of AAA.

7. ID.; ID.; ID.; EXEMPLARY DAMAGES; EXEMPLARY DAMAGES IS AWARDED TO PUNISH THE OFFENDER FOR HIS OUTRAGEOUS CONDUCT.— Likewise, the amount of exemplary damages should be increased from Php 30,000.00 to Php 75,000.00. The importance of awarding the proper amount of exemplary damages cannot be overemphasized, as this species of damages is awarded to punish the offender for his outrageous conduct, and to deter the commission of similar dastardly and reprehensible acts in the future.

8. ID.; ID.; ID.; MORAL DAMAGES; ONCE THE FACT OF RAPE IS ESTABLISHED, MORAL DAMAGES ARE AWARDED TO A RAPE VICTIM WITHOUT NEED OF PROOF.— Finally, the award of moral damages must likewise be increased to Php 75,000.00. Notably, in rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, considering that the victim suffered moral injuries from her ordeal. This serves as a means of compensating the victim for the manifold injuries such as "physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation" that she suffered in the hands of her defiler. Sadly, AAA was even confined in a shelter due to the agony she experienced after having been sexually abused.

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

REYES, JR., *J.*:

This treats of the Notice of Appeal[1] filed by herein accused-appellant Fidel G. Laguerta (Laguerta) seeking the reversal of the Decision[2] dated December 18, 2015, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 06114, which affirmed the trial court's ruling convicting him of the crime of Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (RPC), as amended.

The Antecedents

In an Information dated March 23, 2007, Laguerta was charged with rape in relation to Section 5 of Republic Act (R.A.) No. 7610,[3] committed as follows:

> That on or about the 5th day of October 2006, x x x in the Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle-in-law of the private complainant, with lewd designs, armed with a bladed weapon, through force, violence, threats and/or intimidation, did then and there, willfully, unlawfully and feloniously attack and assault sexually a certain [AAA],[4] a minor, then seventeen (17) years of age, by having carnal knowledge with her, without her consent and against her will, which debases, degrades and/or demeans her intrinsic worth and dignity as human being.

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[1] CA *rollo*, pp. 104.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Mario V. Lopez and Myra V. Garcia-Fernandez, concurring; *id*. at 84-91.

[3] AN ACT PROVIDING FOR STRONG DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND OTHER PURPOSES. Approved on June 17, 1992.

[4] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

CONTRARY TO LAW.[5]

Upon arraignment, Laguerta pleaded not guilty.[6] Trial ensued thereafter.

Evidence for the Prosecution

At around 2:30 p.m. of October 5, 2006, AAA, then 17 years old, was at home with her two younger sisters. AAA's house was located in Quezon Province. Her parents were then in Manila. After cleaning the house, AAA allowed her sisters to watch television at a neighbor's house, which was at a distance of about 10 to 20 meters away from their home.[7]

After cleaning, AAA decided to take a nap. While she was locking the front door of the house, somebody suddenly chanced upon her and covered her mouth with a handkerchief. AAA looked behind her and saw a man whose face was covered with a black shirt. Immediately, she noticed the assailant's physical built, his fair skin ("*hindi kaputian o kapusyawan*"), and distinguishing marks on his feet ("*may butong nakabukol sa hinlalaki ng paa at yung daliri ay nakabaluktot sa isa pang daliri ng paa*), as well as his voice. Instantly, she recognized the assailant as her Tiyo Fidel (Laguerta), who is her uncle by affinity.[8]

Laguerta poked a bladed weapon on her neck and ordered her not to tell her parents about the incident, or else, he would do the same dastardly act on her sisters. Suddenly, AAA felt her head and nose start to ache, and she lost consciousness thereafter.[9]

When AAA awoke, it was already dark, and she was lying half naked on the bed, with her underwear and shorts placed at

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[5] CA *rollo*, p. 40.

[6] *Id*.

[7] *Id*. at 33.

[8] *Id*.

[9] *Id*.

the foot thereof. She felt an excruciating pain in her private organ, as well as in her thighs. She looked for her younger sisters, and found them at the neighbor's house still watching television. After which, AAA and her sisters proceeded to their grandmother's house. She did not report the matter to her parents out of fear that Laguerta will pursue his threat of harming her and her sisters.[10]

Sometime in February 2007, AAA suddenly felt ill. She was taken to the hospital, and there, it was discovered that she was pregnant. This prompted AAA to report the rape incident to her parents.[11]

Due to the trauma she experienced, AAA was confined in a shelter at Project 4 in Quezon City and was placed under the care of a psychiatrist. She stayed at the shelter until she gave birth on May 23, 2007. AAA's baby was born prematurely after AAA's seventh month of pregnancy. Because of this, the baby was confined at the Quirino Memorial Medical Center.[12]

Version of the Defense

Laguerta vehemently denied the rape charge leveled against him. He claimed that on October 5, 2006, he was planting *camote* at his farm in Polilio, Quezon, from 9:00 a.m. until 4:00 p.m. His farm is approximately one and a half kilometers away from his residence. He claimed that he stayed at the farm the whole day and did not go home to have lunch. In fact, he never even left his house after returning from work.[13]

The defense likewise presented Wilma C. Pavino (Pavino), AAA's class adviser, who testified that AAA attended her class on October 5, 2006 from 7:30 a.m. until 4:30 p.m.[14]

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[10] *Id*. at 68-69.

[11] *Id*. at 69.

[12] *Id*.

[13] *Id*. at 34.

[14] *Id*.

Laguerta claimed that AAA's family concocted the rape charge out of spite because sometime in September 2006, his wife Isabel Laguerta (Isabel) scolded AAA's sister, for being noisy while she (Isabel) was sleeping. Laguerta further asserted that AAA's parents were envious of the Laguerta family because they could afford to send their children to school.[15]

Ruling of the Trial Court

On February 20, 2013, the Regional Trial Court (RTC) rendered a Decision[16] convicting Laguerta of the crime of rape under Article 266-A, paragraph 1(a) of the RPC. The RTC found that the prosecution established Laguerta's guilt beyond reasonable doubt. The testimony of AAA narrating the rape incident was credible. In contrast, the RTC found that Laguerta's defenses of denial and alibi were weak. The RTC noted that Laguerta's alibi that he was at his farm at the time of the incident was tenuous, especially since it was not impossible for him to have traveled to the *situs* of the crime, which was only one and a half kilometers away from his farm. Similarly, the RTC rejected Laguerta's claim that the rape charge was concocted by AAA's family out of spite and envy. The RTC stressed that it was highly improbable for a mother to use her child as an instrument of malice and subject her to humiliation and stigma. Finally, the RTC disregarded defense witness Pavino's testimony for being biased and inconsistent. The trial court remarked that it was highly questionable how Pavino could not even remember the subject that she taught every day, but vividly remembered AAA's presence in school on October 5, 2006.[17]

The dispositive portion of the RTC ruling reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered against the accused finding him guilty beyond reasonable doubt of the crime of rape, defined and [sic] under par. 1 (a) of Article 266-A of the [RPC] and penalized under Article 266-B in relation

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[15] *Id*.

[16] Rendered by Presiding Judge Arnelo C. Mesa; *id*. at 40-53.

[17] *Id*. at 47-48.

to par. 1 of the same law and this court hereby imposed upon him the penalty of imprisonment of *reclusion perpetua*, for him to suffer all the accessory penalties, to pay the private complainant the amount of FIFTY THOUSAND PESOS (Php 50,000.00) as moral damages, THIRTY THOUSAND PESOS (Php 30,000.00) as exemplary damages and to pay the cost of suit.

SO ORDERED.[18]

Aggrieved, Laguerta appealed his conviction before the CA.

Ruling of the CA

On December 18, 2015, the CA rendered the assailed Decision[19] affirming Laguerta's conviction for the crime of rape. The CA ratiocinated that AAA positively identified Laguerta as her assailant. AAA was very much acquainted with Laguerta. She identified him based on his physical built, skin color, voice, and distinguishing marks on his feet. She also unerringly narrated the details and circumstances of how he defiled her. In this respect, her testimony was credible and trustworthy. The CA noted that it was unlikely for a girl of 17 years to expose herself to the degradation of a rape victim, if not for the desire to vindicate herself.[20]

Moreover, the CA refused to give credence to Laguerta's denial and alibi. The CA observed that it was not impossible for Laguerta to be at the scene of the crime, which could easily be reached in less than 10 minutes by tricycle or horse, and 20 minutes by foot.[21]

Thus, the dispositive portion of the assailed CA decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The assailed RTC Decision dated February 20,

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[18] *Id*. at 52-53.

[19] *Id*. at 91.

[20] *Id*. at 90.

[21] *Id*. at 89.

2013 is hereby AFFIRMED with modification granting additional monetary awards of Php 50,000.00 as civil indemnity. All monetary awards shall earn 6% interest *per annum* until paid.

SO ORDERED.[22]

The Issue

The main issue raised for the Court's resolution is whether or not the prosecution sufficiently proved beyond reasonable doubt Laguerta's guilt for the crime of rape.

In support of his appeal, Laguerta alleges that the trial court erred in convicting him despite proof showing that AAA was actually in school on the date when the alleged rape incident transpired. Laguerta anchors his defense on the testimony of Pavino, AAA's class adviser, who confirmed that AAA was in class on October 5, 2006. In relation, Laguerta bewails the trial court's rejection of Pavino's testimony. He argues that Pavino's failure to present the Certification dated March 10, 2007, which showed AAA's name in the class record was justified considering that Pavino testified four years after the date when the Certification was issued. Laguerta posits that it was not unlikely for the record to have been destroyed over the course of time. In the same vein, Laguerta tenaciously maintains that he was at his farm on the alleged time and date of the rape. Additionally, Laguerta questions AAA's testimony, which according to him was riddled with inconsistencies. He points out that in AAA's initial testimony she claimed that she was raped at their house, but on cross-examination stated that the rape occurred in her grandmother's house. He likewise avers that there is a significant difference in the age of gestation as indicated in the medical certificate dated February 6, 2007, which stated 1 1/7 weeks, and the one dated February 7, 2007, which indicated 20 weeks. Finally, the rape is belied by the fact that AAA gave birth seven months after the alleged rape occurred.[23]

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that the prosecution proved

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[22] *Id*. at 91.

[23] *Id*. at 35-36.

the guilt of Laguerta beyond reasonable doubt. The OSG avers that the trial court properly rejected Pavino's testimony, as the latter did not have personal knowledge of AAA's physical presence in school at the time of the incident. Pavino could not have been certain of AAA's presence as the former was not actually with the class the whole day. All that Pavino attested to was that AAA signed the attendance sheet at 1:30 p.m. It must be remembered that the rape incident took place an hour later, and that AAA's house is located at a distance of 30 meters by foot from the school.[24]

In addition, the OSG points out that in matters pertaining to the victim's credibility, the trial court is in the best position to assess the veracity of the victim's claims. In this case, the trial court found AAA's testimony believable. It was highly unlikely for AAA, a young lass of 17, to concoct such sordid tale of rape. Anent the allegation that the Medical Certificates were inconsistent with the gestational dates, such minor detail is of no moment, as the fact of pregnancy is merely corroborative evidence of rape. To be sure, the testimony of AAA that the rape occurred on October 5, 2006, and she gave birth prematurely on May 23, 2007, actually corroborates the fact that Laguerta indeed raped her.[25]

Ruling of the Court

The instant appeal is bereft of merit.

AAA's Rape Was Proven by Circumstantial Evidence Through an Unbroken Chain of Established Circumstances That Lead to No Other Logical Conclusion Except for Laguerta's Guilt Beyond Reasonable Doubt.

Article 266-A of the RPC, as amended by R.A. No. 8353,[26] defines the crime of rape as follows:

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[24] *Id*. at 71.

[25] *Id*. at 71-73.

[26] *The Anti-Rape Law of 1997*.

Art. 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 is 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. (Emphasis Ours)

Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely, (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.[27]

Parenthetically, proof of the essential elements in a conviction for rape may rest on direct as well as circumstantial evidence.[28] "Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience."[29] Notably, in cases where the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, the accused may be convicted based on circumstantial evidence, provided that more than one circumstance is duly proven and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged.[30] To

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[27] *People v. Esteban*, 735 Phil. 663, 670 (2014).

[28] *People v. Nuyok*, 759 Phil. 437, 443 (2015).

[29] *People v. Broniola*, 762 Phil. 186, 194 (2015), citing *People v. Pascual*, 596 Phil. 260 (2009).

[30] *People v. Belgar*, 742 Phil. 404, 416 (2014).

rule otherwise, and strictly rely on direct evidence to prove rape will lead to the pernicious result of obstructing the successful prosecution of a rapist who renders his victim unconscious before the consummation.[31]

Thus, circumstantial evidence is sufficient for conviction if the following conditions set forth in Section 4, Rule 133 of the Rules of Court are met:

Sec. 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In fact, in the case of *People v. Nuyok*,[32] the Court upheld a conviction for rape on the basis of circumstantial evidence, upon proof of the following circumstances, namely, (i) the accused laid beside the victim while she was about to sleep; (ii) he punched her in the stomach, causing her to lose consciousness; and (iii) upon waking up, she felt pain in her vagina, and noticed that her *sando* was already raised up to her neck, and her panties had blood.[33] The Court stressed that the accused may be "declared guilty of rape even if the sole witness against him was the victim who had been rendered unconscious at the time of the consummation of carnal knowledge provided sufficient circumstantial evidence existed showing that the victim was violated, and that it was the accused and no other who had committed the violation."[34]

The same pronouncement was reached in the case of *People v. Belgar*,[35] wherein the Court upheld a conviction for rape

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[31] *People v. Nuyok*, *supra*, at 450-451.

[32] 759 Phil. 437 (2015).

[33] *Id*. at 444-450.

[34] *Id*. at 450-451.

[35] 742 Phil. 404 (2014).

based on circumstantial evidence. Again, the chain of events showed that (i) the victim was awakened when she felt someone touching her feet; (ii) she saw therein accused-appellant Bobby Belgar poking a knife at her neck; (iii) he injected an unknown substance into her stomach; (iv) she suddenly fell unconscious; and later, (v) when she regained consciousness, she was naked, and her vagina was aching and soaked with white and red substance. Again, the Court affirmed that "[t]he commission of the rape was competently established although AAA had been unconscious during the commission of the act."[36]

Finally, in *People v. Perez,*[37] the Court affirmed the conviction of therein accused for rape based on circumstantial evidence, despite the absence of direct proof of the sexual intercourse. Here, (i) the accused entered the victim's room; (ii) covered her nose and mouth with a chemically-laced cloth; (iii) the victim lost consciousness, and then, (iv) the victim awoke feeling pain in her vagina, and saw blood and a white substance in her vagina. Her clothes were in disarray and her underwear was in the corner of the room.

Remarkably, the Court rendered the same ruling in the cases of *People v. Lupac,*[38] and *People v. Polonio.*[39] Evidently, jurisprudence is replete with instances where the Court upheld a conviction for rape based on circumstantial evidence, where in all such cases, the accused-appellant was the only person present with the victim, and upon regaining consciousness the victims felt a sharp pain in their private organ.

Thus, it is all too apparent that the cases cited bear a factual kinship with the instant case. Particularly, the prosecution proved through AAA's testimony that: (i) Laguerta chanced upon her, poked a knife at her neck and threatened her; (ii) he covered her mouth with a handkerchief, which caused her head and nose

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[36] *Id*. at 408.

[37] 366 Phil. 741 (1999).

[38] 695 Phil. 505 (2012).

[39] 786 Phil. 825 (2016).

to ache; (iii) she was rendered unconscious; and (iv) upon waking up, she found herself lying half-naked on the bed, with a sharp pain in her vagina and thighs, with her undergarment and shorts lain on the side. Added to this, AAA prematurely gave birth seven months after the rape incident. All these interwoven circumstances form an unbroken chain that unerringly point to Laguerta, and no other, as the man who had carnal knowledge against AAA.

Laguerta's Defenses of Denial and AlibiCrumble Against AAA's Positive Identification. Likewise, the RTC's Assessment of AAA's Credibility Shall Not Be Disturbed On Appeal.

Despite proof unerringly establishing his guilt for the crime of rape, Laguerta seeks exoneration by discrediting AAA's testimony, and lambasting it as unworthy of credence. In addition, Laguerta laments that the rape charge was maliciously concocted out of spite. He harps on the testimony of Pavino who related that AAA was in school at the time of the rape incident.

The Court is not convinced. Pavino's testimony, in addition to being inconsistent and biased, is highly questionable.

Pavino confirmed that AAA was present in school on October 5, 2006. Her assertion was based on a Certification dated March 10, 2007, issued by the school registrar, which stated that AAA's name appeared in the attendance sheet.[40] Unfortunately however, Pavino was unable to produce the said Certification.[41] It must also be noted that Pavino was not actually present the entire day, for her to accurately attest to AAA's presence in school at precisely 2:30 p.m. Besides, even assuming for the sake of argument that AAA indeed signed the attendance sheet at 1:30 p.m., it was not impossible for her to be home by 2:30 p.m., considering that her house can easily be reached in 30 minutes by foot.[42]

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[40] CA *rollo*, p. 47.

[41] *Id*.

[42] *Id*. at 71.

Neither does the Court subscribe to Laguerta's contention that the rape charge was contrived out of spite. It is highly unlikely for AAA's parents to subject their child to the trauma and stigma of undergoing a grueling trial in exchange for avenging a purportedly frivolous quarrel and petty jealousy. Further, it is settled that motives, such as those attributable to revenge, family feuds and resentment cannot destroy the credibility of a minor complainant who gave an unwavering testimony in open court.[43]

Needless to say, the trial court found AAA to be a truthful and candid witness. Her narration of the entire traumatic ordeal was clear, candid, and straightforward. The trial court even noted that she cried twice while delivering her testimony, which unmasked her pain and showed her sincerity. More so, AAA was impregnated due to the rape incident, and was even confined for months at a shelter, due to the trauma she suffered. It is highly unlikely for her to undergo such stress and trauma if the charge was a fake tale.

Further, the Court is guided by the well-entrenched rule that the trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding,[44] for it is in the best position to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. All of these are important in determining the truthfulness of witnesses and in unearthing the truth.[45]

Finally, Laguerta's unsubstantiated denial and alibi cannot prevail against AAA's positive identification of him as her defiler. AAA was certain of Laguerta's identity, as the latter was her uncle whom she has known since she was a child.[46] Besides, for an alibi to prosper, it is imperative for the accused to establish that he was not at the *locus delicti* at the time the offense was committed, and that it was physically impossible for him to be

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[43] *People v. Itdang*, 397 Phil. 692, 700-701 (2000).

[44] *People v. Ocdol, et al.*, 741 Phil. 701, 714 (2014).

[45] *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

[46] CA *rollo*, p. 42.

at the scene at the time of its commission.[47] Although Laguerta claims that he was at his farm at the time of the rape, it was not physically impossible for him to travel quickly to AAA's house, since his farm is merely one and a half kilometers away from AAA's house. In fact, AAA's home can be reached quickly by tricycle or horse in less than 10 minutes; and easily by foot in 20 minutes.[48]

The Proper Charge and Penalties

A perusal of the Information shows that Laguerta was charged with rape under Article 266-A, paragraph 1(a), in relation to R.A. No. 7610, Section 5, by "attacking and assaulting AAA, a minor, by having carnal knowledge with her without her consent and against her will, which debases, degrades and demeans her intrinsic worth and dignity as a human being."[49]

In the cases of *People v. Abay,*[50] *People v. Pangilinan,*[51] and *People of the Philippines v. Nicolas Tubillo y Abella,*[52] the Court discussed the proper imposable penalty in case the accused is charged with rape by carnal knowledge in relation to Section 5 of R.A. No. 7610. In these instances, the Court scrutinized the wordings in the indictment, in addition to the facts proven by the prosecution during the trial.

Particularly, in *Abay,*[53] the Court explained that although the Information alleged the crime of rape, in relation to R.A. No. 7610, therein appellant must be convicted of rape considering that the prosecution's evidence only established that therein appellant forced the victim to engage in sexual intercourse through force and intimidation.[54] The Court explained that:

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[47] *People v. Manalili*, 716 Phil. 762, 774 (2013).

[48] CA *rollo*, p. 89.

[49] *Id*. at 31-32.

[50] 599 Phil. 390 (2009).

[51] 676 Phil. 16 (2011).

[52] G.R. No. 220718, June 21, 2017.

[53] *Supra*.

[54] *Id*. at 396-397.

Under Section 5(b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the [RPC] and penalized with *reclusion perpetua.* On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the [RPC]. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the [RPC] (on complex crimes), a felony under the [RPC] (such as rape) cannot be complexed with an offense penalized by a special law.

In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the [RPC]. **While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.**[55] (Citations omitted and emphasis Ours)

The same ruling and reasoning was adopted by the Court in *Pangilinan,*[56] and since the prosecution's evidence proved carnal knowledge through force and intimidation, the Court convicted therein accused-appellant of rape under Article 266-A, paragraph 1 of the RPC. Added to this, the Court noted that the evidence presented by the prosecution "did not refer to the broader scope of 'influence or coercion' under Section 5(b) of R.A. No. 7610."[57]

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[55] *Id*. at 395-397.

[56] *Supra* note 51.

[57] *Id*. at 36.

Finally, in the more recent case of *Tubillo,*[58] the Court examined the evidence presented by the prosecution as to "whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim." Finding that the evidence focused on the former (force or intimidation employed on the victim), the Court convicted therein accused-appellant of rape under Article 266-A, paragraph 1(a) of the RPC.[59]

Guided by the foregoing, the Court notes that similar to the facts in the afore-mentioned jurisprudence, the evidence in the instant case focused on the fact that Laguerta had carnal knowledge of AAA through force and intimidation. The prosecution sufficiently established that Laguerta chanced upon AAA, poked her neck with a bladed weapon, covered her eyes and nose, and thereafter had sexual intercourse with her against her will. Accordingly, this striking similarity of facts calls for the same ruling as laid down in *Abay, Pangilinan,* and *Tubillo.*

Having thus resolved that Laguerta should be convicted of rape under Article 266-A, paragraph 1(a), the next question to be resolved is whether he should be convicted of simple rape or qualified rape.

Indeed, Article 266-B of the RPC provides that rape is qualified if the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Although the Information alleged that AAA was a minor and that Laguerta was her uncle by affinity ("uncle-in-law"), the prosecution however failed to establish the precise nature of the relationship between Laguerta and AAA. Absent proof of the degree of the relationship between them, Laguerta should only be convicted of simple rape.

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[58] *Supra* note 52.

[59] *Id.*

As for the penalties, the Court deems it necessary to modify the amount of damages awarded by the trial court and the CA in order to conform with current jurisprudence.

It must be noted that the award of civil indemnity for the commission of an offense stems from Article 100 of the RPC which states that "[e]very person criminally liable for a felony is also civilly liable." Civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction inflicted by the accused.[60] Guided by the foregoing, an award of civil indemnity in the amount of Php 75,000.00 should be granted in favor of AAA.

Likewise, the amount of exemplary damages should be increased from Php 30,000.00 to Php 75,000.00.[61] The importance of awarding the proper amount of exemplary damages cannot be overemphasized, as this species of damages is awarded to punish the offender for his outrageous conduct, and to deter the commission of similar dastardly and reprehensible acts in the future.[62]

Finally, the award of moral damages must likewise be increased to Php 75,000.00. Notably, in rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, considering that the victim suffered moral injuries from her ordeal.[63] This serves as a means of compensating the victim for the manifold injuries such as "physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation" that she suffered in the hands of her defiler.[64] Sadly, AAA was even confined in a shelter due to the agony she experienced after having been sexually abused.

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[60] *People v. Jugueta*, 783 Phil. 806, 826 (2016).

[61] *Id*. at 852-853.

[62] *People of the Philippines v. Rommel Ronquillo*, G.R. No. 214762, September 20, 2017.

[63] *Id*., citing *People v. Delabajan*, 685 Phil. 236, 245 (2012).

[64] *People of the Philippines v. Rommel Ronquillo*, *id*.

WHEREFORE, premises considered, the instant appeal is **DISMISSED for lack of merit.** Accordingly, the Decision dated December 18, 2015, rendered by the Court of Appeals in CA-G.R. CR-HC No. 06114, convicting accused-appellant Fidel G. Laguerta of Rape, is **AFFIRMED with modification.** Accused-appellant Fidel G. Laguerta is sentenced to *reclusion perpetua* without eligibility for parole, and is ordered to pay the victim AAA the following monetary awards: (i) Php 75,000.00 as civil indemnity; (ii) Php 75,000.00 as moral damages; (iii) Php 75,000.00 as exemplary damages; and (iv) the costs of suit. All amounts due shall earn legal interest of six percent (6%) *per annum* from the date of the finality of this Decision until the full satisfaction thereof.

SO ORDERED.

Carpio[*]*, Senior Associate Justice,(Chairperson), Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 235652. July 9, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX and YYY,**[*] *accused-appellants.*

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[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

[*] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to RA 7610, 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; RA 9292, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (REPUBLIC ACT NO. 9208); TERM "TRAFFICKING IN PERSONS," DEFINED.— Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph."

2. ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; ELEMENTS; ESTABLISHED.— The crime of "Trafficking in Persons" becomes qualified under, among others, the following circumstances: Section 6. *Qualified Trafficking in Persons.* – The following are considered as qualified trafficking: (a) When the trafficked person is a child; x x x (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee; x x x In this case, accused-appellants were charged of three (3) counts each of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208. XXX was further charged

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the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, emtitleld "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

with another count of the same crime under Section 4 (a) also in relation to Section 6 (a) and (d) of the same law. Section 4 (a) and (e) of RA 9208. As correctly ruled by the courts *a quo,* accused-appellants are guilty beyond reasonable doubt of three (3) counts of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208 as the prosecution had established beyond reasonable doubt that: *(a)* they admittedly are the biological parents of AAA, BBB, and CCC, who were all minors when the crimes against them were committed; *(b)* they made their children perform acts of cybersex for different foreigner customers, and thus, engaged them in prostitution and pornography; *(c)* they received various amounts of money in exchange for the sexual exploitation of their children; and *(d)* they achieved their criminal design by taking advantage of their children's vulnerability as minors and deceiving them that the money they make from their lewd shows are needed for the family's daily sustenance. In the same manner, the courts *a quo* likewise correctly convicted XXX of one (1) count of the same crime, this time under Section 4 (a) in relation to Section 6 (a) and (d) of RA 9208, as it was shown that XXX transported and provided her own minor biological child, AAA, to a foreigner in Makati City for the purpose of prostitution, again under the pretext that the money acquired from such illicit transaction is needed for their family's daily sustenance.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT IS IN THE BEST POSITION TO ASSESS AND DETERMINE THE CREDIBILITY OF THE WITNESSES PRESENTED BY BOTH PARTIES, AND HENCE, DUE DEFERENCE SHOULD BE ACCORDED TO THE SAME; EXCEPTIONS NOT PRESENT.— [T]he Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same. As such, accused-appellants' conviction for Qualified Trafficking in Persons must be upheld.

4. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (REPUBLIC ACT NO. 9208); QUALIFIED

TRAFFICKING IN PERSONS; ACCUSED-APPELLANTS FOUND GUILTY THEREOF; PENALTY OF LIFE IMPRISONMENT AND A FINE, IMPOSED.— Anent the proper penalty to be imposed on accused-appellants, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the courts *a quo* correctly sentenced them to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00 for each count of Qualified Trafficking in Persons.

5. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS. — [T]he courts *a quo* correctly ordered accused-appellants to pay the victims the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages for each count of Qualified Trafficking in Persons as such amounts are at par with prevailing jurisprudence. Further, the Court deems it proper to impose on all monetary awards due to the victims legal interest of six percent (6%) per annum from finality of judgment until full payment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellants XXX and YYY (accused-appellants) assailing the Decision[2] dated August 25, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08446, which affirmed the Judgment[3] dated October 23, 2015 of the Regional Trial Court of Biñan,

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[1] See Notice of Appeal dated September 15, 2017; *rollo*, pp. 35-36.

[2] *Id*. at 2-34. Penned by Associate Justice Ramon A. Cruz with Associate Justices Ricardo R. Rosario and Pablito A. Perez concurring.

[3] CA *rollo* at 56-79. Penned by Judge Teodoro N. Solis.

Laguna, Branch 25 (RTC) in Criminal Case Nos. 21802-B, 21803-B, 21804-B, and 24608-B, convicting them of multiple counts of Qualified Trafficking in Persons defined and penalized under Section 4 in relation to Section 6 of Republic Act No. (RA) 9208,[4] otherwise known as the "Anti-Trafficking in Persons Act of 2003."

The Facts

This case stemmed from various Informations[5] filed before the RTC, charging accused-appellants and a certain John Doe of the crime of Qualified Trafficking in Persons, among others, the accusatory portions of which read:

Criminal Case No. 21802-B

The undersigned 4th Assistant Provincial Prosecutor, hereby accuses XXX and YYY of the crime of Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208, committed as follows:

That for the period comprising the years 2008, 2009, 2010 up to March 5, 2011, in the City of Cabuyao, Province of Laguna, Philippines within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other, by deception and taking advantage of the vulnerability of the minor complainant being the biological parents of the minor complainant having custody and control over AAA, 14 years old, born on 14 December 1996, did then and there maintain for the purpose of prostitution and/or pornography said minor complainant by then and there providing food, shelter and clothing to induce and persuade the said minor complainant, by using the computer and webcam and internet connections, for the minor complainant to engage in private chat wherein persons, usually foreigners would pay a fee, for the minor complainant to show her genitals, buttocks, breasts, pubic area, and to perform simulated sexual explicit activities as by touching and

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[4] Entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

[5] *Rollo*, pp. 3-6 and 11-12.

fondling her genitals, buttocks, breasts, pubic area, and uttering words as "FUCK ME!" "LICK ME!", instilling in the mind of the minor complainant that the same is necessary for their support and daily sustenance as the earnings she derives from such activities will pay for the family's food, rental and utilities in violation of the said law.

With the presence of the qualifying circumstances that (i) the trafficked person AAA, 14 years old, born on 14 December 1996, is a child and (ii) the accused are the parents of the minor complainant.

CONTRARY TO LAW.[6]

Criminal Case No. 21803-B

The undersigned 4th Assistant Provincial Prosecutor, hereby accuses XXX and YYY of the crime of Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208, committed as follows:

That for the period comprising the year 2010 up to March 5, 2011, in the City of Cabuyao, Province of Laguna, Philippines within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other, by deception and taking advantage of the vulnerability of the minor complainant being the biological parents of the minor complainant having custody and control over BBB, 10 years old, born on 14 May 2000, did then and there maintain for the purpose of prostitution and/or pornography said minor complainant by then and there providing food, shelter and clothing to induce and persuade the said minor complainant, by using the computer and webcam and internet connections, to dance naked in front of the camera being viewed through the internet, by a person/s, usually a foreigner named "Sam", who pays a fee, for the minor complainant to: (i) for the minor complainant to engage in private chat wherein persons, usually foreigners would pay for a fee, for the minor complainant to show her genitals, buttocks, breasts, instilling in the mind of the minor complainant that the same is necessary for their support and daily sustenance as the earnings she derives from such activities will pay for the family's food, rental and utilities in violation of the said law.

With the presence of the qualifying circumstances that (i) the trafficked person BBB, 10 years old, born on 14 May 2000, is a child and (ii) the accused are the parents of the minor complainant.

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

CONTRARY TO LAW.[7]

Criminal Case No. 21804-B

The undersigned 4th Assistant Provincial Prosecutor, hereby accuses XXX and YYY of the crime of Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208, committed as follows:

That for the period comprising the year 2010 up to March 5, 2011, in the City of Cabuyao, Province of Laguna, Philippines within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other, by deception and taking advantage of the vulnerability of the minor complainant being the biological parents of the minor complainant having custody and control over CCC, 9 years old, born on July 24, 2001, did then and there maintain for the purpose of prostitution and/or pornography said minor complainant by then and there providing food, shelter and clothing to induce and persuade the said minor complainant, by using the computer and webcam and internet connections, to dance naked in front of the camera being viewed through the internet, by person/s, usually a foreigner named "Sam", who pays a fee, for the minor complainant to: (i) for the minor complainant to engage in private chat wherein persons, usually foreigners would pay for a fee, for the minor complainant to show her genitals, buttocks, breasts, pubic area[,] instilling in the mind of the minor complainant that the same is necessary for their support and daily sustenance as the earnings she derives from such activities will pay for the family's food, rental and utilities in violation of the said law.

With the presence of the qualifying circumstances that (i) the trafficked person, CCC, 9 years old, born on July 24, 2001, is a child and (ii) the accused are the parents of the minor complainant.

CONTRARY TO LAW.[8]

Criminal Case No. 24608-B

The undersigned 4th Assistant Provincial Prosecutor, hereby accuses XXX and JOHN DOE, whose name and personal circumstances are yet unknown, for the crime of Section 4 (a) in relation to Section 6 (a) and (d) of RA 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003", committed as follows:

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

[8] *Id*. at 5-6.

That sometime in April 2010 or in the dates prior thereto in the City of Cabuyao, Province of Laguna, Philippines within the jurisdiction of this Honorable Court, the above-named accused XXX, being the mother of herein complainant AAA, 14 years old, born on 14 December 1996, by taking advantage of the vulnerability of the minor complainant as being the mother accused exerts influence and control over the minor complainant with the intention and purpose of exploitation and prostitution, did then and there willfully, unlawfully and feloniously recruit, transport and provide complainant minor AAA, for the purpose of prostitution by then and there bringing her from their residence in Cabuyao, Laguna to the hotel room occupied by one JOHN HUBBARD, a foreign national in Makati City wherein the said John Hubbard had sexual intercourse with the minor complainant in exchange of material consideration in the amount of One Hundred Thousand Pesos (₱100,000.00).

With the qualifying circumstances that the trafficked person, AAA, 14 years old, born on 14 December 1996, is a child and that the accused is a parent and exercises parental authority over the trafficked person as she is the mother of complainant AAA.

CONTRARY TO LAW.[9]

The prosecution claimed that AAA, BBB, and CCC are the minor children of spouses XXX and YYY. AAA claimed that sometime in April 2010, when she was just 13 years old, her mother XXX brought her to a hotel in Makati to meet with a certain John Hubbard who proceeded to have sexual intercourse with her. AAA further alleged that from 2008 to 2011, XXX ordered her to engage in cybersex for three (3) to four (4) times a week in pornographic websites where AAA was shown in her underwear and made to do sexual activities in front of the computer. For their part, BBB and CCC corroborated AAA's statements, both averring that from 2010-2011, XXX ordered them to dance naked in front of the computer with internet connectivity while facilitating the webcam sessions and chatting with a certain "Sam," their usual client. BBB and CCC alleged that during those sessions, their father YYY would be outside the room or fixing the computer. The children all claimed that

[9] *Id*. at 11-12.

they were made to do sexual activities to earn money for their household expenses which were collected by YYY in remittance centers.[10]

Sometime in February 2011, AAA sought the assistance of the Department of Social Welfare and Development (DSWD) as she wanted her and her siblings to be rescued. AAA was then taken by the DSWD Social Worker, who then coordinated with the National Bureau of Investigation (NBI). After making an investigation and a technical verification of the pornographic websites which revealed photos and transactions of AAA, the NBI applied for and was granted a search warrant. Subsequently, the law enforcement authorities implemented the search warrant, resulting in the rescue of AAA, BBB, and CCC, the confiscation of the computer units and paraphernalia connected with the alleged crimes, and the arrest of both XXX and YYY.[11]

For their defense, accused-appellants denied the accusations and claimed not knowing any motive for their children's accusations as XXX is a housewife, while YYY works at a printing press. They alleged that AAA ran away when she was impregnated by her boyfriend and denied that computer gadgets were confiscated from them.[12]

The RTC Ruling

In a Judgment[13] dated October 23, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of four (4) counts of Qualified Trafficking in Persons as defined and penalized under RA 9208. Accordingly, they were sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00 for each count, and to pay the victims the amounts of ₱30,000.00 as moral damages and ₱10,000.00 as exemplary

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[10] See *id*. at 12-14. See also Appellee's Brief dated May 9, 2017; CA *rollo*, pp. 111-113.

[11] See *id*. at 13-15. See also CA *rollo*, pp. 113-114.

[12] See *id*. at 15-16. See also CA *rollo*, p. 48.

[13] CA *rollo*, pp. 56-79.

damages for each count.[14] All other charges[15] against them were dismissed for being superfluous as they are deemed subsumed under the crimes for which they were convicted.[16]

The RTC found that the prosecution had proven beyond reasonable doubt the fact that accused-appellants had conspired and confederated with one another to maintain and exploit their children, AAA, BBB, and CCC, into committing cybersex with several foreigners through various websites. In this regard, the RTC pointed out that accused-appellants' assertion that the charges against them are merely fabricated cannot be given credence in light of the children's clear and straightforward testimonies and the lack of ill motive to testify against their own parents.[17]

Aggrieved, accused-appellants appealed to the CA.[18]

The CA Ruling

In a Decision[19] dated August 25, 2017, the CA affirmed accused-appellants' conviction, with the following modifications: (*a*) YYY's conviction is reduced to three (3) counts of Qualified Trafficking in Persons; and (*b*) the awards of damages for the

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[14] *Id*. at 79.

[15] Aside from violation of RA 9208, they were also charged for violations of RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," otherwise known as the "SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT," approved on June 17, 1992 and RA 9775, entitled "AN ACT DEFINING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES," otherwise known as the "ANTI-CHILD PORNOGRAPHY ACT OF 2009," approved on November 17, 2009.

[16] See CA *rollo*, pp. 76-78.

[17] See *id*. at 67-76.

[18] See Brief for the Accused-Appellants dated December 15, 2016; *id*. at 37-54.

[19] *Rollo*, pp. 2-34.

victims were increased to ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages.[20]

In affirming accused-appellants' respective convictions, the CA gave credence to the testimonies of the three (3) children-victims who not only positively identified accused-appellants as the perpetrators of the crime, but also straightforwardly explained the acts of sexual exploitation perpetuated against them by their own parents. This notwithstanding, the CA found it appropriate to find the children's father, YYY, guilty for only three (3) counts of Qualified Trafficking, as he was only named as an accused in three (3) of the four (4) total Informations[21] for such crime filed before the RTC.[22]

Hence, this appeal.[23]

The Issue Before the Court

The issue for the Court's resolution is whether or not XXX and YYY are guilty beyond reasonable doubt of four (4) and three (3) counts, respectively, of Qualified Trafficking in Persons.

The Court's Ruling

The appeal is without merit.

Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having

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[20] See *id*. at 31.

[21] A reading of the Information in Criminal Case No. 24608-B would show that YYY was not included as an accused, as it only listed XXX and a certain John Doe as the accused. (See *id*. at 11-12.)

[22] *Id*. at 19-30.

[23] See Notice of Appeal dated September 15, 2017; *id*. at 35-36.

control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph." The crime of "Trafficking in Persons" becomes qualified under, among others, the following circumstances:

Section 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

x x x x x x x x x

In this case, accused-appellants were charged of three (3) counts each of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208. XXX was further charged with another count of the same crime under Section 4 (a) also in relation to Section 6 (a) and (d) of the same law. Section 4 (a) and (e) of RA 9208 reads:

Section 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography;

x x x x x x x x x

As correctly ruled by the courts *a quo*, accused-appellants are guilty beyond reasonable doubt of three (3) counts of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208 as the prosecution had established beyond reasonable doubt that: (*a*) they admittedly are the biological parents of AAA, BBB, and CCC, who were all minors when the crimes against them were committed; (*b*) they made their children perform acts of cybersex for different foreigner customers, and thus, engaged them in prostitution and pornography; (*c*) they received various amounts of money in exchange for the sexual exploitation of their children; and (*d*) they achieved their criminal design by taking advantage of their children's vulnerability as minors and deceiving them that the money they make from their lewd shows are needed for the family's daily sustenance.

In the same manner, the courts *a quo* likewise correctly convicted XXX of one (1) count of the same crime, this time under Section 4 (a) in relation to Section 6 (a) and (d) of RA 9208, as it was shown that XXX transported and provided her own minor biological child, AAA, to a foreigner in Makati City for the purpose of prostitution, again under the pretext that the money acquired from such illicit transaction is needed for their family's daily sustenance.

In light of the foregoing, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[24]

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[24] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

As such, accused-appellants' conviction for Qualified Trafficking in Persons must be upheld.

Anent the proper penalty to be imposed on accused-appellants, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the courts *a quo* correctly sentenced them to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00 for each count of Qualified Trafficking in Persons.

Finally, the courts *a quo* correctly ordered accused-appellants to pay the victims the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages for each count of Qualified Trafficking in Persons as such amounts are at par with prevailing jurisprudence.[25] Further, the Court deems it proper to impose on all monetary awards due to the victims legal interest of six percent (6%) per annum from finality of judgment until full payment.[26]

WHEREFORE, the appeal is **DENIED**. The Decision dated August 25, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08446 is **AFFIRMED** with **MODIFICATIONS** as follows:

(*a*) In Criminal Case No. 21802-B, XXX and YYY are found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208. Accordingly, they are sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, they are ordered to pay the victim, AAA, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from finality of judgment until fully paid;

(*b*) In Criminal Case No. 21803-B, XXX and YYY are found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4 (e) in relation

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[25] See *People v. Hirang*, G.R. No. 223528, January 11, 2017.

[26] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 338.

to Section 6 (a) and (d) of RA 9208. Accordingly, they are sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, they are ordered to pay the victim, BBB, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from finality of judgment until fully paid;

(*c*) In Criminal Case No. 21804-B, XXX and YYY are found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208. Accordingly, they are sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, they are ordered to pay the victim, CCC, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from finality of judgment until fully paid; and

(*d*) In Criminal Case No. 24608-B, XXX is found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4 (a) in relation to Section 6 (a) and (d) of RA 9208. Accordingly, she is sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, she is ordered to pay the victim, AAA, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from finality of judgment until fully paid.

SO ORDERED.

Carpio[*]*, Senior Associate Justice,* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[*] Per Section 12, R.A. 296, *The Judiciary Act of 1948*, as amended.

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ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Application of — Private persons who conspire with public officers may be indicted and, if found guilty, held liable for violation of Sec. 3(g) of R.A. No. 3019. (PCGG *vs*. Hon. Gutierrez, G.R. No. 189800, July 9, 2018) p. 844

Blameless ignorance doctrine — Applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action; generally, the prescriptive period shall commence to run on the day the crime is committed; that an aggrieved person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the prescriptive period; an exception to this rule is the "blameless ignorance" doctrine, incorporated in Sec. 2 of Act No. 3326. (PCGG *vs*. Hon. Gutierrez, G.R. No. 189800, July 9, 2018) p. 844

— Under this doctrine, the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action; the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action. (*Id*.)

Prescriptive period — All offenses punishable under said law shall prescribe in ten (10) years; this period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195, which took effect on March 16, 1982. (PCGG *vs*. Hon. Gutierrez, G.R. No. 189800, July 9, 2018) p. 844

Probable cause — Defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. (PCGG *vs*. Hon. Gutierrez, G.R. No. 189800, July 9, 2018) p. 844

Section 3 (e) — To justify an indictment under Sec. 3(e), the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs; the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph. (*Id*.)

APPEALS

Appeal from a decision of the Court of Appeals on a labor case decided under Rule 65 — When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under Rule 45, the general rule is that this Court may only pass upon questions of law; judicial review under Rule 45 is confined to the question of whether or not the Court of Appeals correctly determined the presence or absence of grave abuse of discretion in the National Labor Relations Commission decision before it and not on the basis of whether the National Labor Relations Commission decision on the merits of the case was correct. (Abuda *vs*. L. Natividad Poultry Farms, G.R. No. 200712, July 4, 2018) p. 554

Appeal in criminal cases — An appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs*. Belmonte *y* Saa, G.R. No. 224588, July 4, 2018) p. 719

— In a petition for review under Rule 45, only questions of law may be raised; our jurisdiction is limited to reviewing only errors of law, and not weighing all over again evidence already considered in the proceedings below; the resolution of factual issues is the function of lower courts, whose findings are accorded with respect, unless certain exceptions are present to warrant review of these findings. (Rebultan *vs*. Sps. Daganta, G.R. No. 197908, July 4, 2018) p. 521

— Only questions of law should be raised in petitions filed because the 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 court when supported by substantial evidence; as in every rule, there are exceptions which have been enunciated in a plethora of cases; these are: (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 findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record. (Anzures *vs*. Sps. Ventanilla, G.R. No. 222297, July 9, 2018) p. 946

— The jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely

Code of Professional Responsibility — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct; a lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar; a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. (Gubaton *vs*. Atty. Amador, A.C. No. 8962, July 9, 2018) p. 825

— A lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession; the use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. (Washington *vs*. Atty. Dicen, A.C. No. 12137, July 9, 2018) p. 837

— Canon 8 of the CPR in particular, instructs that a lawyer's arguments in his pleadings should be gracious to both the court and his opposing counsel and must be of such words as may be properly addressed by one gentleman to another; the language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive. (*Id*.)

— Conduct relative to the non-filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause; an attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence; failure to file the brief within the reglementary period despite notice certainly constitutes inexcusable negligence, more so if the failure resulted in the dismissal of the appeal. (De Borja *vs*. Atty. Mendez, Jr., A.C. No. 11185 [Formerly CBD No. 12-3619], July 4, 2018) p. 476

— Court has refrained from imposing the actual penalties in the presence of mitigating factors; factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

— The chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/ confiscation to receipt by the forensic laboratory to safekeeping to presentation in court for destruction; such record of movements and custody of seized items shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition. (*Id.*)

— The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (*Id.*)

— The plurality of the breaches of procedure committed by the police officers, which were glaringly unjustified by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellants, as the integrity and evidentiary value of the *corpus delicti* had been compromised. (People *vs*. Cordova, G.R. No. 231130, July 9, 2018) p. 1015

— While the delay in itself is not fatal to the prosecution's case as it may be excused based on a justifiable ground, it exposes the items seized to a higher probability of being handled by even more personnel and, consequently, to a higher risk of tampering or alteration. (*Id.*)

— While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity

— The failure of the prosecution to offer any justifiable explanation for its non-compliance with the mandatory requirements of Sec. 21 of R.A. No. 9165 creates reasonable doubt in the conviction of the accused for violation of Sec. 5, Art. II of R.A. No. 9165. (*Id.*)

— The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter possible planting of evidence; failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; however, in case of non-compliance, the prosecution must be able to explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. (*Id.*)

CONSPIRACY

Existence of — Arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; while there was no express agreement between the malefactors, their concerted actions indicate that they conspired with each other. (People *vs.* Bermudo *y* Marcellano, G.R. No. 225322, July 4, 2018) p. 748

— Direct proof of a previous agreement to commit a crime is not indispensable in conspiracy; conspiracy may be deduced from the mode and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves, when such point to a joint purpose and design. (People *vs.* Cariño *y* Gocong, G.R. No. 232624, July 9, 2018) p. 1041

— There is an implied conspiracy when two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in

any offense included therein, has been committed by the person sought to be arrested. (*Id*.)

— If the Information is valid on its face and the prosecutor made no manifest error or his findings of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts; the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor the determination of what constitutes sufficient evidence to establish probable cause for the purpose of filing an information to the court. (*Id*.)

— The determination of the judge of the probable cause for the purpose of issuing a warrant of arrest does not mean, however, that the trial court judge becomes an appellate court for purposes of assailing the determination of probable cause of the prosecutor; the proper remedy to question the resolution of the prosecutor as to his finding of probable cause is to appeal the same to the Secretary of Justice. (*Id*.)

— The executive determination of probable cause concerns itself with whether there is enough evidence to support an information being filed; the judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. (*Id*.)

— The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits. (*Id*.)

— There are two kinds of determination of probable cause: executive and judicial; the executive determination of probable cause is one made during preliminary investigation; it is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial; such official has the quasi-judicial authority to determine

EVIDENCE

Burden of proof — Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. (People *vs.* Belmonte *y* Saa, G.R. No. 224588, July 4, 2018) p. 719

— Proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court; this is a pre-condition for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist. (*Id.*)

— The prosecution bears the burden to overcome such presumption; otherwise, the accused deserves a judgment of acquittal; concomitant thereto, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense; the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (*Id.*)

Circumstantial evidence — Offender's guilt may likewise be proven through circumstantial evidence, as long as the following requisites are present: (i) there must be more than one circumstance; (ii) the inference must be based on proven facts; and (iii) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused. (People *vs.* Cariño *y* Gocong, G.R. No. 232624, July 9, 2018) p. 1041

— Proof of the essential elements in a conviction for rape may rest on direct as well as circumstantial evidence; circumstantial evidence consists of proof of collateral

— Sec. 12, Chapter III of IPRA Law states that individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands. (*Id*.)

Application of — As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. (Rep. of the Phils. *vs*. Cosalan, G.R. No. 216999, July 4, 2018) p. 649

INJUNCTION

Preliminary injunction — An order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts; it is an equitable and extraordinary peremptory remedy to be exercised with caution as it affects the parties' respective rights. (City Gov't. of Baguio *vs*. Atty. Masweng, G.R. No. 195905, July 4, 2018) p. 501

— Requisites must concur before a preliminary injunction is issued: (1) the invasion of a right sought to be protected is material and substantial; (2) the right of the complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. (*Id*.)

JUDGES

Gross ignorance of the law — The failure of the judge to conduct a preliminary hearing on the motion to dismiss the complaint under Rule 16, amounts to gross ignorance of law which makes a judge subject to disciplinary action. (Yu, Jr. *vs*. Judge Mupas, A.M. No. RTJ-17-2491 [Formerly OCA IPI No. 10-3448-RTJ], July 4, 2018) p. 489

JUDGMENTS

Final and executory judgments — Belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory; a judgment becomes final

an employee found to have willfully violated its rules and regulations. (*Id*.)

Money claims — In claims for 13th month pay and SIL pay, the burden rests on the employer to prove the fact of payment; this standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment, considering that all pertinent personnel files, payrolls, records, remittances and other similar documents which will show that the claims of workers have been paid are not in the possession of the worker but are in the custody and control of the employer. (Mamaril *vs*. The Red System Co., Inc., G.R. No. 229920, July 4, 2018) p. 781

Preventive suspension — A measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers; an employee may be placed under preventive suspension during the pendency of an investigation against him; the employer's right to place an employee under preventive suspension is recognized in Secs. 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code. (Mamaril *vs*. The Red System Co., Inc., G.R. No. 229920, July 4, 2018) p. 781

— Even if the errant employee committed the acts complained of almost a year before the investigation was conducted, the employer shall not be estopped from placing the former under preventive suspension, if the employee still performs functions that involve handling the employer's property and funds; the employer still has every right to protect its assets and operations pending the employee's investigation. (*Id*.)

Regular employment — A regular employee is an employee who is: 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the

— Individuals who rely on a clean certificate of title in making the decision to purchase the real property are often referred to as "innocent purchasers for value" and 'in good faith; where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate. (*Id*.)

LEGISLATIVE DEPARTMENT

Inquiries in aid of legislation — The exercise of the power of inquiry is circumscribed by the above-quoted Constitutional provision, such that the investigation must be in aid of legislation in accordance with its duly published rules of procedure and that the rights of persons appearing in or affected by such inquiries shall be respected. (Agcaoili, Jr. *vs*. Rep. Fariñas, G.R. No. 232395, July 3, 2018) p. 405

Senate inquiry — The Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries; the balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation; these interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other. (Balag *vs*. Senate of the Phils., G.R. No. 234608, July 3, 2018) p. 451

— The legislative inquiry of the Senate terminates on two instances: *first,* upon the approval or disapproval of the Committee Report; s*econd,* the legislative inquiry of the Senate also terminates upon the expiration of one (1) Congress. (*Id*.)

— The period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked; once the said legislative inquiry concludes, the exercise

— The constitutional authority extended to each and every LGU to create its own sources of income and revenue has been formalized from Sec. 128 to Sec. 133 of the LGC; to implement the LGUs' entitlement to the just share in the national taxes, Congress has enacted Sec. 284 to Sec. 288 of the LGC; Congress has further enacted Sec. 289 to Sec. 294 of the LGC to define the share of the LGUs in the national wealth; the requirement for the automatic release to the LGUs of their just share in the national taxes is but the consequence of the constitutional mandate for fiscal decentralization. (*Id.*)

Municipal corporations — Being the mere creatures of the State, are subject to the will of Congress, their creator; their continued existence and the grant of their powers are dependent on the discretion of Congress. (Cong. Mandanas *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 199802, July 3, 2018) p. 97

— Congress possesses and wields plenary power to control and direct the destiny of the LGUs, subject only to the Constitution itself, for Congress, just like any branch of the Government, should bow down to the majesty of the Constitution, which is always supreme. (*Id.*)

— Now commonly known as local governments; they are the bodies politic established by law partly as agencies of the State to assist in the civil governance of the country; their chief purpose has been to regulate and administer the local and internal affairs of the cities, municipalities or districts; they are legal institutions formed by charters from the sovereign power, whereby the populations within communities living within prescribed areas have formed themselves into bodies politic and corporate, and assumed their corporate names with the right of continuous succession and for the purposes and with the authority of subordinate self-government and improvement and the local administration of the affairs of the State. (*Id.*)

— The 1987 Constitution, in mandating autonomy for the LGUs, did not intend to deprive Congress of its authority and prerogatives over the LGUs. (*Id.*)

since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment; the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment; the POEA-SEC also requires the employer to act on the report, and in this sense partakes of the nature of a reciprocal obligation. (Paleracio *vs.* Sealanes Marine Services, Inc., G.R. No. 229153, July 9, 2018) p. 997

Permanent and total disability — Should the physician fail to do so and the seafarer's medical condition remains unresolved, the seafarer's disability shall be deemed totally and permanently disabled; the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. (Paleracio *vs.* Sealanes Marine Services, Inc., G.R. No. 229153, July 9, 2018) p. 997

— The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is considered to be on temporary total disability during the 120-day period within which the seafarer is unable to work; if the temporary total disability lasted continuously for more than 120 days, except as otherwise provided in

not necessarily mean that only those illnesses listed under Sec. 32-A are compensable. (*Id.*)

Section 32 — Only those illnesses or injuries classified as Grade 1 shall constitute total permanent disability; those from Grade 2 to Grade 14 are considered as partial permanent disability, subject to the schedule of rates also provided in the POEA-SEC; the lapse of the 120-day or 240-day period does not automatically entitle the seafarer to a total permanent disability; it is the company-designated physician who will certify him as either fit to work or classify his condition as partial or total permanent disability within the said periods. (Yialos Manning Services, Inc. *vs.* Borja, G.R. No. 227216, July 4, 2018) p. 766

Total disability — If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists; the seafarer's condition is considered to be temporary total disability for the duration of his treatment which shall have an initial maximum period of 120 days; if the seafarer requires further medical treatment, the period may be extended to 240 days; within the said periods, the company-designated physician must make an assessment of the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's disability has become partial or total permanent. (Yialos Manning Services, Inc. *vs*. Borja, G.R. No. 227216, July 4, 2018) p. 766

— It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability; his declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. (*Id.*)

POSSESSION

Recovery of — Owner may choose among three kinds of actions to recover possession of real property, an *accion interdictal, accion publiciana* or an *accion reivindicatoria*; an *accion interdictal* is summary in nature, and is cognizable by the proper municipal trial court or metropolitan trial court; it comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*); an *accion publiciana* is the plenary action to recover the right of possession, which should be brought in the proper regional trial court when dispossession has lasted for more than one year; it is an ordinary civil proceeding to determine the better right of possession of realty independently of title; an *accion reivindicatoria* is an action to recover ownership, also brought in the proper RTC in an ordinary civil proceeding. (Javelosa *vs*. Tapus, G.R. No. 204361, July 4, 2018) p. 576

PRESUMPTIONS

Disputable presumptions — Bare denial cannot stand against the fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly. (Ng Ching Ting *vs*. Phil. Business Bank, Inc., G.R. No. 224972, July 9, 2018) p. 965

— When a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail; the facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed; in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative. (Allied Banking Corp. *vs*. De Guzman, Sr., G.R. No. 225199, July 9, 2018) p. 985

intended to relieve innocent persons from the harshness of the doctrine that a certificate is conclusive evidence of an indefeasible title to land. (*Id*.)

Innocent purchaser — It is necessary for the property to have transferred to a registered innocent purchaser not to a mere registered purchaser before recovery from the Assurance Fund may prosper. (Sps. Stilianopoulos *vs*. Register of Deeds for Legazpi City, G.R. No. 224678, July 3, 2018) p. 351

Prescriptive period — Sec. 102 of P.D. No. 1529 sets a six (6)-year prescriptive period from the time the right to bring such action first occurred within which one may proceed to file an action for compensation against the Assurance Fund; prescription, for purposes of determining the right to bring an action against the Assurance Fund, should be reckoned from the moment the innocent purchaser for value registers his or her title *and* upon actual knowledge thereof of the original title holder/ claimant. (Sps. Stilianopoulos *vs*. Register of Deeds for Legazpi City, G.R. No. 224678, July 3, 2018) p. 351

PUBLIC OFFICIALS AND EMPLOYEES

Benefits and allowances — Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith; on the other hand, officers who participated in the approval of the disallowed allowances or benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith. (Dev't. Bank of the Phils. *vs*. Commission on Audit, G.R. No. 210838, July 3, 2018) p. 268

QUALIFYING CIRCUMSTANCES

Treachery — Elements are: (1) employment of means, method or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim; and (2) deliberate adoption of such

— In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female; mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge; all that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. (*Id.*)

— It is worth emphasizing that in statutory rape, proof of force, intimidation or consent is unnecessary; what the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. (*Id.*)

RES JUDICATA

Conclusiveness of judgment — A fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. (Commissioner of Internal Revenue *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 197945, July 9, 2018) p. 875

— In order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical; if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. (*Id.*)

amended; By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. (Ellao *y* Dela Vega *vs*. Batangas I Electric Coop., Inc. (BATELEC I), G.R. No. 209166, July 9, 2018) p. 914

SEPARATION OF POWERS

Judicial privilege — The principle of separation of powers serves as one of the basic postulates for exempting the Justices, officials and employees of the Judiciary and for excluding the Judiciary's privileged and confidential documents and information from *any* compulsory processes which very well includes the Congress' power of inquiry in aid of legislation; such exemption has been jurisprudentially referred to as judicial privilege as implied from the exercise of judicial power expressly vested in one Supreme Court and lower courts created by law; however, as in all privileges, the exercise thereof is not without limitations; the invocation of the Court's judicial privilege is understood to be limited to matters that are part of the internal deliberations and actions of the Court in the exercise of the Members' adjudicatory functions and duties. (Agcaoili, Jr. *vs*. Rep. Fariñas, G.R. No. 232395, July 3, 2018) p. 405

STARE DECISIS

Distinguished from res judicata — *Stare decisis* differs from *res judicata* in that the former is based upon the legal principle or rule involved while the latter is based upon

be complied with for the orderly administration of justice; it can only be upheld in proper cases and under justifiable causes and circumstances. (Ng Ching Ting *vs.* Phil. Business Bank, Inc., G.R. No. 224972, July 9, 2018) p. 965

— Respondent cannot simply lay the blame on the resignation of its in-house counsels since it is incumbent upon it, as the complainant, to promptly hire new lawyers to represent it in the proceedings; much vigilance and diligence are expected of it considering that it is the one who initiated the action; the resignation of its in-house counsels does not excuse the respondent from non-observance of procedural rules, much less, in its duty to prosecute its case diligently. (*Id.*)

— 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; rules prescribing the time for doing specific acts or for taking certain proceedings are considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business; by their very nature, these rules are regarded as mandatory. (*Id.*)

— Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties; where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed; the invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules; Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. (*Id.*)

— To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice; the desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse;

to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions; the Government, as an employer, is constituted as the withholding agent, mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees unless excluded in the NIRC. (*Id.*)

— The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or (b) judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer; pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible; however, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. (Commissioner of Internal Revenue *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 197945, July 9, 2018) p. 875

— Under Sec. 318 of the 1977 NIRC, petitioner had five years from the time respondents filed their excise tax returns in question to: (a) issue an assessment; and/or (b) file a court action for collection without an assessment; without a valid assessment, the five-year prescriptive period to assess continued to run and had, in fact, expired in these cases; irrefragably, petitioner is already barred by prescription from issuing an assessment against respondents for deficiency excise taxes for the covered years. (*Id.*)

— Without either a formal tax collection suit filed before the court of competent jurisdiction or an answer deemed as a judicial action for collection of tax within the prescribed five-year period under Sec. 318 of the 1977 NIRC, petitioner's power to institute a court proceeding for the collection of respondents' alleged deficiency excise taxes without an assessment had already prescribed. (*Id.*)

connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order to receive their just share in the national taxes. (*Id*.)

Power of — For a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation; while taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp., G.R. No. 197945, July 9, 2018) p. 875

— Taxation is an essential attribute of sovereignty and the lifeblood of every nation are doctrine well-entrenched in our jurisdiction; taxes are the government's primary means to generate funds needed to fulfill its mandate of promoting the general welfare and well-being of the people and so should be collected without unnecessary hindrance; while taxation *per se* is generally legislative in nature, collection of tax is administrative in character; Congress delegated the assessment and collection of all nation internal revenue taxes, fees, and charges to the BIR; and as the BIR's chief, the CIR has the power to make assessments and prescribe additional requirements for tax administration and enforcement. (*Id*.)

— The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law; the rule is that taxes must be collected reasonably and in accordance with the prescribed procedure. (*Id*.)

Tax Reform for Acceleration and Inclusion (TRAIN) Act — R.A. No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, further increased the income tax exemption for 13th month pay and other benefits to ₱90,000.00. (Confederation for Unity, Recognition and Advancement of Gov't. Employees (COURAGE) *vs*. Commissioner, Bureau of Internal Revenue, G.R. No. 213446, July 3, 2018) p. 298

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