
# PHILIPPINE REPORTS

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**VOLUME 837**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

JULY 24 2018 TO JULY 31, 2018

SUPREME COURT
MANILA
2020

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2020


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# REPORT OF CASES

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### EN BANC

[A.M. No. MTJ-16-1879. July 24, 2018]
(Formerly OCA IPI No. 14-2719-MTJ)

**ANONYMOUS,** *complainant, vs.* **JUDGE BILL D. BUYUCAN, MUNICIPAL CIRCUIT TRIAL COURT, BAGABAG-DIADI, NUEVA VIZCAYA,** *respondent.*

### SYLLABUS

**1. LEGAL ETHICS; JUDGES; GROSS MISCONDUCT; CONTINUED ILLEGAL OCCUPATION OF LAND OWNED BY THE DEPARTMENT OF AGRICULTURE (DA) DESPITE REPEATED DEMANDS TO VACATE AND ACQUISITION OF A PORTION OF SUCH PROPERTY FROM A PARTY AFTER DECIDING A CASE IN HIS FAVOR CONSTITUTE GROSS MISCONDUCT.—** [T]he Court also notes that despite repeated demands from the DA, respondent Judge Buyucan refused to cease his illegal occupation of the Subject Property. Persons involved in the administration of justice are expected to uphold the strictest standards of honesty and integrity in the public service; their conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility. In this regard, the Court has consistently admonished any act or omission that would violate the norm of public accountability and diminish the faith of the people in the judiciary. At the outset, respondent Judge Buyucan's continued illegal settlement erodes the public's confidence in its agents of justice considering that such act amounts to an

arbitrary deprivation of the DA's ownership rights over the Subject Property. Even worse, his continued refusal to vacate instigated the continued illegal occupation of other informal settlers residing therein. Canon 2 of the New Code of Judicial Conduct requires that the conduct of judges must reaffirm the people's faith in the integrity of the judiciary and that their conduct must, at the least, be perceived to be above reproach in the view of a reasonable observer. Based on the foregoing acts alone, it is clear the respondent Judge Buyucan fell short of the required conduct of all members of the bench. In the same vein, the Court faults respondent Judge Buyucan for his act of acquiring a portion of the Subject Property from a respondent in a case pending before his *sala.* His act is further aggravated by the fact that the respondent therein, Eling Valdez, received a favorable judgment just a few months before the purported sale. Impartiality is essential to the proper discharge of the judicial office. Section 2 of Canon 3 of the New Code of Judicial Conduct mandates that a judge shall ensure that his conduct, both in and out of court, maintains and enhances the confidence of the public and litigants in his impartiality and that of the judiciary. In this respect, respondent Judge Buyucan's conduct incites intrigue and puts into question his impartiality in deciding the cases then pending before him. Such conduct unquestionably gives rise to the impression that he was motivated by extraneous factors in ruling on the said cases. x x x Guided by the foregoing standards, the Court hereby finds respondent Judge Buyucan guilty of gross misconduct for his flagrant violation of the standard of conduct embodied in the New Judicial Code of Judicial Conduct.

**2. ID.; ID.; ID.; ID.; PROPER PENALTY IS DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS.—** The interests of justice require no less than a penalty commensurate to the violations committed by the person charged. In this regard, the OCA's recommendation to penalize respondent Judge Buyucan with a six (6)-month suspension without benefits is far too light given the gravity and multiplicity of infractions committed by respondent Judge Buyucan. Such acts betray his utter lack of integrity and impartiality, both mandatory and continuing requirements, which renders him unfit to continue his service as an esteemed member of the bench. Bearing the foregoing in mind, the Court hereby imposes the penalty of

dismissal from the service and forfeiture of benefits following Rule 140.

**3. ID.; ID.; ID.; ID.; IN VIEW OF THE COURT'S DISCIPLINARY AUTHORITY OVER ITS OFFICERS, RESPONDENT JUDGE IS ORDERED TO VACATE THE SUBJECT PROPERTY.—** The Court takes note of the undisputed fact that respondent Judge Buyucan is occupying public land. Thus, while respondent Judge Buyucan denies the DA's ownership, he nevertheless admitted on record he is encroaching on what he claims to be the RRW of the DPWH beside the Nueva Vizcaya-Isabela National Road. In this regard, the Court, which is vested with disciplinary authority over its officers, finds that respondent Judge Buyucan must likewise be ordered to immediately vacate the Subject Property.

## D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative matter filed with the Office of the Court Administrator (OCA) against respondent Judge Bill D. Buyucan (Judge Buyucan).[1]

*The Facts*

As gathered from the records, the factual antecedents are as follows:

On June 26, 1969, Proclamation No. 573 was signed, which set aside certain lands of the public domain as permanent forest reserves.[2] Included in the said reservation was a 193-hectare parcel of land located in Sitio Tapaya, Villaros, Bagabag, Nueva Vizcaya, a portion of which was granted to the Department of Agriculture (DA) for research purposes (Subject Property).[3] Accordingly, the Subject Property was declared for taxation purposes by the DA as evidenced by T.D. ARP No. 2005-03017-

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[1] *Rollo,* p. 4.

[2] *Id.* at 49.

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

0117[4] and is now known as the Department of Agriculture Cagayan Valley Hillyland Research Outreach Station (DA-CVHILROS).[5]

As there was a need to clear the Subject Property of informal settlers already residing therein, the DA filed several criminal and civil cases before the Municipal Circuit Trial Court of Bagabag-Diadi, Nueva Vizcaya (MCTC), which is presided over by respondent Judge Buyucan.[6]

Among the cases filed before the MCTC were: (i) Civil Case No. 626 for Forcible Entry, entitled "Province of Nueva Vizcaya v. Eling Valdez, et al.," and (ii) Criminal Cases No. 4691 and 5094 for Malicious Mischief, entitled "People of the Philippines v. Eling Valdez" and "People of the Philippines v. Amado Valdez *alias* Eling," respectively.[7] The said cases were eventually dismissed by respondent Judge Buyucan in separate Decisions dated May 22, 2008[8] and June 16, 2008.[9]

A few months later, in August 2008, respondent Judge Buyucan acquired a parcel of land located *within* the Subject Property for One Hundred Fifty Thousand Pesos (₱150,000.00) from Eling Valdez, the same respondent in the previously dismissed cases, together with Ernesto A. Bagos, Isaija Suarez, and a certain Casmin as co-vendors.[10] The purported sale was evidenced by a "Waiver of Rights and Improvements."[11]

Subsequently, complaints for Malicious Mischief were again filed before the MCTC against the informal settlers, entitled

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[4] *Id.* at 15.

[5] *Id*. at 7 and 81.

[6] *Id*. at 8.

[7] *Id*.

[8] *Id*. at 21-35.

[9] *Id*. at 38-44.

[10] *Id*. at 45, 75 and 87.

[11] *Id*.

"People of the Philippines v. Arsenio Apostol and John Doe" and docketed as Criminal Case Nos. 5597 and 5598.

A Motion for Voluntary Inhibition dated March 9, 2009 was then filed by the Office of the Solicitor General (OSG), seeking the inhibition of respondent Judge Buyucan as he was also residing within the very same property involved in the said criminal cases.[12] The OSG alleged that his continued presence in the Subject Property had "emboldened" the other informal settlers to continue with their illegal occupation therein.[13] Respondent Judge Buyucan, however, refused to recuse himself from hearing the said cases.[14]

As a result of the foregoing, in a Letter dated March 1, 2013,[15] the OMB[16] informed the OCA of an anonymous text message received by the Ombudsman Lifestyle Check Hotline on February 20, 2013, as follows:

*Gud day po, gusto ko lang iparating sa inyo itong problema namn dto sa brgy. Villaros, Bagabag Nueva Vizcaya tungkol po sa isang naturingan Judge dto po sa aming bayan kasip nagpatayo po cia ng bahay eh pagkaalam po naming dpo sa kanya yung lupa at wala po kamng makita na building permit tapos maluwang pa ang kanyang sinakop na lupa para kanyang panabong na maunkan imbes n asana kami ang makinabang san po paki imbistigahan po ito maraming salamat po!!!*

*Gud am po, yung tinutukoy po maimbistigahan ay si judge Bill Buyucan ng MTC Bagacg, N.V., tnx/.*[17]

In an Indorsement dated April 4, 2013,[18] the OCA referred the Letter dated March 1, 2013 to Hon. Fernando F. Flor, Jr.

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[12] *Id*. at 46-48.

[13] *Id*. at 47.

[14] OCA Memorandum (dated May 23, 2017), p. 10.

[15] *Rollo,* p. 4.

[16] Atty. Joselito P. Fangon, Assistant Ombudsman.

[17] *Rollo,* 4.

[18] *Id*. at 6.

(Judge Flor), Executive Judge of the Regional Trial Court of Bayombong, Nueva Vizcaya, for investigation and report.

In his Report dated May 16, 2013,[19] Judge Flor gathered the following facts:

1. Judge Buyucan is occupying an approximate area of one (1) hectare where he keeps and maintains his fighting cock farm. A year ago, he started constructing a two-storey house made of strong materials without securing a building permit. This is confirmed by the Municipal Engineer of Bagabag in its Certification dated May 15, 2013.

2. The land occupied by Judge Buyucan is part of the 193 hectares given to the Department of Agriculture (DA) by virtue of Presidential Decree No. 573 dated June 26, 1969, intended for research purposes and for planting of various plants and trees. The land is declared for taxation purposes in the name of the DA as evidenced by Tax Declaration ARP No. 2005-03017-0117.

x x x x x x x x x

5. The Department of Environment and Natural Resources Office through its CENR Officer issued a Certification that the DENR-Officer has not issued any grant, authority under a license, lease, permit or any tenurial document to enter or occupy or possess portions of the land within the DA-CVHILROS.[20]

In a Letter dated November 15, 2013,[21] the OCA directed respondent Judge Buyucan to comment on the charges contained in the Letter dated March 1, 2013.

In his Letter dated December 13, 2013,[22] respondent Judge Buyucan denied knowledge of the DA's ownership of the Subject Property and instead claimed that the land he was occupying was within the road-right-of-way (RRW) of the Department of

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[19] *Id*. at 7-9.

[20] OCA Memorandum, p. 2.

[21] *Rollo,* p. 51.

[22] *Id*. at 55-56.

Public Works and Highways (DPWH) beside the Nueva Vizcaya-Isabela National Road.[23] Respondent Judge Buyucan also claimed that the alleged two (2)-storey house actually belonged to his nephew and that what he constructed were merely a "temporary Ifugao native house" and an adjacent shanty.[24] He further stated that he is, in any case, ready to vacate the area if and when the DPWH needs it.[25]

In a Resolution dated October 15, 2014,[26] the Court resolved to refer the matter back to Judge Flor to conduct a thorough determination and/or confirmation of facts and to submit a more exhaustive report thereon, to wit:

> [D]espite the Report dated May 16, 2013 of Judge Flor, there are still factual issues that need to be clarified especially on the matter of Judge Buyucan's alleged squatting and occupation of the land supposedly reserved for Department of Agriculture Cagayan Valley Hillyland Research Outreach Station (DA-CVHILROS), his alleged construction of a 2-storey house without a building permit, a fighting cock farm on the said parcel of land, and an Ifugao native house allegedly within the road right of way of the Department of Public Works and Highways.[27]

Accordingly, sometime in December 2014, Judge Flor, together with a representative of this Court,[28] conducted an ocular inspection of the Subject Property.[29]

In the meantime, respondent Judge Buyucan filed a Supplemental Answer/Comment dated December 16, 2014,[30] denying once again the allegations of his squatting on the Subject

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[23] *Id*. at 55.

[24] *Id*. at 56.

[25] *Id*. at 55.

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

[27] *Id*.

[28] Atty. Marilou Marzan-Anigan, Judicial Supervisor.

[29] *Rollo,* p. 60.

[30] *Id*. at 60-62.

Property and insisting that the land he purchased was within the RRW of the DPWH.[31] He likewise insisted that he did not own a fighting cock farm and that the structures he built were made of light and indigenous materials and thus exempted from the requirement of a building permit under Presidential Decree (P.D.) No. 1096.[32] Further, respondent Judge Buyucan alleged that the two (2)-storey house described in the Report dated May 16, 2013 is actually owned by his brother, Gabriel Buyucan, who purchased the lot sometime in June 2008 from a certain Larry Valdez, as evidenced by a Waiver of Rights and corroborated by several affidavits.[33]

Thereafter, in compliance with the Resolution dated October 15, 2014, Judge Flor submitted a Report dated January 20, 2015,[34] submitting additional evidence and essentially refuting respondent Judge Buyucan's statements in his Letter dated December 13, 2013. The following facts were further established in the said Report: (i) respondent Judge Buyucan was indeed squatting on the Subject Property; (ii) the informal settlers in the Subject Property were mostly members of the same Ifugao tribe of respondent Judge Buyucan;[35] (iii) respondent Judge Buyucan had several confrontations with the representatives of the Office of the Solicitor General with respect to his illegal occupation of the Subject Property;[36] and (iv) respondent Judge Buyucan erected a building of strong materials on the Subject Property without procuring the necessary building permit.[37]

In a Supplemental Report dated February 16, 2015,[38] Judge Flor recommended the penalty of dismissal from the service

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[31] *Id*. at 62.

[32] *Id*. at 61.

[33] OCA Memorandum, p. 4.

[34] *Rollo,* pp. 74-76.

[35] *Id*. at 77.

[36] *Id*.

[37] *Id*. at 78.

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

against respondent Judge Buyucan as a result of the foregoing acts.

In a Resolution dated September 21, 2016,[39] the Court referred the matter to the OCA for evaluation, report and recommendation.

*The OCA's Report and Recommendation*

In its Memorandum dated May 23, 2017 (OCA Memorandum), the OCA found respondent Judge Buyucan liable for gross misconduct for his illegal occupation and refusal to vacate the Subject Property despite demands from the DA-CVHILROS.[40] Such conduct, the OCA opined, encouraged other illegal settlers to continue occupying portions of the Subject Property in defiance of the orders of the DA.[41] The OCA further opined that respondent Judge Buyucan's act of acquiring a portion of the Subject Property from Eling Valdez three (3) months after deciding a case in his favor was unethical and was indicative of a lack of independence and impartiality.[42]

The OCA recommended thus:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that

(1) The instant administrative complaint be RE-DOCKETED as a regular administrative matter against Judge Bill D. Buyucan, Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya;

(2) Judge Buyucan be found GUILTY of gross misconduct and violation of the Code of Judicial Conduct and be SUSPENDED for a period of six (6) months from office without salary and other benefits; and

(3) Judge Buyucan be ordered to IMMEDIATELY VACATE the land owned by the Department of Agriculture-Cagayan

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[39] *Id*. at 97.

[40] OCA Memorandum, pp. 8-9.

[41] *Id*. at 9.

[42] *Id*. at 9-10.

> Valley Hilly Land Research Outreach Station, REMOVE the structures he introduced thereon; and SUBMIT a report on his compliance within a period of thirty (30) days from notice.
>
> Respectfully submitted.[43]

*Issue*

Whether respondent Judge Buyucan is guilty of gross misconduct.

*The Court's Ruling*

Respondent Judge Buyucan is liable. After a judicious review of the records, the Court adopts the findings in the OCA Memorandum with modification only as to the penalty recommended.

In administrative cases, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[44] Pertinently, as with factual findings of trial courts, credence should be accorded to the findings of the investigating judge who had the opportunity to hear witnesses and observe their demeanor.[45]

In this case, the liability of respondent Judge Buyucan hinges on whether he is in fact illegally occupying a portion of the Subject Property. The Court finds in the affirmative.

The evidence on record is unequivocal. As summarized in the OCA Memorandum:

> To prove that Judge Buyucan illegally occupied the land reserved for the DA-CVHILROS, Executive Judge Flor submitted a Sworn Statement executed by Ernesto Bagos, Antonio M. Balut and Reynaldo G. Garcia, Jr. The affidavit states that: (1) Bagos was one of the vendors who sold his occupation of the land and its improvements

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[43] OCA Memorandum, p. 11.

[44] *Velasco v. Angeles,* 557 Phil. 1 (2007).

[45] *Español v. Mupas,* 484 Phil. 636 (2004).

to Judge Buyucan; (2) Balut was one of the carpenters who constructed the 2-storey house and was paid by Edwin Buyucan, nephew of Judge Buyucan; and (3) Garcia, Jr. was the *Barangay* Captain of Villaros who witnessed the execution of the Waiver of Rights between Bagos and Judge Buyucan. He also submitted the Affidavit dated January 29, 2009 of Ms. Celerina T. Miranda stating that Judge Buyucan is one of those who is occupying a portion of the area of DA-CVHILROS and built a rest house and cultivated portions thereof and planted pineapple, mangoes and corn. The affidavit was executed to support a Motion to Inhibit Judge Buyucan. In another affidavit, Ms. Miranda stated that Judge Buyucan up to the present is squatting on the land reserved for the DA and his acts have emboldened others to enlarge their occupations of the land to the detriment of the outreach projects of the DA-CVHILROS. It also stated that Assistant Solicitor General Hector Calilung who was providing legal assistance to the DA in 2008 had several confrontations with Judge Buyucan regarding his illegal occupation of the DA's land and that he was present during the taking of a survey questionnaire where Judge Buyucan stated that he was a transferee of the land. In addition, Executive Judge Flor in his Supplemental Report dated February 16, 2015 also points out that the land occupied by Judge Buyucan is not only the land beside the national highway where he built a native Ifugao house but also occupied about 20 to 30 meters of the DA-CVHILROS reserved land where he built his rest house.[46]

In addition, respondent Judge Buyucan's claim that he was not occupying a portion of the Subject Property is plainly belied by the verification plan prepared by the DENR, which forms part of the records of this case.[47] Proceeding therefrom, the Court so finds that respondent Judge Buyucan was indeed an illegal occupant of the Subject Property.

In any case, even assuming that respondent Judge Buyucan did not occupy a portion of the Subject Property, he is still liable due to his admission in his Letter dated December 13, 2013 that he was then occupying a portion of the RRW of the DPWH Nueva Vizcaya-Isabela National Road.[48] As aptly

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[46] OCA Memorandum, pp. 4-5.

[47] *Rollo,* p. 14.

[48] *Id*. at 55.

observed in the OCA Memorandum, such act nevertheless constitutes a violation of P.O. No. 17, which makes it unlawful for any person to "usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner, or to use any highway ditch for irrigation or other private purposes x x x."[49]

Aside from the foregoing, the Court also notes several other acts of respondent Judge Buyucan that renders him administratively liable.

By his own admission, respondent Judge Buyucan acquired the occupied portion of the Subject Property (subject of Civil Case No. 626, entitled "Province of Nueva Vizcaya v. Eling Valdez, et al.") in August of 2008 – **only a few months after dismissing Civil Case No. 626.**[50] As stated earlier, it bears stressing that one of the vendors in the alleged transaction was Eling Valdez, one of the respondents in Civil Case No. 626 and the accused in Criminal Case No. 4691.[51]

Lastly, the Court also notes that despite repeated demands from the DA, respondent Judge Buyucan refused to cease his illegal occupation of the Subject Property.[52]

Persons involved in the administration of justice are expected to uphold the strictest standards of honesty and integrity in the public service; their conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility.[53] In this regard, the Court has consistently admonished any act or omission that would violate the norm of public accountability and diminish the faith of the people in the judiciary.[54]

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[49] Section 23, REVISED PHILIPPINE HIGHWAY ACT, Presidential Decree No. 17, October 5, 1972.

[50] *Rollo,* pp. 45, 75, 77 and 80.

[51] *Id*. at 45.

[52] OCA Memorandum, p. 6.

[53] *Office of the Court Administrator v. Duque,* 491 Phil. 128 (2005).

[54] *Id*.

At the outset, respondent Judge Buyucan's continued illegal settlement erodes the public's confidence in its agents of justice considering that such act amounts to an arbitrary deprivation of the DA's ownership rights over the Subject Property. Even worse, his continued refusal to vacate instigated the continued illegal occupation of other informal settlers residing therein. Canon 2 of the New Code of Judicial Conduct[55] requires that the conduct of judges must reaffirm the people's faith in the integrity of the judiciary and that their conduct must, at the least, be perceived to be above reproach in the view of a reasonable observer. Based on the foregoing acts alone, it is clear the respondent Judge Buyucan fell short of the required conduct of all members of the bench.

In the same vein, the Court faults respondent Judge Buyucan for his act of acquiring a portion of the Subject Property from a respondent in a case pending before his *sala.* His act is further aggravated by the fact that the respondent therein, Eling Valdez, received a favorable judgment just a few months before the purported sale.

Impartiality is essential to the proper discharge of the judicial office.[56] Section 2 of Canon 3 of the New Code of Judicial Conduct mandates that a judge shall ensure that his conduct, both in and out of court, maintains and enhances the confidence of the public and litigants in his impartiality and that of the judiciary. In this respect, respondent Judge Buyucan's conduct incites intrigue and puts into question his impartiality in deciding the cases then pending before him. Such conduct unquestionably gives rise to the impression that he was motivated by extraneous factors in ruling on the said cases.

In *Agpalasin v. Agcaoili,*[57] the respondent Judge was found administratively liable for allowing an accused in a robbery

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[55] NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC, April 27, 2004.

[56] Canon 3, NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC, April 27, 2004.

[57] 386 Phil. 452 (2000).

case pending before his *sala* to pay for freight charges of his personal acquisitions. Therein, the Court held that the subsequent acquittal of the accused gave rise to the impression that the judge was swayed by other factors than the evidence on record, thereby casting doubt on the independence and integrity of the entire judiciary:

> That the accused who indulged respondent Judge's corrupt tendencies was subsequently acquitted further gives rise to suspicions that the judge was influenced by the favors the accused extended to him. It gives the impression that the judge was swayed by factors other than the evidence on record, that he arrived at the decision of acquittal other than by his own independent judgment.
>
> **A judge should, in pending or prospective litigation before him, be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course. He must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.** A decision which correctly applies the law and jurisprudence will nevertheless be subject to questions of impropriety when rendered by a magistrate or tribunal believed to be less than impartial and honest.[58] (Emphasis supplied)

Guided by the foregoing standards, the Court hereby finds respondent Judge Buyucan guilty of gross misconduct for his flagrant violation of the standard of conduct embodied in the New Judicial Code of Judicial Conduct.

Gross misconduct is classified as a grave offense under Section 8, Rule 140 of the Rules of Court, and is punishable under Section 11(A) of the same rule by: (1) dismissal from the service, forfeiture of benefits except accrued leave credits and disqualification from reinstatement or appointment to any public office; (2) suspension from office without salary or other benefits for more than three (3) months but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[59]

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[58] *Id*. at 468.

[59] RULES OF COURT, Rule 140, Sec. 11(A).

The interests of justice require no less than a penalty commensurate to the violations committed by the person charged. In this regard, the OCA's recommendation to penalize respondent Judge Buyucan with a six (6)-month suspension without benefits is far too light given the gravity and multiplicity of infractions committed by respondent Judge Buyucan. Such acts betray his utter lack of integrity and impartiality, both mandatory and continuing requirements, which renders him unfit to continue his service as an esteemed member of the bench. Bearing the foregoing in mind, the Court hereby imposes the penalty of dismissal from the service and forfeiture of benefits following Rule 140.

Further, the Court adopts the finding and recommendation of the OCA to order respondent Judge Buyucan to immediately vacate the Subject Property:

> [J]udge Buyucan's claim that he is not occupying the land of the DA but a portion of the road right of way of the Nueva Vizcaya-Isabela road is inconsistent with the survey map of the entire land of the DA-CVHILROS. The map shows that Judge Buyucan occupies lot 45 (in orange highlight) of parcel no. 1 located near the Nueva Vizacaya-Isabel *(sic)* national road. As pointed out by Executive Judge Flor, Judge Buyucan does not only occupy the land beside the national highway where he built his native Ifugao house but also about 20 to 30 meters of the DA-CVHILROS land. But even assuming that the land he occupies is not within the DA-CVHILROS land, his possession of a portion of the road right of way of the national highway of the DPWH is still unlawful. x x x
>
> To prove that he legally occupies the subject land, Judge Buyucan presented the Waiver of Rights executed by Ernesto Bagos in his favor. However, the said land transferred to him is within the land owned by the DA-CVHILROS which has been the subject of a controversy between the DA and the occupants of the land which was brought to his court for adjudication. Hence, Judge Buyucan's rights over the land are still questionable as the DA has yet to take appropriate action against him and claimants of the land.[60]

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[60] OCA Memorandum, p. 7.

The Court takes note of the undisputed fact that respondent Judge Buyucan is occupying public land. Thus, while respondent Judge Buyucan denies the DA's ownership, he nevertheless admitted on record he is encroaching on what he claims to be the RRW of the DPWH beside the Nueva Vizcaya-Isabela National Road.[61] In this regard, the Court, which is vested with disciplinary authority over its officers, finds that respondent Judge Buyucan must likewise be ordered to immediately vacate the Subject Property.

**WHEREFORE,** the foregoing considered, Judge Bill D. Buyucan of the Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya, is hereby found **GUILTY** of Gross Misconduct for violating the New Code of Judicial Conduct and is hereby **DISMISSED** from the service, with **FORFEITURE OF ALL BENEFITS,** except accrued leave credits. He is likewise **DISQUALIFIED** from reinstatement or appointment to any public office or employment, including to one in any government-owned or government-controlled corporations.

He is likewise ordered to **IMMEDIATELY VACATE** the land known as the Department of Agriculture Cagayan Valley Hillyland Research Outreach Station, **REMOVE** the structures he introduced thereon, and **SUBMIT** a report on his compliance within a period of thirty (30) days from notice.

Further, respondent Bill D. Buyucan is directed to **SHOW CAUSE** in writing within ten (10) days from notice why he should not be disbarred for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics as outlined herein.

Let a copy of this Decision be furnished to the Office of the Court Administrator for its information and guidance.

**SO ORDERED.**

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

*Velasco, Jr., J.,* no part.

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[61] *Rollo,* p. 55.

**EN BANC**

[G.R. No. 218232. July 24, 2018]

**RAMON "BONG" B. REVILLA, JR.,** *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 218235. July 24, 2018]

**RICHARD A. CAMBE,** *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), PEOPLE OF THE PHILIPPINES, and OFFICE OF THE OMBUDSMAN,** *respondents.*

[G.R. No. 218266. July 24, 2018]

**JANET LIM NAPOLES,** *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), CONCHITA CARPIO MORALES, IN HER CAPACITY AS OMBUDSMAN, and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 218903. July 24, 2018]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), RAMON "BONG" B. REVILLA, JR., and RICHARD A. CAMBE,** *respondents.*

[G.R. No. 219162. July 24, 2018]

**RAMON "BONG" B. REVILLA, JR.,** *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; COURTS; JUDICIAL DISCRETION; THE DISCRETION OF THE COURT, ONCE EXERCISED, CANNOT BE REVIEWED BY *CERTIORARI* NOR CONTROLLED BY MANDAMUS SAVE IN INSTANCES WHERE SUCH DISCRETION HAS BEEN SO EXERCISED IN AN ARBITRARY OR CAPRICIOUS MANNER.—** Judicial discretion, by its very nature, involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. We have held that discretion is guided by: *first*, the applicable provisions of the Constitution and the statutes; *second*, by the rules which this Court may promulgate; and *third*, by those principles of equity and justice that are deemed to be part of the laws of the land. The discretion of the court, once exercised, cannot be reviewed by certiorari nor controlled by mandamus save in instances where such discretion has been so exercised in an arbitrary or capricious manner.

2. **ID.; CRIMINAL PROCEDURE; BAIL; GRANT OR DENIAL OF BAIL IN OFFENSES PUNISHABLE BY DEATH, *RECLUSION PERPETUA* OR LIFE IMPRISONMENT; THE ORDER GRANTING OR REFUSING BAIL MUST CONTAIN A SUMMARY OF THE EVIDENCE FOR THE PROSECUTION WHICH SHALL BE THE JUDGE'S BASIS IN FORMULATING HIS OWN CONCLUSION AS TO WHETHER THE EVIDENCE OF GUILT AGAINST THE ACCUSED IS STRONG BASED ON HIS DISCRETION.—** Rule 114 of the Rules of Court emphasizes that offenses punishable by death, *reclusion perpetua* or life imprisonment are non-bailable when the evidence of guilt is strong x x x. The grant or denial of bail in an offense punishable by *reclusion perpetua*, such as plunder, hinges on the issue of **whether or not the evidence of guilt of the accused is strong**. This requires the conduct of bail hearings where the prosecution has the burden of showing that the evidence of guilt is strong, subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal. The court is to conduct only a summary hearing, or such brief and speedy

method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is **merely to determine the weight of evidence for purposes of bail**. The order granting or refusing bail which shall thereafter be issued must contain a summary of the evidence for the prosecution. The summary of the evidence shows that the evidence presented during the prior hearing is formally recognized as having been presented and most importantly, considered. The summary of the evidence is the basis for the judge's exercising his judicial discretion. Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion. Thus, judicial discretion is not unbridled but must be supported by a finding of the facts relied upon to form an opinion on the issue before the court. It must be exercised regularly, legally and within the confines of procedural due process, that is, after evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim, caprice, and outright arbitrariness.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; ELEMENTS.—** Plunder, defined and penalized under Section 2 of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d) hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00).

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THE WEIGHT OF EVIDENCE NECESSARY FOR BAIL PURPOSES IS NOT PROOF BEYOND REASONABLE DOUBT, BUT STRONG EVIDENCE OF GUILT, OR PROOF EVIDENT, OR PRESUMPTION GREAT.—** For purposes of bail, we held in *People v. Cabral* that: "[b]y judicial discretion, the law mandates the determination of whether proof is evident or the presumption of guilt is strong. **'Proof evident' or 'Evident proof'** in this connection has been held to mean **clear, strong evidence which**

**leads a well-guarded dispassionate judgment to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered. 'Presumption great'** exists when the circumstances testified to are such that the **inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion**." The weight of evidence necessary for bail purposes is not proof beyond reasonable doubt, but strong evidence of guilt, or "proof evident," or "presumption great." A finding of "proof evident" or "presumption great" is not inconsistent with the determination of strong evidence of guilt x x x.

**5. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE BINDING UPON THE SUPREME COURT; EXCEPTIONS.—** Generally, the factual findings of the Sandiganbayan are binding upon the Court. However, this general rule is subject to some exceptions, among them: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record. We will not set aside the factual findings of the Sandiganbayan, absent any showing that the Sandiganbayan exercised its discretion out of whim, caprice, and outright arbitrariness amounting to grave abuse of discretion.

**6. CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; CONSPIRACY TO COMMIT PLUNDER; PROPERLY APPRECIATED WHEN THE INDIVIDUAL ACTS OF THE ACCUSED WHEN TAKEN TOGETHER AS A WHOLE SHOWED THAT THEY WERE ACTING IN CONCERT AND COOPERATING TO ACHIEVE THE SAME UNLAWFUL OBJECTIVE.—** [T]here is no need to prove that Cambe and Napoles likewise amassed, accumulated or acquired ill-gotten wealth of at least ₱50,000,000.00 or that Revilla talked with Napoles about their alleged agreement. The charge against them is conspiracy to commit plunder. In *Estrada v. Sandiganbayan*, we held that "the gravamen of the conspiracy charge x x x **is**

**that each of [the accused], by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for [petitioner Estrada]**." Also, **proof of the agreement need not rest on direct evidence**, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense. It is **not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme** or the details by which an illegal objective is to be carried out. Thus, in *Guy v. People of the Philippines*, we held that conspiracy was properly appreciated by the Sandiganbayan because even though there was no direct proof that petitioners agreed to cause injury to the government and give unwarranted benefits to a certain corporation, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. The conspiracy to commit plunder need not even be proved beyond reasonable doubt, but only for purposes of determining whether bail shall be granted.

**7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS ENTITLED TO GREAT WEIGHT, SOMETIMES EVEN WITH FINALITY.—** [I]n giving credence to the testimonies of the prosecution witnesses, we held that the trial court's—the Sandiganbayan's - assessment of the credibility of a witness is entitled to great weight, sometimes even with finality. This Court will not interfere with that assessment, absent any indication that the lower court has overlooked some material facts or gravely abused its discretion. Minor and insignificant inconsistencies in the testimony tend to bolster, rather than weaken, the credibility of witnesses, for they show that the testimony is not contrived or rehearsed. Moreover, the testimony of a witness must be considered in its entirety and not merely in its truncated parts. Similarly, we held that "the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion."

**8. ID.; CRIMINAL PROCEDURE; BAIL; FOR PURPOSES OF BAIL, THE COURT DOES NOT TRY THE MERITS OR ENTER INTO ANY INQUIRY AS TO THE WEIGHT THAT**

**OUGHT TO BE GIVEN TO THE EVIDENCE AGAINST THE ACCUSED.—** As for the weight given by the Sandiganbayan to whistleblowers' testimonies, expert's testimony, AMLC report, the hard disk, disbursement ledger and summary of rebates, we emphasize that **for purposes of bail, the court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused**, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein. **The course of inquiry may be left to the discretion of the court** which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination.

**9. ID.; ACTIONS; JURISDICTION; WHEN BY LAW JURISDICTION IS CONFERRED ON A COURT, ALL AUXILIARY WRITS, PROCESSES AND OTHER MEANS NECESSARY TO CARRY IT INTO EFFECT MAY BE EMPLOYED BY SUCH COURT.—** The Rules of Court provide that an arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense. An arrest is made by an actual restraint of a person to be arrested, or **by his submission to the custody of the person making the arrest**. x x x In the present case, both Revilla and Cambe voluntarily surrendered to the Sandiganbayan upon the issuance of the warrants of arrest against them, albeit with motion to elect the detention facilities in the PNP Custodial Center. Upon their voluntary surrender, they are deemed arrested and taken into custody. The Sandiganbayan thereafter allowed both Revilla and Cambe to be detained in the PNP Custodial Center barracks. Under the Rules of Court, the court, such as the Sandiganbayan in the present case, shall exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention. When by law jurisdiction is conferred on a court, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules. Accordingly, the Sandiganbayan acted within its jurisdiction and did not abuse its discretion in ordering the

commitment of Revilla and Cambe in the PNP Custodial Center. Clearly, Section 24 of RA 6975 vests authority in the PNP to detain arrested persons such as Revilla and Cambe, and the Revised PNP Police Operational Procedures Manual includes the PNP Detention/Custodial Center as an institution where any person arrested due to the commission of a crime/s can be detained/admitted.

**10. ID.; RULES OF COURT; PRELIMINARY ATTACHMENT; WHEN ISSUED.—** The grounds for the issuance of the writ of preliminary attachment have been provided in Rule 57 and Rule 127 of the Rules of Court. Rule 127 states that the provisional remedy of attachment on the property of the accused may be availed of to serve as security for the satisfaction of any judgment that may be recovered from the accused when the criminal action is based on a **claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, in the course of his employment as such, or when the accused has concealed, removed or disposed of his property or is about to do so**. Similarly, Rule 57 provides that attachment may issue: "x x x (b) in an **action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer** x x x; (c) in an action to recover the possession of property unjustly or fraudulently taken, detained or converted, **when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found** or taken by the applicant or an authorized person; x x x."

**11. ID.; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; FOR AN *EX-PARTE* ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT TO BE VALID, AN AFFIDAVIT OF MERIT AND AN APPLICANT'S BOND MUST BE FILED WITH THE COURT IN WHICH THE ACTION IS PENDING.—** It is indispensable for the writ of preliminary attachment to issue that there exists a *prima facie* factual foundation for the attachment of properties, and an adequate and fair opportunity to contest it and endeavor to cause its negation or nullification. Considering the harsh and rigorous nature of a writ of preliminary attachment, the court must ensure that all the requisites of the law have been complied with; otherwise, the court which issues it acts in excess of its jurisdiction. Thus, for the *ex-parte* issuance of a writ of

preliminary attachment to be valid, an affidavit of merit and an applicant's bond must be filed with the court in which the action is pending. For the affidavit of merit, Section 3 of x x x [Rule 57] states that: "[a]n order of attachment shall be granted only when it is made to appear by the affidavit of the applicant or some other person who personally knows of the facts that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no sufficient security for the claim sought to be enforced by the action, and that the amount due to applicant or the value of the property the possession of which he is entitled to recover is as much as the sum for which the order is granted above all legal counterclaims." The mere filing of an affidavit reciting the facts required by Section 3, however, is not enough to compel the judge to grant the writ of preliminary attachment. Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of its discretion. The sufficiency or insufficiency of an affidavit depends upon the amount of credit given it by the judge, and its acceptance or rejection, upon his sound discretion. On the requirement of a bond, when the State is the applicant, the filing of the attachment bond is excused.

**12. CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; THE FILING OF THE CRIMINAL ACTION FOR PLUNDER IS DEEMED TO NECESSARILY CARRY WITH IT THE FILING OF THE CIVIL ACTION, AND THE WRIT OF PRELIMINARY ATTACHMENT IS AN AVAILABLE PROVISIONAL REMEDY IN THE CRIMINAL ACTION.—** [T]he crime of plunder is based on a claim for public funds or property misappropriated, converted, misused, or malversed by the accused who is a public officer, in the course of his employment as such. The filing of the criminal action for plunder, which is within the jurisdiction of the Sandiganbayan, is deemed to necessarily carry with it the filing of the civil action. Accordingly, the writ of preliminary attachment is an available provisional remedy in the criminal action for plunder.

**13. REMEDIAL LAW; ACTIONS; PRELIMINARY ATTACHMENT; AVAILABLE DURING THE PENDENCY OF THE ACTION WHICH MAY BE RESORTED TO BY A LITIGANT TO PRESERVE AND PROTECT CERTAIN RIGHTS AND INTERESTS DURING THE INTERIM, AWAITING THE**

**ULTIMATE EFFECTS OF A FINAL JUDGMENT IN THE CASE.—** [T]here is no need for a final judgment of ill-gotten wealth, and a preliminary attachment is entirely different from the penalty of forfeiture imposed upon the final judgment of conviction under Section 2 of RA 7080. By its nature, a preliminary attachment is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available **during the pendency of the action** which may be resorted to by a litigant to preserve and protect certain rights and interests **during the interim, awaiting the ultimate effects of a final judgment in the case**. The remedy of attachment is provisional and temporary, designed for particular exigencies, attended by no character of permanency or finality, and always subject to the control of the issuing court.

**VELASCO, JR., *J.*, *concurring and dissenting opinion*:**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS OF THE ACCUSED; RIGHT TO BAIL; WAIVER OF THE RIGHT TO BAIL; ELEMENTS.—** I cannot concur with the position that Revilla's withdrawal of his petition in G.R. No. 218232 amounts to a waiver of his constitutional right to bail. Waiver of a right by implication cannot be presumed. In criminal cases where life, liberty and property are all at stake, obviously, the rule on waiver cannot be any less. Jurisprudence illustrates that there are (3) essential elements of a valid waiver: "(a) existence of a right; (b) the knowledge of the existence thereof; and, (c) an intention to relinquish such right." In *People v. Bodoso*, this Court held that the last element — the intention to relinquish the right — does not exist where there is a reservation or a nature of any manifestation of a proposed action x x x. Here, while Revilla withdrew his petition in G.R. No. 218232, he made x x x [a] reservation x x x. The absence of the intent to relinquish his right to bail is clear from Revilla's x x x statement. In fact, nothing therein shows his awareness that by withdrawing his Petition, he was thereby abandoning his right to bail. On the contrary, Revilla clarified his intent to avail of the remedies available to him. This necessarily includes the remedy of applying for bail. x x x His lack of intent to abandon

his right to bail should not, therefore, be gainsaid. Waiver of a right is a matter of intention and must not be inferred by this Court in the face of clear statements to the contrary.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WITHOUT THE SATISFACTION OF THE PROBABLE CAUSE REQUIREMENT TO INDICT, THERE CANNOT BE A STRONG EVIDENCE OF GUILT THAT COULD WARRANT CONTINUOUS DETENTION; CASE AT BAR.—** The Constitution prohibits the deprivation of a person's liberty and detention in the absence of probable cause. x x x [T]his probable cause requirement to indict, and thus detain Cambe has not been satisfied x x x. Without the satisfaction of the lower standard of probable cause, there cannot be a strong evidence of guilt that could warrant Cambe's continuous detention. Therefore, I submit that, at the very least, he should be released on bail.

**3. ID.; ID.; ID.; THE APPLICATION FOR BAIL MAY BE GRANTED WHEN THE ACCUSED IS NOT A FLIGHT RISK WHO WILL JUMP BAIL SHOULD HE BE PROVISIONALLY RELEASED; CASE AT BAR.—** As relevant here, and consistent with the doctrine on the presumption of innocence accorded to accused, this Court has ruled that the sole purpose of confining an accused in jail before conviction is to assure his presence at the trial. x x x Thus, in this Court's July 12, 2016 Resolution in *Enrile*, the Court stated that the right to bail "should be curtailed only if the risks of flight from this jurisdiction were too high," taking into consideration circumstances such as the accused's past and present disposition of respect for the legal processes, the length of his public service, and his individual public and private reputation x x x. [T]his case should raise questions about whether Cambe is a flight risk who will jump bail should they be provisionally released. I maintain that Cambe is not. To recall, Cambe surrendered within hours after the Sandiganbayan issued a warrant for his arrest. Four (4) years have passed since trial in the plunder case ensued, without any report of any misdeed or attempts to escape on his part. Clearly, Cambe cannot be categorized as being the same as those who usually jump bail, shadowy characters mindless of their reputation in the eyes of the people for as long as they can flee from the retribution of justice. Thus, I submit that his application for bail should have been considered and granted by the Sandiganbayan.

**APPEARANCES OF COUNSEL**

*Esguerra & Blanco* for petitioner in G.R. Nos. 218232 and 219162 and for respondent Revilla in G.R. No. 218903.

*David Cui-david Buenaventura & Ang Law Offices* for petitioner in G.R. No. 218266.

*Estelito P. Mendoza* for respondent Revilla in G.R. No. 218903.

*The Solicitor General* for the People of the Phiippines, Sandiganbayan and Ombudsman.

**D E C I S I O N**

**CARPIO, *J.*:**

**The Case**

The petitions for certiorari[1] in G.R. Nos. 218232, 218235, and 218266, filed by petitioners Ramon "Bong" B. Revilla, Jr. (Revilla), Richard A. Cambe (Cambe), and Janet Lim Napoles (Napoles), respectively, assail the Resolution[2] dated 1 December 2014 of the Sandiganbayan denying them bail and the Resolution[3] dated 26 March 2015 denying their motion for reconsideration in Criminal Case No. SB-14-CRM-0240.

In G.R. No. 218903, the Office of the Ombudsman assails the Resolution[4] dated 4 September 2014 of the Sandiganbayan denying the prosecution's motion to transfer the place of detention of Revilla and Cambe, and the Resolution[5] dated 20 May 2015 denying the motion for reconsideration. In G.R. No. 219162,

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[1] Pertain to the following petitions: (a) petition in G.R. No. 218232 filed by Revilla; (b) petition in G.R. No. 218235 filed by Cambe; and (c) petition in G.R. No. 218266 filed by Napoles.

[2] *Rollo* (G.R. No. 218232), Vol. I, pp. 53-123.

[3] *Id*. at 124-148.

[4] *Rollo* (G.R. No. 218903), Vol. I, pp. 29-40.

[5] *Id*. at 41-49.

Revilla assails the Resolution[6] dated 5 February 2015 of the Sandiganbayan granting the prosecution's motion for the issuance of a writ of preliminary attachment and the Resolution[7] dated 28 May 2015 denying his motion for reconsideration.

## The Facts

The cases before us stemmed from the Information dated 5 June 2014 filed by the Office of the Ombudsman in the Sandiganbayan charging petitioners Revilla, Cambe, and Napoles, among others, with the crime of Plunder, defined and penalized under Section 2 of Republic Act No. (RA) 7080, as amended. The Amended Information[8] reads:

> In 2006 to 2010, or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused RAMON "BONG" BAUTISTA REVILLA, JR., then a Philippine Senator and RICHARD ABDON CAMBE, then DIRECTOR III at the Office of Senator Revilla, Jr., both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN B. LIM, and JOHN RAYMUND S. DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate and/or acquire ill-gotten wealth amounting to at least TWO HUNDRED TWENTY FOUR MILLION FIVE HUNDRED TWELVE THOUSAND FIVE HUNDRED PESOS (Php224,512,500.00), through a combination or series of overt criminal acts, as follows:
>
> a) by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and REVILLA, JR. and/or CAMBE received, a percentage of the cost

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[6] *Rollo* (G.R. No. 219162), Vol. I, pp. 36-43.

[7] *Id*. at 44-51.

[8] *Rollo* (G.R. No. 218235), Vol. I, pp. 166-167. In an Order dated 26 June 2014, the Sandiganbayan "resolved to PARTIALLY DENY the prosecution's motion to admit the amended information in that the proposed substantial amendments were not allowed but, with the conformity of the defense counsels, the Court authorized the prosecution to effect the formal amendments to the said Information."

of a project to be funded from REVILLA, JR.'s Priority Development Assistance Fund (PDAF), in consideration of REVILLA, JR.'s endorsement, directly or through CAMBE, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of REVILLA, JR.'s PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

b) by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.[9]

Upon arraignment, Napoles and Cambe pleaded not guilty to the charge against them, while petitioner Revilla refused to enter any plea; thus, the Sandiganbayan entered a plea of not guilty in his behalf pursuant to Section 1(c), Rule 116 of the Rules of Court.[10]

In a Resolution[11] dated 19 June 2014, the Sandiganbayan issued warrants of arrest against Revilla, Cambe, and Napoles. On the same day, Revilla voluntarily surrendered to the Philippine National Police (PNP) and filed a Motion to Elect Detention Facilities *Ad Cautelam*[12] praying for his detention at the PNP Custodial Center in Camp Crame. On 20 June 2014, Cambe also voluntarily surrendered to the Sandiganbayan and filed an Urgent Motion to Commit Accused to Criminal Investigation and Detection Group (CIDG)[13] pending trial of the case.

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[9] *Id*. at 19-20.

[10] This provision reads: "(c) When the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him."

[11] *Rollo* (G.R. No. 218903), Vol. I, pp. 52-55.

[12] *Id*. at 56-58.

[13] *Id*. at 59-61.

In two separate Resolutions[14] both dated 20 June 2014, the Sandiganbayan ordered the turn over of Revilla and Cambe to the PNP-CIDG, Camp Crame, Quezon City for detention at its PNP Custodial Center Barracks.

***G.R. Nos. 218232, 218235 and 218266***

Revilla filed a Petition for Bail *Ad Cautelam* dated 20 June 2014; Cambe filed an Application for Bail[15] dated 23 June 2014; and Napoles filed a Joint Petition for Bail dated 25 June 2014, together with co-accused Ronald John Lim (Lim) and John Raymund De Asis (De Asis).[16]

Thereafter, the Sandiganbayan conducted the bail hearings for Revilla, Cambe, and Napoles.

During the bail hearings, the prosecution presented nine witnesses, namely: Commission on Audit (COA) Assistant Commissioner in the Special Services Sector Susan P. Garcia; Department of Budget and Management (DBM) Directors Carmencita N. Delantar and Lorenzo C. Drapete; the whistleblowers Benhur K. Luy (Luy), Merlina P. Suñas (Suñas), Marina C. Sula (Sula), and Mary Arlene Joyce B. Baltazar (Baltazar); National Bureau of Investigation (NBI) Special Investigator III Joey I. Narciso (Narciso); and Anti-Money Laundering Council (AMLC) Bank Officer II Atty. Leigh Vhon Santos (Santos).

The Sandiganbayan summarized the prosecution's evidence as follows:

From 2007 to 2009, accused Revilla was allocated and utilized [Priority Development Assistance Fund (PDAF)] in the total amount of ₱517,000,000.00, covered by twelve (12) [Special Allotment Release

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[14] *Id*. at 62-64.

[15] *Rollo* (G.R. No. 218235), Vol. I, pp. 115-120.

[16] Sandiganbayan Resolution dated 1 December 2014, footnote no. 2 states "The Court in its Order dated July 3, 2014, denied the petition for bail filed by accused Lim and De Asis (jointly with accused Napoles), as they had remained at-large."

Orders (SAROs)], for livelihood and agricultural projects. He named the [Technology Livelihood Resource Center (TLRC), National Agri-Business Corporation (NABCOR), and National Livelihood Development Corporation (NLDC)] to be the [implementing agencies (IAs)], and endorsed five (5) of Napoles' [non-governmental organization (NGOs)], *i.e.*, [*Agri & Economic Program for Farmers Foundation, Inc. (**AEPFFI**), Philippine Social Development Foundation, Inc. (**PSDFI**), Masaganang Ani Para sa Magsasaka Foundation, Inc. (**MAMFI**), Social Development Program for Farmers Foundation, Inc. (**SDPFFI**), and Agricultura Para Sa Magbubukid Foundation, Inc. (**APMFI**),*] as project partners. Of the 12 SAROs, Luy identified six (6) SAROs in his Summary of Rebates, showing how he came up with the supposed ₱224,512,500.00 rebates/commissions/kickbacks mentioned in the Information. The six (6) SAROs with their corresponding amounts, beneficiary NGOs, IAs, and the amount of commissions received by Revilla, through Cambe, mentioned in Luy's Summary are shown in the table below:

TABLE A

| **SARO** | **Amount (Php)** | **IA** | **NGO** | **Rebates Received(Php)** | **Date Received** |
|---|---|---|---|---|---|
| 1. ROCS -07-05486 | 25 million | TLRC | AEPFFI | 7.5 million | March 27, 2007 |
| 2. ROCS-08-05254 | 65 million | NABCOR | MAMFI/ SDPFFI | 10 million<br><br><br>17,250,000.00 | June 24, 2008<br>July 3, 2008 |
| 3. ROCS-08-05660 | 15 million | NABCOR | MAMFI | 7,750,000.00 | July 23, 2008 |
| 4. D-08-9558 | 40 million | TLRC | SDPFFI | 17 million | Dec. 5, 2008 |
| 5. ROCS-08-09789 | 40 million | TLRC | SDPFFI | 2 million<br><br>18 million | Dec. 12, 2008<br><br>Dec. 15, 2008 |
| 6. G-09-07065 | 80 million | NLDC | AEPFFI<br>and<br>APMFI | 9 million<br>9 million<br>2 million<br>12 million<br>8 million | Oct. 6, 2009<br>Oct. 6, 2009<br>Oct. 6, 2009<br>Oct. 22, 2009<br>Oct. 22, 2009 |
| **TOTAL** | **Php 265 million** | | | **Php119,500,000.00** | |

Other commissions without corresponding SARO numbers lifted from Luy's Summary are shown hereunder.

TABLE B

| **Date Received** | **IA/Particulars** | **Rebates Received (Php)** |
|---|---|---|
| | | |
| April 6, 2006 | PDAF-DA 2006 | 5 million |
| June 6, 2006 | DA - 2006 | 5 million |
| April 12, 2007 | DA - 50 M | 9.5 million |
| April 19, 2007 | PDAF-DA 50 M and TLRC 50 M 2007 | 3 million |
| August 2, 2007 | | 2 million |
| August 10, 2007 | | 3 million |
| October 16, 2007 | PDAF 82 M | 5 million |
| October 25, 2007 | PDAF 82 M | 2 million |
| November 15, 2007 | PDAF DA and TLRC 82 M 2007 project | 5 million |
| November 23, 2007 | PDAF 82 M project | 3.5 million |
| December 21, 2007 | PDAF 82 M project | 10 million |
| December 26, 2007 | PDAF 82 M project | 10.5 million |
| May 9, 2008 | PDAF 80 M | 5 million |
| October 24, 2008 | PDAF 50 M | 3 million |
| March 17, 2010 | | 28,512,500.00 |
| April 28, 2010 | | 5 million |
| | | |
| **TOTAL** | | **Php105,012,500.00** |
| | | |
| **Total Rebates Received** | Table A + Table B | **Php224,512,500.00** |

Accused Revilla's commissions represented 50% of the project cost, 25% percent of which was released by accused Napoles upon showing that the DBM already received accused Revilla's endorsement letter with project listings. The other 25% was released upon issuance of the SARO. On the other hand, accused Cambe's share was 5% of the project cost.

But there were instances that, prior to the issuance of the SARO and preempting its release, accused Revilla advanced money from accused Napoles. There were also times that his share was given to him in tranches until the full amount was paid. Thus, there appear entries in Luy's Summary of Rebates without corresponding SARO numbers, and in amounts less than 25% or 50% of the amount of the SARO. Accused Cambe got his commission either together with that of accused Revilla or separately. To acknowledge receipt of the rebates for himself or that for accused Revilla, accused Napoles' office had accused Cambe sign JLN vouchers which, however, were already shredded upon the instruction of accused Napoles.

Upon release of the SARO, documents like letters signed by accused Revilla indorsing accused Napoles' NGO, MOAs signed by accused Cambe, project proposal, and foundation profile, were submitted to the IA.

Subsequently, the IA, after deducting a 3% management fee, released a check in the name of the NGO endorsed by accused Revilla. Accused Napoles had either the president of the payee NGO or anybody from his trusted employees receive the check. Accused Napoles' representative signed the IA voucher and, in return, issued a receipt to the IA in the name of the foundation.

The check was then deposited to the account of the payee foundation. After it was cleared, accused Napoles had her trusted employees withdraw the proceeds of the check. The money was brought to accused Napoles, usually to her office at 2502 Discovery Center, and was disposed of at her will or upon her instruction. Part of the proceeds was used to pay the commissions of accused Revilla and Cambe. Some were kept at the office vault or was brought to her condo unit at 18D Pacific Plaza. Accused Napoles' share was pegged at 32% and 40%, depending on the IA, and she used it to buy dollars and to acquire properties in the Philippines and abroad. She also made deposits in a foreign account to support her daughter Jean and accused Napoles' brother Reynald Lim in the US.

To make it appear that there were implementations of the projects for which accused Revilla's PDAFs were intended, the NGOs submitted liquidation documents such as official receipts, delivery receipts, accomplishment reports, which were all fake, and lists of beneficiaries which were just fabricated having only signed by Napoles' employees, children, household helpers, drivers, and security guards. The receipts

were issued by bogus suppliers which were likewise owned or controlled by accused Napoles.[17]

On the other hand, the defense presented Atty. Desiderio A. Pagui (Pagui), a lawyer and retired document examiner of the NBI, as expert witness. In his Report No. 09-10-2013, attached to his Judicial Affidavit dated 12 November 2014 and adopted as his direct testimony, Pagui stated that upon comparison of Revilla's purported signatures on the photocopies of the PDAF documents and the standard documents bearing Revilla's authentic signature, the purported signatures are not authentic and affixed by Revilla. Pagui examined the originals and photocopies of the PDAF documents in open court using a magnifying glass, and he maintained that the purported signatures are not authentic and affixed by Revilla. Pagui likewise testified that he also examined the photocopies of documents with signatures of Cambe and his findings were embodied in Report No. 10-11-2013.

On cross-examination, Pagui testified that during his stint as document examiner in the NBI, it would take them an average of one or two days to examine a signature, their findings would be reviewed by the majority of the examiners present in the Questioned Document Division of the NBI, and it was the NBI's policy not to examine photocopies of documents as safety precaution. He, however, believed that an examination of the photocopies can now be made since there are already clear copies. He confirmed that it took him three months after the submission of the specimen signature and questioned signature to finish his Report, while it took him only a few minutes to make a conclusion that the photocopies are faithful reproduction of the original. Pagui was paid a professional fee of ₱200,000.00 for examining the signatures of Revilla and Cambe.

Cambe dispensed with the presentation of his witness, Fabian S. Fabian, supervisor of the Records Section of the Philippine Airlines after the parties stipulated on the authenticity and due execution of the Certification he issued and the Passenger Manifest for Flight Nos. PR 102 and PR 103. Napoles likewise

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[17] *Rollo*, (G.R. No. 218232), Vol. I, pp. 100-103.

dispensed with the testimony of Joel M. de Guzman, representative of the Bureau of Immigration, after the parties stipulated on the authenticity and due execution of her immigration records. Both Cambe and Napoles adopted the direct examination of Pagui.

The Sandiganbayan thereafter admitted all the documentary exhibits of Revilla, Cambe, and Napoles except for Exhibits 273 to 277 of Revilla for lack of sponsorship. Revilla made a tender of excluded exhibits and rested his case. Cambe and Napoles also rested their case relative to their application for bail.

In a Resolution dated 1 December 2014,[18] the Sandiganbayan denied the separate applications for bail filed by Revilla, Cambe, and Napoles. The Sandiganbayan held that the prosecution duly established with strong evidence that Revilla, Cambe, and Napoles, in conspiracy with one another, committed the crime of plunder defined and penalized under RA 7080; thus, they are not entitled to the constitutional right to bail.

In a Resolution dated 26 March 2015,[19] the Sandiganbayan denied for lack of merit: (a) Napoles' Motion for Reconsideration dated 17 December 2014; (b) Revilla's Omnibus Motion: (1) for Reconsideration, and (2) To Adduce Additional Evidence dated 17 December 2014; and (c) Cambe's: (1) Motion for Reconsideration dated 15 December 2014, and (2) Motion to Adduce Additional Evidence and Request for Subpoena embodied in his Reply dated 28 January 2015.

Thus, Revilla, Cambe, and Napoles filed their separate petitions for certiorari assailing the Resolutions of the Sandiganbayan before this Court. The petition filed by Revilla is docketed as G.R. No. 218232, the petition filed by Cambe is docketed as G.R. No. 218235, and the petition filed by Napoles is docketed as G.R. No. 218266.

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[18] *Supra* note 2.

[19] Supra note 3.

On 21 December 2016, Revilla filed a Motion to Withdraw[20] the Petition for Certiorari he filed before this Court alleging that "[c]onsidering, however, that the presentation of prosecution evidence in the Plunder Case below will already commence on 12 January 2017, and that trial will be conducted every Thursday thereafter, petitioner will avail of the remedies available to him in said proceedings once the insufficiency of the evidence against him is established."[21]

***G.R. No. 218903***

Meanwhile, on 14 July 2014, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed a Motion to Transfer the Place of Detention of Accused[22] Revilla, Cambe, and Napoles to the Bureau of Jail Management and Penology (BJMP) facility in Camp Bagong Diwa or other similar facilities of the BJMP. The motion states that the PNP Custodial Center is not a detention facility within the supervision of BJMP under RA 6975 and their continued detention in a non-BJMP facility affords them special treatment. In a Manifestation dated 4 August 2014, the prosecution alleged that the Sandiganbayan ordered the detention of Napoles in the BJMP facility in Camp Bagong Diwa; thus, as for Napoles, the motion of the prosecution became moot.

In his Opposition[23] dated 26 July 2014, Revilla alleged that his detention in the PNP Custodial Center is in accord with the Rules and upon a valid resolution of the Sandiganbayan. On 6 August 2014, Cambe also filed his Opposition[24] to the Motion to Transfer the place of his detention.

In a Resolution[25] dated 4 September 2014, the Sandiganbayan denied the motion for failure to advance justifiable grounds for

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[20] *Rollo* (G.R. No. 218232), Vol. VII, pp. 3622-3626.

[21] *Id*. at 3622.

[22] *Rollo* (G.R. No. 218903), Vol. I, pp. 65-70.

[23] *Id*. at 89-102.

[24] *Id*. at 72-76.

[25] *Supra* note 4.

Revilla and Cambe's transfer. The Sandiganbayan held that detention in facilities other than a jail is sanctioned in our jurisdiction and there is no law mandating that detention prisoners shall only be detained in a jail supervised by the BJMP. The Sandiganbayan also found that it was not shown that Revilla and Cambe were granted benefits above the standards set for other detention prisoners.

The prosecution moved for reconsideration of the Sandiganbayan Resolution, while Revilla and Cambe filed their separate Opposition to the motion for reconsideration.

In a Manifestation (Re: Unauthorized Movement of Accused Revilla on 14 February 2015) with Motion (For the Issuance of an Order Directing the Concerned PNP Officials to Explain)[26] dated 27 February 2015, the prosecution alleged that Revilla was allowed to attend the birthday celebration of Juan Ponce Enrile in the PNP General Hospital under the guise of a medical emergency on 14 February 2015, bolstering its argument that Revilla's detention in the PNP Custodial Center is improper.

In his Comment[27] to the Manifestation, PDDG Leonardo A. Espina alleged that he directed the CIDG to investigate the incident, and he approved the recommendations of the CIDG to file an administrative case for Grave Misconduct and violation of PNPHSS 2012 Manual of Operations, and criminal case against PSUPT Eulogio Lovello R. Fabro (Fabro), PSINSP Celina D. Tapaoan (Tapaoan), and PO2 Jaydie Pelagio upon finding that Fabro and Tapaoan connived to facilitate the visit of Revilla to Enrile and tried to cover it up by requesting the attending physician PCINSP Duds Raymond Santos to change his statement.

In a Resolution[28] dated 20 May 2015, the Sandiganbayan denied the motion for reconsideration of the prosecution for lack of merit. The Sandiganbayan did not consider as sufficient

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[26] *Rollo* (G.R. No. 218903), Vol. I, pp. 184-191.

[27] *Id*. at 195-201.

[28] *Supra* note 5.

reason the reported unauthorized visit of Revilla to the hospital room of Enrile to justify his transfer to Camp Bagong Diwa, since the concerned PNP officials have already been admonished for failure to comply with the Sandiganbayan's Order.

Thus, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed a petition for certiorari before us assailing the Sandiganbayan Resolutions dated 4 September 2014 and 20 May 2015. This petition is docketed as G.R. No. 218903.

***G.R. No. 219162***

On 27 October 2014, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed an *Ex Parte* Motion for Issuance of Writ of Preliminary Attachment/Gamishment[29] against the monies and properties of Revilla to serve as security for the satisfaction of the amount of ₱224,512,500.00 alleged as ill-gotten wealth, in the event that a judgment is rendered against him for plunder. The motion states that there is an imminent need for the issuance of the *ex parte* writ to prevent the disappearance of Revilla's monies and properties found to be *prima facie* unlawfully acquired, considering that the AMLC reported that many investment and bank accounts of Revilla were "terminated immediately before and after the PDAF scandal circulated in [the] media,"[30] and Revilla himself publicly confirmed that he closed several bank accounts when the PDAF scam was exposed. The details of the monies and properties sought to be attached were attached as Annex "B-Motion" in the prosecution's motion.

On 14 November 2014, Revilla filed an Opposition[31] to the prosecution's motion, arguing that the factual basis for the issuance of the writ is yet to be proven, and that the issuance of the writ would unduly preempt the proceedings in his bail application.

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[29] *Rollo* (G.R. No. 219162), Vol. I, pp. 188-199.

[30] *Id.* at 191.

[31] *Id*. at 200-209.

On 28 January 2015, the prosecution filed an Urgent Motion to Resolve *Ex Parte* Motion for Issuance of Writ of Preliminary Attachment/Garnishment,[32] alleging that the safeguarding of Revilla's properties has become even more necessary after the Sandiganbayan denied Revilla's bail application and ruled that there is strong evidence of his guilt.

In a Resolution[33] dated 5 February 2015, the Sandiganbayan granted the prosecution's motion upon finding of its sufficiency both in form and substance. The Sandiganbayan held that the issuance of a writ of preliminary attachment is properly anchored on Sections 1 and 2 of Rule 57, and Sections 1 and 2 (b) and (c) of Rule 127 of the Rules of Court. Thus, the Sandiganbayan issued a Writ of Attachment directed to the Acting Chief, Sheriff and Security Services of the Sandiganbayan. On 10 July 2015, the Sandiganbayan granted the prosecution's amendatory motion and issued an Alias Writ of Preliminary Attachment, which included the properties under the known aliases or other names of Revilla and his spouse, Lani Mercado.[34]

Revilla filed a motion for reconsideration, which the Sandiganbayan denied in a Resolution[35] dated 28 May 2015. The Sandiganbayan held that the writ of preliminary attachment is not the penalty of forfeiture envisioned under Section 2 of RA 7080, contrary to Revilla's argument. The Sandiganbayan further elucidated that the issuance of the writ is an ancillary remedy which can be availed of during the pendency of the criminal case of plunder, and it is not necessary to await the final resolution of the bail petition before it can be issued.

Thus, Revilla filed a petition for certiorari before us assailing the Sandiganbayan Resolutions dated 5 February 2015 and 28 May 2015. This petition is docketed as G.R. No. 219162.

In a Resolution[36] dated 4 August 2015, the Court *En Banc* resolved to consolidate G.R. No. 219162 (*Ramon "Bong"*

[32] *Id*. at 210-218.

[33] *Supra* note 6.

[34] *Rollo* (G.R. No. 219162), Vol. II, pp. 566-567.

[35] *Supra* note 7.

[36] *Rollo* (G.R. No. 219162), Vol. I, pp. 464-A-464-B.

*Revilla, Jr. v. Sandiganbayan [First Division]) and People of the Philippines*); G.R. No. 218232 (*Ramon "Bong" Revilla, Jr. v. Sandiganbayan [First Division] and People of the Philippines*); G.R. No. 218235 (*Richard A. Cambe v. Sandiganbayan [First Division], People of the Philippines, and Office of the Ombudsman*); G.R. No. 218266 (*Janet Lim Napoles v. Sandiganbayan [First Division], Hon. Conchita Carpio Morales, in her capacity as Ombudsman, and People of the Philippines*); and G.R. No. 218903 (*People of the Philippines v. Sandiganbayan [First Division], Ramon "Bong" Bautista Revilla, Jr. and Richard A. Cambe*).

In a Resolution[37] dated 21 February 2017, the Court *En Banc* resolved to note the compliance dated 10 February 2017 filed by the counsel of Revilla informing the Court that Revilla's Motion to Withdraw dated 14 December 2016 pertains only to the petition in G.R. No. 218232.

**The Issues**

In G.R. No. 218232, Revilla raises the following issue for resolution:

> The Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's application for admission to bail despite the fact that the evidence on record do not show a clear and strong evidence of his guilt [for] the crime of plunder.[38]

In G.R. No. 218235, Cambe argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions:

> A. The denial of petitioner's application for bail was based on Criminal Procedure 1900 (General Order No. 58), which requires a much lower quantum of proof to deny bail (*i.e.*, proof of guilt is evident or presumption of guilt is strong), and not on Section 13, Article III of the 1987 Philippine Constitution, which requires proof that "evidence of guilt is strong."

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[37] *Rollo* (G.R. No. 218232), Vol. VII, pp. 3634-3635.

[38] *Id*., Vol. I, p. 15.

B. The denial of petitioner's motion for reconsideration was based on the concept of "totality of evidence" which is applicable in Writ of Amparo cases only.

C. Even assuming that "proof evident," "presumption great," or proof that "the presumption of guilt is strong" are the tests to determine whether petitioner may be granted or denied bail, the assailed resolutions were based on mere presumptions and inferences.[39]

In G.R. No. 218266, Napoles alleged that the Sandiganbayan committed grave abuse of discretion in ruling:

A. that the prosecution was able to prove with strong evidence that [Revilla] and [Cambe] conspired with [Napoles], in amassing, accumulating, and acquiring ill-gotten wealth. Thus, their petition for bail should be denied.

B. that the hard disk, disbursement ledger and the summary of rebates are reliable and with integrity.

C. [that] the testimonies of the witnesses and the documents they [submitted are credible].

D. [that] x x x that the evidence of the prosecution prove[s] plunder.[40]

In G.R. No. 218903, the Office of the Ombudsman, through the Office of the Special Prosecutor, alleged that the Sandiganbayan committed grave abuse of discretion amounting to lack and/or excess of jurisdiction:

A. when it substituted its own judgment and refused to apply the clear mandate of [RA 6975].

B. when it denied the transfer of private respondents to a BJMP-operated facility despite the absence of cogent reasons to justify their detention in a facility other than that prescribed by law.

C. when it refused to recognize that the continued detention of private respondents at Camp Crame affords them special treatment and subjects them to different rules and procedures.[41]

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[39] *Rollo* (G.R. No. 218235), Vol. I, p. 6.

[40] *Rollo* (G.R. No. 218266), Vol. I, p. 6.

[41] *Rollo* (G.R. No. 218903), Vol. I, pp. 12-13.

In G.R. No. 219162, Revilla alleged that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the State's *Ex-Parte* Motion for the issuance of a writ of preliminary attachment considering that:

A. the issuance of the assailed writ is erroneous and premature. The plunder law does not allow the issuance of a writ of preliminary attachment, as it amounts to a prejudgment and violates petitioner's constitutional rights to presumption of innocence and due process; and

B. there is neither legal nor factual basis for the issuance of the writ of preliminary attachment or garnishment.[42]

## The Ruling of the Court

### *G.R. Nos. 218232, 218235, and 218266*

At the outset, we note that Revilla withdrew his petition before the Court assailing the Resolution of the Sandiganbayan denying him bail. In withdrawing his petition, he stated "[he] will avail of the remedies available to him in [the plunder case before the Sandiganbayan] once the insufficiency of the evidence against him is established."[43] Accordingly, we no longer find it necessary to rule upon the issues raised by Revilla in his petition in G.R. No. 218232.

Now, we proceed to determine whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying bail to Cambe and Napoles, who are charged with the crime of plunder, after finding strong evidence of their guilt.

Judicial discretion, by its very nature, involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control.[44]

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[42] *Rollo* (G.R. No. 219162), Vol. I, p. 11.

[43] *Supra* note 21.

[44] *People v. Cabral*, 362 Phil. 697 (1999).

We have held that discretion is guided by: *first*, the applicable provisions of the Constitution and the statutes; *second*, by the rules which this Court may promulgate; and *third*, by those principles of equity and justice that are deemed to be part of the laws of the land.[45] The discretion of the court, once exercised, cannot be reviewed by certiorari nor controlled by mandamus save in instances where such discretion has been so exercised in an arbitrary or capricious manner.[46]

Section 13, Article III of the 1987 Constitution provides that:

> All persons, except those charged with offenses punishable by *reclusion perpetua* **when evidence of guilt is strong**, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required. (Emphasis supplied)

Rule 114 of the Rules of Court emphasizes that offenses punishable by death, *reclusion perpetua* or life imprisonment are non-bailable when the evidence of guilt is strong:

> *Sec. 7. Capital offense or an offinse punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail **when evidence of guilt is strong**, regardless of the stage of the criminal prosecution. (Emphasis supplied)

The grant or denial of bail in an offense punishable by *reclusion perpetua*, such as plunder, hinges on the issue of **whether or not the evidence of guilt of the accused is strong**. This requires the conduct of bail hearings where the prosecution has the burden of showing that the evidence of guilt is strong,[47]

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[45] *Id.*; *Carpio v. Maglalang*, 273 Phil. 240 (1991).

[46] *San Miguel Corp. v. Sandiganbayan*, 394 Phil. 608 (2000), citing *Big Country Ranch Corp. v. Court of Appeals*, 297 Phil. 1105 (1993).

[47] Rules of Court, Rule 114, Section 8 provides: "At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment,

subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal.[48] The court is to conduct only a summary hearing, or such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is **merely to determine the weight of evidence for purposes of bail**.[49]

The order granting or refusing bail which shall thereafter be issued must contain a summary of the evidence for the prosecution.[50] The summary of the evidence shows that the evidence presented during the prior hearing is formally recognized as having been presented and most importantly, considered.[51] The summary of the evidence is the basis for the judge's exercising his judicial discretion[52] Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion.[53] Thus, judicial discretion is not unbridled but must be supported by a finding of the facts relied upon to form an opinion on the issue before the court.[54] It must be exercised regularly, legally and within the confines of procedural due process, that is, after evaluation of the evidence submitted by the prosecution.[55] Any order issued

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the prosecution has the burden of showing that the evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify."

[48] *Comia v. Judge Antona*, 392 Phil. 433 (2000), citing *Cortes v. Judge Catral*, 344 Phil. 415 (1997); *Ocampo v. Bernabe*, 77 Phil. 55 (1946).

[49] *Serapio v. Sandiganbayan*, 444 Phil. 499 (2003), citing *Ocampo v. Bernabe*, 77 Phil. 55 (1946); *Basco v. Judge Rapatalo*, 336 Phil. 214 (1997).

[50] *Basco v. Judge Rapatalo*, 336 Phil. 214 (1997); *Carpio v. Maglalang*, 273 Phil. 240 (1991), citing *People v. San Diego*, 135 Phil. 515 (1968).

[51] *People v. Cabral*, *supra* note 44.

[52] *People v. Cabral*, *supra* note 44.

[53] *People v. Cabral*, *supra* note 44.

[54] *Aleria, Jr. v. Velez*, 359 Phil. 141 (1998).

[55] *People v. Antona*, 426 Phil. 151 (2002); *Borinaga v. Judge Tamin*, 297 Phil. 223 (1993).

in the absence thereof is not a product of sound judicial discretion but of whim, caprice, and outright arbitrariness.[56]

In the present case, we find that the Sandiganbayan did not abuse its discretion amounting to lack or excess of jurisdiction when it denied bail to Cambe and Napoles, upon a finding of strong evidence that they committed the crime of plunder in conspiracy with one another.

Plunder, defined and penalized under Section 2[57] of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d)[58] hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00).

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[56] *Id.*

[57] Sec. 2. *Definition of the Crime of Plunder; Penalties.* — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by **reclusion perpetua to death**. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (Emphasis supplied)

[58] Section 1(d) states:

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes.

In finding that there is strong evidence that petitioners Revilla, Cambe, and Napoles committed the crime of plunder, the Sandiganbayan held that:

THE FIRST ELEMENT. Accused Revilla and Cambe were public officers at the time material to this case, accused Revilla being a member of the Senate of the Philippines, and accused Cambe being Revilla's Chief of Staff/Political Officer/Director III as appearing on the face of the documents on record. Accused Napoles is a private individual charged in conspiracy with accused Revilla and Cambe. As provided in Section 2 of RA 7080, "[a]ny person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense."

THE SECOND ELEMENT. x x x.

x x x x x x x x x

The separate and individual acts of accused Revilla, Cambe and Napoles convincingly appear to have facilitated the amassing, accumulation, and acquisition of ill-gotten wealth by accused Revilla. It is immaterial whether or not the prosecution has presented evidence that accused Cambe and Napoles by themselves have likewise

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1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

amassed, accumulated, or acquired ill-gotten wealth in the amount of at least P50 Million each. It is sufficient that the prosecution has established that accused Revilla and accused Cambe have conspired with one another, and with accused Napoles in the accumulation or acquisition of ill-gotten wealth of at least P50 million.

The Court is persuaded that the prosecution has presented compelling evidence that accused Revilla amassed, accumulated or acquired ill-gotten wealth by repeatedly receiving from accused Napoles or her representatives or agents, money, through accused Cambe, and in those several occasions, accused Revilla and/or Cambe made use of his or their official position, authority, connections, and influence. **This was established by the testimonies of the witnesses and the documents they testified to which, at this stage of the proceedings, [have] remained unrebutted, and thus, given full faith and credence by the Court.**

From 2006 to 2009, accused Revilla was earmarked PDAF from the national budget. He had no physical and direct possession of the fund. However, as the fund was allocated to his office, he alone could trigger its release, after accomplishment of the necessary documentary requirements. All he had to do, and which he actually did, was to request its release from then President Gloria Macapagal-Arroyo (PGMA) or from the DBM accompanied by a list of projects and endorsement naming a certain implementing agency on the DBM's menu as project implementor. Finding everything to be in order, the DBM processed accused Revilla's request, approved it, and eventually released the SARO. Accused Revilla was informed of this release. After the SARO, the DBM issued the NCA to cover the cash requirements of the IA authorized under the SARO. The DBM issued Notice of Cash Allocation Issued (NCAI) to the Bureau of Treasury. In tranches, the IA issued checks to the NGOs. The NGOs were paid in full of the project cost upon submission of liquidation reports with supporting documents, such as delivery receipts, purchase orders and list of beneficiaries, with corresponding signatures.

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It is well to note that accused Revilla's endorsement consisted of two phases. The first phase consisted of letters addressed to PGMA or the DBM requesting for the release of the PDAF, with attached list of priority projects. Itemized in the list were the location, name and amount of the project as well as the IA he desired to implement the project. The second phase consisted of letters to the

IAs subsequent to the issuance of the SARO, this time, endorsing Napoles' NGOs to the IAs as the latter's project partners.

The endorsement letters and other documents submitted to the IAs show that accused Revilla's participation did not just stop at initiating the release of his PDAF, but extended to the implementation stage of his identified projects. He sent communications to the IAs appointing and authorizing accused Cambe to monitor, follow up, or assist in the implementation of the projects, and "to sign in his behalf all other documents needed to smooth the process." Accused Cambe, for accused Revilla, conformed to the project activities and project profiles prepared by the NGOs. He likewise signed on the tripartite MOAs with the representatives of the IA and the NGO concerned. Also, accused Cambe, by himself or for accused Revilla, signed liquidation documents such as accomplishment/terminal reports, reports of disbursement (fund utilization), inspection and acceptance reports.

x x x x x x x x x

Accused Revilla could not have possibly drawn money from his PDAF allocation directly to himself. He had to do it through channels or conduits to camouflage the flow with a semblance of legitimacy. Here lies the indispensable participation of accused Napoles. Like accused Revilla, accused Napoles stayed at the background, using other people as her tentacles to fulfill her part of the conspiracy. Although accused Napoles' signature does not appear in any of these documents, evidence abounds to support that she was the brains behind the vital link of the conspiracy. Luy, Suñas, Sula and Baltazar, who once worked for accused Napoles, consistently declared that they moved and acted upon the instruction of Napoles, from the creation of fake NGOs to the diversion of the proceeds of the PDAF. Accused Napoles engineered the creation of the NGOs through which the proceeds of accused Revilla's PDAF were funneled.

Evidence discloses that the NGOs were illicitly established for some dishonest purpose. Their presidents and incorporators either have working or personal relations to accused Napoles, or unknown to her, or fictitious. The addresses of the NGOs were either the location of her property or that of her employees whom she made presidents, or otherwise inexistent. The lists of beneficiaries were bogus, and this was confirmed by the COA during its own investigation where it was found that either there were no projects implemented or there were no such names of beneficiaries that existed.

**Accused Napoles' connection to and control of the NGOs are made evident by the bank transactions of the NGOs. Records of bank transactions of these NGOs reveal, as testified to by witness Santos from the AMLC, that the accounts of these NGOs with the Land bank and Metrobank were only temporary repository of funds and that the withdrawal from the accounts of the NGOs had to be confirmed first with accused Napoles nothwithstanding that the accounts were not under her name. It is well to note that the bank accounts of these NGOs were opened by the named presidents using JLN Corp. identification cards. These circumstances are consistent to the testimonies of accused Luy, Sula, Suñas and Baltazar that as soon as the check of the PDAF proceeds were encashed, accused Napoles directed them or any of her trusted employees to withdraw the same. At this stage, the Court sees no basis to doubt the strong evidence against accused Napoles.**

Accused Revilla managed to remain *incognito* in reaping benefits from the illegal scheme with the help and cooperation of accused Cambe. Concededly, there are no direct proofs that accused Revilla received commissions/rebates out of the proceeds of his PDAF routed to accused Napoles, but the circumstances persuasively attest that accused Revilla on several occasions, received money from the illegitimate deals involving his PDAF, through accused Cambe. Also, accused Cambe profited from the same transactions so far computed at ₱13,935,000.00.

**There are solid reasons to infer that accused Cambe acted on behalf of accused Revilla and with the latter's *imprimatur*, and that accused Revilla effectively clothed accused Cambe with full authority. Consider these: (1) accused Cambe worked for Revilla in the Senate; (2) accused Revilla designated accused Cambe to follow up, supervise and act on his behalf for the implementation of the projects, and to sign necessary documents; (3) accused Cambe, representing accused Revilla or Revilla's office, signed the MOAs and other documents used to support the issuance of the checks from the IA to accused Napoles' NGOs to supposedly finance the projects out of accused Revilla's PDAF. Accused Cambe likewise signed liquidation documents such as accomplishment reports; (4) Luy, Suñas, and Sula forthrightly and positively identified Cambe to have received from them or from accused Napoles the commissions/rebates of accused Revilla; (5) the said witnesses likewise candidly testified that accused Cambe also personally got his own commission either**

**from them or from accused Napoles; (6) Luy had recorded the commissions/rebates per his testimony, and as shown by his disbursement ledgers and Summary of Rebates. These points may rest heavily on the credibility of the witnesses. But, as discussed, the Court, in the meantime, saw no cogent justification to invalidate their testimonies.**

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THE THIRD ELEMENT. Of the Php224,512,500.00 alleged in the Information to have been plundered by accused Revilla and/or Cambe, the prosecution has so far strongly proven the amount of ₱103,000,000.00 broken down below. This is the total amount received by accused Cambe for Revilla, to which Luy, Sula and Suñas have testified to their personal knowledge. In other words, Luy, Sula or Suñas either directly handed the money to accused Cambe, or they saw accused Napoles, or any one of them, give the money to accused Cambe. Thus:

| Date | Amount |
|---|---|
| April 6, 2006 | Php5,000,000.00 |
| June 6, 2006 | 5,000,000.00 |
| March 27, 2007 | 7,500,000.00 |
| April 12, 2007 | 9,500,000.00 |
| April 19, 2007 | 3,000,000.00 |
| August 10, 2007 | 3,000,000.00 |
| 2008 | 10,000,000.00 |
| | 5,000,000.00 |
| October 6, 2009 | 9,000,000.00 |
| October 6, 2009 | 9,000,000.00 |
| October 6, 2009 | 2,000.000.00 |
| October 22, 2009 | 12,000,000.00 |
| October 22, 2009 | 8,000,000.00 |
| March 2010 | 15,000,000.00 |
| **Total Php** | **103,000,000.00**[59] |

(Emphasis supplied)

[59] *Rollo* (G.R. No. 218232), Vol. I, pp. 106-121.

Thus, the Sandiganbayan exercised its judicial discretion within the bounds of the Constitution, law, rules, and jurisprudence after appreciating and evaluating the evidence submitted by the parties.

During the bail hearings, both parties were afforded opportunities to offer their evidence. The prosecution presented nine witnesses and documentary evidence to prove the strong evidence of guilt of the accused. The defense likewise introduced evidence in its own rebuttal and cross-examined the witnesses presented by the prosecution. Only after both parties rested their case that the Sandiganbayan issued its Resolution, which contains the summary of the prosecution's evidence. The summary of the prosecution's evidence shows the basis for the Sandiganbayan's discretion to deny bail to Cambe and Napoles.

In finding strong evidence of guilt against Cambe, the Sandiganbayan considered the PDAF documents and the whistleblowers' testimonies in finding that Cambe received, for Revilla, the total amount of ₱103,000,000.00, in return for Revilla's endorsement of the NGOs of Napoles as the recipients of Revilla's PDAF. It gave weight to Luy's summary of rebates and disbursement ledgers containing Cambe's receipt of money, which Luy obtained from his hard drive. The Sandiganbayan likewise admitted Narciso as expert witness, who attested to the integrity of Luy's hard drive and the files in it.

In finding strong evidence of guilt against Napoles, the Sandiganbayan considered the AMLC Report, as attested by witness Santos, stating that Napoles controlled the NGOs, which were the recipients of Revilla's PDAF. The Sandiganbayan found that the circumstances stated in the AMLC Report, particularly that the bank accounts of these NGOs were opened by the named presidents using JLN Corp. IDs, these accounts are temporary repository of funds, and the withdrawal from these accounts had to be confirmed first with Napoles, are consistent with the whistleblowers' testimonies that they were named presidents of Napoles' NGOs and they withdrew large amounts of cash from the NGOs' bank accounts upon instruction

of Napoles. The Sandiganbayan also took note of the COA report, as confirmed by the testimony of Garcia, that Revilla's PDAF projects failed to comply with the law, Napoles' NGOs were fake, no projects were implemented and the suppliers selected to supply the NGOs were questionable.

Accordingly, there is no basis for the allegation of Cambe that the Sandiganbayan Resolutions were based on mere presumptions and inferences. On the other hand, the Sandiganbayan considered the entire record of evidence in finding strong evidence of guilt.

For purposes of bail, we held in *People v. Cabral*[60] that: "[b]y judicial discretion, the law mandates the determination of whether proof is evident or the presumption of guilt is strong. **'Proof evident' or 'Evident proof'** in this connection has been held to mean **clear, strong evidence which leads a well-guarded dispassionate judgment to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered. 'Presumption great'** exists when the circumstances testified to are such that the **inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion**."[61] The weight of evidence necessary for bail purposes is not proof beyond reasonable doubt, but strong evidence of guilt, or "proof evident," or "presumption great." A finding of "proof evident" or "presumption great" is not inconsistent with the determination of strong evidence of guilt, contrary to Cambe's argument.

Cambe further alleged that the Sandiganbayan gravely abused its discretion in relying on the concept of totality of evidence, which only applies in writ of amparo cases. To support this argument, Cambe's previous counsel cited *Razon, Jr. v. Tagitis*.[62]

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[60] *People v. Cabral*, *supra* note 44.

[61] *Supra* note 44, at 709. Boldfacing and underscoring supplied.

[62] 621 Phil. 536 (2009).

We specifically held in *Razon* that the: "unique situations that call for the issuance of the writ [of amparo], as well as the considerations and measures necessary to address these situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings."[63] Thus, the case of *Razon* should not have been applied in this case. On the other hand, as we held in *People v. Cabral*: "[e]ven though there is a reasonable doubt as to the guilt of accused, if on an examination of the **entire record** the presumption is great that accused is guilty of a capital offense, bail should be refused."[64] Accordingly, **an examination of the entire record — totality of evidence — is necessary to determine whether there is strong evidence of guilt, for purposes of granting or denying bail to the accused**.

In their separate petitions before us, Cambe and Napoles attempt to individually refute each evidence presented by the prosecution. In his petition, Cambe alleges that there was even no evidence that: (1) he is a public officer; and (2) he and Napoles also amassed, accumulated or acquired ill-gotten wealth of at least ₱50,000,000.00. Napoles, on the other hand, argues that there was no direct evidence that Revilla amassed ill-gotten wealth. In addition, Napoles argues that: (1) the whistleblowers' testimonies lack credibility and are hearsay because of their admission that they never saw Revilla talk with Napoles about their alleged agreement; (2) the AMLC report is multiple hearsay; and (3) the hard disk, disbursement ledger, and summary of rebates are not reliable because Narciso is not an expert witness, and the entries in the disbursement ledger are hearsay. In short, Cambe and Napoles question the conclusions of the Sandiganbayan insofar as its appreciation of the facts is concerned.

Generally, the factual findings of the Sandiganbayan are binding upon the Court.[65] However, this general rule is subject to some

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[63] *Supra* note 62, at 554.

[64] *People v. Cabral*, *supra* note 44, at 709-710.

[65] *Alvizo v. Sandiganbayan*, 454 Phil. 34 (2003).

exceptions, among them: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record.[66]

We will not set aside the factual findings of the Sandiganbayan, absent any showing that the Sandiganbayan exercised its discretion out of whim, caprice, and outright arbitrariness amounting to grave abuse of discretion.

In any event, Cambe is estopped from claiming that he is not a public officer. Cambe himself admitted in his Application for Bail that "while **accused Cambe is a public officer**, he did not act by himself or in connivance with members of his family x x x."[67] Furthermore, such is a factual finding of the Sandiganbayan, which is binding before us.

Also, there is no need to prove that Cambe and Napoles likewise amassed, accumulated or acquired ill-gotten wealth of at least ₱50,000,000.00 or that Revilla talked with Napoles about their alleged agreement. The charge against them is conspiracy to commit plunder.

In *Estrada v. Sandiganbayan*,[68] we held that "the gravamen of the conspiracy charge, therefore, is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; **rather, it is that each of them, by their individual acts, agreed to participate, directly or indirectly,**

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[66] *Id.* at 82.

[67] *Rollo* (G.R. No. 218235), p. 117. Emphasis supplied.

[68] 427 Phil. 820 (2002).

**in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for [petitioner Estrada]**."[69] Also, **proof of the agreement need not rest on direct evidence**, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense.[70] It is **not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme** or the details by which an illegal objective is to be carried out.[71] Thus, in *Guy v. People of the Philippines*,[72] we held that conspiracy was properly appreciated by the Sandiganbayan because even though there was no direct proof that petitioners agreed to cause injury to the government and give unwarranted benefits to a certain corporation, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. The conspiracy to commit plunder need not even be proved beyond reasonable doubt, but only for purposes of determining whether bail shall be granted.

Moreover, in giving credence to the testimonies of the prosecution witnesses, we held that the trial court's—the Sandiganbayan's—assessment of the credibility of a witness is entitled to great weight, sometimes even with finality.[73] This Court will not interfere with that assessment, absent any indication that the lower court has overlooked some material facts or gravely abused its discretion.[74] Minor and insignificant inconsistencies in the testimony tend to bolster, rather than weaken, the credibility of witnesses, for they show that the testimony is not contrived or rehearsed.[75] Moreover, the testimony

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[69] *Id.* at 902.

[70] *Guy v. People of the Philippines*, 601 Phil. 105 (2005).

[71] *Id.*

[72] *Id.*

[73] *People of the Philippines v. Combate*, 653 Phil. 487 (2010).

[74] *Id.*

[75] *Id.*

of a witness must be considered in its entirety and not merely in its truncated parts.[76] Similarly, we held that "the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion."[77]

As for the weight given by the Sandiganbayan to whistleblowers' testimonies, expert's testimony, AMLC report, the hard disk, disbursement ledger and summary of rebates, we emphasize that **for purposes of bail, the court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused**, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein.[78] **The course of inquiry may be left to the discretion of the court** which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination.[79]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction.[80] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[81]

We find that the Sandiganbayan was far from abusive of its discretion. On the contrary, its findings were based on the evidence extant in the records. In its appreciation and evaluation

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[76] *Id.*

[77] *Gomez v. Gomez-Samson*, 543 Phil. 436, 457 (2007).

[78] *Serapio v. Sandiganbayan*, 444 Phil. 499 (2003).

[79] *People of the Philippines v. Judge Gako*, 401 Phil. 514 (2000); *Basco v. Rapatalo*, 336 Phil. 214 (1997).

[80] *Cambe v. Office of the Ombudsman*, G.R. Nos. 212014-15, 6 December 2016, 812 SCRA 537.

[81] *Id.*

of the evidence against Cambe and Napoles, the Sandiganbayan did not commit grave abuse of discretion in finding that the prosecution established strong evidence of their guilt.

***G.R. No. 218903***

We find that the Sandiganbayan did not commit grave abuse of discretion amounting to lack and/or excess of jurisdiction when it denied the prosecution's motion to transfer the detention of Revilla and Cambe from the PNP Custodial Center to a BJMP-operated facility.

The Rules of Court provide that an arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense.[82] An arrest is made by an actual restraint of a person to be arrested, or **by his submission to the custody of the person making the arrest**.[83] Section 24 of RA 6975, or An Act Establishing The Philippine National Police Under A Reorganized Department of the Interior and Local Government, and for Other Purposes, provides that: "The Philippine National Police (PNP) shall have the following powers and functions: x x x (e) **Detain an arrested person** for a period not beyond what is prescribed by law, informing the person so detained of all his rights under the Constitution; x x x." The Revised PNP Police Operational Procedures Manual provides that: "any person arrested due to the commission of a crime/s can be detained/admitted in the PNP Detention/ Custodial Center."[84] As defined in the Revised PNP Police Operational Procedures Manual,[85] a detention/Custodial Center is an institution secured by the PNP Units concerned for the purpose of providing short term **custody of [a] detention**

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[82] Rule 113, Section 1.

[83] Rule 113, Section 2.

[84] Section 20.2a(1) of the Revised PNP Police Operational Procedures Manual. http://www.pnp.gov.ph/images/transparency_seal/2016/manuals/PNPOperationsManual.pdf (accessed 24 October 2017).

[85] *Id.*

**prisoner** thereby affording his safety and preventing escape **while awaiting the court's disposition of the case** or his transfer to the appropriate penal institution.

In the present case, both Revilla and Cambe voluntarily surrendered to the Sandiganbayan upon the issuance of the warrants of arrest against them, albeit with motion to elect the detention facilities in the PNP Custodial Center. Upon their voluntary surrender, they are deemed arrested and taken into custody. The Sandiganbayan thereafter allowed both Revilla and Cambe to be detained in the PNP Custodial Center barracks. Under the Rules of Court, the court, such as the Sandiganbayan in the present case, shall exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention.[86]

When by law jurisdiction is conferred on a court, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.[87] Accordingly, the Sandiganbayan acted within its jurisdiction and did not abuse its discretion in ordering the commitment of Revilla and Cambe in the PNP Custodial Center.

Clearly, Section 24 of RA 6975 vests authority in the PNP to detain arrested persons such as Revilla and Cambe, and the Revised PNP Police Operational Procedures Manual includes the PNP Detention/Custodial Center as an institution where any person arrested due to the commission of a crime/s can be detained/admitted.

The prosecution, however, anchors its motion to transfer the detention of Revilla and Cambe on Section 3, Rule 113 of the Rules of Court and Section 63 of RA 6975. Section 3, Rule 113 of the Rules of Court provides that: "It shall be the duty

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[86] Rule 114, Section 25.

[87] Rule 135, Section 6.

of the officer executing the warrant to arrest the accused and to deliver him to the nearest police station or jail without unnecessary delay." On the other hand, Section 63 of RA 6975 provides:

> SECTION 63. Establishment of District, City or Municipal Jail. There shall be established and maintained in every district, city and municipality a secured, clean, adequately equipped and sanitary jail for the custody and safekeeping of city and municipal prisoners, any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person who endangers himself or the safety of others, duly certified as such by the proper medical or health officer, pending the transfer to a medical institution.
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> The municipal or city jail service shall preferably be headed by a graduate of a four (4) year course in psychology, psychiatry, sociology, nursing, social work or criminology who shall assist in the immediate rehabilitation of individuals or detention of prisoners. Great care must be exercised so that the human rights of [these] prisoners are respected and protected, and their spiritual and physical well-being are properly and promptly attended to.

However, both Section 3 of Rule 113 and Section 63 of RA 6975 are inapplicable in the present case. It must be noted that Revilla and Cambe voluntarily surrendered to the Sandiganbayan, and there is no opportunity for the arresting officer to execute the warrants of arrest against them. Moreover, the said rule merely refers to the duty of the arresting officer **to deliver** the arrested person to the nearest police station or jail. The rule did not state about the duty "to detain" the arrested person to the nearest police station or jail. There is nothing in the rule referring to the place of detention of the arrested person.

In the same manner, there is nothing in Section 63 of RA 6975 which expressly mandates and limits the place of detention in BJMP-controlled facilities. On the other hand, it merely provides that: "there shall be established and maintained in every district, city and municipality a secured, clean, adequately equipped and sanitary jail x x x." When the language of the law is clear and explicit, there is no room for interpretation, only application.

Section 61 of the same law states that the BJMP shall exercise supervision and control over all city and municipal jails, while the provincial jails shall be supervised and controlled by the provincial government within its jurisdiction.[88] Evidently, a provincial jail is a place of detention not within the supervision and control of the BJMP. From the law itself, there are places of detention for the accused, which are not within the control and supervision of the BJMP.

Thus, to argue, as the prosecution did, that Revilla and Cambe's detention in the PNP Custodial Center afforded them special treatment because it is not a jail supervised by the BJMP would be similar to saying that detention of an accused in a provincial jail supervised by the provincial government would afford such accused special treatment.

Aside from its bare statements, the prosecution did not advance compelling reasons to justify the transfer of detention of Revilla and Cambe. The prosecution likewise failed to substantiate its allegation of special treatment towards Revilla. As the Sandiganbayan properly held:

> The prosecution failed to advance compelling and reasonable grounds to justify the transfer of accused Revilla and Cambe from the PNP Custodial Center, Camp Crame, to a BJMP controlled jail. Since their detention at the PNP Custodial Center on June 20, 2014, the conditions of their confinement have not been altered by circumstances that would frustrate the very purpose of their detention. Both accused have submitted themselves to the Court when required. No concrete incidents have been cited by the prosecution to establish that their continued detention in Camp Crame is no longer viable, and that the better part of discretion is to transfer them to a BJMP controlled jail. The prosecution does not articulate what is in a BJMP facility that the PNP Custodial Center lacks, or vice versa, which will make a difference in the administration of justice.

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[88] Section 61. *Powers and Functions*. — The Jail Bureau shall exercise supervision and control over all city and municipal jails. The provincial jails shall be supervised and controlled by the provincial government within its jurisdiction, whose expenses shall be subsidized by the National Government for not more than three (3) years after the effectivity of this Act.

Before the Court is simply a general proposition that the accused should be confined in a BJMP controlled detention facility based on some rules, which the Court have previously discussed to be unacceptable, backed up by an unsubstantiated generic declaration that the PNP Custodial Center affords them special treatment not extended to all other detention prisoners under BJMP control. To the prosecution, this is a violation of the constitutional right to equal protection of the other detention prisoners, like Atty. Reyes, who is now detained in a BJMP facility.

But, the Court is not convinced. To agree with the prosecution on the matter of special treatment is to accept a general notion that the public officers in a BJMP facility are more circumspect in the handling of detention prisoners than in a non-BJMP facility, like the PNP Custodial Center. Verily, the "special treatment," *e.g., wedding anniversary celebration of Senator Jinggoy Estrada* claimed by the prosecution, does not go with the place. It has even nothing to do with accused Revilla and Cambe. "Special treatment" is a judgment call by the people concerned in the place. For no matter which detention place will accused Revilla and Cambe be confined if the people controlling that place would extend them privileges not usually given to other detention prisoners, there would always be that dreaded "special treatment." Thus, special treatment can be addressed by ensuring that the people around the accused in their present detention facility will deter from giving them exceptional benefits, through a firm implementation of policies and measures, and the imposition of sanctions for non-compliance. The "special treatment" cannot be remedied by transferring the accused to another detention facility. The transfer must be reasonably justified.

The Court solicitously agrees that it is the fact of detention and not the place of detention that is important. x x x.[89]

In its Resolution dated 20 May 2015, the Sandiganbayan stated that it so took into account, considering the circumstances of the accused, the security conditions of the place, and its proximity to the court.[90] With these factors, the Sandiganbayan viewed that the PNP Custodial Center would be able to secure the accused and ensure their attendance at trial, at a reasonable

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[89] *Rollo* (G.R. No. 218903), Vol. I, pp. 38-39.

[90] *Id*. at 46.

cost to the government. Absent any showing of grave abuse of discretion, the factual findings of the Sandiganbayan are binding upon the Court. We affirm the order of the Sandiganbayan directing the PNP-CIDG "to keep the accused in its custody at the aforesaid barracks (PNP Custodial Center Barracks) and not allow the accused to be moved, removed, or relocated until further orders from the court."[91]

***G.R. No. 219162***

We find that the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the issuance of the writ of preliminary attachment against Revilla's monies and properties.

Presidential Decree No. 1606, as amended by RA 10660, provides that the Sandiganbayan has jurisdiction to jointly determine in the same proceeding the criminal action and the corresponding civil action for the recovery of civil liability, considering that the filing of the criminal action before the Sandiganbayan is deemed to necessarily carry with it the filing of the civil action.[92] The same law provides that the Rules of Court promulgated by the Supreme Court shall apply to all cases

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[91] *Id*. at 62-64.

[92] Presidential Decree No. 1606, as amended by Republic Act No. 10660, Section 4 provides: "Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: *Provided, however*, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned."

and proceedings filed with the Sandiganbayan.[93] The Rules of Court state that the provisional remedies in civil actions, insofar as they are applicable, may be availed of in connection with the civil action deemed instituted with the criminal action.[94]

The grounds for the issuance of the writ of preliminary attachment have been provided in Rule 57 and Rule 127 of the Rules of Court. Rule 127 states that the provisional remedy of attachment on the property of the accused may be availed of to serve as security for the satisfaction of any judgment that may be recovered from the accused when the criminal action is based on a **claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, in the course of his employment as such, or when the accused has concealed, removed or disposed of his property or is about to do so**.[95] Similarly, Rule 57 provides that attachment may issue: "x x x (b) in an **action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer** x x x; (c) in an action to recover the possession of property unjustly or fraudulently taken, detained or converted, **when the property, or any part thereof, has been concealed,**

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[93] Presidential Decree No. 1606, Section 9.

[94] Rules of Court, Rule 127, Section 1.

[95] Rules of Court, Rule 127, Section 2 provides: "When the civil action is properly instituted in the criminal action as provided in Rule 111, the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

x x x x x x x x x

(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) When the accused has concealed, removed, or disposed of his property, or is about to do so; and

x x x x x x x x x"

**removed, or disposed of to prevent its being found** or taken by the applicant or an authorized person; x x x."[96]

It is indispensable for the writ of preliminary attachment to issue that there exists a *prima facie* factual foundation for the attachment of properties, and an adequate and fair opportunity to contest it and endeavor to cause its negation or nullification.[97] Considering the harsh and rigorous nature of a writ of preliminary attachment, the court must ensure that all the requisites of the law have been complied with; otherwise, the court which issues it acts in excess of its jurisdiction.[98]

Thus, for the *ex-parte* issuance of a writ of preliminary attachment to be valid, an affidavit of merit and an applicant's bond must be filed with the court in which the action is pending.[99] For the affidavit of merit, Section 3 of the same rule states that: "[a]n order of attachment shall be granted only when it is made to appear by the affidavit of the applicant or some other person who personally knows of the facts that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no sufficient security for the claim sought to be enforced by the action, and that the amount due to applicant or the value of the property the possession of which he is entitled to recover is as much as the sum for which the order is granted above all legal counterclaims." The mere filing of an affidavit reciting the facts required by Section 3, however, is not enough to compel the judge to grant the writ of preliminary attachment.[100] Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of its discretion.[101]

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[96] Rules of Court, Rule 57, Section 1. Emphasis supplied.

[97] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*, 234 Phil. 180 (1987).

[98] *Jardine-Manila Finance, Inc. v. Court of Appeals*, 253 Phil. 626 (1989).

[99] *Watercraft Venture Corp. v. Wolfe*, 769 Phil. 394 (2015).

[100] *Id.*

[101] *Id.*

The sufficiency or insufficiency of an affidavit depends upon the amount of credit given it by the judge, and its acceptance or rejection, upon his sound discretion.[102] On the requirement of a bond, when the State is the applicant, the filing of the attachment bond is excused.[103]

We find that the Sandiganbayan acted within its jurisdiction since all the requisites for the issuance of a writ of preliminary attachment have been complied with.

Revilla, while still a public officer, is charged with plunder, committed by amassing, accumulating, and acquiring ill-gotten wealth, through a combination or series of overt or criminal acts, as follows:

1) Through **misappropriation, conversion, misuse, or malversation of public funds or raids** on the public treasury;

2) **By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit** from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the

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[102] *Id*.

[103] *Republic of the Philippines v. Garcia*, 554 Phil. 371 (2007).

Filipino people and the Republic of the Philippines.[104] (Emphasis supplied)

Clearly, the crime of plunder is based on a claim for public funds or property misappropriated, converted, misused, or malversed by the accused who is a public officer, in the course of his employment as such. The filing of the criminal action for plunder, which is within the jurisdiction of the Sandiganbayan,[105] is deemed to necessarily carry with it the filing of the civil action. Accordingly, the writ of preliminary attachment is an available provisional remedy in the criminal action for plunder.

In its Motion, the prosecution alleged that: "[Revilla] converted for his own use or caused to be converted for the use by unauthorized persons the sum of Php515,740,000.00 worth of public funds sourced from his PDAF through 'ghost' projects."[106] In *Cambe v. Office of the Ombudsman*,[107] we agreed with the Ombudsman's finding of probable cause against Revilla and held that for purposes of arriving at a finding of probable cause, "only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty." Thus, we held that the prosecution's evidence established a *prima facie* case for plunder against Revilla:

Taking together all of the above-stated pieces of evidence, **the COA and FIO reports tend to *prima facie* establish that irregularities had indeed attended the disbursement of Sen. Revilla's PDAF and that he had a hand in such anomalous releases, being the head of Office which unquestionably exercised operational control thereof**. As the Ombudsman correctly observed, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He

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[104] RA 7080, Section 1(d).

[105] RA 7080, Section 3 provides: "Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the Sandiganbayan."

[106] *Rollo* (G.R. No. 219162), Vol. I, p. 190.

[107] *Supra* note 80.

indorsed [Napoles'] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost projects', and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines." Hence, he should stand trial for violation of Section 3(e) of RA 3019. For the same reasons, it is apparent that ill-gotten wealth in the amount of at least ₱50,000,000.00 (*i.e.*, ₱224,512,500.00) were amassed, accumulated or acquired through a combination or series of overt acts stated in Section 1 of the Plunder Law. Therefore, Sen. Revilla should likewise stand trial for Plunder.[108] (Emphasis supplied)

Thus, contrary to Revilla's insinuations, there exists a *prima facie* factual foundation for the attachment of his monies and properties.

Furthermore, in its Resolution dated 1 December 2014 denying bail to Revilla, the Sandiganbayan held that the prosecution duly established with strong evidence that Revilla, Cambe, and Napoles, in conspiracy with one another, committed the crime of plunder. The finding of strong evidence for purposes of bail is a greater quantum of proof required than *prima facie* factual foundation for the attachment of properties. Thus, the Sandiganbayan properly exercised its discretion in issuing the writ of preliminary attachment upon appreciating and evaluating the evidence against Revilla.

Moreover, the Affidavit of Merit attached to the Motion and executed by graft investigators of Revilla's PDAF likewise established that (1) a sufficient cause of action exists for the issuance of a writ of preliminary attachment; (2) the case is one of those mentioned in Sections 57 and 127 of the Rules of Court, and (3) that Revilla has no visible sufficient security in the event that judgment is rendered against him. The sufficiency of the affidavit depends upon the amount of credit given by the Sandiganbayan, and its acceptance, upon its sound discretion.

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[108] *Supra* note 80, at 599-600.

We refuse to interfere in its exercise of discretion, absent any showing that the Sandiganbayan gravely abused its discretion.

Even assuming that plunder is not based on a claim for public funds or property misappropriated, converted, misused or malversed by the public officer, the prosecution nevertheless alleged that Revilla has concealed, removed, or disposed of his property, or is about to do so, which is another ground for the issuance of the writ of preliminary attachment. The AMLC report, attached to the Motion, states that many investment and bank accounts of Revilla were "terminated immediately before and after the PDAF scandal circulated in [the] media," and Revilla himself publicly confirmed that he closed several bank accounts when the PDAF scam was exposed. Revilla failed to rebut these allegations with any evidence.

Considering that the requirements for its issuance have been complied with, the issuance of the writ of preliminary attachment by the Sandiganbayan is in order.

Contrary to Revilla's allegation, a writ of preliminary attachment may issue even without a hearing. Section 2, Rule 57 of the Rules of Court states that: "[a]n order of attachment may be issued either ***ex parte*** or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. x x x."

In *Davao Light & Power Co., Inc. v. Court of Appeals*,[109] this Court ruled that "a hearing on a motion or application for preliminary attachment is not generally necessary unless otherwise

[109] 281 Phil. 386 (1991).

directed by the trial court in its discretion."[110] In the same case, the Court declared that "[n]othing in the Rules of Court makes notice and hearing indispensable and mandatory requisites for the issuance of a writ of attachment."[111] Moreover, there is an obvious need to avoid alerting suspected possessors of "ill-gotten" wealth and thereby cause that disappearance or loss of property precisely sought to be prevented.[112] In any case, Revilla was given an adequate and fair opportunity to contest its issuance.

Also, contrary to Revilla's allegation, there is no need for a final judgment of ill-gotten wealth, and a preliminary attachment is entirely different from the penalty of forfeiture imposed upon the final judgment of conviction under Section 2 of RA 7080. By its nature, a preliminary attachment is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action.[113] As such, it is available **during the pendency of the action** which may be resorted to by a litigant to preserve and protect certain rights and interests **during the interim, awaiting the ultimate effects of a final judgment in the case**.[114] The remedy of attachment is provisional and temporary, designed for particular exigencies, attended by no character of permanency or finality, and always subject to the control of the issuing court.[115]

On the other hand, Section 2 of RA 7080 requires that upon conviction, the court shall declare any and all ill-gotten wealth

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[110] *Id*. at 396, citing *Toledo v. Judge Burgos*, 250 Phil. 514 (1998).

[111] *Id*., citing *Filinvest Credit Corporation v. Judge Relova*, 202 Phil. 741, 750 (1982).

[112] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*, *supra* note 97.

[113] *Lim, Jr. v. Spouses Lazaro*, 713 Phil. 356 (2013).

[114] *Id*.

[115] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*, *supra* note 97.

and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State. The State may avail of the provisional remedy of attachment to secure the preservation of these unexplained wealth and income, in the event that a judgment of conviction and forfeiture is rendered. The filing of an application for the issuance of a writ of preliminary attachment is a necessary incident in forfeiture cases.[116] It is needed to protect the interest of the government and to prevent the removal, concealment, and disposition of properties in the hands of unscrupulous public officers.[117] Otherwise, even if the government subsequently wins the case, it will be left holding an empty bag.[118]

This Decision does not touch upon the guilt or innocence of any of the petitioners.

**WHEREFORE,** we **DISMISS** the petitions for lack of merit and **AFFIRM** the assailed Resolutions of the Sandiganbayan.

**SO ORDERED.**

*Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Martires, Tijam*, and *Gesmundo, JJ.*, concur.

*Velasco, Jr., J.*, see concurring and dissenting opinion.

*Reyes, Jr., J.*, joins the dissent of *J. Velasco.*

*Jardeleza*, and *Caguioa, JJ.*, no part.

## CONCURRING AND DISSENTING OPINION

**VELASCO, JR., *J.*:**

I concur with the majority's finding that Sandiganbayan did not commit grave abuse of discretion when it denied the

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[116] *Republic of the Philippines v. Garcia*, *supra* note 103.

[117] *Republic of the Philippines v. Garcia*, *supra* note 103.

[118] *Republic of the Philippines v. Garcia*, *supra* note 103.

prosecution's motion to transfer the detention of Senator Ramon "Bong" Revilla, Jr. (Revilla) and Richard Cambe (Cambe) from the PNP Custodial Center to a BJMP-operated facility. However, on the matter of Revilla's supposed waiver of his right to bail, I digress from the majority's opinion. And consistent with my position in *Cambe v. Office of the Ombudsman*,[1] I dissent from the *ponencia* insofar as it denies Cambe's application for bail and sustains the graft court's issuance of the writ of preliminary attachment against Revilla's monies and properties.

*Withdrawal of Petition in G.R. No. 218232 is not a waiver of the right to bail*

I cannot concur with the position that Revilla's withdrawal of his petition in G.R. No. 218232 amounts to a waiver of his constitutional right to bail. Waiver of a right by implication cannot be presumed. In criminal cases where life, liberty and property are all at stake, obviously, the rule on waiver cannot be any less.[2] Jurisprudence illustrates that there are (3) essential elements of a valid waiver: "(a) existence of a right; (b) the knowledge of the existence thereof; and, (c) an intention to relinquish such right."[3] In *People v. Bodoso*,[4] this Court held that the last element—the intention to relinquish the right—does not exist where there is a reservation or a nature of any manifestation of a proposed action, *viz*:

> It is elementary that the existence of waiver must be positively demonstrated since a waiver by implication cannot be presumed. The standard of waiver requires that it "*not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences*." There must thus be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every

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[1] G.R. Nos. 212014-15, 212427-28, 212694-95, 212794-95, 213477-78, 213532-33, 213536-37 & 218744-59, December 6, 2016.

[2] *People v. Bodoso*, 446 Phil. 838 (2003).

[3] See *Spouses Valderama v. Macalde*, 507 Phil. 174 (2005).

[4] *Supra* note 2.

reasonable presumption against the existence and validity of such waiver. Necessarily, where there is a reservation as to the nature of any manifestation or proposed action affecting the right of the accused to be heard before he is condemned, certainly, the doubt must be resolved in his favor to be allowed to proffer evidence in his behalf.

Here, while Revilla withdrew his petition in G.R. No. 218232, he made the following reservation:

> Considering, however, that the presentation of prosecution evidence in the Plunder Case below will already commence on 12 January 2017, and that trial will be conducted every Thursday thereafter, **petitioner will avail of the remedies available to him in said proceedings once the insufficiency of the evidence against him is established**.[5]

The absence of the intent to relinquish his right to bail is clear from Revilla's foregoing statement. In fact, nothing therein shows his awareness that by withdrawing his Petition, he was thereby abandoning his right to bail. On the contrary, Revilla clarified his intent to avail of the remedies available to him. This necessarily includes the remedy of applying for bail.

In addition, judicial notice should be taken of the fact that in his Petition before the Court in G.R. No. 236174, which assails the Sandiganbayan's denial of his Motion for Leave to File Demurrer to Evidence, Revilla even prayed, as an interim relief, that the Court grant him bail. His lack of intent to abandon his right to bail should not, therefore, be gainsaid. Waiver of a right is a matter of intention and must not be inferred by this Court in the face of clear statements to the contrary.

This Court's ruling in *People v. Donato*[6] relied upon by the *ponencia* does not foreclose Revilla's right to be admitted to bail. The factual circumstances in *Donato* and this case are entirely different. In *Donato*, therein detainee, private respondent Rodolfo Salas, withdrew his petition for habeas corpus, but with an explicit agreement with the government that he would

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[5] *Rollo* (G.R. No. 218232), Vol. 7, p. 2622. Emphasis supplied.

[6] 275 Phil. 146 (1991).

"remain in legal custody and face trial before the court having custody over his person."[7] This is the reason why the Court in *Donato* ruled that there was a waiver of Salas' right to be admitted to bail. Unlike *Donato*, no such express act or statement on the part of petitioner Revilla is present.

Furthermore, it is well-settled that an order disposing a petition for bail is merely interlocutory[8] and does not attain finality.[9] Precedent confirms this point. In the recent case of *People v. Escobar*,[10] the Court recognized that a person may file a second application for bail, even after bail has been previously denied.

With the foregoing, to conclude that petitioner Revilla waived his right to bail despite his express intention is unwarranted. Revilla must be given the chance, should he so choose, to again invoke and prove his right to bail.

*On Cambe's Application for Bail*

The Constitution prohibits the deprivation of a person's liberty and detention in the absence of probable cause. As I discussed in my opinion in *Cambe*,[11] this probable cause requirement to indict, and thus detain Cambe has not been satisfied, *viz.*

***Cambe***

As to Cambe, the March 28, 2014 Joint Resolution of the respondent OOMB briefly outlines his alleged participation in the conspiracy, thus:

x x x x x x x x x

In fine, the Ombudsman, in its Joint Resolution, attempted to establish Cambe's liability by presenting an elaborate, complicated scheme wherein he purportedly conspired with Revilla, *et al.* and

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[7] *Ibid.*

[8] *Pobre v. Court of Appeals*, 501 Phil. 360 (2005).

[9] *Ibid.*

[10] G.R. No. 214300, July 26, 2017.

[11] *Supra*.

the whistleblowers to allegedly enable Revilla to illegally acquire and amass portions of the PDAF through kickbacks.

Cambe's participation in the alleged conspiracy scheme to amass wealth, therefore, hinges on his participation as staff member of Sen. Revilla, and his purported signatures on the PDAF documents. On this point, Cambe argued that all his signatures in the PDAF documents were forged, and, thus, his participation in the conspiracy scheme has not been adequately established.

To underscore his point, he presented the examination report dated December 5, 2013 of Atty. Pagui, the forensic document examiner who examined the purported signatures of Cambe appearing on the PDAF documents, and compared them with various standard signatures presented by Cambe. In his report, Atty. Pagui concluded:

x x x x x x x x x

Interestingly, the March 28, 2014 Joint Resolution of the respondent Ombudsman did not once mention the examination report of Atty. Pagui, nor did it squarely address the allegation of forgery. It immediately dismissed the argument by saying:

Forgery is not presumed, it must be proved by clear, positive, and convincing evidence and the burden of proof lies on the party alleging forgery.

Further, as gathered from the March 28, 2014 Joint Resolution, the fact of Cambe, acting on his own as a public officer, amassing or acquiring ill-gotten wealth amounting to at least Fifty Million Pesos (₱50,000,000.00) through any of the means provided under the plunder law or acting in violation of RA 3019 has not been demonstrated.

The Ombudsman simply relied heavily on the statements of Luy, Sula, and Suñas, who confessed to having conspired with Napoles in executing this scheme. From their statements, the Ombudsman pieced together the participation of Revilla, Cambe, and the other petitioners. Thus, Cambe asserts that the whistleblowers' statements cannot be used against him under the *res inter alios acta* rule.

Respondents, through the OSG, claim that the case against Cambe fall under the exception to such rule.

I am unable to agree. The exception to the *res inter alios acta* rule, as earlier indicated, in Section 30 of Rule 130 provides:

> Section 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.
>
> x x x x x x x x x

The requisites to bring a given set of facts under the exception to the *res inter alios acta* rule were not met in the present case. Consider:

*First*, the alleged conspiracy has yet to be established by competent evidence. Except for the whistleblowers' admissions/ statements, no other evidence was adduced to show that Cambe agreed to commit plunder or any crime. In fact, these statements heavily relied upon do not even establish Cambe's participation in the scheme or imply any wrongdoing on his part. The PDAF documents made much of by respondents are tainted with falsehood, as the whistleblowers themselves admitted, and can hardly be viewed to be independent and credible evidence to establish said conspiracy.

The fact that some of the PDAF Documents Cambe purportedly signed were notarized is of no moment in light of the admissions made by the "whistle-blowers" that they themselves did the "notarization." In his *Karagdagang Sinumpaang Salaysay* dated September 12, 2013, Luy admitted that Napoles' employees kept the dry seals and notarial registers of several notary publics and used them to "notarize" the PDAF Documents:

> x x x x x x x x x

Hence, the PDAF Documents by themselves are not reliable evidence of Cambe's complicity in the conspiracy to funnel funds out of the PDAF.

*Second*, Luy, Sula, and Suñas' admissions pertain to their own acts in perpetrating the scheme Napoles designed. This includes the forging and falsification of official documents to make it appear their issuance was authorized by legislators and their staff. Any alleged participation of Cambe as related to by the whistleblowers is hearsay considering that their supposed knowledge as to Cambe's role has Napoles, as source.

Moreover, Cambe's alleged receipt of ₱224,512,500.00 for Revilla and 5% for himself from the years 2006 to 2010, which purportedly

represent their commissions, "rebates," or "kickbacks" for endorsing Napoles' NGOs was never corroborated by any independent evidence aside from the whistleblowers' testimonies. The business ledgers Luy submitted cannot be considered as such independent evidence since they are still based on Luy's statement. The allegation made by Cunanan of the TRC in his counter-affidavit pertaining to his phone conversation with Cambe and Revilla, has not been corroborated and does not establish any wrongdoing on the part of Cambe or Revilla.

*Finally*, public respondents never refuted the fact that these statements were made after the purported conspiracy had ceased. Luy, Sula, and Suñas only executed their respective admissions/ statements sometime in September 2013, long after they have completed the alleged scheme.

What may be taken as independent evidence gathered during the FIO and the NBI's investigations consisted of endorsement letters, MOAs, and other documentation. They are of little evidentiary value, however, as they have been shown to have been falsified and forged by Luy, Sula, and Suñas upon Napoles' instructions. The COA report which found PDAF projects to be inexistent or have never been implemented is also insufficient as to Cambe, as his alleged participation is predicated on the forged indorsement letters, MOAs, and other documents. Even the MOAs allegedly executed by the NGOs, the implementing agencies, and Cambe as representative of Revilla, were admitted to have been "*notarized*" by Napoles' cohorts, not by legitimate notaries. Owing to this aberration, the MOAs do not enjoy the presumption of regularity and cannot be considered to be credible evidence to establish probable cause against Cambe.

Aside from the whistleblowers' own admission of forgery, handwriting experts Azores and Pagui had evaluated the authenticity of the PDAF documents and had determined that the signatures on the PDAF documents were not made by one and the same person. The testimonies of these experts cannot simply be swept aside by mere resort to legal arguments, but must be addressed and refuted by superior contrary evidence. Until then, the shifted burden to establish the authenticity of the documents rests with public respondents. The evaluation by the Special Panel of Investigators as to such authenticity would not, in context, suffice to overturn the expert testimonies of Azores and Pagui since the Special Panel is not experts in the field of handwriting analysis.

The Ombudsman's selective appreciation of certain critical testimonial evidence is a badge of grave abuse of discretion. She, for instance, accepted as gospel truth the accusatory statements of Luy, Sula, and Suñas insofar as the alleged participation of Revilla and Cambe in the scam is concerned, but in the same breath disregarded their admission of forgery and fabrication of the PDAF documents. In fine, the Ombudsman viewed as true those portions of the whistleblowers' statements which would support the prosecution's version despite contrary evidence presented by petitioners.

Considering the apparent whimsical and capricious approach thus taken by the Ombudsman, I submit that this Court should have exercised its power of judicial review. **Tolerating the practice of establishing probable cause based on forged or questionable documents would expose the criminal justice system to malicious prosecution.** It will create a dangerous precedent. It will encourage unscrupulous individuals to file trumped up charges based on fictitious, spurious, or manipulated documents. Malicious lawsuits designed to harass the innocent will proliferate, in clear violation of their rights enshrined by no less than the Constitution. This, I cannot allow.

Without the satisfaction of the lower standard of probable cause, there cannot be a strong evidence of guilt that could warrant Cambe's continuous detention. Therefore, I submit that, at the very least, he should be released on bail.

As relevant here, and consistent with the doctrine on the presumption of innocence accorded to accused, this Court has ruled that the sole purpose of confining an accused in jail before conviction is to assure his presence at the trial. Citing *Montana v. Ocampo*,[12] this Court wrote:

In the evaluation of the evidence the probability of flight is one other important factor to be taken into account. The sole purpose of confining accused in jail before conviction, it has been observed, is to secure his presence at the trial. In other words, if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity,

[12] G.R. No. L-6352, January 29, 1953, cited in *People v. Hernandez*, 99 Phil. 515 (1956).

rather than face the verdict of the jury. Hence, the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of evasion of prosecution.

The possibility of escape in this case, bearing in mind the defendant's official and social standing and his other personal circumstances, seem remote if not nil.

Thus, in this Court's July 12, 2016 Resolution in *Enrile*,[13] the Court stated that the right to bail "should be curtailed only if the risks of flight from this jurisdiction were too high," taking into consideration circumstances such as the accused's past and present disposition of respect for the legal processes, the length of his public service, and his individual public and private reputation, thus:

Secondly, the imputation of "preferential treatment" in "undue favor" of the petitioner is absolutely bereft of basis. A reading of the decision of August 18, 2015 indicates that the Court did not grant his provisional liberty because he was a sitting Senator of the Republic. It did so because there were proper bases — legal as well as factual — for the favorable consideration and treatment of his plea for provisional liberty on bail. By its decision, the Court has recognized his right to bail by emphasizing that such right should be curtailed only if the risks of flight from this jurisdiction were too high. In our view, however, the records demonstrated that the risks of flight were low, or even nil. The Court has taken into consideration other circumstances, such as his advanced age and poor health, his past and present disposition of respect for the legal processes, the length of his public service, and his individual public and private reputation.

Given these precedents, this case should raise questions about whether Cambe is a flight risk who will jump bail should they be provisionally released. I maintain that Cambe is not. To recall, Cambe surrendered within hours after the Sandiganbayan issued a warrant for his arrest. Four (4) years have passed since trial in the plunder case ensued, without any report of any misdeed or attempts to escape on his part. Clearly, Cambe cannot be categorized as being the same as those who usually

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[13] *Enrile v. Sandiganbayan (Third Division)*, G.R. No. 213847 (Resolution), July 12, 2016.

jump bail, shadowy characters mindless of their reputation in the eyes of the people for as long as they can flee from the retribution of justice. Thus, I submit that his application for bail should have been considered and granted by the Sandiganbayan.

*The issuance of the writ of preliminary attachment against Revilla is not warranted.*

For the reasons set forth in my opinion in *Cambe v. Office of the Ombudsman*,[14] I submit that there is no *prima facie* case for plunder against Revilla that warrants the issuance of the writ of preliminary attachment of his monies and properties. To reiterate my discussion, there is nary enough reasonable and competent evidence to sustain probable cause to indict him for plunder, *viz.*:

> The majority sustained the Ombudsman's finding of probable cause to indict Revilla for Plunder and violation of Sec. 3 (e) of RA 3019, for supposedly amassing ill-gotten wealth by allegedly misappropriating, or supposedly receiving commission for allowing the misappropriation of, the PDAF in conspiracy with and/or by giving unwarranted benefit to Napoles and her cohorts. As I have previously stated, I cannot concur with the majority opinion.
>
> A look at the evidence that the complainants had presented demonstrates that **there is nary any competent and relevant evidence that can constitute as basis for the finding of probable cause against Revilla**.
>
> Ruling in favor of the complainants, the Ombudsman sweepingly concluded that Revilla conspired with Napoles and her cohorts to amass ill-gotten wealth at the expense of the State, specifying Revilla's role in the alleged conspiracy as follows:
>
> x x x x x x x x x
>
> To support such conclusion, the Ombudsman cited the counter-affidavits of Revilla's co-respondents and the whistleblowers' bare testimonies, *viz.*:

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[14] G.R. Nos. 212014-15, 212427-28, 212694-95, 212794-95, 213477-78, 213532-33, 213536-37 & 218744-59, December 6, 2016.

x x x x x x x x x

Notably, the pieces of evidence relied upon by the Ombudsman do not provide sufficient basis for even a *prima facie* finding of probable cause to believe **that Revilla negotiated and agreed with Napoles** on: (i) the list of projects to be chosen by the lawmaker; (ii) the corresponding IA that would implement the project; (iii) the project cost; (iv) the Napoles-controlled NGO that would implement the project; and (v) the amount of commission or kickback which the lawmaker would receive in exchange for endorsing the NGO. Indeed, **the Ombudsman's affirmation of these allegations stands on mere inferences and presumptions**.

What is certain is that the Ombudsman surmised Revilla's involvement with the PDAF scam from the following: (1) his purported signatures appearing in several documents endorsing the NGOs affiliated with Napoles; (2) the testimonies of the so-called "whistleblowers"; and (3) the Counter-Affidavits of some of Revilla's co-respondents. As will be discussed, these are neither relevant nor competent, and do not constitute sufficient bases to sustain the finding of probable cause to subject Revilla to continuous prosecution

**The PDAF Documents**

By the PDAF documents, Revilla supposedly coerced the IAs to choose the Napoles NGOs to implement the projects identified by Revilla. The Ombudsman should have been more than wary in accepting such allegations since Revilla, as a member of Congress, was without authority to compel officials or agencies of the executive branch to act at his bidding. The IAs, in fine, simply do not come under the jurisdiction of the Senate, let alone senators. In fact, free from the legislature's control, **the IAs are mandated by law to conduct a public bidding in selecting the NGOs that would implement the projects chosen by the legislator**.

x x x x x x x x x

In a word, any endorsement made by Revilla does not bear any value that could have compelled the endorsee IA to benefit a Napoles-controlled NGO. The choice of the NGO made by the IA, without complying with RA 9184 and similar laws, falls on the IA alone. This is apparent from the very words of the NBI Complaint x x x.

x x x x x x x x x

As Revilla maintained all along, his involvement/participation in the release of his PDAF was limited only to the identification and selection of projects or programs listed in the GAA and communicating such selection to the Chair of the Senate Committee on Finance and the Senate President. Any endorsement made by him does not and cannot sway these IAs to act per his will and contrary to legal requirements. It is, therefore, perplexing that Revilla's involvement in the PDAF scam is hinged on apparently worthless "endorsements" of Napoles-controlled NGOs.

Further, the Ombudsman ought to have exercised caution especially **since <u>the "whistleblowers" no less admitted to forging the lawmakers' endorsements of Napoles' NGOs to the IAs</u> along with all other PDAF Documents**. Suñas testified that they prepared these endorsement letters, upon which Revilla is now being indicted. x x x

x x x x x x x x x

The fact of having falsified or forged the signatures on the PDAF Documents was again mentioned by Suñas in her own *Sinumpaang Salaysay* dated November 5, 2013, thus:

x x x x x x x x x

During the September 12, 2013 Senate Blue Ribbon Committee, Luy also admitted forging the signatures of lawmakers:

x x x x x x x x x

Luy restated his testimony in his *Karagdagang Sinumpaang Salaysay* dated September 12, 2013, where he admitted falsifying documents and forging signatures of legislators and their chiefs of staff, *viz.*:

x x x x x x x x x

Not to be overlooked are the findings of handwriting experts, Rogelio G. Azores and Atty. Desiderio A. Pagui. The two were one in saying that the signatures appearing above Revilla's name on the PDAF Documents were not his. Mr. Azores, in particular, concluded:

The questioned signatures above the printed name Hon. Ramon Revilla, Jr., Ramon "Bong" Revilla, Jr., Ramon Revilla, Jr., on one hand and the standard signatures above the printed name Ramon "Bong" Revilla, Jr., on the other hand, **<u>were not written by one and the same person</u>**.

Atty. Pagui similarly found the signatures above Revilla's name on the PDAF Documents as not belonging to the latter. Atty. Pagui's conclusion after examining the signatures on the PDAF documents and comparing them with Revilla's standard signatures categorically declared that **the signatures on the questioned documents were not affixed by Revilla,** *viz.*:

x x x x x x x x x

In fact, even a cursory glance at some of the PDAF Documents questioned by Revilla reveals **a forgery so obvious as to be remarkably noticeable to the naked eye of an ordinary person**. A prime example is the "endorsement" letter addressed to Gondelina Amata of the NLDC dated October 23, 2009, supposedly signed by Revilla. Compared to the standard signatures submitted by Revilla, the signature contained therein lacks the cursive flourishes of his true signatures and instead contains sharp and blunt strokes. Similarly noticeable is the variance of the letterheads used in these various endorsement letters, with some containing supposed bar codes of Revilla's office, others simply a number.

**Respondent Ombudsman, however, makes much of the letter dated July 20, 2011 Letter addressed to COA Assistant Commissioner Cuenco, Jr., wherein Revilla supposedly confirmed the authenticity of his and Cambe's signatures on the PDAF documents. Upon closer examination of the said letter, however, Mr. Azores found that even the said letter is spurious.** He noted, thus:

x x x x x x x x x

The same finding was made by Atty. Pagui with respect to the same July 20, 2011 Letter. He observed:

x x x x x x x x x

At the very least, the Azores and Pagui findings should have impelled the Ombudsman to consider the veracity of the signatures on the PDAF documents given that these experts' findings uniformly detail discrepancies between the signatures in the PDAF documents and Revilla's admitted genuine specimens of writing. **That the Ombudsman failed to even require NBI handwriting experts to study the questioned signatures renders the immediate dismissal of the two handwriting expert's certifications highly suspect.** Where the genuineness of the documents is crucial to the respondents' defense,

it is more prudent, as stressed in *People v. Agresor*, to allow the opinion of handwriting experts:

**The task of determining the genuineness of the handwriting would have been made easier had an expert witness been employed to aid the court in carrying out this responsibility.** The records show that counsel for the accused did ask the court for time to file a motion so that the handwriting may be submitted to the National Bureau of Investigation (NBI) to ascertain its authenticity. Such motion was, however, denied by the court, ruling that "The Court itself can determine whether or not that handwriting is the handwriting of the private complainant."

x x x x x x x x x

It is true that the opinion of handwriting experts are not necessarily binding upon the courts, the expert's function being to place before the court data upon which the court can form its own opinion. Ultimately, the value of the expert testimony would still have to be weighed by the judge, upon whom the duty of determining the genuineness of the handwriting devolves. **Nevertheless, the handwriting expert may afford assistance in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. There is no doubt that superior skills along these lines will often serve to direct the attention of the courts to facts, assent to which is yielded not because of persuasion or argument on the part of the expert, but by their own intrinsic merit and reasonableness.**

As there was a dispute regarding the genuineness of the handwriting, it would have been more prudent if the trial court allowed the presentation of a handwriting expert by the defense. The denial of the request for time to file a motion to have the handwriting examined in effect rendered the right of the accused to have compulsory process to secure the production of evidence in his behalf nugatory.

Being uncontroverted and, in fact, confirmed by the complainants' witnesses, I submit that this forgery of Revilla's signatures and the falsification of the PDAF Documents should have dissuaded the Ombudsman from filing the Informations against Revilla.

Certainly, **the finding of probable cause to indict a person for plunder cannot be based on *admittedly* falsified documents**. While

probable cause falls below proof beyond reasonable doubt in the hierarchy of quanta of evidence, it must nonetheless be supported by sufficient, credible and competent evidence, *i.e.*, **there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged**. x x x

**Testimonies of the Co-Respondents**

Absent any credible proof of Revilla's actual link or participation in the alleged scheme to divert his PDAF to Napoles' NGOs, the Ombudsman should likewise not have accepted hook, line, and sinker any testimony of a participant in the supposed conspiracy.

It is basic **that an extrajudicial confession binds only the confessant or declarant and is inadmissible against his or her co-accused**. This basic postulate, an extension of the *res inter alios acta* rule, is embodied in Section 28, Rule 130 of the Rules of Court x x x.

Under the rule, the testimony made by the confessant is hearsay and inadmissible as against his co-accused even during the preliminary investigation stage. x x x

The exception to the above rule, the succeeding Section 30 of Rule 130, requires foremost, the existence of an independent and conclusive proof of the conspiracy and that the person concerned has **performed an overt act** in pursuance or furtherance of the complicity.

As discussed above, besides the admittedly falsified and forged PDAF documents, **there is no concrete proof showing that Revilla pulled off any "overt act" in furtherance of the supposed conspiracy with Napoles**. Other than saying that without Revilla, the scheme would have supposedly failed, the Ombudsman has been unable to point to concrete set of facts to support her conclusion as to the complicity of Revilla to the conspiracy in question. Thus, **the conclusion reached by the Ombudsman falls short of the threshold requirement that conspiracy itself must be proved as positively as the commission of the felony itself**. The quantum of evidence required is as should be, as conspiracy is a "facile device by which an accused may be ensnared and kept within the penal fold."

For this reason, I submit that the testimonies of Revilla's co-respondents cannot be taken against him. Yet, the Ombudsman

repeatedly and freely cited the ***previously withheld*** counter-affidavits of Revilla's co-respondents in finding probable cause to indict him for Plunder and violation of Section 3 (e) of RA 3019.

The reliance on these previously suppressed testimonies of Revilla's co-respondents to conjure up probable cause against him is not only violative of the *res inter alios acta* rule, worse, it desecrates the basic rule of due process.

To recall, the counter-affidavits of Revilla's co-respondents, in which the foregoing statements were contained, were not furnished to Revilla before the Ombudsman rendered the March 28, 2014 Resolution despite Revilla's Motion to be Furnished. In denying the Motion, the Ombudsman held that it had no basis to grant the motion and cited *Artillero v. Casimiro*. But *Artillero* is not even applicable to the case. *First*, in *Artillero*, it was the *complainant* who claimed denial of due process when he was not furnished with a copy of the counter-affidavit of the accused. Here, it is the petitioner, as *accused*, requesting for the counter-affidavits of his co-respondents. *Second*, the complainant in *Artillero* requested a copy of the counter-affidavit of the accused not because he wanted to answer the counter-charges against him, such as what petitioner intended to do, but because he wanted to file a reply lest his complaint is dismissed for insufficiency of evidence.

After denying Revilla's Motion to be Furnished and his Motion for Reconsideration, the Ombudsman would suddenly turn around, find Revilla's request in order, and allow him to be furnished copies of the counter-affidavits of some his co-respondents.

In a bid to justify her initial refusal to provide Revilla with subject affidavits, the Ombudsman stated that Revilla was anyway eventually furnished the desired documents before the rendition of the assailed June 4, 2014 Joint Order (albeit after the March 28, 2014 Joint Resolution) and yet chose not to submit his comment within the time given him. Upon this premise, Revilla cannot, as the Ombudsman posited citing *Ruivivar v. Office of the Ombudsman*, be heard about being denied due process having, as it were, "been given ample opportunity to be heard but x x x did not take full advantage of the proffered chance."

I believe that that the Ombudsman has misread *Ruivivar*, which, at bottom, is not consistent with the essence of due process: **to be**

**heard before a decision is rendered**. In *Ruivivar*, petitioner Ruivivar's motion for reconsideration that paved the way for his being furnished with copies of the affidavits of private respondent's witnesses came after the Ombudsman rendered a decision. In the present case, however, Revilla's request to be furnished with his co-respondents' counter-affidavits preceded the Ombudsman's issuance of her probable cause-finding resolution. Clearly, **the accommodation accorded Revilla was belated**, *i.e.*, after the denial of his motion for reconsideration and way after the issuance of the resolution finding probable cause against him. There lies the crucial difference.

It appears that the Ombudsman issued the May 7, 2014 Joint Order only as an afterthought, as an attempt to address the defects of the preliminary investigation the OOMB conducted on petitioner. However, such Order is of little moment as any comment that Revilla would file would no longer have any bearing precisely because the Ombudsman already issued the Joint Resolution on March 28, 2014 finding probable cause against them.

Worse, the Court cannot see its way clear on why the Ombudsman limited the grant to few counter-affidavits when it could have allowed Revilla access to all counter-affidavits and other filings of his co-respondents. The Ombudsman conveniently justified the selective liberality on the notion that only these counter-affidavits contain allegations that tend to incriminate Revilla to the scam. Yet, as pointed out by Revilla, **due process does not only cover the right to know and respond to the inculpatory evidence, but also the concomitant right to secure exculpatory evidence. The mere fact of suppression of evidence, regardless of its nature, is enough to violate the due process rights of the respondent.**

Indeed, *Morfe v. Mutuc* teaches that **the due process requirement is met if official action is free from arbitrariness. But, the Ombudsman's denial and limitation of Revilla's Motion to be Furnished, were arbitrary and unreasonable for there was nothing improper or irregular in Revilla's request**. And it cannot be overemphasized in this regard that the requesting petitioners offered to have the requested documents photocopied at his expense. Verily, these limitations **coupled with her use of the counter-affidavits requested against Revilla, without giving him a prior opportunity to know each and every allegation against him, whether from the complainants and their witnesses or his co-respondents**, are random, unreasonable, and taint the Ombudsman's actions with grave abuse

of discretion for violating the sacred rule of due process. As such, **the statements contained in the Counter-Affidavits of Revilla's co-respondents cannot be used to find probable cause to indict him**.

In *Duterte v. Sandiganbayan* where the petitioners therein were not sufficiently apprised of the charges against them during preliminary investigation, this Court ordered the dismissal of the criminal case filed against them x x x.

In like manner, in the present case, Revilla was not sufficiently apprised of the entirety of the allegations against him *before* the probable cause finding Resolution of March 28, 2014 was rendered by the Ombudsman. Consequently, his right to due process was denied and I believe that this Court is duty-bound to reverse the Ombudsman's action that was tainted with grave abuse of discretion.

Even assuming *arguendo* that the counter-affidavits of Revilla's co-respondents are admissible, the testimonies contained therein are inadequate to engender the probability that Revilla was a knowing participant in the alleged scheme to divert the PDAF. Buenaventura simply testified in general terms that she confirmed the authenticity of the authorization given by Revilla without specifying how she made such confirmation or providing the details of the documents and transactions involved. In like manner, Sevidal broadly claimed that Revilla, through Cambe, was responsible for "identifying the projects costs and choosing the NGOs" but did not provide the factual details that justified her claim. Figura's declaration of having no power to "simply disregard the wishes of [Revilla]" is a clearly baseless assumption.

Meanwhile, a closer look of Cunanan's testimony, which was a critical part of the Ombudsman's Resolutions, bares the infirmity of his claim. While he could have easily asked for a written confirmation of the authorization given by Revilla to Cambe, Cunanan himself admitted that he, instead, supposedly sought verification over the telephone. Yet, an audio recording of the alleged telephone conversation was not presented or even mentioned. Not even a transcript of the alleged telephone conversation was attached to Cunanan's Counter-Affidavit.

Section 1, Rule 11 of the Rules on Electronic Evidence provides that an audio evidence, such as a telephone conversation, is admissible only if it is presented, explained, or authenticated. x x x

Given that no audio evidence of the telephone conversation was presented, much less "identified, explained or authenticated," the occurrence of the alleged telephone conversation is rendered highly suspect, if not improbable, and any testimony thereon is inadmissible and of no probative value.

But granting, *arguendo*, that Cunanan did call Revilla's office, it still begs the question of how he could have recognized or confirmed the identity of the person he was speaking with over the phone and not face-to-face. There is no indication, and Cunanan never even hinted, that he was closely familiar with Revilla's voice that he can easily recognize it over the phone in a single conversation.

This Court had previously declared that the person with whom the witness was conversing on the telephone **must first be reliably identified before the telephone conversation can be admitted in evidence and given probative value**. x x x

x x x x x x x x x

In this case where there is no authentication or identification of the person with whom Cunanan was conversing on the telephone, Cunanan's testimony is inadmissible and of no probative value.

In sum, the Ombudsman should have closely scrutinized the testimonies of the alleged participants in the supposed conspiracy. This holds especially true for testimonies that not only try to relieve the affiant from responsibility but also seek to pass the blame to others. The Ombudsman, however, utterly failed to do so and simply accepted the co-respondents' declarations as the gospel truth, unmindful that a neglect to closely sift through the affidavits of the parties can still force the unnecessary prosecution of frivolous cases. By itself, this neglect constitutes a grave abuse of discretion, which should be reversed by this Court.

**Whistleblowers' Testimonies**

Anent the elements of the crimes charged, the gravamen of the crime of Plunder is the accumulation by the accused of ill-gotten wealth amounting to at least Fifty Million Pesos (₱50,000,000.00). In a bid to satisfy this element against Revilla, the Ombudsman heavily relied on the testimonies of the whistleblowers, Luy, Sula, and Suñas. Yet, **none of the witnesses stated that they deposited money representing the alleged commissions to any of Revilla's accounts.**

**Not one of them testified that they personally handed money or saw anyone handing/delivering money to Revilla as commission/kickback**

The closest thing passed as proof by the complainants is the private and personal records of Luy. But, even **Luy himself admitted his lack of personal knowledge of Revilla's involvement in the PDAF scam, much less of the former senator receiving money from it**. x x x

x x x x x x x x x

The foregoing at once betrays **the *hearsay* nature of Luy's testimony** against Revilla. The hearsay nature of Luy's testimony regarding Revilla's receipt of money from his PDAF is again highlighted in Luy's Sworn Statement of November 8, 2013, *viz.*: x x x

Similarly, the testimony given by Suñas on September 12, 2013 regarding the supposed receipt by Revilla of a part of his PDAF is not based on her own personal knowledge. x x x

Given the hearsay character of the whistleblowers' testimonies, these are devoid of any intrinsic merit, dismissible as without any probative value.

At most, the whistleblowers claimed that money was handed to Cambe. Yet, **there is nothing to prove that Revilla received the said money from Cambe or that Cambe's alleged receipt of the said money was under his authority or instruction**.

For this and for the fact that there is absolutely nothing competent and relevant that can sway a reasonable man to believe that Revilla had participated in the PDAF scheme, I vote for the reversal of the Ombudsman's finding of probable cause to indict Revilla for plunder and violation of Section 3 (e) of RA 3019 on account of grave abuse of discretion.

It must not be forgotten that the crimes involved in these cases are Plunder and violation of Section 3 (e), RA 3019—two grave charges that can strip a man of his good name and liberty, as in this case. The Ombudsman should not have found probable cause to indict Revilla given that there is nothing but falsified documents, hearsay testimonies and declarations barred by the *res inter alios acta* that support the complaints. Worse, the Ombudsman violated the due process protection of the Constitution in citing affidavits and testimonies not previously furnished Revilla. Without a doubt, the

Assailed Resolutions, insofar as it found probable cause against Revilla, were tainted with grave abuse of discretion.

Accordingly, I vote that the Court resolve to GRANT the petitions in G.R. Nos. 218235 and 219162 and ORDER the Sandiganbayan to provisionally release Richard Cambe upon his posting of a cash bond in an amount to be set by the Sandiganbayan and RECALL the writ of preliminary attachment issued against Senator Ramon "Bong" Revilla in Criminal Case No. SB-14-CRM-0240. Revilla is not barred from availing his right to bail.

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**EN BANC**

[G.R. No. 222710. July 24, 2018]

**PHILIPPINE HEALTH INSURANCE CORPORATION,** *petitioner, vs.* **COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY AND SUPERVISING AUDITOR ELENA L. AGUSTIN,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE DECISION OF THE COMMISSION ON AUDIT CAN BE ASSAILED THROUGH A PETITION FOR *CERTIORARI* WHEN TAINTED WITH GRAVE ABUSE OF DISCRETION.—** An aggrieved party can assail the Decision of the COA through a petition for *certiorari* under Rule 64, as ruled in the case of *Maritime Industry Authority vs. Commission on Audit* x x x. This Court has consistently held that findings of administrative

agencies are generally accorded not only respect but also finality, unless found to have been tainted with grave abuse of discretion. The same was aptly discussed in the case of *Maritime* citing *City of General Santos v. Commission on Audit* x x x.

**2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; PRESIDENTIAL DECREE NO. 1445; APPEAL FROM DECISIONS OF AUDITORS; THE REGLEMENTARY PERIOD TO APPEAL THE DECISION OF AN AUDITOR IS SIX MONTHS OR 180 DAYS FROM RECEIPT OF THE DECISION.—** The burden of proving the validity or legality of the grant of allowance or benefit is with the government agency or entity granting the allowance or benefit, or the employee claiming the same. After the Resident Auditor issues a notice of disallowance, the aggrieved party may appeal the disallowance to the Director within six (6) months from receipt of the decision. From the decision of the Director, any aggrieved party may appeal the same within the time remaining of the six (6) months period under Section 4 Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision. At this point, the government agency or employee has the chance to prove the validity of the grant of allowance or benefit. If the appeal is denied, a petition for review or a notice of appeal may be filed before the Commission on Audit Commission Proper (CACP) within the time remaining of the six (6) months period. Finally, the aggrieved party may file a petition for certiorari before this court to assail the decision of the CACP. x x x It is clear that PhilHealth filed its petition beyond the reglementary period to file an appeal which is within six (6) months or 180 days after the Resident Auditor issued a ND. Thus, the Decision No. 2014-002 dated March 13, 2014 of COA Corporate Government Sector which upheld the ND No. H.O. 12-005 (11) dated July 23, 2012 became final and executory pursuant to Section 51 of the Government Auditing Code of the Philippines.

**3. ID.; REPUBLIC ACT NO. 7305 (THE *MAGNA CARTA* OF PUBLIC HEALTH WORKERS); PUBLIC HEALTH WORKERS; REFER TO PERSONS REQUIRED TO RENDER PRIMARILY HEALTH OR HEALTH-RELATED SERVICES.—** [T]he classes of persons considered as public health workers under RA No. 7305 and the IRR are those persons

required to render primarily health or health-related services, *viz*: (1) employees of government agencies primarily engaged in the delivery of health services; (2) employees of government agencies primarily engaged in the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, *barangay* health stations, clinics or other similar institutions; (3) employees of government agencies primarily engaged in the operation of clinical laboratories, treatment and rehabilitation centers, x-ray facilities and other similar facilities; (4) employees in offices attached to government agencies principally involved in financing or regulation of health services; (5) medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; and (6) employees rendering health or health-related work in offices attached to an agency which is not principally engaged in health or health-related services. Employees in the sixth category are deemed employees of "health-related establishments," that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved in health or health-related services. Under the Implementing Rules, such health-related establishments include clinics or medical departments of government corporations, medical corps and hospitals of the Armed Forces of the Philippines, and the specific health service section, division, bureau or unit of a government agency. x x x Otherwise stated, an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law.

**4. ID.; REPUBLIC ACT NO. 7875; PHILIPPINE HEALTH INSURANCE CORPORATION (PHILHEALTH); THE FUNCTIONS OF THE PHILHEALTH PERSONNEL ARE NOT PRINCIPALLY RELATED TO HEALTH SERVICES, AND THEREFORE THEY ARE NOT CONSIDERED PUBLIC HEALTH WORKERS.—** Here, PhilHealth's mandate is the administrator of the National Health Insurance Program through which, covered employees may ensure affordable, acceptable, accessible health care services for all citizens of the Philippines. PhilHealth's establishment and purpose was detailed under RA No. 7875 of Article III, Section 5 x x x. PhilHealth is prohibited from providing health care directly,

from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of ***directly rendering care***, and from owning or investing in health care facilities. Clearly, the functions of the PhilHealth personnel are not principally related to health services. Its powers and functions are elaborated under Article IV, Section 16 of RA No. 7875 x x x. PhilHealth personnel perform functions which pertain to the effective administration of the National Health Insurance Program or facilitating the availablity of funds of health services to its covered employees, and, among others involve the: determination of requirements and issue guidelines in relation to insurance program; inspection of health care institutions; inspection of medical, financial, and other records relevant to the claims, accreditation, premium contribution of employees covered by the program; and, to keep records of the operations of the Corporation and investments of the National Health Insurance Fund. These functions are not similar to those of persons rendering health or health-related services, or those employees working in health-related establishments x x x. Undoubtedly, the PhilHealth personnel cannot be considered public health workers under RA No. 7305. x x x PhilHealth functions are not commensurate to the services rendered by those workers who actually and directly provide health care services. PhilHealth's objective as the National Health Insurance Program provider, is to help the people ***pay*** for health care services; unlike workers or employees of the government and private hospitals, clinics, health centers and units, medical service institutions, clinical laboratories, treatment and rehabilitation centers, health-related establishments of government corporations, and the specific health service section, division, bureau or unit of a government agency, who are actually engaged in health work services.

**5. ID.; ID.; ID.; CANNOT RELY ON THE PREVIOUS DETERMINATION OF THE DEPARTMENT OF HEALTH SECRETARY THAT PHILHEALTH OFFICIALS AND EMPLOYEES ARE PERFORMING HEALTH AND/OR RELATED FUNCTIONS, AND THUS, CONSIDERED PUBLIC HEALTH WORKERS.—** [T]he certification issued by the DOH Secretary Alberto G. Romualdez, which declared PhilHealth officers and employees as public health workers is not authoritative. Although PhilHealth is an attached agency

to the DOH, and the latter principally determines who are entitled to the benefits under RA No. 7305, its authority must be in accordance with the standards set forth in the law and the IRR. Moreover, other government agencies such as the Department of Budget and Management (DBM) and the COA, in the performance of their respective functions, are not precluded from reviewing the DOH's determinations. x x x Hence, PhilHealth cannot rely on the previous determination of the DOH Secretary that PhilHealth officials and employees are performing health and/or health-related functions, and thus, considered public health workers. The said interpretation or certification is not binding against the COA.

**6. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SALARIES, BENEFITS AND ALLOWANCES; GOVERNMENT OFFICIALS AND EMPLOYEES WHO RECEIVED BENEFITS OR ALLOWANCES, WHICH ARE DISALLOWED, NEED NOT REFUND THESE AMOUNTS WHEN THEY RECEIVED THESE IN GOOD FAITH.—** With regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing jurisprudence provides that recipients or payees need not refund these disallowed amounts when they received these in good faith. 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 were required to refund only the amounts received when they were found to be in bad faith or grossly negligent amounting to bad faith. x x x The Court x x x finds that the COA failed to show bad faith on the part of the approving officers in disbursing the disallowed longevity pay. Further, the PhilHealth officers and other employees were presumed to have acted in good faith when they allowed and/or received the longevity pay, in the honest belief that there was legal basis for such grant. The PhilHealth personnel in turn accepted the longevity pay benefits believing that they were entitled to such benefit.

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

**1. POLITICAL LAW; REPUBLIC ACT NO. 7305 (THE *MAGNA CARTA* OF PUBLIC HEALTH WORKERS); PUBLIC HEALTH WORKERS; THE PHILIPPINE HEALTH INSURANCE CORPORATION PERSONNEL ARE PUBLIC HEALTH WORKERS, FOR THEY ARE ENGAGED IN BOTH HEALTH AND HEALTH-RELATED WORK.—** [A] public health worker engaged in health and health-related work not only encompasses one who actually and directly delivers health services through hospitals and other similar institutions but also includes those involved on aspects of provision, financing, and regulation with which PhilHealth personnel are certainly engaged. Republic Act No. 7875, otherwise known as the National Health Insurance Act of 1995, established a National Health Insurance Program, "which shall provide health insurance coverage and ensure affordable, acceptable, available and accessible health care services" for all Filipino citizens. To administer the program, PhilHealth was created. The x x x functions of PhilHealth x x x substantiate that its employees perform tasks pertinent to the provisions and regulations of health services. x x x Apart from being engaged in health and health-related work as provided for under Section 3 of Republic Act No. 7305, PhilHealth personnel are similarly employees of an office attached to another government agency x x x [, pursuant to] Article IV, Section 14 of Republic Act No. 7875, as amended x x x. Among the principal functions of the Department of Health are the provision, financing, and regulation of health services. The Department of Health is mainly responsible "for the formulation, planning, implementation, and coordination of policies and programs in the field of health." Pursuant to its mandate, its primary task involves the "promotion, protection, preservation or restoration of the health of the people through the *provision and delivery of health services* and through the *regulation and encouragement* of providers of health goods and services." x x x Republic Act No. 7305 and its Revised Implementing Rules clearly define who public health workers are. Accordingly, PhilHealth personnel fall within the definition provided for under Section 3 of Republic Act No. 7305 as they are engaged in both health and health-related work. Particularly, they are employees of an office attached to the Department of Health, which has an *explicit* mandate to be involved in both

the provision and regulation of health services. To limit the characterization of public health workers as only to those who are actually involved in the delivery of health services, through hospitals and health-related establishments, as what the *ponencia* did, disregards the law and its purpose.

**2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; RULE-MAKING POWER; THE RULE-MAKING POWER DELEGATED TO AN ADMINISTRATIVE AGENCY IS LIMITED AND DEFINED BY THE STATUTE CONFERRING THE POWER.—** The Commission on Audit, as the guardian of public funds, has vast powers on accounts relevant to government proceeds and disbursements, and to the utilization of public funds and property. While this Court recognizes that the Commission on Audit's "general audit power is among the constitutional mechanisms that [give] life to the check and balance system inherent in our form of government," this does *not*, in any way, empower it to overrule a reasonable interpretation of an executive body pursuant to the latter's statutory mandate. The construction adopted by the Department of Health as the one tasked to carry out the provisions of Republic Act No. 7305 *should* be given credence. The reason behind this includes not only the advent of the "modern or modernizing society['s]" diverse demands and the institution of varied administrative units dealing with those necessities, but also the "accumulation of experience and *growth of specialized capabilities* by the administrative agency charged with implementing a particular statute" which, accordingly, the Department of Health possesses. Therefore, the Commission on Audit should have acknowledged the Department of Health's authority especially considering that often, the representatives of government agencies charged with the execution of the law, are the ones who prepared the rules they interpret. "Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is *limited and defined* by the statute conferring the power." The Department of Health, as the executive branch unit mandated to oversee laws and rules in the field of health and the one particularly tasked under Republic Act No. 7305 to prepare the law's implementing rules, *determines* who are especially covered by the benefits of Republic Act No. 7305. Considering that the Department of Health's determination is in *consonance*

with the law and its purpose, the Commission on Audit cannot completely ignore the Department of Health's statutory authority and readily substitute the Department of Health's resolution with its own determination.

**CAGUIOA, *J., dissenting opinion*:**

**1. REMEDIAL LAW; RULES OF PROCEDURE; THE STRICT APPLICATION OF THE RULES OF PROCEDURE MAY BE RELAXED WHEN STRONG CONSIDERATIONS OF SUBSTANTIVE JUSTICE ARE MANIFEST.—** Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter – the computation of legal periods. In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, the Court found that there exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987, specifically as regards the computation of a *year*, thus, Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.* The COA Revised Rules of Procedure does not explicitly provide the manner on how the period in contest shall be computed. Hence, applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987, which now governs the computation of legal periods, the six (6) months period constitutes 180 days. Further, this Court in *Torres v. Commission on Audit* stated as follows: "***the 6-month or 180-day reglementary period*** shall be reckoned from the petitioners' date of receipt of the Auditor's Notice of Disallowance on November 6, 2009." With the foregoing, it is clear that the Petition for Review of PhilHealth before the COA Commission Proper was filed out of time. However, the Court, even as it has at times acknowledged that procedural rules should be treated with utmost respect and due regard, has likewise, from time to time, recognized exceptions based on the most compelling reasons where stubborn obedience to it would defeat rather than serve the ends of justice. Indeed, where strong considerations of substantive justice are manifest in the petition, the Court is called upon to relax the strict application of the rules of procedure in the exercise of its legal jurisdiction. Thus, despite the Petition for Review having been

filed out of time, the Court should entertain it to finally put to rest the question of whether PhilHealth personnel are public health workers and whether they are entitled to the benefits granted to public health workers.

**2. POLITICAL LAW; REPUBLIC ACT NO. 7305 (THE *MAGNA CARTA* OF PUBLIC HEALTH WORKERS); HEALTH WORKERS; PHILIPPINE HEALTH INSURANCE CORPORATION PERSONNEL ARE ENGAGED IN HEALTH AND HEALTH-RELATED WORK AND THEY SPECIFICALLY FALL UNDER THE DEFINITION WHICH PERTAINS TO THOSE OFFICES ATTACHED TO AGENCIES WHOSE PRIMARY FUNCTION INVOLVES PROVISION, FINANCING OR REGULATION OF HEALTH SERVICES.—** Section 3 of RA 7305 defines the term health workers x x x. Rule III of the Implementing Rules and Regulations (IRR) of RA 7305 further define public health workers x x x. PhilHealth's mandate includes not only providing health insurance coverage, but also ensuring affordable, acceptable, available and accessible health care services for all citizens of the Philippines. Moreover, the x x x powers and functions of PhilHealth include the accreditation of health care providers, inspection of health care institutions, setting of standards and rules to ensure quality of health care and appropriate utilization of health services, contracting with health provider organizations for the provision of personal health services, enrollment of members and dependents, establishment of an efficient premium payment collection mechanism, registration of all government and private employers, administration of health benefit package and improvement of the system for its availment, performance monitoring of health care providers and supervision of health benefits, among others. Further, Section 14, Article IV of RA 7875, as amended, provides that **PhilHealth is attached to the DOH** for coordination and guidance. x x x [T]he more reasonable interpretation is that PhilHealth personnel are engaged in health and health-related work and that they specifically fall under the definition provided in Rule III, 1(b) of the IRR of RA 7305 which pertains to those offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services.

**APPEARANCES OF COUNSEL**

*Office of the Government Corporate Counsel* for petititoner.
*Philippine Health Insurance Corporation Legal Sector* for petitioner.
*The Solicitor General* for respondents.

**D E C I S I O N**

**TIJAM, *J.*:**

Before Us is a special civil action for *certiorari*[1] with prayer for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI) under Rule 64, in relation to Rule 65 of the Rules of Court, filed by the petitioner, Philippine Health Insurance Corporation (PhilHealth), which seeks to annul and set aside the Decision No. 2015-094[2] dated April 1, 2015 and Resolution[3] dated November 9, 2015 of the respondent Commission on Audit (COA). The said Decision and Resolution affirmed the Notice of Disallowance (ND) No. H.O. 12-005 (11)[4] dated July 23, 2012 on the payment of longevity pay to its officers and employees for the period of January to September 2011 in the amount of PhP5,575,294.70 under Republic Act (RA) No. 7305 or otherwise known as *The Magna Carta of Public Health Workers*.

**Antecedent Facts**

On March 26, 1992, RA No. 7305, otherwise known as *The Magna Carta of Public Health Workers* was signed into law in order to: promote and improve the social and economic well-being of the health workers, their living and working conditions and terms of employment; develop their skills and capabilities

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[1] *Rollo,* pp. 3-45.

[2] *Id*. at 55-58.

[3] *Id*. at 129.

[4] *Id*. at 131-132.

in order that they will be more responsive and better equipped to deliver health projects and programs; and, encourage those with proper qualifications and excellent abilities to join and remain in government service.[5] Accordingly, public health workers (*PHWs*) were granted allowances and benefits, among others, the longevity pay, which states:

> Section 23. ***Longevity Pay.*** — A monthly longevity pay equivalent **to five percent (5%)** of the monthly basic pay shall be paid to a health worker **for every five (5) years of continuous, efficient and meritorious services** rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act.[6] (Emphasis ours)

Pursuant to RA No. 7305, which mandates the payment of longevity pay to public health workers, former Department of Health (DOH) Secretary Alberto G. Romualdez, Jr. issued a Certification dated February 20, 2000, declaring PhilHealth officers and employees as public health workers.[7]

For another, the Office of the Government Corporate Counsel (OGCC) in its Opinion 064, Series of 2001, dated April 26, 2001[8], stated that the term health-related work under Section 3[9] of RA No. 7305, includes not only the direct delivery or provision of health services but also the aspect of financing

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[5] RA No. 7305, SEC. 2. *Declaration of the Policy and Objective. Rollo,* p. 6.

[6] *Id.* at 36.

[7] *Id.* at 7.

[8] Signed by Amado D. Valdez, Government Corporate Counsel. *Id.* at 239-242.

[9] SEC. 3. *Definition.* — For purposes of this Act, "health workers" shall mean all persons who are engaged in health and health-related work, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics and other health-related establishments owned and operated by the Government or its political subdivisions with original charters and shall include medical, allied health professional, administrative and support personnel employed regardless of their employment status.

and regulation of health services. Thus, in its opinion, the PhilHealth officers and employees were deemed engaged in health-related works for purposes of entitlement to the longevity pay.[10]

On August 1, 2011, former PhilHealth President and CEO Dr. Rey B. Aquino issued Office Order No. 0053, S-2011, prescribing the guidelines on the grant of longevity pay, incorporating it in the basic salary of qualified PhilHealth employees for the year 2011 and every year thereafter.[11]

On January 31, 2012, the PhilHealth Board passed and approved Resolution No. 1584, S. 2012, which among others, confirmed the grant of longevity pay to its officers and employees for the period of January to September 2011 in the amount of PhP5,575,294.70.[12]

However, on post-audit of the Personal Services account for Calendar Year (CY) 2011, COA Supervising Auditor Ms. Elena C. Agustin (Supervising Auditor Agustin), also a respondent in this case, issued Audit Observation Memorandum (AOM) 2012-09 (11) dated April 30, 2012, which found lack of legal basis for the grant of longevity pay, thus recommended the discontinuance of the grant thereof.[13]

On May 18, 2012, PhilHealth, through its then President and CEO Dr. Eduardo P. Banzon (Dr. Banzon) asserted that PhilHealth personnel were public health workers, as determined by the DOH in its February 20, 2000 Certification and opined by the OGCC in its Opinion 064, Series of 2001 dated April 26, 2001 and therefore entitled to the grant of longevity pay under RA No. 7305.[14]

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[10] *Id.* at 241-242.

[11] *Id*. at 7.

[12] *Id*.

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

[14] *Id*. at 8.

However, Supervising Auditor Agustin found unsatisfactory the justifications for the grant of longevity pay, and thus issued ND No. H.O. 12-005 (11) dated July 23, 2012.[15]

Philhealth received the ND No. H.O. 12-005 (11) on July 30, 2012, and after 179 days from receipt thereof or on January 25, 2013, Philhealth filed its appeal memorandum before the COA Corporate Government Sector.

The COA Corporate Government Sector upheld the ND No. H.O. 12-005 (11) in its Decision[16] No. 2014-002 dated March 13, 2014. The COA ruled that PhilHealth personnel were not public health workers but merely engaged in paying and utilization of health services by its covered beneficiaries. The dispositive portion of the Decision No. 2014-002, provides:

> WHEREFORE, premises considered, the instant Appeal is **DENIED.** Accordingly, ND No. H.O. 12-005 (11) dated July 23, 2012 is hereby affirmed.[17]

PhilHealth received the above decision on March 25, 2014. PhilHealth filed a motion for extension of time of thirty (30) days, from March 30, 2014 to April 30, 2014, to file the petition for review.[18] Thereafter, on April 30, 2014, PhilHealth filed its petition for review before the COA Commission Proper (CP).[19]

On April 1, 2015, the COA CP in a Decision No. 2015-094,[20] dismissed the petition for being filed out of time. It ruled that under Section 48[21] of Presidential Decree (PD) No. 1445, and

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[15] *Id*. at 131-132.

[16] *Id*. at 115-120.

[17] *Id.* at 120.

[18] *Id*. at 121-123.

[19] *Id*. at 9.

[20] *Id*. at 55-58.

[21] Section 48**.** ***Appeal from decision of auditors***. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

Rule VII, Section 3 of the 2009 Revised Rules of Procedure of COA[22], the reglementary period to appeal the decision of an auditor is six (6) months or 180 days from receipt of the Decision. The COA found that PhilHealth filed its motion for extension of time to file the petition for review only after the lapsed of the said period. The *fallo* of the COA Decision No. 2015-094, provides:

> **WHEREFORE,** premises considered, the instant petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Corporate Government Sector-6 Decision No. 2014-002 dated March 13, 2014, affirming Notice of Disallowance No. H.O. 12-005 (11) dated July 23, 2012, on the payment of longevity pay under the Magna Carta for Public Health Workers to the officers and employees of Philippine Health Insurance Corporation for the period January to September 2011 in the total amount of P5,575,294.70, is final and executory.[23]

PhilHealth's motion for reconsideration[24] was likewise denied in the November 9, 2015 Resolution[25]. It ruled that PhilHealth failed to show any valid reason to justify the delayed filing, and affirmed the ND No. H.O. 12-005 (11) dated July 23, 2012.

Aggrieved, PhilHealth filed the instant Petition for *Certiorari* with prayer for TRO and WPI before the Court raising the following issues:

> COA gravely abused its discretion amounting to lack or excess of jurisdiction in failing to consider Philhealth's appeal and dismissing outright the same for being filed out of time despite the following arguments offered by Philhealth:

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[22] Section 3. ***Period of Appeal.*** — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

[23] *Id*. at 57-58.

[24] *Id*. at 60-113.

[25] *Id.* at 129.

A. THE TERM "MONTH" IN THE SIX-MONTH REGLEMENTARY PERIOD TO FILE AN APPEAL, PURSUANT TO THE 2009 REVISED RULES OF PROCEDURE OF COA, SHOULD BE UNDERSTOOD TO MEAN THE 30-DAY MONTH.

B. PHILHEALTH PERSONNEL ARE "PUBLIC HEALTH WORKERS" WITHIN THE CONTEMPLATION OF SECTION 3 OF RA 7305 AS WELL AS SECTION 1 OF RULE III OF ITS RIRR.

C. PHILHEALTH PERSONNEL ARE NOT ENGAGED MERELY IN "PAYING" FOR THE UTILIZATION OF HEALTH SERVICES BY COVERED BENEFICIARIES, BUT ARE ENGAGED IN HEALTH AND HEALTH-RELATED WORK, AS CLEARLY SPELLED OUT IN THE PROVISIONS OF RA 7875, AS AMENDED.

D. PURSUANT TO HIS AUTHORITY UNDER RA 7305, FORMER HEALTH SECRETARY ALBERTO G. ROMUALDEZ, JR., CERTIFIED THAT PHILHEALTH OFFICIALS AND EMPLOYEES ARE PERFORMING HEALTH AND HEALTH-RELATED FUNCTIONS, AND, AS SUCH, ARE COVERED BY THE PROVISIONS OF THIS LAW.

E. UNTIL SET ASIDE BY THE COURT, THE RIRR OF RA 7305 IS ENTITLED TO THE PRESUMPTION OF LEGALITY. THIS IS A NECESSARY CONSEQUENCE OF THE WELL-ESTABLISHED PRACTICE OF ACCORDING THE FORCE AND EFFECT OF A LAW TO RULES AND REGULATIONS ISSUED BY THE AGENCY TASKED TO ENFORCE OR IMPLEMENT A LAW.

F. SECTION 1 (B) OF RULE III OF THE RIRR OF RA 7305 HAS NOT BEEN PREVIOUSLY INTERPRETED BY THE COURT, AND, THUS, THE UNIFORM CONSTRUCTION PLACED THEREON BY THE DOH MUST BE ACCORDED WEIGHT AND CONSIDERATION.

G. THE PHILHEALTH BOARD UNANIMOUSLY CONFIRMED THE GRANT OF PUBLIC HEALTH WORKERS' BENEFITS, INCLUDING THE LONGEVITY PAY, TO PHILHEALTH OFFICIALS AND EMPLOYEES, UNDER ITS RESOLUTION 1584, S. 2012 OF 31 JANUARY 2012.

H. ARTICLE IV, SECTION 16 (N) OF RA 7875, AS AMENDED, EXPLICITLY BESTOWED PHILHEALTH WITH "FISCAL

AUTONOMY" TO FIX THE COMPENSATION OF ITS PERSONNEL.

I. THE FISCAL AUTHORITY OF PHILHEALTH UNDER ARTICLE IV, SECTION 16 (N) OF RA 7875, AS AMENDED, HAD BEEN CONFIRMED TWICE BY FORMER PRESIDENT GLORIA M. ARROYO.

J. THE GRANT OF THE SUBJECT LONGEVITY PAY TO PHILHEALTH PERSONNEL MAY BE CONSIDERED A MINISTERIAL DUTY OR FUNCTION OF THE PHILHEALTH BOARD.

K. RA 7875, AS AMENDED, AND RA 7305 PREVAIL OVER RA 10147, THE FIRST TWO LAWS BEING SPECIAL LAWS, WHILE THE LATTER IS A GENERAL LAW.

J. PHILHEALTH OFFICIALS AND EMPLOYEES RECEIVED THE SUBJECT LONGEVITY PAY IN GOOD FAITH AND, THEREFORE, EVEN IF THE DISALLOWANCE IS SUSTAINED, THEY CANNOT BE REQUIRED TO REFUND THE DISALLOWED AMOUNT.[26]

Substantially the issues for Our resolution are as follows:

1. Whether COA gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing outright the PhilHealth's appeal.

2. Whether PhilHealth personnel are considered public health workers within the contemplation of Section 3 of RA No. 7305, as well as Section 1 of Rule III of its Implementing Rules and Regulations (IRR).

3. Whether PhilHealth employees received the longevity pay in good faith and even if the disallowance is sustained, they cannot be required to refund the same.

**Our Ruling**

***The petition fails***.

*Procedural Aspect –*

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[26] *Id*. at 9-11.

*The COA did not commit grave abuse of discretion*

An aggrieved party can assail the Decision of the COA through a petition for *certiorari* under Rule 64, as ruled in the case of *Maritime Industry Authority vs. Commission on Audit:*[27]

> A petition under Rule 64 may prosper only after a finding that the administrative agency committed grave abuse of discretion amounting to lack or excess of jurisdiction. Not all errors of the Commission on Audit is reviewable by this court. Thus, a Rule 65 petition is a unique and special rule because it commands limited review of the question raised. As an *extraordinary remedy*, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> The limitation of the Court's power of review over COA rulings merely complements its nature as an ***independent constitutional body*** that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.[28] (Emphasis supplied)

This Court has consistently held that findings of administrative agencies are generally accorded not only respect but also finality, unless found to have been tainted with grave abuse of discretion. The same was aptly discussed in the case of *Maritime*[29] citing *City of General Santos v. Commission on Audit*[30], to wit:

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[27] 750 Phil. 288 (2015).

[28] *Id.* at 307-308.

[29] *Maritime v. COA, supra* at 308.

[30] 733 Phil. 687 (2014).

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there 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.

PhilHealth failed to point out the specific acts of COA which may constitute grave abuse of discretion in disallowing the grants of longevity pay.

*PhilHealth failed to appeal within the reglementary period*

The burden of proving the validity or legality of the grant of allowance or benefit is with the government agency or entity granting the allowance or benefit, or the employee claiming the same. After the Resident Auditor issues a notice of disallowance, the aggrieved party may appeal the disallowance to the Director within six (6) months from receipt of the decision.[31]

From the decision of the Director, any aggrieved party may appeal the same within the time remaining of the six (6) months period under Section 4 Rule V[32], taking into account the

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[31] P.D. 1445 OF THE STATE AUDIT CODE OF THE PHILIPPINES:

Section 48. *Appeal from decision of auditors*. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

[32] RULE V – Proceedings before the Director

suspension of the running thereof under Section 5[33] of the same Rule in case of appeals from the Director's decision. At this point, the government agency or employee has the chance to prove the validity of the grant of allowance or benefit. If the appeal is denied, a petition for review or a notice of appeal may be filed before the Commission on Audit Commission Proper (CACP) within the time remaining of the six (6) months period.[34] Finally, the aggrieved party may file a petition for certiorari before this court to assail the decision of the CACP.[35]

Based on the records, PhilHealth received the ND No. H.O. 12-005 (11) on July 30, 2012, and after 179 days from receipt thereof or on January 25, 2013, PhilHealth filed its appeal memorandum before the COA Corporate Government Sector. The COA Corporate Government Sector upheld the ND No. H.O. 12-005 (11) and the same was received by PhilHealth on March 25, 2014. Hence, by that time, it only had a period of one (1) day, or until March 26, 2014, to file its petition for review before the CACP.

However, on March 31, 2014, after the lapse of five (5) days from March 26, 2014, PhilHealth filed a motion for extension

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Section 4. *When Appeal Taken* — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[33] Section 5. *Interruption of Time to Appeal.* — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

[34] RULE VII – Petition for Review to the Commission Proper

x x x x x x x x x

Section 3. *Period of Appeal.* - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

[35] RULES OF COURT, Rule 64; *Maritime v. COA*, *supra* note 26, *id.* at 307.

of time of thirty (30) days, from March 30, 2014 to April 30, 2014 to file its petition for review.[36] Thereafter, on April 30, 2014 or after the lapse of 215 days after the Resident Auditor issued the ND, PhilHealth filed its petition before the CACP.

It is clear that PhilHealth filed its petition beyond the reglementary period to file an appeal which is within six (6) months or 180 days after the Resident Auditor issued a ND. Thus, the Decision No. 2014-002 dated March 13, 2014 of COA Corporate Government Sector which upheld the ND No. H.O. 12-005 (11) dated July 23, 2012 became final and executory pursuant to Section 51[37] of the Government Auditing Code of the Philippines.[38]

Based on the foregoing, it is clear that this petition is procedurally dismissible.

Nevertheless, even if We consider PhilHealth's contention based on the substantive issues, the dismissal of the petition remains.

*Substantive Aspect –*

*PhilHealth personnel are not public health workers*

The question then arises whether the PhilHealth personnel are performing functions which are health or health-related to include them within the coverage of RA No. 7305 and consider them as health workers.

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[36] *Rollo*, pp. 121-123.

[37] THE STATE AUDIT CODE OF THE PHILIPPINES:

Chapter 3 – Decisions of the Commission.

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Section 51. *Finality of decisions of the Commission or any auditor.* A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

[38] *Reyna, et al. v. Commission On Audit*, 657 Phil. 209, 221 (2011).

In the case of *Kapisanan Ng Mga Manggagawa Sa Government Service Insurance System (KMG) v. Commission on Audit, Guillermo N. Carague, et al.,*[39] the Court held that:

Under Section 3 of R.A. No. 7305, the term "health workers" means:

> All persons who are engaged in health and health-related work, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics and other health-related establishments owned and operated by the Government or its political subdivisions with original charters and shall include medical, allied health professionals, administrative and support personnel employed regardless of their employment status.

The Implementing Rules further define "public health workers," or persons engaged in health and health-related work, as follows:

> 1. Public Health Workers (PHWs) — Persons engaged in health and health-related works. These cover employees in any of the following:
>
> > a. Any government entity whose primary function according to its legal mandate is the delivery of health services and the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics or other institutional forms which similarly perform health delivery functions, like clinical laboratories, treatment and rehabilitation centers, x-ray facilities and other similar activities involving the rendering of health services to the public; and
> >
> > b. Offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services.

Also covered are medical and allied health professionals, as well as administrative and support personnel, regardless of their employment status.[40] (Emphasis supplied; citations ommitted)

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[39] 480 Phil. 861 (2004).

[40] *Kapisanan Ng Mga Manggagawa Sa GSIS (KMG), v. COA*, *supra* note 39, *id*. at 874.

Significantly, the classes of persons considered as public health workers under RA No. 7305 and the IRR are those persons required to render primarily health or health-related services, *viz*:[41]

(1) employees of government agencies primarily engaged in the delivery of health services;

(2) employees of government agencies primarily engaged in the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, *barangay* health stations, clinics or other similar institutions;

(3) employees of government agencies primarily engaged in the operation of clinical laboratories, treatment and rehabilitation centers, x-ray facilities and other similar facilities;

(4) employees in offices attached to government agencies principally involved in financing or regulation of health services;

(5) medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; and

(6) employees rendering health or health-related work in offices attached to an agency which is not principally engaged in health or health-related services.

Employees in the sixth category are deemed employees of "health-related establishments," that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved in health or health-related services. Under the Implementing Rules, such health-related establishments include clinics or medical departments of government corporations, medical corps and hospitals of the Armed Forces of the Philippines, and the specific health service section, division, bureau or unit of a government agency. (Citations ommitted)

In this regard, the Implementing Rules defines a "health-related establishment" as a health service facility or unit which performs health service delivery functions within an agency whose legal mandate is not primarily the delivery of health

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[41] *Supra, id*. at 877-878.

services.[42] Health-related establishments include clinics and medical departments of government corporations, medical corps and hospitals of the Armed Forces of the Philippines (AFP), and the specific health service section, division or bureau of a government agency not primarily engaged in health services.[43]

Based on the aforequoted provisions of RA No. 7305 and the IRR, it readily shows that to be included within the coverage, an employee must be principally tasked to render health or health-related services[44], such as in hospitals, sanitaria, health infirmaries, health centers, clinical laboratories and facilities and other similar activities which involved health services to the public; medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; employees of the health-related establishments, that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved in health or health-related services. Otherwise stated, an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law.[45]

Here, PhilHealth's mandate is the administrator of the National Health Insurance Program through which, covered employees may ensure affordable, acceptable, accessible health care services for all citizens of the Philippines. PhilHealth's establishment and purpose was detailed under RA No. 7875 of Article III, Section 5, to wit:

SEC. 5. E*stablishment and Purpose* – There is hereby created the National Health insurance Program which shall provide health insurance coverage and ensure affordable, acceptable, available and

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[42] *Kapisanan Ng Mga Manggagawa Sa GSIS (KMG) v. COA, supra* note 39, *id.* at 876.

[43] *Id.*

[44] *Id.*

[45] *Id.*

accessible health care services for all citizens of the Philippines, in accordance with the policies and specific provisions of this Act. This social insurance program shall serve as the means for the healthy to help pay for the care of the sick and for those who can afford medical care to subsidize those who cannot. It shall initially consist of Programs I and II or Medicare and be expanded progressively to constitute one universal health insurance program for the entire population. The Program shall include a sustainable system of funds constitution, collection, management and disbursement for financing the availment of a basic minimum package and other supplementary packages of health insurance benefits by a progressively expanding proportion of the population. The Program shall be limited to paying for the utilization of health services by covered beneficiaries or to purchasing health services in behalf of such beneficiaries. It shall be prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of directly rendering care, and from owning or investing in health care facilities. (Emphasis Ours)

Stated otherwise, PhilHealth is prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of ***directly rendering care***, and from owning or investing in health care facilities.[46]

Clearly, the functions of the PhilHealth personnel are not principally related to health services. Its powers and functions are elaborated under Article IV, Section 16 of RA No. 7875:

SEC. 16. Powers and Functions – The Corporation shall have the following powers and functions:

a) To administer the National Health Insurance Program;

b) To formulate and promulgate policies for the sound administration of the Program;

c) **To supervise the provision of health benefits** and to set standards, rules, and regulations necessary to ensure quality of care, appropriate utilization of services, fund viability, member satisfaction, and overall accomplishment of Program objectives;

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[46] Section 5, Article III of RA No. 7875.

d) To formulate and implement guidelines on contributions and benefits; portability of benefits, cost containment and quality assurance; and health care provider arrangements, payment, methods, and referral systems;

e) To establish branch offices as mandated in Article V of this Act;

f) To receive and manage grants, donations, and other forms of assistance;

g) To sue and be sued in court;

h) To acquire property, real and personal, which may be necessary or expedient for the attainment of the purposes of this Act;

i) To collect, deposit, invest, administer, and disburse the National Health Insurance Fund in accordance with the provisions of this Act;

j) To negotiate and enter into contracts with health care institutions, professionals, and other persons, juridical or natural, regarding the pricing, payment mechanisms, design and implementation of administrative and operating systems and procedures, financing, and delivery of health services **in behalf of its members**;

k) To authorize Local Health Insurance Offices to negotiate and enter into contracts in the name and on behalf of the Corporation with any accredited government or private sector health provider organization, including but not limited to health maintenance organizations, cooperatives and medical foundations, for the provision of at least the minimum package of personal health services prescribed by the Corporation;

l) **To determine requirements and issue guidelines for the accreditation of health care providers for the Program in accordance with this Act;**

m) **To visit, enter and inspect facilities of health care providers and employers during office hours, unless there is reason to believe that inspection has to be done beyond office hours, and where applicable, secure copies of their medical, financial, and other records and data pertinent to the claims, accreditation, premium contribution, and that of their patients or employees, who are members of the Program;**

n) To organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation;

o) To submit to the President of the Philippines and to both Houses of Congress its Annual Report which shall contain the status of the National Health Insurance Fund, its total disbursements, reserves, average costing to beneficiaries, any request for additional appropriation, and other data pertinent to the implementation of the Program and publish a synopsis of such report in two (2) newspapers of general circulation;

p) To keep records of the operations of the Corporation and investments of the National Health Insurance Fund;

q) **To establish and maintain an electronic database of all its members and ensure its security to facilitate efficient and effective services;**

(r) **To invest in the acceleration of the Corporation's information technology systems;**

(s) **To conduct an information campaign on the principles of the NHIP to the public and to accredited health care providers. This campaign must include the current benefit packages provided by the Corporation, the mechanisms to avail of the current benefit packages, the list of accredited and disaccredited health care providers, arid the list of offices/branches where members can pay or check the status of paid health premiums;**

**(t) To conduct post-audit on the quality of services rendered by health care providers;**

(u) T**o establish an office, or where it is not feasible, designate a focal person in every Philippine Consular Office in all countries where there are Filipino citizens. The office or the focal person shall, among others, process, review and pay the claims of the overseas Filipino workers (OFWs);**

**(v) Notwithstanding the provisions of any law to the contrary, to impose interest and/or surcharges of not exceeding three percent (3%) per month, as may be fixed by the Corporation, in case of any delay in the remittance of contributions which are due within the prescribed period by an employer, whether public or private. Notwithstanding the provisions of any law to the contrary, the Corporation may also compromise, waive or release, in whole or in part, such interest or surcharges imposed upon employers regardless of the amount involved under such valid terms and conditions it may prescribe;**

(w) **To endeavor to support the use of technology in the delivery of health care services especially in farflung areas such as, but not limited to, telemedicine, electronic health record, and the establishment of a comprehensive health database;**

**(x) To monitor compliance by the regulatory agencies with the requirements of this Act and to carry out necessary actions to enforce compliance;**

**(y) To mandate the national agencies and LGUs to require proof of PhilHealth membership before doing business with a private individual or group;**

**(z) To accredit independent pharmacies and retail drug outlets; an (aa) To perform such other acts as it may deem appropriate for the attainment of the objectives of the Corporation and for the proper enforcement of the provisions of this Act.**"[47]

PhilHealth personnel perform functions which pertain to the effective administration of the National Health Insurance Program or facilitating the availablity of funds of health services to its covered employees, and, among others involve the: determination of requirements and issue guidelines in relation to insurance program; inspection of health care institutions; inspection of medical, financial, and other records relevant to the claims, accreditation, premium contribution of employees covered by the program; and, to keep records of the operations of the Corporation and investments of the National Health Insurance Fund. These functions are not similar to those of persons rendering health or health-related services, or those employees working in health-related establishments, as discussed above. Undoubtedly, the PhilHealth personnel cannot be considered public health workers under RA No. 7305.[48]

It is Our firm view that PhilHealth functions are not commensurate to the services rendered by those workers who actually and directly provide health care services. PhilHealth's

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[47] As amended by Section 10, REPUBLIC ACT No. 10606, OTHERWISE KNOWN AS THE "NATIONAL HEALTH INSURANCE ACT OF 2013.

[48] *Kapisanan Ng Mga Manggagawa Sa GSIS (KMG) v. COA Audit, supra* note 39.

objective as the National Health Insurance Program provider, is to help the people *pay* for health care services[49]; unlike workers or employees of the government and private hospitals, clinics, health centers and units, medical service institutions, clinical laboratories, treatment and rehabilitation centers, health-related establishments of government corporations, and the specific health service section, division, bureau or unit of a government agency, who are actually engaged in health work services.

It will also be absurd if the same benefits and treatment will be given to the PhilHealth personnel and to those employees who actually rendered health services. Health workers or employees are not similarly situated with the PhilHealth employees. Health workers have sets of skills, training, medical background, work quality and ethical considerations to patients, and risks in transmission, occupational and hazard exposures, diseases etc., in the performance of their functions, while in PhilHealth, as National Health Insurance Program provider, its policy is only to help the people subsidize; or ***pay***, or finance for the health care services.

More so, if the policy of the State is to include PhilHealth personnel as health workers, the same treatment should be given to Social Security System (SSS)[50], Government Service Insurance System (GSIS)[51], the Philippine Charity Sweepstakes Office

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[49] Article 1, Section 3 (b) of RA No. 7875.

[50] It is the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden. Toward this end, the State shall endeavor to extend social security protection to workers and their beneficiaries. (See Section 2, RA 8282).

[51] The GSIS, as the administrator of the funds for the pension and retirement funds of government employees. *See* Republic Act No. 8291(the Revised GSIS Act of 1997).

(PCSO)[52], and other institutions or agencies, who provide funds for health care services, health programs, medical assistance, against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden, or funds for life insurance, retirement, disability and survivorship benefits.

But this Court once interpreted and ruled that the Social Insurance Group (SIG) personnel of the GSIS, who acted as administrator of funds for the pension and retirement of government employees, were obviously not a health or health-related establishment.[53]

We also said that the SIG personnel who perform tasks for the processing of GSIS members' claims for life insurance, retirement, disability and survivorship benefits are not similar to those persons working in health-related establishments such as clinics or medical departments of government corporations, medical corps and hospitals of the AFP, and the specific health service units of government agencies.[54] Hence, they are not public health workers under RA No. 7305.

Thus, We maintain that PhilHealth personnel were not engaged in the delivery of health or health-related services, and therefore, not public health workers. The same conclusion is reached in the case of *Kapisanan*[55], when the principle of *ejusdem generis*

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[52] SECTION 1. The Philippine Charity Sweepstakes Office. — The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services, and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine, as amended, and shall have the authority: xxx (See **REPUBLIC ACT NO. 1169—** "AN ACT PROVIDING FOR CHARITY SWEEPSTAKES, HORSE RACES, AND LOTTERIES"

[53] *Kapisanan Ng Mga Manggagawa Sa GSIS (KMG) v. COA*, *supra* note 39, *id*. at 876.

[54] *Supra* note 39.

[55] *Id*.

is used to ascertain the meaning of the term "public health worker" under R.A. No. 7305 and its Implementing Rules, *viz:*

> Under the principle of *ejusdem generis,* where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the state which would repel such inference.
>
> Applying the principle of *ejusdem generis*, the inescapable conclusion is that a mere incidental or slight connection between the employee's work and the delivery of health or health-related services is not sufficient to make a government employee a public health worker within the meaning of R.A. 7305. The employee must be principally engaged in the delivery of health or health-related services to be deemed a public health worker.[56]

Furthermore, the certification issued by the DOH Secretary Alberto G. Romualdez, which declared PhilHealth officers and employees as public health workers is not authoritative.

Although PhilHealth is an attached agency to the DOH, and the latter principally determines who are entitled to the benefits under RA No. 7305, its authority must be in accordance with the standards set forth in the law and the IRR. Moreover, other government agencies such as the Department of Budget and Management (DBM) and the COA, in the performance of their respective functions, are not precluded from reviewing the DOH's determinations. This Court aptly discussed the same in the case of *Kapisanan*[57] *(penned by Justice Tinga),* to wit:

> There is likewise no merit in the *KMGs* contention that the COA gravely abused its discretion in disallowing the grant of hazard pay to the SIG personnel because it is the DOH which is mandated by law to make the determination as to who are entitled to the benefits under RA No. 7305.
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> The DOH is the unit of the executive branch of government tasked to administer all laws, rules and regulations in the field of health. In

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[56] *Kapisanan Ng Mga Manggagawa Sa GSIS (KMG) v. COA, supra* at 875.

[57] *Id*.

addition, it is the DOH which is specifically tasked under Section 35 of RA No. 7305 to consult the appropriate government agencies and professional and health workers organizations or unions, and thereafter, to formulate and prepare the implementing rules and regulations of RA No. 7305.

Although it is the DOH which principally determines who are specifically entitled to benefits under RA No. 7305, its authority to make such determination must be in accordance with the definition of terms and standards set in the law and its Implementing Rules. Moreover, there is nothing in the law which precludes review of the DOHs determinations by other government agencies such as the DBM and the COA in the performance of their respective functions. In fact, in accordance with Section 35 of RA 7305, the Secretary of Health collaborated with other government agencies and health workers organizations in drafting the Implementing Rules which lay down, among others, the guidelines and procedure for the grant of hazard pay to public health workers. Also, mindful of the objectives of RA No. 7305, the DBM had earlier requested for a moratorium on the DOHs approval of requests made by agencies for certifications that their personnel are covered by RA No. 7305 due to serious lapses in the issuance of such certifications. (Emphasis supplied)

The DBM is mandated by law to assist the Chief Executive in the preparation, *execution and control of the national budget.* (Emphasis supplied) It was therefore merely performing its duty to enforce and control the use of government funds when it evaluated the grant of hazard pay to the SIG personnel and discovered that such grant was not justified under RA No. 7305. (Emphasis ours)

The COA, on the other hand, is vested by the Constitution with the power and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds or property owned or held in trust by, or pertaining to government owned and controlled corporations with original charters such as the GSIS, on a post-audit basis.It is mandated to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds.

Thus, the COA acted pursuant to its duty and within the bounds of its jurisdiction in reviewing the grant of hazard pay to the SIG personnel under RA No. 7305 and subsequently disallowing the same for being violative of the provisions thereof.

Considering all the foregoing and under any reasonable yardstick, no grave abuse of discretion can be ascribed to the COA in disallowing the grant of hazard pay benefits to the SIG personnel. Clearly, under RA No. 7305 the SIG personnel are not public health workers. Clearly also under the same law, they are not entitled to hazard pay in any case.

Furthermore, the *KMG* cannot invoke the previous determinations by the DOH that the SIG personnel are considered public health workers under RA No. 7305 to justify their entitlement to hazard pay under that law. [58] (Emphasis Ours)

Hence, PhilHealth cannot rely on the previous determination of the DOH Secretary that PhilHealth officials and employees are performing health and/or health-related functions, and thus, considered public health workers. The said interpretation or certification is not binding against the COA.

In the case of *Metropolitan Waterworks and Sewerage System v. Commission on Audit*[59], the Court held that:

The COA as a constitutional office is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[60]

*Refund of the amounts received*

With regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing

[58] *Id.* at 883-885.

[59] G.R. No. 195105, November 21, 2017. Citing *Sanchez, et al. v. Commission on Audit,* 575 Phil. 428, 444-445 (2008).

[60] *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010).

jurisprudence provides that recipients or payees need not refund these disallowed amounts when they received these in good faith. 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 were required to refund only the amounts received when they were found to be in bad faith or grossly negligent amounting to bad faith.[61]

In *Philippine Economic Zone Authority (PEZA) v. Commission on Audit and Reynaldo A. Villar*[62], this Court defined good faith relative to the requirement of refund of disallowed benefits or allowances.

> In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and **freedom from knowledge of circumstances which ought to put the holder upon inquiry;** an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together **with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious**."[63] (Emphasis supplied)

The Court however, finds that the COA failed to show bad faith on the part of the approving officers in disbursing the disallowed longevity pay. Further, the PhilHealth officers and other employees were presumed to have acted in good faith when they allowed and/or received the longevity pay, in the honest belief that there was legal basis for such grant. The PhilHealth personnel in turn accepted the longevity pay benefits believing that they were entitled to such benefit.

Even though We find that the PhilHealth personnel who received the longevity pay acted in good faith under the honest

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[61] *Maritime v. COA, supra* note 26.

[62] 690 Phil. 104 (2012).

[63] *Id.* at 115.

belief that there was legal basis for such payment, the return of the received longevity pay in the ND No. H.O. 12-005 (11) dated July 23, 2012 is in Order. We reiterate that the ND No. H.O. 12-005 (11) dated July 23, 2012 already attained its finality for failure of PhilHealth to file an appeal within the reglementary period, which is six (6) months or 180 days after the Resident Auditor issued the disallowance. We can no longer reverse, much less modify the same without disregarding the doctrine of immutability of judgment.

While We are not insensitive to PhilHealth's suffering in view of the refund of the longevity benefits received by them, We are bound by laws and judicial precedents that must be applied to the present case. We discussed the rule on immutability of judgment in *Antonio Navarro v. Metropolitan Bank and Trust Company*[64], and said:

> No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As the Court declared in *Yau v. Silverio,*
>
> > Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right

[64] 612 Phil. 462 (2009).

to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down. Thus, in *Heirs of Wenceslao Samper v. Reciproco-Noble,* we had occasion to emphasize the significance of this rule, to wit:

> It is an important fundamental principle in our Judicial system that every litigation must come to an end x x x Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.[65]

**WHEREFORE,** the instant petition is **DISMISSED**. The Commission on Audit Decision No. 2015-094 dated April 1, 2015 and Resolution dated November 9, 2015, which affirmed the Notice of Disallowance No. H.O. 12-005 (11) dated July 23, 2012, on the payment of longevity pay under the *Magna Carta for Public Health Workers* to the officers and employees of Philippine Health Insurance Corporation for the period January to September 2011 in the total amount of PhP5,575,294.70, are hereby **AFFIRMED *in toto*.**

**SO ORDERED**.

*Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Martires, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

*Del Castillo, J.,* joins the dissent of *J. Caguioa.*

*Perlas-Bernabe, J.,* joins the dissent of *J. Leonen.*

*Leonen, J.,* dissents, see separate opinion.

*Jardeleza, J.,* joins the dissent of *J. Caguioa.*

*Caguioa, J.,* dissents, see separate opinion.

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[65] *Id.* at 471-472.

**DISSENTING OPINION**

**LEONEN, *J.*:**

To fall under the coverage of Republic Act No. 7305 and its Revised Implementing Rules, the *ponencia* emphasized that one must be principally charged to provide health and health-related services.[1]

Construing from the nature of the Philippine Health Insurance Corporation (PhilHealth) as the administrator of the National Health Insurance Program, through which covered personnel may obtain access to various health services,[2] the *ponencia* concluded that PhilHealth employees cannot be deemed as public health workers under Republic Act No. 7305 and its Revised Implementing Rules.[3] This is, notwithstanding, the clear definition provided for under the pertinent law to which PhilHealth employees undeniably belong.

Comparing the functions of PhilHealth personnel with those of employees operating in health-related establishments like clinics, medical units of governmental corporations, and other definite health service departments of government agencies, the *ponencia* deduced that PhilHealth employees perform tasks not primarily related to health.[4] Accordingly, it affirmed the assailed decisions of the Commission on Audit, which upheld the Notice of Disallowance relevant to the payment of longevity pay to PhilHealth personnel.[5]

I disagree.

PhilHealth employees fall under the clear delineation of public health workers under Republic Act No. 7305 and its Revised

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[1] *Ponencia*, p. 9.

[2] *Id*. at 1.

[3] *Id*. at 11.

[4] *Id*. at 11-12.

[5] *Id*. at 14.

Implementing Rules. In keeping with the words and intent of the law, they should be afforded longevity pay as an additional compensation warranted by law to public health workers.

**I**

Republic Act No. 7305, otherwise known as the Magna Carta of Public Health Workers, seeks:

> (a) [T]o promote and improve the social and economic well-being of the health workers, their living and working conditions and terms of employment; (b) to develop their skills and capabilities in order that they will be more responsive and better equipped to deliver health projects and programs; and (c) to encourage those with proper qualifications and excellent abilities to join and remain in government service.[6]

In furtherance of these purposes, Section 20 of the same law provides that public health workers shall, in addition to their basic salary, receive hazard, subsistence, laundry, and remote assignment allowances, as well as longevity pay.[7]

Accordingly, Section 3 of Republic Act No. 7305 defines health workers as:

> [A]ll persons who are engaged in *health and health-related work*, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics and other health-related establishments owned and operated by the government or its political subdivisions with original charters and

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[6] Rep. Act No. 7305, Sec. 2.

[7] *See* Rep. Act No. 7305, secs. 20 and 23 provide:

> Section 20. Additional Compensation. — Notwithstanding Section 12 of Republic Act No. 6758, public health workers shall receive the following allowances: hazard allowance, subsistence allowance, longevity pay, laundry allowance and remote assignment allowance.
>
> Section 23. Longevity Pay. — A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to a health worker for every five (5) years of continuous, efficient and meritorious services rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act.

shall include medical, allied health professional, administrative and support personnel employed regardless of their employment status. (Emphasis supplied)

The Secretary of Health, pursuant to the authority given under Section 35[8] of Republic Act No. 7305 and after proper consultation with other government agencies, issued the Implementing Rules and Regulations and the equivalent specific directives pertaining to the execution of the law.[9]

Hence, Rule III of the Revised Implementing Rules of Republic Act No. 7305 particularly refers to the following as Public Health Workers covered by the benefits provided for under the law:

1. Public Health Workers (PWH) — Persons engaged in health and health-related works. These cover employees in any of the following:

    a. Any government entity whose primary function according to its legal mandate is the delivery of health services and the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics or other institutional forms which similarly perform health delivery functions, like clinical laboratories, treatment and rehabilitation centers, x-ray facilities and other similar activities involving the rendering of health services to the public; and

    *b. Offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services.*

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[8] Rep. Act No. 7305, Sec. 35 provides:

Section 35. Rules and Regulations. - The Secretary of Health after consultation with appropriate agencies of the government as well as professional and health workers' organizations or unions, shall formulate and prepare the necessary rules and regulations to implement the provisions of this Act. Rules and regulations issued pursuant to this Section shall take effect thirty (30) days after publication in a newspaper of general circulation.

[9] REVISED IMPLEMENTING RULES AND REGULATIONS ON THE MAGNA CARTA OF PUBLIC HEALTH WORKERS (1999).

> Also covered are medical and allied health professionals, as well as administrative and support personnel, regardless of their employment status.
>
> 2. Health-Related Establishment — health service facility or unit which performs health service delivery functions within an agency whose legal mandate is not primarily the delivery of health services. This applies to, among others, clinics or medical departments of government corporations, medical corps and hospitals of the AFP, and specific health service section, division, bureau or any type of organizational subdivision of a government agency. In no case shall the law apply to the whole agency when the primary function of the agency is not the delivery of health services. (Emphasis supplied)

From the foregoing definitions, a public health worker engaged in health and health-related work not only encompasses one who actually and directly delivers health services through hospitals and other similar institutions[10] but also includes those involved on aspects of provision, financing, and regulation[11] with which PhilHealth personnel are certainly engaged.

Republic Act No. 7875, otherwise known as the National Health Insurance Act of 1995,[12] established a National Health Insurance Program, "which shall provide health insurance coverage and ensure affordable, acceptable, available and accessible health care services" for all Filipino citizens.[13] To administer the program,[14] PhilHealth was created.[15]

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[10] *See* REVISED IMPLEMENTING RULES OF REP. ACT NO. 7305, Rule III, 1 (a).

[11] *See* REVISED IMPLEMENTING RULES OF REP. ACT NO. 7305, Rule III, 1 (b).

[12] Rep. Act No. 7875 was amended by Rep. Act No. 9241 (2004) and Rep. Act No. 10606 (2013).

[13] *See* Rep. Act No. 7875, Art. III, Sec. 5, as amended.

[14] *See* Rep. Act No. 7875, Sec. 16, as amended.

[15] *See* PhilHealth History, available at <https://www.philhealth.gov.ph/about_us/history.html>. (Last accessed on February 13, 2018)

The following functions of PhilHealth, among others, substantiate that its employees perform tasks pertinent to the provisions and regulations of health services. Article IV, Section 16 of Republic Act No. 7875, as amended, provides:

a) To administer the National Health Insurance Program;
b) To formulate and promulgate policies for the sound administration of the Program;
c) To *supervise the provision* of health benefits and to set standards, rules, and regulations necessary to ensure quality of care, appropriate utilization of services, fund viability, member satisfaction, and overall accomplishment of Program objectives;
d) To formulate and implement guidelines on contributions and benefits; portability of benefits, cost containment and quality assurance; and health care provider arrangements, payment methods, and referral systems;
... ... ...
j) To negotiate and enter into contracts with health care institutions, professionals, and other persons, juridical or natural, regarding the pricing, payment mechanisms, design and implementation of administrative and operating systems and procedures, financing, and delivery of health services in behalf of its members;
... ... ...
l) To *determine requirements* and issue guidelines for the accreditation of health care providers for the Program in accordance with this Act;
m) To *visit, enter and inspect* facilities of health care providers and employers during office hours ...
s) To conduct an information campaign on the principles of the [National Health Insurance Program] to the public and to accredited health care providers....
t) To *conduct post-audit* on the quality of services rendered by health care providers;
... ... ...
w) To endeavor to support the use of technology in the delivery of health care services especially in farflung areas such as, but not limited to, telemedicine, electronic health record, and the establishment of a comprehensive health database;

x) To *monitor compliance* by the regulatory agencies with the requirements of this Act and to carry out necessary actions to enforce compliance;

... ... ...

z) To *accredit* independent pharmacies and retail drug outlets[.] (Emphasis supplied)

Apart from being engaged in health and health-related work as provided for under Section 3 of Republic Act No. 7305, PhilHealth personnel are similarly employees of an office attached to another government agency. Article IV, Section 14 of Republic Act No. 7875, as amended, provides:

Section 14. Creation and Nature of the Corporation. — There is hereby created a *Philippine Health Insurance Corporation*, which shall have the status of a tax-exempt government corporation attached to the Department of Health for Policy coordination and guidance. (Emphasis supplied)

Among the principal functions of the Department of Health are the provision, financing, and regulation of health services.[16] The Department of Health is mainly responsible "for the formulation, planning, implementation, and coordination of policies and programs in the field of health."[17] Pursuant to its mandate, its primary task involves the "promotion, protection, preservation or restoration of the health of the people through the *provision and delivery of health services* and through the *regulation and encouragement* of providers of health goods and services."[18] Thus:

Section 3. *Powers and Functions*. — The Department shall:

....

(2) *Provide* for health programs, services, facilities and other requirements as may be needed, subject to availability of funds and administrative rules and regulations;

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[16] *See* Rule III, 1(b) of the Revised Implementing Rules of Republic Act No. 7305.

[17] *See* ADM. CODE, Title IX, Chap. I, Sec. 2.

[18] *See* ADM. CODE, Title IX, Chap. I, Sec. 2.

(3) Coordinate or collaborate with, and assist local communities, agencies and interested groups including international organizations in activities related to health;

(4) *Administer all laws, rules and regulations* in the field of health, including quarantine laws and food and drug safety laws;

(5) Collect, analyze and disseminate statistical and other relevant information on the country's health situation, and require the reporting of such information from appropriate sources;

(6) Propagate health information and educate the population on important health, medical and environmental matters which have health implications;

... ... ...

(8) *Regulate* the operation of and issue licenses and permits to government and private hospitals, clinics and dispensaries, laboratories, blood banks, drugstores and such other establishments which by the nature of their functions are required to be regulated by the Department;

(9) *Issue orders and regulations* concerning the implementation of established health policies;...[19] (Emphasis supplied)

Republic Act No. 7305 and its Revised Implementing Rules clearly define who public health workers are. Accordingly, PhilHealth personnel fall within the definition provided for under Section 3 of Republic Act No. 7305 as they are engaged in both health and health-related work. Particularly, they are employees of an office attached to the Department of Health, which has an *explicit* mandate to be involved in both the provision and regulation of health services. To limit the characterization of public health workers as only to those who are actually involved in the delivery of health services, through hospitals and health-related establishments, as what the *ponencia* did, disregards the law and its purpose.

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[19] *See* ADM. CODE, Title IX, Chap. I, Sec. 3.

**II**

Then Secretary of Health Alberto Romualdez's prior Certification that PhilHealth employees are public health workers,[20] as similarly confirmed in the Opinion issued by the Office of the Government Corporate Counsel,[21] should not be discounted.

The Commission on Audit, as the guardian of public funds, has vast powers on accounts relevant to government proceeds and disbursements, and to the utilization of public funds and property.[22] While this Court recognizes that the Commission on Audit's "general audit power is among the constitutional mechanisms that [give] life to the check and balance system inherent in our form of govemment,"[23] this does *not*, in any way, empower it to overrule a reasonable interpretation of an executive body pursuant to the latter's statutory mandate.

The construction adopted by the Department of Health as the one tasked to carry out the provisions of Republic Act No. 7305 *should* be given credence.[24] The reason behind this includes not only the advent of the "modern or modernizing society['s]" diverse demands and the institution of varied administrative units dealing with those necessities, but also the "accumulation of experience and *growth of specialized capabilities* by the administrative agency charged with implementing a particular statute"[25] which, accordingly, the Department of Health possesses. Therefore, the Commission on Audit should have

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[20] *Ponencia*, p. 2, Certification dated February 20, 2000.

[21] *Id*. OGCC Opinion. Series of 2001 dated April 26, 2001.

[22] *Veloso v. Commission on Audit*, 672 Phil. 419 (2011) [Per *J*. Peralta, *En Banc*].

[23] *Id*. at 431.

[24] See *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20 (1969) [Per *J*. Castro, *En Banc*].

[25] *Pest Management Association of the Philippines v. Fertilizer and Pesticide Authority*, 545 Phil. 258, 265 (2007) [Per *J*. Austria-Martinez, *En Banc*].

acknowledged the Department of Health's authority especially considering that often, the representatives of government agencies charged with the execution of the law, are the ones who prepared the rules they interpret.[26]

"Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is *limited and defined* by the statute conferring the power."[27] The Department of Health, as the executive branch unit mandated to oversee laws and rules in the field of health and the one particularly tasked under Republic Act No. 7305 to prepare the law's implementing rules, *determines* who are especially covered by the benefits of Republic Act No. 7305.[28] Considering that the Department of Health's determination is in *consonance* with the law and its purpose, the Commission on Audit cannot completely ignore the Department of Health's statutory authority and readily substitute the Department of Health's resolution with its own determination.

Accordingly, I vote to grant the Petition. The Commission on Audit April 1, 2015 Decision No. 2015-094[29] and November 9, 2015 Resolution,[30] which affirmed Notice of Disallowance No. H.O. 12-005(11) relevant to the payment of longevity pay as provided for under Republic Act No. 7305 to the Philippine Health Insurance Corporation officers and employees for the period of January 2011 to September 2011,[31] should be reversed and set aside.

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[26] *Id.*

[27] See *Re: Entitlement to Hazard Pay of SC Medical and Dental Clinic Personnel*, 592 Phil. 389, 398 (2008) [Per *J.* Tinga, *En Banc*].

[28] See *Kapisanan ng mga Manggagawa sa GSIS v. COA*, 480 Phil. 861 (2004) [Per *J*. Tinga, *En Banc*].

[29] *Rollo*, pp. 55-58. The Decision was signed by Commissioners Heidi L. Mendoza and Jose A. Fabia and attested by Director IV Nilda B. Plaras.

[30] *Id*. at 129.

[31] *See Ponencia* p. 20, *see rollo*, pp. 55-58 and 129.

**DISSENTING OPINION**

**CAGUIOA, *J.*:**

The *ponencia* resolves to dismiss the petition ruling that on both procedural and substantive aspects of the case, the petition fails. The *ponencia* rules that the Petition for Review filed by Philippine Health Insurance Corporation (PhilHealth) before the Commission on Audit (COA) Commission Proper was filed out of time, and even if the rules of procedure were to be liberally construed, the petition would still not prosper because PhilHealth personnel are not public health workers.

With all due respect, I disagree.

The facts are as follows:

Section 20 of Republic Act No. (RA) 7305, known as the *Magna Carta of Public Health Workers*, mandates the payment of **longevity pay**, hazard allowance, subsistence allowance, laundry allowance and remote assignment allowance to public health workers.

Former Department of Health (DOH) Secretary Alberto G. Romualdez, Jr. issued a Certification dated February 20, 2000 (Certification) declaring PhilHealth officers and employees as public health workers within the contemplation of RA 7305.[1] Thereafter, the Office of the Government Corporate Counsel (OGCC) in its Opinion 064, Series of 2001, dated April 26, 2001, likewise declared that PhilHealth officers and employees are public health workers within the meaning of RA 7305.[2]

The Board of Directors of PhilHealth (PhilHealth BOD) passed and approved Resolution 1584, s. 2012 dated January 31, 2012 confirming the grant of public health workers benefits, such as longevity pay, under RA 7305, effective January 1, 2012, to PhilHealth officers and employees.[3]

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[1] *Rollo*, p. 7.

[2] *Id.*

[3] *Id.*

On post-audit, however, COA Supervising Auditor, Elena Agustin (Agustin) issued Audit Observation Memorandum Order 2012-09 (11) stating that the payment of longevity pay lacks legal basis, and thus, recommended the discontinuance of the grant thereof.[4] PhilHealth, through its former President and CEO, Dr. Eduardo P. Banzon, submitted its Reply asserting that PhilHealth personnel are public health workers.[5] Thereafter, Agustin issued Notice of Disallowance H.O. 12-005 (11) (ND).[6] PhilHealth received the ND on July 30, 2012. PhilHealth had six (6) months from July 30, 2012 within which to file its appeal.[7]

PhilHealth filed its Appeal Memorandum to the COA Director on January 25, 2013.[8] The COA Director issued CGS-6 Decision 2014-002 dated March 13, 2014 (CGS Decision) upholding the disallowance.[9] PhilHealth received the CGS Decision on March 25, 2014.[10] On March 31, 2014 (since March 30, 2014 was a Sunday), PhilHealth filed a Motion for Extension of Time to File Petition for Review requesting an extension of one month from March 30, 2014 or until April 30, 2014 within which to file its Petition for Review.[11] Said Petition for Review was filed on April 30, 2014 before the COA Commission Proper.[12]

On May 6, 2015, PhilHealth received a copy of the COA Decision 2015-094 dated April 1, 2015 (COA Decision) dismissing PhilHealth's Petition for Review for being filed out of time.[13] PhilHealth moved for reconsideration which was

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

[5] *Id.* at 8.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] See *id.* at 8-9.

[11] *Id.* at 9.

[12] *Id.*

[13] *Id.*

likewise denied through a November 9, 2015 Notice/Resolution (COA Resolution).[14]

PhilHealth filed the current special civil action for certiorari under Rule 65, in relation to Rule 64, to set aside or nullify the COA Decision and COA Resolution, disallowing the payment of longevity pay to PhilHealth officers and employees which amounts to ₱5,575,294.70.[15]

***The Court may relax the strict application of the rules of procedure if it would defeat rather than serve the ends of justice.***

Rule V[16] of the 2009 Revised Rules of Procedure of the COA (COA Revised Rules of Procedure) states that an appeal from the decision of the auditor to the director must be taken by filing an appeal memorandum within six (6) months after receipt of the decision appealed from. Rule VII[17] of the aforementioned rules provides that a party aggrieved by the decision of the director may appeal to the COA Commission Proper *via* a petition for review filed within the time remaining of the six (6) months period under Section 4, Rule V.

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[14] *Id.*

[15] *Id.* at 4.

[16] Rule V, Secs. 1, 2 and 4 provide:

Section 1. ***Who May Appeal.*** – An aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.

Section 2. ***How Appeal Taken.*** **–** The appeal to the Director shall be taken by filing an Appeal Memorandum with the Director, copy furnished the Auditor. Proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum. Proof of payment of the filing fee prescribed under these Rules shall likewise be attached to the Appeal Memorandum.

x x x x x x x x x

Section 4. ***When Appeal Taken.*** – An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[17] Rule VII, Secs. 1, 2 and 3 provide:

Section 1. ***Who May Appeal and Where to Appeal.*** **–** The party aggrieved

In the case at bar, PhilHealth asserts that the six (6) months period shall be counted from the exact date of the month up to the day prior to the same date of the following month, while the COA believes that the six (6) months period shall be computed as 180 days.

The appeal timelines as interpreted by PhilHealth and COA are illustrated as follows:

***PhilHealth***

| | |
|---|---|
| PhilHealth's receipt of the ND of the Auditor | JULY 30, 2012 |
| Date of Filing of Appeal Memorandum with CGS Cluster 6 Director | JANUARY 25, 2013<br><br>PhilHealth asserts that it had until January 30, 2013 to file the Appeal Memorandum. Thus, upon filing on January 25, 2013, it claims it still had 5 days remaining of the six (6) months period. |
| Date of PhilHealth's Receipt of CGS Decision dated March 13, 2014 | MARCH 25, 2014<br><br>Appeal from the decision of the Director shall be taken *within the time remaining of the six (6) months period.* |

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by a decision of the Director or the ASB may appeal to the Commission Proper.

Section 2. ***How Appeal Taken. —*** Appeal shall be taken by filing a Petition For Review in five (5) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director or the ASB who rendered the decision. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fee prescribed under these Rules.

Section 3. ***Period of Appeal***. — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

| | |
|---|---|
| Date of PhilHealth's filing of Motion for Extension of Time to File Petition for Review | MARCH 31, 2014<br><br>On its belief that it still had 5 days left, PhilHealth counted March 30, 2014 as the last day to file its motion for extension. Since March 30 was a Sunday, the motion was filed on the next working day, March 31, 2014, which was a Monday. |
| Date of Filing of Petition for Review with the COA Commission Proper | APRIL 30, 2014<br>PhilHealth claims that since it was able to file the motion for extension within the deadline, it had until April 30, 2014 to file the Petition for Review. Thus, its Petition for Review was filed on time. |

***COA***

| | |
|---|---|
| PhilHealth's receipt of the ND of the Auditor | JULY 30, 2012 |
| Date of Filing of Appeal Memorandum with CGS Cluster 6 Director | JANUARY 25, 2013<br><br>The COA, on the other hand, claims that PhilHealth had until January 26, 2013 to file the Appeal Memorandum as this is the 180th day from July 30, 2012. And since this was filed on January 25, 2013, PhilHealth had only one day remaining from the six (6) months period. |
| Date of PhilHealth's Receipt of CGS Decision dated March 13, 2014 | MARCH 25, 2014<br><br>Appeal from the decision of the Director shall be taken *within the time remaining of the six (6) months period.* |

| | |
|---|---|
| Date of PhilHealth's filing of Motion for Extension of Time to File Petition for Review | MARCH 31, 2014<br><br>The COA asserts that the motion for extension or Petition for Review should have been filed on March 26, 2014. Hence, the filing on March 31, 2014 was already late and beyond the allowed period. |
| Date of Filing of Petition for Review with the COA Commission Proper | APRIL 30, 2014<br><br>Thus, it is the COA's position that the Petition for Review was filed out of time. |

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter – the computation of legal periods.[18]

Article 13 of the Civil Code reads:

ART. 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; **months, of thirty days**; days, of twenty-four hours; and nights from sunset to sunrise.

**If months are designated by their name, they shall be computed by the number of days which they respectively have.**

In computing a period, the first day shall be excluded, and the last day included. (Emphasis supplied)

Section 31, Chapter VIII, Book I of the Administrative Code of 1987, in turn, states:

SECTION 31. *Legal Periods*. — "Year" shall be understood to be twelve calendar months; **"month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains**;

[18] *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, 558 Phil. 182, 190 (2007).

"day" to a day of twenty-four hours; and "night" from sunset to sunrise. (Emphasis supplied)

In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[19] the Court found that there exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987, specifically as regards the computation of a *year*, thus, Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*

The COA Revised Rules of Procedure does not explicitly provide the manner on how the period in contest shall be computed. Hence, applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987, which now governs the computation of legal periods, the six (6) months period constitutes 180 days. Further, this Court in *Torres v. Commission on Audit*[20] stated as follows: "***the 6-month or 180-day reglementary period*** shall be reckoned from the petitioners' date of receipt of the Auditor's Notice of Disallowance on November 6, 2009."

With the foregoing, it is clear that the Petition for Review of PhilHealth before the COA Commission Proper was filed out of time. However, the Court, even as it has at times acknowledged that procedural rules should be treated with utmost respect and due regard, has likewise, from time to time, recognized exceptions based on the most compelling reasons where stubborn obedience to it would defeat rather than serve the ends of justice.[21] Indeed, where strong considerations of substantive justice are manifest in the petition, the Court is called upon to relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.[22]

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

[20] G.R. No. 211225, January 10, 2017 (Unsigned Resolution).

[21] *Osmeña v. Commission on Audit*, 665 Phil. 116, 124 (2011).

[22] *Id.* at 125.

Thus, despite the Petition for Review having been filed out of time, the Court should entertain it to finally put to rest the question of whether PhilHealth personnel are public health workers and whether they are entitled to the benefits granted to public health workers.

***PhilHealth personnel are public health workers.***

Section 3 of RA 7305 defines the term health workers as follows:

> x x x "health workers" shall mean all persons who are engaged in **health and health-related work**, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics and other health-related establishments owned and operated by the Government or its political subdivisions with original charters and shall include medical, allied health professional, administrative and support personnel employed regardless of their employment status. (Emphasis supplied)

Rule III of the Implementing Rules and Regulations (IRR) of RA 7305 further define public health workers as follows:

> 1. Public Health Workers (PWH) — Persons engaged in health and health-related works. These cover employees in any of the following:
>
>  a. Any government entity whose primary function according to its legal mandate is the delivery of health services and the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations, clinics or other institutional forms which similarly perform health delivery functions, like clinical laboratories, treatment and rehabilitation centers, x-ray facilities and other similar activities involving the rendering of health services to the public; and
>
>  **b. Offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services.**
>
> Also covered are medical and allied health professionals, as well as administrative and support personnel, regardless of their employment status. (Emphasis supplied)

PhilHealth's mandate includes not only providing health insurance coverage, but also ensuring affordable, acceptable, available and accessible health care services for all citizens of the Philippines.[23] Moreover, the enumerated powers and functions of PhilHealth include the accreditation of health care providers, inspection of health care institutions, setting of standards and rules to ensure quality of health care and appropriate utilization of health services, contracting with health provider organizations for the provision of personal health services, enrollment of members and dependents, establishment of an efficient premium payment collection mechanism, registration of all government and private employers, administration of health benefit package and improvement of the system for its availment, performance monitoring of health care providers and supervision of health benefits, among others.[24]

Further, Section 14, Article IV of RA 7875, as amended, provides that **PhilHealth is attached to the DOH** for coordination and guidance.

> SEC. 14. *Creation and Nature of the Corporation* – There is hereby created a Philippine Health Insurance Corporation, which shall have the status of a tax-exempt government corporation attached to the Department of Health for policy coordination and guidance.

With the foregoing, the more reasonable interpretation is that PhilHealth personnel are engaged in health and health-related work and that they specifically fall under the definition provided in Rule III, 1(b) of the IRR of RA 7305 which pertains to those offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services.

Moreover, in *Philippine Health Insurance Corporation v. Commission on Audit*,[25] the Court upheld the validity of the

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[23] Art. III, Sec. 5, RA 7875 (NATIONAL HEALTH INSURANCE ACT OF 1995), AS AMENDED BY RA 10606 (NATIONAL HEALTH INSURANCE ACT OF 2013).

[24] See Art. IV, Sec. 16, RA 7875, as amended by RA 10606.

[25] G.R. No. 213453, November 29, 2016, 811 SCRA 238.

issuance of the Welfare Support Assistance (WESA) of ₱4,000.00 each to PhilHealth personnel, in lieu of the subsistence and laundry allowances paid to public health workers under RA 7305. The statement of the Court, quoted below, leads to the conclusion that the Court has acquiesced that PhilHealth personnel are public health workers. In fact, the issue decided by the Court was not so much on the propriety of the subsistence and laundry allowances in the form of the WESA, but that the Secretary of Health prescribed the rates thereof not in accordance with RA 7305.[26] This very statement is a recognition by the Court that there was no dispute that PhilHealth personnel were covered by RA 7305 and are therefore public health workers, to wit:

> In a similar manner, the Court finds that the PHIC's grant of the WESA was aptly sanctioned not only by Section 12[27] of the [Salary Standardization Law] but also by statutory authority. PHIC Board Resolution No. 385, S. 2001 states that the WESA of ₱4,000.00 each shall be paid to public health workers under the *Magna Carta* of PHWs in lieu of the subsistence and laundry allowances. Respondent COA contested the same not so much on the propriety of the subsistence and laundry allowances in the form of the WESA, but that the Secretary of Health prescribed the rates thereof not in accordance with the *Magna Carta* of PHWs. x x x[28]

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[26] *Id.* at 273.

[27] RA 6758, Sec. 12 provides:

> SEC. 12. *Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[28] *Philippine Health Insurance Corporation v. Commission on Audit*, *supra* note 25, at 272-273.

On the issue of whether PhilHealth officers and employees were in good faith when they allowed and/or received the longevity pay, I rule in the affirmative. PhilHealth's BOD Resolution 1584, s. 2012 dated January 31, 2012 confirming the grant of public health workers' benefits, including the longevity pay to PhilHealth officers and employees, was issued on the basis of the Certification and OGCC Opinion 064. Further, the receipt of the benefit by the officers and employees was upon the honest belief that there was legal basis to such and thus, they are entitled to it.

Accordingly, I vote that the petition be **GRANTED** and that COA Decision 2015-094 dated April 1, 2015 and Resolution dated November 9, 2015, affirming the notice of disallowance, be **REVERSED** and **SET ASIDE**.

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**EN BANC**

[G.R. No. 230107. July 24, 2018]

**DEPARTMENT OF TRANSPORTATION (DOTR), MARITIME INDUSTRY AUTHORITY (MARINA), and PHILIPPINE COAST GUARD (PCG),** *petitioners, vs.* **PHILIPPINE PETROLEUM SEA TRANSPORT ASSOCIATION, HERMA SHIPPING & TRANSPORT CORPORATION, ISLAS TANKERS SEATRANSPORT CORPORATION, MIS MARITIME CORPORATION, PETROLIFT, INC., GOLDEN ALBATROSS SHIPPING CORPORATION, VIA MARINE CORPORATION, and CARGOMARINE CORPORATION,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; ALLEGATIONS OF VIOLATIONS OF THE DUE**

**PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION ARE WELL-RECOGNIZED GROUND FOR JUDICIAL INQUIRY INTO A LEGISLATIVE MEASURE.—** We agree with respondents that the issue presented is a justiciable question which allows the exercise by this Court of its judicial power, and does not involve a political question. x x x In the case at bar, however, while it may appear that contesting the creation of the OPMF amounts to questioning the wisdom behind the measure, such is not the case. As correctly argued by respondents, the Court may take judicial action on said question since it is not contesting the creation of the OPMF *per se,* but rather its inclusion in RA 9483, and the specific parameters incorporated by the legislature in the implementation of the contested provision. More importantly, violations of the due process and the equal protection clauses of the 1987 Constitution alleged by the respondents are well-recognized grounds for a judicial inquiry into a legislative measure.

2. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; MUST BE FILED BEFORE ANY BREACH OR VIOLATION OF AN OBLIGATION.—** One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. x x x Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

3. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; JUSTICIABLE CONTROVERSY; REFERS TO AN EXISTING CASE OR CONTROVERSY THAT IS APPROPRIATE OR RIPE FOR JUDICIAL DETERMINATION, NOT ONE THAT IS CONJECTURAL OR MERELY ANTICIPATORY.—** It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. As We emphasized in *Angara v. Electoral Commission,* any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

**4. ID.; ID.; ID.; EXPANDED *CERTIORARI* JURISDICTION; PETITIONS FOR *CERTIORARI* AND PROHIBITION ARE THE PROPER REMEDIES WHERE AN ACTION OF THE LEGISLATIVE BRANCH IS SERIOUSLY ALLEGED TO HAVE INFRINGED THE CONSTITUTION.—** To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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." There is a grave abuse of discretion when there is a patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "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***." Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.

**5. ID.; STATUTES; SUBJECT MATTER AND TITLES OF STATUTES; TO COMPLY WITH THE CONSTITUTIONAL REQUIREMENT THAT THE SUBJECT OF AN ACT SHALL BE EXPRESSED IN ITS TITLE, ALL THAT CAN BE REQUIRED IS THAT THE TITLE SHALL NOT BE MADE TO COVER LEGISLATION INCONGRUOUS IN ITSELF, AND WHICH BY NO FAIR INTENDMENT CAN BE CONSIDERED AS HAVING A NECESSARY OR PROPER CONNECTION.—** To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court has repeatedly laid down the rule that — "**Constitutional provisions relating to the subject matter and titles of statutes should**

**not be so narrowly construed as to cripple or impede the power of legislation**. x x x **It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object**." x x x Also, in *Sumulong v. Comelec*, the Court held that all that can reasonably be required is that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection x x x. A review of the Conventions reveals that they do not only cover damage claims by affected individuals but also all amounts encompassed by the term "pollution damage" which is defined therein x x x. The Conventions, therefore, also cover **damage to property, containment, clean-up, and rehabilitation**. Thus, the policy underpinning the establishment of the OPMF in Section 22(a) of RA 9483 and its IRR is wholly consistent with the objectives of the conventions. x x x Indeed, by employing preventive and/or immediate containment measures or response techniques, the State is but affording protection to persons or all stakeholders who stand to suffer from oil pollution incidents—the main thrust of the conventions that is now effectively translated and implemented in Section 22 (a) of RA 9483 and its IRR. In other words, by creating the OPMF, Congress sought to ensure that our enforcement agencies are capable of protecting our marine wealth and preventing harm from being caused to the people and their livelihood by reason of these unfortunate events. x x x To Our mind, **oil spill response and containment is directly connected to compensation for damages brought about by the incident**. In fact, the two concepts are inversely proportional to each other in that a more effective and efficient oil spill response and clean up results in lesser pollution damage; and, ultimately, smaller pollution damage means reduced financial liability on the part of the shipowner. With these, We find that Section 22 is not a rider but is an essential provision to attain the purpose of RA 9483.

**6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; DOES NOT PRECLUDE CLASSIFICATION AS LONG AS THE CLASSIFICATION IS REASONABLE AND NOT ARBITRARY.—** The equal protection guaranty under the

Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." However, this clause does not preclude classification as long as the classification is reasonable and not arbitrary. x x x In the instant case, We agree with petitioners that separating "tankers and barges hauling oil and for petroleum products in Philippine waterways and coast wise shipping routes" from other sea-borne vessels does not violate the equal protection clause. x x x Aside from the difference in the purposes behind their existence and navigation, it is internationally well-recognized that oil tankers pose a greater risk to the environment and to people. As a matter of fact, these types of vessels have long been considered as a separate class and are being given a different treatment by various organizations. x x x It bears to stress that "[i]n the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion." Concomitantly, neither should the Court adopt such a restrictive––if not counterproductive approach––in interpreting and applying the equal protection guarantee under the Constitution. To do otherwise would be to unduly restrict the power of Congress in enacting laws by unjustifiably imposing erroneously stringent requirements and excessively high standards in the crafting of each and every piece of legislation, depriving our lawmakers of the much needed elbowroom in the discharge of their functions.

**7. ID.; ID.; ID.; ID.; ENACTING A PIECE OF LEGISLATION AS RESPONSE TO A PROBLEM, INCIDENT, OR OCCURRENCE DOES NOT MAKE IT LIMITED TO EXISTING CONDITIONS ONLY.—** A statute or provision thereof is said to be limited to existing conditions only if it cannot be applied to future conditions as well. x x x Suffice it to state that enacting a piece of legislation as a response to a problem, incident, or occurrence does not make it "limited to existing conditions only." Assessing whether a statute or provision meets said requirement necessitates a review of the provision or statute itself and not the cause or trigger for its enactment. To require otherwise would be to improperly tie the hands of our legislature in enacting laws designed to address the various matters, incidents, and occurrences that may arise

in a highly-dynamic and unpredictable society. Viewed within the purview of RA 9483, it can easily be seen that the statute also applies to future conditions as it covers any and all oil spills that may occur within Philippine waters.

**8. ID.; STATUTES; DELEGATION OF LEGISLATIVE POWERS; WHEN VALID.—** For a valid delegation of power, it is essential that the law delegating the power must be (1) complete in itself, that it must set forth the policy to be executed by the delegate and (2) it must fix a standard — limits of which are sufficiently determinate or determinable — to which the delegate must conform. On the second requirement, *Osmeña v. Orbos* explained that a sufficient standard need not be spelled out and could be implied from the policy of the law x x x. Further, in *Tatad v. Secretary of the Department of Energy*, We stated that courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers x x x.

**9. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS CLAUSE; TO ASSERT THAT AN IMPOST IS UNCONSTITUTIONAL, THE COURT MUST BE CONVINCED THAT INDEED SAID IMPOSITION IS ARBITRARY, OPPRESSIVE, EXCESSIVE, AND CONFISCATORY, THEREBY VIOLATING THE CONSTITUTIONAL PROSCRIPTION AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.—** Section 1, Article III, of the Constitution guarantees that no person shall be deprived of property without due process of law. While there is no controlling and precise definition of due process, it furnishes a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. Relevant to the instant case is the doctrine's application to businesses and trade where this basic pledge ensures that insofar as the property of private corporations and partnerships is concerned, these entities enjoy the promise of protection against arbitrary regulation. x x x Nonetheless, equally well-settled is the rule that "where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail."

Thus, in asserting that the 10-centavo per liter impost is unconstitutional, **respondents have the burden of proof to convince this Court that indeed said imposition is arbitrary, oppressive, excessive, and confiscatory, thereby violating the constitutional proscription against deprivation of property without due process of law**.

**10. POLITICAL LAW; INHERENT POWERS OF THE STATE; POLICE POWER; AN ADMINISTRATIVE CHARGE OR FEE IS A VALID CHARGE AND SUCH IMPOSITION IS AN EXERCISE OF POLICE POWER BY THE STATE; CASE AT BAR.—** [T]he impost provided in Section 22 is not a revenue-raising tax intended to supplement the government's treasury. What Section 22 does is to regulate the conduct of the business of owners and operators of oil tankers and barges by imposing upon them the duty to contribute to the protection of Philippine waters which they directly use in the conduct of their trade, and which they expose to a risk of possibly irreparable destruction brought about by the spillage or leakage of the product that they carry and profit from. In other words, the 10 centavos is an administrative charge or fee which, in the case at hand, was imposed on covered entities to protect a resource and territory that those in the industry directly use in the conduct of their business, that is, the country's maritime domain. Such administrative charge is a valid charge. x x x Through the imposition in Section 22 of RA 9483, Congress did not just direct the protection of the country's marine resource, it also promoted the constitutionally-protected right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature and the basic and constitutional right to health. On the basis thereof, it can be said that the questioned imposition is an exercise of police power by the State. Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, not repugnant to the Constitution, for the good and welfare of the people. This power to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people flows from the recognition that *salus populi est suprema lex*—the welfare of the people is the supreme law.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioners.
*SEDALAW* for respondents.

**D E C I S I O N**

**VELASCO, JR., *J.*:**

**The Case**

This case concerns the constitutionality of establishing the "Oil Pollution Management Fund," under Section 22(a) of Republic Act No. (RA) 9483 and Section 1, Rule X of its Implementing Rules and Regulations (IRR), by imposing "ten centavos (10c) per liter for every delivery or transshipment of oil made by tanker barges and tanker haulers."

**Antecedents**

The value of the Philippine marine ecosystem cannot be overemphasized. The country is part of an important marine biosphere known as the "coral triangle" that includes Malaysia, Indonesia and Papua New Guinea. Marine scientists working in the area have referred to this ocean corridor as the *marine equivalent of the Amazon*.[1] At the center of it all is the Philippines "with the richest concentration of marine life on the entire planet."[2] Characterized by extensive coral reefs, sea-grass beds, and dense mangrove forests, Philippine waters indeed contain some of the world's most diverse ecosystems.[3]

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[1] See <http://www.pbs.org/frontlineworld/rough/2007/08/philippines_parlinks.html> Last Accessed: May 18, 2018.

[2] See *The Philippine Marine Biodiversity: A Unique World Treasure*. Available at <http://www.oneocean.org/flash/philippine_biodiversity.html> Last Accessed: May 18, 2018.

[3] See *Philippines Coastal & Marine Resources: An Introduction*, <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PEM05-ch1.pdf> Last Accessed: May 18, 2018.

In a report, it was explained that "[t]he full extent of the Philippines' marine biodiversity is not known, but the best information available reveals an astounding variety of marine life: 5,000 species of clams, snails and mollusks; 488 species of corals; 981 species of bottom-living algae, and thousands of other organisms. Five of the seven sea turtle species known to exist in the world today occur in Philippine waters."[4]

Repeated oils spills,however,have threatened this national treasure.

In December 2005, a power barge ran aground off the coast of Antique, dumping 364,000 liters of bunker oil. This oil spill severely polluted 40 kilometers of Antique's coastline and decimated more than 230 hectares of pristine mangrove forest. Rehabilitation costs have been estimated at USD 2 million.[5]

A few months after the Antique incident, or on August 11, 2006, a Petron-chartered single hull vessel carrying 2.1 million liters of oil sank in the Guimaras Strait, causing the Philippines' worst oil spill.[6] Dubbed an "ecological time bomb," the sunken vessel leaked an estimated 100 to 200 liters of oil per hour, while roughly 320 kilometres of coastline was covered in thick sludge. Miles of coral reef and mangrove forests were laid to waste and more than 1,100 hectares of marine sanctuaries and reserves were badly damaged. And with all fishing activities put to a halt, around 40,000 people were affected.

The aftereffects of the Guimaras disaster were felt a few days later on August 22, 2006, when sludge washed up on Panay, threatening rich fishing grounds.

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[4] See *The Philippine Marine Biodiversity: A Unique World Treasure*<http://www.oneocean.org/flash/philippine_biodiversity.html> Last Accessed: May 18, 2018; citations omitted.

[5] See <http://wwf.panda.org/?78300/Large-oil-spill-in-the-Philippines-threatens-marine-ecosystem> Last accessed: May 18, 2018.

[6] See <https://www.greenpeace.org/archive-international/en/news/features/philippines-seen-and-heard/>Last accessed: May 18, 2018.

The sunken ship was too deep for divers to reach and the Philippines, lacking heavy salvage equipment, appealed for international help to prevent the disaster from getting worse.[7] Help came from experts from the United States and Japan who helped assess the cleanup operations and suggested measures on how to stop the slick from spreading further to vast mangrove areas and fishing grounds.[8]

On August 23, 2006, the oil spill claimed its first human victim. Health officials said the man inhaled the fumes of the thick, tar-like substance outside his home on Guimaras island. Villagers reported that skin and breathing problems became commonplace. The government hired locals for the clean-up, paying them less than $4 a day to scoop up the sludge on the shores, with no protective gear and using their bare hands.[9]

Recognizing the gravity and extent of the Guimaras oil spill, the lack of proper response strategy, the absence of the necessary equipment for containing, cleaning up, and removing spilled oil, and the difficulty in pinning the liability on oil companies, Congress was prompted to pass a law implementing the *International Convention on Civil Liability for Oil Pollution Damage* (1969 Civil Liability Convention) and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (1992 Fund Convention).[10] The 1969 Civil Liability Convention was later amended by the 1992 Protocol (1992 Civil Liability Convention).[11]

The legislative measure began as Senate Bill No. (SB) 2600 sponsored by then Senator Pia S. Cayetano. With sixteen (16)

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[7] See <https://earth.esa.int/web/earth-watching/natural-disasters/oil-slicks/content/-/asset_publisher/71yyBC1MdfOT/content/philippines-august-2006>Last accessed: May 18, 2018.

[8] *Id*.

[9] *Id*.

[10] *See* Page 1537, Journal Session No. 65, February 8, 2007, Thirteenth Congress – Third Regular Session, Senate of the Philippines.

[11] These conventions were ratified by the Philippine Senate in 1997.

senators voting in favor, SB 2600 was sent to the House of Representatives where it was adopted as an amendment to House Bill No. 4363. With the concurrence of both houses, the enrolled copy of the consolidated bill was sent to the Office of the President for signature.

On June 2, 2007, RA 9483, entitled "*An Act Providing For The Implementation of the Provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Providing Penalties for Violations thereof, and for Other Purposes*" or simply the "Oil Pollution Compensation Act of 2007," was signed into law. The provision relevant to this case, Section 22 of RA 9483, provides for the establishment of an "Oil Pollution Management Fund" (OPMF) and states as follows:

**SEC. 22.** ***Oil Pollution Management Fund.*** — An Oil Pollution Management Fund (OPMF) to be administered by the MARINA is hereby established. Said Fund shall be constituted from:

(a) Contributions of Owners and operators of tankers and barges hauling Oil and for petroleum products in Philippine waterways and coast wise shipping routes. During its first year of existence, the Fund shall be constituted by an impost of ten centavos (10c) per liter for every delivery or transshipment of Oil made by tanker barges and tanker haulers. For the succeeding fiscal years, the amount of contribution shall be jointly determined by Marina, other concerned government agencies, and representatives from the Owners of tankers barges, tankers haulers, and Ship hauling Oil and/or petroleum products. In determining the amount of contribution, the purposes for which the fund was set up shall always be considered; and

(b) Fines imposed pursuant to this Act, grants, donations, endowment from various sources, domestic or foreign, and amounts specifically appropriated for OPMF under the annual General Appropriations Act.

**The Fund shall be used to finance the following activities:**

**(a) Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and**

**(b) Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE: *Provided*, That ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph: *Provided, further*, That any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph.**

**In no case, however, shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.**

*Provided*, That amounts advanced to a responding entity or claimant shall be considered as advances in case of final adjudication/award by the RTC under Section 18 and shall be reimbursed to the Fund. (emphasis ours)

Nine years later, or on April 12, 2016, the IRR of RA 9483 was promulgated, with Section 1, Rule X thereof implementing the questioned Section 22 of RA 9483. It states:

**RULE X**

**FINAL PROVISIONS**

Section 1. ***Oil Pollution Management Fund (OPMF)***– Administration of the OPMF shall be [the] responsibility of the Maritime Industry Authority.

1.1. Establishment of the OPMF – The Maritime Industry Authority (MARINA) is hereby authorized to establish and open a trust fund account with any government depository bank for OPMF – the OPMF shall be available for disbursement/payment of expenses immediately after any occurrence of any oil pollution case or incident.

1.2. Source/Composition of OPMF – OPMF shall be composed mainly from the following sources[:]

1.2.1. Contribution of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes;

1.2.1.1. During its first year of existence from the date of implementation of the Act(,) [t]he OPMF shall be constituted through an impost of levy of ten centavos (0.10) per liter for every delivery of transshipment of oil received by tanker barges or tanker hauler from an oil depot, refinery, or other storage facility for carriage to its point of destination regardless of any intervening or intermediate point for consolidation, de consolidation or change of means of transportation of such oil.

1.2.1.2. An OPMF Committee shall be constituted to determine the amount of contribution for the succeeding years.

1.2.2. Fines and Penalties under Section 1, Rule IX of this IRR and other fines and penalties that may be determined by the OPMF Committee;

1.2.3. Grants, donations and endowment from various domestic and foreign sources; and

1.2.4. Amounts appropriated under the Annual General Appropriations Act pursuant to Section 2, Rule X of this IRR.

1.3. The OPMF Committee shall be constituted as follows:

Chairman – Administrator, MARINA
Vice Chairman – Commandant, PCG
Members: representative from the following:

DOTC
PPA
DOE
DENR-EMB
Tanker Association
(to be designated/appointed by the association members)

Secretariat – MARINA staff designated by the Administrator

1.4. The OPMF Committee shall perform the following Duties and Functions:

1.4.1. Determine the contribution for the year based on the utilization of the OPMF;

1.4.2. Conduct/undertake an annual review and evaluation to determine the need to increase/decrease the amount of contribution for the following year/period;

1.4.3. Issue circulars to prescribe the rate/amount of contributions of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes for any particular period;

1.4.4. Issue, in addition to the violations provided under Section 1, Rule X of this IRR, a Circular prescribing fines and penalties for additional violations of (sic) relative to the implementation of this Act;

1.4.5. Determine/approve amount for the initial and succeeding transfer of funds to the PCG, in accordance with National Oil Spill Contingency Plan;

1.4.6. Determine/approve the conduct of research activities pursuant to Para. (sic) 1.4.1.2, of this Rule; and

1.4.7. Approve the proposed annual budget for the enforcement and monitoring activities of concerned agencies/offices.

1.5. Utilization of the OPMF

1.5.1. Transfer or funds/disbursement from OPMF shall be with prior approval of the OPMF Committee which will cover expenditures relative to the following:

1.5.1.1. For the immediate containment, removal and clean-up operations of the PCG in all Oil Pollution cases the amount shall be in accordance with the Claims Manual.

1.5.1.2. Research, enforcement and monitoring activities as approved by the OPMF Committee.

1.5.2. Reimbursement of expenses incurred for immediate containment, removal and clean-up operations undertaken following an incident shall require approval from the OPMF Committee;

1.5.3. Total expenses for immediate containment, removal and clean-up operations undertaken following an incident shall not exceed 90% of the funds available in the OPMF on the date of the incident;

1.5.4. Amounts appropriated under the General Appropriations Act for the immediate containment, removal and clean-up operations undertaken following an incident.

1.5.5. The fund shall not be used for payment of personal services expenditures, except for the compensation

of those involved in clean-up operations undertaken following [an] incident.

1.5.6. Total expenses for research, enforcement and monitoring activities as approved by the OPMF Committee shall not exceed 10% of the total funds available in the OPMF for any given calendar year.

1.6. Procedures for the Collection and Deposit/Remittance of the OPMF:

1.6.1. Owners and Operators of Tankers and barges hauling oil and/or petroleum products in the Philippines (sic) waterways and coastwise shipping routes shall pay their monthly contributions to the MARINA Central Office or to any of its Maritime Regional Offices (MROs) within the first 5 days of the succeeding month;

1.6.2. In the case of economic zone authorizes (sic) with special charters, MARINA shall put up a collection desk in its premises, monthly contributions shall be paid to the MARINA collecting officer.

1.6.3. Contribution shall be computed based on the rate prescribed by the OPMF Committee and the number of liters of oil delivered/transported as reflected/ reported in the Monthly Voyage Report (MVR). The MVR shall be supported with copies of the bill of lading issued for the month;

1.6.4. MARINA Collection/Accountable Officers shall deposit all collection received for the OPMF intact the following day to the OPMF Fund Account;

1.6.5. MARINA Collecting Officers in the MROs and (sic) shall submit to the Central Office a Monthly Report of Collection and Deposits.

1.7. Transfer/Disbursement of Funds

1.7.1. Immediately after receipt of report from PCG of any incident of oil spill/pollution, the MARINA shall transfer to the latter the amount covering the initial requirements for the containment and removal of the spill;

1.7.2. The amount transfer (sic) shall be considered as a Revolving fund by the PCG;

1.7.3. The PCG shall request MARINA for the replenishment

of the Revolving Fund when disbursement has reached at least 75% of the total amount;

1.7.4. Disbursement or payment of expenses relative to the containment, removal and clean-up operations undertaken by other government agencies/offices or private companies shall be made by the PCG;

1.7.5. Any unexpended portion of the cash advance shall be refunded to the OPMF.

1.8. Disbursement Procedures (10%):

1.8.1. MARINA, PCG, PPA, and other government agencies/ offices concerned shall submit annual plans and budget estimates covering enforcement/monitoring and research activities, pursuant to Section 1.4.1.2 to 1.4.1.4 of this Rule.

1.8.2. Annual Plans and Budget estimates for research, enforcement and monitoring activities shall be submitted to the OPMF for deliberation and approval.

1.8.3. Any new research proposal, in addition to the annual plan may be submitted to the OPMF Committee for deliberation/approval.

1.8.4. Transfer of funds for research activities shall be as approved by the OPMF Committee.

1.9. Reimbursement to the OPMF:

1.9.1. MARINA shall be provided copy of any decision/ order issued by the RTC on the settlement of claims for compensation for pollution damages.

1.10. Audit of the OPMF

1.10.1. The OPMF shall be subjected to the usual audit procedures by the Commission on Audit (COA).

1.11. Reporting

1.11.1. The MARINA, as administrator of the OPMF, shall prepare the following quarterly reports and submit the same to the Secretary of the DOTC, the members of the OPMF Committee and other concerned government offices;

1.11.1.1. Collection and Deposit

1.11.1.2. Disbursement

1.11.1.3. Status of Funds

1.11.2. An audited report of disbursement shall be prepared and submitted by PCF to the MARINA within 90 days after the termination of the clean-up operations.

1.11.3. MARINA shall submit financial reports as required by COA, Bureau of Treasury and Department of Budget (DBM) and Congress.

Respondents lost no time in assailing the law and the IRR. A month after the promulgation of the IRR, they filed a Petition for Declaratory Relief (with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction) under Rule 63, contesting Section 22 (a) of RA 9483, as well as Section 1, Rule X of its IRR. The petition was raffled off and heard by the Regional Trial Court, Branch 216, Quezon City (RTC).

There, they argued that the obligation to contribute to the OPMF solely imposed upon the owners and operators of oil/petroleum tankers and barges violates their right to equal protection of the law; that the ten-centavo (10c) impost is confiscatory and, thus, violates their right to due process; Section 22 (a) is a prohibited rider;and, finally, the provision provides an undue delegation of legislative power.[12]

In an Order[13] dated July 25, 2016, the RTC granted the prayer for issuance of a writ of preliminary injunction and enjoined the implementation of the assailed provision and IRR.[14]

**RTC Decision**

On February 22, 2017, the RTC rendered the questioned Decision granting the petition for declaratory relief and ruling in favor of respondents.

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[12] *Rollo*, pp. 77-78.

[13] *Id.* at 169-176.

[14] Petitioners questioned said July 25, 2016 Order before the Court of Appeals (CA), docketed as C.A. G.R. SP No. 147709 and entitled "*Department of Transportation (DOTR), et al. v. Hon. Alfonso C. Ruiz II, et al.*"

The trial court held that there is no clear and valid reason as to why the oil/petroleum tankers and barges are being treated differently from other vessels.For the trial court, there is no substantial distinction between tankers and barges and these other vessels in terms of their potential to cause oil pollution or effect damage as a consequence thereof. The RTC agreed with respondents that to be valid, all potential marine pollutants should be required to contribute to the OPMF.[15]

With respect to the 10-centavo per liter imposition, the RTC agreed with respondents that the amount is confiscatory and that said amount will cripple, if not bankrupt, the respondents' businesses.[16]

As regards the allegation that Section 22 is a rider, the trial court agreed. It held that based on the title, it is clear that RA 9483 was enacted merely to implement the provisions of the 1992 Civil Liability and the 1992 Fund Conventions.[17] The trial court noted that these Conventions do not order the creation of an OPMF.[18]

Lastly, the RTC ruled that the law does not set specific parameters to guide the implementing agencies on how to determine the amount of contribution for the succeeding years after the first year of existence where the 10-centavo amount applies.[19]

We quote the decretal portion of the assailed Decision:

WHEREFORE, the Petition is hereby granted. The court renders judgment as follows:

1) The Injunction enjoining the respondents from implementing Assailed Provision (Section 22, paragraph (a) of Republic Act No. 9483), and Assailed IRR (Section 1, Rule X of the

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[15] *Rollo*, p. 84.

[16] *Id*. at 85.

[17] *Id*. at 80.

[18] *Id*. at 87.

[19] *Id*. at 87-88.

Implementing Rules and Regulations of Republic Act No. 9438) is made permanent; and

2) Section 22, paragraph (a) of Republic Act No. 9483, and Section 1, Rule X of the Implementing Rules and Regulations of Republic Act No. 9483 are declared unconstitutional.

SO ORDERED.[20]

Aggrieved, petitioners are now with this Court *via* the present petition for review on *certiorari* assailing the February 22, 2017 Decision of the RTC. Petitioners argue that the RTC erred in declaring Section 22(a) of RA 9483 and its implementing rule unconstitutional, given that respondents' petition for declaratory relief questioned the wisdom behind them and was, thus, beyond the lower court's jurisdiction. Petitioners further add that the classification in Section 22 of RA 9483 and its IRR is reasonable and just, and does not violate the equal protection clause. Likewise, petitioners maintain that public interest in protecting the marine wealth of the country warrants the imposition of the 10-centavo impost. Finally, the petitioners insist that the creation of the OPMF is relevant to the subject matter of RA 9483.[21]

In its July 3, 2017 Resolution, the Court required the respondents to file their Comment within a non-extendible period of ten days[22] from receipt of the resolution. On September 2, 2017, respondents filed their Comment on the Petition,[23] mainly reiterating their contentions before the trial court.[24]

**The Issue**

The core issue to be resolved in this case is whether Section 22 (a) of RA 9483 and Section 1, Rule X of its IRR are unconstitutional.

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[20] *Id*. at 88.

[21] *Id.* at 36-37.

[22] *Id*. at 301.

[23] *Id*. at 310.

[24] *Id*. at 322.

**The Court's Ruling**

The petition is impressed with merit.

***The Creation of the OPMF can be the subject of judicial inquiry***

We agree with respondents that the issue presented is a justiciable question which allows the exercise by this Court of its judicial power, and does not involve a political question. In *Tañada and Macapagal v. Cuenco, et al.,*[25] the Court summarized the concept of political questions in this manner:

> xxx it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the *wisdom,* not legality, of a particular measure.

In the case at bar, however, while it may appear that contesting the creation of the OPMF amounts to questioning the wisdom behind the measure, such is not the case. As correctly argued by respondents, the Court may take judicial action on said question since it is not contesting the creation of the OPMF *per se,* but rather its inclusion in RA 9483, and the specific parameters incorporated by the legislature in the implementation of the contested provision. More importantly, violations of the due process and the equal protection clauses of the 1987 Constitution alleged by the respondents are well-recognized grounds for a judicial inquiry into a legislative measure.

***The Petition for Declaratory Relief is not the proper remedy***

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

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[25] 103 Phil. 1051 (1957).

**Section 1.** *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, **before breach or violation** thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[26]As We emphasized in *Angara v. Electoral Commission,*[27]any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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."

There is a grave abuse of discretion when there is a patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari*

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[26] *Board of Optometry v. Colet*, G.R. No. 122241, July 30, 1996, 260 SCRA 88, cited in *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

[27] 63 Phil. 139, 158 (1936).

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***."[28]Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.[29]

In any case, even if the petition for declaratory relief is not the proper remedy, the need to finally resolve the issues involved in this case far outweighs the rigid application of the rules. The Court,thus, treats the petition filed by the respondents before the court a *quo* as a petition for *certiorari* and prohibition.

***Section 22(a)of RA 9483 creating the Oil Pollution Management Fund is not a proscribed rider***

Respondents argue that since RA 9483 was passed to implement the 1992 Civil Liability and the 1992 Fund Conventions, the creation of the OPMF must be found in said Conventions for it to be validly included in RA 9483. Otherwise, according to respondents, its inclusion in said law is constitutionally infirm for being a proscribed rider.

At first glance, one might easily agree with respondent's proposition. The title of RA 9483 is phrased in this manner:

AN ACT PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE 1992 INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE AND

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[28] See *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018, citing *Samahanngmga ProgresibongKabataan v. Quezon City*, G.R. No. 225442, August 8, 2014.

[29] *Id*.

THE 1992 INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

On the basis thereof, respondents draw this Court's attention to the two mentioned Conventions and bid us to examine both documents to see that the OPMF cannot be found therein.

Concisely, the respective subject matters of the two Conventions are as follows:

> The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit its liability to an amount which is linked to the tonnage of its ship.
>
> The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The International Oil Pollution Compensation Fund 1992, generally referred to as the 1992 Fund, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organization established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The IOPC Funds headquarters is based in London.[30]

Indeed, as argued by respondents, the thrust of the 1992 Civil Liability and the 1992 Fund Conventions is to impose upon covered ship-owners strict liability for pollution damage arising from oil spills and to provide compensation for the victims thereof. On the other hand, the questioned OPMF governs the immediate containment, removal, and clean-up operations in

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[30] Explanatory Note, International Oil Pollution Compensation Funds, March 2018 <https://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/explanatory_note.pdf> Last Accessed May 17, 2018.

oil pollution cases and provides for the conduct of research, enforcement, and monitoring activities of relevant agencies.

On the basis thereof, it would appear that the Conventions and the OPMF cover two different subject matters––that is, providing compensation versus pollution containment and clean-up––as asserted by respondents. Thus, *prima facie,* one would easily agree with respondents' contention.

**Such a simplistic,if not myopic, view is not the proper measure to determine whether a provision of law should be declared as unconstitutional**. To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court has repeatedly laid down the rule that —

**Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation**.The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. **It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object**.Mere details need not be set forth. The title need not be an abstract or index of the act.[31]

Also, in *Sumulong v. Comelec*,[32]the Court held that all that can reasonably be required is that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection, *viz*:

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[31] *Giron v. Commission on Elections*, 702 Phil. 30 (2013). See also *Cordero v. Cabatuando*, 116 Phil. 736 (1962); *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, 726 Phil. 104 (2014); *Government of the Philippine Islands v. Hongkong & Shanghai Banking Corp.*, 66 Phil. 483(1938); *Fariñas v. Executive Secretary*, 463 Phil. 179(2003); *Commission on Elections v. Cruz*, 620 Phil. 175(2009).

[32] 73 Phil. 288 (1941), citing 26 S. Ct. 427, 201 U. S. 400, 50 L. ed. 801.

As stated by the Supreme Court of the United States: "We must give the constitutional provision a reasonable construction and effect. The constitution requires no law to embrace more than one subject, which shall be expressed in its title. Now the object may be very comprehensive and still be without objection, and the one before us is of that character. **But it is by no means essential that every end and means necessary or convenient for the accomplishment of the general object should be either referred to or necessarily indicated by the title.All that can reasonably be required is that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection.**"[33] (emphasis ours)

Thus, following these jurisprudential guides, it would undoubtedly be improper for this Court to make a superficial reading of the texts of the conventions in order to determine whether the inclusion of Section 22 in RA 9483, which was enacted to implement these Conventions, is infirm. A more in-depth analysis of the conventions is necessary.

A review of the Conventions reveals that they do not only cover damage claims by affected individuals but also all amounts encompassed by the term "pollution damage" which is defined therein as:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of **reasonable measures of reinstatement actually undertaken or to be undertaken**;

(b) **the costs of preventive measures**[34]and further loss or damage caused by preventive measures.[35]

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[33] Citing *Blair v. Chicago*, 26 S. Ct. 427, 201 U. S. 400, 50 L. ed. 801.

[34] "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

[35] INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS, Texts of the Conventions, p. 5. <https://www.iopcfunds.org/uploads/tx_iopcpublications/Text_of_Conventions_e.pdf>Last Accessed, May 18, 2018. Emphasis supplied.

In its 2011 Annual Report, the International Oil Pollution Compensation Fund (IOPCF) enumerated the types of claims that are admissible, thus:

> An oil pollution incident can generally give rise to claims for five types of pollution damage:
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> • Property damage
> • **Costs of clean-up operations at sea and on shore**
> • Economic losses by fisher folk or those engaged in mariculture
> • Economic losses in the tourism sector
> • **Costs for reinstatement of the environment**.[36]

The Conventions, therefore, also cover **damage to property, containment, clean-up, and rehabilitation**.Thus, the policy underpinning the establishment of the OPMF in Section 22(a) of RA 9483 and its IRR is wholly consistent with the objectives of the conventions. Section 2 of RA 9483 states:

> **SEC. 2.** ***Declaration of Policy.*** – The State, in the protection of its marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, adopts internationally accepted measures which and ensure prompt and adequate compensation for persons who suffer such damage. This Act adopts and implements the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

Indeed, by employing preventive and/or immediate containment measures or response techniques, the State is but affording protection to persons or all stakeholders who stand to suffer from oil pollution incidents—the main thrust of the conventions that is now effectively translated and implemented in Section 22 (a) of RA 9483 and its IRR. In other words, by creating the OPMF, Congress sought to ensure that our enforcement agencies are capable of protecting our marine wealth

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[36] International Oil Pollution Compensation Funds, 2011 Annual Report, p. 12. Available at <https://www.iopcfunds.org/uploads/tx_iopcpublications/FINAL_IOPC_Funds_Annual_Review_2016_ENGLISH.pdf>Last Accessed, May 23, 2018.

and preventing harm from being caused to the people and their livelihood by reason of these unfortunate events.

Time is of the essence when it comes to oil spill response. Whether this will be taken in the context of damage to the environment and its inhabitants or from a monetary perspective, the conclusion will be the same. We cannot simply submit to respondents' proposition that compensation for damages and oil spill response are two unrelated subjects that cannot be tackled in a single piece of legislation. To Our mind, **oil spill response and containment is directly connected to compensation for damages brought about by the incident**. In fact, the two concepts are inversely proportional to each other in that a more effective and efficient oil spill response and clean up results in lesser pollution damage; and, ultimately, smaller pollution damage means reduced financial liability on the part of the shipowner.

With these, We find that Section 22 is not a rider but is an essential provision to attain the purpose of RA 9483.

***The classification in Section 22 of RA 9483 and its IRR does not violate the equal protection clause***

We likewise cannot sustain the RTC's finding that the assailed provisions violate the equal protection guarantee when it singled out "owners and operators of oil or petroleum tankers and barges."

The equal protection guaranty under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."[37] However, this clause does not preclude classification as long

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[37] *Philippine Rural Electric Cooperatives Association, Inc. vs. Department of Interior and Local Government*, G.R. No. 143076, June 10, 2003, 403 SCRA 558, 565. Cited in *Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 139.

as the classification is reasonable and not arbitrary.[38] In *Abakada Guro Party List v. Purisima*,[39] the Court elucidated, thus:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.** This Court has held that **the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary**.

In the instant case, We agree with petitioners that separating "tankers and barges hauling oil and for petroleum products in Philippine waterways and coast wise shipping routes" from other sea-borne vessels does not violate the equal protection clause.

For one, bear in mind that the purpose of the subject legislation is the implementation of the 1992 Civil Liability Convention and the 1992 Fund Convention. Both Conventions only expressly cover "sea-going vessel and seaborne craft of any type whatsoever constructed or adapted **for the carriage of oil in bulk as cargo** xxx."[40] This alone already forecloses any argument against the validity of the alleged classification since the implementation

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[38] *Villareña v. Commission on Audit*, G.R. Nos. 145383-84, August 6, 2003, 408 SCRA 455, 462.

[39] G.R. No. 166715, August 14, 2008.

[40] Article I, Item 1, 1992 Civil Liability Convention provides:

> For the purposes of this Convention:
>
> "Ship" means any 1. sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo,

by RA 9483 of the subject Conventions necessarily carries with it the adoption of the coverage and limitations employed in said texts.

Furthermore, We cannot subscribe to respondents' proposition that since all vessels plying Philippine waters are susceptible to accidents which may cause oil spills, all should be made to contribute to the OPMF. While all vessels, channels, and storage facilities that carry or store oil are capable of causing oil pollution, this does not make them "similarly situated" within the context of the equal protection clause.

Aside from the difference in the purposes behind their existence and navigation, it is internationally well-recognized that oil tankers pose a greater risk to the environment and to people. As a matter of fact, these types of vessels have long been considered as a separate class and are being given a different treatment by various organizations.

The International Maritime Organization (IMO), expounding on the International Convention for the Safety of Life at Sea (SOLAS), 1974, highlighted that the SOLAS includes *special requirements for tankers.*[41] Citing an example, the IMO stated that "[f]ire safety provisions x xx are much more stringent for tankers than ordinary dry cargo ships, since the danger of fire on board ships carrying oil and refined products is much greater."[42] The IMO likewise mentioned some of the measures specifically required of oil tankers, such as making it mandatory

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provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

Article I, Item 2 of the 1992 Fund Convention states:

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention.

[41] <http://www.imo.org/en/OurWork/Safety/Regulations/Pages/OilTankers.aspx>. Last Accessed, May 23, 2018.

[42] *Id*.

for tankers to have double hulls, as opposed to single hulls, the phasing-out of single-hull tankers, and designating protective locations of segregated ballast tanks, among others, in order to ensure their safety.[43] In fact, Annex I of the revised Marpol 73/78[44] sets forth the numerous technical and safety requirements for oil tankers.[45]This list is not exhaustive as there are numerous regulations and requirements applicable only to the subject vessels. What these show, however, is that **a vessel that carries oil in bulk has been recognized and is treated as a separate class of vessel**.This sufficiently justifies the segregation done by Congress.

It bears to stress that "[i]n the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion."[46] Concomitantly, neither should the Court adopt such a restrictive––if not counterproductive approach—in interpreting and applying the equal protection guarantee under the Constitution. To do otherwise would be to unduly restrict the power of Congress in enacting laws by unjustifiably imposing erroneously stringent requirements and excessively high standards in the crafting of each and every piece of legislation, depriving our lawmakers of the much needed elbowroom in the discharge of their functions.

As regards respondents' contention that since RA 9483 came about because of the spate of oil spillage at the time of its enactment, this violates the requirement that the classification must not be limited to existing conditions only, the argument does not hold water.

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[43] *Id*.

[44] International Convention for the Prevention of Pollution from Ships.

[45] MARPOL — International Convention for the Prevention of Pollution from Ships, pp. 66-238. Available at <http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20%28copies%29/MARPOL.pdf> Last Accessed: May 23, 2018.

[46] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 275, citing *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

A statute or provision thereof is said to be limited to existing conditions only if it cannot be applied to future conditions as well.[47] Here, We cannot, by any stretch of imagination, agree with respondents' proposition. Suffice it to state that enacting a piece of legislation as a response to a problem, incident, or occurrence does not make it "limited to existing conditions only." Assessing whether a statute or provision meets said requirement necessitates a review of the provision or statute itself and not the cause or trigger for its enactment. To require otherwise would be to improperly tie the hands of our legislature in enacting laws designed to address the various matters, incidents, and occurrences that may arise in a highly-dynamic and unpredictable society.

Viewed within the purview of RA 9483, it can easily be seen that the statute also applies to future conditions as it covers any and all oil spills that may occur within Philippine waters.

***The conferment on the OPMF Committee of the authority to determine the rate of imposition for the second year of its implementation onwards is not an undue delegation of legislative power***

Arguing that the assailed provision is also an undue delegation of legislative power, respondents allege that giving the OPMF Committee the authority to jointly determine the amount of contribution after the one-year imposition of the 10-centavo contribution is an undue delegation since no fixed parameters were given therefor.[48]

We disagree.

For a valid delegation of power, it is essential that the law delegating the power must be (1) complete in itself, that it must

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[47] See *Ormoc Sugar Co., Inc. v. Treasurer of Ormoc City*, No. L-23794, February 17, 1968, 22 SCRA 603, 606.

[48] *Rollo*, p. 377.

set forth the policy to be executed by the delegate and (2) it must fix a standard — limits of which are sufficiently determinate or determinable — to which the delegate must conform.[49] On the second requirement, *Osmeña v. Orbos*[50] explained that a sufficient standard need not be spelled out and could be implied from the policy of the law:

> **The standard**, as the Court has already stated, **may even be implied**. In that light, there can be no ground upon which to sustain the petition, inasmuch as the challenged law s**ets forth a determinable standard which guides the exercise of the power granted** to the ERB. By the same token, the proper exercise of the delegated power may be tested with ease. It seems obvious that what the law intended was to permit the additional imposts for as long as there exists a need to protect the general public and the petroleum industry from the adverse consequences of pump rate fluctuations. "**Where the standards set up for the guidance of an administrative officer and the action taken are in fact recorded in the orders of such officer, so that Congress, the courts and the public are assured that the orders in the judgment of such officer conform to the legislative standard, there is no failure in the performance of the legislative functions**."
>
> This Court thus finds no serious impediment to sustaining the validity of the legislation; **the express purpose for which the imposts are permitted and the general objectives and purposes of the fund are readily discernible, and they constitute a sufficient standard upon which the delegation of power may be justified.** (Citations omitted; emphasis ours)

Further, in *Tatad v. Secretary of the Department of Energy*, We stated that courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers:

> The validity of delegating legislative power is now a quiet area in our constitutional landscape. As sagely observed, delegation of legislative power has become an inevitability in light of the increasing

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[49] *Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 712.

[50] *Id*.

complexity of the task of government. **Thus, courts bend as far back as possible to sustain the constitutionality of laws which are assailed as unduly delegating legislative powers.** Citing *Hirabayashi v. United States* as authority, Mr. Justice Isagani A. Cruz states "**that even if the law does not expressly pinpoint the standard, the courts will bend over backward to locate the same elsewhere in order to spare the statute, if it can, from constitutional infirmity**."[51] (emphasis ours)

Thus, this Court has previouslyinstructed that a standard as general as the phrases "as far as practicable," "decline of crude oil prices in the world market," and "stability of the peso exchange rate to the US dollar" are neither unclear nor inconcrete in meaning, but are in fact determinable by the simple expedient of referring to their dictionary meanings.[52]The Court even stated that "[t]he fear of petitioners that these words will result in the exercise of executive discretion that will run riot is thus groundless. **To be sure, the Court has sustained the validity of similar, if not more general standards in other cases**."[53]Indeed, the Court has, in numerous instances, accepted as sufficient standards policies as general as:

> xxx "public interest" in People v. Rosenthal, "justice and equity" in Antamok Gold Fields v. CIR, "public convenience and welfare" in Calalang v. Williams, and "simplicity, economy and efficiency" in Cervantes v. Auditor General, to mention only a few cases. In the United States, the "sense and experience of men" was accepted in Mutual Film Corp. v. Industrial Commission, and "national security" in Hirabayashi v. United States.[54] (citations omitted)

Thus, applying this commitment to sift each and every part of the assailed law or provision thereof in order to locate any and all standards possible provided therein, We are duty bound

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[51] G.R. No. 124360, November 5, 1997, 281 SCRA 330, 352, citing Philippine Political Law, 1995 ed., p. 99.

[52] *Id.* at 350-352.

[53] *Id.* at 352-353.

[54] See *Eastern Shipping Lines, Inc. v. POEA*, No. 76633, October 18, 1988, 166 SCRA 533, 545.

to analyze the statute in question to determine once and for all whether indeed the legislature failed to incorporate therein a standard of such character as will pass this test of constitutionality. We shall first tackle the standards expressly embodied in Section 22. To recall, the assailed provision containing the questioned delegation reads:

**SEC. 22.** ***Oil Pollution Management Fund.*** — An Oil Pollution Management Fund (OPMF) to be administered by the MARINA is hereby established. Said Fund shall be constituted from:

(a) Contributions of Owners and operators of tankers and barges hauling Oil and for petroleum products in Philippine waterways and coast wise shipping routes. During its first year of existence, the Fund shall be constituted by an impost of ten centavos (10c) per liter for every delivery or transshipment of Oil made by tanker barges and tanker haulers. **For the succeeding fiscal years, the amount of contribution shall be jointly determined by Marina, other concerned government agencies, and representatives from the Owners of tankers barges, tankers haulers, and Ship hauling Oil and/or petroleum products. In determining the amount of contribution, the purposes for which the fund was set up shall always be considered;** and

(b) Fines imposed pursuant to this Act, grants, donations, endowment from various sources, domestic or foreign, and amounts specifically appropriated for OPMF under the annual General Appropriations Act.

**The Fund shall be used to finance the following activities:**

**(a) Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and**

**(b) Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE:** ***Provided*****, That ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph:** ***Provided, further*****, That any amounts specifically**

**appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph.**

**In no case, however, shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.**

*Provided*, That amounts advanced to a responding entity or claimant shall be considered as advances in case of final adjudication/award by the RTC under Section 18 and shall be reimbursed to the Fund. (emphasis ours)

A review of the contested provision reveals that contrary to respondents' assertion that the law only provides a vague standard for the exercise of the delegated authority, there are in fact a number of set parameters included therein within which the authority to fix the amount of the impost shall be exercised. These are:

1. the purposes for which the fund was set up;
2. the Fund shall be used to finance the following activities:
    a. Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and
    b. Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE;
3. Ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph;
4. Any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph;
5. In no case shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.

Put otherwise, in authorizing the OPMF Committee in determining the rate of impost for the succeeding years, Congress in fact directed them to ensure that 90% of the funds that will be accumulated will be enough to finance the following: (1) emergency response measures for oil pollution cases; (2) clean-up operations for oil spill incidents; (3) research;(4) enforcement; and (5) monitoring activities of the stated agencies in connection with oil pollution.

These parameters––the specified inclusions and exclusions, and the share that the itemized activities shall have in the OPMF–to Us, adequately meet the required standards that make a delegation of legislative power valid. By being statutorily mandated to work within this identified scope and these limitations, the OPMF Committee does not actually have free reign in the exercise of its functions under Section 22. **It has to ensure that the amount of impost that it will set, in addition to any sum that they may receive from the GAA and from other sources such as fines, penalties, grants, donations, and endowments, is sufficient to meet the above stated needs and activities necessary for the promotion of the thrust of RA 9483, which is the protection of the environment and the people from oil pollution damage**.

These scopes and limitations contained in the entirety of Section 22, without a doubt, substantially exceed the general policies that have been recognized and upheld in the past as sufficient standards. Viewed with the multifariousness of oil spill response and clean-up in mind, We find that the parameters set forth in the assailed provision successfully overcome this test of constitutionality, despite the absence of numerical gauges.

Another ground that favors the validity of the assailed provision is that what **Section 22 vested in them is merely the authority to fix the rate of the impost, taking into consideration the parameters therein clearly stated**. In other words, **this authority is actually limited by the sufficiency of the Fund to meet the identified items**. They were not given any discretion to add to these parameters or to disregard them. In other words, the delegates are expected to faithfully follow

these standards set by the law, lest their actions will be struck down as illegal for having exceeded the terms of the agency.[55]

As aptly stated in *People v. Vera*,[56] the true distinction "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."In other words, the policy must be determined by the legislature and the executive's authority is limited only to the furtherance of this identified policy. The executive cannot add, modify, or delete such.

With respect to measuring the adequacy of the country's capability to protect our waters, shores, and the stakeholders from the effects of oil spills as mandated under the law, Sections 4 and 6 of RA 9483, which reflect certain policies under the Conventions, provide the gauge therefor. Said provisions read:

**SEC. 4.** ***Incorporation of the 1992 Civil Liability Convention and 1992 Fund Convention.*** — Subject to the provisions of this Act, the 1992 Civil Liability Convention and 1992 Fund Convention and their subsequent amendments shall form part of the law of the Republic of the Philippines.

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**SEC. 6.** ***Liability on Pollution Damage.*** — The Owner of the Ship at the time of an Incident, or where the Incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any Pollution Damage caused by the Ship as a result of the Incident. Such damages shall include, but not limited to:

(a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;

(b) Reasonable expenses of Preventive Measures and further loss or damage caused by preventive measures;

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[55] See *Tatad v. Secretary of the Department of Energy*, G.R. No. 124360, November 5, 1997, 281 SCRA 330, 353-354.

[56] 65 Phil. 56 (1937), cited in *Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 118.

(c) Consequential loss or loss of earnings suffered by Owners or users of property contaminated or damaged as a direct result of an Incident;

(d) Pure economic loss or loss of earnings sustained by persons although the property contaminated or damaged as a direct result of an Incident does not belong to them;

(e) Damage to human health or loss of life as a direct result of the Incident, including expenses for rehabilitation and recuperation: *Provided*, That costs of studies or diagnoses to determine the long-term damage shall also be included; and

(f) Environmental damages and other reasonable measures of environmental restoration.

As for the Conventions which the subject statute expressly adopts and incorporates therein, making the Conventions form part of the law of the country, it bears to stress that the respective thrusts thereof are to provide "adequate compensation available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships"[57] and "compensation for victims who do not obtain full compensation under the 1992 Civil Liability Convention."[58]

And again, the term "pollution damage" under RA 9483 covers the following:

(a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;
(b) Reasonable expenses of Preventive Measures and further loss or damage caused by preventive measures;
(c) Consequential loss or loss of earnings suffered by Owners or users of property contaminated or damaged as a direct result of an Incident;
(d) Pure economic loss or loss of earnings sustained by persons although the property contaminated or damaged as a direct result of an Incident does not belong to them;
(e) Damage to human health or loss of life as a direct result of the Incident, including expenses for rehabilitation and recuperation:

[57] Liability and Compensation for Oil Pollution Damage, Text of the Conventions, IOPCF, p. 6.

[58] *Id*. at 5.

*Provided*, That costs of studies or diagnoses to determine the long-term damage shall also be included; and
(f) Environmental damages and other reasonable measures of environmental restoration.

The rate of impost should,thus,be enough to accumulate an amount that, when combined with the funds that will be derived from the appropriations under the GAA, grants, donations, and endowment from various sources, domestic or foreign, can sufficiently enable our agencies to fulfill their duty of protecting the country's marine wealth and the stakeholders by ensuring that any damage caused by oil spills is minimal and the resulting cost can be fully or adequately covered by the Conventions. Put differently, **the rate of the impost for the succeeding years must not be so low as to be insufficient to meet the budgetary needs of the agencies for the items identified under Section 22. This is so since the mandate of the law will not be fulfilled if the agencies' capacity for oil spill response is inadequate, ineffective, or less than what is necessary for the declared purpose. Conversely, it must also not be so high that the totality of the amount accumulated from the various sources gravely exceeds the financial requirements for said items. Simply put, the sum of the amounts to be collected or received from the various sources must not exceed the administrative costs and expenses of implementing the activities**.

With these, We find that the evils that the sufficient standards test seeks to prevent are amply addressed by the questioned Section 22, as well as the abovementioned provisions which provide the guidelines therefor. By setting forth the identified parameters and the policy that the funds to be accumulated by virtue of the impost are for the purpose of protecting the country's marine wealth and ensuring full or adequate compensation to the victims of oil spills, the metes and bounds of the exercise of the delegated authority have been sufficiently laid out. **Consequently, the manner by which the delegates are to exercise the conferred authority can be measured against these parameters and checked for any evidence of arbitrariness or excessiveness**.

It is also important to note that **Congress included the representatives from the owners of tankers barges, tankers haulers, and ship hauling oil and/or petroleum products as part of the group tasked to determine the rates for the following years. In so doing, Congress not only valued their inputs but also gave them an avenue to protect their businesses by ensuring that the effect of the imposition on the private sector would be factored in and not seen as mere recommendations**. As a matter of fact, the legislature placed them in a position that is more than consultative. By making them part of the group authorized to determine the amount of impost, they were given not just the opportunity to be heard but the capability to directly influence the rate of the impost. This certainly goes beyond mere consultation or advice.

What further convinces Us that any additional specification of limitations—which Congress opted away from—may actually do more harm than good is the fact that numerous factors affect the extent and severity of oil pollution caused by spills. As summarized by the International Tanker Owners Pollution Federation Limited (ITOPF):

> The effects of an oil spill will depend on a variety of factors including, the **quantity and type of oil spilled**, and **how it interacts with the marine environment**. **Prevailing weather conditions** will also influence the oil's physical characteristics and its behaviour. Other key factors include the **biological and ecological attributes of the area**; the **ecological significance of key species** and **their sensitivity to oil pollution** as well as the **time of year**. It is important to remember that the **clean-up techniques selected** will also have a bearing on the environmental effects of a spill.[59] (emphasis ours)

This highly multifaceted character of oil spill incidents, coupled with the fact that the Philippine archipelago is comprised of thousands of islands with varying sizes and ecology and has one of the longest coastlines in the world—estimated at 36,289 kilometers, reflects a certain complexity in its state of affairs that undoubtedly makes the setting of rigid and exhaustive

[59] Environmental Effects of Oil Spills, Available at <http://www.itopf.com/knowledge-resources/documents-guides/environmental-effects/> Last Accessed: May 24, 2018.

parameters difficult, if not impossible.

Apropos, in *Osmeña*,[60] this Court, tackling the question whether there was an undue delegation of legislative power when the Energy Regulatory Board was conferred the authority to impose additional amounts on petroleum products,held that **the dynamic character of the circumstances within which the authority is to be exercised must be considered in determining whether the assailed provision provides a sufficient standard**.

The Court's pronouncement in the cited case could not be more fitting. Indeed, oil spill response and clean-up, and rehabilitation of affected areas, among others, are affected by a great number of factors, most of which are outside the control of man. Philippine waters are so vast, diverse, and rich that we cannot possibly require Congress to comprehensively set forth any and all factors that must be considered in the determination of the metes and bounds for the setting of the questioned impost, more so numerical restrictions. Furthermore, with the unpredictability and uncontrollability of the accumulation of costs of pollution damage in oil spills, an exhaustive list of parameters may not work to our country's advantage.

***The imposition of the 10-centavo impost does not violate the due process clause***

Section 1, Article III, of the Constitution guarantees that no person shall be deprived of property without due process of law. While there is no controlling and precise definition of due process, it furnishes a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid.[61]

Relevant to the instant case is the doctrine's application to businesses and trade where this basic pledge ensures that insofar

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[60] G.R. No. 99886, March 31, 1993, 220 SCRA 703.

[61] See *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 329.

as the property of private corporations and partnerships is concerned, these entities enjoy the promise of protection against arbitrary regulation.[62] Thus, the Court, in *JMM Promotion and Management, Inc. v. Court of Appeals*, held that:

> **A profession, trade or calling is a property right within the meaning of our constitutional guarantees**. **One cannot be deprived of the right to work and the right to make a living because these rights are property rights**, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.[63]

Nonetheless, equally well-settledis the rule that "where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail."[64]Thus, in asserting that the 10-centavo per liter impost is unconstitutional, **respondents have the burden of proof to convince this Court that indeed said imposition is arbitrary, oppressive, excessive, and confiscatory, thereby violating the constitutional proscription against deprivation of property without due process of law**.

Respondents, however, by providing nothing more than hypothetical computations of their losses,failed to discharge this burden.Indeed, persuading this Court that their businesses would suffer to a large extent if they will be made to shoulder the 10-centavo/liter impost cannot be satisfactorily discharged, as to overcome a strong presumption of constitutionality, by the mere expedient of presenting a sample scenario, the truthfulness or accuracy of which has not even been proven.

It would be improper to declare an imposition as unlawful or unconstitutional on the basis of purely hypothetical and

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[62] See *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, 145 (1919), cited in *City of Manila v. Laguio, Jr.*, *id*. at 330.

[63] G.R. No. 120095, August 5, 1996, 260 SCRA 319, 330.

[64] *Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 14, 130-131.

unsubstantiated computations. In refusing to declare a provision of law as unconstitutional based on theoretical assumptions, this Court, in *AbakadaGuro Party List v. Ermita*, emphatically stated that "[t]he Court will not engage in a legal joust where premises are what ifs, arguments, theoretical and facts, uncertain. Any disquisition by the Court on this point will only be, as Shakespeare describes life in *Macbeth*, 'full of sound and fury, signifying nothing.'"[65]

The hypothetical computations provided by the respondents do not equate to a material and actual impact that the questioned impost will have on their businesses. In other words, these are mere mock-up situations which discount several factors, including any adjustments that a business may undertake to secure profits despite the impost. As a matter of fact, respondents themselves state that they have the option of passing the expense to the consumers.[66] We are not here saying that respondents should adopt said course of action, but what is obvious is that they have sufficient leeway in the conduct of their business that would allow them to realize profits notwithstanding the enforcement of Section 22.

What further prevents Us from relying on said computations is that it would be imprudent for this Court to take these computations without a grain of salt. While it is possible that these income statements are truthful, it is also possible that they are not. The Court is allowed some degree of skepticism and is not expected to take these "evidence" hook, line and sinker especially when what is in question is the constitutionality and validity of a legislative enactment. Echoing this necessary skepticism is the Court's pronouncement in the case of *Churchill v. Concepcion*, thus:

> Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments,

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[65] *Id.* at 139. (citation omitted)

[66] *Rollo*, p. 43.

or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.'[67]

Additionally, the error in said computations lies in the fact that it failed to consider the operation of Section 22 which dictates that the impost shall be 10 centavos per liter only on the first year. This allows for a retention, increase, or reduction in the succeeding years, whichever is determined to be necessary. This scenario was obviously not taken into account when respondents made said computations.

But respondents, adamant in having the impost invalidated, draw Our attention to their computation of the amount that would be collected if said imposition would be enforced.Respondents contend that the imposition of the 10-centavo charge for the years 2007-2012 would have yielded approximately Two Billion Pesos (Php2,000,000,000.00) annually.[68] They then compare this with the cost of the clean-up for the Guimaras Oil Spill, by far the worst oil spill in Philippine history. According to them, it only amounted to Php775,594,885.00, which amount is significantly lower than the amount that the imposition would yield.[69]

The arguments fail to persuade.

The determination of whether a measure or charge is confiscatory or not, within the purview of the due process clause, will not solely depend on the amount that will be accumulated therefrom. Such a gauge is downright erroneous. Other factors

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[67] 34 Phil. 969, 973 (1916), citing *Chicago and Grand Trunk Railway Co. v. Wellman*, 143 U. S. 339.

[68] *Rollo*, p. 369.

[69] *Id.* at 370.

must likewise be considered such as the purposes for which the fund will be used and the costs which said purposes entail, among others. Viewed from the context of oil spills and the current incapacity of our enforcement agencies to timely and adequately respond to oil spill incidents, plus the aforementioned characteristics of our natural resources and the environment, We cannot safely conclude that any amount, even millions or billions, is actually exorbitant or excessive in the furtherance of RA 9483's objectives.

And these computationsfail to take into account the fact that, guilty of reiteration, the impost is not perpetually fixed at 10 centavos per liter. Thus, if the laudable purposes of RA 9483 can be sufficiently met and financed by a lesser impost, then there is nothing to prevent the proper reduction of the rate.

Another flaw in the arguments is that they are incomplete in the sense that without any data as to the costs of the necessary tools, equipment, inventories, trainings, research, among others, needed for the furtherance of RA 9483, there is no way to determine whether the initial amount that will be collected from the 10-centavo impost during the first year of operation of Section 22 is already unjustifiably massive, making the 10-centavo rate exorbitant and confiscatory.

We cannot simply rely on the cost of the Guimaras oil spill clean-up because as repeatedly intimated, oil spills are unpredictable and their extent is almost entirely uncontrollable. One incident cannot serve as the basis for estimating the costs needed for oil spill response, among others. Furthermore, the OPMF does not only cover the conduct of the clean-up itself. The OPMF, as previously explained, was primarily created for capacity-building, that is, to give our local agencies the capability to render emergency response measures and not rely heavily, if not entirely, on foreign assistance. Thus, to use the cost of the cleanup in the Guimaras incident as the benchmark for determining whether the impost is reasonable or not will definitely lead to misguided conclusions.

Most importantly, it must be borne in mind that the impost provided in Section 22 is not a revenue-raising tax intended to

supplement the government's treasury. What Section 22 does is to regulate the conduct of the business of owners and operators of oil tankers and barges by imposing upon them the duty to contribute to the protection of Philippine waters which they directly use in the conduct of their trade, and which they expose to a risk of possibly irreparable destruction brought about by the spillage or leakage of the product that they carry and profit from.

In other words, the 10 centavos is an administrative charge or fee which, in the case at hand, was imposed on covered entities to protect a resource and territory that those in the industry directly use in the conduct of their business, that is, the country's maritime domain. Such administrative charge is a valid charge. On this matter, We refer to the pronouncements of the United States Supreme Court in *Edye v. Robertson*.[70] Thus:

> If it were necessary to prove that the imposition of this contribution on owners of ships is made for the general welfare of the United States, it would not be difficult to show that it is so, and particularly that it is among the means which congress may deem necessary and proper for that purpose, and beyond this we are not permitted to inquire. But the true answer to all these objections is that the power exercised in this instance is not the taxing power. **The burden imposed on the ship-owner by this statute is the mere incident of the regulation of commerce**-of that branch of foreign commerce which is involved in immigration. xxx
>
> It is true, not much is said about protecting the ship-owner. But he is the man who reaps the profit from the transaction, who has the means to protect himself, and knows well how to do it, and whose obligations in the premises need the aid of the statute for their enforcement. **The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government.**[71] xxx

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[70] 112 U.S. 580 (1884).

[71] Emphasis supplied.

The same situation obtains in the present case. The 10-centavo impost is collected from the covered owners and operators, taking into consideration their use of the country's waters and the exposure of this natural resource to a risk of grave and irreparable damage brought about by said use. Moreover, the amounts collected are to be used solely for the identified items in the assailed law and only for the furtherance of the declared purposes of the statute. As stated by the Supreme Court of Washington, *En Banc* in *Teter v. Clark County*:[72]

> x x x In Craig v. Macon, 543 S.W.2d 772 (Mo. 1976), the court held valid the charges imposed by the city for solid waste disposal, even though appellants did not have their garbage removed by the city and thus obtained no "service". The Missouri Supreme Court held that the statute under which the city acted was a public health regulation, intended to protect the entire population. **As a police power measure, the statute enabled the city to take whatever measures were reasonably required to meet the public health needs. The charges were only incidental to the regulatory scheme: the payments went only toward the costs of that program; none of the money went into general revenue**. Thus, because the money was **collected for a specific purpose** (to pay the cost of a public health program) the charge was deemed valid. xxx In Hobbs, the city enacted a garbage collection ordinance and charged property owners for collection; appellant property owners did not use the city's service. There the court held that **a due process violation did not exist because the ordinance is a health measure and the charges are not merely for the specific act of garbage removal, but to defray the expenses of the entire program.** Further, appellants received a general benefit from the removal of others' garbage the control of insects, etc.[73]

The collection of administrative charges and fees on vessels is not new. To name a few, reference may be made to RA 1371[74]

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[72] 104 Wn.2d 227 (1985), 704 P.2d 1171.

[73] Emphasis supplied.

[74] AN ACT TO DEFINE, CLASSIFY, FIX AND REGULATE THE AMOUNT OF ALL CHARGES AND FEES IN PHILIPPINE PORTS, OTHER THAN CUSTOMS DUTIES, INTERNAL REVENUE TAXES AND TONNAGE DUES.

which imposes upon owners and operators of vessels various charges and fees for the use of Philippine ports, among others.[75]

Through the imposition in Section 22 of RA 9483, Congress did not just direct the protection of the country's marine resource, it also promoted the constitutionally-protected right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature[76] and the basic and constitutional right to health.[77] On the basis thereof, it can be said that the questioned imposition is an exercise of police power by the State.

Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, not repugnant to the Constitution, for the good and welfare of the people.[78] This power to prescribe

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[75] RA 1371, **Section 1.** Definitions. As used in this Act:

(a) Harbor fee is the amount which the owner, agent, operator or master of a vessel has to pay for each entrance into or departure from a port of entry in the Philippines.

(b) Wharfage charge is the amount assessed against the cargo of a vessel engaged in the foreign trade, based on the quantity, weight or measure received and/or discharged by such vessel. The owner, consignee, or agent of either, of the merchandise is the person liable for such charge.

(c) Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead wharf, river or channel marginal wharf at any port in the Philippines; or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines. The owner, agent, operator or master of the vessel is liable for this charge.

(d) Storage charge is the amount assessed on merchandise for storage in customs premises, cargo sheds and warehouses of the government. The owner, consignee, or agent of either, of the merchandise is liable for this charge.

(e) Arrastre charge is the amount which the owner, consignee, or agent of either, of merchandise or baggage has to pay for the handling, receiving and custody of the imported or exported merchandise or the baggage of the passengers.

[76] Section 16, Article II [State Policies], 1987 Constitution.

[77] Section 15, Article II [State Policies], 1987 Constitution.

[78] *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 514, cited in *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, August 15, 2007, 530 SCRA 341, 362.

regulations to promote the health, morals, education, good order or safety, and general welfare of the people flows from the recognition that *salus populi est suprema lex*—the welfare of the people is the supreme law.[79]

The creation of the OPMF is, thus, not a burdensome cross that the respondents have to bear. Rather, it is an opportunity for them to have an important role in the protection of the environment which they navigate and directly utilize in the conduct of their business. It is but proper and timely to remind respondents that the conduct of a business is a mere privilege which is subject to the regulatory authority of the State. Property rights may be interfered with, especially if it is for the furtherance of the common good. A few business adjustments and sacrifices, weighed against the prevention of the possibly irreparable destruction of the country's natural resources, must necessarily take a back seat. We have the duty to protect our environment for the future generations, and all must share in this responsibility, including legal entities.

**WHEREFORE,** premises considered, the instant petition is **GRANTED**. The February 22, 2017 Decision of the Regional Trial Court, Branch 216, Quezon City is hereby **REVERSED** and **SET ASIDE**.

The constitutionality and validity of sub-paragraph a, Section 22 of Republic Act No. 9483, as well as Section 1, Rule X of the Implementing Rules and Regulations of said law are hereby **UPHELD**.

**SO ORDERED.**

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

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[79] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, August 15, 2007, 530 SCRA 341, 362.

**EN BANC**

[G.R. No. 232272. July 24, 2018]

**SECRETARY MARIO G. MONTEJO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF SCIENCE AND TECHNOLOGY (DOST),** *petitioner, vs.* **COMMISSION ON AUDIT (COA), AND THE DIRECTOR, NATIONAL GOVERNMENT SECTOR, CLUSTER B — GENERAL PUBLIC SERVICES II AND DEFENSE, COMMISSION ON AUDIT,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE COA's INTERPRETATION OF ITS OWN AUDITING RULES AND REGULATIONS SHOULD BE ACCORDED GREAT WEIGHT AND RESPECT.—** The x x x provisions of DBM BC No. 2006-1 is clear and self-explanatory. As correctly ruled by the COA *En Banc*, petitioner did not comply with the directive of the DBM Circular x x x. COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect x x x.

**2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISALLOWED BENEFITS OR ALLOWANCES; LIABILITY FOR REFUND; PUBLIC OFFICERS AND EMPLOYEES WHO ARE RECIPIENTS OR PAYEES IN GOOD FAITH NEED NOT REFUND THE DISALLOWED BENEFITS OR ALLOWANCES.—**[I]n cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them. Good faith has always been a valid

> defense of public officials that has been considered by this Court in several cases. x x x Petitioner's erroneous interpretation of the DBM circular aside, the action of petitioner was indicative of good faith because he acted in an honest belief that the grant of the CNA Incentives had legal bases, It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioners.
*COA Legal Services Sector* for respondents.

**D E C I S I O N**

**PERALTA, *J.*:**

For this Court's resolution is the Petition for Review[1] on *Certiorari* under Rule 64 of the Revised Rules of Civil Procedure assailing the Decision[2] dated September 26, 2016 and the Resolution[3] dated February 27, 2017 of the Commission on Audit (COA), which affirmed Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 and Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011 issued by the Office of the Auditor, COA, Taguig City disallowing the grant/release of Collective Negotiation Agreement Incentives (CNA Incentives) to the officials and employees of the Department of Science and Technology (*DOST*).

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[1] Dated June 6, 2017.

[2] *Rollo*, pp. 39-47.

[3] *Id.* at 48.

The facts follow.

During the Calendar Year 2010, petitioner released CNA Incentives in the total amount of Five Million Eight Hundred Seventy Thousand Eight Hundred Eighty-Three Pesos and Seventy-Nine Centavos (₱5,870,883.79) to the DOST employees, covered by the following reference documents and particulars:

| Date | Payee | Check No. | Amount |
|---|---|---|---|
| May 25, 2010 | Mario P. Bravo | 530803 | ₱25,000.00 |
| May 25, 2010 | DOST Officers and Employees | 307423 | ₱2,575,000.00 |
| May 28, 2010 | Lilibeth O. Furoc | 530888 | ₱25,000.00 |
| December 16, 2010 | Mario G. Montejo | 534033 | ₱25,000.00 |
| December 16, 2010 | Marilyn M. Yap | 534034 | ₱25,000.00 |
| December 16, 2010 | Mario P. Bravo | 534035 | ₱25,000.00 |
| December 22, 2010 | DOST Officers and Employees | 307547 | ₱3,166,667.12 |
| December 29, 2010 | Maxima M. Taparan | 534285 | ₱4,166.67 |
| | | TOTAL | ₱5,870,883.79 |

Thereafter, on July 5, 2011, petitioner received an Audit Observation Memorandum (AOM) dated June 27, 2011 from the Audit Team Leader of the Office of Auditor, COA, noting various alleged deficiencies in the grant of CNA Incentives by petitioner to its employees, such as:

1. The payment of the CNA Incentive was not supported with written resolution by the DOST Management and SIKAT; DBM approved level of operating expenses; Certificate issued by the Head of the Agency; Detailed computation of unencumbered savings; Proof of the planned program; List of *bonafide* SIKAT members and application for registration;

2. The cost-cutting measures and specific systems improvement to be jointly undertaken by DOST Management and the employees' organization to achieve effective service delivery and agency targets a lesser cost were not identified in the CNA contrary to Section 3 of Administrative Order No. 135;

3. The amount of CNA Incentive was predetermined in the Collective Negotiation Agreement signed by SIKAT and DOST Management contrary to paragraph 5.6.1 of Budget Circular No. 2006-1;

4. Mid-year CNA Incentive amounting to ₱25,000.00 each was paid to DOST officers and employees contrary to Section 5.7 of Budget Circular No. 2006-1;

5. Officers or DOST Managerial employees were granted the CNA Incentive contrary to Section 2 of Administrative Order No. 135, DBM Budget Circular No. 2006-1, PSLM Resolution No. 4, s. 2002 and Section 5.7 of the Collective Negotiation Agreement.[4]

On July 14, 2011, petitioner filed his Letter-Reply[5] dated July 11, 2011 and submitted the required documents, certifications, detailed computations and justifications as required by the Office of the Auditor.

State Auditor IV Flordeliza A. Ares and State Auditor V Myrna K. Sebial issued Notice of Disallowance No. 2011-021-101-(11)[6] dated November 17, 2011 disallowing petitioner's grant of CNA Incentives to DOST employees in the total amount of ₱5,870,883.79 on the alleged ground that it is violative of the provisions of Public Sector Labor Management Council (PSLMC) Resolution No. 4 dated November 14, 2002, Budget Circular No. 2006-1 dated February 1, 2006 and Administrative Order No. 135 dated December 27, 2005.

Then in CY 2011, petitioner also released to DOST employees CNA Incentives in the total amount of Four Million Seven Hundred Seventy-Three Thousand Eight Hundred Twenty-One Pesos and Forty-Nine Centavos (₱4,773,821.49).

Thereafter, State Auditor IV Ares and State Auditor V Sebial issued Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011[7] disallowing petitioner's grant of CNA Incentives to its employees, covered by the following reference documents and particulars:

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[4] *Id.* at 58-62.

[5] *Id.* at 64-67.

[6] *Id.* at 68-70.

[7] *Id.* at 16-17.

| Date | Payee | Check No. | Amount |
|---|---|---|---|
| May 31, 2011 | DOST Officers and Employees | 360753 | ₱4,557,800.00 |
| May 31, 2011 | Mario G. Montejo | 582737 | ₱40,000.00 |
| May 31, 2011 | Rodel A. Lara | 582740 | ₱40,000.00 |
| December 31, 2011 | Wilhelmina R. Mercado | 582742 | ₱40,000.00 |
| December 31, 2011 | Marilyn M. Yap | 582739 | ₱40,000.00 |
| December 31, 2011 | Mario P. Bravo | 582738 | ₱40,000.00 |
| December 31, 2011 | Floramel E. Gaerlan | 382741 | ₱9,354.83 |
| December 31, 2011 | Corazon M. Garcia | 582743 | ₱6,666.66 |
| | | TOTAL | ₱4,773,821.49 |

Petitioner appealed to the National Government Sector (*NGS*), Cluster B-General Services II and Defense, COA, the two Notices of Disallowance issued by the Office of Auditor.

The NGS rendered its Decision dated October 4, 2012, affirming the two Notices of Disallowance, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED and the Notices of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011 in the amount of ₱5,870,883.79 and P4,773,821.49, respectively, are AFFIRMED. This decision is without prejudice to a further appeal that the parties may deem proper.[8]

Petitioner filed a Petition for Review with respondent COA, assailing the NGS Decision dated October 4, 2012 which affirmed the Notices of Disallowances. On October 18, 2016, the COA *En Banc* rendered its Decision, the dispositive portion of which states:

> WHEREFORE, premises considered, the petition for review of secretary Mario G. Montejo, Department of Science and Technology (DOST), of National Government Sector Cluster B Decision No. 2012-013 dated October 4, 2012, is hereby DENIED for lack of merit. Accordingly, Notice of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011, on the payment of Collective Negotiation Agreement Incentives for

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

calendar years 2010 and 2011 to DOST Central Office officials and employees in the total amount of ₱10,644,705.28 are AFFIRMED.[9]

According to the COA *En Banc*, the grant of CNA Incentives by petitioner violated Sections 5.7, 7.1 and 7.1.1 of DBM Budget Circular No. 2006-1, since petitioner paid the CNA Incentives during the middle of CY 2010 and 2011 and at the end of CY 2010. The COA *En Banc* also found that petitioner failed to submit proof that the grant of CNA incentives was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Furthermore, the COA *En Banc* held that the officers who approved the grant of CNA Incentives should be solidarily liable for the total disbursement and that the payees should be held liable for the amount they received pursuant to the principle of *solutio indebiti*.

Hence, the present petition after the COA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

> Respondent COA gravely erred in affirming the 17 and 18 November 2011 Notices of Disallowance Nos. 2011-021-101-(11) and 2011-022-101-(11), which disallowed the payment of Collective Negotiation Agreement Incentives (CNAI) for calendar years 2010 and 2011 to DOST Central Office employees in the total amount of ₱10,644,705.28 because:
>
> a) Petitioner's grant of CNAI was based on identified cost-cutting measures;
> b) Petitioner's grant of CNAI was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM approved level of operating expenses and actual operating expenses;
> c) Petitioner's grant of CNAI substantially complied with the requirements under DBM Circular No. 2006-1; and
> d) The payment of CNAI was done in good faith, hence, no liability attaches therefrom.[10]

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[9] *Id.* at 46-47.

[10] *Id.* at 20.

Petitioner argues that the grant of CNA Incentive was based on duly identified and approved cost-cutting measures and systems improvement. He also claims that its grant of the CNA Incentive was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Petitioner further avers that the grant of CNA Incentive substantially complied with the requirement of DBM Circular No. 2006-1 and that the payment of CNA Incentives was made in good faith, hence, no liability attaches therefrom.

In its Comment[11] dated August 30, 2017, respondent claims that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed decision as the same is in consonance with prevailing laws, rules and regulations and established jurisprudence. Respondent also argues that it correctly disallowed petitioner's grant of CNA Incentives to DOST officials and employees and that the employees and officials of petitioner agency are not excused from refunding the amounts unduly disbursed to them.

The petition is partly meritorious.

This Court finds that the COA did not err in disallowing petitioner's grant of CNA Incentives to DOST officials and employees.

As aptly found by the COA, several provisions of DBM BC No. 2006-1, particularly Items 5.7 and 7.1, have been violated in the release of the CNA Incentives. The said provisions read as follows:

> 5.7 The CNA Incentive for the year shall be paid as a **one-time benefit after the end of the year**, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.
>
> x x x x x x x x x
>
> 7.1 **The CNA Incentive shall be sourced solely from savings from released MOOE allotments** for the year under review, still valid

[11] *Id.* at 154-178.

for obligation during the year of payment of the CNA, subject to the following conditions:

> 7.1.1 Such **savings were generated out of the cost-cutting measures identified in the CNA** and supplements thereto; x x x[12]

In this case, the DOST paid or granted the CNA Incentive during the middle of CY 2010 and CY 2011, and again at the end of the same year in 2010. Petitioner, however, claims that the DOST substantially complied with the requirement of DBM BC No. 2006-1 in its grant of the CNA Incentives. According to petitioner, while the DBM Circular provides that the grant of the CNA Incentives should be granted after the end of the year, it was qualified by a provision that the grant shall be released only after the planned/activities/projects of the concerned agency have been implemented in accordance with the performance targets for the year. Petitioner adds that the DOST has repeatedly submitted documents proving that the proposed program or planned activities for the particular month have been achieved and savings were generated following the DOST Internal Guidelines, thus, while the CNA Incentives was released in the middle of the year, the grant was nevertheless compliant with the condition that it should be anchored on savings actually generated for a particular year.

Petitioners reasoning is flawed. The above-provisions of DBM BC No. 2006-1 is clear and self-explanatory. As correctly ruled by the COA *En Banc*, petitioner did not comply with the directive of the DBM Circular, thus:

> x x x It is clear from the aforecited provisions that the payment of CNA incentive should be a one-time benefit after the end of the year, when the planned programs/activities/projects have already been implemented and completed in accordance with the performance targets for the year. DOST did not comply with this directive as it made a mid-year payment of CNA incentive. While the savings could be possibly determinable by then, it is mandated that programs/activities/projects should have already been implemented and completed to determine whether such activities generated savings from which CNA incentive can be sourced.

[12] *Id.* at 44.

Likewise, DOST could have easily proven that the payment of CNA incentive was solely sourced from the savings generated from the cost-cutting measures conducted by showing a comparative statement of DBM approved level of operating expenses. But DOST failed to submit proof to that effect, thus, payment of CNA incentive should be disallowed.[13]

COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect, as expounded in *Espinas, et al. v. COA*,[14] thus:

The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government.[15] As an essential complement, the CoA has been vested with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. This is found in Section 2, Article IX-D of the 1987 Philippine Constitution which provides that:

> Sec. 2. x x x.
>
> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect. In the recent case of *Delos Santos*

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

[14] 731 Phil. 67, 76-78 (2014). (Emphases and underscoring omitted)

[15] *Dimapilis-Baldoz v. COA*, 714 Phil. 171, 183 (2013).

*v. CoA*,[16] the Court explained the general policy of the Court towards CoA decisions reviewed under *certiorari*[17] parameters:[18]

> [T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.
>
> x x x [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x.

The concept is well-entrenched: grave abuse of discretion exists when there 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.[19] Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must

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[16] 716 Phil. 322 (2013).

[17] Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. Thus, it is only through a petition for *certiorari* under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction. (*Benguet State University v. COA*, 551 Phil. 878, 883 [2007]).

[18] *Delos Santos v. COA, supra* note 16, at 332-333.

[19] *Id.*

be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[20]

Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence[21] has settled that recipients or payees in good faith need not refund these disallowed amounts.[22] For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits. or allowances may keep the amounts disbursed to them.[23] Good faith has always

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[20] *Dimapilis-Baldoz v. COA, supra* note 15, at 187.

[21] *Development Academy of the Philippines v. Pulido-Tan, et al.*, G.R. No. 203072, October 18, 2016, 806 SCRA 362, 386-387, citing *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per *J.* Leonen, *En Banc*]; *Magno v. Commission on Audit*, 558 Phil. 76 (2007) [Per *J.* Chico-Nazario, *En Banc*]; *Singson v. Commission on Audit*, 641 Phil. 154 (2010) [Per *J.* Peralta, *En Banc*]; *Lumayna v. Commission on Audit*, 616 Phil. 928 (2009) [Per *J.* del Castillo, *En Banc*]; *Barbo v. Commission on Audit*, 589 Phil. 289 (2008) [Per *J.* Leonardo-De Castro, *En Banc*]; *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. Commission on Audit, et al.*, 480 Phil. 861 (2004) [Per *J.* Tinga, *En Banc*]; *Veloso v. Commission on Audit*, 672 Phil. 419 (2011) [Per *J.* Peralta, *En Banc*]; *Abanilla v. Commission on Audit*, 505 Phil. 202 (2005) [Per *J.* Sandoval-Gutierrez, *En Banc*]; *Home Development Mutual Fund v. Commission on Audit*, 483 Phil. 666 (2004) [Per *J.* Carpio, *En Banc*]; *Public Estates Authority v. Commission on Audit*, 541 Phil. 412 (2007) [Per *J.* Sandoval-Gutierrez, *En Banc*]; *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455 (2009) [Per *J.* Carpio, *En Banc*]; *Benguet State University v. Commission on Audit, supra* note 13 [Per *J.* Nachura, *En Banc*]; *Agra v. Commission on Audit*, 661 Phil. 563 (2011) [Per *J.* Leonardo-De Castro, *En Banc*]; and *Blaquera v. Commission on Audit*, 356 Phil. 678 (1998) [Fer *J.* Purisima, *En Banc*].

[22] *Id.* at 387, citing *Manila International Airport Authority v. Commission on Audit*, 681 Phil. 644, 668-670 (2012) [Per *J.* Reyes, *En Banc*]; *Benguet State University v. Commission on Audit, supra* note 13 [Per *J.* Nachura, *En Banc*].

[23] *Id.*, citing Brion, Concurring and Dissenting Opinion in *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60, 88 (2014) [Per *J.* Carpio, *En Banc*].

been a valid defense of public officials that has been considered by this Court in several cases.[24]

In *PEZA v. Commission on Audit, et al.*,[25] this Court applied good faith as a valid reason to absolve the responsible officers from liability from refund, thus:

> The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which did not appear clearly to be in conflict with other laws? Otherwise put, should public officials be held financially accountable for the adoption of certain policies or programs which are found to be not in accordance with the understanding by the Commission on Audit several years after the fact, which understanding is only one of several ways of looking at the legal provisions?
>
> Good faith has always been a valid defense of public officials that has been considered by this Court in several cases. Good faith is a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.
>
> In *Arias v. Sandiganbayan*, this Court placed significance on the good faith of heads of offices having to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations, thus:
>
> > There is no question about the need to ferret out and convict public officers whose acts have made the bidding out and construction of public works and highways synonymous with graft or criminal inefficiency in the public eye. However, the remedy is not to indict and jail every person who may have ordered the project, who signed a document incident to its construction, or who had a hand somewhere in its

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[24] *PEZA v. Commission on Audit, et al.*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, 750 Phil. 288, 377 (2015).

[25] G.R. No. 210903, October 11, 2016, 805 SCRA 618, 642-645. (Citations omitted)

implementation. The careless use of the conspiracy theory may sweep into jail even innocent persons who may have been made unwitting tools by the criminal minds who engineered the defraudation.

x x x x x x x x x

We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x x x x x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations. x x x.

Similarly, good faith has also been appreciated in *Sistoza v. Desierto*, thus:

There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau

chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers, doing nothing else but superintending minute details in the acts of their subordinates.

Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.

And recently in *Social Security System v. Commission on Audit*, this Court ruled that good faith absolves liable officers from refund, thus:

Notwithstanding the disallowance of the questioned disbursements, the Court rules that the responsible officers under the ND need not refund the same on the basis of good faith. In relation to the requirement of refund of disallowed benefits or allowances, good faith is a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.

x x x x x x x x x

x x x In *Mendoza v. COA*, the Court held that the lack of a similar ruling is a basis of good faith. There is yet to be

jurisprudence or ruling that the benefits which may be received by members of the SSC are limited to those enumerated under Section 3 (a) of the SS Law.

It is the same good faith, therefore, that will absolve the responsible officers of PEZA from liability from refund.

Similarly, in *Development Bank of the Philippines v. Commission on Audit*,[26] good faith was also appreciated, thus:

Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice or benefit or belief of facts which render transaction unconscientious."

In *Zamboanga City Water District v. COA*, the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

> Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In de Jesus v. Commission on Audit, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala* (*Blaquera*), the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.
>
> In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

[26] G.R. No. 221706, March 13, 2018.

> Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.
>
> x x x x x x x x x
>
> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.
>
> A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

In *Mendoza v. COA*, the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith. At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA*, the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The

Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282 to create their own budget.

On the other hand, in *Silang v. COA*, the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*, the Court affirmed the disallowance of the grant of mid-year financial, bigay-pala bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: (1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.

Here, the DBP believed in good faith that they could grant additional benefits to the Board members based on Section 8 of the DBP Charter. When the Board issued DBP Resolution Nos. 0121 and 0037, they honestly believed they were entitled to the said compensation. More so, the DBP claimed that the additional benefits had the imprimatur of President Arroyo.

Likewise, at the time of the issuance of the said DBP resolutions on March 29, 2006 and August 23, 2006, there was still no existing jurisprudence or administrative order or regulation expressly prohibiting the disbursement of benefits and compensation to the DBP Board members aside from per diems. It was only on February 26, 2009 that the Court promulgated *BCDA v. COA* prohibiting the grant of compensation other than per diems to Board members.

Certainly, it is only in the present case that the Court is given the opportunity to construe Section 8 of the DBP Charter. The said provision has to be categorically interpreted by Court in order to conclude that the Board members are not entitled to benefits other than per diems and that the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines" solely refers to per diems. Thus, the Board members and the accountable officers cannot be faulted for their flawed interpretation of the law.

The Court reached a similar conclusion in *BCDA v. COA* where it held that while the grant of benefits was disallowed, the Board members acted in good faith and were not required to refund the same due to the following reasons: the BCDA Charter authorized its Board to adopt their own compensation and benefit scheme; there was no express prohibition against Board members from receiving benefits other than the per diem; and President Ramos approved the said benefits.

Further, in *DBP v. COA*, the Court affirmed the disallowance of the subsidy granted by DBP to its officers who availed themselves of the Motor Vehicle Lease-Purchase Plan (MVLPP) benefits amounting to 50% of the acquisition cost of the motor vehicles. It found that the RR-MVLPP did not permit the use of the car funds in granting multi-purpose loans or for investment instruments. Nonetheless, the officers of DBP, including its Board members, were absolved from liability in good faith because there was no specific provision in the RR-MVLPP that prohibited the manner in which DBP implemented the plan and there was no showing that the officers abused the MVLPP benefits.

In fine, the responsible officers of the DBP in this case have sufficiently established their defense of good faith, thus, they cannot be held liable to refund the additional benefits granted to the Board members. To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious. Likewise, they had the belief that the President approved their expenditure. Neither could they be deemed grossly negligent as they also believed they could disburse the said amounts on the basis of the provisions of the DBP Charter.

This Court also ruled, in *Veloso, et al. v. COA*,[27] that refund is not required as long as all the parties acted in good faith, thus:

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[27] *Supra* note 21, at 436. (Citations omitted)

However, in line with existing jurisprudence, we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward.

Petitioner's erroneous interpretation of the DBM circular aside, the action of petitioner was indicative of good faith because he acted in an honest belief that the grant of the CNA Incentives had legal bases. It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith.[28] If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively.[29] A contrary rule would be counterproductive.[30]

Thus, although this Court considers the questioned Notices of Disallowance valid, this Court also considers it to be in the better interest of justice and prudence that petitioner, other officials concerned and the employees who benefited from the CNA Incentives be relieved of any personal liability to refund the disallowed amount.

**WHEREFORE,** the Petition for Review on *Certiorari* dated June 6, 2016 of petitioner Secretary Mario G. Montejo is **DISMISSED**. Consequently, the Decision dated September 26, 2016 and the Resolution dated February 27, 2017 of the Commission on Audit, which affirmed Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 and Notice of Disallowance No. 2011-022-101-(11) dated November 18,

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[28] *PEZA v. COA, et al., supra* note 25, at 645.

[29] *Id.*

[30] *Id.*

2011 issued by the Office of the Auditor, Commission on Audit, Taguig City disallowing the payment of Collective Negotiation Agreement Incentives are **AFFIRMED**. However, the petitioner, the other officers concerned and the DOST employees are absolved from refunding the amount covered by the same notices of disallowance.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 216748. July 25, 2018]

**DEPARTMENT OF EDUCATION,** *petitioner, vs.* **NIXON Q. DELA TORRE, BENHUR Q. DELA TORRE, QUINTIN DELA TORRE (DECEASED), REPRESENTED BY HIS WIFE CATALINA DELA TORRE AND HIS CHILDREN STELLA T. NAGDALE, DWIGHT DELA TORRE, VIVIAN T. SUPANGCO, NIXON DELA TORRE AND BENHUR DELA TORRE,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; WHEN A PARTY IS REPRESENTED BY A COUNSEL ON RECORD, SERVICE OF ORDERS OR NOTICES MUST BE MADE ON THE COUNSEL ON RECORD.—** Well-settled is the rule that when a party is represented by a counsel on record, service of orders or notices must be made

on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law. In this case, while the City Prosecutor of Malaybalay City was deputized by the OSG, the latter still remains to be the principal counsel of Cabanglasan Elementary School and hence entitled to be furnished copies of all court orders, notices, and decision. Any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General. x x x It is undisputed that as early as November 28, 2002, the OSG was notified as to the failure of the city prosecutor to present evidence on behalf of the elementary school. It was aware that the presentation of evidence was rescheduled numerous times for the failure of the city prosecutor to present the same. In fact, the OSG has been forewarned that the RTC will be constrained to waive the right of Cabanglasan Elementary School to present evidence if it still failed to present the same x x x. [T]he OSG was furnished the necessary orders in order for the same to exercise its supervision and control over the actuations of the public prosecutor.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Isidro L. Caracol* 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 Department of Education (petitioner), through the Office of the Solicitor General (OSG) assailing the Decision[2] dated January 22, 2014 and Resolution[3] dated January 26, 2015 of

[1] *Rollo,* pp. 12-58.

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, *concurring. Id.* at 59-71.

[3] *Id.* at 72-75.

the Court of Appeals (CA) in CA-G.R. CV No. 02130-MIN which affirmed the Decision[4] dated December 9, 2009 of the Regional Trial Court (RTC) in Civil Case No. 3056-01 declaring that respondent Nixon dela Torre (Nixon) has the better right to possess the land covered by Original Certificate of Title (OCT) No. 0-841 (subject land).

The pertinent facts of the case are as follows:

On December 8, 1979, Maria Pencerga (Maria) executed a Deed of Donation[5] in favor of the Poblacion Cabanglasan Elementary School, donating a four (4) hectare portion of the subject land.[6] On February 23, 2001, two decades after the donation, respondent Nixon together with Benhur Q. Dela Torre, Quintin Dela Torre represented by his wife and children (respondents) filed a civil case[7] for recovery of possession alleging that they were co-owners of a 100,024 square meter lot sold[8] by Maria to respondent Nixon on January 5, 1988.[9]

Cabanglasan Elementary School was initially represented by Atty. Conrado Barroso (Atty. Barroso) in the said case, then a legal consultant of the former Department of Education, Culture and Sports (DECS). However, during the hearing on October 4, 2001, Atty. Barroso manifested that his Consultancy agreement with the DECS had expired and that there was an uncertainty as to its renewal.[10] Thus, the OSG entered its appearance[11] on behalf of the Cabanglasan Elementary School and deputized[12] the City Prosecutor of Malaybalay City to appear on its behalf.

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[4] Promulgated by Judge Benjamin P. Estrada. *Id*. at 130-139.

[5] *Id*. at 96.

[6] *Id*. at 15.

[7] *Id*. at 113-118.

[8] *Id*. at 145-146.

[9] *Id*. at 15.

[10] *Id*., at p. 15.

[11] *Id*. at 120.

[12] *Id*. at 121.

On November 28, 2002, the RTC noted the City Prosecutor's appearance. However, the hearing was reset since the prosecutor cannot proceed with the presentation of evidence inasmuch as the presentation of evidence was previously handled by Atty. Barroso.[13] On May 21, 2004, the RTC issued another Order resetting the hearing on account of the absence of the City Prosecutor. Further, on July 16, 2004, the public prosecutor again failed to appear, thus, the RTC issued an Order resetting the hearing with a warning to the public prosecutor that failure to present evidence will constrain the RTC to waive its presentation of evidence and submit the case for decision.[14]

On September 9, 2004, the hearing was again reset because the public prosecutor manifested that the documents she has to present are still in the possession of Atty. Barroso, who has not yet turned over the same.[15] On March 8, 2005, the OSG received the RTC's order cancelling the hearing as it was busy trying another case.[16]

The OSG has not yet heard of the case since then, until it received the Order[17] dated January 24, 2008 declaring the elementary school's waiver for presenting its evidence and that the case was submitted for decision.[18] On December 9, 2009, the RTC issued a Decision[19] finding respondent Nixon to have a better right to the possession of the subject property and ordering Cabanglasan Elementary School to vacate the premises, thus:

IN VIEW OF ALL THE FOREGOING, Plaintiff Nixon dela Torre is adjudged to have a better right to the possession and is the owner of the litigated area thereof, and for which Defendants Cabanglasan Public Elementary School, Buenventura (sic) Lumbad and Cresencio

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[13] *Id*. at 17.

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

[15] *Id*. at 19.

[16] *Id*.

[17] *Id*. at 129.

[18] *Id.* at 20.

[19] *Id*. at 130-139.

Labrador, their heirs, privies and successor-in-interest are ordered to remove any structures they have built therein, vacate the area and reconvey possession thereof to Plaintiff Nixon dela Torre, his heirs and/or successors and assigns in interest.

In the alternative, if plaintiff Nixon dela Torre wants to appropriate the buildings and other improvements placed by defendant Cabanglasan Public Elementary School, he will pay the latter of the expenses incurred in placing such buildings and other improvements therein, or plaintiff Nixon dela Torre will sell the area to defendant Cabanglasan Public Elementary School in accordance with the prevailing market value of the portion of the subject parcel of land. The alternative afore-mentioned is, however without prejudice to any arrangement the parties may enter with.

Likewise, Plaintiff Nixon dela Torre is directed to deliver portion of the subject parcel of land to his co-plaintiffs Ben Hur dela Torre and Quintin dela Torre or to their respective heirs, privies or successors-in-interest in accordance with the deeds of sale they have executed.

IT IS SO ORDERED.[20]

Cabanglasan Elementary School appealed the case to the CA. The CA in its Decision[21] dated January 22, 2014, affirmed the ruling of the RTC. The motion for reconsideration filed by the elementary school was denied by the CA. Hence, this Petition.

The petitioner raised the following issues for resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT PETITIONER HAS WAIVED ITS RIGHT TO PRESENT EVIDENCE DESPITE THE FACT THAT IT (PETITIONER) WAS NOT PROPERLY REPRESENTED BEFORE THE TRIAL COURT.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENTS HAVE A BETTER RIGHT TO POSSESS THE SUBJECT PROPERTY.

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[20] *Id*. at 138-139.

[21] *Id*. at 59-79.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DECLARING THAT RESPONDENTS ARE GUILTY OF LACHES.

Ultimately, the issue to be resolved is whether the CA erred in affirming the RTC decision.

***The petition is denied.***

In the case of *Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et al.*[22], We held that the OSG remains the principal counsel, despite the presence of a deputized counsel, and as such, entitled to be furnished copies of all court orders, resolutions and judgments, thus:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that **the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.**[23] (Emphasis supplied)

Well-settled is the rule that when a party is represented by a counsel on record, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.[24]

In this case, while the City Prosecutor of Malaybalay City was deputized by the OSG, the latter still remains to be the

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[22] 779 Phil. 405 (2016).

[23] *Id*. at 413-414.

[24] *Cervantes v. City Service Corp., et al.,* 784 Phil. 694, 699 (2016).

principal counsel of Cabanglasan Elementary School and hence entitled to be furnished copies of all court orders, notices, and decision. Any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.[25]

Here, the OSG, claimed that the Cabanglasan Elementary School was not properly represented before the RTC since the OSG was not served all the notices by the RTC. As such, the petitioner cannot be deemed to have waived its right to present evidence without violating due process. Therefore, the proceedings before the RTC should be declared null and void for lack of proper representation by the OSG.

*We do not agree.*

It is undisputed that as early as November 28, 2002, the OSG was notified as to the failure of the city prosecutor to present evidence on behalf of the elementary school. It was aware that the presentation of evidence was rescheduled numerous times for the failure of the city prosecutor to present the same. In fact, the OSG has been forewarned that the RTC will be constrained to waive the right of Cabanglasan Elementary School to present evidence if it still failed to present the same, thus:

> Send a copy of this Order to the City Prosecutor of Malaybalay City, to the Office of the Solicitor General, to the defendants Buenaventura Lumbad, Cresencio Labrador, and Cabanglasan Public School, for them to appear during the said trial and be ready to present their evidence and to appear with [their] own counsel, the City Prosecutor of Malaybalay City, **failure on his part to do so will constrain this Court to submit the case for decision. The defendants to have been waived the right to present any evidence in [their] behalf.**[26] (Emphasis ours)

Contrary to petitioner's allegation, the OSG was furnished the necessary orders in order for the same to exercise its supervision and control over the actuations of the public

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[25] *Rep. of the Phils. v. Court of Appeals, et. al.,* 781 Phil. 15, 21 (2016).

[26] *Rollo,* p. 127.

prosecutor. Notice of the RTC's warning should have put the OSG on guard as to the result of public prosecutor's failure to present evidence. The OSG could have warned the public prosecutor to be more vigilant and zealous in handling the instant case. Also, it could have actively pursued the retrieval of the documents from the RTC or even from Atty. Barroso. Despite the OSG's notice of the RTC's Order[27] dated January 15, 2008, declaring Cabanglasan Elementary School to have waived its right to present evidence, the OSG could have filed a motion for reconsideration of the said order or even filed a petition for *certiorari* questioning the same. Instead, the OSG chose to sit idly by and let the said order attain finality. Be it noted that the trial court promulgated its decision on December 9, 2009[28] declaring that respondent Nixon has a better right to possess the subject land and ordering Cabanglasan Elementary School to vacate the subject land. Interestingly, what the petitioner is indirectly seeking here is a new trial of the case, for this Court to remand the case to the trial court to litigate anew issues and facts which it have already settled. This, petitioner could not be allowed to do.

We quote with conformity the findings of the CA, in this wise:

> Appellant School already waived their right to present evidence per lower court's Order dated January 15, 2008 which it failed to challenge. Hence, the Order dated January 15, 2008 already became final. Since appellant School waived its right to present evidence, it follows that it failed to offer any, and no evidence can be considered in their favor in accordance with Section 34, Rule 132 of the Rules of Court.
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> The records show that the lower court granted appellant School so much opportunities to present evidence but it simply failed to avail of them. It bears stressing that appellees already rested their case as early as August 24, 2001 and the lower court directed the defendants including appellant School to start presenting their evidence on October 4 and 5, 2001. In short, the lower court gave appellant

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[27] *Id*. at 129.

[28] *Id*. at 130-139.

School more than 7 years to present evidence before it was declared to have waived such right. For this reason therefore, We find unacceptable appellant School's explanation before Us, now through the [OSG], that its failure to present evidence was due to the failure of its former counsel to tum over the records of the case to them. x x x.[29]

**WHEREFORE,** the petition is **DENIED.** The Decision dated January 22, 2014 and Resolution dated January 26, 2015 of the Court of Appeals in CA-G.R. CV No. 02130-MIN are hereby **AFFIRMED.**

**SO ORDERED.**

*Leonardo-de Castro (Chairperson)*, *Bersamin,*[*] *del Castillo,* and *Gesmundo,*[**] *JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 228503. July 25, 2018]

**HEIRS OF RAMON ARCE, SR.,** *petitioners, vs.* **DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY SECRETARY VIRGILIO DELOS REYES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES ARE NOT WITHIN THE PROVINCE OF THE SUPREME COURT; EXCEPTION.—** As a general rule, factual issues are not within the province of this Court. However, if the factual findings of the government agency and

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[29] *Id.* at 65-66.

[*] Designated Additional member, per Raffle dated July 19, 2018 vice Associate Justice Francis H. Jardeleza.

[**] Designated Acting Member, pursuant to Special Order No. 2560 dated May 11, 2018.

the CA are conflicting, or the evidence that was misapprehended was of such nature as to compel a contrary conclusion if properly appreciated, the reviewing court may delve into the records and examine for itself the questioned findings.

**2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM PROGRAM; LANDS DEVOTED TO THE RAISING OF LIVESTOCK, POULTRY AND SWINE HAVE BEEN CLASSIFIED AS INDUSTRIAL, NOT AGRICULTURAL, AND THUS, EXEMPTED FROM AGRARIAN REFORM.—** The CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced. Section 3(c) thereof defines "agricultural land" as land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land. In *Luz Farms v. The Honorable Secretary of the Department of Agrarian Reform*, the Court declared unconstitutional the CARL provisions that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that ***it was never the intention of the framers of the Constitution to include the* livestock** and poultry ***industry in the coverage of the constitutionally mandated agrarian reform program of the government***. Reiterating Our ruling in the *Luz Farms* case, We held in *Natalia Realty and Estate Developers and Investors Corp. Inc. v. Department of Agrarian Reform Sec. Benjamin T. Leong and Dir. Wilfredo Leano, DAR- REGION IV*, that industrial, commercial and residential lands are not covered by the CARL. In the same case, We stressed that while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial. Guided by the foregoing, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus, exempted from agrarian reform. A thorough review of the records reveals that there is substantial evidence to show that the entirety of the petitioners' subject lands were devoted to livestock production since the 1950s, *i.e.*, even before the enactment of the CARL on June 15, 1988.

**3. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REFERS TO THE REMEDY BY WHICH A THIRD**

**PARTY, NOT ORIGINALLY IMPLEADED IN THE PROCEEDINGS, BECOMES A LITIGANT THEREIN.—** Intervention under Rule 19 of the Rules of Court is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. x x x SAMANACA may not be allowed to intervene. SAMANACA's allegation that its members have a substantial interest in the outcome of the present case, since they have been identified to be the qualified beneficiaries of the subject lands is not sufficient. The records show that the members of SAMANACA were never in possession of the subject lands nor were they, at one time or another, tenants, farmers, or tillers thereon. Likewise, SAMANACA failed to substantiate their claim that they have been identified as qualified beneficiaries of the subject lands under the CARP. No shred of evidence was ever submitted to prove this claim. Clearly, SAMANACA's assertions do not amount to a direct and immediate legal interest, so much so that they will either gain or lose by the direct legal operation of the court's judgment. At most, their interest, if any, is characterized as inchoate, contingent and expectant – which could not have justified intervention.

**APPEARANCES OF COUNSEL**

*Hermosura Navarro Sison & Ongsiako* for petitioners.
*The Solicitor General* for respondent.

## D E C I S I O N

**TIJAM, *J.*:**

We resolve this petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated August 5, 2016 and the Resolution[3] dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 140755.

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[1] *Rollo* (Vol. 2), pp. 557-584.

[2] Penned by Justice Romeo F. Barza, with the concurrence of Justices Andres B. Reyes, Jr. and Agnes Reyes-Carpio. *Id*. at 590-600.

[3] *Id*. at 601-603.

**The Antecedent Facts**

As early as the 1950s, even before the advent of Republic Act (RA) No. 6657,[4] otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, through which the State implements its policy for a Comprehensive Agrarian Reform Program (CARP), the Heirs of Ramon Arce, Sr., namely, Eulalio Arce, Lorenza Arce, Ramon Arce, Jr., Mauro Arce and Esperanza Arce, (petitioners) were registered owners of a parcel of land located in Brgy. Macabud, Montalban, Rizal with an area of 76.39 hectares (ha.), covered by Transfer Certificates of Title Nos. T-442673, 442674, 442675, and 442676 (referred to as subject lands). The subject lands were utilized as pasture lands for the petitioners' cattle, i.e., buffaloes, carabaos and goats (hereinafter referred to as livestock), for milk and dairy production in the manufacture of Selecta Carabao's Milk and Ice Cream (now Arce Dairy Ice Cream).[5] The farming method adopted by the petitioners was known as "feedlot operation" where the animals were confined and fed on a cut-and-carry basis or zero grazing.[6]

Sometime in 1998, the Philippine Carabao Center-Department of Agriculture (PCC-DA) recommended that petitioners' livestock be transferred to avoid the liver fluke infestation in the area. In compliance with PCC-DA's recommendation, petitioners transferred the older and milking livestock, which are susceptible to infection, to their feedlot facility located in Novaliches, Quezon City (Novaliches property). The younger cattle, which are not susceptible to the fluke infection, remained in the subject lands.[7]

Notwithstanding the transfer of some of their livestock, petitioners continued to plant and grow napier grass in the subject lands. The napier grass were then cut, carried and used as fodder

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[4] Effective June 15, 1988.

[5] *Id.* at 557-558.

[6] *Id.* at 1153.

[7] *Id.* at 558.

for their livestock which were maintained both in the subject lands and in the Novaliches property.[8]

On August 6, 2008, the Provincial Agrarian Reform Officer (PARO) of Teresa, Rizal issued a Notice of Coverage (NOC)[9] over the subject lands under the CARP. In response, petitioners sent a letter[10] dated October 17, 2008 to the PARO of DAR Region IV-A, seeking to exclude and exempt the subject lands from the NOC considering that it has been utilized for livestock raising even before the enactment of the CARP. To prove this, the petitioners enclosed documents,[11] among them were: Certificates of Ownership of Large Cattle registered under the name of Mauro Arce; Photocopy of Livestock Inventory as of December 1987 stating that they have 102 registered cattle, 125 unregistered cattle and 212 heads of goats; Current photos taken on September 17, 2008 of the Arce livestock farm, feeding, and milking techniques, the milk processing and ice cream making machinery at the Arcefoods Plant on Selecta Drive in Balintawak, Quezon City; Current (2008) Certificates of Ownership of 104 heads of cattle under the name of Mauro Arce/Selarce Farms, Inc; and, Photocopy of Livestock Inventory in the Year 2008 showing 150 heads of large cattle. The PARO of DAR Region IV-A considered the letter as a Petition for Exclusion from CARP Coverage.[12]

On December 2, 2008, Municipal Agrarian Reform Officer (MARO) of DAR Region IV-A, issued a Report and Recommendation and recommended the grant of the Petition for Exclusion from CARP Coverage. The Report stated, among others, that:

xxx the method of farming practiced by the Arce Farm is by feed rearing. This means that the animals are not freely grazing in the

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[8] *Id*.

[9] *Id*. at 591, 607 and 1009.

[10] *Id*. at 1010.

[11] *Id*. at 611-612.

[12] *Id*. at 563 and 1010.

open field but instead are confined separately in a feedlot where they are fed and milked; xxx pasture grass of 76 hectares subject landholdings serve as food production area to provide the feed requirements of the animals reared in a separate area; xxx the existence of large cattle is evidently proven by Certificates of Ownership of Large Cattle presented by the landowners, the existence of such cover the years 1981 to present; xxx inspection conducted at the feedlot facility xxx at Novaliches xxx there exists 7 buildings where different livestock are fed/housed. xxx.[13]

xxx the clear scenario xxx is that (the subject property) has been a livestock farm and it continues to exist until now under the exclusive operation and management of its owner, regardless of the method (traditional or modern) of farming xxx.[14]

On March 4, 2009, the Legal Division of the DAR Provincial Office (DARPO) issued an Evaluation Report and Recommendation and likewise recommended the grant of the Petition for Exclusion from CARP Coverage. The Evaluation Report stated, among others, that:

x x x the subject properties, which are undulating in topography and predominantly more than 18% slope are registered in the names of Heirs of Ramon Arce, Sr., and is not devoted to any agricultural activity by any person, but actually and directly devoted to the production of napier grass for feeding purposes by Selarce Farms, owned by the applicant Heirs;[15] xxx there were employees of the applicant who were actually gathering napier grasses on the subject properties to meet the daily needs of the cattles, buffaloes and goats in the Feed and Fattening Facility which they declared that they used to cut and gather napier grass at the volume of 6 tons of napier grasses daily;[16] xxx the aggregate area of the property of 76.3964 hectares has been actually, directly, exclusively devoted to livestock (cattle, buffaloes/*carabaos*, and goats) for milk and dairy production since the 1960s, or long before the advent of the CARP Law in 1988;[17]

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[13] *Id*. at 563.

[14] *Id*. at 612-613.

[15] *Id*. at 564.

[16] *Id*. at 565.

[17] *Id*. at 613.

xxx the applicant has fully complied with all the requirements under DAR A.O. No. 7, Series of 2008 and AO. No. 9, Series of 1993;[18] and xxx the confinement of cattles, buffalos/carabaos and goats in a separate place other than the herein subject properties are but necessary for health and sanitary reasons, there is the chain of connection of the utilization of the livestocks exclusively and directly from farm to livestock facility; xxx[19]

On September 30, 2009, the petitioners filed a Manifestation to Lift Notice of Coverage with the PARO, which was treated as a petition and docketed as Case No. A-0400-0250-09 of DAR Regional Office IV-A with the PARO.[20] This was anchored on the ground that petitioners were in the business of livestock raising, and were using the subject lands as pasture lands for their buffaloes which produce the carabao milk for their ice cream products. The petitioners claimed that the NOC is contrary to the 1987 Philippine Constitution which provides that livestock farms are not among those described as agricultural lands subject to land reform.

On November 20, 2009, Rommel Bote, Attorney II of DARPO, submitted a Memorandum addressed to DARPO's Chief of Legal Division, indicating therein that the petition is meritorious and thus, recommending the lifting of the NOC upon the subject lands.[21]

Based on these findings, DAR Regional Director Antonio G. Evangelista (RD Evangelista) issued an Order[22] dated December 22, 2009, granting the Petition to Lift Notice of Coverage, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the Petition for Lifting of Notice of Coverage filed by the Heirs of Ramon S. Arce, Sr. represented

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[18] *Id*.

[19] *Id*. at 565.

[20] *Id*. at 607.

[21] *Id*. at 608.

[22] *Id*. at 671-675.

by Rodolfo S. Arce, namely: 1. Eulalio Arce, 2. Lorenza Arce, 3. Ramon Arce, Jr., 4. Mauro Arce, and 5. Esperanza Arce involving four (4) parcels of land covered by TCT Nos. 442673 (17.3645 hectares), 442674 (40.5424 hectares), 442675 (15.6485 hectares), and 442676 (2.8410 hectares), with an aggregate area of 76.3964 located at Brgy. Macabuid, Rodriguez, Rizal is hereby **GRANTED**.[23]

On April 29, 2011, RD Evangelista issued a Certification,[24] stating that the Order dated December 22, 2009 had become final and executory, considering that no motion for reconsideration and/or appeal was filed.

Meanwhile, Joevin M. Ucag (Ucag) of DAR Region IV-A submitted an Ocular Inspection Report dated May 12, 2011 to the MARO, stating that "there was no livestock/cattle found in the area of Macabud, Rodriguez, Rizal".[25]

Subsequently, the Samahan ng mga Magsasakang Nagkakaisa sa Sitio Calumpit (SAMANACA), through their leaders, sent letters dated March 2, 2011 and June 14, 2011, to DAR Secretary Virgilio R. De Los Reyes (Secretary De Los Reyes), seeking to annul RD Evangelista's Order dated December 22, 2009. The letters were treated as a Petition to Annul an Invalid Resolution by the Regional Director.[26]

On November 8, 2011, petitioners filed their Comment and countered that RD Evangelista's Order dated December 22, 2009 had become final and executory and that the subject lands were within the retention limit. Thus, they prayed for the dismissal of SAMANACA's Letters-Petition.[27]

On December 7, 2012, DAR Secretary De Los Reyes issued an Order,[28] denying petitioners' Petition for Exclusion from

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[23] *Id*. at 675.

[24] *Id*. at 670.

[25] *Id.* at 614.

[26] *Id*. at 608-609.

[27] *Id*. at 566 and 609.

[28] *Id*. at 604-621.

CARP Coverage. The DAR ruled, among others, that while it is true that the subject lands had been a livestock farm prior to the CARP's enactment, the petitioners failed to prove that the said lands are actually, directly, exclusively and continuously used for livestock activity up to the present. According to the DAR, there were no longer cattle and livestock facilities within the subject lands.

Petitioners filed a Motion for Reconsideration (with Motion for Ocular Inspection)[29] dated January 15, 2013; a Supplemental Motion for Reconsideration[30] dated January 28, 2013; and, a Second Supplemental Motion for Reconsideration[31] dated March 18, 2013 of the DAR's Order. In these motions, the petitioners, alleged, among others that their right to due process were violated when the alleged ocular inspection on the subject lands was conducted by Ucag without prior notice to them, thereby depriving them the right to refute such findings. They averred that Ucag never entered the gated premises of the subject lands and that, had there been an inspection, he must have conducted the same only from outside the premises. Petitioners likewise averred that it is unlikely that Ucag could have spotted the livestock therein considering that the same were lying on a sloping plain, combined with the tall napier grasses.

Thereafter, petitioners filed an Appeal Memorandum[32] with the Office of the President (OP) and averred, among others, as follows: (1) DAR Secretary De Los Reyes erred in reversing RD Evangelista's Order dated December 22, 2009 after it already attained finality; (2) the subject lands were presently and exclusively utilized for livestock raising; (3) only a number of livestock (older and milking) were transferred from the subject lands to the Novaliches facility at the instance of the PCC-DA, while the younger livestock remained in the subject lands; and,

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[29] *Id*. at 648-669.

[30] *Id*. at 681-691.

[31] *Id.* at 696-702.

[32] *Id*. at 704-729.

(4) SAMANACA has no legal standing to assail RD Evangelista's Order dated December 22, 2009 since they were never in possession of the subject lands and they were not tenants, farmers and tillers thereon.

On April 29, 2015, the OP rendered its Decision,[33] and ruled that petitioners' subject lands were exempted from the coverage of CARP. The dispositive portion of its decision reads, thus:

> WHEREFORE, premises considered, the Order dated 7 December 2012 of the Secretary of the Department of Agrarian Reform is hereby REVERSED AND SET ASIDE. The petition for exclusion from CARP coverage with respect to the 76.3964 hectares of lands, located in Brgy. Macabud, Montalban, Rizal, owned by the Heirs of Ramon Arce, is hereby GRANTED.
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> SO ORDERED.[34]

The DAR filed a Petition for Review[35] with the CA and prayed for the reversal of the OP's April 29, 2015 Decision. The CA granted the same in its assailed Decision[36] dated August 5, 2016. The CA held, among others, that petitioners failed to refute or deny that since 1998, there were no longer cattle in the subject lands and that the same were no longer used as grazing lands.

Their Motion for Reconsideration,[37] having been denied in the CA's November 28, 2016 Resolution,[38] petitioners filed this instant petition, anchored on the following grounds:

**A.**

**THE ASSAILED DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT**

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[33] *Id.* at 772-776.

[34] *Id*. at 776.

[35] *Id*. at 777-794.

[36] *Id*. at 590-600.

[37] *Id*. at 1081-1088.

[38] *Id*. at 601-602.

**OF APPEALS ERRONEOUSLY UPHELD THE FINDINGS OF FACTS OF THE DAR SECRETARY WHICH WERE BASED ON PROCEEDINGS UNDERTAKEN IN BLATANT VIOLATION OF PETITIONERS' BASIC RIGHTS TO ADMINISTRATIVE DUE PROCESS AND DESPITE PETITIONERS' PRESENTATION OF SUBSTANTIAL EVIDENCE SHOWING PRESENCE OF LIVESTOCK IN THE SUBJECT PROPERTIES.**

**B.**

**THE ASSAILED DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT OF APPEALS ERRONEOUSLY RULED THAT THE SUBJECT PROPERTIES ARE NO LONGER ACTUALLY, DIRECTLY, AND EXCLUSIVELY USED FOR LIVESTOCK RAISING PURPOSES DESPITE THE FACT THAT THE SUBJECT PROPERTIES ARE UTILIZED TO SUSTAIN THE FEEDLOT OPERATIONS/INTENSIVE SYSTEM OF FARMING OF PETITIONERS.**

**C.**

**THE ASSAILED DECISION AND RESOLUTION WERE NOT MADE IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT OF APPEALS HAD ERRONEOUSLY GIVEN DUE COURSE TO RESPONDENT'S PETITION FOR REVIEW DESPITE THE NON-OBSERVANCE OF THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.**[39]

Meanwhile, on March 20, 2018, SAMANACA filed an *Ex-parte* Motion for Leave (for Intervention and for Admission of Comment),[40] arguing that its members have already been identified as qualified beneficiaries of the subject lands and hence, has the right to participate and air its side of the controversy.

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[39] *Id*. at 569-570.

[40] *Id*. at 1162-1164.

## This Court's Ruling

***The petition is granted.***

***This case falls under the recognized exceptions to the rule that this Court is not a trier of facts –***

As a general rule, factual issues are not within the province of this Court. However, if the factual findings of the government agency and the CA are conflicting,[41] or the evidence that was misapprehended was of such nature as to compel a contrary conclusion if properly appreciated,[42] the reviewing court may delve into the records and examine for itself the questioned findings.

Here, considering the disparity between the findings of fact of the OP, on the one hand, and that of the DAR Secretary and the CA on the other hand, with respect to the following issues on whether the petitioners' subject lands were used for livestock raising on or before June 15, 1988; and, whether there were still livestock grazing in the subject lands up to the present, We are constrained to re-examine the facts of this case based on the evidence presented by both parties.

***The subject lands are devoted to livestock raising; thus, they remain to be exempted from the coverage of the CARP –***

Contrary to the rulings of the DAR and the CA, the subject lands are exempted from the coverage of the CARP.

The CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced.[43] Section 3(c) thereof defines "agricultural land" as

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[41] *Department of Agrarian Reform v. Estate of Pureza Herrera*, 501 Phil. 413-428 (2005).

[42] *Andaya v. NLRC*, 502 Phil. 151, 157 (2005).

[43] Section 4 of RA 6657 provides:

SEC. 4. Scope. — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No.

land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land.[44]

In *Luz Farms v. The Honorable Secretary of the Department of Agrarian Reform*,[45] the Court declared unconstitutional the CARL provisions[46] that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that ***it was never the intention of the framers of the Constitution to include the*** **livestock** and poultry ***industry in the coverage of the constitutionally mandated agrarian reform program of the government***.[47] (Emphasis ours)

Reiterating Our ruling in the *Luz Farms* case, We held in *Natalia Realty and Estate Developers and Investors Corp. Inc. v. Department of Agrarian Reform Sec. Benjamin T. Leong and Dir. Wilfredo Leano, DAR- REGION IV*,[48] that industrial, commercial and residential lands are not covered by the CARL. In the same case, We stressed that while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include

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131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;(c) All other lands owned by the Government devoted to or suitable for agriculture; xxx

[44] Section 3(c) of RA 6657.

[45] 270 Phil. 151 (1990).

[46] CARL, Sections 3(b), 11, 13 and 32.

[47] *Luz Farms v. Sec. of DAR*, *supra* note 45, *id*. at 158.

[48] 296-A Phil. 271, 278 (1993).

lands classified as mineral, forest, residential, commercial or industrial.

Guided by the foregoing, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus, exempted from agrarian reform.[49]

A thorough review of the records reveals that there is substantial evidence to show that the entirety of the petitioners' subject lands were devoted to livestock production since the 1950s, *i.e.*, even before the enactment of the CARL on June 15, 1988. No less than the DAR, who has the competence to determine the status of the land,[50] acknowledged this when it held that:

> It cannot be denied that the Arce properties [subject lands] had been a livestock farm. The documentary evidence presented by the Applicants [petitioners] established the existence of livestock activity in the landholding prior (sic) the enactment of the CARL on 15 June 1988, such as Certificates of Ownership of Large Cattle issued from 1981 to 1988, Certification from the Philippine Carabao Center attesting that the Selarce Farm is a cooperator of the Center as early as 1982, and the Technical Paper published by the Philippine Council for Agriculture and Resources Research featuring the Arce Farm in the "Philippines Recommends for Carabao Production 1978." These documents were positively affirmed by DARPO personnel in their investigation report and recommending for the exclusion of the said landholdings.[51]

Indeed, the subject lands are utilized for livestock raising, and as such, classified as industrial, and not agricultural lands. Thus, they are exempted from agrarian reform.

This notwithstanding, the DAR denied petitioners' Petition for Exclusion from CARP Coverage. The DAR ruled that the subject lands were no longer being utilized for livestock purposes

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[49] *Department of Agrarian Reform v. Court of Appeals, et al.*, 718 Phil. 232, 247 (2013).

[50] *Supra* at 249.

[51] *Rollo* (Vol. 2), pp. 614-615.

since there were no longer livestock grazing in the area of Brgy. Macabud, Rizal, based on an Ocular Inspection Report conducted by Ucag of DAR Region IV-A. The CA, relying on the DAR's pronouncement and in the case of *Department of Agrarian Reform v. Vicente K. Uy*,[52] pointed out that the status of the subject lands as an industrial land was not maintained because these were no longer exclusively, directly and actually devoted to livestock activity up to the present.

*We differ.*

*First*, the records disclosed that sometime in 1998, the PCC-DA recommended that the livestock in the subject lands be transferred to petitioners' Novaliches property due to a fluke infection in Macabud, Montalban, Rizal. While the petitioners followed the recommendation and transferred the older and milking livestock to the Novaliches property, the younger cattle, which were not susceptible to the fluke infection, remained in the subject lands.[53] Petitioners proved this by the submission, among others, of photographs of livestock freely grazing in the subject lands. Contrary to the DAR's and CA's findings, the transfer of some of petitioners' livestock to the Novaliches property, did not detract from the usage of the subject lands which was for the breeding of livestock. As correctly observed by the OP:

> xxx. The confinement of the cattles, buffalos, carabaos and goats in a separate facility other than the subject landholdings is of no moment since ***the transfer, as established, was necessary for health and sanitary considerations having been recommended*** by the Executive Director of the Philippine Carabao Center of the Department of Agriculture (PCC-DA). Such ***transfer is temporary in nature and did not divert the use thereof from the purpose of livestock farming***. Thus, the DAR Secretay committed an error in immediately considering the subject properties as agricultural. xxx[54] (Emphasis ours)

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[52] 544 Phil. 308 (2007).

[53] *Rollo* (Vol.2), p. 572.

[54] *Id*. at 774.

*Second*, upon petitioners' filing of the Petition for Exclusion from CARP Coverage, both the MARO and the DARPO issued their respective reports on the inspection over the subject lands and recommended that the the petition be granted for being meritorious.

As the primary official in charge of investigating the land sought to be exempted as livestock land, the MARO's findings on the use and nature of the land, if supported by substantial evidence on record, are to be accorded greater weight, if not finality.[55]

In its ocular inspection, the MARO found, among others, that the subject lands were devoted for livestock farm up to the present and that there were large cattle thereon as proven by Certificates of Ownership of Large Cattle presented by the petitioners, the existence of such, cover the years 1981 to the present. The DARPO's report was more explicit in that it stated that the subject lands have been actually, directly and exclusively utilized for livestock raising long before the advent of the CARL.

Unfortunately, the DAR and the CA gave little weight to these reports. Instead, they relied on the ocular inspection conducted by Ucag, to the effect that there were no longer livestock grazing in the area of Macabud, Rodriguez, Rizal.

*The reliance is erroneous.*

For one thing, Ucag's ocular inspection was done without the knowledge and prior notice to the petitioners. Aside from the fact that the Ocular Inspection Report did not specify the area over which the alleged inspection was made, there was dearth of evidence that Ucag was permitted to enter the gated premises of the subject lands. Had there been indeed an inspection, the same must have been conducted only from outside the premises. As such, it is likely that Ucag failed to spot the livestock therein. As pointed out by the petitioners, there could have no vantage point from where Ucag could fully inspect

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[55] *Rep. of the Phils. v. Salvador N. Lopez Agri-Business Corp.*, 654 Phil. 44, 58 (2011).

the subject lands considering that the same were lying on a sloping plain, combined with the tall napier grasses, which could have easily hidden the livestock. For another thing, the records did not show that petitioners were given the opportunity to submit their respective sets of evidence against Ucag's Ocular Inspection Report so as to be duly considered and taken into account by the DAR in arriving at its ruling.

*Third*, the subject lands remained to be non-agricultural, despite the fact that they were being used, not only as a grazing pasture, but as a production area where napier grass were grown to supply food for the livestock maintained in the subject lands and in the Novaliches property.

"Feedlot operation", the method adopted by the petitioners in rearing their livestock, was recognized by the DAR, in Administrative Order No. 01, Series of 2004 (AO No. 01-04).[56] As explained by the MARO, this means that the animals were not freely grazing in the open field but instead were confined separately in a feedlot where they were fed and milked.

Indeed, the subject lands have been utilized as an exclusive source for the food requirements of all the petitioners' livestock, *i.e.*, those occupying the subject lands and those that were transferred to the Novaliches facility. Without the subject lands where napier grass were grown, petitioners could not have raised the livestock which were necessary in breeding their livestock.

Contrary to the DAR's avermen,[57] the mere fact that petitioners were sowing napier grass in the subject lands did not automatically make the same an agricultural land so as to be covered under the CARP. It would be surprising if there were

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[56] Section 2. *Definition of Terms*:

xxx 2.26. *Feedlot Operation (Intensive System)* is a type of cattle raising where the animals are confined and are fed on a cut-and-carry basis or zero grazing. A good pasture is developed and maintained to ensure the regular supply of feeds. The feedlot operation mostly involves animals at their finishing stage two to three (2-3) years of age.

xxx xxx xxx

[57] *Rollo* (Vol. 2), p. 1131.

no napier grass on the subject lands considering that the same has been used as a grazing pasture for petitioners' livestock. Also, the DAR did not adduce any proof to show that the napier grass were planted and used for agricultural business. There can be no other presumption, other than that the napier grass was used to augment the supply of fodder for the petitioners' livestock which was in line with petitioners' method of farming. As aptly observed by the OP:

> xxx the records are bereft of any evidence showing that there are agricultural activities in the subject area. To be covered, private lands should be devoted to or suitable for agriculture and/or presently occupied and tilled by farmers. What is evident, however, is that the landholdings are covered and planted with napier grass which is gathered by employees of appellants to meet the daily needs of the cattle, buffalos and goats that were transferred to Novaliches, instead of just allowing the said livestock to graze in the area at the risk of getting diseases like liver fluke infections as warned by the Executive Director of PCC-DA. Evidently, the subject properties have always been maintained as a pasture land only with napier grass.
>
> xxx the records are likewise bereft of any evidence showing that the land is suitable for agriculture. What is clear in the ocular inspection of the MARO and the DARPO Legal is that the subject landholdings are undulating in topography and predominantly with a slope of more than 18 percent. As provided in the CARP Law, all lands with 18% slope and over shall be exempt from the coverage of the said law. xxx the Certification dated 23 June 2014 issued by the Bureau of Soils and Water Management of the Department of Agriculture and the finding in the Highlight of Accomplishment by Bureau of Soils and Water Management of the Department of Agriculture dated 18 June 2014, revealed that the subject land is idled, underutilized, and not suitable for agriculture.[58]

*Fourth*, the CA misread Our pronouncement in the *Uy* case. On page 8 of its decision, the CA cited the following passages from the *Uy* case, thus:

> xxx the law only requires that for exemption of CARP to apply, the subject landholding should be devoted to cattle-raising as of June

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[58] *Id*. at 774-775.

15, 1988 is not entirely correct, for the law requires that it be exclusively, directly and actually used for livestock as of June 15, 1988. Under A.O. No. 9, Series of 1993, two conditions must be established: 1) it must be shown that the subject landholding was EXCLUSIVELY, DIRECTLY AND ACTUALLY used for livestock, poultry or swine on or before June 15, 1988; and, 2) the farm must satisfy the ratios of land to livestock.[59]

The aforecited paragraph, however, was merely a part of the "facts", and not indicated in the "decision" portion of the *Uy* case. We did not declare in the *Uy* case that the two conditions set forth in A.O. No. 09, Series of 1993 (quoted above), should first be established in order that a land be excluded from the coverage of the CARP. Contrariwise, in the *Uy* case, We held that we have already strucked down A.O. No. 09-93 in the *Department of Agrarian Reform v. Sutton*[60] for being unconstitutional. Thus, We explained:

> xxx the threshold substantive issue is the validity and implementation of DAR Administrative Order No. 9, Series of 1993 on the respondent's landholding of more or less 472 ha. in light of the ruling of this Court in *Department of Agrarian Reform v. Sutton*, where DAR Administrative Order No. 9, Series of 1993 was declared unconstitutional.[61]
>
> xxx *to be valid, administrative rules and regulations* must be issued by authority of law and *must not contravene the provisions of the Constitution*. The rule-making power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. *Nor can it be used to enlarge the power of the administrative agency beyond the scope intended*. xxx.[62]
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> xxx we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, *the*

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[59] *Id*. at 597.

[60] 510 Phil. 177 (2005).

[61] *DAR v. Uy*, *supra* note 52, *id*. at 330.

[62] *DAR v. Sutton*, *supra* note 60, *id*. at 183.

*deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry-raising*. The Court clarified in the *Luz Farms* case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. xxx.[63]

In the *Sutton* case, We discussed that what A.O. No. 09-93 sought to address were the reports that some unscrupulous landowners have been converting their agricultural lands to livestock farms to avoid their coverage from the agrarian reform. In that case, as well as in the present one, the odious scenario which A.O. No. 09-93 seeks to prevent is clearly non-existent. Recall that petitioners acquired their landholdings as early as the 1950s. Since then, they have long been utilizing the subject lands covered by napier grass for the raising of their livestock. Evidently, there was no evidence on record that petitioners have just recently engaged in or converted to the raising of livestock after the enactment of the CARL that may lead to the suspicion that petitioners had the intention of evading its coverage. Stated differently, the usage of the subject lands for livestock raising, has been a going concern by the petitioners even before the passage of the CARL.

*Lastly*, We stress that what the CARL prohibits is the conversion of agricultural lands for non-agricultural purposes after the effectivity of the CARL.[64] Here, there was no showing that the subject lands which were devoted for livestock raising prior to the CARL, had been converted to an agricultural land, after its passage. Thus, the petitioners' subject lands remained to be non-agricultural, *i.e.*, devoted to livestock raising, and thus, excluded from the coverage of the CARP.

***SAMANACA's Motion for Leave (for Intervention and for Admission of Comment) cannot be given due course***

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[63] *Id*.

[64] *Department of Agrarian Reform v. Sutton*, *supra* note 60.

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Intervention under Rule 19 of the Rules of Court is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[65]

In *Hon. Executive Secretary, Commissioner of Custom and the District Collector of Customs of the Port of Subic v. Northeast Freight Forwarders, Inc.*,[66] We explained the rationale of this remedy, in this wise:

> Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."[67]

Keeping these factors in mind, SAMANACA may not be allowed to intervene.

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[65] *Hi-Tone Marketing Corp. v. Baikal Realty Corporation*, 480 Phil. 545 (2004).

[66] 600 Phil. 789 (2009).

[67] *Id.* at 799.

SAMANACA's allegation that its members have a substantial interest in the outcome of the present case, since they have been identified to be the qualified beneficiaries of the subject lands is not sufficient. The records show that the members of SAMANACA were never in possession of the subject lands nor were they, at one time or another, tenants, farmers, or tillers thereon. Likewise, SAMANACA failed to substantiate their claim that they have been identified as qualified beneficiaries of the subject lands under the CARP. No shred of evidence was ever submitted to prove this claim.

Clearly, SAMANACA's assertions do not amount to a direct and immediate legal interest, so much so that they will either gain or lose by the direct legal operation of the court's judgment. At most, their interest, if any, is characterized as inchoate, contingent and expectant – which could not have justified intervention.

After an assiduous review of the records of this case, this Court concludes that petitioners' subject lands are beyond the coverage of the agrarian reform program.

**WHEREFORE,** premises considered, the August 5, 2016 Decision and the November 28, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 140755, are R**EVERSED** and **SET ASIDE**, and a new one entered upholding the exemption of the subject lands from the coverage of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988.

**SO ORDERED.**

*Leonardo-de Castro*[*] *(Acting Chairperson)*, *del Castillo, Jardeleza*, and *Gesmundo,*[**] *JJ*., concur.

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[*] Designated Acting Chairperson, pursuant to Special Order No. 2559 dated May 11, 2018.

[**] Designated Acting Member, pursuant to Special Order No. 2560 dated May 11, 2018.

**SPECIAL THIRD DIVISION**

[G.R. No. 178591. July 30, 2018]

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

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; THE SUPREME COURT IS CALLED UPON TO SETTLE OR RESOLVE ONLY ACTUAL CASES AND CONTROVERSIES, NOT TO RENDER ADVISORY OPINIONS; CASE AT BAR.—** By the dismissal of the action for revoking the IPA, there is no longer any controversy surrounding the validity of the IPA. It is well-settled that this Court is called upon to settle or resolve only actual cases and controversies, not to render advisory opinions. There must be an existing case or controversy that is ripe for judicial determination, not conjectural or anticipatory. x x x [R]espondents moved for the dismissal of the case revoking the IPA. The dismissal became final and order. Thus, absent any ruling of the court invalidating the IPA, the latter remains valid and binds the parties thereto.

**APPEARANCES OF COUNSEL**

*Pizarras, Gainza and Associates Law Offices* for petitioner.
*Donato Zarate & Rodriguez* for Oscar Camerino.
*Adrian M. Abaigar* for intervenor Mariano Nocum.
*Yasay Regalado Atienza Mendoza & Bernabe Law Offices* for Efren Camerino, Cornelio Mantile & Mildred del Rosario.

## D E C I S I O N

**TIJAM, *J.*:**

This resolves the Motions[1] for Reconsideration filed by Intervenor Mariano Nocom (Nocom) and Oscar Camerino (Oscar), Efren Camerino, Cornelio Mantile, Domingo Enriquez and the Heirs of Nolasco Del Rosario (respondents) questioning Our Decision[2] dated March 29, 2017, the dispositive portion of which, reads:

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

**SO ORDERED.**[3]

### Factual Antecedents

In Our Decision dated March 29, 2017, the antecedent facts of this case are as follows:

Victoria Homes, Inc. (Victoria Homes) was the registered owner of three (3) lots (subject lots), covered by Transfer Certificate of Title (TCT) Nos. (289237) S-6135, S-72244 and (289236) S-35855,

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[1] *Rollo*, pp. 1236-1250 and 1294-1304.

[2] Penned by Associate Justice Bienvenido L. Reyes, concurred in by Associate Justices Presbitero J. Velasco, Jr., Lucas P. Bersamin, Francis H. Jardeleza and Noel Gimenez Tijam; *id*. at 1169-1184.

[3] *Id*. at 1182.

with an area of 109,451 square meters, 73,849 sq m, and 109,452 sq m, respectively. These lots are situated in Bario Bagbagan, Muntinlupa, Rizal (now Barangay Tunasan, Muntinlupa City, Metro Manila).

Since 1967, respondents [Oscar], [Efren], [Cornelio], [Domingo] and [Nolasco] (herein represented by his heirs) were farmers-tenants of Victoria Homes, cultivating and planting rice and corn on the lots.

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

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

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

[SMS] instituted an action for Annulment of Judgment with prayer for the issuance of a Temporary Restraining Order before the CA, docketed as CA-G.R. SP No. 90931. [SMS] sought the annulment

of the RTC decision allowing [the farmers] to redeem the subject property. [SMS] argued that it was deprived of the opportunity to present its case on the ground of fraud, manipulations and machinations of [the farmers]. It further claimed that the Department of Agrarian Reform, not the RTC, had jurisdiction over the redemption case. The CA, however, dismissed the petition on October 20, 2005. Its motion for reconsideration was also denied for lack of merit. The matter was elevated to this Court *via* a petition for review on *certiorari* in G.R. No. 171754, but the same was denied on June 28, 2006. After the denial of its motion for reconsideration, the Decision became final and executory; and an entry of judgment was subsequently made.

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

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

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

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

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

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

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

On October 23, 2006, the appellate court rendered the assailed Decision, finding [SMS] guilty of forum shopping. The CA concluded that the present case was substantially similar to G.R. No. No. 171754. It further held that the compromise agreement could not novate the Court's earlier Decision in G.R. No. 161029 because only four out of five parties executed the agreement.[4]

### The Motions for Reconsideration

In their motions for reconsideration, Nocom and the respondents principally argued that: 1) the validity of the Irrevocable Power of Attorney (IPA) has been already laid to rest. This Court, in G.R. No. 182984, reversed the RTC of Muntinlupa, Branch 203 and the CA when it summarily invalidated the IPA. This Court remanded the case to the RTC and directed the parties to present their evidence to determine the validity of the IPA. However, instead of the respondents presenting their evidence, the latter filed a motion to dismiss the action for revocation of the IPA. The dismissal order of the RTC became final and executory and effectively barred the

[4] *Id*. at 1170-1172.

relitigation of the same issues;[5] and 2) the Compromise Agreements denominated as "*Kasunduan*" are invalid which did not constitute novation of judgment. The *Kasunduan* is void because the amount of the compromise is palpably unconscionable. For a measly sum of ₱300,000.00 the respondents, except Oscar, relinquished a valuable 29-hectare property. Given the redemption price of ₱9,790,612.00, the compromise amount of ₱300,000.00 is highly unconscionable and shocking to the conscience, hence, the same is void.

**Ruling of the Court**

After careful scrutiny of the records of the case and the motions for reconsideration, We find the respondents' and Nocom's arguments meritorious. Accordingly, We **GRANT** the motions for reconsideration.

Indeed, unless annulled by the courts in an appropriate proceeding, the IPA remains valid.

Recall that on December 18, 2013, respondents executed the IPA[6] authorizing Nocom, among others, to pay the redemption price of ₱9,790,612.00 to the court. Oscar, by himself, filed a Petition to Revoke Power of Attorney[7] against Nocom.

On June 15, 2006, the RTC, Branch 203 of Muntinlupa City issued a Summary Judgment[8] revoking the IPA. Upon appeal to the CA, the latter affirmed the summary revocation of the IPA. However, this Court in G.R. No. 182984, reversed the RTC and CA Decision and concluded that the RTC erred in rendering the summary judgment. The Court thus remanded, the case to the RTC for proper proceedings and proper disposition.

Before the RTC, Oscar, with the intervention of the other respondents, instead of presenting their evidence to show the invalidity of the IPA, moved to dismiss the case for the revocation

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[5] *Id*. at 1242-1243.

[6] *Id*. at 455-456.

[7] *Id*. at 461-467.

[8] *Id*. at 513-524.

of the IPA. Thus, the RTC, on September 20, 2011, issued an Order[9] dismissing the case. The said dismissal order was not appealed by the parties, hence, became final and executory.

By the dismissal of the action for revoking the IPA, there is no longer any controversy surrounding the validity of the IPA. It is well-settled that this Court is called upon to settle or resolve only actual cases and controversies, not to render advisory opinions.[10] There must be an existing case or controversy that is ripe for judicial determination, not conjectural or anticipatory.[11]

This Court, in its earlier Resolution[12] dated July 26, 2010, held that:

> We must recall that, in our January 19, 2005 Decision, we upheld respondents' right to redeem the subject lots for ₱9,790,612.00. On December 18, 2003, respondents executed an Irrevocable Power of Attorney in favor of Nocom, authorizing him to redeem the subject lots. Pursuant to the aforesaid authority, Nocom deposited with the court the redemption money plus commission on August 4, 2005. Consequently, the certificates of title in the name of petitioner were cancelled, and new ones were issued in the name of respondents. It was only on August 20, 2005 that [SMS] and respondents executed the *Kasunduan* or the compromise agreement. **Although we could have easily declared that the agreement was invalid as there was nothing more to compromise at that time with the redemption of the property by Nocom**, yet, as narrated earlier, respondents assailed in a separate case the validity of the Irrevocable Power of Attorney allegedly executed by them in favor of Nocom. x x x[13]

As We found earlier, respondents moved for the dismissal of the case revoking the IPA. The dismissal became final and order. Thus, absent any ruling of the court invalidating the IPA, the latter remains valid and binds the parties thereto. As such,

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[9] *Id*. at 1158-1159.

[10] *Ticzon v. Video Post Manila, Inc.*, 389 Phil. 20, 23 (2000).

[11] *Corales, et. al. v. Rep. of the Phils.*, 716 Phil. 432, 441 (2013).

[12] 639 Phil. 495 (2010).

[13] *Id*. at 504-505.

Nocom validly redeemed the subject lots from SMS by consigning[14] the redemption price to the court on August 4, 2005. Corollarily, at the time of the execution of the Kasunduan[15] on August 21, 2005, there is nothing more to compromise since the subject lots had already been validly redeemed by Nocom.

With the validity of the IPA and the redemption made by Nocom, the compromise agreement executed by SMS with the respondents is null and void. As such, We find it no longer necessary to rule on whether the compromise amount of ₱300,000.00 is unconscionable to render the compromise agreement invalid.

With the foregoing disquisitions, We find that the CA correctly upheld the RTC when it denied the Motion to Hold in Abeyance Execution on Ground of Supervening Event filed by SMS in its Order[16] dated September 7, 2005.

**WHEREFORE,** the Motions for Reconsideration are **GRANTED**. Our Decision dated March 29, 2017 is **REVERSED and SET ASIDE**. The Petition for Review on *Certiorari* filed by SM Systems Corporation is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated October 23, 2006 of the Court of Appeals in CA-G.R. SP No. 92994 is hereby **REINSTATED**.

**SO ORDERED.**

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

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[14] *Rollo*, p. 691.

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

[16] *Id*. at 457-458.

**FIRST DIVISION**

[G.R. No. 178696. July 30, 2018]

**BANGKO SENTRAL NG PILIPINAS and its MONETARY BOARD,** *petitioners, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

[G.R. No. 192607. July 30, 2018]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *petitioner, vs.* **CENTRAL BANK BOARD OF LIQUIDATORS,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; TWO WAYS OF EXECUTING A FINAL AND EXECUTORY JUDGMENT; A PETITION FOR REVIVAL OF JUDGMENT HAD ALREADY PRESCRIBED AS IT WAS FILED ONLY AFTER TWELVE YEARS FROM FINALITY OF THE JUDGMENT SOUGHT TO BE REVIVED.—** Section 6, Rule 39 of the Rules of Court, as amended, provides the two ways of executing a final and executory judgment, x x x Accordingly, the prevailing party may move for the execution of a final and executory judgment as a matter of right within five years from the entry of judgment. If no motion is filed within this period, the judgment is converted to a mere right of action and can only be enforced by instituting a complaint for the revival of judgment in regular court within 10 years from finality of judgment. In this case, our Decision in G.R. No. 70054 attained finality and was entered in the Book of Entries of Judgment on February 4, 1992. Hence, with respect to its right of action, BFSMB only had ten years from February 4, 1992 within which to file its petition for revival of judgment. That it only filed the said petition on July 14, 2004, or more than 12 years from February 4, 1992, it is evident that the subject action was filed out of time.

2. **ID.; ID.; ID.; REVIVAL OF JUDGMENT; CONCEPT; THE CAUSE OF ACTION IS THE DECISION ITSELF AND NOT THE MERITS OF THE ACTION UPON WHICH THE JUDGMENT SOUGHT TO BE ENFORCED IS**

**RENDERED.—** An action to revive judgment is one whose exclusive purpose is to enforce a judgment which could no longer be enforced by mere motion. Being a mere right of action, the petition for revival of judgment is subject to defenses and counter claims which may have arisen subsequent to the date it became effective, as for instance, prescription, which bars an action upon judgment after ten years or payment; or counterclaims arising out of transactions not connected with the former controversy. x x x A judgment sought to be revived is one that is already final (and executory); therefore, it is conclusive as to the controversy between the parties up to the time of its rendition. In other words, the new action is an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment. The cause of action of the petition for revival is the judgment to be revived, *i.e.*, the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.

**3. ID.; ID.; ID.; ID.; AN ACTION FOR REVIVAL OF JUDGMENT CANNOT MODIFY, ALTER OR REVERSE THE ORIGINAL JUDGMENT.—** [T]he above-enumerated undertakings prayed for by BFSMB in its petition go beyond the four corners of the Decision sought to be revived. This is not allowed. **An action for revival of judgment cannot modify, alter or reverse the original judgment, which is already final and executory.**

**4. ID.; ID.; ID.; ID.; THE PETITION FOR REVIVAL OF JUDGMENT MUST BE DISMISSED AS THE JUDGMENT OBLIGATION HAD ALREADY BEEN EXTINGUISHED THROUGH PERFORMANCE.—** [G]iven that the reliefs prayed for by BFSMB are outside the ambit of the judgment sought to be revived, coupled with BFSMB's admission in its petition that – On November 6, 1993, the Monetary Board of the Bangko Sentral adopted Resolution No. 427 x x x, **allowing herein Petitioner to reopen and resume business in the Philippines, subject to compliance with certain conditions**. After meeting the preconditions of the Bangko Sentral, Petitioner reopened its doors to the public and resumed business on July 1, 1994 **under the comptrollership of Bangko Sentral**. x x x [A]nd the *Whereas* or preambular clause of the *Memorandum of Agreement* dated December 20, 1999 entered into and executed

> by the authorized representatives of BFSMB and BSP, which categorically stated the fact that the latter had already complied with the Decision in G.R. No. 70054[.][I]t is evident that the judgment obligation imposed by the Decision in G.R. No. 70054 had already been extinguished through its performance – BFSMB had been reopened and reorganized under the comptrollership of the BSP-MB, which comptrollership lasted until January 20, 2000, upon the agreement of BSP-MB and BFSMB to implement the *Memorandum of Agreement* dated December 20, 1999[.]

**APPEARANCES OF COUNSEL**

*Cruz Marcelo & Tenefrancia* for Bangko Sentral ng Pilipinas and its Monetary Board.

*Felimon L. Fernandez & Francisco A. Rivera* for Banco Filipino Savings & Mortgage Bank.

*PDIC Office of the General Counsel* for Banco Filipino Savings and Mortgage Bank.

*Law Firm of Diaz Del Rosario & Associates* for Central Bank Board of Liquidators.

**D E C I S I O N**

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

For the Court's consideration are two consolidated[1] petitions for review on *certiorari* both filed under Rule 45 of the Rules of Court, as amended.

**G.R. No. 178696** assails the Decision[2] and Resolution[3] dated April 12, 2007 and June 26, 2007, respectively, of the Court of

[1] In a Resolution dated October 6, 2010, the Court resolved to consolidate G.R. No. 192607 with G.R. No. 178696 considering that both cases arose from the same factual background and involving the same subject matter and issues, thus, to avoid confllcting decisions; and in order to facilitate work of the Court. (*Rollo* [G.R. No. 192607], p. 1091.)

[2] *Rollo* (G.R. No. 178696), pp. 122-160; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas concurring.

[3] *Id.* at 231-232.

Appeals in CA-G.R. SP No. 96831 entitled, "*Bangko Sentral ng Pilipinas and its Monetary Board v. The Han. Presiding Judge, Regional Trial Court, Branch 62, Makati City and Banco Filipino Savings and Mortgage Bank*."

**G.R. No. 192607**, on the other hand, seeks the reversal of the Decision[4] and Resolution[5] dated September 3, 2008 and June 17, 2010, respectively, of the Court of Appeals in CA-G.R. SP No. 96280 entitled, "*Central Bank Board of Liquidators v. The Regional Trial Court of Makati (Branch 62) and Banco Filipino Savings and Mortgage Bank*."

CA-G.R SP Nos. 96831 and 96280 involved petitions for *certiorari* under Rule 65 of the Rules of Court, as amended, which similarly prayed for the nullification of the Orders dated July 22, 2005[6] and August 25, 2006[7] of the Regional Trial Court (RTC), Branch 62, Makati City in Civil Case No. 04-823 entitled, "*Banco Filipino Savings and Mortgage Bank v. The Monetary Board, Central Bank of the Philippines, now Central Bank Board of Liquidators, and The Monetary Board, Bangko Sentral ng Pilipinas*," which, in turn, denied the separate motions to dismiss filed by the Bangko Sentral ng Pilipinas and its Monetary Board, and the Central Bank-Board of Liquidators, of Banco Filipino Savings and Mortgage Bank's (BFSMB) Petition for Revival of Judgment.

### *The Facts*

The two consolidated petitions share the same set of facts as follows:

Pursuant to Resolution No. 223 dated February 14, 1963 of the Monetary Board (MB) of the Central Bank of the Philippines

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[4] *Rollo* (G.R. No. 192607), pp. 81-92; penned by Associate Justice Magdangal M. De Leon with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring.

[5] *Id.* at 94-102.

[6] *Rollo* (G.R. No. 178696), pp. 327-348.

[7] *Id.* at 321-325.

(CB), BFSMB commenced its operations as savings and mortgage bank on July 9, 1964.[8]

In MB Resolution No. 955 dated July 27, 1984, however, the CB-MB placed BFSMB under conservatorship of one Basilio Estanislao. Eventually, pursuant to another resolution, MB Resolution No. 75 dated January 25, 1985, the CB-MB ordered the closure of BFSMB on the ground that the latter was found to be "*insolvent and that its continuance in business would involve probable loss to its depositors and creditors x x x*."[9]

On February 28, 1985, BFSMB filed before the Court a petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court seeking to annul MB Resolution No. 75 "*as made without or in excess of jurisdiction or with grave abuse of discretion x x x*."[10] The petition was docketed as **G.R. No. 70054** entitled, "*Banco Filipino Savings and Mortgage Bank v. The Monetary Board, Central Bank of the Philippines, Jose B. Fernandez, Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon V. Tiaoqui*," which was later consolidated with eight other cases.[11] In a consolidated Decision dated December 11, 1991, the Court, among others, annulled and set aside MB Resolution No. 75, and ordered the CB-MB to allow BFSMB to resume business. The pertinent portion of the *fallo* of said decision reads:

ACCORDINGLY, decision is hereby rendered as follows:

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[8] *Banco Filipino Savings and Mortgage Bank v. The Monetary Board*, 281 Phil. 842 (1991).

[9] *Id*. at 866.

[10] *Id*. at 867.

[11] G.R. Nos. 68878 (*Banco Filipino Savings and Mortgage Bank v. Hon. Intermediate Appellate Court and Celestina S. Pahimuntung, assisted by her husband*), 77255-58 (*Top Management Programs Corporation and Pilar Development Corporation v. The Court of Appeals, et al.*), 78766 (*El Grande Corporation v. The Court of Appeals, et al.*), 78767 (*Metropolis Development Corporation v. Court of Appeals, et al.*), 78894 (*Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et al.*), 81303 (*Pilar Development Corporation v. Court of Appeals, et al.*), 81304 (*BF Homes Development Corporation v. The Court of Appeals, et al.*) and 90473 (*El Grande Development Corporation v. The Court of Appeals, et al.*).

x x x x x x x x x

2. The petitions in G.R. No. 70054, 78767 and 78894 are GRANTED and the assailed order of the Central Bank and the Monetary Board dated January 25, 1985 is hereby ANNULLED AND SET ASIDE. The Central Bank and the Monetary Board are ordered **to reorganize petitioner Banco Filipino Savings and Mortgage Bank** and **allow the latter to resume business in the Philippines** under the comptrollership of both the Central Bank and the Monetary Board and **under such conditions as may be prescribed by the latter** in connection with its reorganization **until such time that petitioner bank can continue in business with safety to its creditors, depositors and the general public**.[12] (Emphasis supplied.)

Less than two years thereafter, or on July 6, 1993, Republic Act No. 7653, otherwise known as ***The New Central Bank Act of 1993***, took effect.[13] This new law abolished the CB and a *new* central monetary authority was established known as ***Bangko Sentral ng Pilipinas***.[14] But also under the said law, the CB will continue to exist under the name Central Bank-Board of Liquidators[15] (CB-BOL) for the *sole* purpose of administering and liquidating the assets and liabilities of the CB that were not transferred to the BSP.[16]

During meeting held on November 6, 1993, the BSP-MB, resolved —

1. To allow the Banco Filipino Savings and Mortgage Bank (BFSMB) to reopen, subject to submission of its proposed organization including the list of officers and its plan of operations;

2. To instruct Management to write BFSMB officially, advising them of this decision and to ask the bank to collateralize its advances from the Bangko Sentral ng Pilipinas (BSP); and

[12] *Banco Filipino Savings and Mortgage Bank v. The Monetary Board*, *supra* note 8 at 893.

[13] Republic Act No. 7653 was signed into law on June 14, 1993.

[14] *Id*., Section 2.

[15] Referred to in the title of the petition as "Central Board of Liquidators" but interchanged with "Central Bank-Board of Liquidators" or "CB-BOL in the body of the petition and other parts of the record.

[16] *Id.*, Section 132(e).

3. To authorize Management to file a case in Court for the recovery of its advances including interest thereon and look for private a counsel to (a) advise the Monetary Board on the ancillary legal issues and (b) to act as counsel for the BSP Monetary Board in the filing of a civil case against the BFSMB for recovery of money.[17]

Thus, on July 1, 1994, BFSMB reopened and resumed business under the comptrollership of the BSP.

On December 20, 1999, *Memorandum of Agreement*[18] was entered into by and between the BSP and BFSMB. In said agreement, BFSMB was to repay to BSP the amount of ₱3,673,031,589.36 by way of *dacion en pago* of some of its real properties. The amount owed by BFSMB represented the so-called advances extended to it by the defunct CB.

Further, pursuant to the aforementioned Memorandum of Agreement, BSP has to lift its comptrollership over BFSMB on January 20, 2000, and deliver to the latter all collaterals in its custody, including government securities held by designated comptrollers.[19]

Sometime in December 2002, BFSMB experienced massive withdrawals.[20] Thus, BFSMB applied for emergency financial assistance from the BSP to maintain liquidity.

However, such assistance appeared to have been insufficient to stem the effects of the massive withdrawals. Thus, in letter[21] dated October 9, 2003, BFSMB further requested BSP for financial assistance "*similar [to] arrangements*" that had been extended to other banks similarly situated.

In response thereto, the BSP, through a letter[22] dated November 21, 2003 by Director Candon B. Guerrero, *Supervision and*

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[17] *Rollo* (G.R. No. 178696), p. 450.

[18] *Id*. at 453-460.

[19] *Id*. at 458-459.

[20] *Id*. at 360.

[21] *Id*. at 465-466.

[22] *Id*. at 467-469.

*Examination Department III*, and Director Rolando Alejandro Q. Agustin, *Department of Loans and Credit*, advised BFSMB that because of "*strict requirements imposed by [Republic Act No. 7653], BSP is not in a position to assist BFSMB at this time*." But they added that, "*should BFSMB be able to comply with all the legal requirements [relative to its requests], BSP would not hesitate to extend its support and assistance*." One such requirement is "*BSP-approved rehabilitation program*."

Taking its cue from the above-narrated letter, on April 14, 2004, BFSMB transmitted a long term business plan[23] (business plan) for consideration of the BSP-MB. BFSMB's business plan was premised on the assertion that, having "*stepped into the shoes of the old Central Bank*," the BSP was obligated to "reorganize" it (BFSMB) through the following: (*i*) restoring its 89 branches that used to operate prior to its closure in 1985; and (*ii*) extending financial support that are not subjected to stringent requirements.[24]

In reply thereto, however, BSP-MB stated that it had no basis to act on the business plan considering that the latter appeared to have been taken up and approved by BFSMB's Executive Committee, and not by its Board of Directors, and because of BFSMB's insistence that BSP-MB are the successors-in-interest of CB-MB, "*an allegation that [BSP-MB] have consistently denied in x x x previous communications x x x [and which issue] is still subject to contest in pending [court] proceedings*."[25]

Hence, on July 14, 2004, BFSMB filed ***Petition for Revival of Judgment***[26] to enforce the Decision of the Court in G.R. No. 70054 that became final and executory on February 4, 1992. Said petition was filed against the CB-MB, represented by the CB-BOL, and the BSP-MB.

BFSMB alleged in said petition that:

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[23] *Id*. at 476-487.

[24] *Id*. at 470-475.

[25] *Id*. at 488.

[26] *Id*. at 349-366.

5.1. Under the judgment herein sought to be revived, the respondents, having allowed Petitioner to resume business in the Philippines, are under mandate to reorganize Petitioner and place it in such a condition or footing that it can continue in business with safety to its depositors, creditors and the general public.

5.1.1. To reorganize the Petitioner means to put back on operational status its nationwide branch network, which consisted of 89 branches at the time of its illegal closure and the return or recoupment of its 3.8 million depositors which the Petitioner lost as a direct result of the predatory acts of then Central Bank Governor Jose B. Fernandez, the Central Bank and its Monetary Board. The reorganization of these branches will entail, among other things, the recovery of branch sites which were lost during the illegal closure, the recruitment of qualified personnel and the putting of the necessary infrastructure on and in each branch site. All these require substantial cash outlays. To date, Petitioner has not received any assistance whatsoever from the respondents in the restoration and reorganization of its damaged branch network. To date, exclusively on its own, with its own limited resources, Petitioner has managed to reopen and maintain operational only 60 out of its 89 branches prior to its illegal closure.

5.1.2. To put Petitioner in such a condition or footing that it can continue in business with safety to its depositors, creditors and the general public entails making its operations viable and stable. It includes, among other things, refraining from any act or pronouncement that would undermine the faith and confidence of the depositing public in the Bank or destabilize the bank, and providing it ready financial assistance for the restoration of its damaged organization.

5.2. As aforestated, the collection all at once by the Bangko Sentral via the Memorandum of Agreement x x x of the full amount of the "advances" of the Central Bank, together with interest thereon, depleted the Petitioners inventory of valuable real estate properties upon which it relied for its source of income for its operations and thus admittedly, as hereinabove pointed out, adversely affected the Bank's ability to operate with reasonable safety.

5.2.1. In addition, the *dacion* of real properties required by the Memorandum of Agreement deprived the bank of the wherewithal with which to generate the resources to fund the reestablishment of its branch sites and its operations.

x x x x x x x x x

5.3.1. Subsequently, however, BSP and Monetary Board refused altogether to grant Petitioner universal bank license unless and until the latter complies with stringent conditions which were made more so by the depletion of its resources occasioned by the settlement of the "advances" of the Central Bank by "dacion" under the Memorandum of Agreement x x x.

x x x x x x x x x

5.7.4. This refusal to act at all on Petitioner's business plan is patently discriminating in the light of the financial assistance the BSP has extended with dispatch to a number of other banks which unlike Petitioner, were not even victims of injustice or, did not have in their favor Supreme Court decision declaring them as such. The Bangko Sentral had lent out total of ₱43 billion to bail out distressed banks, x x x, the most recent of which was to rehabilitate PBCom which included a "financial enhancement program" x x x.

5.8. The insistence by Bangko Sentral that it is not the successor-in-interest of the Central Bank of the Philippines, notwithstanding that:

a) it reopened Petitioner and placed it under comptrollership in compliance with the judgment of the Supreme Court in G.R. No. 70054, to which it was not a party; and

b) by its collection of the "advances" of the Central Bank as assignee thereof under the Memorandum of Agreement x x x;

does not augur well for its voluntary compliance with the mandate of the Supreme Court for the Central Bank and the Monetary Board to reorganize Petitioner and put it in such condition and footing as will enable it to continue to do business with safety to its depositors, creditors and the general public.

5.9. As herein earlier pointed out, upon effectivity of Republic Act No. 7653, all powers, duties and functions vested by law in the Central Bank of the Philippines were deemed transferred to the Bangko Sentral ng Pilipinas, and all references to the Central Bank in any law or charter were and shall be deemed to refer to the Bangko Sentral, (Sec. 136, R.A. 7653). All incumbent personnel in the Central Bank as of the date of approval of Republic Act 7653 were mandated to continue to exercise their duties and functions as personnel of the Bangko Sentral, (Sec. 131, last par., R.A. 7653). In light of these provisions of Republic Act No. 7653, there can be no doubt or question that the Bangko Sentral is in fact the successor-in-interest of the

Central Bank which, though it continues to exist, is reduced to mere Board of Liquidators to liquidate the affairs of the Central Bank for a period not exceeding 25 years, (Sec. 132, R.A. 7653).[27]

BFSMB prayed for the following reliefs, *viz.*:

1) Reviving the judgment of the Supreme Court in G.R. No. 70054 dated December 11, 1991 x x x; and

2) Directing and enjoining the herein respondents to comply with each and all mandates therein, most particularly that of putting Petitioner in such condition and footing to continue in business with safety to its depositors, creditors and the general public, until Petitioner's damage claims are fully settled;

3) Directing and enjoining the respondents, as part of the mandate of the Supreme Court in its aforementioned judgment, to approve the Petitioner's Business Plan x x x, and to extend to Petitioner the financial arrangements similarly granted to other banks;

4) Granting such other reliefs as may be just and equitable in the premises.[28]

BSP-MB moved to dismiss the petition on the following grounds:

(i) For failure of BFSMB to pay the necessary docket fees given that one of the reliefs prayed for in its petition for revival of judgment is the release to it by the respondents therein the amount of ₱9,000,000,000.00 as embodied in the proposed Business Plan;

(ii) The cause of action is barred by prescription — the petition for revival of judgment was filed only on July 15, 2004, or more than 12 years from the time the Court's Decision in G.R. No. 70054 became final and executory;

(iii) There is no cause of action against BSP-MB considering that they were neither parties to G.R. No. 70054, nor the successors- in-interest of CB-MB;

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[27] *Id*. at 358-363.

[28] *Id*. at 364.

(iv) The petition for revival of judgment is actually one for mandamus;

(v) The BSP-MB's obligation under the Decision in G.R. No. 70054, pursuant to its Charter, *i.e.*, Republic Act No. 7653, had already been extinguished or complied with when the latter allowed BFSMB to resume its operations;

(vi) There is another case involving the same cause of action and the same parties, which is pending before another court, *i.e.*, Civil Case Nos. 8108, 9675 and 10183, consolidated actions for damages filed by BFSMB against several defendants, including BSP-MB;

(vii) The signatories of the petition for revival of judgment have not been properly authorized to file the said petition, but merely to represent BFSMB during the Pre-Trial stage; and

(viii) The petition's Certification of Non-Forum Shopping contained false allegations as it failed to disclose the pendency of Civil Case Nos. 8108, 9675 and 10183.

The CB-BOL likewise filed a motion to dismiss said petition. In its motion, it argued that:

(i) BFSMB deliberately engaged in forum shopping in filing the petition for revival of judgment;

(ii) BFSMB no longer has a cause of action with its admission that it had already resumed its operations starting July 1, 1994, but in any case, it has no authority to "place the petitioner in such condition and footing to continue in business with safety to its depositors, creditors and the general public, until petitioner's damage claims are fully settled" and "to approve petitioner's business plan and extend financial arrangements similarly granted to other banks to petitioner,"[29] because its powers under Republic Act No. 7653 is limited to administering, disposing of and liquidating any assets/liabilities of the CB not transferred to the BSP;

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[29] *Id*. at 602.

(iii) The CB-BOL is an unincorporated government agency without any separate juridical personality; thus, any suit against it would be one filed against the Government that would require its consent to be sued;

(iv) The petition is filed beyond the 10-year period allowed under Article 1144 of the Civil Code;

(v) The petition is an unauthorized pleading as the signatories thereto had not been properly authorized by the Board of Directors of BFSMB to file the same; and

(vi) The summonses were not properly served upon the respondents.

***RTC Order dated July 22, 2005***

In an Order dated July 22, 2005, the RTC denied the separate motions to dismiss, *viz.*:

WHEREFORE, in light of all the foregoing, both respondents' The Monetary Board, Bangko Sentral ng Pilipinas and the Central Bank-Board of Liquidators[']' Motions to Dismiss are both DENIED. Both respondents are directed to file their responsive pleading within fifteen (15) days from notice hereof.[30]

The RTC reasoned that:

In dealing with the first issue which is the alleged nonpayment of the required docket fee x x x this is not an action for the recovery of sum of money and/or for damages. The aforestated sum is merely projected amount which the respondents may extend in the event this Court shall adjudge that the judgment of the Supreme Court be revived as part of its directive to rehabilitate BF with safety to its creditors x x x.

Anent the matter of prescription, there is no dispute that an action [to] revive judgment should be filed within ten years from entry thereof x x x.

x x x x x x x x x

The issues concerning the allegation that the petition fails to state cause of action, respondents are not real party-in-interest and that person who caused the filing of the petition for and in behalf of BF

[30] *Id.* at 348.

had no authority to do so x x x boil down to one ground for the dismissal of the petition that is no cause of action.

x x x x x x x x x

A careful analysis of the Petition readily showed that it pleaded well the causes of action against both respondents. Petitioner's legal right is to secure full and complete satisfaction of the judgment in its favor in G.R. No. 70054. The corresponding duty or obligation of the respondents is to provide such full and complete satisfaction. The act or omission of the respondents in violation of Petitioner's legal right consists of their failure and/or refusal to provide such full and complete satisfaction of the judgment in G.R. No. 70054.

Anent the matter regarding the assertion of respondent BSP that it was not party to G.R. No. 70054, it cannot be denied that the BSP and the Monetary Board was the transferee of the assets and liabilities of the Central Bank pursuant to Sec. 132 of R.A. 7653 including all the powers, duties and functions vested by law in the Central Bank not inconsistent with the provisions of R.A. 7653 are also deemed transferred to the BSP, and all references to the Central Bank in any law or special charters shall be deemed to refer to the BSP. It is safe to conclude that the BSP is the successor-in-interest of then Central Bank x x x. CB-BOL's evasion likewise cannot be sustained. The judgment sought to be revived directed the Central Bank to reorganize petitioner Banco Filipino Savings and Mortgage Bank [and] allow the latter to resume business in the Philippines under the comptrollership of both Central Bank and the [Monetary] Board and under such conditions as may be prescribed by the latter in connection with its reorganization until such time that petitioner bank can continue in business with safety to its creditors, depositors and the general public. By force of R.A. 7653, the Central Bank and the Monetary Board is now known as the CB-Board of Liquidators for limited period of time, and the contention that it is an unincorporated agency has no leg to stand on. Clearly, it is real party-in-interest.

On the issue of lack of authority to file the instant petition x x x.

x x x [P]erforce, the authority granted in the Board Resolution is actually to represent the Bank at the pre-trial conference and all other stages of any case involving Banco Filipino. Suffice it to state that indeed the phrase "all other stages of any case" is broad enough to cover any stage from commencement to termination of any case involving BF, including filing, initiating and prosecuting any such case. BF submitted [a new] Secretary's Certificate later executed

x x x clarifying the concern of CB-BOL x x x.

x x x x x x x x x

The ground of litis pendencia is likewise unavailing in this case x x x.

There is no dispute that in the three (3) civil cases pending before Branch 136 of the Makati RTC filed by petitioner, BF is the plaintiff in all three cases, with the same Bangko Sentral ng Pilipinas, Monetary Board, and the Central Bank of the Philippines (Central Bank Board of Liquidators) as the defendants. However, record likewise showed that there is no similarity in reliefs sought in the instant case and Civil [Case] Nos. 8108, 9675 and 10183. Here, the nature of the action of BF is the revival of the judgment in G.R. No. 70054 so that the *fallo* thereof may be implemented. The relief sought in the above-entitled cases, on the other hand, is principally the award of damages in its favor to the extent necessary to restore the Petitioner to its full operational status as if it had never been closed. There is therefore, no identity of the reliefs prayed for x x x.

x x x x x x x x x

Anent CB-BOL's protestation that summons intended for it was not served upon its president, managing partner, general manager, corporate secretary, treasurer or in-house counsel pursuant to Section 11[,] Rule 14 of the Revised Rules of Court. By mere oversight or an intentional attempt to mislead this Court, it invoked a rule specifically applicable to domestic private juridical entity and certainly it can never be private corporation x x x. Since, CB-BOL is the name given by R.A. 7653 to the Central Bank, as such the provision that squarely appl[ies] is [S]ection 13 of the same rule which says service may be effected on the solicitor general; x x x or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. It appearing further that summons addressed to CB-BOL was received at the Office of the General Counsel, BSP Complex that the case was made known to them hence the filing of its motion to dismiss and no undue prejudice was sustained by it with the procedural lapse, this Court shall uphold the service of summons unto it. However, in the interest of justice and fair play, CB-BOL shall be afforded [fresh] period within which it could plead.[31]

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[31] *Id.* at 340-348.

Citing A.M. No. 03-1-09-SC[32] dated August 16, 2004, the RTC further observed that "*[BSP-MB and CB-BOL] should have at the very least incorporated the issues now under consideration in their respective responsive pleadings as their affirmative defenses pursuant to the Supreme Court Administrative [i]ssuance. Especially so in this particular case where it appearing that almost if not all the grounds specified under the rules were advanced.*"[33]

***RTC Order dated August 25, 2006***

The subsequent motions for reconsideration were likewise denied by the RTC in another Order dated August 25, 2006, to wit:

> WHEREFORE, premises considered, finding no cogent reason to disturb the challenged Order dated July 22, 2005, the instant Motions for Reconsideration separately filed by Respondents CB-BOL and BSP and The Monetary Board, the Motion to Se[t] Case for Preliminary Hearing on the Affirmative Defenses and Summary Judgment are all DENIED for utter lack of merit.
>
> ACCORDINGLY, CB-BOL is given another inextendible period of fifteen (15) days from notice hereof within which it could plead. The Court noted that the last pleading to be served and filed between BF and BSP was already placed on Record on October 12, 2005 (Petitioner's Answer to BSP's Counterclaim), there is thus tender of issues as between them. However, in order to have an orderly proceedings in this case, joint pre-trial and trial should be conducted. Meantime, the Pre-trial Conference is held in abeyance until CB-BOL and BF has (sic) filed it (sic) Answer and Reply, respectively.[34]

Aggrieved, BSP-MB and CB-BOL went to the Court of Appeals *via* separate petitions for *certiorari*. The petition filed by the BSP-MB was docketed as **CA-G.R. SP No. 96831** entitled, "*Bangko Sentral ng Pilipinas and its Monetary Board v. The*

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[32] Entitled, "RE: PROPOSED RULE ON GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT INTHE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES."

[33] *Rollo* (G.R. No. 178696), p. 339.

[34] *Id*. at 325.

*Hon. Presiding Judge, Regional Trial Court, Branch 62, Makati City and Banco Filipino Savings and Mortgage Bank*"; while the one filed by the CB-BOL was docketed as **CA-G.R. SP No. 96280** entitled, "*Central Bank Board of Liquidators v. The Regional Trial Court of Makati (Branch 62) and Banco Filipino Savings and Mortgage Bank*."

***The Court of Appeals Decisions***

**CA-G.R. SP NO. 96831**

In Decision dated April 12, 2007, the Court of Appeals dismissed the petition for *certiorari*, to wit:

> WHEREFORE, in view of the foregoing, the petition is hereby DENIED and accordingly DISMISSED for lack of merit.[35]

The Court of Appeals held that BSP-MB failed to show that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the same.

Specifically, the Court of Appeals held that the "prayer for the release of Nine Billion Pesos x x x loan is only incidental to its prayer to revive the subject decision[,] which ordered the defunct [CB-MB] to reorganize and assist [BFSMB] until such time that it can already operate safely to its creditors."[36]

As to the alleged defective Verification and Certification of Non-Forum Shopping, the Court of Appeals considered the allegation in the Secretary's Certificate stating that "*the President or the Executive Vice-President is hereby authorized to represent the Bank at the pre-trial conference and* ***all other stages*** *of any case involving Banco Filipino*,"[37] to be broad enough to cover any stage from commencement to termination of any case, *i.e.*, filing, initiating and prosecuting any case.

As to the matter of prescription, the Court of Appeals held that the allegations of the petition showed that the enactment of Republic Act No. 7653 effectively suspended the running

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[35] *Id*. at 160.

[36] *Id*. at 144.

[37] *Id*. at 145.

of the prescription period to enforce the subject judgment, *i.e.*, the said law appears to have rendered the enforceability of the subject judgment uncertain as the CB was "downgraded" into a mere board of liquidators, while at the same time giving its powers, duties and functions to new entity not a party to G.R. No. 70054.

On the issue of the supposed lack of cause of action against BSP-MB, the latter not having been a party to G.R. No. 70054, the Court of Appeals agreed with the RTC that BSP-MB are estopped from denying that they are successors-in-interest and/or transferees *pendente lite* of CB-MB given that BSP-MB "*sought to collect, and eventually collected, from [BFSMB] the so called 'advances' [by] the [CB] which BSP conceded were among the assets transferred to [BSP-MB] from [CB] x x x.*"[38]

The Court of Appeals likewise held that the reliefs sought by the petition for revival were not similar to those prayed for in Civil Case Nos. 8108,[39] 9675,[40] and 10183.[41] Hence, there was no *litis pendentia*.

BSP-MB's subsequent motion for reconsideration was denied in Resolution dated June 26, 2007; thus, the instant petition docketed as **G.R. No. 178696**.

**CA-G.R. SP NO. 96280**

In contrast to the aforequoted ruling, another Division of the Court of Appeals ordered the dismissal of BFSMB's Petition for Revival of Judgment in a Decision promulgated on September 3, 2008, the *fallo* of which reads:

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[38] *Id*. at 152.

[39] A complaint for the annulment of MB Resolution No. 955 (with damages) placing BFSMB under conservatorship, filed sometime in 1984.

[40] A complaint for the annulment of MB Resolution No. 75 (with damages) ordering the closure of BFSMB and placing the latter under receivership, filed in 1985.

[41] A complaint for the annulment of the CB-MB's order directing the liquidation of BFSMB (with damages), filed in 1985.

WHEREFORE, the assailed Orders of respondent court dated July 22, 2005 and August 25, 2006 are ANNULLED and SET ASIDE. Private respondent's Petition for Revival of Judgment is hereby DISMISSED for having been filed beyond the reglementary period.[42]

The Court of Appeals held that the petition for revival of judgment was already "*time-barred*" as it was "filed beyond the period allowed by substantive law and procedural rules."[43] It explained that —

Thus, going by BF's logic, the five-year period for executing the judgment sought to be revived by motion, which started to run on February 4, 1992, and was tolled on July 6, 1993 when R.A. 7653 became a law and took effect, started to run again on December 21, 1999. The five-year period, therefore, ended on July 17, 2003. Correspondingly, the ten-year period to revive the subject judgment will allegedly expire five (5) years from July 17, 2003, or on July 16, 2008.

We do not agree with BF's contentions.

First of all, contrary to BF's proposal, there was no vacuum created with the passage of R.A. 7653 that would render BF uncertain as against whom it can enforce its rights. All powers, duties and functions vested by law in the Central Bank of the Philippines were deemed transferred to the BSP. The law provides that all references to the Central Bank of the Philippines in any law or special charters shall be deemed to refer to the BSP. Further, R.A. 7653 states that any asset or liability of the Central Bank not transferred to the Bangko Sentral shall be retained and administered, disposed of and liquidated by the Central Bank itself which shall continue to exist as the CB Board of Liquidators or CB-BOL. In other words, the entities where the assets and liabilities of the Central Bank have been transferred are readily identifiable. There is, thus, no reason for BF to use, as an excuse for its delay to file an action to revive judgment, the creation of the BSP as the new central monetary authority. It is apparent that there has been merely a transfer of interest between the two entities, with the organization made more efficient by the creation of a body known as the CB-BOL.

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[42] *Rollo* (G.R. No. 192607), p. 91.

[43] *Id.*

Second, the provision relied on by BF is inapplicable primarily because according to jurisprudence, Article 1155 of the Civil Code refers to actions to collect debt under contract or upon the law and not to one confirmed by judgment of court. According to the Supreme Court, Article 1155 refers to the tolling of the period of prescription of the action to collect, not to the action to enforce or revive judgment x x x.

x x x x x x x x x

Since BF's Petition for Revival of Judgment does not refer to any debt or contract between the parties, Article 1155 invoked by BF as a defense against a bar by extinctive prescription is not applicable.[44]

The Court of Appeals concluded that BFSMB only had until February 4, 2002, or 10 years from February 4, 1992, within which to file an action for revival of the judgment in G.R. No. 70054.

BFSMB's subsequent motion for reconsideration was denied in a Resolution dated June 17, 2010; hence, the present petition docketed as **G.R. No. 192607**.

***The Issue***

**G.R. No. 178696**

BSP-MB anchor their petition on the following issues, *viz.*:

I

WHETHER THE COURT OF APPEALS ACTED NOT IN ACCORD WITH THE CONSTITUTION, LAW AND ESTABLISHED JURISPRUDENCE, BY RULING THAT PETITIONER BANGKO SENTRAL SUCCEEDS IN THE ALLEGED LIABILITIES OF THEN CENTRAL BANK TO BANCO FILIPINO, INSTEAD OF THE CENTRAL BANK-BOARD OF LIQUIDATORS, PURSUANT TO SECTION 132 (E) OF RA NO. 7653.

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT BANCO FILIPINO'S PETITION FOR REVIVAL

[44] *Id.* at 88-90.

DATED 08 JULY 2004 STATED CAUSE OF ACTION AGAINST PETITIONERS BSP-MB, WHEN PETITIONERS ARE NEITHER PARTIES TO G.R. NO. 70054, NOR TRANSFEREES *PENDENTE LITE* OF THEN CENTRAL BANK.

III

WHETHER THE COURT OF APPEALS GRAVELY ERRED BY RULING THAT PRIVATE RESPONDENT'S FILING OF ITS PETITION FOR REVIVAL DATED 08 JULY 2004 IS ALLEGEDLY NOT BARRED BY PRESCRIPTION, WHEN IT IS READILY APPARENT THAT THE REMEDY TO REVIVE THE DECISION DATED 11 DECEMBER 1991 RENDERED BY THE HONORABLE COURT IN G.R. NO. 70054 HAS ALREADY PRESCRIBED.

IV

WHETHER THE RELIEFS SOUGHT BY PRIVATE RESPONDENT BANCO FILIPINO ARE BEYOND THE AMBIT OF THE JUDGMENT SOUGHT TO BE REVIVED.

V

WHETHER THE RELIEFS LIE PURELY WITHIN THE DISCRETION OF PETITIONERS BSP-MB AND, THUS, CANNOT BE MANDATED BY JUDICIAL COMPULSION THROUGH MERE REVIVAL OF JUDGMENT.

VI

WHETHER THE COURT OF APPEALS GRAVELY ERRED BY RULING THAT THE PRAYER OF PRIVATE RESPONDENT BANCO FILIPINO IN ITS PETITION FOR REVIVAL DATED 08 JULY 2004 FOR APPROVAL OF ITS BUSINESS PLAN HAS ALLEGEDLY NOT BEEN RENDERED MOOT BY PRIVATE RESPONDENT'S SUBMISSION TO PETITIONERS OF REVISED BUSINESS PLAN ON 07 APRIL 2005.

VII

WHETHER THE COURT OF APPEALS GRAVELY ERRED AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT FAILED TO APPRECIATE THAT THE OBLIGATIONS MANDATED BY THE DECISION DATED 11 DECEMBER 1991 RENDERED IN G.R. NO. 70054 HAD OBVIOUSLY BEEN PERFORMED.

VIII

WHETHER THE COURT OF APPEALS GRAVELY ERRED AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT RULED THAT THE COURT *A QUO* HAS ACQUIRED JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION FOR REVIVAL DATED 08 JULY 2004, NOTWITHSTANDING PRIVATE RESPONDENT BANCO FILIPINO'S DELIBERATE FAILURE TO PAY THE PROPER DOCKET FEES.

IX

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PRIVATE RESPONDENT BANCO FILIPINO IS ALLEGEDLY NOT GUILTY OF FORUM SHOPPING.

X

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PRIVATE RESPONDENT BANCO FILIPINO'S SIGNATORIES ARE PROPERLY AUTHORIZED TO FILE THE CASE *A QUO* AND SIGN THE CERTIFICATION AGAINST FORUM SHOPPING.[45]

**G.R. No. 192607**

BFSMB raises the following issues for the Court's resolution, *viz.*:

I

THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND ACTED IN WAY NOT IN ACCORD WITH LAW OR THE RULES OR THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT WHEN IT GAVE DUE COURSE TO AND GRANTED THE HEREIN RESPONDENT'S PETITION FOR CERTIORARI AND PROHIBITION UNDER RULE 65 OF THE RULES OF COURT, TO ANNUL AND SET ASIDE THE TRIAL COURT'S DENIAL OF RESPONDENT'S MOTION TO DISMISS THE PETITION FOR REVIVAL OF JUDGMENT THEREIN, AND

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[45] *Rollo* (G.R. No. 178696), pp. 26-27.

WITHOUT ANY SHOWING OR FINDING OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT.

II

THE COURT OF APPEALS HAS RESOLVED IN A WAY NOT IN ACCORD WITH LAW OR THE RULES OR THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT, OR WITH GRAVE ABUSE OF DISCRETION BLATANTLY DISREGARDED OR CAVALIERLY GLOSSED OVER AND BRUSHED ASIDE, THE FOLLOWING MATTERS OF SUBSTANCE IN THE INSTANT CASE, TO WIT:

A. THE CAPACITY OF HEREIN RESPONDENT TO INITIATE THE PETITION IN CA-G.R. SP NO. 96280, GIVEN ITS ADMISSION AND CONFESSION THAT IT IS AN UNINCORPORATED GOVERNMENT AGENCY;

B. THE TOLLING OF THE PERIOD OF PRESCRIPTION AND THE ALLEGATIONS OF FACTS RELATIVE THERETO IN THE PETITION IN THE TRIAL COURT WHICH RESPONDENT SOUGHT TO HAVE DISMISSED;

C. THE DOCTRINE OF STARE DECISIS RELATIVE TO THE EARLIER DECISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 96831; AND

D. THE ABANDONMENT BY HEREIN RESPONDENT OF ITS PETITION IN CA-G.R. SP NO. 96280 AND OF THE HEREIN ASSAILED DECISION RENDERED THEREIN BY ITS FILING WITH THE TRIAL COURT OF ITS ANSWER TO THE PETITION THEREIN AFTER THE COURT OF APPEALS HAD ORDERED IN ITS AFORECITED DECISION THE DISMISSAL THEREOF.[46]

### *The Court's Ruling*

BSP-MB's petition in G.R. No. 178696 is meritorious, while BFSMB's petition in G.R. No. 192607 lacks merit.

Section Rule 39 of the Rules of Court, as amended, provides the two ways of executing a final and executory judgment, *viz*.:

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[46] *Rollo* (G.R. No. 192607), pp. 24-25.

Sec. 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action x x x.

The foregoing provision, however, must be read in conjunction with Articles 1144 (paragraph 3) and 1152, both of the Civil Code, which provide:

Article 1144. The following actions must be brought **within ten years** from the time the right of action accrues:

x x x x x x x x x

(3) Upon judgment.

Article 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences **from the time the judgment became final**. (Emphases supplied.)

Accordingly, the prevailing party may move for the execution of a final and executory judgment as a matter of right within five years from the entry of judgment. If no motion is filed within this period, the judgment is converted to a mere right of action and can only be enforced by instituting a complaint for the revival of judgment in regular court within 10 years from finality of judgment.[47]

In this case, our Decision in G.R. No. 70054 attained finality and was entered in the Book of Entries of Judgment on February 4, 1992. Hence, with respect to its right of action, BFSMB only had ten years from February 4, 1992 within which to file its petition for revival of judgment. That it only filed the said petition on July 14, 2004, or more than 12 years from February 4, 1992, it is evident that the subject action was filed out of time.

BFSMB insists that the passage of RA No. 7653 tolled the period of prescription because it rendered the enforceability of the judgment sought to be revived uncertain, *i.e.*, when the

[47] *Villeza v. German Management and Services, Inc.*, 641 Phil. 544, 550 (2010).

enforceability of a final judgment becomes uncertain, the period for such purpose is tolled and prescription does not operate. Further, it asserts that the partial performance by BSP of the subject judgment obligation further tolled the running period.

We disagree.

As correctly held by the Court of Appeals in CA-G.R. SP No. 96280 —

> First of all, contrary to BF's proposal, there was no vacuum created with the passage of R.A. 7653 that would render BF uncertain as against whom it can enforce its rights. All powers, duties and functions vested by law in the Central Bank of the Philippines were deemed transferred to the BSP. The law provides that all references to the Central Bank of the Philippines in any law or special charters shall be deemed to refer to the BSP. Further, R.A. 7653 states that any asset or liability of the Central Bank not transferred to the Bangko Sentral shall be retained and administered, disposed of and liquidated by the Central Bank itself which shall continue to exist as the CB Board of Liquidators or CB-BOL. In other words, the entities where the assets and liabilities of the Central Bank have been transferred are readily identifiable. There is, thus, no reason for BF to use, as an excuse for its delay to file an action to revive judgment, the creation of the BSP as the new central monetary authority. It is apparent that there has been merely transfer of interest between the two entities, with the organization made more efficient by the creation of a body known as the CB-BOL.[48]

And worth noting is the fact that when BFSMB finally filed the petition for revival of judgment in 2004, it filed it against both the BSP-MB and CB-BOL. BFSMB could have done the same and filed the action against both entities anytime within the ten year prescriptive period if it was really unsure which of the two to go against.

Therefore, the petition for revival of judgment filed on July 14, 2004 should be dismissed for having been filed beyond the prescriptive period of ten years from the finality of our judgment in G.R. No. 70054 on February 4, 1992, or more than 12 years later.

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[48] *Rollo* (G.R. No. 192607), pp. 88-90.

In any event, even if we were to disregard the issue of prescription, the petition for revival of judgment filed by BFSMB must still be dismissed as the judgment obligation had already been extinguished through performance.

An action to revive judgment is one whose exclusive purpose is to enforce judgment which could no longer be enforced by mere motion.[49]

Being a mere right of action, the petition for revival of judgment is subject to defenses and counter claims which may have arisen subsequent to the date it became effective, as for instance, prescription, which bars an action upon judgment after ten years or payment; or counterclaims arising out of transactions not connected with the former controversy.[50]

In the present petitions, the judgment sought to be revived pertains to paragraph of the dispositive of the Court's Decision dated December 11, 1991 in G.R. Nos. 70054, 68878, 77255-58, 78766, 78767, 78894, 81303, 81304, and 90473 entitled, "*Banco Filipino Savings and Mortgage Bank v. The Monetary Board*,"[51] which, again, states:

ACCORDINGLY, decision is hereby rendered as follows:

x x x x x x x x x

2. The petitions in G.R. No. 70054, 78767 and 78894 are GRANTED and the assailed order of the Central Bank and the Monetary Board dated January 25, 1985 is hereby ANNULLED AND SET ASIDE. The Central Bank and the Monetary Board are ordered **to reorganize** petitioner Banco Filipino Savings and Mortgage Bank and **allow the latter to resume business** in the Philippines **under the comptrollership** of both the Central Bank and the Monetary Board and **under such conditions as may be prescribed** by the latter in connection with its reorganization **until such time** that petitioner

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[49] *Caiña v. Court of Appeals*, 309 Phil. 241, 249 (1994).

[50] *Compania General de Tabacos v. Martinez*, 29 Phil. 515, 520-521 (1915).

[51] 281 Phil. 847, 893 (1991).

bank can continue business with safety to its creditors, depositors and the general public.

In filing the petition for revival of the above-quoted decision, BFSMB alleges that its reopening was just in partial fulfillment of what the Court mandated upon CB-MB, now BSP-MB. BFSMB still had to be reorganized and put in such "*condition and footing to continue in business with safety to its depositors, creditors and the general public, until [its] damage claims are fully settled*."

BSP-MB and CB-BOL, however, counter-argue that (*i*) the petition for revival stated no cause of action against them because they are neither the successors-in-interest of the defunct CB-MB, nor parties to G.R. No. 70054, and further, as to CB-BOL, that the latter has no authority under Republic Act No. 7653 other than to administer, dispose and liquidate assets/liabilities of the CB not already transferred to the BSP; (*ii*) the judgment obligation had already been extinguished by performance, when BSP-MB reopened and reorganized BFSMB under the former's comptrollership; and (*iii*) the action for revival of judgment had already prescribed. In other words, BSP-MB and CB-BOL advance the following grounds as basis for their respective motions to dismiss — failure to state cause of action, extinguishment of the obligation and prescription are valid grounds for the dismissal of an action — paragraphs (f), (g) and (h) of Section 1, Rule 16 of the Rules of Court, as amended, which read:

Rule 16
MOTION TO DISMISS

SECTION 1. *Grounds*. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

> (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished[.]

Instead of settling the issue, however, the Court of Appeals (in CA-G.R. SP No. 96831) hedged and reasoned that the matter of performance, among others, "*[cannot] be settled by simple evaluation of the petition for revival and the motion to dismiss but, require thorough thumbing of the records as well as judicious evaluation of the evidence that would be submitted by the parties during trial*."[52]

We disagree.

A judgment sought to be revived is one that is already final (and executory); therefore, it is conclusive as to the controversy between the parties up to the time of its rendition. In other words, the new action is an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment.[53] The cause of action of the petition for revival is the judgment to be revived,[54] *i.e.*, the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.

In these cases, the subject Decision in G.R. No. 70054 being the very cause of action of the petition for revival, it was deemed written into the petition. There is no need to go into the records of the case or await evidence to be presented at trial to determine whether or not such obligation had already been performed.

In filing the motions to dismiss, however, the Court of Appeals (in CA-G.R. SP No. 96831) considered BSP-MB to have admitted the truth of all the allegations of the petition for revival. BSP-MB should now establish by concrete and convincing evidence, in full-blown trial, any assertion to the contrary.

The general rule is that in a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of

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[52] *Rollo* (G.R. No. 178696), p. 1426.

[53] *Azotes v. Blanco*, 85 Phil. 90, 91 (1949).

[54] *Estonina v. Southern Marketing Corp.*, 249 Phil. 562, 567 (1988).

the ultimate facts contained in the plaintiff's complaint.[55] But this principle of hypothetical admission admits of exceptions. In *Tan v. Court of Appeals*,[56] this Court held:

> The flaw in this conclusion is that, while conveniently echoing the general rule that averments in the complaint are deemed hypothetically admitted upon the filing of motion to dismiss grounded on the failure to state a cause of action, it did not take into account the equally established limitations to such rule, *i.e.*, that motion to dismiss does not admit the truth of mere epithets of fraud; nor allegations of legal conclusions; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor mere conclusions of law; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insult the opposing party; nor to legally impossible facts; **nor to facts which appear unfounded by record incorporated in the pleading, or by document referred to;** and, **nor to general averments contradicted by more specific averments. A more judicious resolution of motion to dismiss, therefore, necessitates that the court be not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom.** Courts may consider other facts within the range of judicial notice as well as relevant laws and jurisprudence which the courts are bound to take into account, and **they are also fairly entitled to examine records/documents duly incorporated into the complaint by the pleader himself in ruling on the demurrer to the complaint**. (Emphases supplied.)

BFSMB's assertions that the judgment obligation includes the following undertakings:

(1) to put BFSMB in such condition and footing to continue in business with safety to its depositors, creditors and the general public, until [its] damage claims in Civil Case Nos. 8108, 9675 and 10183 are fully settled;

(2) to approve BFSMB's proposed business plan,

(3) to put back in operational status BFSMB's nationwide

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[55] *Pioneer Concrete Philippines, Inc. v. Todaro*, 551 Phil. 589 (2007).

[56] 356 Phil. 555, 563-564 (1998).

branch network consisting of 89 branches and recoup its 3.8 Million depositor base; and

(4) to extend to BFSMB the same financial arrangements granted to other banks.[57]

appear unfounded from a record incorporated in the petition, or by a document referred therein, *i.e.*, the Decision in G.R. No. 70054.

To be sure, in G.R. No. 70054, when this Court declared null and void MB Resolution No. 75 ordering the closure of BFSMB and putting it on receivership, this Court directed the defunct CB-MB —

> **[T]o reorganize** petitioner Banco Filipino Savings and Mortgage Bank and **allow x x x to resume business** in the Philippines **under the comptrollership** of both the Central Bank and the Monetary Board **and under such conditions as may be prescribed by the latter** in connection with its reorganization **until such time** that petitioner bank can continue in business with safety to its creditors, depositors and the general public.[58]

Thus, what this Court obliged CB-MB to do was: (1) to reorganize, and (2) to reopen — BFSMB. Such reorganization and reopening, however, were imposed with conditions, to wit: (1) that they be done under the comptrollership of the CB-MB; and (2) the reorganization of BFSMB should be done under conditions to be prescribed by the CB-MB. Note further, that the comptrollership and imposition of certain conditions by CB-MB were to be accomplished within a period, *i.e.*, "*until such time that petitioner bank can continue in business with safety to its creditors, depositors and the general public*." But most importantly, nothing in the dispositive of the subject decision specified and enumerated how CB-MB was to reorganize BFSMB, or what conditions would be imposed in furtherance thereof. Hence, it cannot be said that the above-enumerated

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[57] *Rollo* (G.R. No. 178696), pp. 358-359.

[58] *Banco Filipino Savings and Mortgage Bank v. Monetary Board*, *supra* note 8 at 893.

undertakings claimed by BFSMB to be accomplished by BSP-MB are supported by the Decision in G.R. No. 70054.

Consequently, it was incorrect to state that because BSP-MB and CB-BOL were deemed to have hypothetically admitted the ultimate facts of the petition for revival, they are now obligated to present clear and convincing evidence in full-blown trial to counter the admission that the judgment obligation had only been partially fulfilled. More importantly, it was grave error for the trial and appellate courts to restrict themselves to the examination of the petition for revival of judgment alone, *sans* the Decision in G.R. No. 70054, in determining whether or not to dismiss the petition for revival.

At any rate, the above-enumerated undertakings prayed for by BFSMB in its petition go beyond the four corners of the Decision sought to be revived. This is not allowed. **An action for revival of judgment cannot modify, alter or reverse the original judgment, which is already final and executory.**[59]

To clarify, the obligation imposed upon CB-MB in the dispositive portion of the Decision in G.R. No. 70054 stemmed from what was provided in Section 29 of Republic Act No. 265, otherwise known as *The Central Bank Act* - that a closed bank may be reorganized or otherwise placed in such condition that it may be permitted to resume business with safety to its depositors, creditors and the general public. Specifically, We stated therein that —

> We are aware of the Central Bank's concern for the safety of Banco Filipino's depositors as well as its creditors including itself which had granted substantial financial assistance up to the time of the latter's closure. But there are alternatives to permanent closure and liquidation to safeguard those interests as well as those of the general public for the failure of Banco Filipino or any bank for that matter may be viewed as an irreversible decline of the country's entire banking system and ultimately, it may reflect on the Central Bank's own viability. For one thing, **the Central Bank and the Monetary Board should exercise <u>strict supervision</u> over Banco Filipino**. They should

[59] *Heirs of Numeriano Miranda, Sr. v. Miranda*, 713 Phil. 541, 551 (2013).

**take all the necessary steps not violative of the laws that will fully secure the repayment of the total financial assistance that the Central Bank had already granted or would grant in the future**.[60] [Emphases supplied.]

From the foregoing, there is nothing in our Decision in G.R. No. 70054 which empowers the RTC and the Court of Appeals to fetter the discretion of BSP-MB regarding the conditions to impose and/or concessions to extend during the reorganization of BFSMB.

That this Court purposely left the finer details of the reorganization and the conditions thereof to the sound discretion of then CB-MB was an acknowledgment of the fact that the CB alone was vested by statute with the power and/or authority to determine or prescribe the conditions under which such resumption of business shall take place.[61] On this point, We agree with BSP-MB that, "*the reliefs prayed for by BFSMB cannot be mandated by judicial compulsion through a mere revival of judgment considering that they lie within the discretion of the BSP-MB taking into account sound banking principles*."

Verily, nothing changed with the enactment of Republic Act No. 7653. BSP, the independent central monetary authority established by the law, is still given sufficient independence and latitude to carry out its mandate. Sections to of Republic Act No. 7653 bear this out, *viz.*:

SECTION 1. *Declaration of Policy*. — The State shall maintain a central monetary authority that shall **function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit**. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being government-owned corporation, **shall enjoy fiscal and administrative autonomy**.

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[60] *Banco Filipino Savings and Mortgage Bank v. Monetary Board*, *supra* note 8 at 892-89.

[61] Republic Act No. 265, Section 29.

SECTION 2. *Creation of the Bangko Sentral*. — There is hereby established an independent central monetary authority, which shall be a body corporate known as the *Bangko Sentral ng Pilipinas*, hereafter referred to as the *Bangko Sentral*.

The capital of the *Bangko Sentral* shall be Fifty billion pesos (₱50,000,000,000), to be fully subscribed by the Government of the Republic, hereafter referred to as the Government, Ten billion pesos (₱10,000,000,000) of which shall be fully paid for by the Government upon the effectivity of this Act and the balance to be paid for within a period of two (2) years from the effectivity of this Act in such manner and form as the Government, through the Secretary of Finance and the Secretary of Budget and Management, may thereafter determine.

SECTION 3. *Responsibility and Primary Objective*. **— The *Bangko Sentral* shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks** and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

**The primary objective of the *Bangko Sentral* is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.** (Emphases supplied.)

Accordingly, given that the reliefs prayed for by BFSMB are outside the ambit of the judgment sought to be revived, coupled with BFSMB's admission in its petition that —

On November 6, 1993, the Monetary Board of the Bangko Sentral adopted Resolution No. 427 x x x, **allowing herein Petitioner to reopen and resume business in the Philippines, subject to compliance with certain conditions**. After meeting the preconditions of the Bangko Sentral, Petitioner reopened its doors to the public and resumed business on July 1, 1994 **under the comptrollership of Bangko Sentral**.[62] (Emphasis supplied.)

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[62] Petition for Revival of Judgment, p. 6; *rollo* (G.R. No. 178696), p. 354.

and the *Whereas* or preambular clause of the *Memorandum of Agreement*[63] dated December 20, 1999 entered into and executed by the authorized representatives of BFSMB and BSP, which categorically stated the fact that the latter had already complied with the Decision in G.R. No. 70054, *viz.*:

> WHEREAS, on December 6, 1993, the BANGKO SENTRAL, through its Monetary Board, **complied with the decision of the Supreme Court** by authorizing BANCO FILIPINO to resume business under BANGKO SENTRAL comptrollership, and that on July 1, 1994, BANCO FILIPINO re-opened its doors to the public and has, since then, been publicly and actively engaged in the banking business[.][64] (Emphasis supplied.)

it is evident that the judgment obligation imposed by the Decision in G.R. No. 70054 had already been extinguished through its performance — BFSMB had been reopened and reorganized under the comptrollership of the BSP--MB, which comptrollership lasted until January 20, 2000, upon the agreement of BSP-MB and BFSMB to implement the *Memorandum of Agreement* dated December 20, 1999, to wit:

> 7. IMPLEMENTATION The parties undertake to perform the following acts to implement this AGREEMENT and its purposes:
>
> (a) Within thirty (30) days from execution of this AGREEMENT, BANGKO SENTRAL shall lift the comptrollership over BANCO FILIPINO and deliver to the latter all collaterals in its custody. The government securities remaining in the custody of the designated comptrollers shall be released upon the signing of this AGREEMENT.[65]

From all the foregoing, any discussion on the other procedural matters raised in these cases is already moot and academic.

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[63] Annex "G" of the Petition for Revival.

[64] *Rollo* (G.R. No. 178696), pp. 453-454.

[65] *Id.* at 458.

Furthermore, due to the above findings, this Court need not make determination at this time whether or not BSP-MB is the successor-in-interest and/or transferee-*pendente lite* of CB-MB. Though in G.R. No. 173399 entitled, "*Central Bank-Board of Liquidators v. Banco Filipino Savings and Mortgage Bank*," this Court made a categorical pronouncement that BSP and its MB have different legal personalities from those of the defunct CB and its MB,[66] we also recognized therein that any determination of the status of BSP-MB and CB-BOL will likely preempt the resolution of Civil Case Nos. 8108, 9675 and 10183, which relate to BSP-MB anq CB-BOL's potential liability for the causes of action originally levelled by BFSMB against CB-MB. Similarly, we shall not pass upon issues related to these civil cases.

***A Word on Proper Appellate Court Procedure***

It cannot be denied that the instant petitions, including the two petitions filed in the Court of Appeals, showed that they involved the same parties, set of facts and issues raised; and basically assailed the same orders of the RTC. Thus, there was no reason why CA-G.R SP Nos. 96280 and 96831 should not have been consolidated at the first instance. It is apropos to remind the Court of Appeals and the parties of our pronouncement in A.M. No. CA-13-51-J entitled, "*Re: Letter Complaint of Merlita B. Fabiana Against Presiding Justice Andres B. Reyes, Jr., Associate Justices Isaias P. Dicdican and Stephen C. Cruz; Carag Jamora Somera and Villareal Law Offices and its Lawyers Attys. Elpidio C. Jamora, Jr. and Beatriz O. Geronilla-Villegas, Lawyers for Magsaysay Maritime Corporation and Visayan Surety and Insurance Corporation*,"[67] that —

In the appellate stage, therefore, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of

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[66] Because the CB was abolished by Republic Act No. 7653, and the BSP created in its stead; and because the members of each MB are natural persons — these factors make the BSP and its MB different from the CB and its MB.

[67] 713 Phil. 161, 177 (2013).

facts, or involving identical claims or interests or parties mandatory. Such consolidation should be made regardless of whether or not the parties or any of them requests it. A mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice.

And the counsels of the parties herein, that —

In this connection, the Court reminds all attorneys appearing as counsel for the initiating parties of their direct responsibility to give prompt notice of any related cases pending in the courts, and to move for the consolidation of such related cases in the proper courts. This responsibility proceeds from their express undertakings in the certifications against forum-shopping that accompany their initiatory pleadings pursuant to Section 5 of Rule 7 and related rules in the Rules of Court, to the effect that they have not theretofore commenced any actions or filed any claims involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of their knowledge, no such other actions or claims are pending therein; that if there were such other pending actions or claims, to render complete statements of the present status thereof; and if they should thereafter learn that the same or similar actions or claims have been filed or are pending, they shall report that fact within five days therefrom to the courts wherein the said complaints or initiatory pleadings have been filed.[68]

Precisely, the very evil that the rule against forum shopping seeks to forestall, the rendition of the two diametrically opposed decisions by the Court of Appeals in CA-G.R. Nos. 96280 and 96831, could have been prevented by the consolidation of the two petitions for *certiorari*.

**WHEREFORE,** the Decision and Resolution dated April 12, 2007 and June 26, 2007, respectively, of the Court of Appeals in CA-G.R. SP No. 96831 entitled, "*Bangko Sentral ng Pilipinas and its Monetary Board v. The Hon. Presiding Judge, Regional Trial Court, Branch 62, Makati City and Banco Filipino Savings and Mortgage Bank*," are **REVERSED** and **SET ASIDE**. While the Decision and Resolution dated September 3, 2008 and June 17, 2010, respectively, of the Court of Appeals in CA-G.R. SP

[68] *Id*.

No. 96280 entitled, "*Central Bank Board of Liquidators v. The Regional Trial Court of Makati (Branch 62) and Banco Filipino Savings and Mortgage Bank*" are **AFFIRMED**.

Consequently, the Petition for Revival of Judgment docketed as Civil Case No. 04-823 entitled, "*Banco Filipino Savings and Mortgage Bank v. The Monetary Board, Central Bank of the Philippines, now Central Bank Board of Liquidators, and The Monetary Board, Bangko Sentral ng Pilipinas*," is **DISMISSED** for lack of merit.

No pronouncement as to costs.

**SO ORDERED.**

*Peralta*,[*] *del Castillo, Tijam*, and *Gesmundo*,[**] *JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 208004. July 30, 2018]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **PRADO VERDE CORPORATION,** *respondent.*

[G.R. No. 208112. July 30, 2018]

**PRADO VERDE CORPORATION,** *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

[G.R. No. 210243. July 30, 2018]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **PRADO VERDE CORPORATION,** *respondent.*

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[*] Per Raffle dated June 20, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

**SYLLABUS**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION; SPECIAL AGRARIAN COURTS ARE MANDATED TO APPLY SECTION 17 OF R.A. NO. 6657, AS AMENDED, IN DETERMINING JUST COMPENSATION; A.O. NO. 1, SERIES OF 2010 GOVERNS THE VALUATION OF THE SUBJECT PROPERTY IN CASE AT BAR.—** [B]oth the SAC and the Land Bank properly relied on Sec. 17, R.A. No. 6657, as amended by R.A. No. 9700[.] x x x The factors to be considered in fixing the amount of just compensation were translated into a basic formula. A.O. No. 5, series of 1998, A.O. No. 2, series of 2009 and even the most recent DAR A.O. No. 7, series of 2011 all provide that the basic formula[.] x x x The DAR also issued DAR A.O. No. 1, series of 2010, which the SAC and the Land Bank relied upon in determining which applicable formula should be used. A.O. No. 1 series of 2010 specifically covers "Rules and Regulations on Valuation and Landowners Compensation involving Tenanted Rice and Corn Lands under Presidential Decree *(P.D.)* No. 27 and Executive Order *(E.O.)* No. 228." x x x Here, the subject properties are rice lands placed under the coverage of and acquired pursuant to the Operation Land Transfer program under P.D. No. 27. Thus, the SAC and the Land Bank correctly relied on A.O. No. 1, series of 2010 in governing the valuation of the subject 2.4975-hectare rice land.

2. **ID.; ID.; ID.; ID.; WHERE THERE ARE NO COMPARABLE SALE TRANSACTIONS, THE COURT SHOULD HAVE OPTED TO USE AN ALTERNATIVE FORMULA PROVIDED BY THE RULES WHICH THE DATA GATHERED PERMITS; THE 2-FACTOR FORMULA OF LV=(CNI x 0.90) + (MV x 0.10) WOULD HAVE BEEN THE BETTER ALTERNATIVE IN CASE AT BAR.—** In this case, the SAC did not take into consideration any comparable sale transactions because records did not show any. The reported ₱20.00/sq. m. zonal value of the land was simply multiplied by 10,000 sq. m. to arrive at the amount of ₱200,000.00 as the CS, a formula that is not one of those abovementioned. The SAC should not have forced using the 3-factor formula considering that no Comparable Sales was reported. Instead, it

should have opted using an alternative formula provided by the rules which the data gathered permits. The 2-factor formula of LV = (CNI x 0.90) + (MV x 0.10) would have been the better alternative.

3. **ID.; ID.; ID.; PAYMENT OF JUST COMPENSATION WITH INTEREST IS PROPER; RATIONALE.—** [R]ecords showed that the state did not only immediately take the subject properties without paying just compensation, but it also subsequently distributed such landholdings to the farmer-beneficiaries as evidenced by the TCTs issued in their favor. Prado, as landowner, has been deprived of its properties. The imposition of such interest was to compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking. The delay in the payment of just compensation is a forbearance of money. As such, it is necessarily entitled to earn interest. The rationale for imposing the interest is to compensate the landowner for the income it would have made had it been properly compensated for its properties at the time of the taking. The need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken. The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Consequently, the just compensation as adjudged by the court shall earn an interest rate of 12% *per annum* from the time of taking until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this decision. Thereafter, the total amount of just compensation shall earn interest rate of 6% *per annum* from finality of this decision until fully paid, in line with prevailing jurisprudence.

## APPEARANCES OF COUNSEL

*LBP Legal Services Group* for Land Bank of the Philippines
*Harry Z. Pajares* for Prado Verde Corp.

## D E C I S I O N

**GESMUNDO, *J.*:**

The instant petitions are rooted from the March 21, 2012 Decision[1] and June 11, 2012 Resolution[2] of the Regional Trial Court of Legazpi City, Branch 3 *(RTC),* in Agrarian Case No. 08-04, a case for just compensation filed by Prado Verde Corporation *(Prado)*, formerly United Plaza Properties, Inc., against Land Bank of the Philippines *(Land Bank)* whereby the trial court directed Land Bank to pay Prado the amount of ₱294,495.20 as just compensation, an amount which was higher than Land Bank's revalued amount of ₱214,026.38.

After both parties' respective motions for reconsideration were denied, each party filed its separate petition for review before the Court of Appeals *(CA)*. Prado's petition was raffled to the Sixth Division and was docketed as CA-G.R. SP No. 125525, while Land Bank's petition was raffled to the First Division, docketed as CA-G.R. SP No. 125471.

Learning of the two petitions, both parties moved for consolidation in CA-G.R. SP No. 125471, said case having the lower docket number. However, pending resolution of the motion, the CA Sixth Division rendered a Decision[3] on January 31, 2013, and later a Resolution[4] on July 8, 2013, affirming the decision of the RTC and denying the parties' motions for reconsideration, respectively. Thus, Land Bank and Prado filed their separate petitions for review before the Court, docketed as **G.R. No. 208004** and **G.R. No. 208112**. Both petitions were later consolidated.

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[1] *Rollo* (G.R. No. 208004), pp. 99-112; penned by Judge Frank E. Lobrigo.

[2] *Id.* at 113-114.

[3] *Id.* at 32-53; penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon, concurring.

[4] *Id.* at 54-55.

Subsequently, the CA First Division denied the motion for consolidation, the same having been mooted by the January 31, 2013 Decision of the Sixth Division. Thus, it later rendered a Resolution[5] on December 4, 2013 dismissing Land Bank's petition for lack of merit. Hence, Land Bank filed a petition for review before the Court, docketed as **G.R. No. 210243**.

Since all three petitions are not simply intertwined, but involve the very same parties, facts and issues, consolidation is therefore in order.

***Antecedents***

Prado was the owner of an agricultural land known as Lot 5834-A, covered by Transfer Certificate of Title *(TCT)* No. 4141 issued in the name of Legazpi Oil Company, Inc. *(Legazpi Oil)*, from which Prado bought said property in 1979. The property remained registered in the name of Legazpi Oil and the sale was not annotated on the TCT. However, on July 9, 1980, the deed of absolute sale in favor of United Plaza Properties, Inc. was presented for registration and was duly registered before the Registry of Deeds of Legazpi. The said property was placed within the coverage of the Agrarian Reform Program under Presidential Decree *(P.D.)* No. 27 and a portion thereof, with an area of 2.4975 hectares, was placed within the coverage of Operation Land Transfer on December 4, 1995. As of August 2010, the landowner of the agricultural property had not yet been compensated. Prado received the claims folder from the Department of Agrarian Reform *(DAR)* on January 24, 1996.

Meanwhile, on April 21, 1988 and pursuant to Emancipation Patent issued by DAR, the Registry of Deeds entered in its registry TCT Nos. 58 and 59 over portions of Lot 5834-A, which portions were then known as Lot No. 5834-A-1, issued in the name of farmer-beneficiary Salustiano Arcinue and Lot No. 5834-2 issued in the name of farmer-beneficiary Agapito

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[5] *Rollo* (GR No. 210243), pp. 46-48; penned by Associate Justice Normandie B. Pizarro, with Associate Justices Andres B. Reyes, Jr. and Manuel M. Barrios, concurring.

Azupardo, respectively. Thus, TCT No. 4141 was partially cancelled with regard to the 2.4975 hectare portion, which portion was previously classified as riceland, of Lot No. 5834-A.

On January 1996, Land Bank initially valued the acquired property in the amount of ₱38,885.04 pursuant to P.D. No. 27. Then, a revaluation was made and the compensation was pegged in the amount of ₱59,457.05 which amount, for unknown reason, was not received by the landowner. Thus, Prado filed an agrarian suit before the RTC.

During the pendency of the case, Land Bank further revalued the property using the reckoning dates of production data and values pursuant to Administrative Order *(A.O.)* No. 1, series of 2010, which the DAR issued under Republic Act *(R.A.)* No. 9700, and the two-factor formula prescribed therein [(LV = (CNI x 0.90) + (MV x 0.10)], thus arriving at the amount of ₱214,026.38. However, Prado rejected the revalued compensation.

On March 21, 2012, the RTC, acting as a Special Agrarian Court *(SAC)*, rendered a Decision[6] fixing the amount of just compensation at ₱294,495.20. The trial court held that just compensation of the subject properties should be computed pursuant to A.O. No. 5, Series of 1998, as amended by A.O. No. 2, Series of 2009 and A.O. No. 1, Series of 2010, which reckoned the determination of just compensation based on the condition of the property prevailing within the 12-month period preceding June 30, 2009, the presumptive date of taking.[7] The computation was as follows:

**LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)**

Where: LV = Land Value
CNI = Capitalized Net Income which refers to the gross sales (AGP x SP) with assumed net income rate of 20%

[6] *Supra* note 1.

[7] *Rollo* (G.R. No. 208004), p. 35.

Capitalized at 0.12

CS = Comparable Sales (based on fair market value equivalent to 70% of BIR Zonal Value)
MV = Market Value per Tax Declaration

$$CNI = \frac{(AGP \times SP) \times 0.20)}{0.12}$$
$$= \frac{(5{,}900 \times 9.00) \times 0.20)}{0.12}$$
= **₱88,500.00**

CS = ₱20.00 zonal value/square meter x 10,000 sq. m.
= **₱200,000.00**

MV = ₱30,100.00 x 100% x 1.60
= **₱48,160.00**

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)
= (88,500.00 x 0.60) + (200,000.00 x 0.30) + (48,160.00 x 0.10)
= 53,100.00 + 60,000.00 + 4,816.00
= **₱117,916.00** per hectare

Total LV = LV x area acquired
= 117,916.00 x 2.4975 hectares
= **₱294,495.20**

Unsatisfied, both parties moved for reconsideration. Prado claimed that the valuation of the property should be based on the zonal value of the residential lots within the vicinity where the property is located, while Land Bank argued that its revaluation should be upheld.

The parties' motions for reconsideration were denied. Thus, Prado and Land Bank filed their respective petitions for review before the CA.

***CA's Ruling***

CA-G.R. SP No. 125525

Prado insisted that the trial court violated the equal protection clause when it did not compute the valuation of its landholding

based on the zonal value of the residential lots within the vicinity where it is situated. Prado further claimed that the fair market value of the land should have been used as basis for the computation of just compensation, citing *Hacienda Luisita Incorporated, et al. v. Presidential Agrarian Reform Council, et al*.[8]

The CA Sixth Division, however, denied Prado's petition ruling that the trial court correctly applied the three-factor formula prescribed under A.O. No. 1, Series of 2010. It also did not agree with Prado's contention that the Court use the fair market value of the land as basis for the computation of just compensation. Instead, the appellate court agreed with the Land Bank's observation that nowhere in the decision of the Court was it found that the fair market value was used as basis. The CA, citing *Allied Banking Corp. v. LBP*,[9] ruled that a market data approach cannot replace the factors enumerated in the agrarian law and the computation in accordance with the DAR administrative order implementing it;[10] and that the measure of just compensation in agrarian reform is different from ordinary expropriation where lands are likewise taken for public use.[11]

The CA further ruled that contrary to Land Bank's stance, the three-factor formula prescribed under the aforementioned A.O. was correctly applied by the court *a quo* in the valuation of Prado's landholding.[12] It held that:

> Indeed, the Court a quo's findings closely conformed to the factors listed in Section 17 of RA No. 6657 especially the factors of *actual use and income of the subject properties*. It has been consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value, assessor's value and the volume and the value of produce is valid

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[8] 676 Phil. 518 (2011).

[9] 600 Phil. 346 (2009).

[10] *Rollo* (G.R. No. 208004), p. 49.

[11] *Id*. at 51A.

[12] *Id.* at 43.

and accords with Section 17, *supra*. In the absence of proof to show that the Court *a quo*, acting as Special Agrarian Court, committed grievous error in the appreciation and weighing of the evidence, We respect its findings. *Accordingly*, the determined amount by the Court *[a quo]*, in eminent domain terms, is the *"real, substantial, full and ample" compensation the government must pay to be "just" to the landowner, herein petitioner.*[13] (citations omitted)

Unsatisfied with the decision, Prado and Land Bank filed their respective motions for reconsideration. However, both motions were denied. Thus, they sought relief before the Court.

CA-G.R. SP No. 125471

Land Bank contended that the RTC's valuation of the subject land did not consider the pertinent guidelines issued by the Department of Agrarian Reform *(DAR)* but instead created its own version of the applicable guidelines, which is not allowed under settled jurisprudence.[14]

The CA First Division, however, was not convinced, ruling in this wise:

As the law now stands, it is clear that the RTC, acting as Special Agrarian Court, is duty-bound to take into consideration the factors fixed by Section 17 of Republic Act (RA) No. 6657, as amended, and apply the basic formula prescribed and laid down in the pertinent administrative regulations.

After a judicious evaluation of the petition, as well as the evidence on record, We find and so hold that the Petitioner failed to sufficiently show that the RTC ignored, misconstrued, or misapplied any cogent facts and circumstances which, if considered, would warrant a modification or reversal of the outcome of the case. On the contrary, it conformed with the factors listed in Section 17 of the above law in determining just compensation. In the absence of proof to show that it committed grievous error in its dispositions, We have to respect its findings.[15]

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[13] *Id*. at 48.

[14] *Rollo* (G.R. No. 210243), p. 47.

[15] *Id*.

Undaunted, Land Bank proceeded before the Court *via* a petition for review questioning the above disposition.

Collectively, the issues for resolution are as follows:

**I.**

**WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE SAC'S DETERMINATION OF JUST COMPENSATION.**

**II.**

**WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF THE SAC ORDERING THE IMMEDIATE PAYMENT OF ITS ADJUDGED JUST COMPENSATION, WITH INTEREST AT 12% IF UNHEEDED WITHIN 30 DAYS FROM NOTICE, EVEN IF THE ORDER IS NOT YET FINAL AND EXECUTORY.**

***Court's Ruling***

The Court finds the petition filed by Land Bank partly meritorious.

In eminent domain, the determination of just compensation is principally a judicial function of the Regional Trial Court, acting as a Special Agrarian Court.[16] It exercises original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners.[17] The RTC-SAC, however, must comply with the Court's ruling in *Alfonso v. Land Bank of the Philippines*[18] necessitating compliance with the guidelines and factors laid down by law in determining just compensation, where the Court specifically emphasized that:

> For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, **courts should henceforth consider the factors**

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[16] *Spouses Mercado v. Land Bank of the Phils.,* 760 Phil. 846, 856 (2015).

[17] *Land Bank of the Philippines v. Dalauta,* G.R. No. 190004, August 8, 2017.

[18] G.R. Nos. 181912 & 183347, November 29, 2016.

**stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law.** If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[19] (emphasis supplied)

*Parties' respective arguments before the Court*

In its Memorandum,[20] Land Bank avers that while the SAC recognized that the Administrative Orders implementing R.A. No. 6657, as amended by R.A. No. 9700, should be followed in the determination of just compensation, yet it did not follow the factors and formula under DAR A.O. No. 1, S. 2010 for a P.D. No. 27 covered land, such as in this case, where the valuation is challenged by the landowner.[21] Instead, the SAC erroneously used the formula for P.D. No. 27 lands **that are still to be covered under the new law**,[22] thus, the adjudged compensation was violative of agrarian reform laws and established jurisprudence.[23] Land Bank argues that the SAC cannot invoke judicial discretion in justifying its decision disregarding the prescribed formula for the determination of just compensation. While the discretion of just compensation involves the exercise of judicial discretion, such discretion must be discharged within the bounds of the law, and must be viewed in the light of the rulings of the Court in the cases of *Celada, Luz Lim and Allied Bank*.[24]

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[19] *Id*.

[20] *Id*. at 414-435.

[21] *Id*. at 420-421.

[22] *Id.* at 422.

[23] *Id*. at 421.

[24] *Id*. at 429.

Therefore, in upholding the decision of the SAC, the appellate court committed reversible error.

Land Bank also questions the SAC's order of immediate payment of the adjudged just compensation, with interest of 12% if unheeded within 30 days from notice, even if the order is not yet final and executory. It argues that Section 16 of R.A. No. 6657 merely allows Land Bank to pay the amount equivalent to its initial valuation of the subject property.[25] Pending final determination of just compensation, it is not liable to pay the compensation determined by the court.[26] When the adjudged just compensation is not yet final, the court cannot impose interest.[27]

Land Bank further contends that, even assuming *arguendo*, it is liable to pay interests, the current legal rate of interest is no longer 12% but 6%, as per Monetary Board Circular No. 799, series of 2013, and as enunciated in *Nacar v. Gallery Frames*.[28]

On the other hand, Prado, in its Memorandum,[29] alleges that the procedure for the determination of just compensation under R.A. No. 6657, as summarized by the Supreme Court in *LBP v. Sps. Banal*, was not followed by the DAR and Land Bank. The instant case must be remanded to the SAC for the determination of just compensation.[30]

Prado also insists that Land Bank's revaluation amounting to ₱214,026.38 is too iniquitous for 2.4975 hectares of land. Evidence would show that a directly adjacent one (1) hectare property was mortgaged with Metrobank for ₱21,500,000.00.[31]

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[25] *Id*. at 432.

[26] *Id*. at 431.

[27] *Supra* note 25.

[28] *Id.* at 433.

[29] *Id*. at 478-495.

[30] *Id*. at 490.

[31] *Id*.

Land Bank's revaluation was not in accordance with Sec. 17 of R.A. No. 6657 for lack of proper substantiation and validation. It was based on outdated data gathered by the DAR which, expectedly, were irrelevant or off-tangent to the factors laid down under Sec. 17 of R.A. No. 6657.[32]

*RTCs, acting as Special Agrarian Courts, are mandated to apply Sec. 17 of R.A. No. 6657, as amended, in determining just compensation*

In *Alfonso v. Land Bank of the Philippines,*[33] the Court explicitly emphasized that:

> The determination of just compensation *is* a judicial function. The "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic formula, and the "justness" of the components (and their weights) that flow into the basic formula, are all matters for the courts to decide. As stressed by *Celada*, however, until Section 17 or the basic formulas are declared invalid in a proper case, they enjoy the presumption of constitutionality. This is more so now, with Congress, through RA 9700, expressly providing for the mandatory consideration of the DAR basic formula. In the meantime, *Yatco*, akin to a legal safety net, has tempered the application of the basic formula by providing for deviation, where supported by the facts and reasoned elaboration.[34]

Undoubtedly, the courts are not at liberty to deviate from the DAR basic formula, unless such deviations are amply supported by facts and reasoned justification.

In this case, both the SAC and the Land Bank properly relied on Sec. 17, R.A. No. 6657, as amended by R.A. No. 9700, which states that:

**Section 7.** Section 17 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

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[32] *Id.* at 491.

[33] *Supra* note 18.

[34] *Id.*

> SECTION 17. *Determination of Just Compensation*. - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

The factors to be considered in fixing the amount of just compensation were translated into a basic formula. A.O. No. 5, series of 1998, A.O. No. 2, series of 2009 and even the most recent DAR A.O. No.7, series of 2011 all provide that the basic formula shall be:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value

CNI[35] = Capitalized Net Income (based on land use and productivity)

CS[36] = Comparable Sales (based on fair market value Equivalent to 70% of BIR zonal value)

MV[37] = Market Value per Tax Declaration (based on Government assessment)

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[35] Factors enumerated in Section 17 of RA No. 6657, such as the nature, actual use and income are considered in the determination of the CNI of a particular landholding.

[36] Factors, such as the cost of acquisition of the land, the current value of like properties, loans secured from any government financing institution and 70% of the zonal valuation of the Bureau of Internal Revenue are considered as the CS sub-factors.

[37] On the other hand, factors, such as the tax declarations and assessment made by government assessors were considered in the determination of the MV factor.

1.1 If the three factors are present

When the CNI, CS and MV are present, the formula shall be:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

1.2 If two factors are present

1.2.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.90) + (MV x 0.10)

1.2.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.90) + (MV x 1.10)

1.3 If only one factor is present

When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula (MV x 2) exceed the lowest value of land within the same estate under consideration or within the same barangay, municipality or province (in that order) approved by LBP within one (1) year from receipt of claimfolder.

The DAR also issued DAR A.O. No. 1, series of 2010, which the SAC and the Land Bank relied upon in determining which applicable formula should be used. A.O. No. 1 series of 2010 specifically covers "Rules and Regulations on Valuation and Landowners Compensation involving Tenanted Rice and Corn Lands under Presidential Decree *(P.D.)* No. 27 and Executive Order *(E.O.)* No. 228." It appears, then, that said administrative order specially applies to tenanted rice and corn lands under P.D. No. 27 and E.O. No. 228. In said order, the lands/claims covered are the following:

II. COVERAGE

A. Lands already distributed by the DAR to the farmer-beneficiaries where documentation and/or valuation are/is

not yet complete (Distributed But Not Yet Documented [DNYD] claims).

B. PD 27/EO 228 claims with the Land Bank of the Philippines where:

1. The DAR valuation is rejected by the landowner OR

2. The DAR valuation is undergoing summary proceeding with the DARAB or just compensation case with the Court OR

3. The landowner accepts the original valuation under protest or without prejudice to the determination of just compensation OR

4. The landowner refuses or fails to submit or comply with the pre-payment/documentary requirements under PD 27/EO 228 formula despite receipt of notice of demand.

C. Rice and Corn lands under PD 27 falling under Phase 1 of RA 9700.

Here, the subject properties are rice lands placed under the coverage of and acquired pursuant to the Operation Land Transfer program under P.D. No. 27.[38] Thus, the SAC and the Land Bank correctly relied on A.O. No. 1, series of 2010 in governing the valuation of the subject 2.4975-hectare rice land.

There was, however, a disagreement as to which formula to use. A.O. No. 1 series of 2010 provided two formulas, each covering a different set of lands. Item IV. 1 thereof refers to lands already distributed by the DAR to the farmer-beneficiaries where documentation and/or valuation are/is not yet complete (DNYD) AND for claims with the Land Bank. The formula shall be:

LV = (CNI x 0.90) + (MV x 0.10)

Where:

LV = Land Value

[38] *Rollo* (G.R. No. 208004), p. 100.

CNI = Capitalized Net Income which refers to the gross sales (AGP x SP) with assumed net income rate of 20% capitalized at 0.12

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) \times 0.20}{0.12}$$

Where:

AGP = Annual Gross Production corresponding to the latest available 12 month's gross production immediately preceding 30 June 2009. The AGP shall be secured from the Department of Agriculture (DA) or Bureau of Agriculture Statistics (BAS). The AGP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, AGP may be secured within the province or region.

SP = The average of the latest available 12 months' selling prices prior to 30 June 2009 such prices to be secured from the Department of Agriculture (DA) or Bureau of Agricultural Statistics (BAS). If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

MV = Market Value per Tax Declaration which is the latest Tax Declaration and Schedule of Unit of Market Value (SUMV) issued prior to 30 June 2009. MV shall be grossed-up up to 30 June 2009.

*The reckoning date of the AGP and SP shall be June 30, 2009.*[39]

On the other hand, item IV. 2 of A.O. No. 1 refers to lands falling under Phase 1 of R.A. No. 9700, where the basic formula shall be:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

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[39] Rules and Regulations on Valuation and Landowners Compensation Involving Tenanted Rice and Corn Lands Under Presidential Decree No. 27 and Executive Order No. 228, DAR Administrative Order No. 001-10, February 12, 2010.

Where:

LV = Land Value

CNI = Capitalized Net Income which refers to the gross sales (AGP x SP) with assumed net income rate of 20% capitalized at 0.12.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) \times 0.20}{0.12}$$

Where:

AGP = Annual Gross Production corresponding to the latest available 12 month's gross production immediately preceding 01 July 2009. The AGP shall be secured from the Department of Agriculture (DA) or Bureau of Agriculture Statistics (BAS). The AGP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, AGP may be secured within the province or region.

CS = Comparable Sales (based on fair market value Equivalent to 70% of BIR Zonal Value).

SP = The average of the latest available 12 months' selling prices prior to 01 July 2009 such prices to be secured from the Department of Agriculture (DA) or Bureau of Agricultural Statistics (BAS). If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

MV = Market Value per Tax Declaration which is the latest Tax Declaration and Schedule of Unit of Market Value (SUMV) issued prior to 01 July 2009. MV shall be grossed-up up to 01 July 2009.

*In case CS is not present, the formula shall be*:
LV = (CNI x 0.90) + (MV x 0.10)

*The reckoning date of the AGP and SP shall be July 01, 2009.*[40]

[40] *Id.*

The SAC, which the CA affirmed, held that, as per report of the commissioner, all three (3) relevant factors mentioned in either A.O. No. 2, series of 2009 and/or A.O. No. 1, series of 2010 are present. Thus, the three-factor formula prescribed in A.O. No. 1, series of 2010 is applicable.[41] The SAC then arrived at the following computation:

$$\text{CNI} = \frac{(\text{AGP} \times \text{SP}) \times 0.20}{0.12}$$

$$= \frac{(5{,}900 \times ₱9.00) \times 0.20}{0.12}$$

= **₱88,500.00**

CS = 20.00 zonal value/square meter x 10,000 sq. m.

= **₱200,000.0**

MV = ₱30,100.00 x 100% x 1.60

= **₱48,160.00**

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

= (88,500.00 x 0.60) + (200,000.00 x 0.30) + (48,160.00 x 0.10)

= 53,100.00 + 60,000.00 + 4,816.00

= **₱117,916.00** per hectare

Total LV= LV x area acquired

= 117,916.00 x 2.4975 hectares

= **₱294,495.20**

The Land Bank opposed the computation, arguing that the subject properties fall under II. B of DAR A.O. No. 1, series of 2010 – those P.D. No. 27 claims with the Land Bank where the DAR valuation is rejected or undergoing just compensation

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[41] *Rollo* (G.R. No. 208004), p. 111.

case in court. Hence, the formula that should be used is that provided in IV. 1 of the said administrative order, to wit:

LV = (CNI x 0.90) + (MV x 0.10)

Thus, Land Bank arrived at the recomputed value of the subject properties, taking into consideration the relevant factors, as follows:

A. Land Use / Production — twelve (12) months prior to date of field investigation

1. Capitalized Net Income (CNI):

| CROPS PLANTED | ANNUAL GROSS PRODUCTION (AGP) | SELLING PRICE(P) | NIR | CAPITALIZATION RATE | CNI |
|---|---|---|---|---|---|
| Rice-irrigated | 5,900 kg. | 9.00/kg. | 20% | .12 | ₱88,500.00 |

2. Market Value per Tax Declaration (MVTD):

| ACTUAL LAND USE | PRODUCTIVITY CLASSIFICATION | UNIT MARKET VALUE(P) | LOACTION ADJ. FACTOR | REGIONAL CONSUMER PRICE INDEX (RCPI) | ADJUSTED UMV |
|---|---|---|---|---|---|
| Rice-irrigated | | 43,750.00 | 100% | 1.382 | ₱60,462.50 |

3. Unit Land Value (ULV) Computation:

ULV = (CNI x 0.90) + (MV x 0.10)

Area = 2.4975 has.

ULV = ₱88,500.00 (.090) + 60,462 (0.10)
= ₱79,650.00 + ₱6,046.25
= ₱85,696.25/ha.

LV = ₱85,696.25/ha. X 2.4975
= **₱214,026.38**

On the other hand, Prado likewise opposes the computation, insisting that Land Bank's revaluation amounting to ₱214,026.38

is too iniquitous for the land.[42] Prado claims that the zonal valuation of its property is ₱2,500.00 per sq. m.[43] It asserts that Land Bank's computation was not in accordance with Sec. 17 of R.A. No. 6657 because it was based on the outdated data gathered by the DAR.[44] Similarly, Prado claims that the SAC also failed to follow its mandate to comply with Sec. 17, R.A. No. 6657 in determining the just compensation for the subject properties.[45]

Consequently, Prado prays that the Court order the farmer-beneficiaries to turn over possession and ownership of the landholding if the reasonable just compensation it prayed for is impossible. Prado avers that it shall, in turn, award the farmer-beneficiaries with reasonable homelots as, and by way of, disturbance compensation allowed under the law.[46]

The Court, however, agrees with the Land Bank.

While we acknowledge the SAC's effort to abide by and conform to the prevailing law and regulations on land valuation, we cannot fully subscribe to its finding and in ultimately fixing the amount of just compensation because of its failure to apply the correct formula.

In its decision, the SAC declared item IV. D. 2. of A.O. No. 2, series of 2009,[47] as void and inapplicable insofar as it

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[42] *Supra* note 30.

[43] *Id*.

[44] *Supra* note 32.

[45] *Rollo* (G.R. No. 208004), p. 492.

[46] *Id*.

[47] All previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of R.A. No. 6657, as amended.

In like manner, claims over tenanted rice and corn lands under P.D. 27 and E.O. 228 whether submitted or not to the Land Bank of the Philippines and not yet approved for payment shall be valued under R.A. 6657, as amended.

Landholdings covered by P.D. 27 and falling under Phase 1 of R.A. No. 9700 shall be valued under R.A. No. 9700.

distinguishes the applicability of Sec. 17 of R.A. No. 6657, as amended by R.A. No. 9700. It ruled that:

> The Court thus finds and so holds that the provision of AO No. 2, series of 2009, insofar as it distinguishes the applicability of Sec. 17 of RA [No.] 6657, as amended by RA No. 9700, is void and inapplicable in the determination of just compensation because it is contrary to the spirit of RA No. 9700 which never made a distinction on the applicability of Sec. 17; it is contrary to the holding in *LBP v. Dumlao, et al., supra,* which upholds the harmonization of the formulae for the computation of just compensation both under PD No. 27 and RA No. 6657; it is violative of the "equal protection clause" of the Constitution; and it is unreasonable even as it unduly impinges on the prerogative of the special agrarian court to determine the amount of just compensation.[48]

Perusal of A.O. No. 2, series of 2009, would show that the "distinction" made was merely to emphasize that those lands would have to be resolved and finally valued under Sec. 17, R.A. No. 6657, as amended, instead of under P.D. No. 27 and E.O. No. 228. The same *provisos* were reiterated in DAR A.O. No. 01, series of 2010. It was, certainly, in keeping with the harmonization of the formulas in the computation of just compensation.

That being said, as the subject properties are undisputedly lands acquired under P.D. No. 27, they should be valued following the guidelines set forth in DAR A.O. No. 1.

As previously discussed, there were two (2) formulas provided for in DAR A.O. No. 1. We agree with Land Bank that since the subject land has already been distributed by the DAR to the farmer-beneficiaries and the DAR valuation is rejected by the landowner and is undergoing a just compensation case in court, **the first formula – LV = (CNI x 0.90) + (MV x 0.10) – should be used in determining just compensation of the 2.4975 hectares of land subject of this case**. Records would show that Land Bank has clearly presented the relevant factors it considered in fixing the amount of just compensation. These factors were also sufficiently substantiated.

[48] *Rollo* (G.R. No. 208004), p. 105.

On the contrary, even with its effort to apply the DAR basic formula of LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10), which is the second formula under DAR A.O. No. 1, series of 2010, the SAC still erred in using the same. It is observed that, in arriving at the comparable sales *(CS)* factor, the SAC merely adopted the commissioner's report that the subject land had a zonal value of ₱20.00 per square meter or a total amount of ₱200,000.00 per hectare. The SAC immediately considered such data as the CS, which is one of the three (3) factors needed in the DAR basic formula.

There are, however, guidelines set forth in determining the CS factor. DAR A.O. No. 05-98 categorically enumerates them as follows:

C.1 The following rules shall be observed in the computation of CS:

a. As a general rule, there shall be at least three (3) Sales Transactions.
At least one comparable sales transaction must involve land whose area is at least ten percent (10%) of the area being offered or acquired but in no case less than one hectare. The other transaction/s should involve land whose area is/ are at least one hectare each.

b. If there are more than three (3) STs available in the same barangay, all of them shall be considered.

c. If there are less than three (3) STs available, the use of STs may be allowed only if AC and/or MVM are/is present.

d. Depending on the presence of applicable sub-factors, the following formulae shall be used:

d.1 If there are two or more STs and MVM and/or AC are present:

$$\text{d.1.1} \quad CS = \frac{STA + MVM + AC}{3} \quad \text{OR}$$

$$\text{d.1.2} \quad CS = \frac{STA + MVM}{2} \quad \text{OR}$$

$$\text{d.1.3} \quad CS = \frac{STA + AC}{2}$$

WHERE:

STA is the average of available STs or as expressed in equation form:

$$STA = \frac{ST1 + \_\_\_ + STN}{\text{No. of STs}}$$

d.2 If there is only one ST and AC and/or MVM are/is available:

$$\text{d.2.1} \quad CS = \frac{ST + MVM + AC}{3} \quad \text{OR}$$

$$\text{d.2.2} \quad CS = \frac{ST + MVM}{2} \quad \text{OR}$$

$$\text{d.2.3} \quad CS = \frac{ST + AC}{2}$$

d.3 If three or more STs are present and AC and MVM are not available:

$$CS = STA$$

d.4. If AC and/or MVM are/is present and no ST is available:

$$\text{d.4.1} \quad CS = \frac{AC + MVM}{2} \quad \text{OR}$$

| | | | |
|---|---|---|---|
| d.4.2 | CS = | AC | OR |
| d.4.3 | CS = | MVM | |

x x x x x x x x x[49]

In this case, the SAC did not take into consideration any comparable sale transactions because records did not show any. The reported ₱20.00/sq. m. zonal value of the land was simply multiplied by 10,000 sq. m. to arrive at the amount of ₱200,000.00 as the CS, a formula that is not one of those abovementioned. The SAC should not have forced using the 3-factor formula considering that no Comparable Sales was reported. Instead, it should have opted using an alternative formula provided by the rules which the data gathered permits. The 2-factor formula of LV = (CNI x 0.90) + (MV x 0.10) would have been the better alternative. Clearly, the SAC failed to abide by the implementing rules of the agrarian law and deviated therefrom without any justification.

As regards the contentions of Prado, the same are without merit.

Although Prado reiterates the mandate of the SAC to comply with agrarian law, which mandate the trial court failed to follow, it did not present or offer any sufficient data relevant in the proper computation of just compensation. Prado only had bare and unsubstantiated claims relating to the value of the subject properties which, in its opinion, the SAC should have used.

Further, Prado's offer of reasonable homelots and disturbance compensation in favor of the farmer-beneficiaries in exchange for its alternative prayer of repossession of the subject properties is utterly baseless. It is to be emphasized that the subject properties were expropriated by the state for which the payment of just compensation is proper.

*Payment of just compensation with interest is proper*

[49] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired, DAR Administrative Order No. 05-98.

In *Land Bank of the Philippines v. Phil-Agro Industrial Corp.*,[50] the Court ruled that:

> It is doctrinal that to be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay. The requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657.
>
> The amount allegedly deposited by the petitioner was only a partial payment that amounted to almost 18% of the actual value of the subject landholdings. It could be the basis for the immediate taking of the subject landholdings but by no stretch of the imagination can said nominal amount be considered substantial enough to satisfy the full requirement of just compensation, taking into account its income potential and the foregone income lost because of the immediate taking.
>
> **Notwithstanding the fact that the petitioner had immediately deposited the initial valuation of the subject landholdings after its taking, the fact remains that up to this date, the respondent has not yet been fully paid. Thus, the respondent is entitled to legal interest from the time of the taking of the subject landholdings until the actual payment in order to place it in a position as good as, but not better than, the position that it was in before the taking occurred. The imposition of such interest is to compensate the respondent for the income it would have made had it been properly compensated for the properties at the time of the taking.**[51] (emphasis supplied)

Here, records showed that the state did not only immediately take the subject properties without paying just compensation,[52] but it also subsequently distributed such landholdings to the farmer-beneficiaries as evidenced by the TCTs[53] issued in their

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[50] G.R. No. 193987, March 13, 2017.

[51] *Id.*

[52] *Rollo* (G.R. No. 208004), pp. 183-185.

[53] *Id.* at 138-145.

favor. Prado, as landowner, has been deprived of its properties. The imposition of such interest was to compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking.[54]

The delay in the payment of just compensation is a forbearance of money. As such, it is necessarily entitled to earn interest.[55] The rationale for imposing the interest is to compensate the landowner for the income it would have made had it been properly compensated for its properties at the time of the taking. The need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken.[56]

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[57]

Consequently, the just compensation as adjudged by the court shall earn an interest rate of 12% *per annum* from the time of taking until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this decision.[58] Thereafter, the total amount of just compensation shall earn interest rate of 6% *per annum* from finality of this decision until fully paid, in line with prevailing jurisprudence.[59]

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[54] *Land Bank of the Phils. v. Spouses Avanceña,* 785 Phil 755, 765 (2016).

[55] *Evergreen Manufacturing Corp. v. Republic,* G.R. Nos. 218628 & 218631, September 6, 2017.

[56] *Land Bank of the Philippines v. Phil-Agro Industrial Corp.,* G.R. No. 193987, March 13, 2017.

[57] *Supra* note 54 at 763-764.

[58] *Supra* note 55.

[59] *Nacar v. Gallery Frames,* 716 Phil. 267 (2013).

*On a final note*

The Court reiterates its pronouncement in *Alfonso v. Land Bank of the Philippines*, [60] where we declare that:

> While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. Until a direct challenge is successfully mounted against Section 17 and the basic formulas, they and the collective doctrines in *Banal, Celada* and *Yatco* should be applied to all pending litigation involving just compensation in agrarian reform.[61]

In fixing the just compensation in agrarian cases, courts are duty-bound to apply and consider the factors provided for in Sec. 17 of R.A. No. 6657, as amended, which are translated into the applicable DAR formulas. Although the courts have the power to make a final determination of just compensation as a result of its exercise of judicial discretion, a deviation from prevailing formulas on land valuation would be allowed for as long as such deviation is rational and amply substantiated.

**WHEREFORE,** the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 125525 dated January 31, 2013 and July 8, 2013, respectively, and the Resolution in CA-G.R. SP No. 125471 dated December 4, 2013, are **SET ASIDE.** Accordingly, these cases are **REMANDED** to the Special Agrarian Court for the determination of just compensation in accordance with this ruling, as follows:

1. The 2-factor formula LV = (CNI x 0.90 x 0.10) as provided for under DAR A.O. No. 1, series of 2010, pursuant to Section 17 of R.A. No. 6657, as amended by R.A. No. 9700, shall be applied.

2. The relevant sub-factors necessary for the application of the 2-factor formula shall be taken into consideration, following

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[60] G.R. Nos. 181912 & 183347, November 29, 2016.

[61] *Id.*

the guidelines set forth under Section 17 of R.A. No. 6657, as amended.

3. The just compensation as adjudged by the court shall earn an interest rate of 12% *per annum* from the time of taking until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this decision. Thereafter, the total amount of just compensation shall earn legal interest of 6% *per annum* from finality of this decision until fully paid,[62] in line with prevailing jurisprudence.

**SO ORDERED.**

*Velasco, Jr. (Chairperson)*, *Bersamin,* and *Leonen, JJ.,* concur. *Martires, J.,* on leave.

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**SECOND DIVISION**

[G.R. No. 212786. July 30, 2018]

**REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),** *petitioner, vs.* **ESTRELLA R. DECENA, MARIETA DECENA BRAZIL, NOLAND D. BRAZIL, HEIRS OF EDITA R. DECENA, as represented by VIRGILIO C. BRAZIL, SR.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE THE PROPER SUBJECT OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.—** At the outset, the rule that only questions of law are the proper subject of a petition for review on *certiorari*

[62] *Supra* note 55.

under Rule 45 of the Rules of Court applies with equal force to expropriation cases. Inasmuch as issues pertaining to the value of the expropriated property are questions of fact, such issues are beyond the scope of the Court's judicial review in a Rule 45 petition, and, absent a showing of exceptional circumstances that would warrant ruling otherwise, are final and conclusive upon the Court.

2. **ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IN AN EXPROPRIATION PROCEEDING IS A FUNCTION ADDRESSED TO THE SOUND DISCRETION OF THE COURT; RATIONALE.—** [I]t has been held in a plethora of cases that the determination of just compensation in an expropriation proceeding is a function addressed to the sound discretion of the courts. This judicial function has a constitutional *raison d'etre*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation. Consequently, the determination of just compensation remains to be an exercise of judicial discretion, so long as courts consider the standards laid down in statutes for the determination of just compensation, in this case, Section 5 of R.A. 8974. The specific wording of Section 5 of R.A. 8974 provides: "[i]n order to facilitate the determination of just compensation, the court[s] *may* consider [them]" — thus operating to confer discretion. Being simply standards, it is still the court that renders judgment as to what amount should be awarded and how to arrive at such an amount. And, in the absence of a finding of abuse, arbitrariness, or serious error, the exercise of such discretion may not be interfered with.

3. **ID.; ID.; ID.; ID.; ABSENT FULL PAYMENT OF JUST COMPENSATION, INTEREST ON UNPAID PORTION, LIKEWISE RUNS AS A MATTER OF LAW AND FOLLOWS AS A MATTER OF COURSE IN ORDER TO PLACE THE PROPERTY OWNER IN A POSITION AS GOOD AS THE POSITION HE WAS IN BEFORE THE TAKING OCCURED.—** In accordance with prevailing jurisprudence, just compensation contemplates just and prompt payment, and 'prompt' payment, in turn, requires the payment ***in full*** of the just compensation as finally determined by the courts. Read vis-a-vis Section 10, Rule 67 of the Rules of Court,

this means that the Petitioner incurs in delay if it does not pay the property owner in the full amount of just compensation as of the date of the taking. This too is the mandate of Section 4 of R.A. 8974, *viz.*: "[w]hen the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court." In other words, R.A. 8974 requires the government to pay at two stages: ***first*, immediately upon the filing of the complaint, the initial deposit** which is 100% of the value of the property based on the current relevant zonal valuation of the BIR, and the value of the improvements and/or structures sought to be expropriated; and ***second***, the just compensation as determined by the court, when the decision becomes final and executory, in which case the implementing agency shall pay the owner the difference between the just compensation as determined by the court and the amount already or initially paid. Accordingly, absent full payment of just compensation, interest on the unpaid portion (*i.e.*, the just compensation determined by the court at the time the decision becomes final and executory minus the initial deposit), likewise runs as a matter of law and follows as a matter of course — in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. The underlying reason is simple. Compensation would not be "just" if the government does not pay the property owner interest on the just compensation from the date of the taking of the property. x x x While it is ideal that just compensation be immediately made available to the property owner so that he may derive income from that compensation, that is not always the case. If full payment is not paid for the property taken, the State must pay for the shortfall in the earning potential that the owner immediately lost due to the taking. Consequently, interest on the unpaid portion becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.

**4. ID.; ID.; ID.; THE VALUE OF THE JUST COMPENSATION SHALL BE DETERMINED AS OF THE DATE OF TAKING OF THE PROPERTY OR THE FILING OF THE COMPLAINT, WHICHEVER CAME FIRST; CASE AT BAR.—** As to the specific date of taking, Section 4, Rule 67 of the Rules of Court clearly provides that the value of just compensation shall be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. x x x Thus, in a situation where the property is taken for

public use *before* the initial deposit is made — such as in this case — interest must necessarily accrue *from the time the property is taken to the time when compensation is actually paid or deposited with the court*, in order to ensure that the owner is fully placed in a position as whole as he was before the taking occurred. Inasmuch as the filing of the complaints for expropriation (*i.e.*, between November 2010 and February 2011) preceded the actual possession of the property (*i.e.*, June 17, 2011), just compensation and the corresponding interests thereon shall be determined based on the respective dates of the filing of the complaints for expropriation.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Ching Mendoza Biolena and Partners* for respondents.

**D E C I S I O N**

**CAGUIOA, *J.*:**

This is a petition for review on *certiorari*[1] (*Petition*) under Rule 45 of the Rules of Court filed by the Petitioner Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH), through the Office of the Solicitor General (OSG), against herein Respondents Estrella R. Decena, Marieta D. Brazil, Noland D. Brazil, and Heirs of Edita R. Decena, all represented by Virgilio C. Brazil, Sr., assailing the Court of Appeals' (CA) *Decision*[2] dated February 28, 2014 and *Resolution*[3] dated May 28, 2014 in CA-G.R. CV No. 100485.[4]

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[1] *Rollo*, pp. 12-30.

[2] *Id*. at 36-49. Penned by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Manuel M. Barrios.

[3] *Id*. at 52-54.

[4] *Republic of the Philippines, rep. by the Department of Public Works and Highways (DPWH) v. Estrella R. Decena, et al.*

In the assailed rulings, the CA affirmed *in toto* the *Resolution*[5] of the Regional Trial Court of Quezon City, Branch 83 (RTC) dated July 5, 2012 in Civil Cases Nos. Q-10-68298, Q-10-68299, Q-10-68390, Q-10-68731, and Q-10-68732, in which the RTC determined and fixed the just compensation at Twenty-Five Thousand Pesos (₱25,000.00) per square meter for Respondents' expropriated property.[6]

***The Antecedent Facts***

As part of its Circumferential Road 5 (C5 Road) Extension Road Widening Project, Petitioner sought to acquire Respondents' properties (subject properties), all of which are located along Old Balara, Quezon City.[7] When attempts by Petitioner to obtain the subject properties through negotiated sale failed,[8] Petitioner instituted five (5) separate *complaints for expropriation* against Respondents between November 2010 and February 2011.[9] These complaints[10] were later consolidated before the RTC.

On June 1, 2011, Petitioner filed an *Ex-Parte Motion for the Issuance of Writ of Possession* with the RTC, stating that it had deposited with the Land Bank of the Philippines (LBP) an amount equivalent to 100% of the current zonal valuation of the subject properties,[11] in compliance with Section 4(a) of Republic Act No. (R.A.) 8974.[12] The amounts deposited are broken down as follows:

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[5] *Rollo*, pp. 93-98. Penned by Presiding Judge Ralph S. Lee.

[6] *Id.* at 3, 105.

[7] *Id.* at 39.

[8] *Id.*

[9] *Id.*

[10] Civil Cases Nos. Q-10-68298, Q-10-68299, Q-10-68390, Q-10-68731, Q-10-68732. *Id.* at 15, 93.

[11] *Rollo*, p. 39.

[12] SEC. 4. *Guidelines for Expropriation Proceedings.* — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the

| Amount deposited with LBP | Owner |
|---|---|
| ₱1,428,000.00 | Estrella Decena |
| ₱3,668,000.00 | Marieta Decena-Brazil |
| ₱4,410,000.00 | Nolan Decena-Brazil |
| ₱3,346,000.00 and ₱1,554,000.00 | Edita Brazil[13] |

On June 17, 2011, the RTC issued a *Writ of Possession* ordering the sheriff to place the Petitioner in possession of the property.[14]

Subsequently, on December 12, 2011, the RTC issued an *Order of Condemnation* and created a Board of Commissioners (BOC), *viz.*:

> WHEREFORE, in view of the foregoing existing rule, an ORDER OF CONDEMNATION is hereby issued declaring that the plaintiff, Republic of the Philippines, represented by the Department of Public Works and Highways, has a lawful right to take the subject parcels of land more specifically covered by Transfer Certificate of Title Nos. RT-127975 (352132), 004-201000207, N-310774, 004-RT2010010365 (352129) and RT-128458 (352131) registered in the names of the above-named defendants at the Registry of Deeds for Quezon City for public use or purpose as stated in the Complaints, upon payment of just compensation.
>
> Accordingly, aside from the recommendation of the defendants through a private evaluator or assessor, in order to reasonably ascertain

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appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); x x x. (now Section 6(a)(l) of R.A. 10752, AN ACT FACILITATING THE ACQUISITION OF RIGHT-OF-WAY SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS, March 7, 2016).

[13] *Rollo*, p. 39.

[14] *Id*. at 40.

the just compensation, a Board of Commissioners is hereby created and the following disinterested persons are hereby appointed as members, to wit: (1) the Branch Clerk of Court of this Court, (2) the Quezon City Assessor or his authorized representative, and (3) the Quezon City Treasurer or his authorized representative.

SO ORDERED.[15]

The BOC valuation

The BOC submitted its report[16] on May 14, 2012, recommending an amount of **₱17,893.33 per square meter** as just compensation.[17] In arriving at this amount, the BOC considered the following: (i) the BIR zonal valuation of ₱14,000.00; (ii) the average recorded sales of properties within the vicinity of ₱14,490.00 which were based on Records[18] from the year 2011-2012;[19] and (iii) the highest recorded sale for adjacent properties, which was ₱25,190.00.[20]

The RTC, noticing that one year had already lapsed between the filing of the complaints and the actual valuation made by the BOC, ordered the BOC to review its valuation.[21] Subsequently, in a supplemental report dated June 26, 2012, the BOC affirmed its valuation of ₱17,893.33 per square meter, finding that there was no significant change in the value of the properties over the course of 12 months.[22]

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[15] *Id*. at 16.

[16] *Id.* at 55-58.

[17] *Id*. at 40, 57, 94.

[18] The "records" referred to in the CA Decision refer to data gathered from the Department of Assessment, Quezon City. According to these records, the prices for the sale of properties within the vicinity ranged from ₱5,780.00 to ₱25,190.00 per square meter. *Id*. at 44.

[19] *Rollo*, p. 44.

[20] *Id*.

[21] *Id*. at 41.

[22] *Id*. at 17.

The PACI evaluation

For their part, Respondents submitted, through a *Manifestation*[23] before the RTC, a valuation based on the Appraisal Report[24] of the Philippine Appraisal Company, Inc. (PACI). The PACI report recommended a valuation of **₱30,000.00 per square meter**.[25] The PACI employed a "market data approach,"[26] considering the prices for sales, listings, and other data of comparable properties within the vicinity, with specific focus on properties located along Commonwealth and within the Ayala Heights Subdivision.[27] In its data-gathering process, PACI considered the classification of property, site data (*i.e.*, development and shape of the lot), neighborhood data, utilities available, as well as the highest and best use of the property.[28] PACI likewise considered the time element, noting that the valuation was made on November 10, 2011.[29]

***Ruling of the RTC***

The RTC, in a *Resolution* dated July 5, 2012, fixed the just compensation at **₱25,000.00 per square meter**, ruling as follows:

**WHEREFORE**, premises considered, and under [the] given circumstances, this Court fixes the just compensation for the subject properties, to wit:

| Transfer Certificate of Title No. | Registered Owner |
|---|---|
| RT - 127975 (352132) | Estrella R. Decena |
| 004-RT2010010365 (352129) | Edita R. Decena |
| N-310774 | Nolan Decena Brazil |

[23] *Id*. at 59-60.

[24] See *id*. at 61-92.

[25] *Id*. at 66, 77, 88.

[26] *Id*.

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

[28] *Id*. at 44.

[29] *Id*.

| | |
|---|---|
| RT-128458 (352131) | Edita R. Decena |
| 004-2010002076 | Marieta Decena Brazil |

at **Php25,000.00 per square meter** to be paid to the registered owners through their attorney-in[-]fact Virgilio C. Brazil, Sr.

**SO ORDERED.**[30] (Additional emphasis supplied)

In fixing the amount of just compensation at ₱25,000.00, the RTC ruled:

> This Court, in determining the just compensation for the property subject matter of this appropriation (*sic*) case cannot take into consideration the BIR Zonal Valuation as the same is always relatively less than the fair market value. The valuation recommended by the commissioners cannot also be adopted as the appraised value was arrived at considering only the average of recorded sales of property within or adjacent to the subject property in Tandang Sora[,] ranging from as low as ₱5,780.00 to as high as Php25,190.00 per square meter, the BIR Zonal Valuation of Php14,000.00 and the highest recorded sale for adjacent property of Php25,190.00. No other documents or proofs that can serve as basis for determining market value were presented to substantiate their recommended valuation. The valuation recommended by Philippine Appraisal Co., Inc. (PACI) predominantly based on the sales, listings and other market data of comparable property within the vicinity cannot be entirely relied upon. The highest appraised value of a lot within the immediate vicinity is at Php38,500.00 per square meter is expected considering the presence of a golf course in the area, the existence of which will always command a high market value. From the foregoing, this Court believes that the fair market value for the properties subject of these expropriation cases is Php25,000.00 per square meter.[31] (Underscoring supplied)

Petitioner's motion for reconsideration was denied by the RTC in a *Resolution*[32] dated November 29, 2012, for lack of merit.

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[30] *Id.* at 97.

[31] See *id*. at 96-97.

[32] *Id*. at 99-101.

Unsatisfied, Petitioner appealed to the CA, alleging that the RTC erred when it ruled that the fair market value of the properties subject of expropriation is ₱25,000.00 instead of ₱17,893.33 per square meter.[33]

***Ruling of the CA***

In its *Decision* dated February 28, 2014 the CA denied Petitioner's appeal and consequently, **affirmed** the RTC Decision *in toto, viz.*:

> Given the foregoing, We find the amount of ₱25,000.00 fixed by the court *a quo* as the full and fair equivalent of the properties sought to be expropriated. The amount considered by the court *a quo* for the subject properties appears to be substantial, full and ample under the circumstances.
>
> **WHEREFORE**, premises considered, the assailed Resolution of the court *a quo* is hereby **AFFIRMED IN TOTO**. Accordingly, the instant appeal is hereby **DENIED**.[34] (Emphasis in the original)

The CA observed that the case before it involved three (3) varying market values arrived at for the purpose of determining the proper amount of compensation for the subject property.[35] These values were: ₱17,893.33 per square meter according to the BOC, ₱30,000.00 per square meter according to PACI, and ₱25,000.00 per square meter according to the RTC.[36]

Guided by the list of factors in Section 5 of R.A. 8974[37] that may be considered in determining a property's market value,

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[33] *Id*. at 42.

[34] *Id*. at 48-49.

[35] *Id*. at 44.

[36] *Id*.

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

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

the CA ruled that the BOC report is clearly insufficient, it being based only on the zonal valuation and average recorded sales within the area.[38] As well, the PACI report was deemed insufficient basis by the CA because the same relied heavily on the "asking price"[39] of properties located within the vicinity. Relying on *LECA Realty Corporation v. Republic*,[40] the CA noted that in *LECA*, the Court refused to give credence to real property valuations based on newspaper advertisements of offers for sale of properties within the vicinity, because these valuations are merely "asking prices" which remain subject to further negotiations.[41]

Thus, in upholding the RTC's determination of just compensation in the amount of ₱25,000.00, the CA ruled that the RTC considered all the data and evidence submitted and carefully and judiciously set the amount of compensation at a reasonable and fair middle ground that will entitle the owners, herein Respondents, to receive just shares for their condemned properties and likewise enable the Republic, herein Petitioner, to take said subject properties for public use at a reasonable amount.[42]

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(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible, (now Section 7 of R.A. 10752).

[38] *Rollo*, p. 47.

[39] *Id.*

[40] 534 Phil. 693 (2006).

[41] *Rollo*, p. 47.

[42] *Id*. at 48.

Aggrieved by the CA's Decision, Petitioner filed a motion for reconsideration,[43] but the same was denied by the CA in a Resolution dated May 28, 2014.

Hence, this petition.

***The Parties' Arguments***

In its Petition, Petitioner asserts that the CA committed an error of law when it affirmed the valuation set by the trial court instead of the valuation set by the BOC.[44] Specifically, Petitioner alleges that the parameters set forth by law must be fully taken into consideration and that the determination of just compensation is "more than the discovery of the middle ground."[45] To Petitioner, just compensation in the amount of ₱25,000.00, which the RTC determined to be the middle ground between the BOC's recommended ₱17,893.33 and the PACI's recommended ₱30,000.00, is essentially the same figure as the highest recorded sale for adjacent properties (₱25,190.00 per square meter).[46]

For their part, Respondents, in their *Comment*,[47] submit that the CA acted in accordance with law when it affirmed the trial court's determination of the amount of just compensation, considering that the amount was arrived at based on all the data and evidence submitted by the parties. To Respondents therefore, the CA correctly affirmed the RTC's determination of just compensation in the amount of ₱25,000.00 per square meter.[48]

***Issue***

The sole issue for this Court's resolution is whether the CA committed reversible error in its *Decision* dated February 28,

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[43] On March 21, 2014, *id*. at 53.

[44] *Rollo*, p. 19.

[45] *Id.* at 21.

[46] *Id*. at 22.

[47] *Id*. at 105-110, filed on December 10, 2014.

[48] *Id*. at 108.

2014 and *Resolution* dated May 28, 2014, when it affirmed RTC's determination of just compensation for Respondents' expropriated property at ₱25,000.00 per square meter.

***Our Ruling***

The petition lacks merit.

At the outset, the rule that only questions of law are the proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court[49] applies with equal force to expropriation cases.[50] Inasmuch as issues pertaining to the value of the expropriated property are questions of fact, such issues are beyond the scope of the Court's judicial review in a Rule 45 petition,[51] and, absent a showing of exceptional circumstances[52]

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[49] SECTION 1. *Filing of petition with Supreme Court* . — A party desiring to appeal by *certiorari* from a judgement or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[50] *Republic v. Heirs of Eladio Santiago*, G.R. No. 193828, March 27, 2017, 821 SCRA 497, 505, citing *Rep. of the Phils. v. C.C. Unson Company, Inc.*, 781 Phil. 770 (2016); *Rep. of the Phils. v. Heirs of Sps. Pedro Bautista and Valentino Malabanan*, 702 Phil. 284, 297 (2013); *Rep. of the Phils. v. Sps. Tan*, 676 Phil. 337, 351 (2011).

[51] *Evergreen Manufacturing Corp. v. Republic*, G.R. Nos. 218628 & 218631, September 6, 2017, p. 7.

[52] (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures;

(2) when the inference is manifestly mistaken, absurd or impossible;

(3) when there is a grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee;

(7) when the CA's findings are contrary to those of the trial court;

(8) when the conclusions do not cite the specific evidence on which they are based;

that would warrant ruling otherwise, are final and conclusive upon the Court.[53]

Here, in claiming that "evidentiary weight should be accorded [by the RTC] to the recommendation of the BOC,"[54] Petitioner is asking the Court to recalibrate and weigh anew the evidence already passed upon by the lower courts; yet, Petitioner has not alleged, much less proven, the presence of any of the exceptional circumstances that would warrant a deviation from the rule that the Court is not a trier of facts.[55] On this ground alone, the denial of the petition is warranted.

***The determination of just compensation is a judicial function***

Nevertheless, the Court finds that the sole issue raised by Petitioner — that is, whether the lower courts "fully considered"[56] the standards laid down in Section 5 of R.A. 8974 — equally lacks merit. Section 5 of R.A. 8974 provides:

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

(a) The classification and use for which the property is suited;
(b) The development costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;

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(9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

(10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record; see *Rep. of the Phils. v. Sps. Tan*, *supra* note 50.

[53] See *Republic v. Heirs of Eladio Santiago*, *supra* note 50

[54] *Rollo*, p. 25

[55] *Republic v. Heirs of Eladio Santiago*, *supra* note 50, citing *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015)

[56] *Rollo*, p. 21.

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of the improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

To begin with, it has been held in a plethora of cases[57] that the determination of just compensation in an expropriation proceeding is a function addressed to the sound discretion of the courts.[58] This judicial function has a constitutional *raison d'etre*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation.[59] Consequently, the determination of just compensation remains to be an exercise of judicial discretion,[60] so long as courts consider the standards laid down in statutes for the determination of just compensation,[61] in this case, Section 5 of R.A. 8974.

The specific wording of Section 5 of R.A. 8974 provides: "[i]n order to facilitate the determination of just compensation,

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[57] *National Power Corporation v. Sps. Asoque*, 795 Phil. 19, 48 (2016), citing *National Power Corporation v. Sps. Zabala*, 702 Phil. 491, 499-500 (2013); *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51, at 8, citing *Landbank of the Philippines v. Celada*, 515 Phil. 467, 477 (2006); *National Power Corporation v. Tuazon*, 668 Phil. 301, 313 (2011); *National Power Corp. v. Bagui*, 590 Phil. 424, 432 (2008); *Alfonso v. Land Bank of the Philippines*, G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27, 89, citing *Export Processing Zone Authority v. Judge Dulay*, 233 Phil. 313, 326 (1987).

[58] *Id*.

[59] See *National Power Corporation v. Tuazon*, *supra* note 57, at 312.

[60] *Alfonso v. Land Bank of the Philippines*, *supra* note 57, at 73.

[61] *Id*. at 158.

the court[s] *may* consider [them]"[62] — thus operating to confer discretion.[63] Being simply standards, it is still the court that renders judgment as to what amount should be awarded and how to arrive at such an amount.[64] And, in the absence of a finding of abuse, arbitrariness, or serious error,[65] the exercise of such discretion may not be interfered with.[66]

In the present case, the Court finds no abuse, arbitrariness, or error on the part of the lower court.

That the RTC found the amounts recommended by the BOC or the PACI to be, by *themselves*, incomplete indication of the fair market value of the property cannot be considered an indicium of arbitrariness. To recall, the BOC Report was primarily based on the zonal valuation and average recorded sales of property within the vicinity,[67] while the PACI report was predominantly based only on sales and listings of comparable property within the vicinity.[68] With both recommended valuations — a BOC valuation of ₱17,893.33 per square meter and a PACI valuation of ₱30,000.00 — as guideposts, the court determined the fair market value of the property to be ₱25,000.00, in the exercise of its discretion to substitute its own estimate of the value of the property as gathered from the records.[69] Considering that the amount of just compensation was arrived at after due consideration of the applicable statutory standards, the Court

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[62] Italics supplied.

[63] *Rep. of the Phils. v. C.C. Unson Company, Inc.*, *supra* note 50, at 784.

[64] *National Power Corporation v. Sps. Zabala*, *supra* note 57, citing *National Power Corp. v. Bagui*, *supra* note 57.

[65] *Republic v. Heirs of Eladio Santiago*, *supra* note 50, at 508.

[66] *Rep. of the Phils. v. C.C. Unson Company, Inc.*, *supra* note 50, at 784, citing *Rep. of the Phils. v. Heirs of Sps. Pedro Bautista and Valentina Malabanan*, *supra* note 50, at 298.

[67] *Rollo*, pp. 96-97.

[68] *Id.* at 97.

[69] *Rep. of the Phils. v. Court of Appeals*, 612 Phil. 965, 979 (2009), citing *Rep. of the Phils. v. Santos*, 225 Phil. 29, 35 (1986).

sees no cogent reason to disturb the findings of the RTC, as wholly affirmed by the CA.

In fine, the Court holds that the CA did not err when it found that the RTC had properly and judiciously considered the standards set forth in Section 5 of R.A. 8974 in arriving at the just compensation of ₱25,000.00 per square meter.

***Interests due on the amount of just compensation***

Finally, with respect to the issue of interest due on the compensation, the Court notes that on June 1, 2011, Petitioner filed an *Ex-Parte Motion for the Issuance of Writ of Possession* asserting that it had deposited with the Land Bank of the Philippines an amount[70] equivalent to 100% of the zonal value of the subject properties prior to taking possession of the subject properties pursuant to the RTC's issuance of a *Writ of Possession* on June 17, 2011.[71] Although this initial deposit made by Petitioner complied with R.A. 8974, Section 4(a)[72] requiring the government to pay "100% of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue [upon the filing of the complaint for expropriation]," it does not, *by itself* constitute "just compensation" as contemplated by Article III, Section 9 of the 1987 Constitution,[73]

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[70] See *rollo*, p. 39.

[71] *Id*. at 40.

[72] SEC. 4. *Guidelines for Expropriation Proceedings*. — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); x x x. (now Section 6(a)(l) of R.A. 10752).

[73] *Section 9.* Private property shall not be taken for public use without just compensation.

as indeed it was subject to further proceedings before the RTC on the proper or correct amount of just compensation.

In accordance with prevailing jurisprudence,[74] just compensation contemplates just and prompt payment, and 'prompt' payment, in turn, requires the payment ***in full*** of the just compensation as finally determined by the courts.[75] Read vis-a-vis Section 10, Rule 67 of the Rules of Court,[76] this means that the Petitioner incurs in delay if it does not pay the property owner in the full amount of just compensation as of the date of the taking. This too is the mandate of Section 4 of R.A. 8974, *viz.*: "[w]hen the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court."[77]

In other words, R.A. 8974 requires the government to pay at two stages: ***first*****, immediately upon the filing of the complaint, the initial deposit** which is 100% of the value of the property based on the current relevant zonal valuation of the BIR, and the value of the improvements and/or structures sought to be expropriated; and ***second***, the just compensation

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[74] *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51.

[75] *Id*. at 12, citing *Land Bank of the Phils. v. Alfredo Hababag, Sr.*, 786 Phil. 503, 508 (2016), further, citing *Land Bank of the Phils. v. Santos*, 119 Phil. 587, 610 (2016).

[76] SEC. 10. *Rights of plaintiff after judgment and payment.* — Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of section 2 hereof. If the defendant and his counsel absent themselves from the court, or decline to receive the amount tendered, the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment thereof to the defendant or the person ultimately adjudged entitled thereto. (Underscoring supplied)

[77] *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51, at 13.

as determined by the court, when the decision becomes final and executory, in which case the implementing agency shall pay the owner the difference between the just compensation as determined by the court and the amount already or initially paid.[78]

Accordingly, absent full payment of just compensation, interest on the unpaid portion (*i.e.*, the just compensation determined by the court at the time the decision becomes final and executory minus the initial deposit), likewise runs as a matter of law and follows as a matter of course[79] — in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.[80] The underlying reason is simple. Compensation would not be "just" if the government does not pay the property owner interest on the just compensation from the date of the taking of the property.[81]

As aptly observed by the Court in *Evergreen Manufacturing Corp. v. Republic*:[82]

> Section 9, Article III of the 1987 Constitution provides that "no private property shall be taken for public use without just compensation." Just compensation in expropriation cases has been held to contemplate just and timely payment, and prompt payment is the payment in full of the just compensation as finally determined by the courts.[83] Thus, just compensation envisions a payment in full of the expropriated property. Absent full payment, interest on the balance would necessarily be due on the unpaid amount. In *Republic v. Mupas*,[84] we held that interest on the unpaid compensation becomes

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[78] *Rep. of the Phils. v. Judge Mupas*, 769 Phil. 21, 195 (2015).

[79] *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51, at 12, citing *id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.

[83] *Land Bank of the Phils. v. Alfredo Hababag, Sr.*, *supra* note 75, citing *Land Bank of the Phils. v. Santos*, *supra* note 76.

[84] *Supra* note 78.

due if there is no full compensation for the expropriated property, in accordance with the concept of just compensation. We held:

> The reason is that just compensation would not be "just" if the State does not pay the property owner interest on the just compensation from the date of the taking of the property. Without prompt payment, the property owner suffers the immediate deprivation of both his land and its fruits or income. The owner's loss, of course, is not only his property but also its income-generating potential.
>
> Ideally, just compensation should be immediately made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property.
>
> However, if full compensation is not paid for the property taken, then the State must pay for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived. **Interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.**
>
> Thus, **interest in eminent domain cases "runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking."**[85] (Emphasis in the original)

While it is ideal that just compensation be immediately made available to the property owner so that he may derive income from that compensation, that is not always the case. If full payment is not paid for the property taken, the State must pay for the shortfall in the earning potential that the owner immediately lost due to the taking.[86] Consequently, interest on the unpaid portion becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.[87]

Considering the foregoing, the Court finds that Petitioner owes Respondents: (1) the **unpaid portion** of the fair market

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[85] *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51, at 12.

[86] *Id*.

[87] *Id*.

value, that is, the balance between the fair market value as finally determined by the court (computed at ₱25,000.00 per square meter) and the amount of the initial deposit made by the government; (2) ***interest*** on that **unpaid portion**, which interest begins to run from the date of taking; and (3) ***interest*** on the fair market value from the date of the taking to the date of the initial deposit by Petitioner.

As to the specific date of taking, Section 4, Rule 67 of the Rules of Court clearly provides that the value of just compensation shall be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.[88] As held by the Court in *B.H. Berkenkotter & Co. v. Court of Appeals*:[89]

> It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. **Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.**[90] (Emphasis supplied)

Thus, in a situation where the property is taken for public use *before* the initial deposit is made — such as in this case —

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[88] Sec. 4, Rule 67 provides:

> x x x 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 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. (Underscoring supplied); see also *National Power Corp. v. Co.*, 598 Phil. 58, 70 (2009); *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51, at 6.

[89] 290-A Phil. 371 (1992).

[90] *Id*. at 375, citing *Republic of the Philippines v. Phil. National Bank*, 111 Phil. 572, 576 (1961) and reiterated in *National Power Corp. v. Spouses Dela Cruz*, 543 Phil. 53, 70 (2007); *Romonafe Corp. v. National Power Corp.*, 542 Phil. 411,416 (2007); *National Power Corporation v. Ong Co*, 598 Phil. 58, 70 (2009).

interest must necessarily accrue *from the time the property is taken to the time when compensation is actually paid or deposited with the court*,[91] in order to ensure that the owner is fully placed in a position as whole as he was before the taking occurred.

Inasmuch as the filing of the complaints for expropriation (*i.e.*, between November 2010 and February 2011) preceded the actual possession of the property (*i.e.*, June 17, 2011), just compensation and the corresponding interests thereon shall be determined based on the respective dates of the filing of the complaints for expropriation.

Considering that the present petition originated from several complaints for expropriation filed by Petitioner against Respondents over the course of November 2010 and February 2011[92] and later consolidated before the RTC, the latter is hereby ordered to compute the unpaid portions of just compensation and the corresponding interest on those unpaid portions, from the respective dates of filing of the complaints for expropriation in Civil Cases Nos. Q-10-68298, Q-10-68299, Q-10-68390, Q-10-68731, and Q-10-68732 with the RTC.

To recapitulate in the light of the foregoing discussion, Respondents are entitled to the following amounts from Petitioner:

(1) **the unpaid portion of the fair market value** (*i.e.*, fair market value as finally determined by the Court minus the amount of initial deposit made by Petitioner);

(2) **legal interest** on the unpaid portion of the fair market value, which interest begins to run from the respective dates of the filing of the complaints for expropriation in Civil Cases Nos. Q-10-68298, Q-10- 68299, Q-10-68390, Q-10-68731, and Q-10-68732;[93]

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[91] See *Rep. of the Phils. v. Court of Appeals*, 433 Phil. 106, 122 (2002); see also *Apo Fruits Corp. v. Land Bank of the Phils.*, 647 Phil. 251, 283 (2010).

[92] *Rollo*, p. 39.

[93] *Id*.

(3) **legal interest** on the fair market value from the date of the filing of the respective complaints to the date of the initial deposit by Petitioner.

**WHEREFORE**, finding no reversible error on the part of the Court of Appeals, the petition is hereby **DENIED**. The Court of Appeals' Decision dated February 28, 2014 and Resolution dated May 28, 2014 in CA-G.R. CV No. 100485, determining the amount of just compensation to be ₱25,000.00 are hereby **AFFIRMED**, with the amounts due to each of the Respondents for their respective properties, consisting of:

1. The **unpaid portion** of the just compensation corresponding to each of the subject properties, which shall be the **difference** between the fair market value as finally determined by the Court (computed at ₱25,000.00 per square meter (FMV)) and the amount of initial deposit made by the Republic of the Philippines with the Land Bank of the Philippines.

**2.** **Interest**, computed as follows:

   i. twelve percent (12%) legal interest *per annum* applied to the FMV, reckoned from the respective dates of the filing of the complaints for expropriation in Civil Cases Nos. Q-10-68298, Q-10-68299, Q-10-68390, Q-10-68731, and Q-10-68732 (between November 2010 and February 2011)[94] up to the date of the initial deposit made by the Republic of the Philippines (June 1, 2011);

   ii. twelve percent (12%) legal interest *per annum* from June 2, 2011 to June 30, 2013;[95] and thereafter,

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[94] *Id.*

[95] *Rep. of the Phils. v. Judge Mupas*, *supra* note 78, at 198, citing *Eastern Shipping Lines Inc. v. Court of Appeals*, 304 Phil. 236 (1994), *Reyes v. National Housing Authority*, 443 Phil. 603 (2003), *Land Bank of the Phils. v. Wycoco*, 464 Phil. 83 (2004), *Rep. of the Phils. v. Court of Appeals*, 494 Phil. 494 (2005); *Land Bank of the Phils. v. Imperial*, 544 Phil. 378 (2007); *Philippine Ports Authority v. Rosales-Bondoc*, 557 Phil. 737 (2007); *Sps.*

six percent (6%) legal interest *per annum*[96] in accordance with the Monetary Board of the Bangko Sentral ng Pilipinas Circular No. 799 (s. 2013) until finality of this Decision, to be applied to the unpaid portion per item (1) above; and

iii. six percent (6%) legal interest on items (1) and (2) above, from the date of finality of this Decision until full payment,[97] also in accordance with the Monetary Board of the Bangko Sentral ng Pilipinas Circular No. 799 (s. 2013).

**SO ORDERED.**

*Carpio (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Gesmundo*,[*] *JJ.*, concur.

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**SECOND DIVISION**

[G.R. No. 217744. July 30, 2018]

**JOSE Z. MORENO**, *petitioner, vs.* **RENE M. KAHN, CONSUELO MORENO KAHN-HAIRE, RENE LUIS PIERRE KAHN, PHILIPPE KAHN, MA. CLAUDINE KAHN MCMAHON, and THE REGISTER OF DEEDS OF MUNTINLUPA CITY**, *respondents.*

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*Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009); *Evergreen Manufacturing Corp. v. Republic*, *supra* note 51

[96] *Id.*

[97] See *Land Bank of the Phils. v. Alfredo Hababag, Sr.*, *supra* note 75.

[*] Designated additional Member per Raffle dated July 30, 2018.

**SYLLABUS**

**1. CIVIL LAW; FAMILY CODE; SUITS BETWEEN MEMBERS OF THE SAME FAMILY; EARNEST EFFORT REQUIREMENT; NON-COMPLIANCE THEREWITH IS NOT A JURISDICTIONAL DEFECT WHICH WOULD AUTHORIZE THE COURTS TO DISMISS SUITS FILED BEFORE THEM *MOTU PROPRIO*.—** [T]he wisdom behind x x x [Article 151 of the Family Code] is to maintain sacred the ties among members of the same family. "As pointed out by the Code Commission, it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family and it is known that a lawsuit between close relatives generates deeper bitterness than between strangers." Thus, a party's failure to comply with this provision before filing a complaint against a family member would render such complaint premature; hence, dismissible. This notwithstanding, the Court held in *Heirs of Favis, Sr. v. Gonzales* that non-compliance with the earnest effort requirement under Article 151 of the Family Code is not a jurisdictional defect which would authorize the courts to dismiss suits filed before them *motu proprio*. Rather, it merely partakes of a condition precedent such that the non-compliance therewith constitutes a ground for dismissal of a suit should the same be invoked by the opposing party at the earliest opportunity, as in a motion to dismiss or in the answer. Otherwise, such ground is deemed waived x x x.

**2. ID.; ID.; ID.; ID.; NO LONGER A CONDITION PRECEDENT BEFORE AN ACTION CAN PROSPER ONCE A STRANGER BECOMES A PARTY TO THE SUIT.—** [T]he Court x x x finds Article 151 of the Family Code inapplicable to this case. For Article 151 of the Family Code to apply, the suit must be exclusively between or among "members of the same family." Once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper. x x x In this light, case law states that Article 151 of the Family Code must be construed strictly, it being an exception to the general rule. Hence, any person having a collateral familial relation with the plaintiff

other than what is enumerated in Article 150 of the Family Code is considered a stranger who, if included in a suit between and among family members, would render unnecessary the earnest efforts requirement under Article 151. *Expressio unius est exclusio alterius*. The express mention of one person, thing, act, or consequence excludes all others.

**APPEARANCES OF COUNSEL**

*Martinez Vergara Gonzales & Serrano* for petitioner.
*Algarra & Giron Law Offices* for respondent Rene M. Kahn.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 24, 2014 and the Resolution[3] dated March 17, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129232, which affirmed the Orders dated January 18, 2012[4] and October 11, 2012[5] of the Regional Trial Court of Muntinlupa City, Branch 205 (RTC) in Civil Case No. 12-004 dismissing *motu proprio* the complaint filed by petitioner Jose Z. Moreno (Jose) for non-compliance with Article 151 of the Family Code.

**The Facts**

Jose alleged that since May 1998 and in their capacity as lessees, he and his family have been occupying two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. 181516 and 181517[6] (subject lands) co-owned by his full-blooded

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[1] *Rollo*, Vol. I, pp. 28-69.

[2] *Id*. at 71-81. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio, concurring.

[3] *Id*. at 83-84.

[4] *Id*. at 378. Penned by Judge Amelia A. Fabros.

[5] *Id*. at 445-450.

[6] *Id*. at 204-205.

sister, respondent Consuelo Moreno Kahn-Haire (Consuelo) and his nephews and nieces (Consuelo's children), respondents Rene M. Kahn (Rene), Rene Luis Pierre Kahn (Luis), Philippe Kahn (Philippe), and Ma. Claudine Kahn-McMahon (Claudine; collectively, respondents).[7]

Around April or May 2003, through numerous electronic mails (emails) and letters, respondents offered to sell to Jose the subject lands for the amount of US$200,000.00 (US$120,000.00 to be received by Consuelo and US$20,000.00 each to be received by her children),[8] which Jose accepted. Notably, the agreement was made verbally and was not immediately reduced into writing, but the parties had the intention to eventually memorialize the same via a written document. Over the next few years, Jose made partial payments to respondents by paying off the shares of Rene, Luis, Philippe, and Claudine, leaving a remaining balance of US$120,000.00 payable to Consuelo.[9]

However, in July 2010, Consuelo decided to "cancel" their agreement, and thereafter, informed Jose of her intent to convert the earlier partial payments as rental payments instead. In response, Jose expressed his disapproval to Consuelo's plan and demanded that respondents proceed with the sale, which the latter ignored.[10] He then claimed that on July 26, 2011, without his consent, Consuelo, Luis, Philippe, and Claudine sold[11] their shares over the subject lands to Rene, thereby consolidating full ownership of the subject lands to him. Consequently, TCT Nos. 181516 and 181517 were cancelled and new TCTs, *i.e.*, TCT Nos. 148026 and 148027,[12] were issued

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[7] Consuelo owns 6/10 portion of the subject lands, while her children, Rene, Luis, Philippe, and Claudine own 1/10 portion each (see *id*. at 72).

[8] See *id*. at 167-170.

[9] *Id*. at 72. See also *id*. at 165-170.

[10] See *id*. at 170-171.

[11] See Deed of Absolute Sale; *id*. at 226-228.

[12] *Id*. at 195-200.

in Rene's name. Upon learning of such sale, Jose sent a demand letter[13] to Rene, and later on to Consuelo, Luis, Philippe, and Claudine,[14] asserting his right to the subject lands under the previous sale agreed upon. As his demands went unheeded, Jose brought the matter to the barangay *lupon* for conciliation proceedings between him and Rene only, since Consuelo, Luis, Philippe, and Claudine are all living abroad. As no settlement was agreed upon,[15] Jose was constrained to file the subject complaint[16] for specific performance and cancellation of titles with damages and application for temporary restraining order and writ of preliminary injunction, docketed as Civil Case No. 12-004.[17]

**The RTC Proceedings**

In an Order[18] dated January 18, 2012, the RTC *motu proprio* ordered the dismissal of Jose's complaint for failure to allege compliance with the provision of Article 151 of the Family Code which requires earnest efforts to be made first before suits may be filed between family members.

Jose moved for reconsideration,[19] arguing that: (*a*) the RTC cannot *motu proprio* order the dismissal of a case on the ground of failure to comply with a condition precedent, *i.e.*, non-compliance with Article 151 of the Family Code; (*b*) Article 151 does not apply to the instant case, contending that while Consuelo is indeed his full-blooded sister, her co-defendants, namely his nephews Rene, Luis, and Philippe, and niece Claudine are not considered members of the same family as him and Consuelo; and (*c*) assuming Article 151 of the Family Code applies, he has complied with the earnest efforts requirement

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[13] See letter dated December 14, 2011; *id*. at 229-231.

[14] See letter dated January 6, 2011 (should be 2012); *id*. at 234-236.

[15] See Endorsement dated January 6, 2012; *id*. at 232.

[16] Dated January 9, 2012; *id*. at 162-193.

[17] *Id*. at 72-73. See also *id*. at 170-176.

[18] *Id*. at 378.

[19] See motion for reconsideration dated February 1, 2012; *id*. at 379-398.

as he tried convincing Consuelo to change her mind through email correspondences, and even underwent barangay conciliation proceedings with Rene.[20]

In an Order[21] dated October 11, 2012, the RTC denied Jose's motion, ruling, *inter alia*, that Article 151 of the Family Code applies, despite the fact that Consuelo had other co-defendants (*i.e.*, her children) in the suit, as the dispute, which led to the filing of the case, was mainly due to the disagreement between full-blooded siblings, Jose and Consuelo.[22]

Aggrieved, Jose filed a petition for *certiorari*[23] before the CA.

**The CA Ruling**

In a Decision[24] dated September 24, 2014, the CA affirmed the RTC ruling. It held that the *motu proprio* dismissal of Jose's complaint was proper in light of Article 151 of the Family Code which mandates such dismissal if it appears from the complaint/petition that no earnest efforts were made between party-litigants who are members of the same family.[25] The CA likewise agreed with the RTC's finding that Jose's main cause of action was against his full-blooded sister, Consuelo, and as such, the fact that his nephews and nieces were impleaded as co-defendants does not take their situation beyond the ambit of Article 151.[26] Finally, the CA opined that the barangay conciliation proceedings cannot be deemed as substantial compliance with the earnest efforts requirement of the law as the participants therein were only Jose and Rene, and without the other defendants.[27]

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[20] See *id*. at 382-396.

[21] *Id*. at 445-450.

[22] See *id*. at 449.

[23] Dated March 26, 2013. *Id*. at 451-488.

[24] *Id*. at 71-81.

[25] See *id*. at 75-76.

[26] See *id*. at 78.

[27] See *id*. at 78-79.

Undaunted, Jose moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated March 17, 2015; hence, this petition.

**The Issues Before the Court**

The issues for the Court's resolution are whether or not: (*a*) the CA correctly affirmed the RTC's *motu proprio* dismissal of Jose's complaint; and (*b*) Article 151 of the Family Code is applicable to this case.

**The Court's Ruling**

The petition is meritorious.

Article 151 of the Family Code reads:

> Article 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Palpably, the wisdom behind the provision is to maintain sacred the ties among members of the same family. "As pointed out by the Code Commission, it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family and it is known that a lawsuit between close relatives generates deeper bitterness than between strangers."[30] Thus, a party's failure to comply with this provision before filing a complaint against a family member would render such complaint premature;[31] hence, dismissible.

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[28] See motion for reconsideration dated October 22, 2014; *id.* at 85-106

[29] *Id*. at 83-84.

[30] *Martinez v. Martinez*, 500 Phil. 332, 339 (2005), citing *Magbaleta v. Gonong*, 167 (168) Phil. 229, 231 (1977).

[31] *Martinez v. Martinez*, *id*. at 339.

This notwithstanding, the Court held in *Heirs of Favis, Sr. v. Gonzales*[32] that non-compliance with the earnest effort requirement under Article 151 of the Family Code is not a jurisdictional defect which would authorize the courts to dismiss suits filed before them *motu proprio*. Rather, it merely partakes of a condition precedent such that the non-compliance therewith constitutes a ground for dismissal of a suit should the same be invoked by the opposing party at the earliest opportunity, as in a motion to dismiss or in the answer. Otherwise, such ground is deemed waived, *viz.*:

> The base issue is whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made.
>
> **The appellate court committed egregious error in dismissing the complaint**. The appellate courts' decision hinged on Article 151 of the Family Code x x x.
>
> x x x x x x x x x
>
> The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the1997 Rules of Civil Procedure, which provides:
>
> > Section 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
> >
> > x x x x x x x x x
> >
> > (j) That a condition precedent for filing the claim has not been complied with.
>
> The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court *motu proprio*. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:
>
> > Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from

[32] 724 Phil. 465 (2014).

> the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action. x x x.

x x x x x x x x x

Why the objection of failure to allege a failed attempt at a compromise in a suit among members of the same family is waivable was earlier explained in the case of *Versoza v. Versoza* ([*Versoza*] 135 Phil. 84, 94 [1986]), a case for future support which was dismissed by the trial court upon the ground that there was no such allegation of infringement of Article 222 of the Civil Code, the origin of Article 151 of the Family Code. While the Court ruled that a complaint for future support cannot be the subject of a compromise and as such the absence of the required allegation in the complaint cannot be a ground for objection against the suit, the decision went on to state thus:

x x x x x x x x x

**Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action**. *Versoza* was cited in a later case as an instance analogous to one where the conciliation process at the *barangay* level was not priorly resorted to. Both were described as a "**condition precedent for the filing of a complaint in Court**." In such instances, the consequence is precisely what is stated in the present Rule. Thus:

> **The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court**.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in

favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. **In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals**.

**Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu propio* order the dismissal of petitioner's complaint**.[33] (Emphases and underscoring supplied)

In this case, a plain reading of the records shows that the RTC ordered the dismissal of Jose's complaint against respondents for his alleged failure to comply with Article 151 of the Family Code – even before respondents have filed a motion or a responsive pleading invoking such non-compliance. As such ground is not a jurisdictional defect but is a mere condition precedent, the courts *a quo* clearly erred in finding that a *motu proprio* dismissal was warranted under the given circumstances.

Even assuming *arguendo* that respondents invoked the foregoing ground at the earliest opportunity, the Court nevertheless finds Article 151 of the Family Code inapplicable to this case. For Article 151 of the Family Code to apply, the suit must be exclusively between or among "members of the same family." Once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper.[34] In *Hiyas Savings and Loan Bank, Inc. v. Acuña*,[35] the Court explained the rationale behind this rule, to wit:

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[33] *Id.* at 471-476; citations omitted.

[34] See *Hiyas Savings and Loan Bank, Inc. v. Acuña*, 532 Phil. 222, 232 (2006).

[35] *Id.*

[T]hese considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional pre-requisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves.[36]

In this relation, Article 150 of the Family Code reads:

Art. 150. Family relations include those:

(1) Between husband and wife;
(2) Between parents and children;
(3) Among other ascendants and descendants; and
(4) Among brothers and sisters, whether of the full or half-blood.

In this light, case law states that Article 151 of the Family Code must be construed strictly, it being an exception to the general rule. Hence, any person having a collateral familial relation with the plaintiff other than what is enumerated in Article 150 of the Family Code is considered a stranger who, if included in a suit between and among family members, would render unnecessary the earnest efforts requirement under Article 151.[37] *Expressio unius est exclusio alterius*. The express mention of one person, thing, act, or consequence excludes all others.[38]

In this instance, it is undisputed that: (*a*) Jose and Consuelo are full-blooded siblings; and (*b*) Consuelo is the mother of Rene, Luis, Philippe, and Claudine, which make them nephews

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[36] *Id*. at 230-231, citing *Magbaleta v. Gonong*, *supra* note 30, at 231.

[37] See *Martinez v. Martinez*, *supra* note 30, at 339-340.

[38] *Nasipit Integrated Arrastre and Stevedoring Services, Inc. v. Nasipit Employees Labor Union*, 578 Phil. 762, 769 (2008).

and niece of their uncle, Jose. It then follows that Rene, Luis, Philippe, and Claudine are considered "strangers" to Jose insofar as Article 151 of the Family Code is concerned. In this relation, it is apt to clarify that while it was the disagreement between Jose and Consuelo that directly resulted in the filing of the suit, the fact remains that Rene, Luis, Philippe, and Claudine were rightfully impleaded as co-defendants in Jose's complaint as they are co-owners of the subject lands in dispute. In view of the inclusion of "strangers" to the suit between Jose and Consuelo who are full-blooded siblings, the Court concludes that the suit is beyond the ambit of Article 151 of the Family Code. Perforce, the courts *a quo* gravely erred in dismissing Jose's complaint due to non-compliance with the earnest effort requirement therein.

**WHEREFORE,** the petition is **GRANTED**. The Decision dated September 24, 2014 and the Resolution dated March 17, 2015 of the Court of Appeals in CA-G.R. SP No. 129232 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. 12-004 is **REINSTATED** and **REMANDED** to the Regional Trial Court of Muntinlupa City, Branch 205 for further proceedings.

**SO ORDERED.**

*Carpio (Chairperson)*, *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 218914. July 30, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **HENRY DE VERA *y* MEDINA,** *accused-appellant.*

## SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.—** For a successful prosecution of a case for illegal sale of drugs, the following elements must be proven: (1)the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **ID.; ID.; ILLEGAL POSSESSION OF DRUGS; ELEMENTS.—** [I]n prosecuting a case for illegal possession of drugs, the following elements must concur: (1) the accused is in possession of prohibited drugs; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

3. **ID.; ID.; CHAIN OF CUSTODY; PERFORMS THE FUNCTION OF ENSURING THAT UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE ARE REMOVED.—** The dangerous drug itself constitutes the *corpus delicti* of the offense of sale and/or possession of dangerous drugs. It is important that the State establish, with moral certainty, the integrity and identity of the illicit drugs sold to be the same as those examined in the laboratory and subsequently presented in court as evidence. This rigorous requirement, known under RA 9165 as the *chain of custody*, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.

4. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PHYSICAL INVENTORY AND PHOTOGRAPHING OF SEIZED ITEMS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREON IS TANTAMOUNT TO FAILURE IN ESTABLISHING THE IDENTITY OF *CORPUS DELICTI*, THUS ENGENDERING THE ACQUITTAL OF AN ACCUSED; EXCEPTION.—** By providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia, Sec. 21 of RA 9165 is a critical means to ensure the establishment of the *chain of custody*. x x x Filling in the details as to where the physical inventory and photographing of the seized items should be made is Sec. 21

(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) x x x [and] echoed in Sec. 2(a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002 x x x. In sum, the applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous/illegal drugs: 1. The initial custody requirements must be done **immediately after seizure or confiscation**; 2. The **physical inventory and photographing** must be done in the presence of: a. the **accused or his representative or counsel; b.** a representative from the **media**; c. a representative from the **DOJ**; **and** **d.** any **elected public official**. 3. The conduct of the physical inventory and photograph shall be done at the: a. **place where the search warrant is served;** or b. **at the nearest police station**; or c. **nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure. Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, thus engendering the acquittal of an accused. However, such failure to comply is excused in cases where the following obtain: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**. In these exceptional cases, the seizures and custody over the confiscated items "shall not be rendered void and invalid."

**5. ID.; ID.; ID.; ID.; MUST BE AT THE PLACE OF APPREHENSION AND/OR SEIZURE AND THE THREE MANDATORY WITNESSES MUST ALREADY BE PHYSICALLY PRESENT AT THE TIME OF AND AT OR NEAR THE PLACE OF APPREHENSION AND SEIZURE.—** Sec. 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x 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 thereof." The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at**

**the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office. Likewise, so they can be ready to witness these procedures, the three (3) mandatory witnesses — the elected public official and the DOJ and media representatives — **must already be physically present at the time of and at or near the place of apprehension and seizure**. This is a requirement that can be ***easily*** ensured or complied with in a buy-bust operation as this is, by its very nature, a planned activity. The presence of these witnesses was specifically mandated by substantive law precisely to guard against the rather pervasive police practice of planting evidence in anti-narcotics operations — a practice that necessarily takes place at the point of seizure and confiscation. Hence, it is at this point that their presence is most crucial.

**6. ID.; ID.; ID.; ID.; MARKING; SHOULD BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR AND IMMEDIATELY UPON CONFISCATION.—** Apart from the three (3) insulating witnesses, Sec. 21 requires that the physical inventory and photographing of the confiscated drugs be likewise made in the presence of, **"the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel."** As to marking, although Sec. 21 is silent thereon, consistency with the chain of custody rule requires that such marking should be done (1) **in the presence of the apprehended violator** and (2) immediately upon confiscation. x x x The presence of the accused during x x x [the] initial custodial requirements cannot be brushed aside as a mere technicality, as it is critical in protecting the chain of custody and preserving the integrity and identity of the *corpus delicti*. As such, the failure of the prosecution to prove that the accused or his representative or counsel witnessed the performance by the buy-bust team of these requirements is fatal. It is settled that the prosecution has the positive duty to prove compliance with Sec. 21 and such need not be raised as an issue by the defense.

**7. ID.; ID.; ID.; STRICT COMPLIANCE WITH THE PRESCRIBED PROCEDURE UNDER SECTION 21 OF THE LAW IS REQUIRED BUT IN CASE OF NON-COMPLIANCE THEREOF, A SAVING CLAUSE IS PROVIDED REQUIRING THE PROSECUTION TO ACKNOWLEDGE AND CREDIBLY JUSTIFY THE NON-**

**COMPLIANCE AND TO SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM WERE PROPERLY PRESERVED.—** As a rule, strict compliance with the prescribed procedure under Sec. 21 is required. The Court has, however, recognized that this may not always be possible under field conditions which are sometimes far from ideal; hence, the apprehending officers cannot at all times attend to the niceties of the procedure in the handling of confiscated evidence. Thus, Sec. 21 (a), Article II of the IRR of RA 9165 provides for a saving clause, requiring the satisfaction, by the prosecution, of a **two-pronged requirement: first, to acknowledge and credibly justify the non-compliance with Sec. 21, and second, to show that the integrity and evidentiary value of the seized item were properly preserved**. x x x On the first prong, it has been held that the prosecution must **first acknowledge** the lapses on the part of the apprehending officers and thereafter **cite the justifiable grounds** therefor, which must be **credible**. Breaches of the procedure contained in Sec. 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would then have been compromised. If this two-pronged requirement obtains, the saving clause is triggered and the prosecution is then allowed to establish the identity of the *corpus delicti* despite the failure of the apprehending team to physically inventory and photograph the drugs at the place of arrest and/or to secure the presence of the required witnesses thereto. x x x [B]ecause the prosecution neither acknowledged nor explained its non-compliance with Sec. 21, the first prong was not satisfied. This leads to the inevitable conclusion that the saving clause was not triggered. Accordingly, there is no longer any point in determining if the second prong had been satisfied — *i.e.*, proving the integrity and evidentiary value of the seized illegal drugs. Regardless, even if the Court allows proof of the second prong despite this blunder in proving the first, the case for the prosecution must still fail. The matters required by the second prong to be proven — the integrity and evidentiary value of the seized drugs — are heavily tainted because of the irregularities attending the chain of custody of the drugs and the suspicious points in the factual narration of the prosecution.

**8. ID.; ID.; ID.; THE PROCEDURE ENSHRINED IN SECTION 21 IS A MATTER OF SUBSTANTIVE LAW AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY.—** The procedure enshrined in Sec. 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality. Substantive law requires strict observance of these procedural safeguards. Sec. 21's initial custody requirements must be strictly observed. Failure in this renders the confiscated items illegal unless the two-pronged requirement of the saving clause is satisfied.

**9. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY; CANNOT ARISE WHEN THE BUY-BUST TEAM COMMITTED PROCEDURAL LAPSES IN HANDLING THE CONFISCATED DRUGS.—** The People and the trial court, in maintaining the legality of the seizure, invoked the presumption of regularity in the performance of the police officers' duties. This is misplaced. Considering the procedural lapses the buy-bust team committed in handling the confiscated drugs and the dubious chain of its custody, a presumption of regularity **cannot** arise in the present case. x x x Hence, there is no such presumption that may arise in the present case. Contrary to the trial court's categorical declaration, the presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt and overcome his presumed innocence. This burden of the prosecution does not change even if the accused's defense is weak and uncorroborated. Such weakness does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight. It is settled that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.

**PERALTA, *J.*, *separate concurring opinion*:**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; INVENTORY AND PHOTOGRAPHING; MUST BE**

**CONDUCTED AFTER THE SEIZURE AND CONFISCATION IN THE PRESENCE OF NO LESS THAN THREE WITNESSES; CASE AT BAR.—** 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 x x x. 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. x x x However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant 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 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."

**2. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE LAID DOWN IN SECTION 21 MUST BE ADEQUATELY EXPLAINED BY THE PROSECUTION AND MUST BE ADEQUATELY PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE, BUT STRICT ADHERENCE TO THE PROCEDURE IS REQUIRED WHEN THE QUANTITY OF ILLEGAL DRUGS SEIZED IS MINISCULE TO PREVENT INCIDENTS OF PLANTING, TAMPERING OR ALTERATION OF EVIDENCE.—** 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.

**3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; JUDICIAL RELIANCE THEREON DESPITE THE LAPSES IN THE PROCEDURE UNDERTAKEN BY THE AGENTS OF THE LAW IS FUNDAMENTALLY FLAWED BECAUSE THE LAPSES THEMSELVES ARE AFFIRMATIVE PROOFS OF IRREGULARITY.—** [I]nvocation 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 appellant's 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.

**4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY RULE; REGARDED AS A MATTER OF EVIDENCE AND A RULE OF PROCEDURE, AND THE COURT HAS THE LAST SAY REGARDING THE APPRECIATION OF EVIDENCE.—** I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* 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.

**5. ID.; ID.; ID.; MARKING, INVENTORY AND PHOTOGRAPHING; CONSIDERED AS POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE BUT THE NON-OBSERVANCE THEREOF SHOULD NOT AFFECT THE VALIDITY OF THE SEIZURE OF THE EVIDENCE.— [T]he 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 x x x.** 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.

**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

**CAGUIOA, *J.*:**

This is an Appeal[1] filed pursuant to Section 13, Rule 124 of the Rules of Court from the Decision[2] dated September 30, 2014 (assailed Decision) of the Court of Appeals, Ninth (9th) Division (CA) in CA-G.R. CR-HC No. 06188. The assailed Decision affirmed *in toto* the Decision[3] dated April 10, 2013 rendered by the Regional Trial Court of Baguio City, Branch 61 (trial court), in Criminal Case (CC) Nos. 31846-R and 31847-R, which found accused-appellant Henry De Vera y Medina (De Vera) guilty beyond reasonable doubt of violation of Sections 5[4] and 11[5] of

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[1] *Rollo*, pp. 23-24.

[2] *Id*. at 2-22. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. concurring.

[3] CA *rollo*, pp. 54-63. Penned by Presiding Judge Antonio C. Reyes.

[4] 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.

[5] SEC. 11. *Possession of Dangerous Drugs*. — The penalty of x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x regardless of the degree of purity thereof:

x x x x x x 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.

Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portions of the two (2) Informations filed and consolidated before the trial court against De Vera read:

[Criminal Case No. 31846-R:]

That on or about the 24th day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously **sell and deliver** One (1) heat sealed transparent plastic sachet containing 0.61 gram of methamphetamine hydrochloride also known as 'SHABU[,]' a dangerous drug, for Php5,000.00 to **Albert Dolinta[,] Jr.**, a member of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG), Baguio City Police Office who acted as poseur buyer, knowing the same to be a dangerous drug, in violation of the aforementioned provision of law.[7]

[Criminal Case No. 31847-R:]

That on or about the 24th day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody: Three (3) heat sealed transparent plastic sachets, each containing 0.08 gram, 0.06 gram, and 0.06 gram, respectively, of methamphetamine hydrochloride also known as 'SHABU[,]' a dangerous drug, without the corresponding license or prescription from the authorities concerned, in violation of the aforementioned provision of law.[8] (Emphasis in the original)

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[6] 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 (2002).

[7] Records, p. 1

[8] *Id.* at 15. The Information mistakenly cited Sec. 12, Article II of RA 9165 instead of Sec. 11 as clearly intended from the body.

Upon his arraignment on June 27, 2011, De Vera entered a plea of "not guilty" to both offenses charged.[9] Trial on the merits, thereafter, was held.

**The Facts**

*Version of the Prosecution:*

The prosecution presented two (2) witnesses: SPO2 Albert Dolinta, Jr. (SPO2 Dolinta) and PO2 Marlon Charmino (PO2 Charmino),[10] who made the following narration of facts:

On May 24, 2011, at about 8:00 o'clock in the evening, a walk-in Confidential Informant (CI) went to the Office of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG) of the Baguio City Police Office and reported to SPO2 Dolinta that a certain Henry, who turned out to be De Vera, a drug pusher, offered to sell *shabu* worth ₱5,000.00.[11] Upon SPO2 Dolinta's instruction, the CI contacted Henry and told the latter that, the CI did not have enough money but that he would bring along another interested buyer.[12] They agreed to meet at around 11:30 p.m. along Upper Brookside, Baguio City.[13]

SPO2 Dolinta relayed the matter to the Chief of the Police, Police Senior Inspector Dino W. Cogasi (PSI Cogasi), who verified the information by interviewing the CI.[14] Thereafter, PSI Cogasi formed a buy-bust team composed of SPO2 Dolinta as poseur-buyer and team leader; PO2 Charmino as seizing officer; PO3 Jaime Abrera (PO3 Abrera) and PO1 Ramon Christopher Bueno (PO1 Bueno) as back-up officers.[15] They

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[9] *Id*. at 33.

[10] Referred to as "PO3 Charmino" in some parts of the records.

[11] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 6.

[12] *Id*.

[13] *Id*.

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

[15] *Id*. at 9-10.

coordinated the impending buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) - Cordillera Administrative Region (CAR).[16]

After the final briefing at around 11:00 o'clock p.m., the buy-bust team proceeded to the Barangay Upper Brookside, Baguio City.[17] SPO2 Dolinta and the CI waited for De Vera near a waiting shed[18] while the rest of the team positioned themselves nearby discreetly.[19]

Upon arrival of De Vera at around 11:45 p.m., the CI introduced SPO2 Dolinta as the buyer he was referring to earlier in the phone call.[20] SPO2 Dolinta brought out the buy-bust money consisting of five (5) one thousand peso (₱1,000.00) bills, which he counted in front of De Vera and then handed them to the latter.[21] De Vera, in turn, brought out a purse from his front pocket, opened the same and took out one (1) plastic sachet which contained white crystalline substance (drugs subject of sale).[22] After assessing the item as *shabu*, SPO2 Dolinta gave the pre-arranged signal by removing his cap, causing the back-up officers to respond to the scene and help in arresting De Vera.[23]

After introducing themselves to De Vera and informing him of his violations, SPO2 Dolinta marked the sachet of suspected drugs bought from De Vera by placing his initials, date and signature thereon.[24] Meanwhile, PO2 Charmino recovered the buy-bust money from De Vera which he handed to SPO2 Dolinta

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[16] *Id*. at 10.

[17] *Id*. at 11-12.

[18] *Id.* at 12-13.

[19] Records, p. 4.

[20] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 14.

[21] *Id*.

[22] Records, p. 4.

[23] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 15.

[24] Records, p. 4.

as the evidence custodian.[25] Upon frisking, PO2 Charmino likewise recovered from De Vera the purse containing three (3) more plastic sachets of suspected *shabu* (drugs subject of the possession case) and 42 pieces of transparent empty plastic sachets[26] which PO2 Charmino marked by putting his initials, date and signature thereon.[27] PO2 Abrera then stated to De Vera the latter's constitutional rights in the dialect he understood: Ilocano.[28]

Thereafter, the buy-bust team brought De Vera to the CAIDSOTG office where the inventory of the confiscated items was conducted in the presence of elected Barangay Official Rico W. Tibong, media representative from ABS-CBN, Meilen B. Pacio and Department of Justice (DOJ) representative, Prosecutor Ramsey Wynn Sudaypan.[29] Thereafter, with a request for qualitative examination signed by PSI Cogasi, SPO2 Dolinta and PO2 Charmino brought all four (4) seized drugs to the Regional Crime Laboratory Office, Camp Bado Dangwa (Crime Lab), for laboratory examination. The results yielded positive for methamphetamine hydrochloride.[30]

From the time of their seizure from De Vera to their submission to the Crime Lab, SPO2 Dolinta held custody of the drugs subject of sale and the buy-bust money while PO2 Charmino held custody of the drugs subject of the possession case and the 42 pieces of transparent plastic sachets.[31]

*Version of the Defense:*

The defense called De Vera to the stand, who narrated the following pertinent facts:

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[25] *Id*. at 5.

[26] Direct Examination of PO3 Charmino, TSN, June 6, 2012, p. 14.

[27] Records, p. 5.

[28] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 18.

[29] Records, p. 4.

[30] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 22.

[31] *Id*. at 21.

On May 24, 2011, De Vera was at a drinking session in his cousin's house in Tiptop, Pacdal until he left for home at around 11:00 o'clock p.m. The driver of the taxi cab he took told him that they were taking a shorter route through Brookside. At the intersection of Rimando Road and Upper Brookside, the taxi cab was blocked by four (4) armed policemen who ordered De Vera to alight as they received information that he was in possession of *shabu*. De Vera was taken to a nearby waiting shed where he was frisked. When the policemen found nothing illegal on De Vera's person, they went inside the taxi cab and after less than two (2) minutes, came out with a brown coin purse which was shown to De Vera.

The policemen brought De Vera to the CAIDSOTG office where the contents of the coin purse, which turned out to be *shabu*, were shown to the latter. SPO2 Dolinta imputed ownership thereof to De Vera, despite the latter's denial. He was thereafter detained and eventually brought to Camp Dangwa where he was ordered to sign an unknown document. All this while, there were no representatives from the media and DOJ or an elected public official present.[32]

*The Ruling of the trial court*

In the Decision dated April 10, 2013, the trial court found De Vera guilty beyond reasonable doubt of the offenses charged as follows:

> **WHEREFORE**, judgment is hereby rendered:
>
> 1. In Criminal Case No. 31846-R, finding the accused Henry De Vera **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a fine of ₱5,000,000.00**; and,
>
> 2. In Criminal Case No. 31847-R, finding the accused Henry De Vera **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine [of] ₱300,000.00[.]
>
> **SO ORDERED.**[33]

[32] Direct Examination of De Vera, TSN, February 18, 2013, pp. 6-22.

[33] CA *rollo*, p. 63.

The trial court ruled that the prosecution was able to discharge its burden to prove the guilt of De Vera for the separate crimes of sale and possession of illegal drugs. The presumption of regularity in the performance of duties of the buy-bust team *far outweighed* the presumption of innocence of the accused, as the latter presumption was overturned by the evidence of the prosecution. Moreover, the accused's defense of denial is highly improbable and the defense failed to show ill-motives on the part of the buy-bust team so as to falsely impute upon De Vera the crimes charged.[34]

Moreover, the trial court ruled that the police officers conducted a legitimate buy-bust operation; hence, there was valid seizure of the drugs subject of sale and valid warrantless arrest. Consequently, the body search upon De Vera's person which yielded the drugs subject of the possession case after his arrest is, likewise, constitutionally sanctioned. Finally, the integrity of the *corpus delicti* of both crimes charged was preserved, the buy-bust team having complied with Sec. 21 of RA 9165.[35]

De Vera appealed to the CA *via Notice of Appeal*.[36] He filed his *Brief*[37] dated December 16, 2013, while the People, through the Office of the Solicitor General (OSG), filed its *Brief*[38] dated May 15, 2014. On June 25, 2014, De Vera filed a *Manifestation*[39] waiving his right to file a Reply Brief.

*The Ruling of the CA*

In the assailed Decision, the CA affirmed *in toto* the trial court's Decision, thereby disposing of the case as follows:

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[34] *Id*. at 58.

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

[36] Records, pp. 182-183.

[37] CA *rollo*, pp. 38-52.

[38] *Id*. at 77-94.

[39] *Id*. at 95-96.

**WHEREFORE**, the trial court's *Decision* dated April 10, 2013 is **AFFIRMED** *in toto*.

**SO ORDERED.**[40] (Emphasis and italics in the original)

The CA held that the prosecution adequately proved all the elements of the crimes charged and that the prosecution's evidence sufficiently established an unbroken link in the chain of custody. On the issue of non-compliance by the buy-bust team with Sec. 21 of RA 9165, the CA pronounced that such does not necessarily render the arrest illegal or the items seized inadmissible as what is essential is that the integrity and the evidentiary value of the seized items are preserved.[41] Amidst the objections of the defense, the CA held that the identity and integrity of the seized drugs were proven by the prosecution.

Hence, this recourse.

In lieu of filing supplemental briefs, De Vera and the People filed separate *Manifestations* dated October 6, 2015[42] and October 15, 2015,[43] respectively, foregoing their right to file supplemental briefs and repleading the arguments raised in their *Briefs* filed before the CA.

## Issue

The main issue for the Court's resolution is whether or not accused-appellant De Vera is guilty beyond reasonable doubt of the separate crimes of sale and possession of illegal drugs as defined and punished under Sec. 5 and Sec. 11, respectively, both under Article II of RA 9165.

## The Court's Ruling

The Court finds for and accordingly acquits accused-appellant De Vera.

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[40] *Rollo*, p. 21.

[41] *Id*. at 11.

[42] *Id*. at 30-34.

[43] *Id*. at 37-41.

De Vera is charged with selling 0.61 gram, and possessing three (3) sachets of 0.08 gram, 0.06 gram, and 0.06 gram each of dangerous illegal drugs, in particular, Methamphetamine Hydrochloride colloquially known as *shabu*. At the outset, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, being the law in place at the time of the commission of the offense applies in this case.

For a successful prosecution of a case for illegal sale of drugs, the following elements must be proven: (l)the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, in prosecuting a case for illegal possession of drugs, the following elements must concur: (1) the accused is in possession of prohibited drugs; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[44]

The dangerous drug itself constitutes the *corpus delicti* of the offense of sale and/or possession of dangerous drugs.[45] It is important that the State establish, with moral certainty, the integrity and identity of the illicit drugs sold to be the same as those examined in the laboratory and subsequently presented in court as evidence.[46] This rigorous requirement, known under RA 9165 as the *chain of custody*,[47] performs the function of

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[44] *People v. Casacop*, 778 Phil. 369, 375 (2016).

[45] See *People v. Abetong*, 735 Phil. 476, 490 (2014); *Valencia v. People*, 725 Phil. 268, 277 (2014).

[46] See *People v. Del Mundo*, G.R. No. 208095, September 20, 2017, p. 7, citing *People v. Gayoso*, G.R. No. 206590, March 27, 2017, p. 8; *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

[47] The definition of "chain of custody" can be found in Sec. 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, thus:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment [of] each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court [to] destruction. Such record of movements and custody

ensuring that unnecessary doubts concerning the identity of the evidence are removed.[48]

By providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia, Sec. 21 of RA 9165 is a critical means to ensure the establishment of the *chain of custody*.[49] The same provides:

> 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;**
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, 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, which shall be done under oath by the forensic laboratory examiner,

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of seized [items] shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

[48] *People v. Dahil*, 750 Phil. 212, 226 (2015).

[49] *Id.* at 227.

shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours. (Emphasis supplied and italics in the original)

Filling in the details as to where the physical inventory and photographing of the seized items should be made is Sec. 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR), which reads:

(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;** x x x (Emphasis supplied)

The same likewise provides for a saving clause in case of non-compliance with the requirements of RA 9165 and the IRR, thus:

x x x **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.** x x x (Emphasis supplied)

The foregoing is echoed in Sec. 2(a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

**a. the apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physical inventory and photograph the same in the presence of:**

**(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;**
**(ii) a representative from the media;**
**(iii) a representative from the Department of Justice; and**
**(iv) any elected public official;**

**who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 a seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x.** (Emphasis supplied)

In sum, the applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous/illegal drugs:

1. The initial custody requirements must be done **immediately after seizure or confiscation**;

2. The **physical inventory and photographing** must be done in the presence of:

    a. the **accused or his representative or counsel;**
    b. a representative from the **media**;
    c. a representative from the **DOJ**; **and**
    d. any **elected public official**.

3. The conduct of the physical inventory and photograph shall be done at the:

    **a. place where the search warrant is served;** or
    **b. at the nearest police station**; or

**c. nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure.

Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, thus engendering the acquittal of an accused.[50]

However, such failure to comply is excused in cases where the following obtain: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[51] In these exceptional cases, the seizures and custody over the confiscated items "shall not be rendered void and invalid."

With the foregoing considered, the Court had thoroughly sifted the records of the case and is led to entertain reasonable doubts on the integrity and identity of the *corpus delicti*.

***The buy-bust team failed to comply with the requirements of Sec. 21 of RA 9165, specifically, with the required inventory and photographing of the seized dangerous drugs in the presence of the the three (3) insulating witnesses and immediately after seizure and confiscation.***

*(i) Presence of the three (3) insulating witnesses*

Sec. 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph

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[50] *People v. Dela Cruz*, 744 Phil. 816, 830 (2014).

[51] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, Sec. 21 (l).

[the seized illegal drugs] in the presence of the accused x x x 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 thereof."

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.[52]

Likewise, so they can be ready to witness these procedures, the three (3) mandatory witnesses — the elected public official and the DOJ and media representatives — **must already be physically present at the time of and at or near the place of apprehension and seizure**. This is a requirement that can be ***easily*** ensured or complied with in a buy-bust operation as this is, by its very nature, a planned activity. The presence of these witnesses was specifically mandated by substantive law precisely to guard against the rather pervasive police practice of planting evidence in anti-narcotics operations[53] — a practice that necessarily takes place at the point of seizure and confiscation. Hence, it is at this point that their presence is most crucial. As the Court had clearly illustrated:

x x x Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the

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[52] See IRR, Article II, Sec. 21 (a).

[53] As early as in the case of *People v. Cruz*, 310 Phil. 770, 774-775 (1994), the Court has taken judicial notice of the rather pervasive practice of planting evidence in anti-narcotics operations, holding that:

Be that as it may, the Court is also cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses is not uncommon. By the very nature of anti-narcotics operations, with the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. x x x

seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 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 sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x[54] (Italics in the original)

In the present case, the buy-bust operation was arranged in advance with the police officers having been able to form an apprehending team, prepare the necessary paperwork and the buy-bust money, coordinate with PDEA and set-up the sale. With all this time spent preparing, the records show no attempt by the buy-bust team to secure the presence of the three (3) witnesses to be present at the time and place of the alleged confiscation of the drugs. Instead, what is evident from the records is that the witnesses' presence were only secured upon return of the buy-bust team to CAIDSOTG office, and during the inventory of the seized items therein, as testified to by SPO2 Dolinta, thus

[PROSECUTOR MA. LOURDES SORIANO (PROS. SORIANO)

x x x x x x x x x

Q After that, what happened?

x x x x x x x x x

A Afterwards, PO2 Abrera stated to him his Constitutional Rights in Ilocano dialect which he understood. Afterwards, we brought the suspect to our office for the filing of the necessary charges against him.

x x x x x x x x x

Q **When you arrive[d] at your office, what happened next?**

x x x x x x x x x

A **When we arrived at our office, we made the necessary documents. First is the Inventory of the evidence**

[54] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

> **confiscated from the suspect. We called the representatives from the Barangay, Media and DOJ. We made the Inventory in our office.**[55] (Emphasis supplied)

Clearly, not one of the mandatory witnesses was present during, and at the place of, the alleged confiscation of drugs — confirming, in fact, the testimony of De Vera. There being no witness to insulate against police abuses at the point of seizure, *i.e.*, the first link in the chain of custody, it becomes futile to establish the rest of the links in the chain. Doing so would simply be proving the chain of custody of, possibly, already planted drugs.

*(ii) Physical Inventory and Photographing*

The above-cited evidence of the Prosecution likewise points to another fatal lapse of the buy-bust team: its failure to conduct a physical inventory and photographing of the seized drugs immediately after and at the place of confiscation as required under Sec. 21. SPO2 Dolinta testified thus:

> [ATTY. IMMANUEL AWISAN (ATTY. AWISAN)]
>
> x x x x x x x x x
>
> Q **And did you conduct an inventory of those items while you were still there at Upper Brookside, Baguio City?**
>
> A **No, Sir.**
>
> Q **There were also no photographs of those [seized] items?**
>
> A **No, Sir.**[56] (Emphasis supplied)

Instead, these initial custody requirements were only made at about 1:30 a.m. or an hour and a half after the return of the buy-bust team to the CAIDSOTG office. Specifically on the inventory, SPO2 Dolinta testified:

> ATTY. AWISAN:
>
> x x x x x x x x x

[55] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, pp. 17-19.

[56] Re-Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 23.

Q What time did you reach the office after the arrest of Mr. Henry [D]e Vera?
A **I think we reached our office 12:00 midnight already.**
Q **And what time was the inventory conducted?**
A **At around I think 1:30 a.m. of May 25, 2011.**[57] (Emphasis supplied)

This fact likewise appears in SPO2 Dolinta's Affidavit[58] dated May 25, 2011:

10. That **while in the office we conducted the inventory with the presence of media representative from ABSCBN Meilen B. Pacio, Elected official RICO W. TIBONG and DOJ representative Prosecutor RAMSEY WYNN SUDAYPAN**[.][59] (Emphasis supplied)

As to the photographing, a perusal of the photographs[60] reveals that they were, indeed, taken, not in Upper Brookside immediately after the confiscation,[61] but only when the buy-bust team returned to the CAIDSOTG office and during the inventory.

Significantly, the photographs[62] submitted in evidence are, by themselves, defective as they were not of the seized illegal drugs. A cursory look at the three photographs shows only: a) a mug shot of the accused; and b) two of the alleged witnesses signing the Inventory Form.

Thus, no photographs at all of the drugs and drug paraphernalia alleged to have been confiscated from De Vera were presented. To emphasize, the photographs required by law to be taken are those of the articles confiscated during the buy-bust operation,

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[57] *Id*. at 26.

[58] Records, p. 4.

[59] *Id*.

[60] Showing, in the background, what appear to be office tables and a poster of the PNP attached to the wall. Records, p. 43.

[61] Re-Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 23.

[62] Records, p. 43.

particularly the seized illegal drugs,[63] consistent with the law's purpose to ensure that their integrity and identity are preserved.

The fact that the photographs are not of the seized illegal drugs is moreover reflected in the *Receipt*,[64] signed by the Clerk of the trial court, of the items submitted by SPO2 Dolinta, including the photographs, thus:

> Received the following item(s) from SPO2 ALBERT E. DOLINTA, JR., PNP, Baguio City:
>
> x x x x x x x x x
>
> **2. Three (3) pictures: one of the accused and the two witnesses to the inventory** x x x[65] (Emphasis in the original)

In fine, the buy-bust team utterly failed to comply with the requirements of RA 9165 to perform a physical inventory and photographing of the seized illegal drugs immediately after, and at the place of, seizure and confiscation.

*(iii) Presence of the accused during the marking, physical inventory and photographing of the seized items.*

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[63] See Sec. 21 of RA 9165.

> 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[.]** (Emphasis supplied)

[64] Records, p. 38.

[65] *Id*.

Apart from the three (3) insulating witnesses, Sec. 21 requires that the physical inventory and photographing of the confiscated drugs be likewise made in the presence of, **"the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel."**

As to marking, although Sec. 21 is silent thereon, consistency with the chain of custody rule requires that such marking should be done (1) **in the presence of the apprehended violator** and (2) immediately upon confiscation.[66]

In the present case, the prosecution failed to adduce evidence concerning the presence of De Vera during the photographing, physical inventory and marking of the seized items. The prosecution's witnesses specifically mentioned the presence of the three (3) insulating witnesses during the inventory, detailed the immediate marking upon seizure of the seized drugs and pointed out the photographing during the inventory; **however, no mention was made on whether De Vera or his representative or counsel witnessed these activities**.

The presence of the accused during these initial custodial requirements cannot be brushed aside as a mere technicality,[67] as it is critical in protecting the chain of custody and preserving the integrity and identity of the *corpus delicti*. As such, the failure of the prosecution to prove that the accused or his representative or counsel witnessed the performance by the buy-bust team of these requirements is fatal. It is settled that the prosecution has the positive duty to prove compliance with Sec. 21[68] and such need not be raised as an issue by the defense.

All told, the prosecution utterly failed to establish its compliance with the straightforward mandate of Sec. 21 and related jurisprudence on buy-bust operations. It failed to secure the presence of the three (3) insulating witnesses, and conduct

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[66] *People v. Beran*, 724 Phil. 788 (2014).

[67] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 141.

[68] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

a physical inventory and photographing of the seized illegal drugs, immediately after, and at the place of, seizure and confiscation. Moreover, it failed to prove the presence of the accused in these initial custody requirements, as well as during the marking.

*The prosecution failed to trigger the saving clause under the IRR of RA 9165. Its noncompliance with Sec. 21 cannot be excused; the identity and integrity of the corpus delicti are not preserved.*

As a rule, strict compliance with the prescribed procedure under Sec. 21 is required.[69] The Court has, however, recognized that this may not always be possible under field conditions which are sometimes far from ideal; hence, the apprehending officers cannot at all times attend to the niceties of the procedure in the handling of confiscated evidence.[70] Thus, Sec. 21 (a), Article II of the IRR of RA 9165 provides for a saving clause,[71] requiring the satisfaction, by the prosecution, of a **two-pronged requirement: first, to acknowledge and credibly justify the non-compliance with Sec. 21, and second, to show that the integrity and evidentiary value of the seized item were properly preserved**.[72] The Court held in *Valencia v. People*:[73]

> Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity

[69] *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475 (2016).

[70] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[71] x x x **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.** (Emphasis supplied)

[72] See *id*.

[73] *Supra* note 45.

and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided [was] a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[74]

On the first prong, it has been held that the prosecution must **first acknowledge** the lapses on the part of the apprehending officers and thereafter **cite the justifiable grounds** therefor,[75] which must be **credible**.[76] Breaches of the procedure contained in Sec. 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would then have been compromised.[77]

If this two-pronged requirement obtains, the saving clause is triggered and the prosecution is then allowed to establish the identity of the *corpus delicti* despite the failure of the apprehending team to physically inventory and photograph the drugs at the place of arrest and/or to secure the presence of the required witnesses thereto.

In this case, the prosecution did not concede the evident lapses of the buy-bust team and, thus, failed to offer credible and justifiable grounds for these lapses. No explanation was advanced as to the failure to conduct the inventory and take photographs of the seized drugs immediately after confiscation and in the presence of the insulating witnesses and the accused.

The People, in its *Brief*, insists that the buy-bust team substantially complied with the requirements of Sec. 21 as the

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[74] *Id.* at 286.

[75] *People v. Cayas*, *supra* note 69, at 80.

[76] *People v. Barte*, G.R. No. 179749, March 1, 2017, 819 SCRA 10.

[77] *Id.*; see also *People v. Sumili*, 753 Phil. 342, 352 (2015).

marking was made at the place of arrest and the inventory was witnessed by a public officer and media and DOJ representatives.[78] Even granting that these constitute "substantial compliance"[79] of the law, the same will not salvage the case for the prosecution.

To reiterate, **strict compliance** — not just substantial compliance — is required of the mandatory provisions of Sec. 21.[80] The Court cannot absolve the failure of the buy-bust team to comply **fully** with Sec. 21 for its successful observance of only some of the law's provisions. Selective and partial compliance is tantamount to non-compliance which, as have been repeatedly emphasized, is fatal to establishing the *corpus delicti*. Then, unless excused by the saving clause, the acquittal of the accused must follow.

Too, the People, in attempting to excuse its lack of justification for the lapses, faults the defense in "never bother[ing] to question the police officers for the reasons" behind such lapses.[81] To emphasize, the prosecution has the duty to adduce evidence proving compliance by the buy-bust team with the prescribed procedures laid down by Sec. 21.[82] Corollary thereto is its positive duty, in case it fails to prove such compliance, to trigger the saving clause. The accused's Constitutional right to be presumed innocent means that he can stay quiet and not do anything, and this will not be taken against him nor will this impact on his presumed innocence.[83]

At any rate, the records show that the defense had, indeed, been taking issue with the non-observance of Sec. 21 as early

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[78] CA *rollo*, p. 88.

[79] *Id*.

[80] *People v. Cayas*, *supra* note 69; *People v. Havana*, *supra* note 69.

[81] CA *rollo*, p. 89.

[82] *People v. Kamad*, 624 Phil. 289, 301 (2010), citing *People v. Garcia*, 599 Phil. 416, 427 (2009).

[83] *People v. Galvez*, 548 Phil. 436, 470 (2007), citing *People v. Saavedra*, 233 Phil. 622, 647 (1987).

as in the trial court proceedings. In its *Comment on the Formal Offer of Evidence by the Prosecution*,[84] the defense objected to the admission of the Inventory as evidence for the prosecution, precisely on this ground, thus:

> **The accused objects to the admission of exhibit "C" (inventory of seized items) on the ground that the police officers failed to comply with [S]ection 21 Article II of R.A. 9165 relative to the handling and custody of drug evidences.** The police officers failed to safeguard the integrity of the drug evidences. The inventory of the drug evidence and other seized items was not done immediately after the arrest but was only conducted after the lapse of a considerable period from the time the same were allegedly seized.[85] (Emphasis supplied)

The defense continued asserting this objection in its *Brief* filed with the CA, thus:

> In the assailed decision, the trial court was convinced that the buy-bust team complied with Section 21, Article II of Republic Act No. 9165. The accused-appellant, however, maintains that there is no factual basis from which the trial court's finding can be derived.
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> x x x x x x x x x
>
> *First*, the prosecution witnesses claimed that the items seized were immediately marked upon confiscation. Nevertheless, it was not established beyond reasonable doubt whether the marking thereof was done in the presence of the accused-appellant. x x x
>
> *Second*, the accused-appellant did not witness nor sign the inventory. x x x
>
> *Third*, no photograph was taken during the actual confiscation of the items. x x x
>
> **The above enumerated points of noncompliance with the prescribed procedure would not invalidate the search and seizure of the items subject of this case, only if: (1) the noncompliance was based on justifiable grounds; and (2) the integrity of the**

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[84] Records, pp. 137-138.

[85] *Id*. at 137.

**items confiscated has been preserved. The problem is that the prosecution failed to satisfy the two (2) requirements.**

**No explanation was at all offered to justify these lapses and the integrity of the confiscated items had not been preserved.** x x x (Additional emphasis supplied and italics in the original)[86]

Remarkably, even as the defense, in its *Brief* pointed out the failure of the prosecution to justify the buy-bust team's procedural lapses which would have made possible the application of the saving clause, the prosecution remained mum on the matter. It could have very well filed a Supplemental Brief with the Court expressing its justifications for the lapses;[87] however, it did not. Instead, the prosecution, in complete disregard of the defense's points, filed a *Manifestation* dispensing with the filing of a Supplemental Brief.[88]

Hence, because the prosecution neither acknowledged nor explained its non-compliance with Sec. 21, the first prong was not satisfied. This leads to the inevitable conclusion that the saving clause was not triggered. Accordingly, there is no longer any point in determining if the second prong had been satisfied - *i.e.*, proving the integrity and evidentiary value of the seized illegal drugs.

Regardless, even if the Court allows proof of the second prong despite this blunder in proving the first, the case for the prosecution must still fail. The matters required by the second prong to be proven — the integrity and evidentiary value of the seized drugs — are heavily tainted because of the irregularities attending the chain of custody of the drugs and the suspicious points in the factual narration of the prosecution.

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[86] CA *rollo*, pp. 48-50.

[87] On August 12, 2015, the Court resolved, among others, to notify the parties that they may file their respective supplemental briefs within thirty (30) days from such notice. *Rollo*, p. 28.

[88] *Rollo*, p. 37.

First, as the defense had pointed out, the request for qualitative examination (*Request*)[89] and the Inventory[90] show an aggregate weight of **1.32 grams** of illegal drugs allegedly confiscated from De Vera.[91] This differs starkly from the figures in the

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[89] Records, p. 6.

[90] *Id*. at 7.

[91] *Id*. at 6-7. The following table appear in both the Request and the Inventory:

| MARKING/S | QUANTITY | DESCRIPTION |
|---|---|---|
| EXH-A "AED" 05/24/2011 W/ signature | Approximately zero point sixty (0.60) gram of suspected white crystalline substance suspected to be "shabu" for buy-bust. | One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "AED" 05/24/2011 and signature for identification purposes. |
| EXH-B-1 "MNC" 05/24/2011 W/ signature | Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession. | One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes. |
| EXH-B-2 "MNC" 05/24/2011 W/ signature | Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession. | One (1) piece of small heat sealed transparent plastic – sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes. |
| EXH-B-3 "MNC" 05/24/2011 W/ signature | Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession. | One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes. |

Initial Laboratory Report[92] and Chemistry Report[93] which both show that the total weight of drugs submitted for examination was only **0.81 gram**.[94] **This means that the drugs subjected to examination was short by 0.51 gram or 39% less than what was declared to have been confiscated and inventoried by the buy-bust team.**

In the case of *People v. Pornillos*,[95] the Court acquitted the accused therein on the **sole** basis that there was a wide discrepancy between the weight of the substance seized and the weight of the substance subjected to forensic tests, thus:

> **But the CA is in error in one important point. It said that the chain of custody of the seized drugs does not appear to be unbroken. But the PDEA report to the Provincial Prosecutor's Office, the booking sheet and arrest report, the Certificate of Inventory, and the laboratory examination request all put down the seized *shabu* as weighing 0.4 gram. The forensic chemist reported and testified, however, that the police actually submitted only 0.2204 gram of *shabu* for laboratory testing, short by 0.1796 gram from what the police inventoried.**

In *People v. Aneslag*, the Information alleged that the accused sold 240 grams of *shabu* but the forensic test showed that the drugs weighed only 230 grams, short by 10 grams. The prosecution offered a sound explanation for the 4.16% loss. The trial court ordered two separate tests of the subject *shabu* packs. As a consequence the two

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[92] *Id*. at 8.

[93] *Id*. at 42.

[94] *Id.* at 8, 42. The following appear in both the Laboratory Report and Chemistry Report:

**SPECIMEN/S SUBMITTED:**

1 - Four (4) heat sealed transparent plastic sachets, each containing white crystalline substance with the following markings and recorded net weights:

A = [EXH-A AED 05/24/2011 and signature] = 0.61 gram

B = [EXH B-1 MNC 05/24/2011 and signature] = 0.08 gram

C = [EXH B-2 MNC 05/24/2011 and signature] = 0.06 gram

D = [EXH B-3 MNC 05/24/2011 and signature] = 0.06 gram (Emphasis in the original)

[95] 718 Phil. 675 (2013).

chemists took out separate samples from each of the seized packs of *shabu*, resulting in the weight loss.

Here, however, **the percentage of loss was not that small. The content of the sachet was inventoried at 0.4 gram but yielded only 0.2204 gram during the laboratory test, short by 0.1796 gram. It suffered a loss of 45% or nearly half of the original weight**. The prosecution has three theories: only two chemists served the entire region giving rise to possible error; the police and the crime laboratory used different weighing scales; and the failure of the laboratory to take into account the weight of the sachet container. **But these are mere speculations since none of those involved was willing to admit having committed weighing error. Speculations cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering with the prosecution evidence. The Court cannot affirm the conviction of Pornillos on compromised evidence.**[96] (Emphasis and underscoring supplied)

In the present case, similar to *Pornillos*, the pieces of evidence submitted reveal a significant discrepancy of 39% between the weight of the drugs allegedly confiscated from De Vera and those subjected to examination by the forensic chemist. In dismissing this irregularity, the CA accepted the prosecution's explanation that the quantity of the seized items as indicated in the Request and Inventory are "approximate" weights only, not "true" weights.[97] Likewise, the seized drugs were marked anyway, hence, switching, planting or contamination thereof was obviated.[98]

The Court takes exception to the CA's conclusions. The dismissive explanation of the prosecution does not remove the doubts created on the identity of the drugs seized and examined. The weight discrepancy is rather significant and apart from the nomenclature used in the Request and Inventory which refers only to approximate weights, no other explanation was advanced.

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[96] *Id*. at 678-679.

[97] CA *rollo*, p. 86.

[98] *Rollo*, p. 19.

In the case of *People v. Aneslag*,[99] the prosecution went to great lengths to explain the 12.5% variance between the weight of the seized drugs as alleged in the Information (240 grams) and that as determined by the forensic chemist (210 grams). This explanation was, thus, duly noted and given credence and weight by the Court.

Moreover, the fact that there was marking at the point of seizure does not work to excuse irregularities attending the rest of the links in the chain of custody. At any rate, as had been previously discussed, the marking itself of the seized drugs was erroneous for not having been witnessed by the accused.

Second, under the circumstances, well-taken is the defense's point that the significantly insufficient consideration for the allegedly sold drugs renders doubtful the legitimacy of the buy-bust sale. Team leader and poseur-buyer SPO2 Dolinta stated that the buy-bust money used to buy the 0.62 gram of *shabu* sold and seized was only ₱5,000.00.[100] On the other hand, SPO2 Dolinta likewise testified that based on his experience, one (1) gram of *shabu* costs ₱15,000.00 and ₱5,000 should be able to buy more or less 0.40 gram only.[101] This begs the question: why would De Vera sell 0.61 gram of shabu to SPO2 Dolinta, a complete stranger, for ₱5,000.00, when its market value was approximately ₱9,150.00 or ₱4,150.00 more than what it was sold for. No special circumstance was disclosed for this transaction to warrant the huge discount of 45%.

The CA was correct that under Sec. 5 of RA 9165, the payment of any consideration is immaterial as the distribution is, in itself, a punishable offense. However, the issue of insufficient consideration in the present case is raised not so much as an element of the crime but goes into the very credibility of the prosecution's story of a buy-bust activity. In plain terms, it belies and shows the prosecution's narration of a legitimate

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[99] 699 Phil. 146, 166-167 (2012).

[100] Records, p. 4.

[101] Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 12.

buy-bust sale in the manner that it presented to be a complete concoction.

*Courts must apply strictly the requirements of Sec. 21. The presumption of regularity in the performance of official duties cannot apply where there is a clear violation of Sec. 21. In such cases, the innocence of the accused, as presumed, must be upheld.*

Unfortunately, the CA and the trial court glossed over these obvious irregularities which attended the present buy-bust operation and the confiscation and handling of the subject drugs.

The CA excused the buy-bust team's lapses, ruling that what is essential is that the integrity and evidentiary value of the seized items are preserved.[102] In other words, the CA excused the failure of the buy-bust team to comply with Sec. 21 on the basis of the second prong of the saving clause (that the integrity and evidentiary value of the subject drugs are established) **but ignoring altogether the first prong (absence of justifiable reasons for the procedural lapses)**.

The CA assumes a mistaken understanding of Sec. 21. The procedure enshrined in Sec. 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.[103] Substantive law requires strict observance of these procedural safeguards.[104] Sec. 21's initial custody requirements must be strictly observed. Failure in this renders the confiscated items illegal unless the two-pronged requirement of the saving clause is satisfied.

The People[105] and the trial court,[106] in maintaining the legality of the seizure, invoked the presumption of regularity in the

[102] *Rollo*, p. 11.

[103] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[104] *Id*. at 1033.

[105] CA *rollo*, p. 92.

[106] *Id*. at 58.

performance of the police officers' duties. This is misplaced. Considering the procedural lapses the buy-bust team committed in handling the confiscated drugs and the dubious chain of its custody, a presumption of regularity **cannot** arise in the present case. This was settled in *People v. Kamad*,[107] where the Court held:

> **x x x A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.** In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.[108] (Emphasis and underscoring supplied)

Hence, there is no such presumption that may arise in the present case. Contrary to the trial court's categorical declaration, the presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt and overcome his presumed innocence.[109]

This burden of the prosecution does not change even if the accused's defense is weak and uncorroborated. Such weakness does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight. It is settled that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.[110]

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[107] *Supra* note 82.

[108] *Id*. at 311.

[109] *People v. Pagaura*, 334 Phil. 683, 690 (1997).

[110] *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

Based on the foregoing and following the Court's precedents as discussed above, the Court is left with no alternative except to reverse De Vera's conviction.

The prosecution utterly failed to establish the *corpus delicti* of the crimes due to the serious lapses in observing Sec. 21 of R.A. 9165 and the concomitant failure to trigger the saving clause. The prosecution did not recognize and justify credibly its procedural lapses and failed to prove the integrity and evidentiary value of the seized drugs. De Vera's innocence, as presumed and protected by the Constitution, must stand in light of the reasonable doubt on his guilt. His acquittal must forthwith issue.

To conclude, the Court emphasizes the following primordial points: the prosecution is duty-bound to prove, beyond reasonable doubt, each and every element of the crime charged. In illegal drugs cases, this includes proving faithful compliance with Sec. 21 of RA 9165, this being fundamental to establishing the element of *corpus delicti*. **In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Sec. 21.**[111]

**As no less than the liberty of an accused is at stake, appellate courts, the Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Sec. 21 and if not, if the same is justified under the circumstances.** This, regardless if issues thereon were ever raised or threshed out in the lower court/s, consistent with the doctrine that appeal in criminal cases throws the whole case open for review and the appellate court must correct errors in the appealed judgment whether they are assigned or not.[112] If, from such full examination of the records, there appears unjustified failure to comply with Sec. 21, it becomes the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[113]

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[111] See *People v. Jugo*, *supra* note 68.

[112] *People v. Dahil*, *supra* note 48, at 225.

[113] See *People v. Jugo*, *supra* note 68.

**WHEREFORE,** premises considered, the Decision dated September 30, 2014 of the CA in CA-G.R. CR-HC No. 06188 is **REVERSED** and **SET ASIDE**. Accused-appellant Henry De Vera y Medina is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The Superintendent of New Bilibid Prison is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police for his information.

**SO ORDERED.**

*Carpio (Chairperson)*, *Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

*Peralta, J.*, see separate concurring opinion.

## SEPARATE CONCURRING OPINION

**PERALTA, *J.*:**

I concur with the *ponencia* in acquitting accused-appellant Henry De Vera *y* Medina 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 the records show no attempt by the buy-bust team to secure the presence of the three (3) witnesses required to be present at the time and place of the alleged confiscation of the dangerous drugs, namely:

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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"*

the public elected official, the Department of Justice representative and the media representative. I also agree with the *ponencia* in stressing that the prosecution did not concede the evident lapses of the buy-bust team, and no explanation was advanced as to the failure to conduct the inventory and take photographs of the seized drugs immediately after confiscation and in the presence of the insulating witnesses and the accused. Nevertheless, I would like to elaborate on important matters relative to Section 21[2] 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

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[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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018. (Emphasis ours)

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. 1064[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.

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

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[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.

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

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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> x x x x x x x x x
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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.
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> 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

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[6] *Id.*

[7] *Id.*

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 appellant 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 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

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[8] *Id.* at 349-350.

[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.

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 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**

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[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id.*

[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.

**assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.

Also, it is not amiss to emphasize that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (*Terry* search), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.

Meanwhile, 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 appellant's 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 jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the

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[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

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) 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)

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[16] G.R. No. 202206, March 5, 2018.

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.

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**FIRST DIVISION**

[G.R. No. 221427. July 30, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ALVIN J. LABAGALA and ROMEO LABAGALA,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.—** For the accused to be convicted of robbery with homicide, the prosecution must prove the following elements: *(a)* the taking of personal property with the use of violence or intimidation against the person; *(b)* the property taken belongs to another; *(c)* the taking is characterized by intent to gain or *animus lucrandi;* and *(d)* on the occasion or by reason of the robbery, the crime of homicide, as used in its *generic sense,* was committed. In robbery with homicide, it must be established that the *original criminal design* of the malefactor/s is to commit robbery, and the killing is merely *incidental* thereto. "The intent to commit robbery must precede the taking of human life[, but] the homicide may take place *before, during* or *after* the robbery."

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A SINGLE WITNESS, IF POSITIVE AND CREDIBLE, IS SUFFICIENT TO SUSTAIN A JUDGMENT OF CONVICTION.—** A thorough review of the records shows that the prosecution was able to prove all the elements of the crime of robbery with homicide through the testimony of Jun, who was an eyewitness to the incident x x x. We agree with the court *a quo* in upholding the detailed, clear and straightforward testimony of Jun. That said testimony is uncorroborated by another witness is of no moment. After all, "the testimony of a single witness, if positive and credible, is sufficient to sustain a judgment of conviction x x x."

**3. ID.; ID.; ID.; THE TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS THEREON GENERALLY DESERVE GREAT RESPECT AND ARE ACCORDED FINALITY.—** [I]t is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, *unless* the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case."

**4. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; AN ACCUSED WHO PARTICIPATED AS A PRINCIPAL IN THE COMMISSION OF A ROBBERY WILL ALSO BE HELD LIABLE AS A PRINCIPAL OF ROBBERY WITH HOMICIDE EVEN IF HE DID NOT ACTUALLY TAKE PART IN THE KILLING THAT WAS COMMITTED BY REASON OR ON THE OCCASION OF THE ROBBERY; EXCEPTION.—** We explained in *People v. De Jesus* that an accused who participated as a principal in the commission of a robbery will also be held liable as a principal of robbery with homicide *even if he did not actually take part in the killing* that was committed by reason or on the occasion of the robbery, *unless* it is clearly shown that he tried to prevent the same x x x. Per the records, it was established that appellants, together with their co-accused, entered the victim's yard where they took the victim's personal effects by means of force, and with an obvious intent to gain. That they cooperated with each other to achieve this purpose was plainly manifested by their actions x x x. Since it was not shown that appellants had

endeavored to prevent the victim's killing, they are both liable as principals of the crime of robbery with homicide.

**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**

**DEL CASTILLO, *J.*:**

Assailed in this appeal is the June 27, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06040 which affirmed the November 15, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 27, Cabanatuan City, finding appellants Alvin J. Labagala and Romeo Labagala guilty beyond reasonable doubt of the crime of robbery with homicide.

***The Antecedent Facts***

Appellants, together with their co-accused, Pablito Palens a.k.a. "Jun" (Pablito), Salve A. Pascual (Salve) and Michael Doe (Michael), were charged with the crime of robbery with homicide in an Amended Information[3] dated December 23, 2002 which reads:

That on or about the 12th day of June, 2002 in Cabanatuan City, Republic of the Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused, armed with a deadly weapon, with intent [to] gain and by means of force, violence and intimidation on the person of one MARIO P. LEGASPI, SR., conspiring, confederating and mutually aiding and abetting with one another[,] did then and there, willfully, unlawfully and feloniously take, steal

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[1] *Rollo,* pp. 2-13; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Rosmari D. Carandang and Danton Q. Bueser.

[2] CA *rollo,* pp. 34-45; penned by Presiding Judge Angelo C. Perez.

[3] Records, p. 29. Docketed as Criminal Case No. 12694.

and carry away the following: 2 big rings, necklace, watch, cash money and a licensed 9 MM Jericho pistol with Serial No. 95305683[,] more or less in the total amount of TWO HUNDRED THOUSAND PESOS (₱200,000.00), Philippine Currency, owned by and belonging to said Mario Legaspi[,] Sr., to the damage and prejudice of the heirs of said Mario Legaspi[,] and on the occassion [sic] of the said robbery, the above-named accused[,] with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Mario Legaspi[,] Sr. by hitting him on the head and stabbing him on the different parts of his body, thereby inflicting upon him serious physical injuries which directly caused his death.

CONTRARY TO LAW, with the qualifying circumstances of treachery and the fact that the accused took advantage of superior strenght [sic] and had employed means to weaken the victim's defense and evidence premeditation [sic].

Upon being arraigned, appellants entered a plea of not guilty to the offense charged in the Information.[4] Trial thereafter ensued.

***Version of the Prosecution***

The prosecution's version of the incident is as follows:

On June 12, 2002, at around 7:30 p.m., Jun Alberto[5] (Jun) was having dinner with the victim under the mango tree at the latter's residence when Salve entered the yard to buy a pack of cigarettes.[6] As he was attending to Salve, he noticed four men enter the premises.[7] Jun identified two of them in open court as appellants Alvin and Romeo Labagala.[8] Jun saw Alvin poke a gun at the victim and whip him with a gun[9] while the other

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[4] See Order dated July 25, 2008, *id*. at 73.

[5] Referred to as June Alberto in some parts of the records.

[6] TSN, April 24, 2009, pp. 10-11 and 12-13.

[7] *Id*. at 6.

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

[9] *Id*. at 8.

three held him in place.[10] Alvin then took the victim's jewelry consisting of two rings, a necklace and a wristwatch.[11]

Afterwards, Jun witnessed the victim being dragged inside the house by Alvin.[12] At the time, he was cornered at the backyard by one of Alvin's companions.[13] There was a commotion inside the house and he heard someone moaning.[14] Alvin and his companions immediately ran away.[15] When he went inside the house, he found the victim already dead.[16]

***Version of the Defense***

Appellants raised the defenses of denial and alibi, *viz.*:

> [Appellant] Romeo Labagala was a resident of Homestead II, Talavera, Nueva Ecija. On 5 June 2012, he went to Barangay Dicos, Nueva Ecija to harvest *"palay"* in the farm of Mario Agulto. He stayed there for almost a month.
>
> He testified that from Cabanatuan City to Talavera, Nueva Ecija, it would take one (1) hour of travel by jeepney, while it would take about three (3) hours of travel from Cabanatuan City to Barangay Dicos, Nueva Ecija.
>
> [Appellant] Alvin Labagala is Romeo Labagala's nephew. He was also a farmer in Talavera, Nueva Ecija. On 12 June 2002, however, he was in Tanza, Navotas helping his friends[,] Lolita Asuncion and Chito Asuncion[,] sell vegetables. He stayed there until the first week of July. Thereafter, he returned to Guimba, Nueva Ecija with the Asuncion spouses to reap vegetables. A week after, they returned to Tanza, Navotas to sell the harvested vegetables. When going to Navotas, they would usually pass by Cabanatuan.[17]

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[10] *Id*. at 16.

[11] *Id*. at 9.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] CA *rollo,* p. 25.

***Ruling of the Regional Trial Court***

In its Decision dated November 15, 2012, the RTC convicted appellants of the crime of robbery with homicide under Article 293, in relation to Article 294, par. 1, of the Revised Penal Code. However, it acquitted Salve of the crime charged for failure of the prosecution to prove her guilt beyond reasonable doubt[18] while the case against Pablito and Michael was archived and alias warrants of arrest were issued against them.

The RTC held that the prosecution was able to establish that appellants had conspired with each other to commit the crime against the victim,[19] *viz.*:

> The [p]rosecution was likewise able to establish conspiracy among [appellants] in the commission of the crime. Jun Alberto stated how the accused confederated and mutually aided one another in the commission of the crime, identifying [appellant] Alvin Labagala as the one who poked and whipped the victim with his gun while his other companions held him. x x x [20]

On this point, the RTC noted that "conspiracy and mutual aid to one another was crystal clear from the acts of [appellants] whose conduct during the commission of the crime clearly indicated that they had the same purpose and were united in its execution."[21]

The RTC likewise rejected appellants' defenses of denial and alibi in light of the positive identification of appellants as the victim's assailants by a credible witness who had no motive to testify falsely against them.[22]

Accordingly, the RTC sentenced appellants to suffer the penalty of *reclusion perpetua.* It likewise ordered appellants to return to the victim's heirs two stolen rings, a necklace and

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

[19] *Id*. at 39.

[20] *Id*. at 42.

[21] *Id*.

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

a wristwatch, and to pay the latter, jointly and severally, the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.[23]

Appellants thereafter appealed the RTC Decision before the CA.

***Ruling of the Court of Appeals***

In its Decision dated June 27, 2014, the CA affirmed the assailed RTC Decision *in toto*.[24]

The CA found that the prosecution was able to prove that the overriding intention of appellants was to rob the victim, and the victim's killing was merely incidental thereto, resulting by reason or on the occasion of the robbery.[25] Like the RTC, it found Jun's testimony to be positive and credible, and enough to sustain a judgment of conviction.[26]

In addition, the CA upheld the RTC's conclusion that appellants, together with their co-accused, had acted in conspiracy in committing the crime charged.[27] It explained that:

> From the circumstances obtaining in this case, it cannot be doubted that the appellants, together with their co-accused who are at large, acted in conspiracy in committing the crime charged. They were together when they entered the compound of [the victim]. Afterwards, they were still together when they divested [the victim] of his jewelry and in dragging the latter inside his house where he was killed, while one of them cornered Jun Alberto and brought him at the backyard, up to the time they fled the scene of the crime. Thus, there can be no other conclusion than they hatched a criminal scheme, synchronized their acts for unity in its execution, and aided each other for its consummation.[28]

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

[24] *Rollo,* p. 12.

[25] *Id*. at 7.

[26] *Id*. at 8.

[27] *Id*. at 11.

[28] *Id*.

Aggrieved, appellants filed the present appeal.

**The Issues**

Appellants raise the following issues for the Court's resolution:

*First,* whether the prosecution was able to sufficiently prove the elements of the crime of robbery with homicide, considering that Jun's testimony narrating the incident was uncorroborated by another witness;[29]

And *second,* whether appellants, together with their co-accused who are at large, acted in conspiracy in committing the crime charged.[30]

**The Court's Ruling**

The appeal is unmeritorious.

Article 294, par. 1 of the Revised Penal Code provides:

> ART. 294. *Robbery with violence against or intimidation of persons – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 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, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

For the accused to be convicted of robbery with homicide, the prosecution must prove the following elements: *(a)* the taking of personal property with the use of violence or intimidation against the person; *(b)* the property taken belongs to another; *(c)* the taking is characterized by intent to gain or *animus lucrandi;* and *(d)* on the occasion or by reason of the robbery, the crime of homicide, as used in its *generic sense,*[31] was committed.[32]

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[29] CA *rollo,* pp. 27-28.

[30] *Id.* at 28-30.

[31] "The word 'homicide' is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide." See *People v. De Jesus,* 473 Phil. 405, 427 (2004).

[32] *People v. Madrelejos,* G.R. No. 225328, March 21, 2018.

In robbery with homicide, it must be established that the *original criminal design* of the malefactor/s is to commit robbery, and the killing is merely *incidental* thereto.[33] "The intent to commit robbery must precede the taking of human life[, but] the homicide may take place *before, during* or *after* the robbery."[34]

A thorough review of the records shows that the prosecution was able to prove all the elements of the crime of robbery with homicide through the testimony of Jun, who was an eyewitness to the incident, *viz.*:

[FISCAL VICENTE B. FRANCISCO:]

Q: Now, you mentioned that when accused Salve Pascual entered the yard of [the victim] to buy cigarette[s,] the four (4) accused also entered the yard, what happened after that?
A: They poked a gun at [the victim].

Q: Who[,] in particular[,] poked a gun at [the victim]?
A: It was Abel who poked a gun at [the victim].

Q: And when you say Abel[,] you are referring to accused Alvin Lagabala [sic], [are you] not?
A: Yes, [s]ir.

Q: And what happened after accused Alvin Lagabala [sic] poked a gun [at the victim]?
A: **After he poked a gun, be whipped [the victim] with his gun and then he took away his jewelries...**

Q: And what are those jewelries that accused Alvin Labagala took away from [the victim]?
A: Two (2) rings, necklace and one wrist watch.

Q: And after accused Alvin Lagabala [sic] took away the pieces of jewelries from [the victim], what happened after that?
A: He dragged the victim inside the house.

Q: And what happened after that[?]
A: I heard that there was a commotion, that somebody was moaning.

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[33] *People v. De Jesus, supra.*

[34] *Id.*

Q: What about you, what did you do?
A: I was cornered by one of their companions and I was brought at the backyard.

Q: And after [the victim] was brought inside the house, what happened after that?
A: There was a commotion and they ran away.

Q: After the commotion[,] what happened?
A: **I went inside the house and saw [the victim] already dead.**[35] (Emphasis supplied)

We agree with the court *a quo* in upholding the detailed, clear and straightforward testimony of Jun.[36] That said testimony is uncorroborated by another witness is of no moment. After all, "the testimony of a single witness, if positive and credible, is sufficient to sustain a judgment of conviction x x x."[37]

Besides, it is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, *unless* the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case."[38]

In this case, we find no cogent reason to overturn the factual findings of the trial court, as they are *not clearly arbitrary or unfounded,*[39] and said findings were *affirmed by the CA* on appeal.[40]

We likewise uphold the CA's conclusion that appellants, together with their co-accused who are still at large, acted in conspiracy in committing the crime charged.[41]

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[35] TSN, April 24, 2009, pp. 8-9.

[36] *Rollo,* p. 8.

[37] *People v. Navarro,* 357 Phil. 1010, 1030 (1998).

[38] *People v. Cabral,* 623 Phil. 809, 814 (2009). Italics supplied.

[39] See *People v. Espino, Jr.,* 577 Phil. 546, 562-563 (2008).

[40] *Id.*

[41] *Rollo,* p. 11.

We explained in *People v. De Jesus*[42] that an accused who participated as a principal in the commission of a robbery will also be held liable as a principal of robbery with homicide *even if he did not actually take part in the killing* that was committed by reason or on the occasion of the robbery, *unless* it is clearly shown that he tried to prevent the same, *viz.*:

> When homicide is committed by reason or on the occasion of [a] robbery, all those who took part as principals in the robbery would also be liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, ***unless* it clearly appears that they endeavored to prevent the same.**
>
> If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. *One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.*[43] (Emphasis and italics supplied)

Per the records, it was established that appellants, together with their co-accused, entered the victim's yard where they took the victim's personal effects by means of force, and with an obvious intent to gain.[44] That they cooperated with each other to achieve this purpose was plainly manifested by their actions, *viz.:*

> [COURT:]
>
> Q: So you said it was this Alvin Labagala who poked a gun on [the victim] and who whipped a gun on him. How about the other companions[,] what were they doing when Alvin Labagala ganged the old man?
>
> A: **While Alvin Labagala was whipping the old man, they were holding [the latter in place].**[45] (Emphasis supplied)

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[42] *Supra* note 31.

[43] *Id.* at 428.

[44] TSN, April 24, 2009, p. 6-9.

[45] *Id.* at 16.

Since it was not shown that appellants had endeavored to prevent the victim's killing, they are both liable as principals of the crime of robbery with homicide.

However, we deem it appropriate to *modify* the award of damages in conformity with prevailing jurisprudence.[46] Thus, we *increase* the amounts of civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00 each, and temperate damages from ₱25,000.00 to ₱50,000.00, and *award* exemplary damages in the amount of ₱75,000.00.

**WHEREFORE,** the appeal is **DISMISSED.** The June 27, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06040 is hereby **AFFIRMED** with the following **MODIFICATIONS:**

(a) the amounts of civil indemnity and moral damages are increased from ₱50,000.00 to ₱75,000.00 each;

(b) the amount of temperate damages ts increased from ₱50,000.00 to ₱50,000.00;

(c) appellants are ordered to pay the heirs of the victim, jointly and severally, the amount of ₱75,000.00 as exemplary damages; and,

(d) all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

**SO ORDERED.**

*Leonardo-de Castro*[*] *(Acting Chairperson)*, *Leonen,*[**] *Tijam,* and *Gesmundo,*[***] *JJ.,* concur.

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[46] *People v. Jugueta,* 783 Phil. 806, 846-848 (2016).

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] 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. 221684. July 30, 2018]

**MARIA T. CALMA,** *petitioner, vs.* **MARILU C. TURLA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL PROCEEDINGS; LETTERS OF ADMINISTRATION; SPECIAL ADMINISTRATORS; MAY BE APPOINTED OR REMOVED AT THE DISCRETION OF THE COURT BUT THE EXERCISE OF SUCH DISCRETION MUST BE BASED ON REASON, EQUITY, JUSTICE AND LEGAL PRINCIPLES.—** Settled is the rule that the selection or removal of *special* administrators is not governed by the rules regarding the selection or removal of *regular* administrators. Courts may appoint or remove *special* administrators based on grounds other than those enumerated in the Rules, at their discretion. As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it. This, however, is no authority for the judge to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. The exercise of such discretion must be based on reason, equity, justice and legal principles.

**2. ID.; EVIDENCE; RULE ON DNA EVIDENCE; THE GRANT OF DNA TESTING APPLICATION SHALL NOT BE CONSTRUED AS AN AUTOMATIC ADMISSION INTO EVIDENCE OF ANY COMPONENT OF THE DNA EVIDENCE THAT MAY BE OBTAINED AS A RESULT THEREOF.—** [T]he DNA test was ordered to prove respondent's paternity, but surprisingly, the test was conducted with the alleged siblings of Rufina, which showed that respondent is not related to Rufina. While respondent was shown to be not blood related to Rufina, however, the DNA result did not at all prove that she is not a daughter of Mariano, as petitioner claims and which the RTC's order of DNA testing wanted to establish. Notably, petitioner alleges that she is Mariano's half-sister, but it baffles us why she was not the one who underwent the DNA testing when such procedure could satisfactorily prove

her contention that respondent is not Mariano's daughter. x x x Section 5 of A.M. No. 06-11-5-SC, Rule on DNA evidence, provides that the grant of DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof. Here, the DNA result was not offered in accordance with the Rules on Evidence. Therefore, we do not find the DNA test results as a valid ground for the revocation of respondent's appointment as Special Administratrix and her removal as such. Respondent's removal was not grounded on reason, justice and legal principle.

**APPEARANCES OF COUNSEL**

*The Law Office of Jose Mangaser Caringal* for petitioner.
*Joel Enrico N. Santos* for respondent.

**D E C I S I O N**

**PERALTA, *J.*:**

Assailed in this petition for review on *certiorari* is the Decision[1] dated November 27, 2015 of the Court of Appeals in CA-GR. SP No. 131032.

The antecedent facts are as follows:

On March 12, 2009, respondent Marilu C. Turla filed with the Regional Trial Court *(RTC),* Branch 22, Quezon City a Petition[2] for Letters of Administration alleging, among others, that her father, Mariano C. Turla, died[3] intestate on February 5, 2009, leaving real properties located in Quezon City and Caloocan City, bank deposits and other personal properties, all with an estimated value of ₱3,000,000.00; that she is the sole legal heir entitled to inherit and succeed to the estate of

[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison Pedro B. Corales concurring; *rollo,* pp. 29-45.

[2] Docketed as Special Proceeding No. Q-09-64479; CA *rollo,* pp. 38-41.

[3] Certificate of Death, *id.* at 42.

her deceased father who did not leave any other descendant or other heir entitled to the estate as his wife, Rufina de Castro, had predeceased him; and that she is entitled to be issued letters of administration. She presented her Certificate of Live Birth[4] signed and registered by the deceased himself with the Local Civil Registrar of Manila.

As the petition was sufficient in form and substance, the RTC gave due course to it and set the petition for hearing. On April 21, 2009, the Letter of Special Administration[5] was issued to respondent.

Petitioner Maria Turla Calma,[6] claiming to be the surviving youngest half-sister of Mariano as he was her mother's illegitimate son before her marriage to her father, filed an Opposition[7] to the petition for administration and alleged that respondent is not a daughter of Mariano; that the information recited in her two birth certificates are false, the truth being that Mariano and his wife Rufina did not have any child. She argued that she is entitled to the administration of the estate of her half-brother and nominated Norma Bernardino, who has been managing the business and other financial affairs of the decedent, to take charge of the management and preservation of the estate pending its distribution to the heirs.

Respondent filed her Reply[8] stating that her filiation had been conclusively proven by her record of birth which was duly authenticated by the Civil Registrar General of the National Statistics Office *(NSO),* and only the late Mariano or his wife had the right to impugn her legitimacy; that petitioner had no right to oppose her appointment as Special Administratrix of Mariano's estate since the former is not the latter's heir; that

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[4] *Id.* at 43.

[5] *Id.* at 46; RTC, Branch 222.

[6] Respondent claims that petitioner had already died on March 28, 2016; *rollo,* p. 103.

[7] CA *rollo,* pp. 47-49.

[8] *Id.* at 89-93.

in her capacity as the Special Administratrix of Mariano's estate, she had filed several cases against Norma and her husband; and thus, Norma is not qualified to act as an administratrix because she has an interest antagonistic to the estate.

Spouses Robert and Norma Bernardino filed a Motion for Leave of Court to Intervene as Oppositors which was denied by the RTC in an Order dated June 2, 2010.

Petitioner also filed a Motion to Recall Order[9] appointing respondent as Special Administratrix on the ground that she has been collecting rentals from the properties of the decedent for her personal gain and that she has been filing malicious suits against the Spouses Bernardino. Respondent filed her Opposition[10] thereto stating, among others, that she has all the right to be appointed as Special Administratrix since she is the legitimate daughter of the deceased Mariano and that she is able to protect and preserve the estate from Norma, the one being recommended by petitioner.

Petitioner filed an undated Rejoinder claiming that the case filed against Norma before the RTC Makati, Branch 59, related to two promissory notes where the payee was Mariano Turla ITF: Norma C. Bernardino, hence, a trust account was created which did not belong to the estate of the deceased. Respondent filed her Reply to Rejoinder contending that in case Norma is appointed as Regular Administrator of the estate, she will succeed in taking all the assets of the estate for her own use and benefit.

On June 29, 2009, petitioner filed a Motion to Order DNA Testing as respondent's blood relation to Mariano is in issue. Respondent opposed the same on the ground that petitioner lacked the legal right or personality to request for a DNA test as she has no legal interest in the matter in litigation.

On May 12, 2010, respondent filed her initial Accounting[11] of the funds that have come to her possession.

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[9] *Id.* at 74-75.

[10] *Id.* at 76-78.

[11] *Id.* at 94-96.

In an Order dated June 25, 2010, the RTC granted petitioner's motion for an order for DNA testing,[12] the dispositive portion of which reads:

> WHEREFORE, premises considered, the above incidents are disposed in the following manner.
>
> x x x x x x x x x
>
> (4) The motion for DNA testing filed by the oppositor is GRANTED, and accordingly, the parties are directed to make arrangements for DNA testing and analysis for the purpose of determining the paternity of Marilu Turla, upon consultation and coordination with laboratories and experts on the field of DNA analysis at the expense of oppositor.[13]

Petitioner filed a motion to remove respondent as Special Administratrix on grounds that she had incurred expenses mostly legal without proper receipts which cannot be returned if the same is disallowed since it is not guaranteed that she will be declared as one of the heirs. Respondent opposed the same arguing that the grounds raised in the motion are not sufficient for her removal and are highly speculative; that she has made an honest and truthful accounting for the approval of the intestate court; and that the said motion was filed for the purpose of stopping her from prosecuting the various actions she had filed against the Bernardino spouses to recover properties belonging to the estate.

On August 28, 2012, the RTC received the Report of Dr. Maria Corazon A. de Ungria, Head of the DNA Analysis Laboratory, UP Natural Sciences Research Institute *(NSRI),* on the DNA test on the blood samples from Rufina's alleged siblings and respondent, with the following conclusion:

> Based on the results of mitochondrial DNA analysis there is no possibility that Mr. Ireneo S. de Castro and Ms. Basilia de Castro Maningas are maternal relatives of Ms. Marilu de Castro Turla.[14]

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[12] *Rollo,* p. 54. (CA Decision dated June 29, 2011 in CA-G.R. SP No. 115847).

[13] *Id.* at 55.

[14] *Id.* at 75.

On September 11, 2012, the RTC issued an Order,[15] the decretal portion of which reads:

> WHEREFORE, premises considered, the Motion to Remove Marilu Turla as Special Administratrix filed by oppositor Maria Calma Turla is hereby GRANTED. Accordingly, petitioner Marilu C. Turla is REMOVED as Special Administratrix in this case. Petitioner is hereby ordered to submit an inventory of all the assets of the deceased that came into her possession and knowledge and for her to render an accounting thereof within thirty (30) days from receipt hereof.
>
> In the meantime, let Letters of Special Administration issue in favor of Norma Bernardino who is hereby APPOINTED as Special Administratrix of the estate of the deceased Mariano C. Turla, effective upon the filing of a bond in the amount of One Million Pesos (₱1,000,000.00) and the taking of the corresponding Oath of Office.
>
> Petitioner Marilu Turla is hereby ordered to turn-over possession of all the assets of the deceased Mariano Turla which came into her possession to Norma Bernardino within thirty (30) days from the time the latter formally takes her Oath of Office.
>
> SO ORDERED.[16]

In finding merit to petitioner's motion to remove respondent as Special Administratix, the RTC ruled that while respondent's birth certificate stated her father to be Mariano and her mother to be Rufina, the DNA test results conclusively showed that she is not Rufina's daughter.

Respondent's motion for reconsideration was denied in an Order[17] dated May 9, 2013.

Respondent filed a petition for *certiorari* with the CA. After the submission of the parties' respective pleadings, the case was submitted for decision.

On November 27, 2015, the CA issued the assailed Decision, the dispositive portion of which reads:

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[15] *Id.* at 71-76; Per Judge Charito B. Gonzales; RTC, Branch 80.

[16] *Id* at. 76.

[17] *Id.* at 77-79. Per Judge Alexander S. Balut, RTC, Branch 76.

WHEREFORE, premises considered, the petition is GRANTED. The [Order] dated September 11, 2012 issued by the RTC of Quezon City, Branch 80, [and] the Order dated May 9, 2013 issued by Branch 76 of the same court, in Special Proceedings No. Q-09-64479, are ANNULLED AND SET ASIDE.

SO ORDERED.[18]

Hence this petition for review.

Petitioner contends that respondent had petitioned the RTC to be appointed as Special Administratrix of the intestate estate of Mariano on the basis of her birth certificate showing that she is the daughter of Rufina, wife of Mariano; that in 1994, however, Mariano executed an affidavit of adjudication for the extrajudicial settlement of the intestate estate of the late Rufina wherein he stated that "being her surviving spouse, I am the sole legal heir entitled to succeed to and inherit the estate of the said deceased who did not leave any descendant, ascendant or any other heir entitled in her estate"; that while respondent's birth certificate states her father to be Mariano Turla and her mother Rufina de Castro, the DNA results conclusively showed that she is not Rufina's daughter, so her own birth certificate stating Rufina as her mother was fraudulent. She avers that she had put in issue the blood relationship of the respondent with the deceased Mariano.

Petitioner also argues that respondent had violated her duties as Special Administratrix as the latter failed to submit an inventory and to render an accounting thereof, hence there was a good reason for the RTC to remove her. Moreover, she failed to comply with the Order to submit inventory and render accounting and to turn over possession to the new administrator; and that the appointment of Norma Bernardino as the new Special Administratrix is in accordance with the rules.

We find no merit in the petition.

Settled is the rule that the selection or removal of *special* administrators is not governed by the rules regarding the selection

[18] *Id.* at 43-44.

or removal of *regular* administrators.[19] Courts may appoint or remove *special* administrators based on grounds other than those enumerated in the Rules, at their discretion. As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it. This, however, is no authority for the judge to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. The exercise of such discretion must be based on reason, equity, justice and legal principles.[20]

We agree with the CA when it found that the RTC acted with grave abuse of discretion in removing respondent as Special Administratrix of the estate of Mariano Turla on the basis of the DNA result showing that she is not maternally related to Rufina, Mariano's wife.

Respondent had filed with the RTC a Petition for Letter of Administration in the matter of the intestate estate of the late Mariano Turla. Petitioner filed her opposition thereto based on the ground that respondent is not the daughter of the deceased Mariano Turla; that the spouses Mariano and Rufina Turla did not have any child; that she had not been legally adopted and no right arise from a falsified birth certificate. In respondent's Opposition to petitioner's motion to recall order appointing her as Special Administratrix, she claimed that she has the right to be appointed as such since she is the legitimate child of the late Mariano, hence, respondent's blood relationship with the decedent had been put in issue. Subsequently, petitioner asked for a DNA test on respondent which the RTC granted as follows:

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[19] *Co v. Judge Rosario, et al.,* 576 Phil. 223, 225, citing *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel,* 511 Phil. 371, 383 (2005), citing *Roxas v. Pecson,* 82 Phil. 407, 410 (1948); see *Rivera v. Hon. Santos;* 124 Phil. 1557, 1561 (1966), in which the Court ruled that the selection of a special administrator is left to the sound discretion of the court, and that the need to first pass upon and resolve the issues of fitness or unfitness as would be proper in the case of a regular administrator, does not obtain; *see also Alcasid v. Samson,* 102 Phil. 735, 737 (1957), in which the Court declared that the appointment and removal of a special administrator are interlocutory proceedings incidental to the main case and lie in the sound discretion of the court.

[20] *Id.* at 226, citing *Fule v. Court of Appeals,* 165 Phil. 785, 800 (1976).

x x x Amidst the protestation of the petitioner (herein respondent) against the DNA analysis, the Court finds it **prudent to allow the conduct of the DNA testing considering its definitive result will decisively lay to rest the issue of filiation of the petitioner with the deceased Mariano Turla** for purposes of determining the issues on the other hand in this proceeding for the settlement of the estate of the said deceased and persons to whom the same should be distributed. The filiation issue will secure a legal right associated with paternity such as support or even inheritance as in the present case. The presumption of legitimacy is not conclusive and consequently may be overthrown by evidence to the contrary. To reject the conduct of the same and result that may be obtained therefrom is to deny progress in proceedings of this case.[21]

x x x x x x x x x

WHEREFORE, premises considered, the above incidents are disposed in the following manner:

x x x x x x x x x

(4) The motion for DNA testing filed by the oppositor is GRANTED, and accordingly, the parties are directed to make arrangements **for DNA testing and analysis for the purpose of determining the paternity of petitioner Marilu Turla,** upon consultation and coordination with laboratories and experts on the field of DNA analysis, at the expense of the oppositor.[22]

Clearly, the DNA test was ordered to prove respondent's paternity, but surprisingly, the test was conducted with the alleged siblings of Rufina, which showed that respondent is not related to Rufina. While respondent was shown to be not blood related to Rufina, however, the DNA result did not at all prove that she is not a daughter of Mariano, as petitioner claims and which the RTC's order of DNA testing wanted to establish. Notably, petitioner alleges that she is Mariano's half-sister, but it baffles us why she was not the one who underwent the DNA testing when such procedure could satisfactorily prove her contention that respondent is not Mariano's daughter.

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[21] *Rollo,* p. 54. (CA Decision dated June 29, 2011 in CA-G.R. SP No. 115847). (Emphasis supplied)

[22] *Id.* at 55.

Moreover, Section 5 of A.M. No. 06-11-5-SC, Rule on DNA evidence, provides that the grant of DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof. Here, the DNA result was not offered in accordance with the Rules on Evidence. Therefore, we do not find the DNA test results as a valid ground for the revocation of respondent's appointment as Special Administratrix and her removal as such. Respondent's removal was not grounded on reason, justice and legal principle. We find apropos the CA disquisition in this wise:

> The estate to be administered is that of decedent Mariano Turla, hence, it is grave abuse of discretion on the part of the Respondent Judge to remove petitioner on the ground that she is not related to Rufina Turla. True, that she claims to be the daughter of the Spouses Mariano Turla and Rufina Turla. However, a finding that she is not the daughter of Rufina Turla does not automatically mean that she is not the daughter of Mariano Turla as well, especially since in the two versions of her birth certificate, it was Mariano Turla who reported her birth and who signed the same as the father of the child.
>
> x x x the DNA Test results used as a basis by the Respondent Judge in removing petitioner was not, at the very least, presented and offered as evidence. The rule is that after the DNA analysis is obtained, it shall be incumbent upon the parties who wish to avail of the same to offer the results in accordance with the rules of evidence. The RTC, in evaluating the DNA results upon presentation shall assess the same as evidence in keeping with Sections 7 and 8 of the Rule on DNA Evidence (A.M. No. 06-11-5-SC). At that point when the RTC used it as basis for the removal of petitioner, the DNA Test Result is not yet considered evidence, depriving petitioner the opportunity to contest the same. In its Order dated May 9, 2013, the RTC backtracked a little and stated that the DNA Test Result was merely persuasively considered in the resolution of the issue. A perusal of the Order dated September 11, 2012 shows otherwise because it was evidently the only basis considered by the RTC in its ruling. As we already determined, the DNA Test Result is not even material and relevant evidence in this case. Petitioner's filiation with Rufina Turla is not material in the resolution of the right of petitioner to the

estate of Mariano Turla and/or to administer the same, whether as a regular or as a special administratrix.[23]

Mariano's execution of an affidavit of adjudication in 1994 for the extrajudicial settlement of the intestate estate of his late wife Rufina stating among others, "that she did not leave any descendant", would not also prove that respondent is not a daughter of Mariano whose estate is under consideration.

Petitioner argues that respondent had violated her duties as the court-appointed Special Administratrix.

We do not agree.

Records show that respondent had submitted with the RTC an accounting of the funds that had come to her possession during the initial year of her administration. While she was directed by the RTC to submit an inventory of all the assets of the deceased that came into her possession and knowledge and for her to render an accounting thereof, such directive was only embodied in the RTC's Order dated September 11, 2012 removing her as Special Administratrix which she assailed by filing a petition for *certiorari* with the CA, which reversed the same and now the subject of the instant petition.

Considering the above-discussion, we find no need to discuss the issue of whether the appointment of Norma Bernardino as the new Special Administratrix is in accordance with the rules.

**WHEREFORE,** the petition is **DENIED.** The Decision dated November 27, 2015 of the Court of Appeals in CA-G.R. SP No. 131032 is hereby **AFFIRMED.**

**SO ORDERED.**

*Carpio (Chairperson)*, *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[23] *Id.* at 41-42. (CA Decision dated November 27, 2015 in CA-G.R. SP No. 131032). (Citations omitted)

**SECOND DIVISION**

[G.R. No. 227147. July 30, 2018]

**RADIOWEALTH FINANCE COMPANY, INC.,** *petitioner, vs.* **ALFONSO O. PINEDA, JR. and JOSEPHINE C. PINEDA,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; ACTIONS; JURISDICTION AND VENUE, DISTINGUISHED.—** "Jurisdiction is defined as the authority to hear and determine a cause or the right to act in a case. In addition to being conferred by the· Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted." This is markedly different from the concept of venue, which only pertains to the place or geographical location where a case is filed.

2. **ID.; CIVIL PROCEDURE; VENUE OF CIVIL ACTIONS; RESTRICTIVE STIPULATIONS ON VENUE; IT MUST BE SHOWN THAT THE STIPULATION IS EXCLUSIVE, SUCH THAT IN THE ABSENCE OF QUALIFYING WORDS, THE STIPULATION SHOULD BE DEEMED NOT AS LIMITING VENUE TO THE SPECIFIED PLACE.—** Rule 4 of the Rules of Court governs the rules on venue of civil actions. x x x. In *Briones v. Court of Appeals,* the Court succinctly discussed the rule on venue, including the import of restrictive stipulations on venue x x x. The parties x x x are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. **Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon x x x. As regards restrictive stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words,** such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import,

**the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.** In this case, the venue stipulation found in the subject Promissory Note – which reads "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within [the] National Capital Judicial Region or in any place where Radiowealth Finance Company, Inc. has a branch/office, a[t] its sole option" – is indeed restrictive in nature, considering that it effectively limits the venue of the actions arising therefrom to the courts of: *(a)* the National Capital Judicial Region; ***or*** *(b)* any place where petitioner has a branch/ office. In light of petitioner's standing allegation that it has a branch in San Mateo, Rizal, it appears that venue has been properly laid, unless such allegation has been disputed and successfully rebutted later on.

**3. ID.; ID.; ID.; WHEN IT APPEARS THAT VENUE HAS BEEN IMPROPERLY LAID, COURTS MAY NOT *MOTU PROPRIO* DISMISS THE CASE ON THE GROUND OF IMPROPER VENUE.—** [E]ven if it appears that venue has been improperly laid, it is well-settled that the courts may not *motu proprio* dismiss the case on the ground of improper venue. Without any objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived. The Court's ruling in *Radiowealth Finance Company, Inc. v. Nolasco* is instructive on this matter x x x.

**APPEARANCES OF COUNSEL**

*Alquin Bugarin Manguera for petitioner.*

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

This is a direct recourse to the Court from the Regional Trial Court of San Mateo, Rizal, Branch 75 (RTC), through a petition for review on *certiorari* assailing the Amended Order[1] dated July 21, 2016 and the Order[2] dated September 1, 2016 of the

[1] *Rollo,* pp. 21-22. Penned by Presiding Judge Beatrice A. Caunan-Medina.

[2] *Id.* at 23.

RTC in Civil Case No. 2814-15 SM which dismissed petitioner Radiowealth Finance Company, Inc.'s (petitioner) complaint for sum of money against respondents Alfonso O. Pineda, Jr. and Josephine C. Pineda (respondents) on the ground of lack of jurisdiction.

## The Facts

In its Complaint[3] dated October 12, 2015, petitioner alleged that on October 23, 2014, it extended a loan to respondents, as evidenced by a Promissory Note,[4] in the amount of ₱557,808.00 payable in 24 equal monthly installments of ₱23,242.00, which was secured by a Chattel Mortgage[5] constituted on a vehicle owned by respondents. Notably, the Promissory Note states that "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within [the] National Capital Judicial Region or in any place where Radiowealth Finance Company, Inc. has a branch/office, a[t] its sole option."[6] Due to respondents' default, petitioner demanded payment of the whole remaining balance of the loan, which stood at ₱510,132.00 as of June 8, 2015, excluding penalty charges. As the demand went unheeded, petitioner filed the instant suit for sum of money and damages with application for a Writ of Replevin before the RTC, further alleging that it has a branch in San Mateo, Rizal.[7]

## The RTC Proceedings

In an Order[8] dated March 28, 2016, the RTC issued a Writ of Replevin, due to respondents' continued failure to pay their monetary obligations to petitioner and/or surrender their vehicle subject of the Chattel Mortgage.

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[3] *Id.* at 26-31.

[4] *Id.* at 36-37.

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

[6] *Id.* at 37.

[7] See *id.* at 26-30.

[8] *Id.* at 42.

However, in an Amended Order[9] dated July 21, 2016, the RTC recalled the Writ of Replevin and ordered the dismissal of petitioner's complaint on the ground of lack of jurisdiction. It pointed out that since: *(a)* petitioner's principal place of business is in Mandaluyong City, Metro Manila; and *(b)* respondents' residence is in Porac, Pampanga, it has no jurisdiction over any of the party-litigants, warranting the dismissal of the complaint.[10]

Aggrieved, petitioner moved for reconsideration,[11] which was, however, denied in an Order[12] dated September 1, 2016; hence, this petition.

**The Issue Before the Court**

The issue for the Court's resolution is whether or not the RTC correctly dismissed petitioner's complaint on the ground of lack of jurisdiction.

**The Court's Ruling**

"Jurisdiction is defined as the authority to hear and determine a cause or the right to act in a case. In addition to being conferred by the· Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted."[13] This is markedly different from the concept of venue, which only pertains to the place or geographical location where a case is filed. In *Pilipinas Shell Petroleum Corporation v. Royal Ferry Services, Inc.,*[14] the Court exhaustively differentiated these concepts, to wit:

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[9] *Id*. at 21-22.

[10] See *id.*

[11] See motion for reconsideration dated August 15, 2016; *id*. at 43-46.

[12] *Id*. at 23.

[13] *Home Guaranty Corporation v. R-II Builders, Inc.,* 660 Phil. 517, 529 (2011).

[14] G.R. No. 188146, February 1, 2017, 816 SCRA 379.

Petitioner confuses the concepts of jurisdiction and venue. In *City of Lapu-Lapu v. Phil. Economic Zone Authority*:

> On the one hand, jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Jurisdiction is a matter of substantive law. Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought. Objections to jurisdiction cannot be waived and may be brought at any stage of the proceedings, even on appeal. When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case.
>
> On the other hand, venue is "the place of trial or geographical location in which an action or proceeding should be brought." In civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case.
>
> Wrong venue is merely a procedural infirmity, not a jurisdictional impediment. Jurisdiction is a matter of substantive law, while venue is a matter of procedural law.[15]

In this case, petitioner filed a complaint for, *inter alia,* sum of money involving the amount of ₱510,132.00. Pursuant to Section 19 (8) of Batas Pambansa Blg. (BP) 129,[16] as amended

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[15] *Id*. at 396-397; citations omitted.

[16] Section 19 (8) of BP 129, entitled "THE JUDICIARY REORGANIZATION ACT OF 1980," reads:

Section 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

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

by Section 5 of Republic Act No. (RA) 7691,[17] the RTC irrefragably has jurisdiction over petitioner's complaint. Thus, it erred in dismissing petitioner's complaint on the ground of its purported lack of jurisdiction.

Clearly, the RTC confused the concepts of jurisdiction and venue which, as already discussed, are not synonymous with each other. Even assuming *arguendo* that the RTC correctly pertained to venue, it still committed grave error in dismissing petitioner's complaint, as will be explained hereunder.

Rule 4 of the Rules of Court governs the rules on venue of civil actions, to wit:

Rule

VENUE OF ACTIONS

Section 1. *Venue of real actions.* – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Section 2. *Venue of personal actions.* – All other actions may be commenced and tried where the plaintiff or any of the principal

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[17] Section 5 of RA 7691, entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980,"' reads:

Section 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of Batas Pambansa Blg. 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided. however,* That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400.000.00).

plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Section 3. *Venue of actions against nonresidents.* – If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of said defendant located in the Philippines, the action may be commenced and tried in the court of the place where the plaintiff resides, or where the property or any portion thereof is situated or found.

Section 4. *When Rule not applicable.* – This Rule shall not apply –

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

In *Briones v. Court of Appeals,*[18] the Court succinctly discussed the rule on venue, including the import of restrictive stipulations on venue:

Based therefrom, the general rule is that the venue of real actions is the court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated; while the venue of personal actions is the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff. As an exception, jurisprudence in *Legaspi v. Rep. of the Phils.* [(581 Phil. 381, 386 [2008])] instructs that the parties, thru a written instrument, may either introduce another venue where actions arising from such instrument may be filed, or restrict the filing of said actions in a certain exclusive venue, *viz.:*

The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. **Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their**

[18] 750 Phil. 891 (2015).

> **suit not only in the place agreed upon but also in the places fixed by law.** As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.
>
> **As regards restrictive stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words,** such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, **the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.**[19] (Emphases and underscoring in the original)

In this case, the venue stipulation found in the subject Promissory Note – which reads "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within [the] National Capital Judicial Region or in any place where Radiowealth Finance Company, Inc. has a branch/office, a[t] its sole option"[20] – is indeed restrictive in nature, considering that it effectively limits the venue of the actions arising therefrom to the courts of: *(a)* the National Capital Judicial Region; ***or*** *(b)* any place where petitioner has a branch/office. In light of petitioner's standing allegation that it has a branch in San Mateo, Rizal, it appears that venue has been properly laid, unless such allegation has been disputed and successfully rebutted later on.

Finally, even if it appears that venue has been improperly laid, it is well-settled that the courts may not *motu proprio* dismiss the case on the ground of improper venue. Without any objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived.[21] The Court's ruling in

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[19] *Id.* at 898-899; citations omitted.

[20] See *rollo,* p. 37.

[21] *Radiowealth Finance Company, Inc. v. Nolasco,* 799 Phil. 598, 605 (2016).

*Radiowealth Finance Company, Inc. v. Nolasco*[22] is instructive on this matter, to wit:

> Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue, in inferior courts as well as in the Courts of First Instance (now RTC), may be waived expressly or impliedly. **Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4 of Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, be cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.**
>
> **Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised.** The trial court cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case.[23] (Emphases and underscoring supplied)

In sum, the RTC erred in *motu proprio* dismissing petitioner's complaint before it. As such, the complaint must be reinstated, and thereafter, remanded to the RTC for further proceedings.

**WHEREFORE,** the petition is **GRANTED.** The Amended Order dated July 21, 2016 and the Order dated September 1, 2016 of the Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 2814-15 SM are hereby **REVERSED** and **SET ASIDE.** Accordingly, Civil Case No. 2814-15 SM is **REINSTATED** and **REMANDED** to the RTC for further proceedings.

**SO ORDERED.**

*Carpio (Chairperson)*, *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[22] *Id.*

[23] *Id*. at 605-606, citing *Dacoycoy v. Intermediate Appellate Court,* 273 Phil. 1, 6-7 (1991).

**SECOND DIVISION**

[G.R. No. 229826. July 30, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **PATRICIA CABRELLOS *y* DELA CRUZ,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; CRIMINAL CASES; AN 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.—** [A]n 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."

**2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** 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.

**3. 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.

**4. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE PROHIBITED DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** In x x x [illegal sale and illegal possession of dangerous drugs], case law instructs that 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 doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

**5. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREOF, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS; CONDITIONS.—** Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. 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. x x x **[N]on-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.**

**6. ID.; ID.; ID.; PHYSICAL INVENTORY OF SEIZED ITEMS; REQUIRED WITNESSES RULE; NON-COMPLIANCE THEREWITH DOES NOT PER SE RENDER THE CONFISCATED ITEMS INADMISSIBLE BUT A JUSTIFIABLE REASON FOR SUCH FAILURE OR A SHOWING OF GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES MUST BE ADDUCED.—** [T]he arresting officers conducted two (2) separate inventories, both of which are glaringly non-compliant with the required witnesses rule x x x. [T]he chain of custody rule laid down by RA 9165 and its IRR contemplates a situation where the inventory conducted on the seized items is witnessed by the required personalities at the same time. The wordings of the law leave no room for any piecemeal compliance with the required witnesses rule as what happened in this case. Otherwise, the avowed purpose of the required witnesses rule – which is to prevent the evils of switching, planting, or contamination of the *corpus delicti* resulting in the tainting of its integrity and evidentiary value – will be greatly diminished or even completely negated. At this point, it is well to note that the non-compliance with the required witnesses rule does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced. x x x **[P]olice officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.**

**PERALTA, *J., separate concurring opinion*:**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; PHYSICAL INVENTORY OF SEIZED ITEMS; THREE-WITNESS RULE; THE PRESENCE OF THE THREE WITNESSES IS INTENDED AS A GUARANTEE AGAINST PLANTING OF EVIDENCE AND FRAME UP, AS THEY ARE NECESSARY TO INSULATE THE APPREHENSION AND INCRIMINATION PROCEEDINGS FROM ANY TAINT OF ILLEGITIMACY OR IRREGULARITY.—** 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 x x x. 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. x x x However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crime 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 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."

**2. ID.; ID.; ID.; THE PROSECUTION BEARS THE BURDEN OF PROVING A VALID CAUSE FOR NON-COMPLIANCE WITH THE PROCEDURE ON THE CUSTODY AND DISPOSITION OF SEIZED ITEMS, BUT STRICT ADHERENCE TO THE PROCEDURE IS**

**REQUIRED WHEN THE QUANTITY OF ILLEGAL DRUGS SEIZED IS MINISCULE, SINCE IT IS HIGHLY SUSCEPTIBLE TO PLANTING, TAMPERING OR ALTERATION OF EVIDENCE.—** 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. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

**3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT BE INVOKED WHEN THERE ARE LAPSES IN THE PROCEDURES UNDERTAKEN BY THE AGENTS OF THE LAW BECAUSE THE LAPSES THEMSELVES ARE AFFIRMATIVE PROOFS OF IRREGULARITY.—** 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 appellant's 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.

**4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);**

**CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY RULE; CONSIDERED AS A MATTER OF EVIDENCE AND A RULE OF PROCEDURE.—** I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* 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.

**5. ID.; ID.; ID.; MARKING, INVENTORY AND TAKING PHOTOGRAPH OF SEIZED ITEMS ARE POLICE INVESTIGATION PROCEDURE WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE.— [T]he 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** x x x. 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.

**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**

**PERLAS-BERNABE, *J.*:**

Before the Court is an ordinary appeal[1] filed by accused-appellant Patricia Cabrellos *y* Dela Cruz (Cabrellos) assailing the Decision[2] dated September 13, 2016 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 02020, which affirmed the Joint Judgment[3] dated February 25, 2015 of the Regional Trial Court of Bais City, Negros Oriental, Branch 45 (RTC) in Crim. Case Nos. 05-0163-A and 05-0162-A finding Cabrellos guilty beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, respectively, of Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

**The Facts**

This case stemmed from two (2) Informations[5] filed before the RTC charging Cabrellos with violations of Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

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[1] See Notice of Appeal dated September 30, 2016; *rollo*, pp. 16-18.

[2] *Id*. at 4-15. Penned by Associate Justice Pablito A. Perez with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol concurring.

[3] CA *rollo*, pp. 61-74. Penned by Judge Candelario V. Gonzalez.

[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.

[5] Both dated October 24, 2005. Records (Crim. Case No. 05 -0163-A), pp. 2-3; and records (Crim. Case No. 05-0162-A), pp. 2-3.

**Crim. Case No. 05-0163-A**

That on September 22, 2005 at about 12:45 in the afternoon at Barangay Iniban, Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without lawful authority, did then and there willfully, unlawfully and feloniously SELL and DELIVER to a poseur buyer Methamphetamine Hydrochloride locally known as *Shabu*, weighing 0.08 gram, a dangerous drug.

Contrary to law.[6]

**Crim. Case No. 05-0162-A**

That on September 22, 2005 at 12:45 in the afternoon, more or less, at Barangay Iniban, Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, did then and there willfully, unlawfully and feloniously have in her possession, control and custody, 0.64 gram of Methamphetamine Hydrochloride, locally known as *Shabu*, a dangerous drug, without lawful authority.

Contrary to law.[7]

The prosecution alleged that on September 22, 2005 and acting upon a tip from a confidential informant regarding Cabrellos's alleged illegal drug activities in Ayungon, Negros Oriental, the Philippine Drug Enforcement Agency and the Provincial Anti-Illegal Drugs Special Operations Group organized a buy-bust team, with PO3 Allen June Germodo (PO3 Germodo) acting as poseur-buyer and PO2 Glenn Corsame (PO2 Corsame) as immediate back-up. The buy-bust team, together with the informant, then went to Cabrellos's house. Thereat, the informant introduced PO3 Germodo as a *shabu* buyer. After PO3 Germodo gave Cabrellos the two (2) marked ₱500.00 bills, Cabrellos took out two (2) plastic sachets containing suspected *shabu* from her bag and handed it over to PO3 Germodo. Upon receipt of the sachets, PO3 Germodo placed Cabrellos under arrest, with the rest of the buy-bust team rushing to the scene. The

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[6] Records (Crim. Case No. 05-0163-A), p. 2.

[7] Records (Crim. Case No. 05-0162-A), p. 2.

police officers searched Cabrellos's bag and discovered seventeen (17) more sachets containing suspected *shabu* therein. The police officers then brought Cabrellos and the seized items to the Ayungon Police Station for the conduct of photography and inventory of the seized items. However, since only a barangay *kagawad* was present at the Ayungon Police Station at that time, the police officers brought Cabrellos and the seized items to the Dumaguete Police Station wherein they conducted a second inventory, this time in the presence of a representative each from the DOJ and the media. Thereafter, the seized sachets were brought to the crime laboratory where the contents thereof were confirmed to be methamphetamine hydrochloride or *shabu*.[8]

In her defense, Cabrellos testified that she was inside her house tending to her child when suddenly, two (2) unidentified persons came into their house looking for her husband. When she told them that her husband was not around, she was brought to the police station for selling *shabu*, and there, made to sign a document already signed by a barangay official. She was detained for three (3) months at the Dumaguete Police Station before she was transferred to Bais City Jail.[9]

**The RTC Ruling**

In a Joint Judgment[10] dated February 25, 2015, the RTC convicted Cabrellos of the crimes charged, and accordingly, sentenced her as follows: (*a*) in Criminal Case No. 05-0163-A, to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00; and (*b*) in Criminal Case No. 05-0162-A, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to fourteen (14) years, and to pay a fine of ₱300,000.00.[11]

The RTC found that the prosecution was able to establish Cabrellos's guilt beyond reasonable doubt, considering that:

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[8] See *rollo*, pp. 6-7. See also CA *rollo*, pp. 62-68.

[9] See *rollo*, p. 8. See also CA *rollo*, pp. 68-69.

[10] CA *rollo*, pp.61-74.

[11] *Id*. at 73a-74.

(*a*) she was caught in *flagrante delicto* selling *shabu* to the poseur-buyer; and (*b*) in the search incidental to her arrest, she was discovered to be in possession of seventeen (17) more sachets of *shabu*. On the other hand, it did not give credence to Cabrellos' bare denial as it stood weak in the face of the detailed and candid testimonies of the prosecution's witnesses.[12]

Aggrieved, Cabrellos appealed[13] to the CA.

**The CA Ruling**

In a Decision [14] dated September 13, 2016, the CA affirmed the RTC ruling.[15] It held that the testimonies of the police officers had established the fact that Cabrellos was caught in the act of selling illegal drugs, and that in the course of her arrest, she was found in possession of more sachets containing illegal drugs. In this regard, the CA ruled that the police officers substantially complied with the chain of custody requirement as the identity and evidentiary value of the seized items were duly established and preserved. [16]

Hence, this appeal.

**The Issue Before the Court**

The issue for the Court's resolution is whether or not Cabrellos is guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

**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

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[12] See *id*. at 69-73a.

[13] See Notice of Appeal dated March 2, 2015; records (Crim. Case No. 05-0162-A), p. 153a.

[14] *Rollo*, pp. 4-15.

[15] *Id*. at 14.

[16] See *id*. at 9-13.

of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[17] "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."[18]

In this case, Cabrellos was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. 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.[19] 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.[20] In both instances, case law instructs that 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 doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21]

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[17] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[18] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[19] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[20] *People v. Bio*, 753 Phil. 730, 736 (2015).

[21] See *People v. Manansala*, G.R. No. 229092, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[22] Under the said section, prior to its amendment by RA 10640,[23] 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.[24] In the case of *People v. Mendoza*,[25] 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 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."[26]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section

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[22] *People v. Sumili, supra* note 19, at 349-350.

[23] 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.

[24] See Section 21 (1) and (2), Article II of RA 9165.

[25] 736 Phil. 749 (2014).

[26] *Id*. at 764; emphases and underscoring supplied.

21, Article II of RA 9165 may not always be possible.[27] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[28] – 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**

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[27] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[28] 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 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.

x x x x x x x x x"

**seized items are properly preserved by the apprehending officer or team**.[29] 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.[30] In *People v. Almorfe*,[31] **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**.[32] Also, in *People v. De Guzman*,[33] 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.**[34]

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Cabrellos.

Initially, it would appear that the arresting officers complied with the witness requirement during inventory, as seen in the Receipt of Property Seized[35] dated September 22, 2005 which contains the signatures of the required witnesses, *i.e.*, a public elected official, a representative from the DOJ, and a

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[29] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[30] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[31] 631 Phil. 51 (2010).

[32] *Id*. at 60.

[33] 630 Phil. 637 (2010).

[34] *Id*. at 649.

[35] Records (Crim. Case No. 05-0163-A), p. 9.

representative from the media. However, no less than PO3 Germodo admitted in open court that they actually conducted two (2) separate inventories in different places and in the presence of different witnesses. Pertinent portions of his direct testimony read:

> [Pros. Yuseff Cesar Ybañez, Jr.]: After you were able to make the said marking, were you able to take pictures with the accused inside her house?
> [PO3 Germodo]: No, sir. We only took pictures **during the inventory at the police station of Ayungon**.
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> x x x x x x x x x
>
> Q: Mr. Witness, after you have prepared, and signed of the properties seized and gone with the markings of the property seized, what did you do then, if any?
> A: We conducted the inventory of the confiscated items **together with the witness, the [B]rgy. *Kagawad* Raul Fausto and he signed the inventory**.
>
> Q: And after Raul Fausto signed the inventory, what happened then, if any?
> A: Since there was no report from the media [and] the Department of Justice, **we proceeded to Dumaguete City**.
>
> Q: Where did you proceed in Dumaguete City?
> A: In our office.
>
> Q: Where is your office located?
> A: **It is located at PNP compound, Locsin St., Dumaguete City**.
>
> Q: After you arrived there, what happened then?
> A: I called the media representative and the DOJ.
>
> Q: And did they arrive, the media representative and the DOJ representative?
> A: Yes.
>
> Q: After they arrived, what transpired at your office?
> A: We conduct (*sic*) again an inventory.
>
> Q: After conducting the second inventory, what did you do then, if any?

A: After the inventory we made a request for PNP crime laboratory.[36] (Emphases and underscoring supplied)

From the foregoing testimony, it is clear that the arresting officers conducted two (2) separate inventories, both of which are glaringly non- compliant with the required witnesses rule: (*a*) in the inventory conducted at the Ayungon Police Station, only a public elected official – Brgy. *Kagawad* Raul Fausto – was present thereat; and (*b*) on the other hand, the inventory conducted at the Dumaguete Police Station was witnessed only by representatives from the DOJ and the media. To make matters worse, the arresting officers attempted to cover up such fact by preparing a single inventory sheet signed by the witnesses at different times and places. Verily, the chain of custody rule laid down by RA 9165 and its IRR contemplates a situation where the inventory conducted on the seized items is witnessed by the required personalities at the same time. The wordings of the law leave no room for any piecemeal compliance with the required witnesses rule as what happened in this case. Otherwise, the avowed purpose of the required witnesses rule – which is to prevent the evils of switching, planting, or contamination of the *corpus delicti* resulting in the tainting of its integrity and evidentiary value – will be greatly diminished or even completely negated.

At this point, it is well to note that the non-compliance with the required witnesses rule does not *per se* render the confiscated items inadmissible.[37] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.[38] In *People v. Umipang*,[39] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under

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[36] TSN, November 17, 2006, pp. 22 and 25-27.

[37] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[38] See *id*. at 1052-1053.

[39] *Id*.

the law for "[a] sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse."[40] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. **As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.**[42]

To reiterate, PO3 Germodo admitted that they had to re-do the inventory at the Dumaguete Police Station for it to be witnessed by the DOJ and media representatives. However, the re-conduct of the inventory at the Dumaguete Police Station was no longer witnessed by the public elected official who was left behind at the Ayungon Police Station. Unfortunately, no excuse was offered for such mishap; and worse, they even tried to trivialize the matter by making the required witnesses sign a single inventory sheet despite the fact that they witnessed the conduct of two (2) separate inventories. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized

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[40] *Id*. at 1053.

[41] See *id*.

[42] See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

from Cabrellos have been compromised. It is settled that in a prosecution for the Illegal Sale and Illegal Possession of Dangerous Drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.[43] 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; or worse, ignored as an impediment to the conviction of illegal drug suspects.[44] As such, since the prosecution failed to provide justifiable grounds for non-compliance with the aforesaid provision, Cabrellos's acquittal is perforce 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.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.[45]

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[43] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, *id*. at 1039-1040.

[44] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *id*. at 1038.

[43] See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

"In this light, prosecutors are 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 the 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."[46]

**WHEREFORE,** the appeal is **GRANTED**. The Decision dated September 13, 2016 of the Court of Appeals in CA-G.R. CR H.C. No. 02020 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Patricia Cabrellos *y* Dela Cruz is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

**SO ORDERED.**

*Carpio*[*] *(Chairperson)*, *Caguioa*, and *Reyes, Jr., JJ.*, concur.

*Peralta, J.*, see separate concurring opinion.

## SEPARATE CONCURRING OPINION

**PERALTA, *J.*:**

I concur with the *ponencia* in acquitting accused-appellant Patricia Cabrellos *y* Dela Cruz of the charges of illegal sale

[46] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)

and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. I agree that the prosecution failed to provide justifiable grounds for the arresting officers' non-observance of the three-witness rule under Section 21[2] of R.A. No. 9165, *i.e.*, why they had to re-do the inventory of the seized items at the police station for it to be witnessed by the representatives from the Department of Justice and the media *sans* the presence of an elected public official, who was the only one present during the initial inventory of the said items. At any rate, 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]

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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;

[3] *People v. Ramirez,* G.R. No. 225690, January 17, 2018.

(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.

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

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[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*."

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

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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> x x x x x x x x x
>
> 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.

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[6] *Id*.

[7] *Id*.

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 appellant committed the crime 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 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

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[8] *Id.* at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017,

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] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for 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 were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official 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**

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[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*.

[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

**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 appellant's 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 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

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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.

[16] G.R. No. 202206, March 5, 2018.

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 Evidenc*e. – 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) 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. 233477. July 30, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JOWIE ALLINGAG y TORRES and ELIZABETH ALLINGAG *y* TORRES,** *accused-appellants.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.—** Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."

**2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [U]nder Section 11, Article II of R. A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.

**3. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; THE PROSECUTION BEARS THE BURDEN OF PROOF TO SHOW VALID CAUSE FOR NON-COMPLIANCE WITH THE PROCEDURE ON THE CUSTODY AND DISPOSITION OF SEIZED ITEMS, BUT A STRICTER ADHERENCE THERETO IS REQUIRED WHEN THE QUANTITY OF ILLEGAL DRUGS SEIZED IS MINISCULE SINCE IT IS HIGHLY SUSCEPTIBLE TO PLANTING, TAMPERING, OR ALTERATION.—** On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. x x x Under the original provision of Section 21 [of

R.A. No. 9165], after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment. In this case, the absence of a representative from the DOJ during the inventory of the seized items was not justifiably explained by the prosecution. x x x [T]he prosecution bears the burden of proof to show 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 proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the 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. 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 item. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration. There being no justifiable reason for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt.

**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**

**PERALTA, *J.*:**

This is an appeal of the Court of Appeals' (*CA*) Decision[1] dated June 9, 2017 dismissing appellants' appeal and affirming the Decision[2] dated January 8, 2016 of the Regional Trial Court (*RTC*), Branch 70, Taguig City convicting appellants Jowie Allingag y Torres and Elizabeth Allingag y Torres of Violation of Sections 5 and 11, Article II, Republic Act (*R.A.*) No. 9165.

The facts follow.

A confidential informant arrived at the Station Anti-Illegal Drugs- Special Operations Task Group (*SAID-SOTG*), Taguig City Police Station on December 8, 2011 and reported to Police Officer (*PO*) 3 Jowel Briones the illegal drug activities of a certain Jowie Allingag and Elizabeth Allingag. As a consequence, team leader Police Senior Inspector Jerry Amindalan made a plan and called the team that included SPO1 Sanchez, PO2 Antillion, and PO1 Balbin, among others, to conduct a briefing for a buy-bust operation. PO3 Briones was designated as poseur-buyer and PO1 Balbin was his immediate back-up. The team leader then instructed PO2 More to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) and the Southern Police District. PO2 More also prepared the Coordination Form and Pre-Operation Report. PO3 Briones was then given two (2) Five Hundred Peso bills and investigator Bonifacio recorded the same in the police blotter.

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Edwin D. Sorongon and Nina G. Antonio-Valenzuela concurring; *rollo*, pp. 2-21.

[2] Penned by Presiding Judge Louis P. Acosta; CA *rollo*, pp. 19-27.

The team then proceeded to F. Generao St., Calzada Tipas, Taguig to conduct the buy-bust operation. The team parked their vehicle near the target area and they proceeded on foot. When they reached the place, the confidential informant saw appellants Jowie and Elizabeth and informed the police officers that the latter two were the target persons. The confidential informant approached Jowie and Elizabeth and introduced PO3 Briones as the person who will buy *shabu* for his personal consumption. Jowie then told them that the *shabu* was worth One Thousand Two Hundred Pesos (₱1,200.00) but because the confidential informant was his "*suki,*" PO3 Briones was allowed to buy the *shabu* for One Thousand Pesos (₱1,000.00). PO3 Briones then handed the marked money to Jowie and the latter passed the same money to Elizabeth. Elizabeth then told PO3 Briones that she has another sachet of *shabu* and asked him if he still wanted to buy another. PO3 Briones told Elizabeth that he only had One Thousand Pesos (₱1,000.00).

Thereafter, PO3 Briones made the pre-arranged signal by removing his bull cap and PO1 Balbin rushed to arrest appellants Jowie and Elizabeth. PO1 Balbin handcuffed the two and PO3 Briones recovered one (1) plastic sachet of dried marijuana from Jowie and one (1) plastic sachet of *shabu* and the buy-bust money from Elizabeth. Thereafter, PO3 Briones placed his markings "JVB" on the *shabu* subject of the sale and "JVB-2" on the marijuana confiscated from Jowie and "JVB-1" on the *shabu* confiscated from Elizabeth.

A certificate of inventory was then prepared and, thereafter, the team proceeded to the police station for proper turnover and documentation. At the police station, photographs of the arrested suspects, Spot Report, Request for Crime Laboratory of the specimens, Request for Drug Tests and the booking and information sheets were prepared. Thereafter, PO3 Briones and investigator PO3 Bonifacio brought the request and the confiscated items to the crime laboratory for examination.

Police Chief Inspector Jocelyn Belen Julian, Forensic Chemist of the PNP Crime Laboratory, Camp Crame conducted an examination on the confiscated items marked "JVB" and "JVB-

1" which tested positive for the presence of methylamphetamine hydrochloride and "JVB-2" which tested positive for marijuana.

Thus, three (3) Informations were filed against the appellants for violation of Sections 5 and 11, Article II of R.A. No. 9165 that read as follows:

Crim. Case No. 17821-D
(against appellants Jowie and Elizabeth)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without being authorized by law, to sell or otherwise dispose any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer, zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

Crim. Case No. 17822-D
(against appellant Jowie)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession of zero point thirty-two (0.32) gram of dried Marijuana fruiting tops, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Crim. Case No. 17823-D
(against appellant Elizabeth)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully

[3] CA *rollo*, p. 13.

[4] *Id.* at 15.

and knowingly have in her possession, custody and control of zero point thirteen (0.13) gram of dried Methylamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

Upon arraignment, appellants, with the assistance of counsel from the Public Attorney's Office (*PAO*), entered pleas of "not guilty" on all charges.

Both appellants denied the allegations and claimed that they were victims of frame-up by the police officers.

According to appellant Elizabeth, she was celebrating her birthday on December 8, 2011. Around 6 o'clock in the evening, appellant Elizabeth rented a *videoke* and when she returned, she saw several people outside her house and heard that police officers were inside. She immediately went near the house and asked three police officers what the problem was. The police officers asked what her relationship is with appellant Jowie and upon knowing that the latter is her brother, the police officers dragged her inside the house and handcuffed her. Surprised with what happened, and having noticed that the police officers were searching inside the house, she asked the police officers if the latter have a search warrant, but she did not receive any reply from them. Appellant Elizabeth also claims that the police officers did not find anything in the house and when the police officers were about to frisk her, she told them that she will take out her pockets, showing that the same were empty. One (1) of the police officers, however, presented a small plastic sachet containing white powder content and the police officers brought her and appellant Jowie to the municipal hall. Appellant Elizabeth asked the police officers what they have done wrong, but no one answered. Thereat, two (2) plastic sachets, two (2) Five Hundred Peso Bills, and another plastic sachet containing leaves were placed by the police officers on top of the table. She denied that the items were recovered from them.

[5] *Id.* at 17.

Appellant Jowie also denied the charges against him and claims that on the date and time of the incident, he was inside his house watching television, when several men arrived and suddenly went inside his house and handcuffed him. He asked them what he did wrong, but they did not reply, instead they searched his house. While searching his house, appellant Elizabeth, his elder sister, arrived and asked for a warrant as they were searching the house. While addressing those questions, the men also handcuffed his sister. Then one of the men took out a plastic containing white powder and they forcibly brought them to the municipal hall. The police officers put on the table a Two Hundred Peso (₱200.00) bill and two (2) plastic sachets containing white powder and one (1) plastic sachet containing dried leaves and they were then told that those items belong to them.

The RTC found appellants guilty beyond reasonable doubt of the offenses charged and sentenced them as follows:

> WHEREFORE, premises considered, both accused JOWIE ALLINGAG y TORRES and ELIZABETH ALLINGAG y TORRES are hereby found GUILTY beyond reasonable doubt of selling without any authority 0.13 gram of Methylamphetamine Hydrochloride or "*shabu*," a dangerous drug, in violation of Sec. 5, Art. II of R. A. 9165 and are hereby both sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) for Criminal Case No. 17821-D.
>
> Under Crim. Case No. 17822-D for possession of 0.32 gram of dried Marijuana fruiting tops a dangerous drug, accused JOWIE ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).
>
> Under Crim. Case No. 17823-D for possession of 0.13 gram of Methylamphetamine Hydrochloride or "*shabu*," a dangerous drug, accused ELIZABETH ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE [(1)] DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Pursuant to Section 21 of Republic Act 9165, the Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of the PDEA authorized representative is hereby ordered to take charge and to have custody of the sachets of "*shabu*" and marijuana subject matters of these cases, within 72 hours from notice, for proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

SO ORDERED.[6]

According to the RTC, the police officers enjoy the presumption of regularity in the performance of their official functions and that the claim of appellants that they were the subject of a frame-up has no basis. It also ruled that the elements of the crimes charged are present and that the arresting officers complied with the provisions of Section 21 of R.A. No. 9165.

The CA affirmed the decision of the RTC *in toto*, thus:

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated January 8, 2016 of the Regional Trial Court of Taguig City, Branch 70, in Criminal Case Nos. 17821-23-D, finding Jowie Allingag y Torres and Elizabeth Allingag y Torres guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, is hereby AFFIRMED *in toto*.

SO ORDERED.[7]

The CA ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs and that the bare denials of the appellants cannot prevail over the positive testimonies of the police officers. It also held that non-compliance with Section 21 of R.A. No. 9165 does not automatically render void and invalid the seizure and custody over the seized item, as long as the integrity and the evidentiary value of the same were properly preserved by the apprehending officers.

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[6] *Id.* at 26-27.

[7] *Rollo*, p. 20.

Hence, the present appeal.

The issues presented in the appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND RESONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN THEIR FAVOR.[8]

Appellants argue that the trial court's reliance on the presumption of regularity in the performance of duty by the police officers is misplaced since the buy-bust team failed to comply with Section 21 of R.A. No. 9165 as there was no representative from the Department of Justice (*DOJ*) when the inventory of the purportedly seized items was conducted. They also claim that the presence of the representative from the media during the inventory of the seized items is doubtful because the representative admitted that, upon arriving at the place of the incident, the inventory was already accomplished and that he merely signed the same because the police officers told him to do so. It is also pointed out that the testimonies of the *barangay kagawad* and the forensic chemist were not presented in court.

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[8] CA *rollo*, pp. 105-106.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[9]

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[10]

Also, under Section 11, Article II of R. A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

> [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.[11]

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[12] In *People v. Gatlabayan*,[13] the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."[14] Thus, the chain of custody carries out this purpose

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[9] *People v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] 699 Phil. 240, 252 (2011).

[14] *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

"as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[15]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

> (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.

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

> (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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

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[15] See *People v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

(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 person/s 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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted 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 increasing drug addiction and also, in the conflicting decisions of the courts."[16] Specifically, she cited 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 more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."[17] In addition, "[t]he requirement that inventory is required to be done in the police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[18]

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[16] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[17] *Id.*

[18] *Id.*

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the 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."[19] In his Co-sponsorship Speech, he noted:

> 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 seized illegal drugs.
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> x x x x x x x x x
>
> Section 21(a) of RA 9165 needs 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 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 enforement officers could justify the same and

[19] *Id.* at 349.

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 wherein 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.[20]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, this Court opined in *People v. Miranda*:[21]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 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 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. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the 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 stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and 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.[22]

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[20] *Id.* at 349-350.

[21] G.R. No. 229671, January 31, 2018. (Citations omitted)

[22] See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People*

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[23] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

In this case, the absence of a representative from the DOJ during the inventory of the seized items was not justifiably explained by the prosecution. A review of the transcript of stenographic notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ. In his testimony, PO3 Briones merely confirmed the presence of a *barangay kagawad* and a representative from the media during the inventory of the seized items, thus:

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*v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[23] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

Q You mentioned the three (3) plastic sachets with the markings. I'm giving you these three plastic sachets, can you please identify which among those plastic sachets is the one subject of sale confiscated from Jowie?
A This one, [M]a'am,

PROSEC FABELLA
Your Honor, the witness identified as the one subject of sale from Jowie Allingag the plastic sachet with markings JVB, which has been marked as Exhibit "O".

Q How about the other two plastic sachets?
A This is the plastic sachet with markings JVB-1 confiscated from the possession of Elizabeth Allingag, [M]a'am.

PROSEC FABELLA
Your Honor, the witness identified this specimen with marking Exhibit "O-1".

Q How about the plastic sachet of marijuana?
A This is the sachet with markings "JVB-2" in the possession of Jowie Allingag, [M]a'am.

PROSEC FABELLA
Your Honor, the witness identified this specimen which was marked as Exhibit "O-2".

Q Where did you put these markings, [M]r. [W]itness?
A At the place where they were arrested, [M]a'am.

Q Who were present when you put these markings?
A The representative of the media, Peter Corpus of Remate, [M]a'am.

Q And what happened after you put markings on those specimen?
A I also prepared the certificate of inventory, [M]a'am.

Q If that certificate of inventory will be shown to you, will you be able to identify it?
A Yes, [M]a'am.

Q I'm showing to you this document, can you please go over this?
A Yes, [M]a'am this is the same document and this is the signature of the media representative of Remate and a Kagawad, a certain Vicente Magdaraog.

Q How did you know that these are their signatures?
A I was there and I saw them signed their signatures, [M]a'am.[24]

In *People v. Angelita Reyes, et al.*,[25] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[26] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,[27] thus:

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[24] TSN, November 26, 2012, pp. 15-17.

[25] G.R. No. 219953, April 23, 2018.

[26] Article 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. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[27] G.R. No. 224290, June 11, 2018.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for 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 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 elected public official within the period required under Article 125 of the Revised Penal Could 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.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[28] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[29] 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. 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 item.[30] A stricter adherence to Section 21 is required where the quantity of illegal

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[28] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[29] See *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Jugo*, G.R. No. 231792, January 29, 2018.

[30] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[31]

There being no justifiable reason for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt. Thus, this Court finds it appropriate to acquit the appellants in this case.

**WHEREFORE,** premises considered, the Decision dated June 9, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08043 dismissing appellants' appeal and affirming the Decision dated January 8, 2016 of the Regional Trial Court, Branch 70, Taguig City in Criminal Case Nos. 17821-23-D is **REVERSED AND SET ASIDE**. Appellants Jowie Allingag y Torres and Elizabeth Allingag y Torres are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let copies of this Decision be furnished to the Directors of the Bureau of Corrections and the Correctional Institution for Women, for immediate implementation. Said Directors are **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action they have taken.

**SO ORDERED.**

*Carpio*[*] *(Chairperson)*, *Perlas-Bernabe, Caguioa*, and *Reyes, Jr., JJ.,* concur.

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[31] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena*, G.R. No. 210677, August 23, 2017; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana*, G.R. No. 20841, August 2, 2017; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

**SECOND DIVISION**

[G.R. No. 233572. July 30, 2018]

**ALFREDO A. RAMOS,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE PROHIBITED DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** In order to properly secure the conviction of an accused charged with Illegal Possession of Dangerous Drugs, the prosecution must prove that: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Notably, 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 doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

**2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREON, 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.—** Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when 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 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 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 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.**

**3. ID.; ID.; ID.; INVENTORY OF SEIZED ITEMS; THE ABSENCE OF THE REQUIRED WITNESSES DOES NOT**

***PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE BUT A JUSTIFIABLE REASON FOR SUCH FAILURE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES MUST BE ADDUCED.—** [T]he inventory of the drugs purportedly seized from Ramos was conducted ***without*** the presence of any elected public official or representatives from both the DOJ and the media. x x x [T]he absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.**

**4. ID.; ID.; ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; THE STATE CARRIES THE HEAVY BURDEN OF PROVING NOT ONLY THE ELEMENTS OF THE OFFENSE, BUT ALSO TO PROVE THE INTEGRITY OF THE *CORPUS DELICTI*.—** It is settled that in a prosecution for the illegal sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but

also to prove the integrity of the *corpus delicti*, failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt. Moreover, jurisprudence dictates that the procedure in Section 21 of RA 9165, as amended by RA 10640, 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. Accordingly, since the prosecution failed to provide justifiable grounds for non-compliance therewith, Ramos's acquittal is in order.

**PERALTA, *J.*, *separate concurring opinion*:**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; THE PROSECUTION BEARS THE BURDEN OF PROVING A VALID CAUSE FOR NON-COMPLIANCE WITH THE PROCEDURE THEREON BUT STRICT ADHERENCE THERETO IS REQUIRED WHEN THE QUANTITY OF ILLEGAL DRUGS SEIZED IS MINISCULE, SINCE IT IS HIGHLY SUSCEPTIBLE TO PLANTING, TAMPERING OR ALTERATION OF EVIDENCE.—** 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 x x x. 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. x x x However, under the original provision of Section 21 and its IRR, which is applicable at the time the petitioner committed the crime 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 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." 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. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

**2. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER OR TEAM FOLLOWED THE REQUIREMENTS ON THE CUSTODY AND DISPOSITION OF SEIZED ITEMS.—** 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 petitioner's 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.

**3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CONSIDERED A MATTER OF EVIDENCE AND A RULE OF PROCEDURE.—** I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* 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.

**4. ID.; ID.; ID.; THE MARKING, INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTION IN CASE OF NON-COMPLIANCE.— [T]he 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** x x x. 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.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for respondent.
*Public Attorney's Office* for petitioner.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 21, 2017 and the Resolution[3] dated August 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38528, which affirmed the Decision[4] dated August 27, 2015 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Criminal Case No. 12-0227, finding petitioner Alfredo A. Ramos (Ramos) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs as defined and penalized under Section 11, Article II of Republic Act (RA) No. 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

**The Facts**

On May 8, 2012 an Information was filed before the RTC charging Ramos of violation of Section 11, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 1st day of May 2012, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to possess any dangerous drug, did then and

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[1] *Rollo*, pp. 12-39.

[2] *Id.* at 41-56. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Mario V. Lopez and Eduardo B. Peralta, Jr. concurring.

[3] *Id.* at 58-62.

[4] *Id.* at 84-85. Penned by Presiding Judge Dennis Patrick Z. Perez.

[5] 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.

there willfully, unlawfully and knowingly possess and have in his custody and control 0.05 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

The prosecution alleged that on May 1, 2012, acting upon the information of a police asset that a certain "Nonong" – later identified as Ramos – was bringing in *shabu* from LupangArienda to Barangay (Brgy.) San Roque, Angono, Rizal, Senior Police Officer 1 (SPO1)Pablo Medina (SPO1 Medina),together with three (3) other police officers,took their positions at Col. Guido St., Brgy. San Roque. After waiting for a while, Ramos arrived at the location, and later, two (2) unidentified men came and talked to him. The three (3) men then started fighting, which prompted the police officers to approach and pacify them. However,the men escaped, except for Ramos who was caught by SPO1 Medina. Ramos then took something from his pocket and tried to throw away a pack of cigarettes containing a plastic sachet, which SPO1 Medina was able to intercept. Thereafter, the latter proceeded to the Angono Police Station where he turned over Ramos and the seized items to police investigator SPO1 Ian Voluntad (SPO1 Voluntad) for marking and taking of photographs. Thereat, SPO1 Voluntad marked the plastic sachet with "AAR-1" and the cigarette pack as "AAA-2" and then delivered the items to the crime laboratory where it was confirmed[7] that the seized items contained 0.05 gram of methamphetamine hyrdrochloride or *shabu*, an illegal drug.[8]

In his defense, Ramos pleaded not guilty and denied the charge against him. He then narrated that on the date he was arrested, he received a call from his friend Brandon Balais (Balais) who invited him to go to Angono, Rizal for Balais's birthday. At around 4:00 o'clock in the afternoon, he arrived at the Angono

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[6] *Rollo*, p. 42.

[7] The chemistry report is not attached to the *rollo*.

[8] See *rollo*, p. 42. See also *id*. at 84.

Caltex gas station, lit a cigarette,and while waiting, a man in civilian clothes started to frisk him. Thereafter, the man showed him a cigarette case with *shabu* inside and claimed that he owned it. When he denied, he was brought inside an office where a report was instantly prepared against him.[9]

**The RTC Ruling**

In a Decision[10] dated August 27, 2015, the RTC found Ramos guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve(12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[11]

The RTC found that the prosecution had established beyond reasonable doubt that Ramos committed the crime charged as he was caught*in flagrante delicto* by the arresting police officers in possession of a sachet containing *shabu*. In this regard, the RTC pointed out that the chain of custody of the seized drug had been preserved, since it was brought to the crime laboratory on the date of the seizure.[12]

Aggrieved, Ramos appealed[13] to the CA.

**The CA Ruling**

In a Decision[14] dated March 21, 2017, the CA upheld the RTC ruling, finding all the elements of the crime present, and further holding that the prosecution was able to establish an unbroken chain of custody of the illegal drug from the time of its confiscation by SPO1 Medina until its identification in court. It ruled that despite the failure to strictly follow the requirements under Section 21, Article II of RA 9165, the following

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[9] *Id.* at 44. See also *id*. at 68-69.

[10] *Id.* at 84-85.

[11] *Id.* at 85.

[12] See *id.*

[13] See Brief for the Accused-Appellant dated September 1, 2016; *id.* at 65-83.

[14] *Id.* at 41-56.

circumstances show substantial compliance thereof: (*a*) the marking and inventory of the subject specimen were immediately done at the police station; and (*b*) the absence of representatives from the DOJ and the media, or any elected official during the inventory was justified, since SPO1 Medina exerted efforts to secure their presence but they failed to appear.The CA further pointed out that while the photographs of the seized items were not presented as evidence, SPO1 Medina testified that pictures were actually taken by SPO1 Voluntad.Finally, the CA held that it is within the prosecution's discretion whether or not to present SPO1 Voluntad but in any case, the failure to do so was not crucial in proving Ramos's guilt.[15]

Unperturbed, Ramos moved for reconsideration[16] which was, however, denied in a Resolution[17] dated August 4, 2017;hence, this petition.[18]

**The Issue Before the Court**

The issue for the Court's resolution is whether or not Ramos is guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165.

**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.[19] "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."[20]

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[15] See *id*. at 46-55.

[16] See motion for reconsideration dated April 17, 2018; *id*. at 110-120.

[17] *Id*. at. 58-62.

[18] *Id.* at 12-39.

[19] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[20] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

In this case, Ramos was charged with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165.In order to properly secure the conviction of an accused charged with Illegal Possession of Dangerous Drugs, the prosecution must prove that: (*a*)the accused was in possession of an item or object identified as a dangerous drug; (*b*)such possession was not authorized by law; and (*c*)the accused freely and consciously possessed the said drug.[21]Notably, 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 doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[22]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[23]Under the said section, prior to its amendment by RA 10640,[24] 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

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[21] *People v. Bio*, 753 Phil. 730, 736 (2015).

[22] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] See *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

[24] 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. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on May 1, 2012.

(24) hours from confiscation for examination.[25]In the case of *People v. Mendoza*,[26] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA No. 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 xx presence of such witnesses would have preserved an unbroken chain of custody."[27]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[28]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 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**.[29]In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and

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[25] See Section 21 (1) and (2), Article II of RA 9165.

[26] 736 Phil. 749 (2014).

[27] *Id*. at 764; emphases and underscoring supplied.

[28] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[29] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

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.[30] In *People v. Almorfe*,[31] **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**.[32] Also, in *People v. De Guzman*,[33] 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.**[34]

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Ramos.

It is glaring from the records that no less than SPO1 Medina admitted on cross-examination that the inventory of the drugs purportedly seized from Ramos was conducted ***without*** the presence of any elected public official or representatives from both the DOJ and the media.[35] When questioned on the reason behind such irregularity, SPO1 Medina offered the following justification:

[PROSECUTOR CO]: In this inventory it appears that there is no signature coming from an elected official, media representative and DOJ representative, why is it so?

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[30] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[31] 631 Phil. 51 (2010).

[32] *Id.* at 60; citation omitted.

[33] 630 Phil. 637 (2010).

[34] *Id.* at 649.

[35] See *rollo*, p. 44.

[SPO1 Medina]: At that time, there were no available barangay kagawad(s), Sir.

[PROSECUTOR CO]: How [about] the media and the DOJ representative, did you exert effort at that time?

[SPO1 Medina]: We exerted effort but there nobody was (*sic*) available, Sir.[36]

At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.[37] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced.[38]In *People v. Umipang*,[39] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse."[40] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[41]These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165.**As such, police officers are compelled not only to state reasons for their non-**

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[36] *Id.* at 51.

[37] *People v. Umipang*, 686 Phil.1024, 1052 (2012).

[38] See *id.* at 1052-1053.

[39] *Id.*

[40] *Id.* at 1053.

[41] See *id.*

**compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.**[42]

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression – as in fact the only reason given was that "they exerted effort but nobody was available" – the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Ramos have been compromised. It is settled that in a prosecution for the illegal sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.[43] Moreover, jurisprudence dictates that the procedure in Section 21 of RA 9165, as amended by RA 10640, 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.[44]Accordingly, since the prosecution failed to provide justifiable grounds for non-compliance therewith, Ramos's acquittal is 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

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[42] See *People v. Manansala*, *supra* note 21.

[43] See *People v. Umipang*, *supra* note 38, at 1039-1040.

[44] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *id.* at 1038.

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.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] order is too high a price for the loss of liberty. x x x.[45]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 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 the 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's court bounden duty to acquit the accused, and perforce, overturn a conviction.[46]

**WHEREFORE,** the appeal is **GRANTED**. The Decision dated March 21, 2017 and the Resolution dated August 4, 2017 of the Court of Appeals in CA-G.R. CR No. 38528 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Alfredo A. Ramos is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

**SO ORDERED.**

*Carpio (Chairperson)*, *Caguioa,* and *Reyes, Jr., JJ.,* concur.

*Peralta, J.,* see separate concurring opinion.

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[45] See *Bulauitan v.People*, G.R. No. 218891, September 19, 2016, 803 SCRA 367, 387.

[46] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

## SEPARATE CONCURRING OPINION

**PERALTA, *J.***

I concur with the *ponencia* in acquitting petitioner Alfredo A. Ramos of the charge of illegal possession of dangerous drugs, or violation of Section 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. I agree that the prosecution failed to provide justifiable grounds for the arresting officers' non-observance of the three-witness rule under Section 21[2] of R.A. No. 9165, *i.e.*, why an elected public official and representatives from the Department of Justice and the media were not present during the inventory of the seized drugs. At any rate, 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

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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;

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.

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

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[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

[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*."

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

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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> 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.

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[6] *Id.*

[7] *Id.*

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 petitioner committed the crime 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 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

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[8] *Id.* at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

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] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for 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 were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official 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**

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[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.*

[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.

**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 petitioner's 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 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

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[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

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) 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.

**THIRD DIVISION**

[G.R. No. 234033. July 30, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **AMADO BALUBAL *y* PAGULAYAN,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY, DEFINED; THE LINKS IN THE CHAIN OF CUSTODY MUST BE ESTABLISHED BY THE PROSECUTION IN A BUY-BUST OPERATION.—** Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. The procedure on the custody and disposition of confiscated, seized and/or surrendered drug and/or drug paraphernalia is governed by Sec. 21(1), Art. II of R.A. No. 9165. This was, however, amended by R.A. No. 10640 which took effect in 2014. Considering that the alleged crime was committed on June 4, 2013, the old law and its corresponding implementing rules and regulations shall apply. x x x In *People v. Kamad*, the Court identified the links that the prosecution must establish in the chain of custody in a buy-bust operation as follows: *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.

2. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS THEREON WILL NOT RENDER VOID AND INVALID THE SEIZURES OF AND CUSTODY OVER THE CONFISCATED ITEMS; CONDITIONS.—** [T]he apprehending team is required, after seizure and confiscation, to immediately conduct a physical inventory and photograph of the seized items in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** Notably, the last sentence of Sec. 21, Art. II of the IRR provides a saving clause. It provides that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.** This saving clause applies (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. In which case, the prosecution loses the benefit of invoking the presumption of regularity and bears the burden of proving – with moral certainty – that the illegal drug presented in court was the same drug that was confiscated from the appellant during his arrest.

3. **ID.; ID.; ID.; THE PROCEDURE IN SECTION 21 IS A MATTER OF SUBSTANTIVE LAW AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY.—** It is well-settled that the procedure in Sec. 21 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. The significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti.*

**4. ID.; ID.; ID.; THE MINISCULE QUANTITY OF CONFISCATED ILLICIT DRUGS HEIGHTENS THE IMPORTANCE OF A MORE STRINGENT CONFORMITY WITH THE PROCEDURES LAID DOWN BY THE LAW.—** The miniscule amount of the drug involved in this case should have impelled the police officers to faithfully comply with the law. Trial courts should thoroughly take into consideration the factual intricacies of the cases involving violations of R.A. No. 9165. The courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs for these can be readily planted and tampered. The miniscule quantity of confiscated illicit drugs heightens the importance of a more stringent conformity with the procedures laid down by the law, which the police officers in this case miserably failed to comply. The significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti*.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**GESMUNDO, *J.*:**

This is an appeal of the March 21, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 08238. The CA affirmed the March 28, 2016 Judgment[2] of the Regional Trial Court of Tuguegarao City, Branch 5 (*RTC*) in Criminal Case No. 15671, finding Amado Balubal *y* Pagulayan (*appellant*) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*

[1] *Rollo*, pp. 2-18; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Mario V. Lopez and Eduardo B. Peralta, Jr., concurring.

[2] CA *rollo*, pp. 60-68.

## The Antecedents

In an Information[3] dated August 27, 2013, docketed as Criminal Case No. 15671, appellant was charged with the crime of illegal sale of *shabu* weighing 0.07 gram. The accusatory portion of the information reads:

> That on or about June 4, 2013, in the municipality of Solana, province of Cagayan and within the jurisdiction of this Honorable Court, the said accused AMADO BALUBAL Y PAGULAYAN ALIAS ADO without authority, did, then and there willfully, unlawfully and feloniously sell, transport, give away to another and deliver to a Police Officer who posted as buyer, one (1) piece of heat sealed transparent sachet containing white crystaline (sic) substance, methamphetamine hydrochloride commonly known as SHABU weighing approximately 0.07 grams (sic) more or less, a dangerous drugs (sic) for and in consideration of the amount of PHP1,500.00 which resulted to the apprehension of the accused and the confiscation from his possession and custody the pre-marked buy[-bust] money consisting of one (1) piece genuine Five Hundred peso bill denomination bearing serial number MC857420 and one (1) piece boodle money of one thousand peso bill denomination.
>
> Contrary to law.[4]

On October 21, 2013, appellant was arraigned and he pleaded not guilty to the offense charged.[5] Thereafter, trial on the merits ensued.

*Version of the Prosecution*

The prosecution presented Police Sr. Inspector Glenn Ly Tuazon *(PSI Tuazon)*, Intelligence Officer 1 Mary Jane R. Gaayon *(IO1 Gaayon)*, Intelligence Officer 1 Judy-Mar P. Molina *(IO1 Molina)*, Severino Baggayan *(Baggayan)*[6] and SO2 Romarico Pagulayan *(SO2 Pagulayan)*.

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[3] Records, p. 1.

[4] *Id*.

[5] Records, p. 39.

[6] Referred to as Severo Bangayan in the RTC Judgment, Records, p. 125; Severino Pagulayan in the Brief for the Appellee, CA *rollo*, p. 83.

The combined testimonies of the prosecution witnesses tend to show that in the morning of June 4, 2013, SO2 Pagulayan received an information from a confidential informant *(CI)* that a certain Ado Balubal was looking for a buyer of *shabu*. SO2 Pagulayan relayed the information to the Regional Director of the Philippine Drug Enforcement Agency *(PDEA)*, Regional Office No. 2, who instructed them to conduct a buy-bust operation. SO2 Pagulayan then formed a team composed of IO1 Gaayon, IO1 Molina, IO1 Robert Baldoviso, IO1 John Angelo Asco and IO1 Walter Bucad. During the briefing, IO1 Gaayon was designated as the poseur-buyer, while IO1 Molina was assigned as the immediate back-up. IO1 Gaayon was given one (1) piece genuine ₱500.00 bill bearing serial number MC857420, which she marked with her initials "MRG" and one (1) piece ₱1,000.00 boodle money.

After coordinating with the Solana Police Station, the team met with the CI. SO2 Pagulayan instructed the CI to call Ado Balubal and inform him that a friend intends to buy *shabu*.

At around 1:00 o'clock in the afternoon, the buy-bust team left their office on board their service vehicle and arrived in Solana, Cagayan. IO1 Gaayon rode a motorcycle driven by the CI and proceeded to Solana Police Station for final briefing. Thereafter, IO1 Gaayon and the CI boarded a motorcycle and left, while the other members of the team followed on board their service vehicle. When the buy-bust team reached the place of transaction and after the CI parked his motorcycle, a man approached them. The CI introduced IO1 Gaayon to Ado Balubal. He said that IO1 Gaayon was his friend who wanted to buy *shabu*. Ado Balubal asked for payment and after handing the marked money to him, he gave her one (1) heat-sealed transparent plastic sachet. Immediately thereafter, IO1 Gaayon executed the pre-arranged signal by putting her right hand on her head. She then held the hand of Ado Balubal, who was identified as appellant herein. Appellant was able to free himself from IO1 Gaayon's grip and ran away. The police officers chased appellant and were able to catch him. Appellant was searched and IO1 Molina recovered the buy-bust money and a cellular phone. After they apprised appellant of his constitutional rights, he

was brought to the Solana Police Station and the seized items were also marked, inventoried and photographed. The inventory and photography were conducted in the presence of appellant, *Barangay Kagawads* Jose Bautista *(Bautista)* and Baggayan and a certain Roy Joseph Pacallagan *(Pacallagan)*,[7] who was allegedly a DOJ representative.

After inventory, the buy-bust team returned to PDEA Regional Office No. 2 and prepared the request for the laboratory examination of the heat-sealed plastic sachet that was seized from appellant. The other documents needed for the filing of the case were likewise prepared.

IO1 Gaayon then submitted the heat-sealed plastic sachet together with the request for laboratory examination to the PNP Crime Laboratory and were received by PSI Tuazon. In his Chemistry Report No. D-50-2013,[8] PSI Tuazon confirmed that the contents of the heat-sealed plastic sachet tested positive for methamphetamine hydrochloride, a dangerous drug.

*Version of the Defense*

The defense presented appellant and Agnes Gabona *(Gabona)* as witnesses.

Appellant denied the allegation that he sold dangerous drug to the police officers. He alleged that at around 2:00 o'clock in the afternoon of June 4, 2013, he was in front of his house along the provincial road in Natappian East, Solana, Cagayan, waiting for a jeepney. When a jeepney passed by, he boarded it by leaping in the step board and clinging at the rear portion of the vehicle which was full of passengers. As the jeepney traversed the provincial road at barangay Andarayan South, Solana, Cagayan, a man in civilian clothes waved the jeepney to stop. When the jeepney stopped, the man approached the driver and two (2) other men in civilian clothes appeared, rushed

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[7] He was referred to as Joseph Pacallangan in the CA Decision, *rollo*, p. 4, Roy Joseph Bautista in the RTC Judgment, Records, p. 125 and Joseph Pagulayan in the Brief for the Appellee, CA *rollo,* p. 83.

[8] Records, p. 16.

to him and forcibly pulled him down. One of them immediately handcuffed appellant from behind, while the other person pointed a gun at him. After his illegal arrest, appellant was allegedly pushed inside a white vehicle which was parked in the alley near the provincial road. After they all boarded the vehicle, it drove to the PNP Regional Command in Tuguegarao City.

Gabona, on the other hand, testified that at around 1:30 in the afternoon of June 4, 2013, while she was uprooting weeds in the garden at Karing Lasam, she noticed the presence of a white vehicle parked in the alley toward the Cagayan river. She saw five (5) persons in civilian clothes alight from said vehicle, three (3) of them proceeded beside the provincial road and stood. Moments later, when a jeepney passed by, Gabona saw one of them signal the vehicle to stop. When the jeepney stopped, one person approached the driver, while the two (2) persons rushed to the rear of the jeepney and pulled down a passenger, whom she later identified as appellant. One of the persons handcuffed appellant, while the other drew a gun and pointed it at appellant. Appellant was searched and was forcibly pushed inside the white vehicle and drove away.

*The RTC Ruling*

The RTC found appellant guilty beyond reasonable doubt of violating Sec. 5, Art. II of R.A. No. 9165. It held that the PDEA agents involved in the buy-bust operation are presumed to have performed their duties regularly and there was absolutely no motive for them to concoct a fake buy-bust operation.

Also, the RTC ruled that the chain of custody was fully observed. It recapitulated that the inventory of the seized items prepared by IO1 Molina, was witnessed by *barangay kagawads* Bautista and Baggayan, and Pacallagan, who was actually a court interpreter; the heat-sealed plastic sachet was delivered by IO1 Gaayon to the PNP Regional Laboratory Office in Tuguegarao City for examination; and the contents tested positive for metamphetamine hydrochloride. The RTC concluded that the seized *shabu* presented in court was the same drug confiscated from appellant. The *fallo* of the RTC judgment reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused AMADO BALUBAL y Pagulayan GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby sentences him to LIFE IMPRISONMENT and to pay a fine of ₱500,000.00 with the accessory pe[n]alty of CIVIL INTERDICTION for LIFE and PERPETUAL ABSOLUTE DISQUALIFICATION which said accused shall suffer even though pardoned as to this principal penalty unless the same shall be expressly remitted in the pardon.

The confiscated drugs are hereby forfeited in favor of the government. The Clerk of Court is hereby ordered to turn over the confiscated shabu to the Philippine Drug Enforcement Agency (PDEA) for its disposition in accordance with law together with a copy of this judgment.

SO ORDERED.[9]

Aggrieved, appellant appealed before the CA.

*The CA Ruling*

In its decision, the CA affirmed the ruling of the RTC. It held that the lack of surveillance before the entrapment operation was justified as the law does not require that prior surveillance be conducted before a buy-bust operation. It found appellant's arrest during the entrapment operation legal since he was caught *in flagrante delicto*, hence, the *shabu* seized from him were also admissible in evidence.[10]

With regard to the chain of custody, the CA held that although the inventory was not witnessed by a member of the media, there was substantial compliance with Sec. 21, Art. II of R.A. No. 9165 because it was witnessed by elected barangay officials and an employee of the court, purportedly representing the DOJ. Citing *People v. Gum-Oyen,*[11] the CA stated that a testimony regarding the marking of the seized items at the police station

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[9] CA *rollo*, p. 68.

[10] *Rollo*, p. 14.

[11] 603 Phil. 665 (2009).

and in the presence of the appellant was sufficient compliance with the rules on the chain of custody. The dispositive portion of the CA decision states:

**WHEREFORE**, the appeal is **DENIED**. The assailed Judgment dated March 28, 2016 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 in Criminal Case No. 15671 is **AFFIRMED**.

**SO ORDERED**.[12]

Hence, this appeal.

On November 20, 2017, this Court issued a Notice[13] to the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties adopted their respective appellant's and appellee's briefs, instead of filing supplemental briefs.[14]

**Issue**

WHETHER THE CA ERRED IN AFFIRMING THE JUDGMENT OF THE RTC FINDING APPELLANT GUILTY OF THE OFFENSE CHARGED.

Appellant insists that the RTC and CA erred in finding him guilty of the offense charged as the buy-bust operation was invalid rendering his arrest unlawful and the alleged confiscated *shabu* inadmissible. He avers that there are badges of irregularity in the conduct of the alleged buy-bust operation[15] and evidentiary gaps in the chain of custody of the alleged confiscated *shabu* because IO1 Gaayon only marked the alleged seized *shabu* at the police station, and the inventory and photography of the said confiscated item was conducted without the presence of media and DOJ representatives, which are contrary to the mandate of Sec. 21, Art. II of R.A. No. 9165.[16]

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[12] *Rollo,* p. 17.

[13] *Id*. at 24.

[14] Manifestation of the Office of the Solicitor General, *rollo*, p. 27; and Manifestation of appellant, *rollo*, p. 30.

[15] CA *rollo*, p. 41.

[16] *Id*. at 51.

**The Court's Ruling**

The appeal is meritorious.

*The chain of custody rule*

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[17]

The procedure on the custody and disposition of confiscated, seized, and/or surrendered drug and/or drug paraphernalia is governed by Sec. 21 (1), Art. II of R.A. No. 9165. This was, however, amended by R.A. No. 10640[18] which took effect in 2014. Considering that the alleged crime was committed on June 4, 2013, the old law and its corresponding implementing rules and regulations shall apply.

Sec. 21 (1), Art. II of R.A. No. 9165 provides that:

> (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[.]

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[17] *People v. Barte,* G.R. No. 179749, March 1, 2017.

[18] 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.

This is implemented by Sec. 21 (a), Art. II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165, which reads:

> (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[.] (emphasis supplied)

Based on the foregoing, the apprehending team is required, after seizure and confiscation, to immediately conduct a physical inventory and photograph of the seized items in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**[19]

Notably, the last sentence of Sec. 21, Art. II of the IRR provides a saving clause. It provides that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[20] This saving

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[19] *People v. Dahil, et al.,* 750 Phil. 212, 228 (2015).

[20] *People v. Dela Cruz,* 591 Phil. 259, 271 (2008).

clause applies (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. In which case, the prosecution loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court was the same drug that was confiscated from the appellant during his arrest.[21]

*The prosecution failed to prove compliance with the chain of custody rule*

In *Mallillin v. People*,[22] the Court had the opportunity to explain the rule on the chain of custody and what constitutes sufficient compliance therewith, thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[23] (citations omitted, emphasis supplied)

In *People v. Kamad,*[24] the Court identified the links that the prosecution must establish in the chain of custody in a buy-

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[21] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, 789 Phil. 70, 80 (2016).

[22] 576 Phil. 576 (2008).

[23] *Id*. at 587.

[24] *People v. Kamad,* 624 Phil. 289 (2010).

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

In the present case, the prosecution failed to prove that the police officers complied with the chain of custody rule as mandated by Sec. 21, Art. II of R.A. No. 9165 and its IRR. It also failed to present any explanation to justify its non-observance of the prescribed procedure.

Although the first link was duly observed; that is, the seized *shabu* was properly marked, the second link in the chain of custody lacks detail. After the appellant was arrested and informed of his constitutional rights, he was brought to the police station and the seized items consisting of one (1) heat-sealed transparent sachet, buy-bust money and cellular phone were marked, inventoried and photographed. It must be observed that during the inventory and photograph of these seized items, no representatives from the media or the DOJ were present. The inventory and photography were witnessed only by appellant, *barangay kagawads* Bautista and Baggayan and Pacallagan, who was neither a representative of the media nor DOJ but a court interpreter of the Municipal Circuit Trial Court of Solana-Enrile, Cagayan. Sec. 1 (A.1.6) of the chain of custody IRR explicitly provides that a representative of the National Prosecution Service of the DOJ is anyone from its employees.[26] Certainly, Pacallagan is not one of those required by law to witness the inventory and photography of the seized *shabu* and sign the corresponding inventory report. It is not enough for the apprehending officers to mark the seized sachet of *shabu*; the buy-bust team must also conduct a physical inventory and

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[25] *Id*. at 304.

[26] *People of the Philippines v. Saragena,* G.R. No. 210677, August 23, 2017.

take photographs of the confiscated *shabu* in the presence of these persons required by law.[27]

In fact, IO1 Gaayon knew that Pacallagan was not a representative of the DOJ but an employee of the court, thus:

ATTY. CALEDA

x x x x x x x x x

Q: Now you also mentioned about an inventory and you mentioned that it took place in the Solana Police Station, is that right?

A: Yes, sir.

**Q: You admit that there was no media representative at the time of the inventory?**

**A: Yes, sir.**

**Q: There was no DOJ representative at the time of the inventory?**

**A: There was, sir.**

**Q: Because the person that you mentioned is a personnel of the MTCC Solana, is that right?**

**A: What I know is that the witness who came is a representative of the DOJ and his name is Roy Joseph Pacallagan, sir.**

**Q: I am showing to you Exhibit "D" captioned as Inventory of Seized Properties/Items, kindly go over this document and do you confirm that at the rear bottom portion of that document there appears the signature and name of Roy Joseph Pacallagan and just below the name are the words MTCC Solana-Enrile Interpreter, is that right?**

**A: Yes, sir.**

**Q: On the basis of that same document, Roy Joseph Pacallagan is not a DOJ representative, do you confirm that?**

PROS. DALIUAG:

Already answered and she said she did not know, your Honor.

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[27] *Id*.

COURT:

Q: Do you know that person?
A: No, sir, he just arrived to witness the inventory.

Q: And as a representative of what?
A: DOJ, [Sir].[28] (emphases and underscoring supplied)

This was corroborated by IO1 Molina in his testimony, *viz*:

Q: And when you arrived in the Police Station immediately you conducted the initial inventory of the items as indicated in this certification, am I correct?
A: When we arrived at the Police Station the inventory was not yet done because the witnesses were on their way so we waited for the witnesses before we conducted the inventory of the seized items, sir.

Q: No media representative was ever present at the time of the inventory?
A: Yes, your Honor.

Q: There was no DOJ representative present at the time of the inventory?
A: There was DOJ representative, your Honor.

Q: It was a court personnel not a DOJ representative, do you confirm that?
A: Yes an employee of the court, your Honor.

Q: He is not therefore a DOJ representative?

THE COURT:

Admitted.[29]

From the foregoing, it has been established that there was no media representative at the time of the conduct of the marking, inventory and photography, and that the person who actually witnessed the said activities was an employee of MTCC.

As stated, the failure of the apprehending team to strictly comply with the procedures under Sec. 21, Art. II of R.A. No.

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[28] TSN, May 14, 2014, p. 18.

[29] TSN, June 16, 2014, pp. 26-27.

9165 and its IRR does not *ipso facto* render the seizure and custody over the seized *shabu* as void and invalid provided the prosecution satisfactorily proves that there was justifiable ground for non-compliance; and the integrity and evidentiary value of the seized item was properly preserved.[30]

Here, the prosecution did not present any justifiable ground for the non-compliance with the procedures under Sec. 21, Art. II of R.A. No. 9165. They failed to provide an explanation for the failure of the buy-bust team to secure the representatives of the media and DOJ who are required, under the law, to witness the inventory and photography of the seized items. Despite the fact that the buy-bust operation was arranged and scheduled in advance, still the buy-bust team failed to ensure the presence of all persons required to witness the inventory and marking of the seized items.[31]

In *People v. Umipang*,[32] the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse.[33]

It is well-settled that the procedure in Sec. 21 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.[34] The significant lapses committed, as well as their failure to explain

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[30] See *People v. Año,* G.R. No. 230070, March 14, 2018, citing *People v. Goco*, 806 SCRA 240, 252 (2016).

[31] See *People v. Alvarado, et al.,* G.R. No. 234048, April 23, 2018.

[32] *People v. Umipang,* 686 Phil. 1024, 1052-1053 (2012).

[33] *People v. Crispo,* G.R. No. 230065, March 14, 2018. Citing *People v. Umipang, supra* at 1053.

[34] *People v. Geronimo,* G.R. No. 225500, September 11, 2017.

their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti*.

*Irregularity in the fourth link of the chain of custody*

Aside from the absence of a DOJ and media representatives, the prosecution also failed to establish the fourth link in the chain of custody. After the seized *shabu* was delivered by IO1 Gaayon to PSI Tuazon for laboratory analysis, no one testified on how the specimen was handled thereafter. It failed to disclose the identity of the police officer to whom custody of the seized *shabu* was given after the laboratory examination, and how it was handled and kept until it was presented in court.

In *People v. De Guzman,*[35] the Court discussed the importance of the unbroken link in the chain of custody. **The prosecution's evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge 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.** The same witness would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have its possession. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[36]

In this case, the testimony of the forensic chemist was dispensed with. In the March 20, 2014 order of the RTC it simply stated that PSI Tuazon received the specimen submitted by the PDEA agent for laboratory examination. The testimony

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[35] G.R. No. 219955, February 5, 2018.

[36] *Id*.

of PSI Tuazon was admitted by counsel for the appellant as well as the existence and due execution of the Chemistry Report No. D-50-2013. Thus, with said admission by the defense, PSI Tuazon's testimony was dispensed with.

The testimony of prosecution witness IO1 Gaayon provided details only until the time the seized drug was delivered to the forensic chemist, *viz*:

ATTY. CALEDA:

x x x x x x x x x

Q: Now, you mentioned that you received the white crystalline substance from Amado Balubal?
A: Yes, sir.

**Q: After you received the same to whom did you turn it over?**
**A: To the chemist, sir.**

**Q: You did not turn it over to the evidence custodian?**
**A: No, sir.**

**Q: You are very sure of that?**
**A: Yes, sir.**[37] (emphases supplied)

There was no concrete evidence as to whom the forensic chemist delivered the seized item before its presentation in court. From the time of the completion of the laboratory examination on June 4, 2013 up to the time the confiscated *shabu* was offered and marked as exhibit during the preliminary conference on November 19, 2013, it was not indicated in the record who was the custodian thereof. In the Chain of Custody Form,[38] the name, designation and signature of the supposed evidence custodian were all left blank. This casts serious doubts on the handling of the confiscated *shabu* as it is not clear as to whom it was delivered to pending its presentation in court. This opens the possibility that integrity and evidentiary value of the seized drug may have been compromised.

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[37] TSN, May 14, 2014, p. 19.

[38] Records, p. 14.

*The miniscule amount of the drug should have placed the police officers on guard*

The miniscule amount of the drug involved in this case should have impelled the police officers to faithfully comply with the law. Trial courts should thoroughly take into consideration the factual intricacies of the cases involving violations of R.A. No. 9165. The courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs for these can be readily planted and tampered.[39]

The miniscule quantity of confiscated illicit drugs heightens the importance of a more stringent conformity with the procedures laid down by the law, which the police officers in this case miserably failed to comply. The significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti.*[40]

With these circumstances, the Court finds doubt in the integrity and evidentiary value of the seized item, thus, there is reasonable doubt on the guilt of appellant for the crime charged.

**WHEREFORE,** the March 21, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08238 is **REVERSED** and **SET ASIDE**. Appellant Amado Balubal *y* Pagulayan is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is being lawfully held in custody for any other reason. Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation.

**SO ORDERED.**

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

*Martires, J.,* on leave.

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[39] *People v. Casacop*, 755 Phil. 265, 283 (2015).

[40] See *People v. Sagana,* G.R. No. 208471, August 2, 2017.

**SECOND DIVISION**

[G.R. No. 235498. July 30, 2018]

**RENALYN A. MASBATE and SPOUSES RENATO MASBATE and MARLYN MASBATE,** *petitioners, vs.* **RICKY JAMES RELUCIO,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RULES ON THE PERFECTION OF APPEALS MUST OCCASIONALLY YIELD TO THE LOFTIER ENDS OF SUBSTANTIAL JUSTICE AND EQUITY.—** [R]ules on the perfection of appeals, particularly on the period of filing thereof, must occasionally yield to the loftier ends of substantial justice and equity. In the same manner that the CA took cognizance of respondent's appeal from the denial of his motion for reconsideration of the RTC Order dated December 4, 2015, which is technically prohibited under the Rules of Court, so shall this Court hold that the ends of justice would be served better when cases are determined, not on mere technicality or some procedural nicety, but on the merits – after all the parties are given full opportunity to ventilate their causes and defenses. Lest it be forgotten, dismissal of appeals purely on technical grounds is frowned upon. The rules of procedure ought not to be applied in a very rigid, technical sense, for they have been adopted to help secure – not override – substantial justice.

2. **ID.; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; WRIT OF *HABEAS CORPUS* IN CUSTODY CASES INVOLVING MINORS; WHEN GRANTED.—** It is settled that *habeas corpus* may be resorted to in cases where "the **rightful custody** of any person is withheld from the person entitled thereto." In custody cases involving minors, the writ of *habeas corpus* is prosecuted for the purpose of determining the right of custody over a child. The grant of the writ depends on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondents;

and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondents.

**3. CIVIL LAW; FAMILY CODE; PARENTAL AUTHORITY; REFERS TO THE JURIDICAL INSTITUTION WHEREBY PARENTS RIGHTFULLY ASSUME CONTROL AND PROTECTION OF THEIR UNEMANCIPATED CHILDREN TO THE EXTENT REQUIRED BY THE LATTER'S NEEDS.—** "The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. It is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, 'there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.'"

**4. ID.; ID.; ID.; ILLEGITIMATE CHILDREN SHALL BE UNDER THE PARENTAL AUTHORITY OF THEIR MOTHER.—** As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common children. However, insofar as illegitimate children are concerned, Article 176 of the Family Code states that **illegitimate children shall be under the parental authority of their mother**. Accordingly, mothers (such as Renalyn) are entitled to the sole parental authority of their illegitimate children (such as Queenie), notwithstanding the father's recognition of the child. In the exercise of that authority, mothers are consequently entitled to keep their illegitimate children in their company, and the Court will not deprive them of custody, *absent any imperative cause showing the mother's* ***unfitness*** *to exercise such authority and care.*

**5. ID.; ID.; ID.; TENDER-AGE PRESUMPTION; NO CHILD UNDER SEVEN YEARS OF AGE SHALL BE SEPARATED FROM THE MOTHER UNLESS THE COURT FINDS COMPELLING REASONS TO ORDER OTHERWISE.—** Article 213 of the x x x [Family] Code provides for the so-called *tender-age presumption,* stating that "[n]o child under

seven [(7)] years of age shall be separated from the mother *unless the court finds compelling reasons to order otherwise."* x x x According to jurisprudence, the following instances may constitute "compelling reasons" to wrest away custody from a mother over her child although under seven (7) years of age: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease.

**6. ID.; ID.; ID.; THE CHOICE OF A CHILD OVER SEVEN YEARS OF AGE UNDER THE FAMILY CODE AND OVER TEN YEARS OF AGE UNDER RULE 99 OF THE RULES OF COURT IS AVAILABLE IN CUSTODY DISPUTES ONLY BETWEEN MARRIED PARENTS.—** [T]he choice of a child over seven (7) years of age (first paragraph of Article 213 of the Family Code) and over ten (10) years of age (Rule 99 of the Rules of Court) shall be considered in custody disputes **only between married parents** because they are, pursuant to Article 211 of the Family Code, accorded joint parental authority over the persons of their common children. On the other hand, this choice is not available to an illegitimate child, much more one of tender age such as Queenie (second paragraph of Article 213 of the Family Code), because sole parental authority is given only to the mother, unless she is shown to be unfit or unsuitable (Article 176 of the Family Code).

**7. REMEDIAL LAW; SPECIAL PROCEEDINGS; RULE ON CUSTODY OF MINORS AND WRIT OF *HABEAS CORPUS* IN RELATION TO CUSTODY OF MINORS; AWARD OF CUSTODY; IN AWARDING CUSTODY, THE COURT SHALL CONSIDER THE BEST INTEREST OF THE MINOR AND SHALL GIVE PARAMOUNT CONSIDERATION TO THE LATTER'S WELFARE.—** It was not disputed that Ricky James was in actual physical custody of Queenie when Renalyn left for Manila to pursue her studies until the instant controversy took place. As such, Ricky James had already assumed obligations and enjoyed privileges of a custodial character, giving him a cause of action to file a case of *habeas corpus* to regain custody of Queenie as her actual custodian. Indeed, it may be argued that Article 176 of the Family Code has effectively disqualified the father of an illegitimate child from exercising substitute parental authority under Article

216 even if he were the actual custodian of the child under the premise that no one is allowed to do indirectly what he is prohibited to do directly. However, the Court cannot adopt a rigid view, without running afoul to the overarching consideration in custody cases, which is the **best interest of the minor.** Even way back, Article 363 of the Civil Code provides that in all questions relating to the care, custody, education and property of the children, the latter's welfare is paramount. Under present rules, A.M. No. 03-04-04-SC explicitly states that "[i]n awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to [her] material and moral welfare. The best interests of the minor refer to the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to [her] physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor."

**8. ID.; ID.; ID.; ID.; IT IS ONLY AFTER TRIAL THAT THE COURT MAY ISSUE ANY ORDER THAT IS JUST AND REASONABLE PERMITTING THE PARENT WHO IS DEPRIVED OF THE CARE AND CUSTODY OF THE MINOR TO VISIT OR HAVE TEMPORARY CUSTODY.—** It should be stressed that Section 15 of A.M. No. 03-04-04-SC provides for temporary visitation rights, **not** temporary custody x x x. It is only after trial, when the court renders its judgment awarding the custody of the minor to the proper party, that the court may likewise issue "any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody," pursuant to Section 18 of A.M. No. 03-04-04-SC x x x.

**APPEARANCES OF COUNSEL**

*Regala Llagas & Lelis Law Offices* for petitioners.
*Batocabe & Associates Law Offices* for respondent.

## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 12, 2017 and the Omnibus Resolution[3] dated October 3, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144406, which set aside the Orders dated December 4, 2015[4] and January 7, 2016[5] of the Regional Trial Court of Legazpi City, Albay, Branch 8 (RTC) in Special Proceeding (SP) No. FC-15-239, directed the remand of the case to the RTC for trial, and granted respondent Ricky James Relucio (Ricky James) "temporary custody" once a month for a period not exceeding twenty-four (24) hours over the minor, Queenie Angel M. Relucio (Queenie), his illegitimate daughter with petitioner Renalyn A. Masbate (Renalyn), on top of visitation rights fixed at two (2) days per week.

### The Facts

Queenie was born on May 3, 2012 to Renalyn and Ricky James, who had been living together with Renalyn's parents without the benefit of marriage. Three (3) years later, or in April 2015, the relationship ended. Renalyn went to Manila, supposedly leaving Queenie behind in the care and custody of her father, Ricky James.[6]

Ricky James alleged that on November 7, 2015, Spouses Renato and Marlyn Masbate (Renalyn's parents) took Queenie from the school where he had enrolled her. When asked to give Queenie back, Renalyn's parents refused and instead showed

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[1] *Rollo,* pp. 3-18.

[2] *Id*. at 21-35. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Henri Jean Paul B. lnting concurring.

[3] *Id*. at 42-54.

[4] *Id*. at 55. Penned by Pairing Judge Pedro R. Soriao.

[5] *Id*. at 60.

[6] See *id*. at 22.

a copy of a Special Power of Attorney[7] (SPA) executed by Renalyn granting full parental rights, authority, and custody over Queenie to them. Consequently, Ricky James filed a **petition for habeas corpus and child custody**[8] docketed as SP No. FC-15-239 before the RTC (petition *a quo).*[9]

A hearing was conducted on December 3, 2015, where Renalyn brought Queenie and expressed the desire for her daughter to remain in her custody.[10]

**The RTC Ruling**

In an Order[11] dated December 4, 2015, the RTC ruled that the custody of three (3)-year-old Queenie rightfully belongs to Renalyn, citing the second paragraph of Article 213 of the Family Code, which states that "[n]o child under seven [(7)] years of age shall be separated from the mother x x x." The RTC likewise found that, while Renalyn went to Manila to study dentistry and left Queenie in the custody of her parents, her intention was to bring Queenie to Manila at a later time. Thus, in the *fallo* of said Order, the RTC declared that it will "NOT GIVE FURTHER DUE COURSE" to the petition *a quo.*[12]

Dissatisfied, Ricky James moved for reconsideration,[13] lamenting the "[extraordinary] speed in the issuance of the x x x award of custody over the child to [petitioners]."[14] He claimed that the hearing conducted on December 3, 2015 was not the kind of hearing that was procedurally contemplated under A.M.

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[7] Not attached to the *rollo.*

[8] Not attached to the *rollo.*

[9] See *rollo,* pp. 22-23.

[10] See *id*. at 55.

[11] *Id*.

[12] See *id*.

[13] See motion for reconsideration dated December 10, 2015; *id*. at 56-59.

[14] *Id*. at 56.

No. 03-04-04-SC,[15] otherwise known as the "Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors," because the RTC merely propounded random questions without placing the witnesses on the stand to testify under oath. Moreover, he was allegedly deprived of his right to due process when the RTC refused to give further due course to the petition *a quo*.[16]

The motion was denied in an Order[17] dated January 7, 2016, wherein the RTC emphasized that Queenie was born out of wedlock, for which reason she shall be under the parental authority of her mother, Renalyn, pursuant to Article 176[18] of the Family Code. In addition, the RTC faulted Ricky James for failing to present credible evidence in court to demonstrate that Renalyn is unfit to take custody of their daughter.[19]

Aggrieved, Ricky James filed an appeal[20] before the CA, imputing error upon the RTC: (*a*) in not conducting a full blown trial and not receiving evidence; (*b*) in granting sole custody to Renalyn without giving paramount consideration to the best interests of the child; and (*c*) in not granting him shared custody and/or visitation rights.[21] Ricky James insisted that the tender-age presumption in Article 213 of the Family Code is rebuttable by evidence of the mother's neglect, abandonment, and unemployment, among other factors, and claimed that Renalyn abandoned Queenie when she went to live in Manila and failed to seek employment to support her daughter.[22]

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[15] Entitled "RE: PROPOSED RULE ON CUSTODY OF MINORS AND WRIT OF *HABEAS CORPUS* IN RELATION TO CUSTODY OF MINORS," effective on May 15, 2003.

[16] See *rollo,* p. 57.

[17] *Id*. at 60.

[18] Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. x x x.

[19] See *rollo,* p. 60.

[20] Not attached to the *rollo.*

[21] See *rollo,* pp. 24-25.

[22] *Id*. at 25.

For their part, Renalyn and her parents (petitioners) moved for the outright dismissal of the appeal on the ground that no appeal can be had against an order denying a motion for reconsideration. In addition, petitioners argued that being the illegitimate father of Queenie, Ricky James has absolutely no right of custody over her, and that Renalyn's act of entrusting the care of Queenie to her parents was not a renunciation of parental authority but only a temporary separation necessitated by her need to adjust to her studies, which she undertook to improve her and Queenie's life.[23]

On September 2, 2016, the case was referred to mediation, but the parties were unable to arrive at a settlement.[24]

**The CA Ruling**

In a Decision[25] dated January 12, 2017, the CA set aside the assailed RTC Orders and remanded the case to the lower court for determination of who should exercise custody over Queenie.[26] The CA found that the RTC hastily dismissed the petition *a quo* upon Queenie's production in court, when the objective of the case was to establish the allegation that Renalyn had been neglecting Queenie, which was a question of fact that must be resolved by trial.[27] Citing Section 18 of A.M. No. 03-04-04-SC, which states that, "[a]fter trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor," the CA declared that the dismissal by the RTC of the petition *a quo* was not supported by the Rules.[28]

Nonetheless, the CA affirmed the RTC Orders granting custody to Renalyn "pending the outcome of the case," stating

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[23] *Id*.

[24] See *id*. at 25-26.

[25] *Id.* at 21-35.

[26] *Id*. at 34.

[27] See *id*. at 28.

[28] See *id*. at 29-30.

that only Queenie's mother, Renalyn, has parental authority over her as she is an illegitimate child. Further, the CA declared that the RTC must thresh out Renalyn's capacity to raise her daughter, which shall, in turn, determine whether or not the tender-age presumption must be upheld, or whether Queenie's well-being is better served with her remaining in the custody of her maternal grandparents in the exercise of their substitute parental authority or with Ricky James, who was Queenie's actual custodian before the controversy.[29]

Finally, the CA granted Ricky James visitation rights of two (2) days a week, with provision for additional visitation days that may be permitted by Renalyn.[30]

Petitioners filed a motion for reconsideration,[31] while Ricky James filed a motion for clarification[32] asking that he be allowed to pick up Queenie from petitioners' residence on a Friday afternoon and to return the child on a Sunday afternoon.[33] In their Comment,[34] petitioners argued that the arrangement proposed by Ricky James is not within the scope of his visitation rights, but that he may, through Renalyn's written consent, take Queenie home on certain family occasions.[35]

In its Omnibus Resolution[36] dated October 3, 2017, the CA denied petitioners' motion for reconsideration for lack of merit, insisting on its application of the case of *Bagtas v. Santos,*[37] which held that a trial is still necessary to determine the issue of custody despite the production of the child.[38] On the other

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[29] See *id*. at 31-33.

[30] *Id*. at 34.

[31] Dated February 21, 2017. *Id*. at 36-40.

[32] Dated February 20, 2017. *Id*. at 61-64.

[33] See *id*. at 62.

[34] Not attached to the *rollo.*

[35] *Rollo,* p. 43.

[36] *Id*. at 42-54.

[37] 621 Phil. 94 (2009).

[38] See *rollo,* pp. 51-53.

hand, the CA ruled in favor of Ricky James' motion for clarification, granting the latter what it calls a " limited and temporary custody" that will allow him to take Queenie out once a month, or on the first Saturday of each month, for a period not exceeding twenty-four (24) hours, but which shall not reduce his visitation days fixed at two (2) days per week.[39] In so holding, the appellate court cited "humane and practical considerations"[40] and argued that it is in Queenie's best interest to have an exclusive time with Ricky James.[41]

Undaunted, petitioners filed the instant petition for review on *certiorari,* maintaining that the RTC correctly dismissed the petition *a quo* after the hearing on December 3, 2015 on the grounds that: (*a*) the purported custodial right that Ricky James seeks to enforce in filing his petition has no legal basis; *(b)* the petition *a quo* does not comply with the requisites for *habeas corpus* petitions involving custody of minors; and *(c)* there are no more factual issues to be resolved as it had already been admitted by Renalyn during the hearing that she goes to Manila to study but that she comes home every week for Queenie and whenever there is a problem.[42]

Ricky James filed a Comment/Opposition[43] as well as an Urgent Omnibus Motion[44] to dismiss the petition and for immediate execution pending appeal of the Omnibus Resolution dated October 3, 2017, claiming that the instant petition was filed out of time and that it was erroneous for petitioners to state that the last day of filing fell on November 4, 2017, a Saturday, which compelled them to file their petition on November 6, 2017, a Monday. By his calculation, the fifteen (15)-day reglementary period, which commenced to run upon

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[39] *Id*. at 53.

[40] *Id*. at 46.

[41] See *id*. at 47.

[42] See *id*. at 10.

[43] Dated December 11, 2017. *Id*. at 66-78.

[44] *Id*. at 80-84.

petitioners' receipt on October 19, 2017 of the Omnibus Resolution dated October 3, 2017, ended on November 3, 2017, a Friday, and not on November 4, 2017.[45]

**The Issue Before the Court**

The main issue for the Court's resolution is whether or not the CA correctly remanded the case *a quo* for determination of who should exercise custody over Queenie.

**The Court's Ruling**

The petition is partially meritorious.

**I.**

At the outset, it must be stressed that while petitioners may have erroneously determined the expiration of the reglementary period for filing the instant petition, which resulted in the same being filed a day late on November 6, 2017, the Court finds it proper to overlook this procedural lapse given the compelling merit of the petition in the interest of substantial justice.

The Court has declared that rules on the perfection of appeals, particularly on the period of filing thereof, must occasionally yield to the loftier ends of substantial justice and equity. In the same manner that the CA took cognizance of respondent's appeal from the denial of his motion for reconsideration of the RTC Order dated December 4, 2015,[46] which is technically prohibited under the Rules of Court, so shall this Court hold that the ends of justice would be served better when cases are determined, not on mere technicality or some procedural nicety, but on the merits – after all the parties are given full opportunity to ventilate their causes and defenses. Lest it be forgotten, dismissal of appeals purely on technical grounds is frowned upon. The rules of procedure ought not to be applied in a very rigid, technical sense, for they have been adopted to help secure – not override – substantial justice.[47]

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[45] *Id*. at 66-67.

[46] See *id.* at 26.

[47] *Remulla v. Manlongat,* 484 Phil. 832, 836 (2004).

In this relation, it may not be amiss to point out that the fundamental policy of the State, as embodied in the Constitution in promoting and protecting the welfare of children, shall not be disregarded by the courts by mere technicality in resolving disputes which involve the family and the youth.[48] The State is mandated to provide protection to those of tender years. Through its laws, it safeguards them from everyone, even their own parents, to the end that their eventual development as responsible citizens and members of society shall not be impeded, distracted or impaired by family acrimony.[49]

Accordingly, the Court shall delve into the substantive arguments propounded in this case.

**II.**

It is settled that *habeas corpus* may be resorted to in cases where "the **rightful custody** of any person is withheld from the person entitled thereto."[50] In custody cases involving minors, the writ of *habeas corpus* is prosecuted for the purpose of determining the right of custody over a child. The grant of the writ depends on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondents; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondents.[51]

"The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. It is a mass of rights and obligations which the law grants to parents for

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[48] *Suarez v. CA,* 271 Phil. 188, 195 (1991).

[49] *Concepcion v. CA,* 505 Phil. 529, 546 (2005).

[50] *Sombong v. CA,* 322 Phil. 737, 749 (1996).

[51] *Id*. at 751.

the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, 'there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.'"[52]

As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common children.[53] However, insofar as illegitimate children are concerned, Article 176[54] of the Family Code states that **illegitimate children shall be under the parental authority of their mother**. Accordingly, mothers (such as Renalyn) are entitled to the sole parental authority of their illegitimate children (such as Queenie), notwithstanding the father's recognition of the child. In the exercise of that authority, mothers are consequently entitled to keep their illegitimate children in their company, and the Court will not deprive them of custody, *absent any imperative cause showing the mother's* ***unfitness*** *to exercise such authority and care.*[55]

In addition, Article 213 of the same Code provides for the so-called *tender-age presumption,* stating that "[n]o child under seven [(7)] years of age shall be separated from the mother *unless the court finds compelling reasons to order otherwise."* The rationale behind the rule was explained by the Code Commission in this wise:

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[52] *Tonog v. CA,* 427 Phil. 1, 7-8 (2002), citing *Santos, Sr. v. CA,* 312 Phil. 482, 487-488 (1995).

[53] See Article 211 of the Family Code, which reads:

Article 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

[54] Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. x x x The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

[55] See *Briones v. Miguel,* 483 Phil. 483, 492-493 (2004).

The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for "compelling reasons" for the good of the child; those cases must indeed be rare, if the mother's heart is not to be unduly hurt. x x x[56]

According to jurisprudence, the following instances may constitute "compelling reasons" to wrest away custody from a mother over her child although under seven (7) years of age: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease.[57]

As the records show, the CA resolved to remand the case to the RTC, ratiocinating that there is a need to establish whether or not Renalyn has been neglecting Queenie,[58] for which reason, a trial is indispensable for reception of evidence relative to the preservation or overturning of the tender-age presumption under Article 213 of the Family Code.[59] In opposition, petitioners contend that the second paragraph of Article 213 of the Family Code would not even apply in this case (so as to determine Renalyn's unfitness as a mother) because the said provision only applies to a situation where the parents are married to each other.[60] As basis, petitioners rely on the Court's ruling in *Pablo-Gualberto v. Gualberto V* [61] *(Pablo-Gualberto)*, the pertinent portion of which reads:

In like manner, the word "shall" in Article 213 of the Family Code and Section 6 of Rule 99 of the Rules of Court has been held to connote a mandatory character. **Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are**

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[56] *Tonog v. CA, supra* note 52, at 8.

[57] *Pablo-Gualberto v. Gualberto V,* 500 Phil. 226, 250 (2005).

[58] See *rollo,* p. 28.

[59] See *id*. at 33.

[60] See *id*. at 10-11.

[61] *Supra* note 57.

**married to each other,** but are separated by virtue of either a decree of legal separation or a *de facto* separation. x x x[62]

For easy reference, Article 213 of the Family Code and Section 6, Rule 99 of the Rules of Court, which were cited in *Pablo-Gualberto,* are quoted hereunder in full:

**Article 213 of the Family Code**

Article 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

**Section 6, Rule 99 of the Rules of Court**

Section 6. *Proceedings as to child whose parents are separated. Appeal.* – When husband and wife are divorced or living separately and apart from each other, and the question to the care, custody, and control of a child or children of their marriage is brought before a Court of First Instance by petition or as an incident to any other proceeding, the court, upon hearing the testimony as may be pertinent, shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. If, upon such hearing, it appears that both parents are improper persons to have the care, custody, and control of the child, the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society. The court may in conformity with the provisions of the Civil Code order either or both parents to support or help support said child, irrespective of who may be its custodian, and may make any order that is just and reasonable permitting the parent who is deprived of its care and custody to visit the child or have temporary custody thereof. Either parent may appeal from an order

[62] *Id*. at 248-249.

made in accordance with the provisions of this section. No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor.

Notably, after a careful reading of *Pablo-Gualberto,* it has been determined that the aforequoted pronouncement therein is based on a previous child custody case, namely, *Briones v. Miguel*[63] *(Briones),* wherein the Court pertinently held as follows:

> However, the CA erroneously applied Section 6 of Rule 99 of the Rules of Court. This provision contemplates a situation in which the parents of the minor are married to each other but are separated either by virtue of a decree of legal separation or because they are living separately *de facto.* In the present case, it has been established that petitioner and Respondent Loreta were never married. Hence, that portion of the CA Decision allowing the child to choose which parent to live with is deleted, but without disregarding the obligation of petitioner to support the child.[64]

For guidance, the relevant issue in *Briones* for which the stated excerpt was made is actually the application of Section 6, Rule 99 of the Rules of Court insofar as it permits the child over ten (10) years of age **to choose which parent he prefers to live with.** As the Court's ruling in *Briones* was prefaced: "[t]he Petition has no merit. However, the assailed Decision should be modified in regard to its erroneous application of Section 6 of Rule 99 of the Rules of Court."[65] Accordingly, since the statement in *Pablo-Gualberto* invoked by petitioners, *i.e.,* that "*Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other* x x x," was based on *Briones,* then that same statement must be understood according to its proper context – that is, the issue pertaining to the right of a child to choose which parent he prefers to live with. The reason as to why this statement

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[63] *Supra* note 55. "*Briones v. Miguel,* G.R. No. 156343, October 18, 2004, p. 13." is the citation of the stated pronouncement as per footnote 44 of *Pablo-Gualberto v. Gualberto V* (*supra* note 57, at 249).

[64] *Id.* at 494.

[65] *Briones v. Miguel, supra* note 55, at 489.

should be understood in said manner is actually not difficult to discern: the choice of a child over seven (7) years of age (first paragraph of Article 213 of the Family Code) and over ten (10) years of age (Rule 99 of the Rules of Court) shall be considered in custody disputes **only between married parents** because they are, pursuant to Article 211 of the Family Code, accorded joint parental authority over the persons of their common children. On the other hand, this choice is not available to an illegitimate child, much more one of tender age such as Queenie (second paragraph of Article 213 of the Family Code), because sole parental authority is given only to the mother, unless she is shown to be unfit or unsuitable (Article 176 of the Family Code). Thus, since the issue in this case is the application of the exception to the tender-age presumption under the second paragraph of Article 213 of the Family Code, and not the option given to the child under the first paragraph to choose which parent to live with, petitioners' reliance on *Pablo-Gualberto* is grossly misplaced.

In addition, it ought to be pointed out that the second paragraph of Article 213 of the Family Code, which was the basis of the CA's directive to remand the case, does not even distinguish between legitimate and illegitimate children – and hence, does not factor in whether or not the parents are married – in declaring that "[n]o child under seven [(7)] years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise." "*Ubi lex non distinguit nec nos distinguere debemos.* When the law makes no distinction, we (this Court) also ought not to recognize any distinction."[66] As such, petitioners' theory that Article 213 of the Family Code is herein inapplicable – and thus, negates the need for the ordered remand – is not only premised on an erroneous reading of jurisprudence, but is also one that is fundamentally off-tangent with the law itself.

**III.**

The Court cannot also subscribe to petitioners' contention that even if there are compelling reasons to separate Queenie

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[66] *Yu v. Samson-Tatad,* 657 Phil. 431, 439 (2011).

from her mother, Renalyn, pursuant to the second paragraph of Article 213 of the Family Code, Ricky James would still not acquire custody over their daughter because there is no provision of law granting custody rights to an illegitimate father.[67]

In the event that Renalyn is found unfit or unsuitable to care for her daughter, Article 214 of the Family Code mandates that **substitute parental authority** shall be exercised by the **surviving grandparent.** However, the same Code further provides in Article 216 that "[i]n default of parents or judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:"

> Article 216. x x x
>
> (1) The surviving grandparent as provided in Art. 214;
>
> (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
>
> (3) **The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.**

The same order of preference with respect to substitute parental authority is reiterated in Section 13 of A.M. No. 03-04-04-SC, the "Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors," to wit:

> Section 13. *Provisional order awarding custody.* – After an answer has been filed or after expiration of the period to file it, the court may issue a provisional order awarding custody of the minor. As far as practicable, the following order of preference shall be observed in the award of custody:
>
> (a) Both parents jointly;
>
> (b) Either parent, taking into account all relevant considerations, especially the choice of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit;
>
> (c) The grandparent, or if there are several grandparents, the grandparent chosen by the minor over seven years of age and of

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[67] See *rollo,* pp. 10-11.

sufficient discernment, unless the grandparent chosen is unfit or disqualified;

(d) The eldest brother or sister over twenty-one years of age, unless he or she is unfit or disqualified;

(e) **The actual custodian of the minor over twenty-one years of age, unless the former is unfit or disqualified;** or

(f) Any other person or institution the court may deem suitable to provide proper care and guidance for the minor.

It was not disputed that Ricky James was in actual physical custody of Queenie when Renalyn left for Manila to pursue her studies until the instant controversy took place. As such, Ricky James had already assumed obligations and enjoyed privileges of a custodial character, giving him a cause of action to file a case of *habeas corpus* to regain custody of Queenie as her actual custodian.

Indeed, it may be argued that Article 176 of the Family Code has effectively disqualified the father of an illegitimate child from exercising substitute parental authority under Article 216 even if he were the actual custodian of the child under the premise that no one is allowed to do indirectly what he is prohibited to do directly. However, the Court cannot adopt a rigid view, without running afoul to the overarching consideration in custody cases, which is the **best interest of the minor.** Even way back, Article 363 of the Civil Code provides that in all questions relating to the care, custody, education and property of the children, the latter's welfare is paramount.[68] Under present rules, A.M. No. 03-04-04-SC explicitly states that "[i]n awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to [her] material and moral welfare. The best interests of the minor refer to the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to [her] physical, psychological and emotional development. It also means the least detrimental available

[68] *Luna v. Intermediate Appellate Court,* 221 Phil. 400, 408 (1985).

alternative for safeguarding the growth and development of the minor."[69]

In light of the foregoing, the Court finds that Queenie's best interest demands that a proper trial be conducted to determine if she had, indeed, been neglected and abandoned by her mother, rendering the latter unfit to exercise parental authority over her, and in the event that Renalyn is found unsuitable, whether it is in Queenie's best interest that she be in the custody of her father rather than her grandparents upon whom the law accords a far superior right to exercise substitute parental authority. In the case of *Bagtas v. Santos,*[70] which was a tug-of-war between the maternal grandparents of the illegitimate minor child and the actual custodians of the latter, the Court faulted the trial court for hastily dismissing the petition for *habeas corpus* and awarding the custody of the minor to the grandparents without conducting any trial. The import of such decision is that the preference accorded by Article 216 of the Family Code does not automatically attach to the grandparents, and is conditioned upon the determination of their fitness to take care of their grandchild. In ruling as it did, the Court ratiocinated that the child's welfare being the most important consideration, **it is not bound by any legal right of a person over the child.** Reiterating its pronouncement in the early case of *Sombong v. CA,*[71] the Court held that:

> [I]n passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court

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[69] See Section 14 of A.M. No. 03-04-04-SC.

[70] *Supra* note 37.

[71] *Supra* note 50.

is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration. In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances.[72]

The Court cannot close its eyes to the sad reality that not all fathers, especially those who have sired children out of wedlock, have risen to the full height of a parent's responsibility towards his offspring. Yet, here is a father of an illegitimate child who is very much willing to take on the whole gamut of parenting. He, thus, deserves, at the very least, to be given his day in court to prove that he is entitled to regain custody of his daughter. As such, the CA's order to remand the case is proper.

**IV.**

While the appellate court correctly remanded the case for trial, the Court, however, holds that it erred in granting Ricky James temporary custody for a limited period of twenty-four (24) consecutive hours once every month, in addition to visitation rights, invoking "humane and practical considerations,"[73] which were based solely on Ricky James' allegations.

It should be stressed that Section 15 of A.M. No. 03-04-04-SC provides for temporary visitation rights, **not** temporary custody, as follows:

Section 15. *Temporary visitation rights.* – The court shall provide in its order awarding provisional custody appropriate visitation rights to the non-custodial parent or parents, unless the court finds said parent or parents unfit or disqualified.

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[72] *Id.* at 750-751.

[73] *Rollo,* pp. 46-48.

The temporary custodian shall give the court and non-custodial parent or parents at least five days' notice of any plan to change the residence of the minor or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the non-custodial parent or parents.

It is only after trial, when the court renders its judgment awarding the custody of the minor to the proper party, that the court may likewise issue "any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody," pursuant to Section 18 of A.M. No. 03-04-04-SC, to wit:

Section 18. *Judgment.* – After trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor.

If it appears that both parties are unfit to have the care and custody of the minor, the court may designate either the paternal or maternal grandparent of the minor, or his oldest brother or sister, or any reputable person to take charge of such minor, or to commit him to any suitable home for children.

In its judgment, the court may order either or both parents to give an amount necessary for the support, maintenance and education of the minor, irrespective of who may be its custodian. In determining the amount of support, the court may consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the minor; (2) the physical and emotional health, special needs, and aptitude of the minor; (3) the standard of living the minor has been accustomed to; and (4) the non-monetary contributions that the parents would make toward the care and well-being of the minor.

**The court may also issue any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody.** (Emphasis supplied)

By granting temporary *albeit* limited custody ahead of trial, the appellate court overturned the tender-age presumption with nothing but Ricky James' bare allegations, to which the Court cannot give its imprimatur. As earlier intimated, the issue surrounding Renalyn's fitness as a mother must be properly threshed out in the trial court before she can be denied custody, even for the briefest of periods, over Queenie.

In view of the disposition in *Silva* and *Briones* and the rules quoted above, the Court can only uphold Ricky James' visitation rights, which shall be limited to two (2) days per week, without prejudice to Renalyn allowing him additional days. However, consistent with the aforesaid cases, as well as the more recent case of *Grande v. Antonio,*[74] Ricky James may take Queenie out only upon the written consent of Renalyn. Contrary to the posturing[75] of the appellate court, the requirement for the consent of the mother is consistent with the regime of sole maternal custody under the second paragraph of Article 213 of the Family Code with respect to children under seven (7) years of age, which may be overcome only by compelling evidence of the mother's unfitness.[76] Until and unless Ricky James is able to substantiate his allegations, he can only claim visitation rights over his daughter.

**WHEREFORE,** the petition is **PARTLY GRANTED.** The Decision dated January 12, 2017 and the Omnibus Resolution dated October 3, 2017 of the Court of Appeals in CA-G.R. SP No. 144406 are hereby **AFFIRMED** with the **MODIFICATION** deleting the grant of limited and temporary custody for lack of legal and factual basis. The grant of visitation rights of two (2) days per week shall be maintained. Respondent Ricky James Relucio may take his daughter, Queenie Angel M. Relucio, out but only with the written consent of petitioner Renalyn A. Masbate in accordance with this Decision.

The Regional Trial Court of Legazpi City, Albay, Branch 8 is **DIRECTED** to immediately proceed with hearing Special Proceeding No. FC-15-239 upon notice of this Decision.

**SO ORDERED.**

*Carpio (Chairperson)*, *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[74] 727 Phil. 448 (2014).

[75] See *rollo,* pp. 47-48.

[76] See *Pablo-Gualberto v. Gualberto V, supra* note 57, at 250.

**EN BANC**

[A.C. No. 5580. July 31, 2018]

**SAN JOSE HOMEOWNERS ASSOCIATION, INC. as represented by REBECCA V. LABRADOR,** *complainant, vs.* **ATTY. ROBERTO B. ROMANILLOS,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; ATTORNEYS; PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW; MEMBERSHIP IN THE BAR IS A SPECIAL PRIVILEGE GRANTED ONLY TO THOSE WHO DEMONSTRATE SPECIAL FITNESS IN INTELLECTUAL ATTAINMENT AND IN MORAL CHARACTER; SAME REASONING APPLIES TO REINSTATEMENT OF A DISBARRED LAWYER.—** Membership in the Bar is a privilege burdened with conditions. It is not a natural, absolute or constitutional right granted to everyone who demands it, but rather, a special privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character. The same reasoning applies to reinstatement of a disbarred lawyer. When exercising its inherent power to grant reinstatement, the Court should see to it that only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar. Thus, though the doors to the practice of law are never permanently closed on a disbarred attorney, the Court owes a duty to the legal profession as well as to the general public to ensure that if the doors are opened, it is done so only as a matter of justice.

**2. ID.; ID.; ID.; FOR PETITION FOR REINSTATEMENT TO PROSPER, PROOF OF REFORMATION AND A SHOWING OF POTENTIAL AND PROMISE ARE INDISPENSABLE; GUIDELINES IN RESOLVING REQUESTS FOR JUDICIAL CLEMENCY, REITERATED.—** Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if

there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable. x x x [G]uidelines in resolving requests for judicial clemency, to wit: *1*. **There must be proof of remorse and reformation.** These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. *2*. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform. *3*. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. *4*. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service. *5*. There must be other relevant factors and circumstances that may justify clemency.

3. **ID.; ID.; ID.; ID.; RESPONDENT FAILED TO SHOW SUBSTANTIAL PROOF OF HIS REFORMATION; WHILE RESPONDENT ASKS FOR FORGIVENESS, HE CONTINUES TO INSIST ON HIS HONEST BELIEF THAT THERE WAS NO CONFLICT OF INTEREST DESPITE THE COURT'S FINDINGS TO THE CONTRARY.—** [W]hile more than ten (10) years had already passed since his disbarment on June 15, 2005, respondent's present appeal has failed to show substantial proof of his reformation as required in the first guideline above. The Court is not persuaded by respondent's sincerity in acknowledging his guilt. While he expressly asks for forgiveness for his transgressions in his letters to the Court, respondent continues to insist on his honest belief that there was no conflict of interest notwithstanding the Court's finding to the contrary.

4. **ID.; ID.; ID.; ID.; RESPONDENT LIKEWISE FAILED TO DEMONSTRATE HIS POTENTIAL FOR PUBLIC SERVICE AND HE – NOW BEING 71 YEARS OF AGE – STILL HAS PRODUCTIVE YEARS AHEAD OF HIM.—** To add, no other evidence was presented in his appeal to

demonstrate his potential for public service, or that he — now being 71 years of age — still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. Thus, the third and fourth guidelines were neither complied with.

**APPEARANCES OF COUNSEL**

*Roque & Butuyan Law Offices* for complainant.

**R E S O L U T I O N**

***PER CURIAM*:**

For resolution is the Letter[1] dated April 21, 2014, filed by respondent Atty. Roberto B. Romanillos who seeks judicial clemency in order to be reinstated in the Roll of Attorneys.

Records show that respondent was administratively charged by complainant San Jose Homeowners Association, Inc. for representing conflicting interests and for using the title "*Judge*"[2] despite having been found guilty of grave and serious misconduct in the consolidated cases of *Zarate v. Judge Romanillos*.[3]

The factual and legal antecedents are as follows:

In 1985, respondent represented San Jose Homeowners Association, Inc. (SJHAI) before the Human Settlements Regulation Commission (HSRC) in a case[, docketed as HSRC Case No. REM-021082-0822 (NHA-80-309),] against Durano and Corp., Inc. (DCI) for violation of the Subdivision and Condominium Buyer's Protection Act (P.D. No. 957). SJHAI alleged that Lot No. 224 was designated as a school site in the subdivision plan that DCI submitted to the Bureau of Lands in 1961 but was sold by DCI to spouses Ramon and Beatriz Durano without disclosing it as a school site.

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[1] *Rollo*, pp. 360-362.

[2] *Id.* at 5, 235; italics supplied.

[3] 312 Phil. 679 (1995).

While still the counsel for SJHAI, respondent represented Myrna and Antonio Montealegre in requesting for SJHAI's conformity to construct a school building on Lot No. 224 to be purchased from Durano.

When the request was denied, respondent applied for clearance before the Housing and Land Use Regulatory Board (HLURB) in behalf of Montealegre. Petitioner's Board of Directors terminated respondent's services as counsel and engaged another lawyer to represent the association.

Respondent also acted as counsel for Lydia Durano-Rodriguez who substituted for DCI in Civil Case No. 18014 entitled "*San Jose Homeowners, Inc. v. Durano and Corp., Inc.*" filed before the Regional Trial Court of Makati City, Branch 134. Thus, SJHAI filed a disbarment case against respondent for representing conflicting interests, docketed as Administrative Case No. 4783.

In her Report dated August 3, 1998, Investigating Commissioner Lydia A. Navarro of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) made the following findings:

> ... Respondent failed to observe [the] candor and fairness in dealing with his clients, knowing fully well that the Montealegre case was adverse to the Complainant wherein he had previously been not only an active board member but its corporate secretary having access to all its documents confidential or otherwise and its counsel in handling the implementation of the writ of execution against its developer and owner, Durano and Co.[,] Inc.
>
> Moreso, when Respondent acted as counsel for the substituted defendant Durano and Co.[,] Inc., Lydia Durano-Rodriguez; the conflict of interest between the latter and the Complainant became so revealing and yet Respondent proceeded to represent the former.
>
> ... ... ...
>
> For his defense of good faith in doing so; inasmuch as the same wasn't controverted by the Complainant which was his first offense; Respondent must be given the benefit of the doubt to rectify his error subject to the condition that should he commit the same in the future; severe penalty will be imposed upon him.[4]

[4] *Rollo*, p. 20.

The Investigating Commissioner recommended the dismissal of the complaint with the admonition that respondent should observe extra care and diligence in the practice of his profession to uphold the dignity and integrity beyond reproach.

The IBP Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner, which [the Court] noted in [its] [R]esolution dated March 8, 1999.

Notwithstanding the admonition, respondent continued representing Lydia Durano-Rodriguez before the Court of Appeals[5] and the Court[6] and even moved for the execution of the decision.

Thus, a second disbarment case was filed against respondent for violation of the March 8, 1999 Resolution in A.C. No. 4783 and for his alleged deceitful conduct in using the title "*Judge*" although he was found guilty of grave and serious misconduct.

Respondent used the title "*Judge*" in his office letterhead, correspondences and billboards which was erected in several areas within the San Jose Subdivision sometime in October 2001.

In his Comment and Explanation,[7] respondent claimed that he continued to represent Lydia Durano-Rodriguez against petitioner despite the March 8, 1999 Resolution because it was still pending when the second disbarment case was filed. He maintained that the instant petition is a rehash of the first disbarment case from which he was exonerated. Concerning the title "*Judge*[,]" respondent stated that since the filing of the instant petition, he had ceased to attach the title to his name.[8] (Italics supplied)

In a Decision[9] dated June 15, 2005, the Court found merit in the complaint, and thus, held respondent guilty of violating

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[5] *SJHAI v. HLURB, et al.*, docketed as CA-G.R. SP No. 67844, *id.* at 234.

[6] *SJHAI v. HLURB, et al.*, docketed as G.R. No. 153980, *id.*

[7] *Rollo*, pp. 31-33.

[8] *Id.* at 233-235.

[9] *Id.* at 232-241. *Per Curiam* Decision signed by Chief Justice Hilario G. Davide, Jr., Associate Justices Reynato S. Puno, Artemio V. Panganiban, Leonardo A. Quisumbing, Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Antonio T. Carpio, Ma. Alicia Austria-Martinez, Renato C. Corona, Conchita Carpio-Morales, Romeo J. Callejo, Sr., Adolfo S. Azcuna, Dante O. Tinga, Minita V. Chico-Nazario and Cancio C. Garcia.

the lawyer's oath, as well as Rule 1.01, 3.01 and 15.03 of the Code of Professional Responsibility, resulting in his disbarment from the practice of law:

**WHEREFORE**, respondent Atty. Roberto B. Romanillos is **DISBARRED** and his name is **ORDERED STRICKEN** from the Roll of Attorneys. Let a copy of this Decision be entered in respondent's record as a member of the Bar, and notice of the same be served on the Integrated Bar of the Philippines, and on the Office of the Court Administrator for circulation to all courts in the country.

**SO ORDERED.**[10] (Emphasis in the original)

The Court *En Banc* ruled in this wise:

**It is inconsequential that petitioner never questioned the propriety of respondent's continued representation of Lydia Durano--Rodriguez. The lack of opposition does not mean tacit consent. As long as the lawyer represents inconsistent interests of two (2) or more opposing clients, he is guilty of violating his oath.** Rule 15.03 of the Code of Professional Responsibility specifically mandates that a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure. Incidentally, it is also misleading for respondent to insist that he was exonerated in A.C. No. 4783.

We agree with the IBP that respondent's continued use of the title "*Judge*" violated Rules 1.01 and 3.01 of the Code of Professional Responsibility prohibiting a lawyer from engaging in deceitful conduct and from using any misleading statement or claim regarding qualifications or legal services. **The quasi-judicial notice he posted in the billboards referring to himself as a judge is deceiving. It was a clear attempt to mislead the public into believing that the order was issued in his capacity as a judge when he was dishonorably stripped of the privilege.**

Respondent did not honorably retire from the judiciary. He resigned from being a judge during the pendency of *Zarate v. Judge Romanillos*, where he was eventually found guilty of grave and serious misconduct and would have been dismissed from the service had he not resigned.

In that case, **respondent was found guilty of illegal solicitation and receipt of ₱10,000.00 from a party litigant**. We ruled thus:

[10] *Id*. at 240.

> Considering the foregoing, respondent Judge Roberto B. Rornanillos is hereby found guilty of grave and serious misconduct affecting his integrity and honesty. He deserves the supreme penalty of dismissal. However, respondent, in an obvious attempt to escape punishment for his misdeeds, tendered his resignation during the pendency of this case. ... Consequently, we are now precluded from dismissing respondent from the service. Nevertheless, the ruling in People v. Valenzuela (135 SCRA 712 [1985]), wherein the respondent judge likewise resigned before the case could be resolved, finds application in this case. Therein it was held that the rule that the resignation or retirement of a respondent judge in an administrative case renders the case moot and academic, is not a hard and fast rule. ...
>
> ... ... ...
>
> **ACCORDINGLY**, in view of our aforestated finding that respondent Judge Romanillos is guilty of grave and serious misconduct which would have warranted his dismissal from the service had he not resigned during the pendency of this case, and it appearing that respondent has yet to apply for his retirement benefits and other privileges if any; the Court, consistent with the penalties imposed in Valenzuela (*supra*), hereby orders the FORFEITURE of all leave and retirement benefits and privileges to which herein respondent Judge Romanillos may be entitled WITH PREJUDICE to reinstatement and/or reemployment in any branch or instrumentality of government, including government-owned or controlled agencies or corporations.
>
> SO ORDERED.[11]

The penalty imposed upon him in said case included forfeiture of all leave and retirement benefits and *privileges* to which he may be entitled with prejudice to reinstatement and/or reemployment in any branch or instrumentality of government, including government-owned or controlled agencies or corporations. Certainly, the use of the title "Judge" is one of such *privileges*.

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[11] *Zarate v. Judge Romanillos*, *supra* note 3, at 692-693.

This is not respondent's first infraction as an officer of the court and a member of the legal profession. He was stripped of his retirement benefits and other privileges in *Zarate v. Judge Romanillos*.[12] In A.C. No. 4783, he got off lightly with just an admonition. Considering his previous infractions, respondent should have adhered to the tenets of his profession with extra fervor and vigilance. He did not. On the contrary, he manifested undue disrespect to our mandate and exhibited a propensity to violate the laws. He is thus unfit to discharge the duties of his office and unworthy of the trust and confidence reposed on him as an officer of the court. His disbarment is consequently warranted.[13] (Additional emphasis and italics supplied)

Aggrieved, respondent filed on July 16, 2005 a Motion for Reconsideration and/or Plea for Human Compassion,[14] praying that the penalty imposed be reduced from disbarment to suspension for three (3) to six (6) months. The Court denied the aforesaid Motion for Reconsideration in a Resolution[15] dated August 23, 2005.

On April 16, 2006, respondent wrote a letter[16] addressed to the Chief Justice and the Associate Justices of the Court, begging that compassion, mercy, and understanding be bestowed upon him by the Court and that his disbarment be lifted. The same was, however, denied in a Resolution[17] dated June 20, 2006.

Unperturbed, respondent wrote letters dated June 12, 2007[18] and January 17, 2010[19] addressed to the Court, praying for the

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[12] In *National Bureau of Investigation v. Judge Reyes*, 382 Phil. 872, 886 (2000), respondent judge therein was found guilty of bribery. He was meted the penalty of dismissal from the service and further disbarred from the practice of law.

[13] *Rollo*, pp. 236-239.

[14] *Id*. at 243-259.

[15] *Id.* at 260.

[16] *Id*. at 337-338.

[17] *Id*. at 340.

[18] *Id*. at 341-343.

[19] *Id*. at 346-348.

Court's understanding, kindness and compassion to grant his reinstatement as a lawyer. The aforementioned letters were denied for lack of merit in Resolutions dated August 14, 2007[20] and May 31, 2011[21] respectively.

Almost nine (9) years from his disbarment, or on **April 21, 2014**, respondent filed the instant Letter once more praying for the Court to reinstate him in the Roll of Attorneys.

In a Resolution[22] dated June 25, 2014, the Court referred the aforementioned letter to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation thereon within thirty (30) days from notice hereof.

Acting on the Report and Recommendation[23] dated November 18, 2016 submitted by the OBC, the Court, in a Resolution[24] dated January 10, 2017, directed respondent to show proof that he is worthy of being reinstated to the Philippine Bar by submitting pieces of documentary and/or testimonial evidence, including but not limited to letters and attestations from reputable members of the society, all vouching for his good moral character.

In compliance with the Court's Resolution dated January 10, 2017, respondent submitted forty (40) letters from people, all vouching for his good moral character:

| *Name* | *Date of Letter* | *Relationship to respondent* | *Testimony/ies in favor of respondent* |
|---|---|---|---|
| 1) Jaime B. Trinidad | March 7, 2017[25] | Friend | Respondent is a person of good moral character since 1990 |

[20] *Id*. at 345.

[21] *Id*. at 357.

[22] *Id*. at 364.

[23] *Id*. at 370-371.

[24] *Id*. at 372.

[25] *Id*. at 377.

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| 2) Teodoro Adriatico Dominguez(Marketing Director, Philippines & Sea Ayerst Philippines, Ayerst International; Director, Senior Citizens Assn. of Bgy. BF; Past Coordinator, Member of the Lay Ministers Resurrection of Our Lord Parish, BFHP; Past Grand Knight, F. Navigator, Dist. Deputy Knights of Columbus Council 7147; U.P. Pan Xenia; and UTOPIA, Ateneo) | March 9, 2017[26] | Tennis buddy | Respondent is kind, friendly, very approachable, quick to help with free legal advice/counsel. |
| 3) Carolina L. Nielsen | March 20, 2017[27] | Neighbor | Respondent graciously rendered free legal advice to her and her family. |
| 4) Arnaldo C. Cuasay | Undated[28] | Brother-in-law | After his disbarment, respondent dedicated his life to taking care of his sick wife, who eventually died a few years after.<br>Respondent also provided support to his children's education and other needs as well as helping relatives and friends.<br>Respondent also provided community services in Muntinlupa and his hometown in Cebu. |

[26] *Id*. at 383.

[27] *Id*. at 386-387.

[28] *Id*. at 388.

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| 5) Atty. Manuel Lasema, Jr. (Founder, Former Chairman and President, Las Piñas City Bar Association, Inc.; Former Director, Secretary and Vice President, IBP PPLLM Chapter; Former Professor of Law, FEU Institute of Law; Third Placer, 1984 Bar Examinations; and Partner, Laserna Cueva-Mercader Law Offices) | March 28, 2017[29] | Colleague | Respondent served as a former president of the Las Piñas City Bar Association.<br>Respondent implemented various seminars, dialogues and other Bar activities. |
| 6) Patricia C. Sison and Marie Louise Kahn Magsaysay (Chairman) and President, Philipine Ballet Theatre, Inc. (PBT) | Undated Statement[30] | Clients | Respondent is the adviser of the PBT. Respondent advised PBT Board members regarding urgent problems affecting company operations.<br>Respondent also provided PBT with appropriate guidelines regarding the manner in which they should conduct their duties affecting PBT's legal and financial obligations. |
| 7) Francisco C. Cornejo (President, U.P. Alumni Association) | March 24, 2017[31] | Friend | Respondent is a person of good moral character, especially in his business dealings. |
| 8) Dr. Artemio I. Panganiban, Jr. (President, Professional | March 9, 2017[32] | Friend | Respondent is a person of good moral character since 1968. |

[29] *Id*. at 389.

[30] *Id*. at 390.

[31] *Id*. at 391.

[32] *Id*. at 392.

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| Academy of the Philippines) | | | |
| 9) Dean Dionisio G. Magpantay(Chairman and President, Asian+ Council of Leaders, Administrators, Deans and Educators in Business) | March 20, 2017[33] | Colleague | Respondent and Magpantay served together in the Federation of Homeowners Association Executive Board in the mid and end of the 1990s, and in their Church and community service with the Knights of Columbus in mid 2000, until the present. |
| 10)Maximo A. Ricohermoso (President, Rotary Club of Mandaue North; and Chairman, Seaweed Industry Association of the Philippines, Inc.) | March 10, 2017[34] | Colleague | Respondent is a fellow Rotarian at the Rotary Club of Mandaue North, Mandaue City, Cebu, since the early 1980s. |
| 11)Arsenio M. Bartolome III(First Chairman/ President, Bases Conversion Development Authority; and Former President, Philippine National Bank) | March 8, 2017[35] | Colleague | Respondent helps his PWD brother-in-law, Mr. Manuel H. Reyes, in his business transactions. |
| 12)Rodigilio M. Oriino (Former President, Rotary Club of Uptown Manila) | March 13, 2017[36] | Co-employee | Respondent was his co-employee in the Legal Department of FNCB Finance.<br>Respondent has not done any wrong doing that will affect his good moral character and profession as a lawyer. |

[33] *Id*. at 393.

[34] *Id*. at 394.

[35] *Id*. at 395.

[36] *Id*. at 396.

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| 13)Epimaco M. Densing, Jr. (Former Chapter President, Philippine Institute of Certified Public Accountants, Cagayan de Oro Chapter; Charter Chapter President, Government Association of CPAs, Cebu Chapter; and Former Chapter Head, Brotherhood of Christian Businessmen & Professionals, Parañaque Chapter) | Undated[37] | Friend | Respondent is a friend for over 20 years, whom he knows as a person of good moral character |
| 14)Mamerto A. Marcelo, Jr. | Undated[38] | Colleague | Respondent was employed as one of the lawyers in the Collection Department of FNCB Finance, of which Marcelo was then a Vice President.<br>Later on, Marcelo hired respondent as a legal consultant in a telecommunications company the former later worked with. |
| 15)Atty. Eleuterio P. Ong Vaño(Former National President, Philippine Association of Real Estate Boards, Inc.) | March 14, 2017[39] | Friend | Respondent is known to Atty. Vaño as a respectable person of good moral character. |

[37] *Id*. at 397.

[38] *Id.* at 398.

[39] *Id*. at 399.

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| 16) Domingo L. Mapa (President, Santos Ventura Hocorma Foundation, Inc.) | March 7, 2017[40] | Colleague | Respondent is "*one with [them]*"[41] in pursuing their advocacies in their scholarship program. |
| 17) Ernesto M. Caringal (President, Abcar International Construction Corporation) | March 7, 2017[42] | Colleague | Caringal hired respondent as Vice President for Administration of his company even after he was disbarred in 2005 because Caringal believes respondent is a person of good moral character. |
| 18) Rolando L. Sianghio (President, Lacto Asia Pacific Corporation) | March 14, 2017[43] | Colleague | Respondent rendered voluntary service as Adviser-Consultant of the Directors of the Habitat for Humanity and i-Homes in their programs for housing for the poor. |
| 19) PSSupt. Marino Ravelo (Retired PDEA Director) | March 10, 2017[44] | Business Partner | Respondent is Ravelo's business partner in the sourcing and supply of nickel and chromite raw ores from Zambales to their local customers.<br>Respondent has never been involved in any shady business deals. |
| 20) Atty. Tranquilino R. Gale (Legal Counselor & Consultant) | March 14, 2017[45] | Former partner in law firm | Respondent was the former law firm partner of Atty. Gale, prior to respondent's appointment as RTC judge. |

[40] *Id*. at 401.

[41] *Id*.; italics supplied.

[42] *Id*. at 402.

[43] *Id*. at 403.

[44] *Id*. at 404.

[45] *Id*. at 405.

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| | | | Respondent is honest and of good moral character in his public and private dealings even after he was disbarred. |
| 21)Godofredo D. Asunto (President, Waterfun Condominium Bldg. 1 Inc. (Homeowners Association); and Retired Bank Executive) | March 8, 2017[46] | Colleague | Asunto availed of respondent's legal services in resolving his collection cases. |
| 22)Rosalind E. Hagedorn | March 9, 2017[47] | Colleague | In view of his good values to the profession, Respondent was recommended by Hagedorn to act as legal counsel of her valued clients and friends. |
| 23) Antonio A. Navarro III | March 9, 2017[48] | Friend | Respondent was known to Navarro as a person of good moral character since 1988 up to the present. |
| 24) Peter A. Yap | March 10, 2017[49] | Community Friend | Respondent was known to Yap as a person of good moral character since 1975 up to the present. |
| 25)Teodora S. Ocampo (Professor, De La Salle University) | March 12, 2017[50] | | Respondent worked with Ocampo in a power project installation in 2000.<br>Sender claims she found respondent to be an |

[46] *Id*. at 407.

[47] *Id.* at 409.

[48] *Id*. at 410.

[49] *Id*. at 411.

[50] *Id*. at 412.

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| | | | ethical, trustworthy and a person of high integrity. |
| 26) Valentin T. Banda (Retired Bank Officer, Philippine Veterans Bank) | March 12, 2017[51] | Colleague<br>Friend | Respondent's disbarment has turned him into a new person. |
| 27) Atty. Samuel A. Nuñez | March 13, 2017[52] | Friend | Respondent has been active in the community affairs while staying in Cebu. |
| 28) Atty. Ramon C. Gonzaga, Jr. | March 18, 2017[53] | Former partner in law firm | Atty. Gonzaga, Jr., stated that he has not heard that respondent was involved in any charge or complaint, morally or otherwise, even after he was disbarred. |
| 29) Efren Z. Palugod (Chairman Plaza Loans Corporation) | March 8, 2017[54] | Friend | Respondent is of good moral character.<br>Respondent stayed in touch with Palugod whenever respondent would go to Cebu every now and then for his coal supply business. |
| 30) Rodolfo G. Pelayo (Chairman, Power & Synergy, Inc.) | March 7, 2017[55] | | Despite being disbarred, respondent involved himself in worthwhile activities as senior citizen and offered his services as business consultant to their company, Power & Synergy, Inc. and friends. |

[51] *Id*. at 413-414.

[52] *Id*. at 415.

[53] *Id*. at 416-417.

[54] *Id*. at 418.

[55] *Id*. at 419.

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| 31) Sol Owen G. Figues | Undated[56] | Colleague<br>Friend | Respondent should be reinstated as a lawyer again in order for him to "*continue his [G]ood Samaritan work to the common people that seeks justice and guidance in times of trouble and grief*."[57] |
| 32)Col. Jose Ely D. Alberto GSC (INF) (Internal Auditor, Philippine Army) | March 24, 2017[58] | Acquaintance | Respondent was known to Navarro as a person of good moral character since 2000 up to the present. |
| 33)Atty. Albert L. Hontanosas | March 8, 2017[59] | Friend | Respondent has integrity, independence, industry and diligence.<br>Respondent should be given a second chance to serve the Filipino masses as a *bonafide* member of the Philippine Bar. |
| 34)Antonio E. De Borja (Former Councilor, Baliwag, Bulacan; and President, Early Riser Assembly, Baliwag, Bulacan) | March 17, 2017[60] | Friend | Respondent provides free legal assistance to the poor, who were victims of injustice, through his son who is also a lawyer. |
| 35)Tomas Barba Tan (President, Cebu Adconsultants, Inc.) | March 9, 2017[61] | Client | Respondent is a person of good moral character. |

[56] *Id.* at 420.

[57] *Id.*; italics supplied.

[58] *Id.* at 421.

[59] *Id.* at 422.

[60] *Id.* at 423.

[61] *Id.* at 424.

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| 36)Engr. Daniel D. Villacarlos (Operations Manager, Hi-Tri Development Corp.) | March 11, 2017[62] | Friend | Respondent is very dependable, fair and a very respectable person both on the tennis courts in Parañaque City where they are both members until now and inside the court of law when he was still active as an excellent and reputable lawyer.<br>Respondent's conduct of sportsmanship in BF Homes Tennis Club and as a person is exemplary. |
| 37) Roy Bufi(President, The Bas Corporation) | March 9, 2017[63] | Friend | Respondent is known to Bufi as kind, generous and is very professional when it comes to work. |
| 38)Remigio R. Viola (Retired Municipal Administrator, Municipality of Baliwag, Bulacan) | March 13, 2017[64] | Former colleague | Respondent is his business consultant because respondent is known to Viola for being a community leader. |
| 39) Leonardo U. Lindo | March 20, 2017[65] | Friend | Respondent is a strong supporter of their social and civic activities to provide free medical services to the less fortunate members of the society. |
| 40) Felipe De Sagun | Undated[66] | Friend | In 2003, respondent handled their case against Metrobank and won the case for them.<br>Respondent is trustworthy, reliable and honest. |

[62] *Id*. at 425.

[63] *Id*. at 426.

[64] *Id*. at 427.

[65] *Id*. at 428.

[66] *Id*. at 429.

**The Court's Ruling**

The Court denies the present appeal.

Membership in the Bar is a privilege burdened with conditions.[67] It is not a natural, absolute or constitutional right granted to everyone who demands it, but rather, a special privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character.[68] The same reasoning applies to reinstatement of a disbarred lawyer. When exercising its inherent power to grant reinstatement, the Court should see to it that only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar. Thus, though the doors to the practice of law are never permanently closed on a disbarred attorney, the Court owes a duty to the legal profession as well as to the general public to ensure that if the doors are opened, it is done so only as a matter of justice.[69]

The basic inquiry in a petition for reinstatement to the practice of law is whether the lawyer has sufficiently rehabilitated himself or herself in conduct and character. The lawyer has to demonstrate and prove by clear and convincing evidence that he or she is again worthy of membership in the Bar. The Court will take into consideration his or her character and standing prior to the disbarment, the nature and character of the charge/s for which he or she was disbarred, his or her conduct subsequent to the disbarment, and the time that has elapsed in between the disbarment and the application for reinstatement.[70]

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[67] *In the Matter of the IBP Membership Dues Delinquency of Atty. Edillion*, 189 Phil. 468, 473 (1980).

[68] *In the Matter of the Admission to the Bar of Argosino*, 316 Phil. 43, 46 (1995), citing G.A. Malcolm, *Legal and Judicial Ethics* (1949), at p. 13; *In re Parazo*, 82 Phil. 230, 242 (1948), reiterated in *Tan v. Sabandal*, 283 Phil. 390; 399 (1992).

[69] *Que v. Atty. Revilla, Jr.*, 746 Phil. 406, 413 (2014), citing *Scholl v. Kentucky Bar Ass'n*, 213 S.W. 3d 687 (Ky. 2007).

[70] *Id*.

Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable.[71]

The principle which should hold true not only for judges but also for lawyers, being officers of the court, is that judicial "[c]lemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. [Thus,] [t]he Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable."[72]

In the case of *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency,*[73] the Court laid down the following guidelines in resolving requests for judicial clemency, to wit:

*1.* **There must be proof of remorse and reformation.**[74] These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.

*2.* Sufficient time must have lapsed from the imposition of the penalty[75] to ensure a period of reform.

*3.* The age of the person asking for clemency must show

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[71] *Re: Letter of Judge Augustus C. Diaz, MTC-QC, Br. 37, Appealing for Judicial Clemency*, 560 Phil. 1, 5 (2007).

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.[76]

*4*. There must be a showing of promise[77] (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.[78]

*5*. There must be other relevant factors and circumstances that may justify clemency.

In the case of *Bernardo v. Atty. Mejia*,[79] the Court, in deciding whether or not to reinstate Atty. Mejia, considered that 15 years had already elapsed from the time he was disbarred, which gave him sufficient time to acknowledge his infractions and to repent. The Court also took into account the fact that Atty. Mejia is already of advanced years, has long repented, and suffered enough. The Court also noted that he had made a significant contribution by putting up the Mejia Law Joumal containing his religious and social writing; and the religious organization named "*El Cristo Movement and Crusade on Miracle of the Heart and Mind*." Furthermore, the Court considered that Atty. Mejia committed no other transgressions since he was disbarred.[80]

In *Adez Realty, Inc. v. CA*,[81] the Court granted the reinstatement of the disbarred lawyer (*found to be guilty of intercalating a material fact in a CA decision*) and considered the period of three (3) years as sufficient time to do soul-searching and to prove that he is worthy to practice law. In that case, the Court

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[76] *Id*. at 6.

[77] *Id*.

[78] *Id*.

[79] 558 Phil. 398 (2007).

[80] *Id*. at 401-402.

[81] 321 Phil. 556 (1995).

took into consideration the disbarred lawyer's sincere admission of guilty and repeated pleas for compassion.[82]

In *Valencia v. Atty. Antiniw*,[83] the Court rejnstated Atty. Antiniw (*who was found guilty of malpractice in falsifying a notarized deed of sale and subsequently introducing the document in court*) after considering the long period of his disbarment (almost 15 years). The Court considered that during Atty. Antiniw's disbarment, he has been persistent in reiterating his apologies to the Court, has engaged in humanitarian and civic services, and retained an unblemished record as an elected public servant, as shown by the testimonials of the numerous civic and professional organizations, government institutions, and members of the judiciary.[84]

In all these cases, the Court considered the conduct of the disbarred attorney before and after his disbarment, the time that had elapsed from the disbarment and the application for reinstatement, and more importantly, the disbarred attorneys' sincere realization and acknowledgment of guilt.[85]

Here, while more than ten (10) years had already passed since his disbarment on June 15, 2005, respondent's present appeal has failed to show substantial proof of his reformation as required in the first guideline above.

The Court is not persuaded by respondent's sincerity in acknowledging his guilt. While he expressly asks for forgiveness for his transgressions in his letters to the Court, respondent continues to insist on his honest belief that there was no conflict of interest notwithstanding the Court's finding to the contrary. Respondent asserted in all his letters to the Court that:

I also did not [do] and I do not deny the fact that in the year 1985, I filed ONLY a single motion for the issuance of an alias writ of

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[82] *Id*. at 560.

[83] 579 Phil. 1 (2008).

[84] *Id*. at 11-12.

[85] *Que v. Atty. Revilla, Jr.*, *supra* note 69, at 415.

execution on behalf of said San Jose Homeowners Association against the Durano & Co., Inc. before the HLURB in a case for completion of development under P.D. 957, and that later in the year 1996, I handled another HLURB case for the respondents Durano/Rodriguez in the said case filed by the San Jose Homeowners Association, **for the declaration of the school site lot as an open space, on the basis of my firm belief that I was given a prior consent to do so by the said association**, pursuant to its Board Resolution, dated March 14, 1987, a copy of which is attached and made an integral part hereof, as Annex "A" **and also because of my honest belief that there was no conflict of interest situation obtaining under the circumstances, as those cases are totally unrelated [and] distinct from each other, pursuant to the jurisprudences that I had cited in my ANSWER in this disbarment case**.[86] (Emphasis supplied)

Furthermore, the testimonials submitted by respondent all claim that respondent is a person of good moral character without explaining why or submitting proof in support thereof. The only ostensible proof of reformation that respondent has presented are the following:

1. The Letter dated March 7, 2017 signed by Domingo L. Mapa, President of Santos Ventura Hocorma Foundation, Inc., averring that respondent is "*one with* [*them*] *in pursuing* [*their*] *advocacies in* [*their*] *scholarship* x x x;"[87]
2. The Letter dated March 13, 2017 signed by Atty. Samuel A. Nuñez, claiming that respondent has been active in community affairs while staying in Cebu;[88]
3. The undated Letter signed by Sol Owen G. Figues, humbly asking that respondent be reinstated again in order for him to "*continue his* [*G*]*ood Samaritan work to the common people that seeks justice and guidance in times of trouble and grief*;"[89]

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[86] *Rollo*, p. 337, see also pp. 346-347, 352-353, 360-361.

[87] *Id*. at 401; italics supplied.

[88] *Id*. at 415.

[89] *Id*. at 420; italics supplied.

*4*. The undated Letter of Arnaldo C. Cuasay, the brother-in-law of respondent, stating that after his disbarment, respondent provided community services in Muntinlupa and in his hometown in Cebu;[90]

*5*. The Letter dated March 14, 2017 signed by Rolando L. Sianghio, President of Lacto Asia Pacific Corporation, stating that respondent rendered voluntary service as Adviser-Consultant of the Directors of the Habitat for Humanity in their programs for housing for the poor;[91]

*6*. The Letter dated March 17, 2017 signed by Antonio E. De Borja, a friend of respondent, where Borja claimed that respondent provides free legal assistance to the poor, who were victims of injustice, through his son who is also a lawyer;[92]

*7*. The Letter dated March 20, 2017 signed by Leonardo U. Lindo, a friend of respondent, which stated that respondent is "[*a strong supporter of their*] *social* [*and*] *civic activities to provide free medical services to the less fortunate members of the society*;"[93]

*8*. The Letter dated March 20, 2017 signed by Dean Dionisio G. Magpantay, Chairman and President of Asian+ Council of Leaders, Administrators, Deans and Educators in Business, stating that he personally knows respondent having served together in their church and community service with the Knights of Columbus in the mid-2000s until the present;[94] and

*9*. The Letter dated March 20, 2017 signed by Carolina L. Nielsen, a neighbor of respondent, where she claimed

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[90] *Id*. at 388.

[91] *Id*. at 403.

[92] *Id*. at 423.

[93] *Id*. at 428; italics supplied.

[94] *Id*. at 393.

> that respondent "[*graciously rendered free legal advice to her and her family*.]"[95]

Still, aside from these bare statements, no other proof was presented to specify the actual engagements or activities by which respondent had served the members of his community or church, provided free legal assistance to the poor and supported social and civic activities to provide free medical services to the less fortunate, hence, insufficient to demonstrate any form of consistency in his supposed desire to reform.

The other testimonials which respondent submitted, particularly that of Ernesto M. Caringal, President of Abcar International Construction Corporation, who stated that "[*he hired respondent as Vice President for Administration of his company even after*] *he was disbarred in 2005*,"[96] and that of Police Senior Superintendent Marino Ravelo (Ret.), who stated that "[*he is the business partner of respondent*] *in the sourcing and supply of nickel and chromite raw ores from Zambales to* [*their*] *local customers*,"[97] all relate to respondent's means of livelihood after he was disbarred; hence, these are incompetent evidence to prove his reformation which connotes consistent improvement subsequent to his disbarment. If at all, these testimonials contradict respondent's claim that he and his family were having financial difficulties due to his disbarment, to wit:

> Since then up to now, I and my family had been marginally surviving and still continue to survive, from out of the measly funds that I have been able to borrow from our relatives and my former clients (who, of course I don't expect to continue lending to me indefinitely) to whom I promised to repay my debts upon the resumption of my law practice.[98]

To add, no other evidence was presented in his appeal to demonstrate his potential for public service, or that he — now

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[95] *Id*. at 387; italics supplied.

[96] *Id*. at 402; italics supplied.

[97] *Id*. at 404; italics supplied.

[98] *Id*. at 338, see also pp. 343, 347, 353, 361.

being 71 years of age - still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. Thus, the third and fourth guidelines were neither complied with.[99]

While the Court sympathizes with the predicaments of disbarred lawyers — may it be financial or reputational in cause — it stands firm in its commitment to the public to preserve the integrity and esteem of the Bar. As held in a previous case, "*in considering* [*a lawyer's*] *application for reinstatement to the practice of law, the duty of the Court is to determine whether he has established moral reformation and rehabilitation, disregarding its feeling of sympathy or pity*."[100]

The practice of law is a privilege, and respondent has failed to prove that he has complied with the above-discussed guidelines for reinstatement to the practice of law. The Court, therefore, denies his petition.

**WHEREFORE**, the instant appeal is **DENIED**.

**SO ORDERED.**

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

*Velasco, Jr., J.*, no part, relation to a party.

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[99] *Re: In the Matter of the Petition for Reinstatement of Rolando S. Torres as a member of the Philippine Bar*, 767 Phil. 676, 686 (2015).

[100] *Que v. Atty. Revilla, Jr.*, *supra* note 69, at 417; italics supplied.

**EN BANC**

[A.C. No. 10555. July 31, 2018]

**EVELYN T. GOOPIO,** *complainant, vs.* **ATTY. ARIEL D. MAGLALANG,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; ADHERENCE TO RIGID STANDARDS OF MENTAL FITNESS, MAINTENANCE OF THE HIGHEST DEGREE OF MORALITY, FAITHFUL COMPLIANCE WITH THE RULES OF THE LEGAL PROFESSION, AND REGULAR PAYMENT OF MEMBERSHIP FEES TO THE INTEGRATED BAR OF THE PHILIPPINES ARE THE CONDITIONS REQUIRED FOR REMAINING A MEMBER OF GOOD STANDING OF THE BAR AND FOR ENJOYING THE PRIVILEGE TO PRACTICE LAW.—** The practice of law is a privilege burdened with conditions, and so delicately affected it is with public interest that both the power and the duty are incumbent upon the State to carefully control and regulate it for the protection and promotion of the public welfare. Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful compliance with the rules of the legal profession, and regular payment of membership fees to the IBP are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. Beyond question, any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege. Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.

**2. ID.; ID.; DISBARMENT OR SUSPENSION; A LAWYER ENJOYS THE PRESUMPTION OF INNOCENCE, AND THE BURDEN OF PROOF RESTS ON THE**

**COMPLAINANT TO SATISFACTORILY PROVE THE ALLEGATIONS IN HIS COMPLAINT THROUGH SUBSTANTIAL EVIDENCE.—** [I]n consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, we have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence. A complainant's failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.

**3. ID.; ID.; DISBARMENT; MAY NOT BE AKIN TO A CRIMINAL PROSECUTION BUT IF THE ENTIRE BODY OF PROOF RESTS MAINLY ON THE DOCUMENTARY EVIDENCE, AND THE CONTENT OF WHICH WILL PROVE EITHER THE FALSITY OR VERACITY OF THE CHARGE FOR DISBARMENT, THEN THE DOCUMENTS THEMSELVES, AS SUBMITTED INTO EVIDENCE, MUST COMPLY WITH THE BEST EVIDENCE RULE.—** To prove their lawyer-client relationship, Goopio presented before the IBP photocopies of the General Power of Attorney she allegedly issued in Atty. Maglalang's favor, as well as acknowledgement receipts issued by the latter for the amounts he allegedly received. We note, however, that what were submitted into evidence were mere photocopies, in violation of the Best Evidence Rule under Rule 130 of the Rules of Court. x x x Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly on the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule, save for an established ground that would merit exception. Goopio failed to prove that the present case falls within any of the exceptions that dispense with the requirement of presentation of an original of the documentary evidence being presented, and hence, the general rule must apply. The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content of the documents. This is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy, completeness, and authenticity of the documents submitted into

evidence. x x x Long-standing is the rule that punitive charges standing on the truth or falsity of a purported document require no less than the original of said records. Thus, the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. In the absence of a clear showing that the original writing has been lost or destroyed or cannot be produced in court, the photocopy submitted, in lieu thereof, must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.

**4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF THAT MUST BE DISCHARGED BY THE COMPLAINANT IN A DISCIPLINARY PROCEEDING AGAINST A LAWYER FOR THE SUPREME COURT TO EXERCISE ITS DISCIPLINARY POWERS.—** We are not unaware that disciplinary proceedings against lawyers are *sui generis;* they involve investigations by the Court into the conduct of one of its officers, not the trial of an action or a suit. Being neither criminal nor civil in nature, these are not intended to inflict penal or civil sanctions, but only to answer the main question, that is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. In the present case, this main question is answerable by a determination of whether the documents Goopio presented have probative value to support her charge. The irreversible effects of imposed penalties from the same must stand on sufficiently established proof through substantial evidence. Such quantum of proof is a burden that must be discharged by the complainant, in order for the Court to exercise its disciplinary powers. In the present case, substantial evidence was not established when Goopio failed to comply with the Best Evidence Rule, and such failure is fatal to her cause. Such non-compliance cannot also be perfunctorily excused or retrospectively cured through a fault or failure of the contending party to the complaint, as the full weight of the burden of proof of her accusation descends on those very documents. Having submitted into evidence documents that do not bear probative weight by virtue of them being mere photocopies, she has inevitably failed to discharge the burden of proof which lies with her.

**5. LEGAL ETHICS; ATTORNEYS; DISBARMENT; IN A DISBARMENT PROCEEDING, ANY OFFER OR ATTEMPT AT A COMPROMISE BY THE PARTIES IS NOT ONLY INADMISSIBLE AS EVIDENCE TO PROVE GUILT ON THE PART OF THE OFFEROR, BUT IS IN FACT WHOLLY EXTRANEOUS TO THE PROCEEDING.—** Neither will Atty. Maglalang's offer to restitute to Goopio the monetary award pending finality of the decision be deemed as his indirect admission of guilt. x x x [A]s expressed in Section 27, Rule 130 of the Rules of Court, an offer of compromise in the context of civil cases may not be taken as an admission of any liability. x x x In legal contemplation in the context of a disbarment proceeding, any offer or attempt at a compromise by the parties is not only inadmissible as evidence to prove guilt on the part of the offeror, but is in fact wholly extraneous to the proceeding, which resides solely within the province of the Court's disciplinary power. Any offer for compromise, being completely immaterial to the outcome of the disbarment complaint, may not hold sway for or impute guilt on any of the parties involved therein.

**6. ID.; ID.; ID.; A PRAYER FOR THE MODIFICATION OF PENALTY AND REDUCTION OF THE SAME MAY NOT BE INTERPRETED AS AN ADMISSION OF GUILT.—** Atty. Maglalang's prayer for the modification of penalty and reduction of the same may not be interpreted as an admission of guilt. At most, in the context in which it was implored, this may be reasonably read not as a remorseful admission but a plea for compassion—a reaction that is in all respects understandable, familiar to the common human experience, and consistent with his narration that he was likewise a victim of fraudulent representations of Goopio's sister. Furthermore, this prayer for a kinder regard cannot by any course limit the Court's independent disciplinary reach and consideration of the facts and merits of this case as has been presented before it. This degree of autonomy is in no small measure due to the fact that administrative proceedings are imbued with public interest, public office being a public trust, and the need to maintain the faith and confidence of the people in the government, its agencies, and its instrumentalities demands that proceedings in such cases enjoy such level of independence.

**7. ID.; ID.; A LAWYER MUST AT ALL TIMES EXERCISE CARE AND DILIGENCE IN CONDUCTING THE AFFAIRS OF HIS PRACTICE.—** [W]e find that by his own recognition, Atty. Maglalang's "failure to discover the manipulations of his former client before the matter became worse" is material negligence, for which the penalty of reprimand, under the circumstances of the case at bar, may be consequently warranted. Veritably, a lawyer must at all times exercise care and diligence in conducting the affairs of his practice, including the observation of reasonable due vigilance in ensuring that, to the best of his knowledge, his documents and other implements are not used to further duplicitous and fraudulent activities.

**APPEARANCES OF COUNSEL**

*Valencia Ciocon Dabao Valencia Dela Paz Dionela Ravena & Pandan Law Offices* for complainant.
*Ma. Cecilia V. Quebrar-Soriano* for respondent.

**D E C I S I O N**

**JARDELEZA, *J.*:**

This is a petition[1] filed by respondent Atty. Ariel D. Maglalang (Atty. Maglalang) challenging the Resolution[2] dated December 14, 2012 of the Integrated Bar of the Philippines (IBP) Board of Governors (IBP Board) which imposed upon him the penalty of suspension from the practice of law for three years and ordered the restitution of ₱400,000.00 to complainant Evelyn T. Goopio (Goopio).

The case originated from a disbarment complaint[3] filed by Goopio charging Atty. Maglalang with violation of Section 27, Rule 138 of the Rules of Court, which provides:

Sec. 27. *Attorneys removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed or suspended

[1] *Rollo,* pp. 189-194.

[2] *Id.* at 156.

[3] *Id.* at 3-8.

from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In her disbarment complaint, Goopio primarily alleged that sometime in 2005, in relation to her need to resolve property concerns with respect to 12 parcels of land located in Sagay City, Negros Occidental, she engaged the services of Atty. Maglalang to represent her either through a court action or through extra-judicial means. Having been employed in Switzerland at the time, she allegedly likewise executed a General Power of Attorney[4] on June 18, 2006 in favor of Atty. Maglalang, authorizing him to settle the controversy covering the properties with the developer, including the filing of a petition for rescission of contract with damages.[5]

Goopio further alleged that Atty. Maglalang supposedly informed her that the petition for rescission was filed and pending with the Regional Trial Court (RTC) of Bacolod City, and that as payment of the same, the latter requested and received the total amount of ₱400,000.00 from her.[6] Goopio similarly alleged that Atty. Maglalang presented an official receipt[7] covering the alleged deposit of the ₱400,000.00 with the court.[8]

Goopio further contended that Atty. Maglalang rendered legal services in connection with the petition, including but not limited

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[4] *Id.* at 12-13.

[5] *Id.* at 4.

[6] Allegedly on the dates of March 10, 2006, March 28, 2006 and April 27, 2006, *id.*

[7] *Rollo,* p. 17.

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

to, appearances at mediations and hearings, as well as the preparation of a reply between the months of December 2006 and April 2007, in relation to which she was supposedly billed a total of ₱114,000.00, ₱84,000.00 of which she paid in full.[9]

Goopio also claimed that she subsequently discovered that no such petition was filed nor was one pending before the RTC or any tribunal,[10] and that the purported inaction of Atty. Maglalang likewise resulted in the continued accrual of interest payments as well as other charges on her properties.[11]

She alleged that Atty. Maglalang admitted to all these when he was confronted by Goopio's representative and niece, Milogen Canoy (Canoy), which supposedly resulted in Goopio's revocation[12] of the General Power of Attorney on May 17, 2007. Goopio finally alleged that through counsel, she made a formal demand[13] upon Atty. Maglalang for restitution, which went unheeded; hence, the disbarment complaint.[14]

In his verified answer,[15] Atty. Maglalang specifically denied Goopio's claims for being based on hearsay, untrue, and without basis in fact. He submitted that contrary to Goopio's allegations, he had not met or known her in 2005 or 2006, let alone provided legal services to her as her attorney-in-fact or counsel, or file any petition at her behest. He specifically denied acceding to any General Power of Attorney issued in his favor, and likewise submitted that Goopio was not in the Philippines when the document was purportedly executed. He further firmly denied receiving ₱400,000.00 from Goopio, and issuing

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[9] *Id.* at 5.

[10] *Id.* at 20.

[11] *Id.* at 5.

[12] *Id.* at 27.

[13] *Id.* at 28-29.

[14] *Id.* at 6.

[15] *Id.* at 70-74.

any receipts.[16] He also added that he had not received any demand letter.[17]

Clarifying the capacity in which he knew Goopio, Atty. Maglalang explained that Ma. Cecilia Consuji (Consuji), Goopio's sister and his client since 2006, introduced him to Goopio sometime in 2007, where an altercation ensued between them.[18]

As special and affirmative defenses, Atty. Maglalang further countered that without his knowledge and participation, Consuji surreptitiously used his name and reputation, and manipulated

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[16] *Id.* at 70-71. The pertinent portion in Atty. Maglalang's verified answer provides:

3. That paragraphs 1, 2, 2.1, and 3 of the Complaint on Statement of Facts are vehemently denied for being based on hearsay, untrue, baseless and mere concoctions. The truth of the matter is that Respondent had NOT MET AND KNOWN Complainant sometime in year 2005 or 2006 and neither did Complainant engage the services of the Respondent to either act as her attorney-in-fact or her counsel to settle her problem with the Developer. Consequently, Respondent has no reason or obligation to file a Petition for Rescission of Contract with Damages in favor of complainant x x x;

4. That paragraphs 4 and 5 of the Complaint on Statement of Facts are likewise specifically denied for being based on hearsay, untrue, baseless and mere concoctions subject further to special and affirmative defenses hereinafter set forth. The truth of the matter is that, Respondent has not signed or executed such General Power of Attorney. x x x Respondent would like to stress that HE DID NOT SIGN SUCH GENERAL POWER OF ATTORNEY and that COMPLAINANT WAS LIKEWISE NOT PRESENT IN THE PHILIPPINES WHEN THE ALLEGED DOCUMENT WAS EXECUTED;

5. That paragraphs 6 and 6.1 are likewise vehemently denied for the reason that Respondent has NOT RECEIVED the amount of FOUR HUNDRED THOUSAND PESOS (₱400,000.00) and consequently had not issued the subject receipts, subject further to special and affirmative defenses hereinafter set forth particularly on the Rules on Hearsay Evidence;

6. That paragraph 7 of the Complaint on Statement of Facts is also denied for being based on hearsay, untrue, baseless and mere conjectures and for lack of knowledge as he did not make, execute or prepare the said Receipt[.]

[17] *Id.* at 70-72.

[18] *Id.* at 71-73.

the supposed "engagement" of his services as counsel for Goopio through the execution of a falsified General Power of Attorney. Atty. Maglalang likewise submitted that Consuji collected huge sums of money from Goopio by furtively using his computerized letterhead and billing statements. In support of the same, he alleged that in fact, Consuji's name appeared on the annexes, but there was no mention of her in the actual disbarment complaint for purposes of isolating her from any liability.[19]

To bolster his affirmative defense that no lawyer-client relationship existed between him and Goopio, Atty. Maglalang submitted that in fact, the Office of the City Prosecutor of Bacolod City had earlier dismissed two complaints filed by Goopio against him for charges of falsification of public documents and estafa by false pretenses,[20] alleging the same set of facts as narrated in the present disbarment complaint. Atty. Maglalang submits that in a Resolution dated February 14, 2008, the City Prosecutor summarily dismissed the complaints for being hearsay.[21]

In a Report and Recommendation[22] dated August 13, 2010, IBP Commissioner Victor C. Fernandez (Commissioner Fernandez) found that a lawyer-client relationship existed between complainant Goopio and Atty. Maglalang. This was found to be sufficiently proven by the documentary evidence submitted by Goopio. Commissioner Fernandez did not give any credence to the specific denials of Atty. Maglalang. Moreover, the IBP held that the demand letter of Attys. Lily Uy Valencia and Ma. Aleta C. Nuñez dated June 5, 2007 sufficiently established Atty. Maglalang's receipt of the amount of ₱400,000.00. Commissioner Fernandez held that had Atty. Maglalang found the demand letter suspect and without basis, he should have sent a reply denying the same.[23]

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[19] *Id.* at 73.

[20] Docketed as BC IS Nos. 07-1751 and 07-1757, *id.* at 73, 76.

[21] *Id.*

[22] *Rollo,* pp. 158-166.

[23] *Id.* at 163-165.

He recommended that Atty. Maglalang be found guilty of violating Section 27, Rule 138 of the Rules of Court and Canon 16 of the Code of Professional Responsibility, suspended from the practice of law for two years, and ordered to return to Goopio the amount of ₱400,000.00, under pains of disbarment.[24]

In a Resolution dated December 14, 2012, the IBP Board affirmed with modification the Report and Recommendation of Commissioner Fernandez, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violation of Section 27, Rule 138 of the Rules of Court and Canon 16 of the Code of Professional Responsibility, Atty. Ariel D. Maglalang is hereby **SUSPENDED from the practice of law for three (3) years** and Ordered to Return to complainant the amount of Four Hundred Thousand (₱400,000.00) Pesos within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made.[25]

Atty. Maglalang filed a motion for reconsideration[26] of the IBP Board's Resolution. In said motion for reconsideration, Atty. Maglalang prayed for full exoneration on the ground that he was also merely a victim of the manipulations made by his former client, Consuji, further contending that if any fault could be attributed to him, it would only be his failure to detect and discover Consuji's deceit until it was too late. The same motion was denied in a Resolution[27] dated March 22, 2014. Hence, this petition.

In his petition, Atty. Maglalang reiterated his defense of specific denial, and further claimed that his efforts to locate

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[24] *Id.* at 165-166.

[25] *Id.* at 156.

[26] *Id.* at 167-169.

[27] *Id.* at 175-176.

Consuji to clarify the complaint were exerted in vain. He likewise additionally submitted that in demonstration of his desire to have the case immediately resolved, and with no intentions of indirect admission of guilt, he agreed to pay complainant the amount she was claiming at a rate of ₱50,000.00 per month.[28]

Atty. Maglalang's forthright actions to further the resolution of this case is noted. All claims and defenses considered, however, we cannot rule to adopt the IBP Board's findings and recommendations.

The practice of law is a privilege burdened with conditions,[29] and so delicately affected it is with public interest that both the power and the duty are incumbent upon the State to carefully control and regulate it for the protection and promotion of the public welfare.[30]

Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful compliance with the rules of the legal profession, and regular payment of membership fees to the IBP are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. Beyond question, any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege.[31] Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.[32]

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

[29] *In the Matter of the IBP Membership Dues Deliquency of Atty. M.A. Edillon,* A.C. No. 1928, December 19, 1980, 101 SCRA 612, 617.

[30] See *Heck v. Santos*, A.M. No. RTJ-01-1657, February 23, 2004, 423 SCRA 329, 346.

[31] See *Yu v. Dela Cruz,* A.C. No. 10912, January 19, 2016, 781 SCRA 188, 197-198.

[32] See *Yap-Paras v. Paras,* A.C. No. 4947, June 7, 2007, 523 SCRA 358, 362.

However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, we have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence.[33] A complainant's failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.

Under the facts and the evidence presented, we hold that complainant Goopio failed to discharge this burden of proof.

*First.* To prove their lawyer-client relationship, Goopio presented before the IBP photocopies of the General Power of Attorney she allegedly issued in Atty. Maglalang's favor, as well as acknowledgement receipts issued by the latter for the amounts he allegedly received. We note, however, that what were submitted into evidence were mere photocopies, in violation of the Best Evidence Rule under Rule 130 of the Rules of Court. Sections 3 and 4 of Rule 130 provide:

> Sec. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

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[33] See *Reyes v. Nieva,* A.C. No. 8560, September 6, 2016, 802 SCRA 196.

Sec. 4. *Original of document.* —

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule, save for an established ground that would merit exception. Goopio failed to prove that the present case falls within any of the exceptions that dispense with the requirement of presentation of an original of the documentary evidence being presented, and hence, the general rule must apply.

The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content of the documents.[34] This is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy, completeness, and authenticity of the documents submitted into evidence. It is therefore *non-sequitur* to surmise that this crucial preference for the original may be done away with or applied liberally in this case merely by virtue of Atty. Maglalang's failure to appear during the second mandatory conference. No such legal license was intended either by the Rules on Evidence or the rules of procedure applicable to a disbarment case. No

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[34] See *Consolidated Bank and Trust Corporation (SOLIDBANK) v. Del Monte Motor Works, Inc.,* G.R. No. 143338, July 29, 2005, 465 SCRA 117, 131-132.

such effect, therefore, may be read into the factual circumstances of the present complaint.

The Notice of Mandatory Conference itself stated that "[n]on-appearance at the mandatory conference shall be deemed a waiver of the right to participate in the proceedings."[35] At most, Atty. Maglalang's non-appearance during the rescheduled mandatory conference dated March 12, 2009[36] merited the continuation of the proceedings *ex parte*.[37] **Nothing in the face of the notice provided that in case of Atty. Maglalang's non-appearance, a leniency in the consideration of the evidence submitted would be in order.**[38] **Nowhere in the subsequent Order of Commissioner Soriano, which remarked on the non-appearance of Atty. Maglalang in the last mandatory conference, was there a mention of any form of preclusion on the part of Goopio to further substantiate her documentary evidence.**[39] Atty. Maglalang's waiver of his right to participate in the proceedings did not serve as a bar for Goopio to submit into evidence the original copies of the documents upon which her accusations stood.

Furthermore, consistent with Section 5, Rule V of the Rules of Procedure of the Commission on Bar Discipline of the Integrated Bar of the Philippines,[40] Atty. Maglalang's non-appearance at the mandatory conference was deemed a waiver of his right to participate in the proceedings, and his absence only rightly ushered the *ex parte* presentation of Goopio's evidence. The latter's belated feigning of possession and willingness to present the original copies of the documents were

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[35] *Rollo,* p. 86.

[36] *Id.* at 103.

[37] Records show that he was present during the original schedule of the mandatory conference held on November 27, 2008, *id.* at 91-92.

[38] *Id.* at 101.

[39] *Id.* at 103.

[40] B.M. No. 1755. These Rules, as amended, find suppletory application to Rule 139-B of the Rules of Court.

betrayed by the fact that even when she was ordered by the investigating commissioner to produce the original of her documentary evidence, and absent any bar in the applicable Rules for presentation of the same, she still failed to bring forth said originals.

To be sure, it is grave error to interpret that Atty. Maglalang's absence at the second mandatory conference effectively jeopardized Goopio's opportunity to substantiate her charge through submission of proper evidence, including the production of the original General Power of Attorney, acknowledgment receipts, and the billing statements. Viewed in another way, this line of reasoning would mean that Atty. Maglalang's non-appearance worked to excuse Goopio's obligation to substantiate her claim. This simply cannot be countenanced. Goopio's duty to substantiate her charge was separate and distinct from Atty. Maglalang's interests, and therefore, the latter's waiver would not, as in fact it did not, affect the rights and burden of proof of the former.

In fact, the transcript of the initial mandatory conference recorded the Commissioner's pointed instruction that Goopio and counsel have the concomitant obligation to produce the originals of the exhaustive list of documents they wish to have marked as exhibits.[41] The records positively adduce that the duty to produce the originals was specifically imposed on the party seeking to submit the same in evidence; there was no such bar on the part of Goopio to furnish the Commission with the originals of their documentary evidence submissions even after Atty. Maglalang's non-appearance and waiver.

It is additionally worth noting that during the mandatory conference, counsel of Goopio signified that they did not in fact have the original copies of the pertinent documents they were seeking to submit into evidence. In the preliminary conference brief submitted by Goopio, she further annotated in the discussion of the documents she wished to present that "[o]riginal copies of the foregoing documents will be presented

[41] *Rollo,* pp. 97-99.

for comparison with the photocopies during the preliminary conference."[42] Despite such statement of undertaking, however, and borne of no other's undoing, Goopio was never able to present the originals of either the General Power of Attorney or the acknowledgement receipts, the authenticity of which lie at the crux of the present controversy.

In our ruling in *Concepcion v. Fandiño, Jr.,*[43] a disbarment case which involved as documentary evidence mere photocopies of the notarized documents upon which the main allegation stood, we aptly reiterated how even in disbarment proceedings which are *sui generis* in nature, the Best Evidence Rule still applies, and submission of mere photocopies of documentary evidence is unavailing for their dearth of probative weight.

In *Concepcion,* the basis for the complaint for disbarment was the allegation that the lawyer therein notarized documents without authority. Similarly involving a disbarment proceeding that centered on the authenticity of the purported documents as proof of the violative act alleged, what we said therein is most apt and acutely instructive for the case at bar, to wit:

> A study of the document on which the complaint is anchored shows that the photocopy is not a certified true copy neither was it testified on by any witness who is in a position to establish the authenticity of the document. Neither was the source of the document shown for the participation of the complainant in its execution. x x x This fact gives rise to the query, where did these documents come from, considering also the fact that respondent vehemently denied having anything to do with it. It is worthy to note that the parties who allegedly executed said Deed of Sale are silent regarding the incident.
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> x x x x x x x x x
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> x x x **We have scrutinized the records of this case, but we have failed to find a single evidence which is an original copy. All documents on record submitted by complainant are indeed mere photocopies.** In fact, respondent has consistently objected to the

[42] *Id.* at 106.

[43] A.C. No. 3677, June 21, 2000, 334 SCRA 136.

admission in evidence of said documents on this ground. We cannot, thus, find any compelling reason to set aside the investigating commissioner's findings on this point. **It is well-settled that in disbarment proceedings, the burden of proof rests upon complainant.** x x x

x x x x x x x x x

**The general rule is that photocopies of documents are inadmissible.** As held in *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals,*[44] such document has no probative value and is inadmissible in evidence.[45] (Emphasis supplied; citations omitted.)

In both *Concepcion* and the case at bar, the allegations at the core of the disbarment complaints both involve alleged violations, the truth or falsity of which relies on a determination of the authenticity of the documents that serve as the paper trail of said punishable acts.

In *Concepcion,* the basis for the disbarment depended on whether or not the lawyer therein did, in fact, notarize the 145 documents without authority,[46] which, if proven, would have merited the punishment prayed for. Similarly, in the case at bar, the grounds for the disbarment of Atty. Maglalang centered chiefly on the truth and genuineness of the General Power of Attorney which he supposedly signed in acceptance of the agency, and the acknowledgment receipts which he purportedly issued as proof of receipt of payment in consideration of the lawyer-client relationship, for proving the authenticity of said documents would have unequivocally given birth to the concomitant duty and obligation on the part of Atty. Maglalang to file the petition on behalf of Goopio, and undertake all necessary measures to pursue the latter's interests. Both cases are further comparable in that both sets of photocopies of documents offered into evidence have been impugned by the lawyers therein for being false, without basis in fact, and deployed for purposes of malice

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[44] G.R. Nos. 103727 & 106496, December 18, 1996, 265 SCRA 733.

[45] *Concepcion v. Fandiño, Jr., supra* note 43 at 140-143.

[46] *Id*. at 142.

and retaliation, which in effect similarly placed the motives of the complainants within the ambit of suspicion. Finally, in both *Concepcion* and the case at bar, the complainants therein failed to submit the original of their documentary evidence, even though the same would have clearly redounded to the serving of their interests in the case, and despite having no bar or prohibition from doing the same.

In both cases, the documentary evidence was the causal link that would chain the lawyers therein to the violations alleged against them, and in the same manner, both central documentary evidence were gossamer thin, and have collapsed under the probative weight that preponderance of evidence requires.

Long-standing is the rule that punitive charges standing on the truth or falsity of a purported document require no less than the original of said records. Thus, the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. In the absence of a clear showing that the original writing has been lost or destroyed or cannot be produced in court, the photocopy submitted, in lieu thereof, must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.[47]

We are not unaware that disciplinary proceedings against lawyers are *sui generis;* they involve investigations by the Court into the conduct of one of its officers, not the trial of an action or a suit.[48] Being neither criminal nor civil in nature, these are not intended to inflict penal or civil sanctions, but only to answer the main question, that is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice.[49] In the present case, this main question is answerable by a determination of whether the documents Goopio presented have probative value to support her charge.

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[47] *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, supra* at 757.

[48] *Ylaya v. Gacott,* A.C. No. 6475, January 30, 2013, 689 SCRA 452, 467.

[49] *Gonzalez v. Alcaraz,* A.C. No. 5321, September 27, 2006, 503 SCRA 355, 357.

The irreversible effects of imposed penalties from the same must stand on sufficiently established proof through substantial evidence. Such quantum of proof is a burden that must be discharged by the complainant, in order for the Court to exercise its disciplinary powers.[50] In the present case, substantial evidence was not established when Goopio failed to comply with the Best Evidence Rule, and such failure is fatal to her cause. Such non-compliance cannot also be perfunctorily excused or retrospectively cured through a fault or failure of the contending party to the complaint, as the full weight of the burden of proof of her accusation descends on those very documents. Having submitted into evidence documents that do not bear probative weight by virtue of them being mere photocopies, she has inevitably failed to discharge the burden of proof which lies with her.

This principle further finds acute importance in cases where, as in the one at bar, the complainant's motives in instituting the disbarment charge are not beyond suspicion,[51] considering Atty. Maglalang's contention that his signature in the General Power of Attorney was forged.

Neither will Atty. Maglalang's offer to restitute to Goopio the monetary award pending finality of the decision be deemed as his indirect admission of guilt. After receiving notice of the IBP Board's Resolution suspending him from the practice of law for three years and ordering the return of the ₱400,000.00 he allegedly received from Goopio, Atty. Maglalang filed a motion for reconsideration which mentioned his honest desire to have the instant case resolved at the soonest possible time:[52]

> 3. That with all due respect to the findings and recommendation of the Board of Governors, Respondent would like to seek for reconsideration and ask for lesser penalty if not total exoneration from the sanction imposed on the ground that he is also a victim of

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[50] *Martin v. Felix, Jr.,* A.C. No. 2760, June 30, 1988, 163 SCRA 111, 130. Citation omitted.

[51] See *Lim v. Antonio,* A.C. No. 848, September 30, 1971, 41 SCRA 44, 49.

[52] *Rollo,* p. 168.

the manipulations made by his former client, Ma. Cecilia Consuji who happens to be the sister of complainant, Evelyn Goopio;

x x x x x x x x x

6. **That Respondent is left with no other option but to face the accusation and if there is any fault that can be attributed to him, it is his supposed failure to discover the manipulations of his former client before the matter became worse;**

7. That for lack of material time to produce necessary evidence on the validity of the Alleged General Power of Attorney, Respondent is asking for a reconsideration for a lesser sanction of stern warning or reprimand and despite the non-finality of the subject Resolution because of the filing of the instant Motion for Reconsideration, the undersigned counsel will make arrangements with counsel for complainant how he will be able to restitute the money award as soon as possible x x x **as a show of his honest desire to have the instant case resolved and as a tough learning experience to always cherish his privilege to practice law.**[53] (Emphasis supplied.)

**An examination of Atty. Maglalang's offer to restitute would clearly show that there was no admission of the acts being imputed against him. His offer was made "as a show of his honest desire" to have the case resolved immediately, and his admission, if any, was limited to his failure to immediately discover the manipulations of complainant's sister.** If anything, his earnest desire to restitute to Goopio the amount of the monetary award only reasonably betrayed his considerateness towards someone who was similarly deceived by Consuji, as well as his need to protect his reputation, which may be tarnished if the proceedings were to be protracted. It would be unjust to fault Atty. Maglalang's efforts to protect his reputation, especially in light of the verity that the success of a lawyer in his profession depends almost entirely on his reputation, and anything which will harm his good name is to be deplored.[54]

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[53] *Id.* at 167-168. Respondent would reiterate the same allegations in his petition filed before this Court appealing the IBP Board's Resolution suspending him from the practice of law.

[54] *Saludo, Jr. v. Court of Appeals,* G.R. No. 121404, May 3, 2006, 489 SCRA 14, 20.

Moreover, as expressed in Section 27, Rule 130 of the Rules of Court, an offer of compromise in the context of civil cases may not be taken as an admission of any liability. Demonstrably, this Court articulated the ratio behind the inadmissibility of similar offers for compromise in *Pentagon Steel Corporation v. Court of Appeals,*[55] where we reasoned that since the law favors the settlement of controversies out of court, a person is entitled to "buy his or her peace" without danger of being prejudiced in case his or her efforts fail.[56] Conversely, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented, and unnecessary litigation would result since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness[57] or an indirect admission of guilt.

In legal contemplation in the context of a disbarment proceeding, any offer or attempt at a compromise by the parties is not only inadmissible as evidence to prove guilt on the part of the offeror, but is in fact wholly extraneous to the proceeding, which resides solely within the province of the Court's disciplinary power. Any offer for compromise, being completely immaterial to the outcome of the disbarment complaint, may not hold sway for or impute guilt on any of the parties involved therein.

Seen in a similar light, Atty. Maglalang's prayer for the modification of penalty and reduction of the same may not be interpreted as an admission of guilt. At most, in the context in which it was implored, this may be reasonably read not as a remorseful admission but a plea for compassion—a reaction that is in all respects understandable, familiar to the common human experience, and consistent with his narration that he was likewise a victim of fraudulent representations of Goopio's sister. Furthermore, this prayer for a kinder regard cannot by

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[55] G.R. No. 174141, June 26, 2009, 591 SCRA 160.

[56] *Id.* at 170.

[57] *Id.*

any course limit the Court's independent disciplinary reach and consideration of the facts and merits of this case as has been presented before it.

This degree of autonomy is in no small measure due to the fact that administrative proceedings are imbued with public interest, public office being a public trust, and the need to maintain the faith and confidence of the people in the government, its agencies, and its instrumentalities demands that proceedings in such cases enjoy such level of independence.[58] As we maintained in *Reyes-Domingo v. Branch Clerk of Court,*[59] the Court cannot be bound by any settlement or other unilateral acts by the parties in a matter that involves its disciplinary authority; otherwise, our disciplinary power may be put for naught.

In the case at bar, the fact that Atty. Maglalang offered to restitute to Goopio the money award in no way precludes the Court from weighing in on the very merits of the case, and gauging them against the quantum of evidence required. No less than the public interest in disbarment proceedings necessitates such independent, impartial, and inclusive contemplation of the totality of evidence presented by the parties. Regrettably for the complainant in this case, her failure to comply with the elementary Best Evidence Rule caused her probative submissions to be weighed and found severely wanting.

As has been avowed by the Court, while we will not hesitate to mete out the appropriate disciplinary punishment upon lawyers who fail to live up to their sworn duties, we will, on the other hand, protect them from accusations that have failed the crucible of proof.[60]

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[58] See *Gacho v. Fuentes, Jr.,* A.M. No. P-98-1265, June 29, 1998, 291 SCRA 474.

[59] A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6.

[60] See *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, supra* note 44.

Accordingly, all premises considered, we cannot find Atty. Maglalang guilty of violating Section 27, Rule 138 of the Rules of Court as the case levelled against him by Goopio does not have any evidentiary leg to stand on. The latter's allegations of misrepresentation and deceit have not been substantiated as required by the applicable probative quantum, and her failure to present the best evidence to prove the authenticity of the subject documents places said documents well within the ambit of doubt, on the basis of which no punitive finding may be found. The General Power of Attorney allegedly issued in favor of Atty. Maglalang, and the acknowledgment receipts purportedly issued by the latter as proof of payment for his legal services are the documents which constitute the bedrock of the disbarment complaint. Goopio's failure to substantiate their authenticity with proof exposes the claims as those that stand on shifting sand. Her documentary evidence lacked the required probative weight, and her unproven narrative cannot be held to sustain a finding of suspension or disbarment against Atty. Maglalang. Hence, the dismissal of the disbarment complaint is in order, without prejudice to other remedies that Goopio may avail of for any monetary restitution due her, as the courts may deem proper.

However, we find that by his own recognition, Atty. Maglalang's "failure to discover the manipulations of his former client before the matter became worse"[61] is material negligence, for which the penalty of reprimand,[62] under the circumstances of the case at bar, may be consequently warranted.[63] Veritably, a lawyer must at all times exercise care and diligence in conducting the affairs of his practice, including the observation

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[61] *Rollo,* p. 168.

[62] Pursuant to Section 12(c) of Rule 139-B of the Rules of Court, where reprimand is enumerated as among the disciplinary sanctions available other than disbarment and suspension.

[63] See *Linsangan v. Tolentino,* A.C. No. 6672, September 4, 2009, 598 SCRA 133; *San Jose Homeowners Association Inc. v. Romanillos,* A.C. No. 5580, June 15, 2005, 460 SCRA 105; and *Salosa v. Pacete,* A.M. No. 107-MJ, August 27, 1980, 99 SCRA 347.

of reasonable due vigilance in ensuring that, to the best of his knowledge, his documents and other implements are not used to further duplicitous and fraudulent activities.

**WHEREFORE,** Atty. Ariel D. Maglalang is hereby **REPRIMANDED,** but the disbarment complaint against him is nevertheless **DISMISSED** for lack of merit. Let a copy of this decision be attached to his records.

**SO ORDERED.**

*Carpio*[*] *(Senior Associate Justice), Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

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## EN BANC

[A.C. No. 11724. July 31, 2018]
(Formerly CBD No. 14-4109)

**HDI HOLDINGS PHILIPPINES, INC.,** *complainant, vs.* **ATTY. EMMANUEL N. CRUZ,** *respondent.*

### SYLLABUS

**1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; THE QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE CASES AGAINST LAWYERS WHICH THE COMPLAINANT HAS THE BURDEN TO DISCHARGE.—** In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which

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[*] Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.

the complainant has the burden to discharge. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has a greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief compared to the presented contrary evidence.

**2. LEGAL ETHICS; ATTORNEYS; EXPECTED NOT ONLY TO BE PROFESSIONALLY COMPETENT, BUT TO ALSO HAVE MORAL INTEGRITY.—** Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity. Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly, and must uphold the integrity and dignity of the legal profession. Atty. Cruz failed in these respects as a lawyer. In the instant case, considering all the x x x infractions, it is beyond dispute that Atty. Cruz is guilty of engaging in dishonest and deceitful conduct.

**3. ID.; ID.; SHOULD ACCOUNT FOR THE MONEY OR PROPERTY RECEIVED FOR AND FROM THEIR CLIENTS.—** The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose as in cash for biddings and purchase of properties, as in this case, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01of the Code of Professional Responsibility. Atty. Cruz's failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.

**4. ID.; ID.; NOT BARRED FROM DEALING WITH THEIR CLIENTS BUT THE BUSINESS TRANSACTIONS MUST**

**BE CHARACTERIZED WITH UTMOST HONESTY AND GOOD FAITH.—** As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith. The measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard that is required in business dealings where the parties trade at arms length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to assure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor. Clearly, in the instant case, Atty. Cruz's acts of contracting unsecured personal loans and receiving money as loan proceeds from HDI, and thereafter failing to pay the same are indicative of his lack of integrity and sense of fair dealing.

**5. ID.; ID.; LAWYER-CLIENT RELATIONSHIP; IMBUED WITH TRUST AND CONFIDENCE AND THE RULE AGAINST BORROWING MONEY BY A LAWYER FROM HIS CLIENT IS INTENDED TO PREVENT THE LAWYER FROM TAKING ADVANTAGE OF HIS INFLUENCE OVER HIS CLIENT.—** The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. In *Frias v. Atty. Lozada,* the Court categorically declared that a lawyer's act of asking a client for a loan, as what Atty. Cruz did, is unethical and that the act of borrowing money from a client was a violation of Canon 16.04 of the CPR.

**6. ID.; ID.; GROSS MISCONDUCT; DELIBERATE FAILURE TO PAY JUST DEBTS, A CASE OF.—** [I]n borrowing money from HDI and thereafter failing to pay the same within the agreed period, Atty. Cruz failed to uphold the integrity and dignity of

the legal profession. We, thus, likewise find Atty. Cruz equally liable for violating Canon 7 of the CPR which reads: 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. That being said, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations.

**7. ID.; ID.; INTEGRATED BAR OF THE PHILIPPINES (IBP); THE DIRECTIVE OF THE IBP AS AN INVESTIGATING ARM OF THE SUPREME COURT IN ADMINISTRATIVE CASES AGAINST LAWYERS IS NOT A MERE REQUEST BUT AN ORDER WHICH SHOULD BE COMPLIED WITH PROMPTLY AND COMPLETELY.—** Atty. Cruz's indifference to the IBP's directives to file his comment on the allegations against him cannot be countenanced. He disregarded the proceedings before the IBP despite receipt of summons and notices. Atty. Cruz's act of not filing his answer and ignoring the hearings set by the Investigating Commissioner, despite due notice, further aggravated his already disgraceful attitude. As an officer of the Court, Atty. Cruz is expected to know that said directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely.

**8. ID.; ID.; MALPRACTICE AND GROSS MISCONDUCT; TAKING ADVANTAGE OF THE TRUST AND CONFIDENCE OF THE CLIENT, ENGAGING IN DISHONEST AND DECEITFUL CONDUCT AND FRAUDULENT ACTS FOR PERSONAL GAIN, AND DISRESPECTING THE IBP DUE TO NON-COMPLIANCE OF ITS DIRECTIVE CONSTITUTE MALPRACTICE AND GROSS MISCONDUCT; CASE AT BAR.—** Atty. Cruz demonstrated not just disregard of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. For taking advantage of the trust and confidence of the complainant, for engaging in dishonest and deceitful conduct

and fraudulent acts for personal gain, and disrespecting the IBP due to non-compliance of its directive to file comment, His acts constitute malpractice and gross misconduct in his office as attorney. His propensity to defraud his client, and the public in general, render him unfit to continue discharging the trust reposed in him as a member of the Bar. Atty. Cruz, indeed, deserves no less than the penalty of disbarment.

**APPEARANCES OF COUNSEL**

*Jimeno Cope & David Law Offices* for complainant.

**D E C I S I O N**

***PER CURIAM*:**

Before the Court is an administrative complaint filed by complainant HDI Holdings Philippines, Inc. (*HDI*), represented by Darmo N. Castillo,[1] against respondent Atty. Emmanuel N. Cruz (*Atty. Cruz*) for violations of Canons 16.01, 16.02, 16.03, 16.04 and 17 of the Code of Professional Responsibility (*CPR*).

The facts are as follows:

HDI is a domestic corporation duly organized and existing under the laws of the Philippines with office address at 4th Floor, Francisco Gold I Condominium, 784 Edsa, Quezon City, Philippines.

In its complaint, HDI alleged that on July 10, 2010, they retained the services of Atty. Cruz as its in-house corporate counsel and corporate secretary. In the beginning, HDI's directors and officers were pleased with Atty. Cruz's performance, thus, in time, he earned their trust and confidence that he was eventually tasked to handle the corporation's important and confidential matters. Ultimately, Atty. Cruz became a friend to most of HDI's directors, officers and staff members.

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[1] In a Board Resolution, HDI authorized Darmo N. Castillo to represent them in the institution of the instant case against Atty. Cruz; *rollo*, p. 18.

However, HDI lamented that Atty. Cruz's seeming friendliness was apparently a mere façade in order to gain the trust of HDI's officers and directors for his financial gain. HDI averred that through Atty. Cruz's deception and machinations, he managed to misappropriate a total of Forty- One Million Three Hundred Seventeen Thousand One Hundred Sixty-Seven and Eighteen Centavos (₱41,317,167.18), in the following manner, to wit:

***The cash bid and the unpaid personal loans***

On September 21, 2011, HDI released Three Million Pesos (₱3,000,000.00) in cash to Atty. Cruz to be used as cash bid for the purchase of a parcel of land located at E. Rodriguez Sr. Avenue. Atty. Cruz signed a cash voucher dated September 21, 2011 evidencing the receipt of the said amount.[2]

However, after HDI lost in the bid, Atty. Cruz failed to promptly return the money to the company. HDI made several demands to Atty. Cruz for the return of the money but it was only after four (4) months, or on January 18, 2012, when Atty. Cruz finally returned the said amount. Because Atty. Cruz eventually returned the ₱3 million, HDI gave him the benefit of the doubt and continued to trust him.

A few months later, sometime in April 2012, Atty. Cruz approached HDI's officers and asked for a Four Million Peso (₱4,000,000.00) personal loan allegedly to be used in purchasing his house. Based on his promises and his position with the company, HDI's officers loaned him the said amount. A Contract of Loan[3] was executed on April 30, 2012 between Atty. Cruz and Chia Tzu Chern, one of HDI's officers, where the former agreed to pay his loan in the amount of Four Million Pesos (₱4,000,000.00) by June 15, 2012.

Thereafter, on May 3, 2012, Atty. Cruz informed the management of HDI that there was going to be another bidding for the E. Rodriguez property. On May 9, 2012, he sent an e-

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[2] *Rollo*, p. 20.

[3] *Id.* at 21-22.

mail[4] to Conchita G. Nicolas, the Corporate Treasurer, asking for Three Million Pesos (₱3,000,000.00) for the bid deposit. Banking on his assurances to HDI that the same amount was fully refundable and/or convertible as earnest money for the sale, HDI again gave Three Million Pesos (₱3,000,000.00) to Atty. Cruz, who signed a check voucher[5] dated May 10, 2012 evidencing receipt of the said amount.

Few days later, Atty. Cruz asked for an additional Three Million Pesos (₱3,000,000.00) for the bid deposit, claiming that it will be added to their earlier bid deposit of ₱3,000,000.00, and that the same was likewise refundable and/or convertible as earnest money for the sale. On May 14, 2012, Atty. Cruz signed the check voucher[6] acknowledging receipt of the additional ₱3 million as cash bid bond.

On July 18 and 19, 2012, Atty. Cruz sent e-mails[7] to HDI's Chairman, Brandon Chia and begged for another Four Million Pesos (₱4,000,000.00) as personal loan. He alleged that his brother has a serious gambling problem, and that their family had been threatened by several loan sharks because of his brother's debts. The additional ₱4,000,000.00 personal loan was supposedly to pay off his brother's debts and keep his family out of harm. Feeling sorry for Atty. Cruz, Mr. Chia agreed to give him a loan out of his own pocket.

Thereafter, HDI learned that it did not win the rebidding on the E. Rodriguez property. Thus, HDI demanded for the immediate return of the Six Million Pesos (₱6,000,000.00) bid bond. However, despite several and repeated demands, Atty. Cruz did not heed the same.

Later, in an e-mail[8] dated September 27, 2012, Atty. Cruz confessed that he converted the allotted cash bid bond in the total amount of ₱6,000,000.00 for his personal use, to wit:

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[4] *Id*. at 22.

[5] *Id*. at 23.

[6] *Id*. at 25.

[7] *Id*. at 26-27.

[8] *Id*. at 28-29. (Emphasis supplied)

x x x It was at this time sir that my brother told us that he still had some obligations with some other financiers and that he was getting death threats already. My mom said that she really doesn't know how to pay for all of it immediately because of the staggering amount (14M including the first 4M). During that time sir I was supposed to get the bid bond for the second bid for the property beside our newly-acquired Petron property. We followed the same cash bid procedure sir in our first attempt to acquire the property. However, instead of remitting back the bond money after the bid just like our first attempt, out of desperation and for fear of the life of my family, ***I unilaterally decided to use that money sir instead of returning it. I thought of using it first to settle with the financiers and thereafter seek the help of other friends so I can immediately return the money to which I failed to do sir.***

Sir, in relaying to you this, I am not justifying or trying to rationalize out what I've done. I just wanted to relay what really happened. Bottom line sir, I know what I did was wrong sir and I deeply apologize for my act. I know I have affected a lot of things by my acts. I have not only placed myself at risk but also the company. My personal concerns got in the way of my work and for that I'm truly sorry.

Believing Atty. Cruz's sincerity in his apology and that he truly acted out of concern for his family, HDI forgave him and agreed to just convert the misappropriated Six Million Pesos (₱6,000,000.00) into another loan. Thus, another Contract of Loan[9] was executed, this time for the amount of Ten Million Pesos (₱10,000,000.00), representing the second Four Million Pesos (₱4,000,000.00) loan made in July, plus the missing Six Million Pesos (₱6,000,000.00). On September 15, 2012, Atty. Cruz also executed an acknowledgment, admitting his Ten Million Peso (₱10,000,000.00) outstanding debt to Mr. Chia.[10]

***Transaction concerning the property covered by TCT No. 75276***

Sometime in the last quarter of 2011, Capital Growth Inc. (*CGI*), a corporation wholly-owned by HDI Holdings, Inc., through Atty. Cruz, arranged and facilitated the purchase of a

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[9] *Id.* at 30-31.

[10] *Id.* at 32.

parcel of land covered by Transfer Certificate of Title (*TCT*) No. 75276[11] which was co-owned by Francisco G. Castillo, Francisco Castillo, and Cristina C. Castillo.

On December 21, 2011, Atty. Cruz sent an e-mail to Mr. Chia, informing him that CGI intended to make payment of the purchase price of the property and thus requested Mr. Chia, being the Chairman of HDI, for an amount of Twenty-Six Million Nine Hundred Eighty-Seven Thousand Five Hundred Pesos (₱26,987,500.00). The said amount was released by CGI, upon Atty. Cruz's instructions to one Atty. Mauro Anthony Cabading III (*Atty. Cabading*), the alleged attorney-in-fact of the Castillo family, who duly acknowledged receipt of the payment.[12]

Thereafter, CGI asked Atty. Cruz several times about the transfer of the title of the property to the company's name but the latter gave no definite answers. Consequently, on July 16, 2013, or more than a year later, a representative of CGI met with Francisco C. Castillo, the seller. It was then that HDI discovered that the purchase price of the property was only Twenty-Five Million Two Hundred Ninety-Eight Thousand Four Hundred Pesos (₱25,298,400.00) and that they only received the said amount, and not the ₱26,987,500.00 as Atty. Cruz's claimed. Further, the Castillo family informed them that they never authorized Atty. Cabading to be their attorney-in-fact.

After discovering the discrepancy of ₱1,689,100.00 from the true purchase price of the property, CGI demanded from Atty. Cruz and Atty. Cabading the return of the difference in the overpriced amount. However, despite numerous verbal demands made by HDI, Atty. Cruz failed to return the ₱1,689,100.00.

***The fictitious sale of a certain Quezon City property covered by TCT no. N-308973***

On May 10, 2012, Atty. Cruz sent an e-mail[13] to Mr. Chia, informing him of a 500 square meter property for sale located

[11] *Id.* at 33-35.

[12] *Id.* at 36.

[13] *Id.* at 37.

in Quezon City, covered by TCT No. N-308973. They were told that the owner of the Quezon City property died, and the heirs who now owned the same were already entertaining buyers. Atty. Cruz further stated in his e-mail that:

> As advised by their lawyer, the family is really intending to sell it already so sir we might need to firm up in paper with them already as [there] are other interested parties, I would like to ask for your advise regarding the offer that I will be making tom sir."[14]

On May 12, 2012, Atty. Cruz sent another e-mail[15] to Mr. Chia confirming the meeting with the sellers and their lawyer and alleged that he offered ₱42,500.00 per square meter, as advised, which price the heirs found acceptable. Thereafter, Atty. Cruz advised Mr. Chia that the heirs required an earnest money of ₱5,000,000.00 but the full payment of the purchase price of ₱21,250,000.00 should immediately follow. He added that it was subject to full reimbursement in the event the heirs defaulted in the contract.

Because Atty. Cruz emphasized the urgency of the sale, HDI immediately started processing the earnest money of ₱5,000,000.00 to be given to the heirs. Atty. Cruz then informed HDI that the check should be payable again to Atty. Cabading, the alleged family lawyer of the heirs.

On May 15, 2012, HDI gave a Planters Bank Cashier's Check No. 578376[16] in the amount of Five Million Pesos (₱5,000,000.00) to Atty. Cruz as earnest money for the QC property. In return, copies of the contract to sell and deed of absolute sale signed by a certain Federico Castillo II as the seller were given to HDI.[17]

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[14] *Id.*

[15] *Id.* at 38.

[16] *Id.* at 40.

[17] *Id.* at 41-49.

On May 23, 2012, HDI released to Atty. Cruz another cashier's check[18] in the amount of Sixteen Million Two Hundred Fifty Thousand Pesos (₱16,250,000.00) representing the balance on the full purchase price of the Q.C. property, payable to Atty. Cabading. The two manager's checks were deposited into the Banco De Oro Account No. 2138009864 of Cabading.

Thereafter, HDI followed up with Atty. Cruz the transfer of the title of the QC property in its name but nothing happened. Consequently, HDI directly communicated with one of the heirs, Mr. Jose Castillo. To HDI's surprise, it turned out that the QC property was never sold to HDI, and the owners of the QC property was not at all interested in selling the property. Further, HDI found out that the alleged heirs did not have a family lawyer by the name of Atty. Cabading. The signed copies of the contract to sell and deed of absolute sale turned out to be mere forgeries as there was also no person in the name of Federico Castillo II, the supposed named seller in the documents.

Due to this discovery, HDI demanded from Atty. Cruz the return of the total amount of Twenty One Million Two Hundred Fifty Thousand Pesos (₱21,250,000.00), which was released to him for the purchase of the Q.C. property. To date, Atty. Cruz has ignored HDI's demands, and there has been no attempt on his part to return the ₱21,250,000.00 he pocketed.

***The unremitted rentals***

CGI owned two (2) parcels of land located at E. Rodriguez Sr. Avenue covered by TCT Nos. 104620 and 104621 which were being leased to Petron Corporation until March 6, 2018.

Since 2011, HDI, through CGI, has not received rental payments from Petron. Consequently, in the afternoon of July 2, 2013, the Executive Assistant to the Chairman of HDI, Ms. Wilhelmina Liwanag, called Petron to inquire and/or follow up on the unpaid rentals from 2011 to 2012 due to HDI as the new owner of CGI. She was then informed that two (2) checks

[18] *Id.* at 142.

were already released to Atty. Cruz after he presented a Secretary's Certificate[19] authorizing himself to receive the rental payments.

The next day, Ms. Liwanag, together with the Chairman of HDI and a director of CGI, went to the office of Petron at SMC Head Office complex to verify the truth of Petron's officer's claims. They were presented the following documents:

a. The unauthorized Secretary's Certificate dated January 10, 2013[20] which purportedly authorized Atty. Cruz and a certain Adolph Ilas to collect the rental payments for the subject property;

b. Acknowledgment receipts for the rental payments signed by Atty. Cruz;[21]

c. Photocopies of the checks received by Atty. Cruz, *i.e.,* the first check received on January 18, 2013 in the amount of Two Million One Hundred Fifty Thousand Two Hundred Eighty-Two Pesos and Twenty-Five Centavos (₱2,150,282.25);[22] and the second check, in the form of manager's check received on March 12, 2013 in the amount of Two Million Two Hundred Fifty-Seven Thousand Seven Hundred Eighty-Four Pesos and Ninety-Three Centavos (₱2,257,784.93);[23] and

d. Two Bureau of Internal Revenue Forms No. 2307 with Atty. Cruz as the named payee.[24]

Upon discovery, HDI immediately demanded from Atty. Cruz the rental payments in the total amount of Four Million Four Hundred Eight Thousand Sixty-Seven Pesos and Eighteen Centavos (₱4,408,067.18)[25] which he failed to turn over.

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[19] *Id*. at 50.

[20] *Id*.

[21] *Id*. at 51.

[22] *Id*.

[23] *Id*. at 52.

[24] *Id*. at 53-54.

[25] *Id.* at 154-155.

Later, HDI finally decided to confront him about his actions. On July 4, 2013, Atty. Cruz went to HDI's office where he broke down and admitted to everything. After writing his confession,[26] Atty. Cruz likewise tendered his resignation from HDI. On the same occasion, Atty. Cruz's relatives were present and also expressed their commitment to help pay Atty. Cruz's debts with HDI.[27]

However, even after several demand letters, Atty. Cruz failed to return the misappropriated money.

Considering the above-cited actuations of Atty. Cruz, it is evident that he violated Canon 1, Rule 1.01, Rule 1.02, Canon 7, Rule 7.03, Rules 16.01, 16.02, 16.03, 16.04 and 17 of the Code of Professional Responsibility. HDI alleged that Atty. Cruz failed to live up to the standards expected of a lawyer, thus, he should be disbarred from the practice of law.

On February 5, 2014, the Integrated Bar of the Philippines (IBP) directed Atty. Cruz to file his Answer on the complaint against him.[28]

During the mandatory conference before the IBP- Commission on Bar Discipline (*IBP-CBD*), only the counsel for HDI appeared. Thus, on October 7, 2014, the IBP-CBD terminated the preliminary mandatory conference and directed the parties to submit their respective position papers.

On July 6, 2015, in its Report and Recommendation,[29] the IBP-CBD recommended that Atty. Cruz be disbarred from the practice of law.

In a Resolution No. XXII-2016-446[30] dated August 27, 2016, the IBP-Board of Governors resolved to adopt and approve the report and recommendation of the IBP-CBD.

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[26] *Id*. at 55-58.

[27] *Id*. at 59-60.

[28] *Id*. at 70.

[29] *Id*. at 171-181.

[30] *Id*. at 169-170.

***RULING***

We adopt the findings and recommendation of the IBP.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which the complainant has the burden to discharge. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has a greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief compared to the presented contrary evidence.[31]

However, in the instant case, Atty. Cruz has chosen to remain silent despite the severity of the allegations against him. He was given several opportunities to comment on the charges yet no comment came. The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentive videtur.* Silence gives consent.[32]

Thus, we find that the evidence submitted by HDI, *albeit* secondary evidence only being mere photocopies, when put together with Atty. Cruz' written confession[33] and his subsequent non-cooperation during the proceedings before the IBP, would give a convincing conclusion that indeed Atty. Cruz is guilty of the following reprehensible acts, to wit:

(a) misappropriation of the cash bid in the total amount of ₱6,000,000.00 which remains unpaid;

(b) contracting unsecured personal loans with HDI in the total amount of ₱8,000,000.00 which remains unpaid;

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[31] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 407-408 (2013).

[32] *Judge Noel-Bertulfo v. Nuñez*, 625 Phil. 111, 121 (2010), citing *Grefaldeo v. Judge Lacson,* 355 Phil. 266, 271 (1998).

[33] *Supra* note 26.

(c) deceiving HDI as to the true selling price of the Q.C. property which resulted in overpayment in the amount of ₱1,689,100.00 which remains unpaid;

(d) fabricating a fictitious sale by executing a fictitious contract to sell and deed of sale in order to obtain money in the amount of ₱21,250,000.00 from HDI which remains unpaid;

(e) collecting rental payments amounting to ₱4,408,067.18, without authority, and thereafter, failed to turn over the same to HDI; and

(f) executing a fake Secretary's Certificate appointing himself as the authorized person to receive the payments of the lease rentals.

Canon 1 and Rule 1.01 of the CPR provide:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.0 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity.[34] Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly, and must uphold the integrity and dignity of the legal profession. Atty. Cruz failed in these respects as a lawyer.

In the instant case, considering all the above-cited infractions, it is beyond dispute that Atty. Cruz is guilty of engaging in dishonest and deceitful conduct. In several occasions, he manifested a propensity to lie and deceive his client in order to obtain money. Obviously, his misrepresentations in order to compel HDI to release money for cash bids, fictitious purchase of a property, the overpriced purchase price of the Q.C. property and his misrepresentation that he had authority to collect rentals in behalf of HDI and CGI, as well as his execution of fictitious

[34] See *Arciga v. Maniwang*, 193 Phil. 730, 735 (198l).

documents to give semblance of truth to his misrepresentations, constitute grave violations of the CPR and the lawyer's oath. These reprehensible conduct of Atty. Cruz without doubt breached the highly fiduciary relationship between lawyers and clients.

This Court also sees it fit to note that the CPR strongly condemns Atty. Cruz's conduct in handling the funds of HDI. Rules 16.01 and 16.02 of the Code provides:

> Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose as in cash for biddings and purchase of properties, as in this case, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01of the Code of Professional Responsibility.[35]

Atty. Cruz's failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[36]

Atty. Cruz's unbecoming conduct towards complainant did not stop here. Records reveal that he likewise violated Canon

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[35] See *Treñas v. People*, 680 Phil. 368, 387 (2012).

[36] *Id.*

16.04 of the CPR, which states that *"[a] lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client."*

In his private capacity, Atty. Cruz requested from HDI, not just one, but two loans of considerable amounts as evidenced by contracts of loan and acknowledgement receipts, the authenticity of which was undisputed. The first time, he borrowed ₱4,000,000.00 for the purchase of his house; and the second time, he borrowed another ₱4,000,000.00 in order to help his brother who allegedly has serious gambling debts. Apparently, these acts of borrowing money were committed by Atty. Cruz in his private capacity but were assented to by HDI because of the trust and confidence it has in him as a lawyer. Worse, the loans were unsecured which left HDI unprotected.

As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty andgood faith. The measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard that is required in business dealings where the parties trade at arms length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to assure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor.[37] Clearly, in the instant case, Atty. Cruz's acts of contracting unsecured personal loans and receiving money as loan proceeds from HDI, and thereafter failing to pay the same are indicative of his lack of integrity and sense of fair dealing.

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[37] *Nakpil v. Atty. Valdes*, 350 Phil. 412, 424 (1998).

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. In *Frias v. Atty. Lozada,*[38] the Court categorically declared that a lawyer's act of asking a client for a loan, as what Atty. Cruz did, is unethical and that the act of borrowing money from a client was a violation of Canon 16.04 of the CPR.

Corollary, in borrowing money from HDI and thereafter failing to pay the same within the agreed period, Atty. Cruz failed to uphold the integrity and dignity of the legal profession. We, thus, likewise find Atty. Cruz equally liable for violating Canon 7 of the CPR which reads: 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.

That being said, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations.[39]

Finally, Atty. Cruz's indifference to the IBP's directives to file his comment on the allegations against him cannot be countenanced. He disregarded the proceedings before the IBP

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[38] 513 Phil. 512, 521 (2005).

[39] *Barrientos v. Atty. Libiran-Meteoro*, 480 Phil. 661, 671 (2004).

despite receipt of summons and notices. Atty. Cruz's act of not filing his answer and ignoring the hearings set by the Investigating Commissioner, despite due notice, further aggravated his already disgraceful attitude.[40] As an officer of the Court, Atty. Cruz is expected to know that said directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely.[41]

Considering the above-cited infractions, it is, thus, beyond dispute that Atty. Cruz demonstrated not just disregard of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. For taking advantage of the trust and confidence of the complainant, for engaging in dishonest and deceitful conduct and fraudulent acts for personal gain, and disrespecting the IBP due to non-compliance of its directive to file comment, His acts constitute malpractice and gross misconduct in his office as attorney. His propensity to defraud his client, and the public in general, render him unfit to continue discharging the trust reposed in him as a member of the Bar. Atty. Cruz, indeed, deserves no less than the penalty of disbarment.

However, insofar as the return of the misappropriated money, the same should be qualified. As to the money which Atty. Cruz borrowed as personal loan, the Court cannot order him to return the money the borrowed from complainant in his private capacity. Complainant may file a separate civil case against Atty. Cruz for this purpose.

In *Foster v. Atty. Agtang,*[42] the Court held that it cannot order the lawyer to return money to complainant if he or she acted in a private capacity because its findings in administrative cases have no bearing on liabilities which have no intrinsic link to the lawyer's professional engagement. In disciplinary

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[40] *Rollo*, p. 171.

[41] *Gone v. Atty. Ga*, 662 Phil. 610, 617 (2011).

[42] 749 Phil. 576, 596 (2014).

proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. The only concern of the Court is the determination of respondent's administrative liability. Its findings have no material bearing on other judicial actions which the parties may choose against each other.[43]

However, insofar as the money received by Atty. Cruz from HDI, in his professional capacity, to wit: ₱6,000,000.00, representing the total amount released for bidding;[44] ₱21,250,000.00, representing the total amount released for the purported purchase of a property which turned out to be fictitious;[45] ₱4,408,067.18 representing the unremitted rentals from Petron,[46] and ₱1,689,100.00 representing the overpayment in the overpriced Q.C. property,[47] these amounts should be returned as it was borne out of their professional relationship.

***PENALTY***

Jurisprudence reveals that in similar cases[48] where lawyers abused the trust and confidence reposed in them by their clients as well as committed unlawful, dishonest, and deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them.

As the infractions in the foregoing cases are similar to those committed by Atty. Cruz, in the instant case, the Court deems that the same penalty of disbarment be imposed against him. Clearly, as herein discussed, Atty. Cruz committed deliberate violations of the Code as he dishonestly dealt with HDI and

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[43] *Roa v. Atty. Moreno*, 633 Phil. 1, 8 (2010).

[44] *Supra* note 3.

[45] *Supra* note 17.

[46] *Supra* note 25.

[47] *Supra* note 13.

[48] *Tabang v. Atty. Gacott*, 713 Phil. 578 (2013); *Brennisen v. Atty. Contawi*, 686 Phil. 342 (2012); *Sabayle v. Hon. Tandayag*, 242 Phil. 224 (1988); *Daroy v. Legaspi*, 160 Phil. 306 (1975).

misappropriated the funds intended to a specific purpose for his personal gain. Atty. Cruz, thus, deserves the ultimate punishment of disbarment.

**IN VIEW OF ALL THE FOREGOING,** we find respondent **ATTY. EMMANUEL CRUZ**, guilty of gross misconduct by violating the Canon of Professional Responsibility through his unlawful, dishonest, and deceitful conduct, and willful disobedience of lawful orders rendering him unworthy of continuing membership in the legal profession. He is thus ordered **DISBARRED** from the practice of law and his name stricken off of the Roll of Attorneys, effective immediately.

Furthermore, Atty. Cruz is **ORDERED** to **RETURN** to complainant HDI the amounts of ₱6,000,000.00, ₱21,250,000.00, ₱4,408,067.18 and ₱1,689,100.00, with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal file of respondent. All the courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and quasi-judicial agencies of the Republic of the Philippines.

**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**

[G.R. No. 205698. July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF)** *petitioner, vs.* **CHRISTINA SAGUN,** *respondent.*

[G.R. No. 205780. July 31, 2018]

**DEPARTMENT OF JUSTICE, rep. by SEC. LEILA DE LIMA, STATE PROSECUTOR THEODORE M. VILLANUEVA, and PROSECUTOR GENERAL CLARO A. ARELLANO, and THE NATIONAL BUREAU OF INVESTIGATION (NBI),** *petitioners, vs.* **CHRISTINA SAGUN,** *respondent.*

[G.R. No. 208744. July 31, 2018]

**DEPARTMENT OF JUSTICE,** *petitioner, vs.* **DELFIN S. LEE,** *respondent.*

[G.R. No. 209424. July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF)** *petitioner, vs.* **GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, DELFIN S. LEE, in his capacity as the President of the Corporation, and TESSIE G. WANG,** *respondents.*

[G.R. No. 209446. July 31, 2018]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **ALEX M. ALVAREZ,** *respondent.*

[G.R. No. 209489. July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF)** *petitioner, vs.* **ATTY. ALEX M. ALVAREZ,** *respondent.*

[G.R. No. 209852. July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF)** *petitioner, vs.* **DELFIN S. LEE,** *respondent.*

[G.R. No. 210095. July 31, 2018]

**DEPARTMENT OF JUSTICE,** *petitioner, vs.* **DELFIN S. LEE,** *respondent.*

[G.R. No. 210143. July 31, 2018]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **DELFIN S. LEE,** *respondent.*

[G.R. No. 228452. July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF)** *petitioner, vs.* **DEXTER L. LEE,** *respondent.*

[G.R. No. 228730. July 31, 2018]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **DEXTER L. LEE,** *respondent.*

[G.R. No. 230680. July 31, 2018]

**CRISTINA SALAGAN,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and HOME DEVELOPMENT MUTUAL FUND (HDMF),** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; SEPARATE JUDGMENTS; A PARTIAL SUMMARY JUDGMENT IS A SEPARATE JUDGMENT THAT DOES NOT ALWAYS RESULT IN THE FULL ADJUDICATION OF ALL THE ISSUES RAISED IN A CASE; IT IS AN INTERLOCUTORY JUDGMENT THAT COULD BE**

**ASSAILED ONLY THROUGH *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; CASE AT BAR.—** A partial summary judgment like that rendered on January 30, 2012 by the Makati RTC was in the category of a separate judgment. Such judgment did not adjudicate damages, and still directed that further proceedings be had in order to determine the damages to which Globe Asiatique and Delfin Lee could be entitled. Section 4, Rule 35 of the *Rules of Court* thus came into operation. xxx Worthy to emphasize is that the rendition of a summary judgment does not always result in the full adjudication of all the issues raised in a case. In such event, a partial summary judgment is rendered in the context of Section 4, *supra*. Clearly, such a partial summary judgment – because it does not put an end to the action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for – cannot be considered a final judgment. It remains to be an interlocutory judgment or order, instead of a final judgment, and is not to be dealt with and resolved separately from the other aspects of the case. xxxConsidering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment or order could be appealed. Section 1, Rule 41 of the *Rules of Court* makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order. x xx Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through *certiorari* under Rule 65 of the *Rules of Court*. Thus, the HDMF properly instituted the special civil action for *certiorari* to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

**2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT-OWNED AND -CONTROLLED CORPORATIONS (GOCCs); A GOCC LIKE HOME DEVELOPMENT MUTUAL FUND (HDMF) SHOULD BE REPRESENTED BY THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) IN ITS LEGAL MATTERS, EXCEPT IN SOME EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES WHEN IT IS ALLOWED TO ENGAGE THE SERVICES OF PRIVATE COUNSELS, PROVIDED SUCH ENGAGEMENT IS WITH WRITTEN**

**CONFORMITY OF THE SOLICITOR GENERAL OR THE GOVERNMENT CORPORATE COUNSEL AND THE WRITTEN CONCURRENCE OF THE COMMISSION ON AUDIT.—**The HDMF is a government-owned and -controlled corporation (GOCC) performing proprietary functions with original charter or created by special law, specifically Presidential Decree (P.D.) No. 1752, amending P.D. No. 1530. As a GOCC, the HDMF's legal matters are to be handled by the Office of the Government Corporate Counsel (OGCC), save for some extraordinary or exceptional circumstances when it is allowed to engage the services of private counsels, provided such engagement is with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the Commission on Audit (COA). xxx The records reveal that although the OGCC authorized the HDMF to engage the services of the Yorac Law Firm, the HDMF did not sufficiently prove that the written concurrence of the COA had been obtained.

**3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION SHALL BE FILED WITHIN 60 DAYS FROM THE RECEIPT OF THE JUDGMENT, ORDER OR RESOLUTION SOUGHT TO BE ASSAILED; EXCEPTIONS; CASE AT BAR.—**There are instances, xxx when the rigidity of the rule requiring the petition for *certiorari* to be filed within 60 days from the receipt of the judgment, order, or resolution sought to be thereby assailed has been relaxed, such as: (1) when the most persuasive and weighty reasons obtain; (2) when it is necessary to do so in order to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) in case of the good faith of the defaulting party by immediately paying within a reasonable time of the default; (4) when special or compelling circumstances exist; (5) when the merits of the case so demand; (6) when the cause of the delay was not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) when there is no showing that the review sought is merely frivolous and dilatory; (8) when the other party will not be unjustly prejudiced thereby; (9) in case of fraud, accident, mistake or excusable negligence without the appellant's fault; (10) when the peculiar legal and equitable circumstances attendant to each case so require; (11) when

substantial justice and fair play are thereby served; (12) when the importance of the issues involved call for the relaxation; (13) in the exercise of sound discretion by the court guided by all the attendant circumstances; and (14) when the exceptional nature of the case and strong public interest so demand.Herein, the broader interest of justice and the attendant peculiar legal and equitable circumstances dictated that the HDMF's petition for *certiorari* be resolved on its merits despite its filing beyond the reglementary period. The HDMF believed in good faith that it had duly filed the motion for reconsideration vis-à-vis the January 30, 2012 summary judgment. Although the Makati RTC noted the HDMF's failure to secure the COA's concurrence, and resolved to treat the HDMF's motion for reconsideration as a mere scrap of paper, the reglementary period to file the petition for *certiorari* had already lapsed, such failure to file on time was not entirely attributable to the fault or negligence of the HDMF.

**4. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE IS WITH THE PROSECUTOR WHICH MAY ONLY BE INTERVENED BY THE COURT WHEN THERE IS GRAVE ABUSE OF DISCRETION.—**The concept of probable cause has been discussed in *Napoles v. De Lima* as follows: xxx During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may

produce[.]" xxxWhile the courts are generally not permitted to substitute their own judgments for that of the Executive Branch in the discharge of its function of determining the existence of probable cause during the preliminary investigation,the intervention of the courts may be permitted should there be grave abuse of discretion in determining the existence of probable cause on the part of the investigating prosecutor or the Secretary of Justice.

**5. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689(INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR *ESTAFA*); SYNDICATED *ESTAFA*; ELEMENTS; CAN ONLY BE COMMITTED BY A SYNDICATE OF FIVE OR MORE PERSONS CREATED FOR THE SOLE PURPOSE OF DEFRAUDATION BY MISAPPROPRIATING MONEYS CONTRIBUTED BY MEMBERS OF RURAL BANKS, COOPERATIVES, *SAMAHANG NAYON* OR FARMERS' ASSOCIATION, OR OF FUNDS SOLICITED BY CORPORATIONS/ ASSOCIATIONS FROM THE GENERAL PUBLIC; CASE AT BAR.—**P.D. No. 1689 condemns the taking by fraud or deceit of funds contributed by members of rural banks, cooperatives, *samahang nayon* or farmers' associations, or of funds solicited by corporations or associations from the general public as such taking poses a serious threat to the general public. The elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling, as defined in Articles 315 and 316 of the *Revised Penal Code*, is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by the stockholders, or members of rural banks, cooperative, *samahang nayon(s),* or farmers' associations, or of funds solicited by corporations/associations from the general public. xxx Based on the foregoing elements of syndicated *estafa*, the Court holds that the CA did not err in reversing the August 10, 2011 *Review Resolution* of the DOJ insofar as Sagun was concerned and in quashing the warrants of arrest issued against the respondents. In the same manner, we find and so hold that the CA erred in upholding the propriety of the issuance of the warrant of arrest against Salagan.

**6. ID.; ID.; SYNDICATE; DEFINED AS CONSISTING OF FIVE OR MORE PERSONS FORMED WITH THE INTENTION**

**OF CARRYING OUT THE UNLAWFUL OR ILLEGAL ACT, TRANSACTION, ENTERPRISE OR SCHEME, THREE STANDARDS BY WHICH A GROUP OF PURPORTED SWINDLERS MAY BE CONSIDERED A SYNDICATE; CASE AT BAR.—**A syndicate is defined by P.D. No. 1689 as consisting of **five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme**. The Court has clarified in *Remo v. Devanadera* that in order for any group to be considered a syndicate under P.D. No. 1689 – xxx Dissecting the pronouncement in *Galvez* for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PO No. 1689: 1. They must be at least five (5) in number; 2. They must have formed or managed a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public. 3.They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme *i.e*., they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors. None of the three abovementioned standards for determining the existence of a syndicate was present.

**7. ID.; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; ELEMENTS; ESTABLISHED IN CASE AT BAR.—**An examination of the records reveals that there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple *estafa.* The first three elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* – (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; and (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property – obtained in this case. x xx The first two elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* are satisfied if the false pretense or fraudulent act is committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation

constitutes the very cause or the only motive that induces the offended party to part with his money.

**8. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; DEPARTMENT OF JUSTICE; MANDATED TO INVESTIGATE THE COMMISSION OF CRIMES AND TO PROSECUTE THE OFFENDERS; INJUNCTION WILL NOT LIE TO ENJOIN A CRIMINAL PROSECUTION.—**The Pasig RTC issued the assailed April 10, 2013 order enjoining the DOJ from proceeding with the preliminary investigation of the second, third, and fourth complaints for syndicated *estafa* against Globe Asiatique, *et al*. because of its impression that the summary judgment rendered by the Makati RTC in favor of Globe Asiatique had effectively removed the indispensable element of damage from the criminal complaints. The Pasig RTC undeniably gravely abused its discretion in issuing the writ of preliminary injunction. It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts. The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality. x xx We emphasize yet again that the conduct of a preliminary investigation, being executive in nature, was vested in the DOJ. As such, the injunction issued by the Pasig RTC inexcusably interfered with the DOJ's mandate under Section 3(2), Chapter 1, Title III, Book IV of the *Administrative Code of 1987* to investigate the commission of crimes and to prosecute the offenders.

**9. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF THE LAW OF THE CASE; PRECLUDES DEPARTURE IN A SUBSEQUENT PROCEEDING ESSENTIALLY INVOLVING THE SAME CASE FROM A RULE PREVIOUSLY MADE BY AN APPELLATE COURT; APPLICATION IN CASE AT BAR.—**Equally worthy of emphasis is that the ruling of the CA in C.A.-G.R. SP No. 121594 attained finality after the Court reviewed such ruling in G.R. No. 201360. Considering that the petitions against the DOJ arose from the same factual milieu and sought the same relief,

which was to restrain the DOJ from conducting preliminary investigations against Globe Asiatique and its officers and employees upon the complaints filed before the DOJ, and considering further that the cases involved the same parties and reprised the arguments, the doctrine of the law of the case certainly applied to bar a different outcome. At the very least, the Pasig RTC should have been very well instructed thereby, and should have avoided the incongruous situation of ignoring what was already the clear law of the case. The doctrine of the law of the case precludes departure in a subsequent proceeding essentially involving the same case from a rule previously made by an appellate court. Indeed, the issue submitted for the Pasig RTC's determination had been resolved by the CA in CA-G.R. SP No. 121594 to the effect that the Pasig RTC could not enjoin the DOJ from proceeding with the preliminary investigation of the second complaint. As far as the parties were concerned, therefore, the propriety of the DOJ's conduct of the preliminary investigation was no longer an unresolved issue.

**PERLAS-BERNABE, *J., separate opinion*:**

**1. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The elements of *estafa* as contemplated in [Section 315 (2) (a) of the Revised Penal Code] are the following: (*a*) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (*b*) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (*c*) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (*d*) that, as a result thereof, the offended party suffered damage. xxx With these in mind, it is my opinion that there is probable cause to believe that *estafa* under Article 315 (2) (a) of the RPC was committed by all of the respondents, considering that HDMF was induced to enter into various FCAs and a MOA with GA based on its understanding that GA would only process the applications of *bona fide* Pag-IBIG members who have been properly evaluated and approved in accordance with the program's housing guidelines. Because of the execution of such FCAs and MOA, HDMF released funds to GA via numerous

loan takeouts for the latter's Xevera Project. However, unknown to HDMF, GA implemented fraudulent designs, such as the "special buyers" scheme, to make it appear that it had various buyers/borrowers for the Xevera Project, when in truth, most of such buyers/borrowers were fictitious, not qualified to avail of such loans, or even persons who merely signed documents in exchange for money offered to them by GA. Case law states that: Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.In this case, HDMF was evidently prejudiced by the scheme employed by GA, through its officers and agents, as HDMF unduly released public funds to GA, which it had yet to recover. In fact, as soon as HDMF stopped its fund releases to GA, the latter's Performing Accounts Ratio for the Xevera Project went from 95% to 0%.

2. **ID.; PRESIDENTIAL DECREE NO. 1689 (INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR *ESTAFA*); SYNDICATED *ESTAFA*; ELEMENTS; THERE IS NO SYNDICATED *ESTAFA* WHEN, REGARDLESS OF THE NUMBER OF THE ACCUSED, THE ENTITY SOLICITING FUNDS FROM THE GENERAL PUBLIC IS THE VICTIM AND NOT THE MEANS THROUGH WHICH THE *ESTAFA* IS COMMITTED, OR THE OFFENDERS ARE NOT OWNERS OR EMPLOYEES WHO USED THE ASSOCIATION TO PERPETRATE THE CRIME; CASE AT BAR.—** [T]he elements of syndicated *estafa* are: (*a*)*estafa* or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (*b*) the *estafa* or swindling is committed by a syndicate of five (5) or more persons; and (*c*) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)," or farmers' association, or of funds solicited by corporations/associations from the general public.xxx[T]he first element of syndicated *estafa* has been shown to be present. Correlatively, as the *estafa* was allegedly committed by at least five (5) individuals, there exists a "syndicate" within the purview of PD 1689, and thus, the second element of syndicated *estafa* is likewise present. However, the third and last element of syndicated *estafa*, as discussed by the

*ponencia*, is not present in this case.As earlier stated, the third element of syndicated *estafa* is that the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)," or farmers' association, **or of funds solicited by corporations/ associations from the general public**. Essentially, the wide-scale defraudation of the public through the use of corporations/ associations is the gravamen of syndicated *estafa*. xxx After a careful study of this case, I find the third element to be lacking. Based on the allegations of the complaint, it is apparent that the thrust thereof is respondents' purported defraudation of HDMF which induced it to release funds. This is not a criminal case filed by members of the general public, such as buyers of the Xevera Project, claiming that rural banks, cooperatives, "*samahang nayon*(*s*)," and farmers' association or corporations/ associations solicited funds from them, but later on resulted into them being defrauded. To be sure, the fact that the funds released by HDMF are in the nature of public funds does not mean that syndicated es*tafa* was committed. The operative factor is whether or not the fraud was committed against the general public. On this point, the case of *Galvez v. CA* illumines, among others, that PD 1689 does not apply when, regardless of the number of the accused, (*a*) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (*b*) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies.

**3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF OFFICIAL ACTS MAY BE REBUTTED BY AFFIRMATIVE EVIDENCE OF IRREGULARITY OR FAILURE TO PERFORM A DUTY; CASE AT BAR.—**[T]he audit conducted by HDMF was made pursuant to its investigatory powers which is incidental to its power "[t]o ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private xxx" under Section 13 (q) of Republic Act No. (RA) 9679, known as "*Home Development Mutual Fund Law of 2009, otherwise known as Pag-IBIG (Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industriya at Gobyerno) Fund*." Therefore, it

cannot be denied that the audit was an official function, which hence, must be accorded the presumption of regularity. Case law states that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness."

**4. CRIMINAL LAW; CONSPIRACY; IN DETERMINING WHETHER CONSPIRACY EXISTS, IT IS NOT SUFFICIENT THAT THE ATTACK BE JOINT AND SIMULTANEOUS FOR SIMULTANEOUSNESS DOES NOT ITSELF DEMONSTRATE THE CONCURRENCE OF WILL OR UNITY OF ACTION AND PURPOSE WHICH ARE THE BASES OF THE RESPONSIBILITY OF THE ASSAILANTS; WHAT IS DETERMINATIVE IS PROOF ESTABLISHING THAT THE ACCUSED WERE ANIMATED BY ONE AND THE SAME PURPOSE; CASE AT BAR.—** [I]t is my submission that there is probable cause to believe that all respondents, *i.e.*, Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez, conspired and confederated with one another in order to commit the fraudulent acts against HDMF. In this regard, jurisprudence instructs that "in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose."

**5. ID.; CRIMINAL LIABILITY; IF THE VIOLATION OR OFFENSE IS COMMITTED BY A CORPORATION, PARTNERSHIP, ASSOCIATION OR OTHER JURIDICAL ENTITIES, THE PENALTY SHALL BE IMPOSED UPON THE DIRECTORS, OFFICERS, EMPLOYEES OR OTHER OFFICIALS OR PERSONS RESPONSIBLE FOR THE OFFENSE; CASE AT BAR.—** That it was GA and HDMF – both corporate entities – which dealt with each other, and not respondents in their personal capacities, does not eliminate the

latter's criminal liabilities in this case, if so established after trial. Jurisprudence provides that "**if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense**. The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the [RPC]. The reason for this is obvious: corporation, partnership, association or other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liabilities arising from the criminal offense. This is the import of the clause 'without prejudice to the civil liabilities arising from the criminal offense.'"

**6. ID.; REVISED PENAL CODE; *ESTAFA*; CRIMINAL LIABILITY FOR ESTAFA IS NOT AFFECTED BY COMPROMISE OR NOVATION OF CONTRACT, FOR IT IS A PUBLIC OFFENSE WHICH MUST BE PROSECUTED AND PUNISHED BY THE GOVERNMENT ON ITS OWN MOTION EVEN THOUGH COMPLETE REPARATION SHOULD HAVE BEEN MADE OF THE DAMAGE SUFFERED BY THE OFFENDED PARTY; CASE AT BAR.—** As previously stated, the MOA was executed on July 13, 2009, and at that time, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less ₱2.9 Billion for the purpose. Thus, even prior to the said amendment, the commission of fraud and the resulting damage to HDMF had, in all reasonable likelihood, already existed, which, in turn, means that the crime of *estafa* had already been probably consummated. The probable consummation of the crime is not erased by the succeeding partial novation of the contract between the parties. Case law dictates that criminal liability for *estafa* is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party.A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.

**7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AMENDMENT THEREOF, PROPER IN CASE AT BAR; WARRANTS OF ARREST ISSUED MUST STAND.—** Although the Information filed before the RTC and the consequent warrants of arrest issued against respondents were for the crime of syndicated *estafa*, and not for simple *estafa*, the case of *Spouses Hao v. People* teaches that **said issuances remain valid** but a formal amendment of the Information should be made:With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it **follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper**. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice. xxx Accordingly, it is my position that respondents should instead be indicted for simple *estafa* only. For this purpose, the DOJ should be directed to amend the Information so as to charge respondents accordingly. Meanwhile, the warrants of arrest issued against them must stand.

**8. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; PROPER REMEDY TO APPEAL AN INTERLOCUTORY ORDER.—** In ruling for the grant of **G.R. No. 209424**, the *ponencia* prefatorily held that the Resolution dated January 30, 2012 of the Makati-RTC which granted summary judgment in GA, *et al.*'s favor is, strictly speaking, only a partial summary judgment rendered in the context of Section 4, Rule 35 of the Rules of Court. It then explained that such Resolution only resolved the issue of whether or not GA, *et al.* were entitled to specific performance, and explicitly stated that the issue on the proper amount of damages to be awarded to them shall still be subject to a presentation of evidence. Since there is still a matter to be resolved by the Makati-RTC, such Resolution partakes of the nature of an interlocutory order. As such, HDMF correctly availed of the remedy of filing a petition for *certiorari* before the CA.

**9. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC); AS A RULE, GOCCs, SUCH AS HDMF, ARE ENJOINED TO REFRAIN FROM HIRING**

**PRIVATE LAWYERS OR LAW FIRMS TO HANDLE THEIR CASES AND LEGAL MATTERS; IN EXCEPTIONAL CIRCUMSTANCES, THE WRITTEN CONFORMITY AND ACQUIESCENCE OF THE SOLICITOR GENERAL OR THE GOVERNMENT CORPORATE COUNSEL, AS THE CASE MAY BE, AND THE WRITTEN CONCURRENCE OF THE COMMISSION ON AUDIT SHALL FIRST BE SECURED.—** The general rule is that GOCCs, such as HDMF, are enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. However, in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm. In this case, these written authorizations were complied with by HDMF. Records show that Atty. Tan issued a Certification that the COA concurred in the engagement by HDMF of Yorac Law Firm as its private counsel. The said certification is presumed to have been issued by the said officer in the regular performance of her duties and hence, should be deemed valid, absent any showing to the contrary. Besides, as pointed out by one of the dissenting justices before the CA, if the Makati-RTC was uncertain about the authority of private counsel to represent HDMF, "fairness and prudence dictate that the [same] be given a chance to provide the form of proof acceptable to the RTC," especially considering the public interest involved in this case.

**10. REMEDIAL LAW; JUDGMENTS; SUMMARY JUDGMENT; NOT WARRANTED WHEN THERE ARE GENUINE ISSUES WHICH CALL FOR A FULL BLOWN TRIAL; CASE AT BAR.—**Jurisprudence is clear that "[s]ummary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial."A perusal

of the pleadings filed by the parties in Civil Case No. 10-1120 would show that genuine issues of fact were raised, and thus, negated the remedy of summary judgment.

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

**1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689 (INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA); SYNDICATED ESTAFA; ELEMENTS.—** On April 6, 1980, President Ferdinand E. Marcos issued PD 1689 which treats the crime of syndicated *estafa*. Section 1 thereof, which incorporates Articles 315 and 316 by reference. x xx [T]o sustain a charge for syndicated *estafa*, the following elements must be established: (i) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC is committed; (ii) the *estafa* or swindling is committed by a syndicate of five or more persons; and (iii) defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperatives, "*samahangnayon(s)*," or farmers' associations or of funds solicited by corporations/associations from the general public.

**2. ID.; ID.; ID.; ID.; SECOND ELEMENT THAT THE ESTAFA OR SWINDLING IS COMMITTED BY SYNDICATE OF FIVE OR MORE PERSONS; ESTABLISHED IN CASE AT BAR.—** In concurrence with the *ponencia*, and with the separate opinions of Senior Associate Justice Antonio T. Carpio and Associate Justice Estela M. Perlas-Bernabe, I find that the evidence presented against Alvarez establish his participation as the fifth conspirator in the fraudulent scheme subject of the charge. xxx As aptly explained by Justice Carpio, Alvarez admitted during the course of investigation that he notarized documents for Globe Asiatique Realty Holdings Corporation (GA) in exchange for a fixed monthly fee even as he was employed as manager of HDMF's Foreclosure Department, and that he often notarized these documents in GA's head office during the same period.Notably, these acts became subject of the case entitled *Alex M. Alvarez v. Civil Service Commission and Home Development Fund,* docketed as G.R. No. 224371. Therein, the Court found Alvarez liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service, and thus, dismissed Alvarez from service with

finality.Again, as Justice Carpio astutely observes, Alvarez, being the manager of HDMF's Foreclosure Department, evidently knew that the documents he was notarizing for GA (*e.g.,* Affidavits of Income, Contracts to Sell and promissory notes, among others) were essential for the processing and approval of the housing loans in question. In the words of Justice Carpio, this glaring conflict of interest, coupled with the NBI's finding that majority of the documents corresponding to the fictitious accounts had been notarized by Alvarez, show that he had knowledge of the fraudulent scheme perpetrated by GA, and had actively participated therein.

3. **ID.; ID.; ID.; ID.; WHEN THE FRAUDULENT SCHEME WAS PERPETRATED BY AN ENTITY WHICH DOES NOT SOLICIT FUNDS FROM THE GENERAL PUBLIC, THIRD ELEMENT IS ABSENT.—** Considering that the fraudulent scheme in question was perpetrated by an entity which does *not* solicit funds from the general public, I find that the third element of syndicated *estafa* is absent. Thus, I likewise concur with the *ponencia* in this respect. xxx I find that the third element of syndicated *estafa* does not obtain. To recall, the misappropriated funds in this case pertain to HDMF. While such funds were undoubtedly solicited from the general public, it bears emphasizing that **HDMF was not the corporate vehicle used to perpetrate the fraud. Rather, HDMF was the subject of the fraudulent scheme perpetrated by GA**. These facts, taken together, place the present case beyond the scope of PD 1689.x xx The "whereas clauses" are clear — PD 1689 is intended to cover swindling and other forms of frauds involving corporations or associations operating on funds solicited from the general public. To relax the third element of syndicated *estafa* in the present case is to adopt a liberal interpretation of PD 1689 to respondents' detriment; this cannot be done without doing violence to the well-established rule on the interpretation of criminal and penal statutes.

4. **ID.; REVISED PENAL CODE; SIMPLE *ESTAFA* UNDER ARTICLE 315 (2) (a); SYSTEMATIC ENDORSEMENT OF FICTITIOUS AND UNQUALIFIED BUYER-BORROWERS IS INDICATIVE OF FRAUDULENT REPRESENTATION WHICH SERVES AS SUFFICIENT BASIS FOR LIABILITY FOR SIMPLE *ESTAFA*; CASE AT BAR.—** I

find that the allegations in the Information, coupled with the evidence offered thus far, establish the existence of probable cause to charge and try respondents for the crime of simple *estafa* under the RPC, particularly under Article 315(2)(a) thereof due to respondents' involvement in the implementation of GA's "Special Other Working Group Membership Program" (SOWG). xxx Respondents posit that GA *could not* have made any false representations which would have impelled HDMF to approve the loan applications of its buyer-borrowers, so as to render them liable for simple *estafa* under Article 315(2)(a) of the RPC. I disagree. I find, as do the majority, that GA's systematic endorsement of fictitious and unqualified buyer-borrowers serves as sufficient basis to hold the respondents liable for simple *estafa* — which liability stands regardless of whether GA's warranties under the Funding Commitment Agreements (FCAs) remained in effect.To recall, the elements of simple *estafa* under Article 315(2)(a) are: (i) there must be a false pretense or fraudulent representation as to the offender's power, influence, qualifications, property, credit, agency, business or imaginary transactions; (ii) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (iii) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (iv) that, as a result thereof, the offended party suffered damage. In order for simple *estafa* of this kind to exist, the false pretense or fraudulent representation must be made prior to, or at least simultaneous with, the delivery of the thing subject of the fraud, it being essential that such false statement or representation constitutes the very cause or motive which induces the victim to part with his/her money. x xx The sheer volume of anomalous SOWG accounts is indicative of willful and fraudulent misrepresentation on the part of GA, for while the endorsement of a handful of fictitious and/or inexistent buyer-borrowers may reasonably result from negligence or even mere oversight, the endorsement such accounts in the hundreds clearly shows the employment of an elaborate scheme to defraud, and assumes the nature and character of fraud and deceit constitutive of simple *estafa* under Article 315(2)(a).

**TIJAM, *J., separate opinion*:**

**1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689; SYNDICATED ESTAFA; FUNDS SUBJECT OF MISAPPROPRIATION.—** Under paragraph 1 of Section 1, P.D. No. 1689, the funds misappropriated must be: 1) moneys contributed by stockholders or members of rural banks, cooperative, *samahang nayons* or farmers' associations, or 2) funds solicited from the general public.

**2. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9679 (HOME DEVELOPMENT MUTUAL FUND LAW OF 2009); THE HOME DEVELOPMENT MUTUAL FUND (HDMF) MAY BE REGARDED AS MONEYS CONTRIBUTED BY HDMF MEMBERS WHICH MAY BE THE SUBJECT OF SYNDICATED ESTAFA.—** Section 10 of Republic Act (R.A) No. 9679 or the HDMF Law of 2009 describes the HDMF fund as "private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit." The personal and employer contributions are to be fully credited to each member and shall earn dividends. The fund also constitutes as a provident fund of each member, to be paid upon termination of membership. In other words, HDMF funds are funds held in trust for the member and are provident funds to be paid to the member, or his estate or beneficiaries, upon termination of his membership. As in the nature of provident funds, the HDMF funds operate as a savings scheme consisting of contributions from the members in monetary form which, in turn, earns dividends, may be used as a loan facility and provides supplementary welfare benefit to members. It is *akin* to funds held by banks, which is still wholly owned by the depositor but is loaned to the bank which the latter may use/invest and thus earns interest for the depositor. In other words, HDMF funds may thus properly be regarded as moneys contributed by HDMF members which may be the subject of syndicated *estafa*.

**3. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689; SYNDICATED ESTAFA; THE SYNDICATE MUST HAVE USED THE ASSOCIATION THAT THEY MANAGE TO DEFRAUD THE GENERAL PUBLIC OF THE FUNDS CONTRIBUTED TO THE ASSOCIATION; CASE AT BAR.—** [T]he respondents GA officials do not fall under the

definition of who may commit syndicated *estafa*. Jurisprudence, as it stands, particularly in *Galvez, et al. v. Court of Appeals, et al.*, requires that the syndicate must have used the association that they manage to defraud the general public of the funds contributed to the association. x xx [T]he syndicate must have used the rural banks, cooperative, *samahang nayons* or farmers' associations they formed, owned, or managed to misappropriate the moneys contributed by their stockholders or members, or the syndicate must have used the corporation or association they formed, owned, or managed to misappropriate the funds it solicited from the general public. Here, the GA officials admittedly did not form, own or manage HDMF. It was neither alleged in the Information that the GA officials used HDMF to defraud the general public. Since it was HDMF (the "association" holding the moneys contributed by its members) which is the victim and the juridical person used by the syndicate to defraud, P.D. No. 1689 does not apply.Finally, independently of whether the threshold number of accused, *i.e.*, five, is met (on whether Atty. Alvarez should properly be included or not), the fact remains that four out of the five accused are neither owners nor employees of HDMF. This places the instant case outside the scope of P.D. No. 1689. Since the elements of simple *estafa* appear to be present, respondents, including Atty. Alvarez of the HDMF, should be charged of simple *estafa*. The arrest warrants against them stand, and if quashed, should be reinstated.

**4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY THE TRIAL COURT THAT RENDERED A SUMMARY JUDGMENT WHEN THE ISSUE AS TO DAMAGES NECESSITATES FURTHER PROCEEDINGS; CASE AT BAR.—** The RTC Makati gravely abused its discretion when it rendered a summary judgment in the Civil Case for specific performance when it actually deemed that the issue as to damages necessitates further proceedings. As suggested by Justice Estela M. Perlas-Bernabe, there is no need to remand the case to the CA to determine if the RTC Makati gravely abused its discretion especially so when proper evaluation of the merits may be had as when copies of various pleadings and documents are in possession of the Court. Instead, the case should be remanded to RTC Makati for further proceedings.

**CARPIO, *J., dissenting opinion*:**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; NOT COMPLIED WITH IN CASE AT BAR.—** Aggrieved parties may appeal from resolutions of prosecutors by filing a verified petition for review before the Secretary of Justice. x xx The exception to the general rule will apply only when there is a clear showing of grave abuse of discretion by the public prosecutor amounting to lack or excess of jurisdiction. Absent such showing, the courts do not have the power to substitute their judgment for that of the Secretary of Justice. xxxThe prerequisite for Sagun's resort to the CA is a clear showing of grave abuse of discretion by the public prosecutors. Under the present circumstances, however, Sagun failed to show that the investigating prosecutors abused their discretion, much less gravely abused their discretion. Sagun, in contrast to her co-respondents in I.S. No.XVIINV-10J-00319, immediately resorted to judicial review before the CA. Delfin S. Lee, Dexter Lee, Cristina Salagan, and Atty. Alex Alvarez all filed appeals before the Secretary of Justice. xxxSagun employed the wrong remedy in assailing the investigating prosecutor's Review Resolution, and Sagun never filed an appeal before the Secretary of Justice. Sagun was never able to validly question the Review Resolution. Thus, both the findings and conclusion in the Review Resolution, as well as the consequent filing of the Information against Sagun, stand. The CA erred in considering Sagun's petition and ruling in her favor. Sagun's immediate filing of a petition before the CA is a procedural shortcut that merits a dismissal.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DEFINED AS SUCH FACTS AS ARE SUFFICIENT TO ENGENDER A WELL-FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED AND THAT RESPONDENT IS PROBABLY GUILTY THEREOF; DETERMINATION THEREOF IS WITHIN THE JURISDICTION OF THE PROSECUTOR WHICH THE COURTS DO NOT INTERFERE WITH UNLESS THERE IS GRAVE ABUSE OF DISCRETION; CASE AT BAR.—** The CA wrongfully asserted that when it reviews the DOJ's determination of probable cause, it makes a judicial determination

of probable cause which binds the trial court. x xx*Reyes v. Pearlbank Securities, Inc.*defines probable cause in the following manner, and further explains why the courts generally do not review the findings made by the Secretary of Justice: Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are different to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof. xxx A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. xxx These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. xxx The reasons put forward by the CA to justify its substitution of the Pampanga RTC's determination of probable cause do not amount to grave abuse of discretion. The Pampanga RTC's determination of probable cause, although in accord with the findings of the DOJ, did not necessarily rely on the DOJ's resolution alone. Hence, in the absence of grave abuse of discretion, there is no reason to disturb the Pampanga RTC's determination of probable cause.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION; MUST FIRST BE FILED WITH THE LOWER COURT BEFORE RESORTING TO THE EXTRAORDINARY WRIT OF *CERTIORARI*; CASE AT BAR.—** It is hornbook doctrine that a motion for reconsideration must first be filed with the lower court before resorting to the extraordinary writ of *certiorari*. A motion for reconsideration gives the lower court an opportunity to correct the errors imputed to it. Moreover, the special civil action for *certiorari* will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the course of law. In the present case, Delfin S. Lee arrogated to himself the determination of whether the filing of a motion for reconsideration is necessary. However, Delfin S. Lee failed to show any compelling reason for his non-filing of a motion for reconsideration and his immediate recourse to a special civil action for *certiorari* before the CA.

4. **ID.; CIVIL PROCEDURE; FORUM-SHOPPING; DEFINED AS AN ACT OF A PARTY AGAINST WHOM AN ADVERSE JUDGMENT OR ORDER HAS BEEN**

**RENDERED IN ONE FORUM OF SEEKING AND POSSIBLY GETTING A FAVORABLE OPINION IN ANOTHER FORUM, OTHER THAN BY APPEAL OR SPECIAL CIVIL ACTION OF *CERTIORARI*; REQUISITES; ESTABLISHED IN CASE AT BAR.—** Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be 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. For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief 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.The acts of Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez that were enumerated in the preceding paragraphs satisfy all these conditions.

**5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIMITED TO ERRORS OF JURISDICTION AND NOT ERRORS OF JUDGMENT; CASE AT BAR.—** The CA quashed, recalled, and lifted the warrants of arrest against Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez. In doing so, the CA reviewed and weighed the evidence submitted before the trial court and tried the facts presented before it. It would do well for the CA to recall that its *certiorari* jurisdiction is limited to errors of jurisdiction and not errors of judgment. xxx It is premature for the CA to rule on the merits of the case prior to the trial on the merits.

**6. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689 (INCREASINGTHE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA); ELEMENTS; THE LAW DOES NOT REQUIRE THAT THE PERPETRATORS OR THE ACCUSED CORPORATION/ASSOCIATION BE THE ONE TO SOLICIT THE FUNDS FROM THE PUBLIC; THE LAW MERELY REQUIRES THAT THE DEFRAUDATION RESULTS IN THE MISAPPROPRIATION OF MONEY OR OF FUNDS SOLICITED BY CORPORATION/**

**ASSOCIATIONS FROM THE GENERAL PUBLIC; CASE AT BAR.—** Under Section 1 of PD 1689, the elements of syndicated estafa are: (1) estafa or other forms of swindling as defined in Articles 315 and 316 of the RPC are committed; (2) the estafa or swindling is committed by a syndicate of five or more persons; and (3) the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*," or farmers' associations or of funds solicited by corporations/ associations from the general public.Under PD 1689, syndicated estafa includes cases where fraud results in the misappropriation of funds solicited by corporations/associations from the general public. Thus, the law does not require that the perpetrator or the accused corporation/association be the one to solicit the funds from the public. The law merely requires that the **"defraudation results in the misappropriation of money xxx or of funds solicited by corporations/ associations from the general public."** The alleged fraud perpetrated resulted in the misappropriation of funds of the HDMF or PAG-IBIG Fund which is undisputedly a provident fund of the general public. The PAG-IBIG Fund consists of mandatory contributions solicited by HDMF from all employees in the public and private sectors. The PAG-IBIG Fund includes the mandatory contributions of the approximately 28,000 employees of the Judiciary whose contributions were part of the ₱2.9 Billion loan proceeds received by Globe Asiatique from HDMF through the nine (9) FCAs executed by Globe Asiatique with HDMF.

**7. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; GRAVE ABUSE OF DISCRETION IN THE DETERMINATION THEREOF, ABSENT IN CASE AT BAR.—** The Pampanga RTC's determination of probable cause, which was in accord with the findings of the DOJ, shows no grave abuse of discretion. Hence, the claim of Cristina Salagan that there was no probable cause to charge her with syndicated estafa deserves scant consideration.

**8. ID.; RULES OF COURT; RULES MUST BE COMPLIED WITH FOR THE ORDERLY ADMINISTRATION OF JUSTICE BUT MAY BE RELAXED UNDER EXCEPTIONAL CIRCUMSTANCES; CASE AT BAR.—** I agree with the *ponencia* that the CA should not have dismissed

the petitions for being filed out of time because there existed special and compelling reasons for the relaxation of procedural rules.Rules of procedure are indispensable to facilitate the orderly and speedy adjudication of cases. Courts are constrained to adhere to procedural rules under the Rules of Court. xxx However, courts are not given *carte blanche* authority to interpret rules liberally and the resort to liberal application of procedural rules remains as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. xxxThe 18 June 2013 Petition for *Certiorari* was filed before the CA within the extended period requested by petitioner. However, due to the unintended omission of the docket number (CA-G.R. SP No. 130404), the petition was assigned a new docket number (CA-G.R. SP No. 130409) and raffled to another *ponente* and division. This resulted in the dismissal of the petition for being filed out of time. As explained by petitioner DOJ, the procedural lapse was due to inadvertence and not intended to delay the proceedings. Considering the merits of the petition and having been filed within the extended period requested, albeit lacking the proper docket number, the CA should have applied the rules liberally and excused the belated filing.It is more prudent for the court to excuse a technical lapse to avoid causing grave injustice not commensurate with the party's failure to comply with the prescribed procedure. Furthermore, the merits of the case may be considered as a special or compelling reason for the relaxation of procedural rules.

**9. ID.; CRIMINAL PROCEDURE; AS A RULE, CRIMINAL PROSECUTION MAY NOT BE RESTRAINED OR STAYED BY INJUNCTION OR PROHIBITION; EXCEPTIONS; CASE AT BAR.—** [T]he general rule is that criminal prosecution may not be restrained or stayed by injunction or prohibition because public interest requires the immediate and speedy investigation and prosecution of criminal acts for the protection of society. With more reason will injunction not lie when the case is still at the preliminary investigation stage. xxxHowever, there are exceptions to this rule, such as: 1. To afford adequate protection to the constitutional rights of the accused; 2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; 3. When there is a prejudicial question which is *sub judice*; 4. When the acts of the officer are without or in excess of authority; 5. Where

the prosecution is under an invalid law, ordinance or regulation; 6. When double jeopardy is clearly apparent; 7. Where the court has no jurisdiction over the offense; 8. Where there is a case of persecution rather than prosecution; 9. Where the charges are manifestly false and motivated by the lust for vengeance; 10. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; 11. Preliminary injunction has been granted by the Supreme Court to prevent the threatened unlawful arrest of petitioners.The Pasig RTC case does not fall under any of these exceptions. Thus, Judge Mislang of the Pasig RTC should not have issued the writ of preliminary injunction.

**10. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PROPER REMEDY WHERE THE JUDGMENT SOUGHT TO BE APPEALED IS ALREADY FINAL AND EXECUTORY; CASE AT BAR.—** Clearly, the finality of the judgment as against HDMF necessitates the filing of a petition for *certiorari* since a notice of appeal is barred where the judgment sought to be appealed is already final and executory. xxx [I]n this case, the Motion for Reconsideration filed by HDMF was held unauthorized by the Makati RTC and deemed a mere scrap of paper which did not toll the running of the period of appeal. Thus, compared to Faria and Atty. Berberabe whose motions for reconsideration were denied for lack of merit, the Makati RTC ruled that the summary judgment is "final, executory, and immutable as to defendant HDMF." In light of this ruling, HDMF had to file a petition for *certiorari*, while Faria and Atty. Berberabe filed their notice of appeal. Furthermore, where there is absolutely no legal basis for the rendition of a summary judgment, a petition for *certiorari* is the appropriate, adequate, and speedy remedy to nullify the assailed judgment to prevent irreparable damage and injury to a party. xxx The propriety of *certiorari* as the more speedy and adequate remedy is underscored by the fact that respondents Globe Asiatique and Delfin S. Lee have already filed a Motion for Execution dated 19 March 2013 against HDMF. HDMF contends that if the motion is granted, HDMF will be required to release hundreds of millions or billions of pesos, money which came from the hard-earned contributions of HDMF members, in favor of Globe Asiatique. Moreover, HDMF posits that it will also be compelled to accept the replacement buyers offered

by Globe Asiatique, whose accounts may be equally spurious as those of the original buyers whose applications were approved by Globe Asiatique.

**11. ID.; JUDGMENTS; SUMMARY JUDGMENT; A PROCEDURAL TECHNIQUE DESIGNED TO PROMPTLY DISPOSE OF CASES WHERE THE FACTS APPEAR UNDISPUTED AND CERTAIN FROM THE PLEADINGS, DEPOSITIONS, ADMISSIONS, AND AFFIDAVITS ON RECORD; REQUISITES; ABSENT IN CASE AT BAR.—** A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record. The purpose of summary judgment is to grant immediate relief in cases where no genuine triable issue of fact is raised, and thus avoid needless trials and delays. Summary judgment should not be granted unless the records show with certainty that there is no disputable issue as to any material fact which would prevent recovery from the party presenting the motion for summary judgment if a full-blown trial is conducted. The party who moves for summary judgment has the burden of proving the absence of any genuine issue as to any material fact or that the issue posed is patently unsubstantial and does not constitute a genuine issue for trial. xxx Section 3 of Rule 35 provides two requisites for the grant of a summary judgment: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Thus, where the pleadings tender a genuine issue which requires the presentation of evidence, the rendition of a summary judgment is not proper. A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived, or false claim.Contrary to the ruling of the Makati RTC, the pleadings of the parties show the existence of genuine issues of material facts, rendering the summary judgment improper. xxx It is very apparent from the allegations in the parties' respective pleadings that there exist relevant genuine issues which require the presentation of evidence and which need to be resolved in a full-blown trial. Summary judgment cannot take the place of trial since the facts as pleaded by Globe Asiatique are categorically disputed and contradicted by HDMF.

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

**1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1689(INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR *ESTAFA*); SYNDICATED ESTAFA; ELEMENTS; CASE AT BAR.—** [S]yndicated estafa exists if the following elements are present: 1) [E]stafa or other forms of swindling as defined in Articles 315 and 316 of the [Revised Penal Code] was committed; 2) the estafa or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon[s]," or farmers associations or of funds solicited by corporations/associations from the general public."The recital of elements demonstrates that two (2) additional elements qualify swindling into syndicated estafa. The first is "commi[ssion] by a syndicate." The second is misappropriation. The object of this misappropriation, in turn, can be either of two (2) categories of funds. The first category is "moneys contributed by stockholders, or members of rural banks, cooperatives, 'samahang nayon(s)', or farmers[']associations." The second category is "funds solicited by corporations/associations from the general public."

**2. ID.; ID.; SECTION 1 THEREOF; THERE IS A SYNDICATE WHEN THERE IS A COLLECTIVE OF FIVE (5) OR MORE INDIVIDUALS, THE INTENT OF WHICH IS THE CARRYING OUT OF THE UNLAWFUL OR ILLEGAL ACT, TRANSACTION, ENTERPRISE OR SCHEME; WHAT IS CRITICAL IS NOT THE NUMBER OF INDIVIDUALS ACTUALLY AVAILABLE FOR OR IDENTIFIED TO STAND TRIAL, BUT A SHOWING THAT A DECEIT MENTIONED IN ARTICLE 315 AND/OR 316 OF THE REVISED PENAL CODE WAS COMMITTED BY FIVE (5) OR MORE INDIVIDUALS ACTING IN CONCERT.—** Concerning the first additional element of "commi[ssion] by a syndicate," Section 1 of Presidential Decree No. 1689 proceeds to identify when a syndicate exists. There is a syndicate when there is a collective of five (5) or more individuals, the intent of which is the "carrying out [of] the unlawful or illegal act, transaction, enterprise or scheme." While Section 1 specifies a minimum number of individuals acting

out of a common design to defraud so that a syndicate may be deemed to exist, it does not specify the number of individuals who must be charged for syndicated estafa at any given time. At no point does Section 1 require a minimum of five (5) individuals to stand trial for syndicated estafa. Likewise, it does not state that, failing in any such threshold, prosecution cannot prosper. xxx What is critical is not the number of individuals actually available for or identified to stand trial, but a showing that a deceit mentioned in Articles 315 and/or 316 of the Revised Penal Code was committed by five (5) or more individuals acting in concert. For as long as this is shown, coupled with the requisite misappropriation, prosecution and conviction can proceed.

**3. ID.; ID.; ID.; IT IS NOT ESSENTIAL THAT AN ACCUSED BE FORMALLY NAMED OR IDENTIFIED AS AN AFFILIATE OF THE CORPORATION OR ASSOCIATION USED AS AN ARTIFICE FOR THE FRAUDULENT SCHEME.—** It is also not essential that an accused be formally named or identified as an affiliate such as by being a director, trustee, officer, stockholder, employee, functionary, member, or associate of the corporation or association used as an artifice for the fraudulent scheme. As with the inordinate fixation on the number of individuals being prosecuted, insisting on such an affiliation can also conveniently frustrate the ends of justice. A cabal of scammers can then nominally exclude one (1) of their ilk from their organized vehicle and already be beyond Presidential Decree No. 1689's reach, regardless of the excluded collaborator's actual participation in their fraudulent designs.Presidential Decree No. 1689 contemplates not only corporations but also associations as avenues for misappropriation. Affiliation with corporations whether as a director, trustee, officer, stockholder, or member is carefully delineated by law. In contrast, associations and affiliations with them are amorphous. Any number of individuals can organize themselves into a collective. Their very act of coming together with an understanding to pursue a shared purpose suffices to make them an association. A regulatory body's official recognition of their juridical existence and their collective's competence to act as its own person is irrelevant.

**4. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9679 (HOME DEVELOPMENT MUTUAL FUND LAW OF 2009);**

**THE HOME DEVELOPMENT MUTUAL FUND IS PROVIDENT IN CHARACTER THAT RELIES ON THE REQUIRED REMITTANCE OF SAVINGS BY ITS MEMBERS; IT IS INCORRECT TO SAY THAT THE MISAPPROPRIATED FUNDS ARE HDMF'S ALONE AND NOT THE GENERAL PUBLIC'S; CASE AT BAR.—** The *ponencia* overemphasizes the technicality of Home Development Mutual Fund's separate and distinct juridical personality at the expense of a proper appreciation of the gravity of the offense involved.Republic Act No. 9679, or the Home Development Mutual Fund Law of 2009, emphasizes the "provident character" of the Home Development Mutual Fund. xxxAs a provident fund, Home Development Mutual Fund relies on the required remittance of savings by its members. Membership is either mandated or voluntary. Its mandated membership consists of all private individuals covered by the Social Security System, all public employees covered by the Government Service Insurance System, uniformed personnel in the Armed Forces of the Philippines, the Philippine National Police, the Bureau of Jail Management and Penology, the Bureau of Fire Protection, and all Filipinos employed by foreign employers regardless of their place of deployment.Voluntary membership is open to Filipinos aged 18 to 65. It is true that Home Development Mutual Fund has a personality distinct and separate from its members and exercises competencies independently of them. However, considering its provident character and its membership base, it is incorrect to say that the misappropriated funds in this case are Home Development Mutual Fund's alone and not the general public's. By Republic Act No. 9679's express language and Home Development Mutual Fund's membership base, that is, practically the same as the general public, it is erroneous to insulate Globe Asiatique from the general public by hyperbolizing Home Development Mutual Fund's role as an intervening layer between them. In asserting that Globe Asiatique neither solicited funds from the general public nor committed misappropriation, the *ponencia* similarly fails to account for how Globe Asiatique used and manipulated Home Development Mutual Fund. While it is true that the funds collected, and eventually misappropriated, from Home Development Mutual Fund members were in the nature of their contributions which did not accrue to Globe Asiatique, the essence of the fraudulent scheme was that Globe Asiatique used Home Development Mutual Fund as a medium for its pilferage.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for the People of the Philippines.

*Office of the Government Corporate Counsel* for petitioner HDMF in G.R. Nos. 209424 and 209852.

*Fortun Narvasa Salazar* for respondent in G.R. Nos. 208744 & 210095.

*Garay Cruz and Associates* for Globe Asiatique Realty Holdings Corporation.

*Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm* for HDMF.

*Rivera Perico & Rivera Law Offices* for respondent in G.R. No. 210143.

*Manuel Law Office* for respondent in G.R. Nos. 209446 & 209489.

**D E C I S I O N**

**BERSAMIN, *J.*:**

We hereby consider and resolve the following consolidated appeals by petition for review on *certiorari*,[1] namely:

**(1) G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452 and 228730,** whereby petitioners Department of Justice (DOJ), the People of the Philippines and the Home Development Mutual Fund (HDMF) assail the decisions[2] of the Court of Appeals (CA): (i) setting aside the August 10, 2011 *Review Resolution* of the DOJ insofar as Christina Sagun (Sagun) is concerned; and (ii) annulling the May 22, 2012 and August 22, 2012 resolutions of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga (Pampanga RTC), and quashing the warrants of arrest issued against Delfin Lee, Dexter

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[1] *Rollo,* G.R. No. 210143, pp. 4885A-4885B; it is to be noted that on June 7, 2017, the Court issued a Resolution consolidating G.R. Nos. 228452 and 228730 with the other related cases.

[2] In C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554 and C.A.-G.R. SP No. 127690.

Lee (Dexter), and Atty. Alex Alvarez (Atty. Alvarez) for lack of probable cause;

**(2) G.R. No. 230680**, whereby petitioner Cristina Salagan assails the decision of the CA dismissing her petition for *certiorari* and upholding the resolutions dated May 22, 2012 and January 29, 2014 of the Pampanga RTC insofar as finding probable cause for the crime of syndicated *estafa* and the issuance of a warrant of arrest against her were concerned;

**(3) G.R. Nos. 208744 and 210095,** whereby the DOJ challenges the resolutions of the CA dismissing its petition for *certiorari* for being filed out of time;[3] and

**(4) G.R. No. 209424**, whereby HDMF assails the decision promulgated on October 7, 2013,[4] whereby the CA found no grave abuse of discretion on the part of the Regional Trial Court, Branch 58, in Makati City (Makati RTC) in issuing its January 31, 2012 final resolution granting the motion for summary judgment of Globe Asiatique Realty Holdings, Corp. (Globe Asiatique) and Delfin Lee in Civil Case No. 10-1120 entitled *Globe Asiatique Realty Holdings Corporation and Delfin Lee, in his capacity as President of the Corporation v. Home Development Mutual Fund (HDMF) or Pag-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge*.

## Salient Factual Antecedents

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I–Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its Xevera Bacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).[5]

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[3] In C.A.-G.R. SP No. 130409.

[4] In C.A.-G.R. SP No. 128262.

[5] *Rollo* (G.R. No. 205698), Vol. I, p. 26.

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves of loans from HDMF under the Pag-Ibig Fund; that all documents submitted to the HDMF in behalf of the applicants, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding and enforceable; that any person or agent employed by Globe Asiatique or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.[6]

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA). In this regard, Delfin Lee undertook to maintain at least 90% Performing Accounts Ratio (PAR) under the CSA.[7]

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its Xevera Bacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (*e.g.*, practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs). Delfin Lee offered to extend the buy-back guarantee from two to five years to bolster his position that the project was viable. HDMF eventually entered into another agreement for this purpose.[8]

Corollary to the foregoing, the parties entered into a second FCA worth ₱200,000,000.00. Globe Asiatique likewise

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[6] *Id*. at 16.

[7] *Id*.

[8] *Id.* at 28.

undertook that the PAR for all of its projects would be increased to at least 95%; that the buy-back guaranty for all accounts taken out from the Xevera Bacolor Project would be increased to five years; that it would assign all its housing loan proceeds from its other projects to HDMF to cover any unpaid obligations from the Xevera Project; and that the OWG borrowers, to be eligible for Pag-Ibig Membership, would be required to present their Income Tax Returns (ITRs) and affidavits of income.[9]

On July 13, 2009, the parties executed a MOA granting Globe Asiatique an additional ₱5,000,000,000.00 funding commitment line for its Xevera Projects in Pampanga on the condition that Globe Asiatique would maintain a 95% PAR, and that the housing loan take-outs would be covered by a buy-back guaranty of five years.[10] Section 9 of the MOA expressly stated, however, that the MOA "supersedes, amends and modifies provisions of all other previous and existing Agreements that are Inconsistent hereto."[11]

More FCAs were executed between the parties. According to HDMF, the aggregate amount of ₱7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.[12]

In the course of its regular validation of buyers' membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees. HDMF invited the attention of Delfin Lee regarding some 351 buyers who surrendered or withdrew their loans and were no longer interested in pursuing the same, and requested Globe Asiatique to validate the 351 buyers. Delfin Lee replied that Globe Asiatique

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[9] *Rollo* (G.R. No. 209852), Vol. I, p. 17.

[10] *Rollo* (G.R. No. 209424), Vol. II, pp. 598, 600.

[11] *Id.* at 601.

[12] *Rollo* (G.R. No. 205698), Vol. I, p. 30.

was actually monitoring about 1,000 suspicious buyers' accounts. Subsequently, HDMF ostensibly found out about an additional 350 buyers who either denied knowledge of having availed of loans or manifested their intention to terminate their account.[13]

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buy-back of the 701 fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.[14]

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered that at least 644 supposed borrowers under the OWG Membership Program who were processed and approved by Globe Asiatique for the take-out by HDMF were not aware of the loans they had supposedly signed in relation to the Xevera Project; and assuming they were aware of the loan agreements, they had merely signed the same in consideration of money given to them by Globe Asiatique; that some borrowers were neither members of HDMF nor qualified to take out a housing loan from HDMF because they had insufficient or no income at all or they did not have the minimum number of contributions in HDMF; and that some of the borrowers did not live in the units they purchased.[15]

HDMF alleged that at least 805 borrowers could not be located or were unknown in the addresses they had provided in the loan agreements, or had indicated non-existent addresses therein; and that it incurred damages totalling ₱1.04 billion covering

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[13] *Id.* at 30-31.

[14] *Id.* at 31.

[15] *Rollo* (G.R. No. 209852), Vol. I, p. 18.

the loans of 644 fraudulent and 805 fake borrowers attributed to the fraudulent and criminal misrepresentations of Delfin Lee and Globe Asiatique's officials and employees.[16]

**The Criminal Charges**

Upon the recommendation of the National Bureau of Investigation (NBI), the DOJ conducted its preliminary investigation against Globe Asiatique, particularly its officers, namely: Delfin S. Lee, Dexter L. Lee, Ramon Palma Gil, Cristina Salagan, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Atty. Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguiling, John Tungol and Atty. Alex Alvarez on the strength of the complaint-affidavit dated October 29, 2010 filed by Emma Linda B. Faria, then the officer-in-charge (OIC) of the HDMF. This first complaint alleged the commission of the crime of syndicated *estafa* constituting economic sabotage, as defined and penalized under Article 315(2)(a) of the *Revised Penal Code*, in relation to Presidential Decree No. 1689 (P.D. No. 1689).[17]

The DOJ formed a panel of prosecutors to investigate the complaint.

On December 10, 2010, the NBI Anti-Graft Division recommended the filing of a second complaint for syndicated *estafa* constituting economic sabotage under P.D. No. 1689, in relation to Article 315(2) of the *Revised Penal Code* against Delfin Lee and the others. This second complaint was precipitated by the complaints of supposed Globe Asiatique clients such as Evelyn Niebres, Catherine Bacani and Ronald San Nicolas, who were victims of double sale perpetrated by Globe Asiatique.[18]

Also, HDMF brought a complaint against Globe Asiatique and its officers for the fraudulent take-out of housing loans for bogus buyers.

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[16] *Id.* at 19.

[17] Docketed as I.S. No. XVI-INV-10J-00319 entitled *National Bureau of Investigation (NBI)/ Home Development Mutual Fund (HDMF) vs. Globe Asiatique Realty Holdings Corp., et al.*

[18] *Rollo* (G.R. No. 209852), Vol. I, p. 20.

Subsequently, the DOJ formed yet another panel of prosecutors to conduct another preliminary investigation.[19]

Upon learning of the filing of the second case in the DOJ, Delfin Lee filed a petition for the suspension of proceedings pending the outcome of the civil action for specific performance that he and Globe Asiatique had commenced in the Makati RTC, contending therein that the issue in the civil case constituted a prejudicial question vis-a-vis the second DOJ case.

On February 21, 2011, the DOJ panel of prosecutors issued an *Omnibus Order* denying Delfin Lee's prayer for suspension of proceedings.

After Delfin Lee's motion for reconsideration was denied on July 5, 2011, he filed his counter-affidavit *ad cautelam* in the DOJ.[20]

On August 10, 2011, Prosecutor General Claro A. Arellano approved the *Review Resolution* of Senior Deputy State Prosecutor Theodore M. Villanueva, the Chairman of the DOJ's Task Force on Securities and Business Scam (SDSP Villanueva) pertaining to the first criminal complaint.[21] It is noted that the investigating prosecutors of the DOJ's Task Force on Securities and Business Scam had initially recommended the filing of charges for the crime of *estafa* defined and penalized under paragraph 2(a) of Article 315 of the *Revised Penal Code*, in relation to paragraph 2, Section 1 of PD No. 1689, against Delfin Lee, Sagun, and Cristina Salagan (Salagan). However, SDSP Villanueva recommended in the *Review Resolution* the inclusion of Atty. Alvarez and Dexter Lee in the *estafa* charge, thereby charging syndicated *estafa*, with no bail recommended.[22]

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[19] The case was docketed as NPS No. XV-05-INV-10L-00363 entitled *National Bureau of Investigation (NBI)/Evelyn B. Niebres, et al. vs. Globe Asiatique Realty Holdings, Corp./Delfin S. Lee, et al.*

[20] *Rollo* (G.R. No. 209852), Vol. I, p. 21.

[21] *Id.*

[22] *Rollo* (G.R. No. 209446), Vol. I, p. 165.

Consequently, Delfin Lee filed an amended petition on August 25, 2011 to enjoin the DOJ from filing the information for syndicated *estafa* in relation to the first DOJ case.[23]

On September 15, 2011, Sagun filed in the CA her petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to assail the August 10, 2011 *Review Resolution* of the DOJ (**C.A.-G.R. SP No. 121346**).[24]

On his part, Atty. Alvarez resorted to his own petition for review on October 3, 2011 of the same August 10, 2011 *Review Resolution* in the DOJ. However, on November 14, 2011, he withdrew his petition following his filing of a petition in the Manila RTC on October 10, 2011 assailing the same August 10, 2011 *Review Resolution*. He also filed a petition for *certiorari* with the CA on November 15, 2011 to enjoin the DOJ from filing the information in the first syndicated *estafa* case, but he subsequently withdrew the petition and filed on the same day a petition for injunction and prohibition in the Caloocan City RTC, Branch 125, to enjoin the DOJ from filing the information in the first syndicated *estafa* case and from conducting the preliminary investigation in the second case.[25]

**Proceedings in the Pasig RTC**

Prior to the DOJ's issuance of its August 10, 2011 *Review Resolution*, Delfin Lee initiated his action for injunction on July 28, 2011 in the Pasig RTC to enjoin the DOJ from proceeding with the second DOJ case, and reiterated therein that the civil case pending in the Makati RTC constituted a prejudicial question vis-a-vis the second DOJ case. The case was docketed as Civil Case No. 73115 entitled *Delfin S. Lee v. Department of Justice*.

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[23] *Rollo* (G.R. No. 209852), Vol. I, p. 21.

[24] Sagun later on impleaded the Pampanga RTC in view of the eventual filing of the information against her in the RTC of Pampanga on April 30, 2012.

[25] *Rollo (*G.R. No. 209446), Vol. I, p. 15-16.

The Pasig RTC, then presided by Judge Rolando Mislang, granted Delfin Lee's prayer for the issuance of the TROs on August 16, 2011, and admitted the amended petition on August 26, 2011.[26]

The Pasig RTC thereafter issued the writ of preliminary injunction under both the original and the amended petitions on September 5, 2011.[27]

Aggrieved, the DOJ filed a petition for *certiorari* on October 6, 2011 (C.A.-G.R. SP No. 121594), alleging that Judge Mislang had committed grave abuse of discretion in issuing the writ of preliminary injunction enjoining the filing of the information for syndicated *estafa* with respect to the first case and from proceeding with the preliminary investigation in the second case on the ground of the existence of a prejudicial question.[28]

On April 16, 2012, the CA granted the DOJ's petition for *certiorari* in C.A.-G.R. SP No. 121594, and ruled that the facts and issues in the civil case pending in the Makati RTC were not determinative of the guilt or innocence of Delfin Lee in the cases filed in the DOJ; hence, it annulled and set aside the writ of preliminary injunction issued by Judge Mislang.[29]

The adverse ruling in C.A.-G.R. SP No. 121594 was appealed by petition for review on *certiorari*. On July 4, 2012, the Court dismissed the appeal because of Delfin Lee's failure to show any reversible error on the part of the CA in issuing the assailed decision. The dismissal became final and executory.[30]

Much later on, Delfin Lee learned of the third and fourth criminal complaints filed in the DOJ. Again, he sought the issuance of a TRO by the Pasig RTC.

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[26] On August 25, 2011, Delfin Lee filed an Amended Petition in the Pasig RTC to enjoin the filing of the Information for the first syndicated *estafa* case based on the August 10, 2011 *Review Resolution*.

[27] *Rollo* (G.R. No. 209852), Vol. I, p. 22.

[28] *Id*.

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

[30] *Id*. at 24.

On March 21, 2013, Judge Mislang issued the second TRO enjoining the preliminary investigation of the second, third and fourth criminal complaints.[31]

On April 10, 2013, Judge Mislang issued the writ of preliminary injunction in Civil Case No. 73115 enjoining the conduct of the preliminary investigation in the second, third and fourth criminal complaints.[32]

Consequently, the DOJ filed another petition for *certiorari*, docketed as **C.A.-G.R. SP No. 130409**, to annul the writ of preliminary injunction issued on April 10, 2013 by the Pasig RTC.

**Proceedings in the Pampanga RTC**

With the lifting of the first writ of preliminary injunction issued by the Pasig RTC, the DOJ filed a criminal case for syndicated *estafa* against Delfin Lee, Dexter Lee, Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex Alvarez (Atty. Alvarez) on April 30, 2012 in the Pampanga RTC. The case was docketed as Criminal Case No. 18480 entitled *People of the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez.*[33]

The information in Criminal Case No. 18480 reads:

That sometime during the period from 10 June 2008 to 24 September 2010, or on dates prior and subsequent thereto, in the City of San Fernando, Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN[,] CRISTINA SALAGAN and ATTY. ALEX ALVAREZ, acting as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design, by way of take out on housing loans of supposed Pag-IBIG fund members through the use of fictitious

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[31] *Rollo* (G.R. No. 208744), Vol. I, p. 59.

[32] *Id*. at 61-62.

[33] *Rollo* (G.R. No. 209852), Vol. I, p. 24.

buyers and/or "special buyers" conspiring, confederating and mutually helping one another, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud, did then and there wilfully, unlawfully and feloniously defraud the private complainant HOME DEVELOPMENT MUTUAL FUND, otherwise known as the Pag-IBIG Fund, in the following manner, to wit: accused Delfin S. Lee, being the president and chief executive officer of Globe Asiatique Realty Holdings Corporation (GA), a domestic corporation engaged in real estate development, did then and there willfully, unlawfully and knowingly enter into funding commitment agreements and other transactions with the private complainant, wherein said accused Delfin S. Lee made false and fraudulent representations to the latter that GA has interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga when, in truth and in fact, said accused knew fully well that the corporation does not have such buyers, as in fact the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, in conspiracy with one another, submitted names of fictitious buyers and documents to Pag-IBIG Fund as housing loan applicants/buyers of GA's Xevera projects in order to obtain, as in fact the said corporation obtained, through accused Delfin S. Lee, fund releases from HDMF by way of housing loan take-out of the said fictitious buyers. In addition, the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, has also engaged in a "special buyers" scheme whereby it recruited persons who does not have any intention to buy its housing units in Xevera but, in exchange for a fee, said "special buyers" lent their names and Pag-IBIG membership to GA, so that the said corporation could use, as in fact it has used, the names and Pag-IBIG membership of the said "special buyers" in obtaining fund releases from HDMF, as the said corporation, through accused Delfin S. Lee, had in fact obtained fund releases from HDMF, by way of take-out of the supposed housing loans of the "special buyers", and by reason of the aforesaid false and fraudulent representations of accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, HDMF was induced to release, through several funding commitment agreements, to Globe Asiatique Realty Holdings Corporation, through accused Delfin S. Lee, the total amount of ₱6,653,546,000.00, more or less, and upon receipt of the aforesaid amount, the above-named accused did then and there willfully, unlawfully and feloniously convert, misappropriate and misapply the same, and despite repeated demands, the above-named accused

failed and refused to pay the same, to the damage and prejudice of the private complainant in the aforesaid amount.

As to the element of deceit, it was found that the documents submitted by GA concerning the existence and qualifications of its buyers are spurious and/or questionable. It was uncovered that at least 351 of the supposed buyers have already surrendered or withdrew their loans and/or are no longer interested in pursuing their loans, while the alleged buyers for additional 350 Xevera accounts have either denied availing of the loans or expressed their intention to cancel their respective accounts. Afterwards, documents obtained by HDMF through special audit conducted on the Xevera Projects disclose that out of the 8,230 loans taken out by Pag-IBIG, only 39% of the borrowers belong to the Other Working Group (OWG) category. On the other hand, out of the 10% of the OWG surveyed/audited, only 1.85% are actually living in the units they purchased, whereas, 83.38% of the acquired units remain unoccupied; 7.69% of the units are closed, 6.15% are being occupied by third parties; and lastly, 0.92% of the units are yet to be constructed. The same documents likewise show that: (a) from a random examination of the units taken out by Pag-IBIG and which are being occupied by third parties, 16 units are being occupied by in-house buyers – two of whom have fully paid their obligations with GA; 3 units were leased out by non-borrowers; 1 unit is being occupied by a replacement buyer; and 82% of the borrowers of the units have failed to submit their respective Income Tax Returns (ITR) which is a mandatory requirement for the approval of their loan applications, and (b) as a result of the post take-out validation conducted by HDMF, it was found that 644 borrowers endorsed by GA are not genuine buyers of Xevera homes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers.

In connection with the "special buyers scheme," it was established that the people engaged as such have no intention of buying housing units from GA, but merely agreed to the same after GA's agents sought them out for a fee of ₱5,000.00. After being paid such fee, the aforementioned "special buyers" agreed to apply for membership with Pag-IBIG, on the condition that it is GA that pays for their 24 months installments, so that they can be qualified to apply for a Pag-IBIG housing loan. Thereafter, these "special buyers" are made to execute loan and other supporting documents, which are then submitted to HDMF for take-out of their housing loans for the Xevera projects.

After take-out, GA pays the monthly amortizations of these "special buyers" to Pag-IBIG, using the payment made to it by Pag-IBIG on the housing loan of GA's Xevera project buyers. In this wise, GA's Performing Accounts Ration (PAR) reached as high as 99.97%. However, when HDMF stopped fund releases to GA by way of housing loan take-outs of its buyers, or sometime August 2010, GA started to fail in remitting to HDMF Pampanga Branch office the monthly housing loan amortizations of its buyers of Xevera project. Thus, GA's almost 100% monthly collection/remittance rate dropped to 0% or no remittance at all when HDMF stopped its fund releases to GA, thereby establishing that the monthly amortizations of its borrowers were being paid by GA from the funds released by HDMF on the housing loans of its Xevera housing project borrowers.

That in carrying out the aforesaid conspiracy, accused Christina Sagun, head of the documentation department of Globe Asiatique Realty and Holdings Corp., did then and there unlawfully, feloniously and knowingly process and approve the housing loan applications of the said fictitious and "special buyers" of GA, in clear violation of the terms of conditions of the agreements entered into between HDMF and GA; accused Dexter L. Lee, did then and there, unlawfully, feloniously and knowingly order employees of GA to find and recruit "special buyers," and in fact found such special buyers, in accordance with the aforementioned illegal scheme, and in fact, is a co-signatory of the checks issued by GA in favor of the said "special buyers;" accused Atty. Alex Alvarez, did then and there unlawfully, feloniously and knowingly notarize crucial pieces of documents, consisting, among others, of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction; and accused CRISTINA SALAGAN, being the head of GA's accounting department, did then and there unlawfully, feloniously and knowingly allow the release of the questionable amounts of ₱5,000.00 as payment to every fake/fictitious and/or "special buyer" applicant of GA despite knowledge of its unlawful and illegal nature, to the damage and prejudice of HDMF and/or its members.

CONTRARY TO LAW.[34]

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[34] *Id.* at 24-27.

In due course, the respondents separately moved to quash the information and to seek judicial determination of probable cause. [35]

On May 22, 2012, the Pampanga RTC found probable cause for syndicated *estafa* and for the issuance of warrants of arrest, to wit:

> PREMISES GIVEN, the Court orders the following:
>
> I. Probable cause for the crime of ESTAFA (ARTICLE 315 [2] [a] of the Revised Penal Code, in relation to Section 1 of P.D. 1689, as amended, is found against the Accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.
>
> II. Issue Warrant of Arrest against DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.
>
> III. There is NO BAIL RECOMMENDED for each of DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.
>
> The setting (sic) on May 23 and 24, 2010 is (sic) CANCELLED.
>
> SO ORDERED.[36]

Upon notice of the resolution, Delfin Lee filed a *Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion*.

On August 22, 2012, the Pampanga RTC denied Delfin Lee's *Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion*.[37]

Delfin Lee, Dexter and Salagan moved to reconsider the August 22, 2012 resolution of the Pampanga RTC.

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[35] *Id*. at 27-29.

[36] *Id*. at 28-29.

[37] *Id*. at 30.

Without waiting for the resolution of the motion, Delfin Lee filed a petition for *certiorari* with prayer for the issuance of a TRO and/or writ of preliminary injunction in the CA on November 26, 2012 to nullify the resolutions of the Pampanga RTC dated May 22, 2012 and August 22, 2012 (**C.A.-G.R. SP No. 127553**).[38]

Meanwhile, Atty. Alvarez also filed a motion for reconsideration of the May 22, 2012 resolution, but the Pampanga RTC denied the motion on August 22, 2012. Thereafter, he filed a petition for *certiorari* with the CA to nullify and set aside the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC. The petition was docketed as **C.A.-G.R. SP No. 127690**.

Dexter filed his own petition for *certiorari* in the CA to question the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC.

Salagan likewise filed her own petition for *certiorari* in the CA alleging grave abuse of discretion on the part respondent Judge of the Pampanga RTC in issuing the May 22, 2012 resolution denying her second motion to quash information with prayer to re-determine probable cause and the January 29, 2014 resolution denying her motion for reconsideration.

**The Civil Case**
**(Proceedings before the Makati RTC)**

Globe Asiatique and Delfin Lee initiated the complaint for specific performance and damages against HDMF on November 15, 2010. Docketed as Civil Case No. 10-1120,[39] the case was assigned to Branch 58 of the Makati RTC. Globe Asiatique and Delfin Lee thereby sought to compel HDMF to accept the proposed replacements of the buyers/borrowers who had become delinquent in their amortizations, asserting that HDMF's inaction to accept the replacements had forced Globe Asiatique to default on its obligations under the MOA and FCAs.[40]

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[38] *Id*. at 30-31.

[39] *Id*. at 19.

[40] *Id*. at 20.

Globe Asiatique and Delfin Lee filed a *Motion for Summary Judgment*, which the Makati RTC, after due proceedings, resolved on January 30, 2012, disposing thusly:

**WHEREFORE,** premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiff (sic) have proven their case by preponderance of evidence. **As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.**

2. Pursuant to the provisions of their MOA amending the continuing FCAs and CSAs, defendant HDMF is hereby ordered to comply faithfully and religiously with its obligation under the said contracts, including but not limited to the release of loan take-out proceeds of those accounts whose Deed[s] of Assignment with Special Power of Attorney have already been annotated in the corresponding Transfer Certificate of Title covering the houses and lots purchased by the Pag-IBIG member-borrowers from plaintiff GARHC as well as the evaluation of the loan applications of those who underwent or will undergo plaintiff GARHC's loan counselling and are qualified or PAG-IBIG FUND loans under the MOA and continuing FCAs and process the approval thereof only if qualified, under the Window 1 Facility as provided for in the MOA and continuing FCAs;

3. The unilateral cancellation by defendant HDMF of the continuing FCAs specifically the latest FCAs of December 15, 2009, January 5 and March 17, 2010 and CSA dated 10 February 2009, is hereby SET ASIDE[;]

4. Defendants are ordered to automatically off-set the balance of those listed in Annex "E" of the Motion for Summary Judgment against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

5. Defendants are ordered to accept the replacement-buyers listed in Annex "F" of the Motion for Summary Judgment, which list is unopposed by defendants, without interest or penalty from the time of defendant HDMF's cancellation of the Collection Servicing Agreement (CSA) resulting to the refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

6. Defendants are ordered to release the corresponding Transfer Certificate of Title[s] (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "E" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof.

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled to on March 12, 2012 at 8:30 in the morning.

SO ORDERED.[41]

On December 11, 2012, the Makati RTC denied the motion for reconsideration of OIC Faria and Atty. Berberabe filed through the Yorac Arroyo Chua Caedo and Coronal Law Firm (the Yorac Law Firm). The trial court held that the Yorac Law Firm was not duly authorized to represent the HDMF; hence, it treated the motion for reconsideration as a mere scrap of paper and opined that its filing did not toll the running of the period to appeal. As to the HDMF, the Makati RTC, noting with approval the manifestation of Globe Asiatique and Delfin Lee to the effect that the HDMF had not filed a motion for reconsideration or taken an appeal, deemed the summary judgment final and executory as to the HDMF.[42]

Aggrieved, the HDMF brought its petition for *certiorari* (**C.A.-G.R. SP No. 128262**).

**Decisions of the CA**

The CA promulgated the separate decisions now under review.

**1.**
**C.A.-G.R. SP No. 130409**
**(DOJ petition assailing the April 10, 2013 writ of preliminary injunction issued by the Pasig RTC)**

On June 18, 2013, the DOJ filed the intended petition for *certiorari* but inadvertently did not indicate therein the proper

[41] *Id.* at 22-23.

[42] *Rollo* (G.R. No. 209424), Vol. I, p. 26.

docket number for the case thereby causing the assignment by the CA of a new docket number, specifically C.A.-G.R. SP No. 130409. On June 26, 2013, the CA dismissed the DOJ's petition for *certiorari* in C.A.-G.R. SP No. 130409 on the ground that it had not received a motion for extension of time to file the petition.[43]

Meanwhile, on July 8, 2013, the CA issued its resolution in C.A.-G.R. SP No. 130404 denying the DOJ's motion for extension for failure of the DOJ to file the intended petition for *certiorari.*

Realizing its error later on, the DOJ immediately filed a manifestation with motion to admit petition for *certiorari* to clarify the mix-up and rectify its error. On August 14, 2013, the CA denied the DOJ's manifestation with motion to admit petition for *certiorari.*

Hence, the DOJ filed a petition docketed as G.R. No. 208744 to assail the resolution promulgated on July 8, 2013 in C.A.-G.R. SP No. 130404.[44] As to CA-G.R. SP No. 130409, the DOJ moved for reconsideration of the CA's resolution dated June 26, 2013, but the motion was denied on November 11, 2013.[45]

**2.**
**C.A.-G.R. SP No. 128262**
**(HDMF Petition assailing the January 30, 2012 and December 11, 2012 resolutions of the Makati RTC in Civil Case No. 10-1120)**

On October 7, 2013, the CA promulgated its decision dismissing the HDMF petition in **C.A.-G.R. SP No. 128262**,[46] to wit:

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

[44] *Id.* at 65-66.

[45] *Rollo* (G.R. No. 210095), Vol. I, pp. 75-76.

[46] *Rollo* (G.R. No. 209424), Vol. I, pp. 14-34; penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justice Elihu A. Ybanez, and Associate Justice Danton Q. Bueser, while Associate Justice Magdangal M. De Leon and Associate Justice Myra V. Garcia Fernandez dissented.

**WHEREFORE,** there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in rendering the assailed Resolution dated January 30, 2012 containing the Summary Judgment and the Resolution dated December 11, 2012 denying HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby **DISMISSED.**

**SO ORDERED.**

The CA opined that the HDMF had availed itself of the wrong remedy to assail the January 30, 2012 summary judgment and the December 11, 2012 resolution of the Makati RTC; and that the *certiorari* petition did not further show that it had been filed under the authority of the Office of the Government Corporate Counsel, or by a private law firm with the necessary pre-requisite conformity of the Government Corporate Counsel and Commission on Audit.[47]

**3.**
**C.A.-G.R. SP No. 121346**
**(Sagun Petition assailing the August 10, 2011 *Review Resolution* of the DOJ)**

In **C.A.-G.R. SP No. 121346,** the CA opined that respondent Sagun's duties as the Documentation Head of Globe Asiatique were ministerial in nature and did not require the employment of much discretion. As the DOJ observed in its assailed *Review Resolution*, Sagun's functions were limited to the collation of the documents submitted by the borrowers/buyers through Globe Asiatique's Marketing Department, and to ensuring that such documents were complete and duly accomplished, and to the determination and verification from the HDMF through the submission of Membership Status Verification whether the borrowers/buyers were really HDMF members, or had updated contributions, or had no existing housing loans, and were thus qualified to apply for housing loans. The CA conceded that any errors or oversights, which could occur in the performance of Sagun's duties, should be attributed to her negligence, as concluded in the *Review Resolution*.

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[47] *Id*. at 32.

While the DOJ asserted that the fraud could have been averted had Sagun not been negligent, the CA explained that such negligence negated any intent to commit a crime; hence, Sagun could not have committed the crime of *estafa* charged. Moreover, the documents Sagun had reviewed were forwarded to the HDMF for evaluation and approval; hence, the HDMF had the opportunity and the ultimate prerogative and discretion on the documents.

Accordingly, the CA disposed in its assailed decision promulgated on October 5, 2012 in **C.A.-G.R. SP No. 121346**,[48] *viz.*:

**WHEREFORE**, premises considered, the Petition for *Certiorari* and Prohibition is hereby **PARTIALLY GRANTED**. Consequently, the subject Review Resolution dated August 10, 2011 issued by respondent DOJ is **SET ASIDE** and **DISMISSED** as against petitioner Christina Sagun.

**SO ORDERED.**[49]

**4.**
**C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554, and C.A.-G.R. SP No. 127690**
**(respectively, the Delfin Lee Petition, Dexter Lee Petition and Alvarez Petition assailing the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC)**

On October 3, 2013, the CA promulgated its decision on the Alvarez petition (**C.A.-G.R. SP No. 127690**),[50] ruling that there was not enough evidence to implicate Atty. Alvarez; that the RTC had merely listed the documents submitted by the task force and had not conducted any evaluation of the evidence to

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[48] *Rollo* (G.R. No. 205698), Vol. I, pp. 24-57; penned by Associate Justice Angelita Gacutan with the concurrence of Associate Justice Mariflor Punzalan Castillo and Associate Justice Francisco P. Acosta.

[49] *Id.* at 56-57.

[50] *Rollo* (G.R. No. 209446), Vol. I, pp. 12-32; penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison.

determine whether or not Alvarez had participated in the alleged grand scheme to defraud the HDMF; and that the RTC had relied solely on the recommendation of the panel of prosecutors, which was insufficient under prevailing jurisprudence. The disposition was as follows:

**WHEREFORE**, in view of the foregoing premises, the Petition for Certiorari and the Supplemental Petition are **PARTIALLY GRANTED** and the assailed Resolutions dated May 22, 2012 and August 22, 2012 of the Regional Trial Court, Branch 42 of San Fernando City, Pampanga in so far as petitioner **ALEX M. ALVAREZ** is concerned are hereby annulled and set aside. Accordingly, the warrant of arrest issued against him is hereby **LIFTED, QUASHED/ RECALLED.**

**Meantime,** since the evidence do not support the finding of probable cause against petitioner **ALEX M. ALVAREZ**, public respondent court is hereby enjoined from proceeding with Criminal Case No. 18480 as against said petitioner only.

**SO ORDERED.**[51]

On November 7, 2013, the CA promulgated its decision on Delfin Lee's petition (**C.A.-G.R. SP No. 127553**),[52] decreeing:

**WHEREFORE**, in view of the foregoing, the instant petition is hereby **PARTIALLY GRANTED**. The assailed Resolutions dated May 22, 2012 and August 22, 2012 are hereby **ANNULLED** and **SET ASIDE** for the issuance thereof was attended with grave abuse of discretion on the part of public respondent Hon. Ma. Amifaith S. Fider-Reyes, in her capacity as the Presiding Judge of the San Fernando, Pampanga RTC – Branch 42. Consequently, the Warrant of Arrest issued against petitioner Delfin S. Lee is hereby **QUASHED, RECALLED AND LIFTED.** Afore-named public respondent judge is directed to **CEASE** and **DESIST** from further proceeding with Criminal Case No. 18480 insofar as petitioner Delfin S. Lee is concerned.

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[51] *Id*. at 31-32.

[52] *Rollo* (G.R. No. 209852), Vol. I, pp. 15-43; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justice Agnes Reyes-Carpio and Associate Justice Melchor Q.C. Sadang.

Furthermore, all government agencies tasked in the enforcement of the said warrant of arrest including but not limited to the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Bureau of Immigration (BI) are immediately **ENJOINED** from implementing the same.

**SO ORDERED.**[53]

The CA observed that the RTC gravely abused its discretion because its conclusion on finding probable cause to issue the arrest warrant was in the nature of speculation; that the RTC had merely relied on the information, the *Review Resolution* and the six boxes of documentary evidence to find and conclude that a huge amount of money had been transferred from the HDMF to Globe Asiatique through a complex scheme that could only have been attained through the sustained action of people in concert to commit their criminal intention; that such findings and conclusions were not based on hard facts and solid evidence as required by jurisprudence; that the report did not mention how many perpetrators had conspired against the HDMF; that the parts of Delfin Lee and his supposed cohorts in the supposed fraudulent acts committed against the HDMF had not been particularly identified; that the conversion of the recommendation from the filing of simple *estafa* to syndicated *estafa* had not been clearly explained in the *Review Resolution*; that the RTC had simply adopted such findings without justifying how the charge could be for syndicated instead of simple *estafa*; and that the RTC had also issued the resolution a day immediately after the six boxes of documentary evidence had come to its knowledge as the trial court.

The CA debunked the HDMF's argument that Delfin Lee had defrauded it into releasing a considerable sum of money to Globe Asiatique through a complex scheme involving fraudulent buyers. The CA noted that the *Deed of Assignment with Contract to Sell and Special Power of Attorney* executed between Globe Asiatique and the HDMF showed that the HDMF had been ultimately duty-bound to check the applications of prospective

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

borrowers and to approve the same; that, consequently, whatever damage the HDMF had incurred could not be solely ascribed to Delfin Lee; that in fact the DOJ had also endorsed the *Review Resolution* to the Ombudsman for the investigation of the HDMF officers for violation of Republic Act No. 3019; and that it was confusing that Delfin Lee had been charged separately of another crime instead of being joined with the officers of the HDMF who had been referred to the Ombudsman for investigation.

On November 16, 2016, the CA promulgated its decision on Dexter's petition (**C.A.-G.R. No. 127554**), declaring that the Pampanga RTC had erred in its determination of probable cause against him;[54] that the Pampanga RTC had gravely abused its discretion when it based its assessment solely on the *Review Resolution* of the panel of prosecutors, the information, and the six boxes of documents presented as evidence by the Prosecution without making its independent assessment of the documents and other pieces of evidence to validate the issuance of the arrest warrant issued against Dexter.

The CA disposed thusly:

**ACCORDINGLY**, on the foregoing reasons, the petition is **PARTIALLY GRANTED**. The assailed Resolutions dated May 22, 2012 and August 22, 2012 of Branch 42 of Regional Trial Court of Pampanga City (sic) are **ANULLED and SET ASIDE**. Thus, the Warrant of Arrest issued against petitioner Dexter L. Lee is hereby **QUASHED, RECALLED and LIFTED**. Furthermore, the Regional Trial Court, Branch 42 of San Fernando, Pampanga is directed to **CEASE and DESIST** from further proceeding with Criminal Case No. 18480 insofar as petitioner Dexter L. Lee is concerned.

Moreover, all government agencies tasked in the enforcement of the Warrant of Arrest including but not limited to the Philippine National Police, the National Bureau of Investigation and the Bureau of Immigration are immediately **ENJOINED** from implementing the said Warrant.

**SO ORDERED.**[55]

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[54] *Rollo* (G.R. No. 228730), Vol. I, p. 108.

[55] *Id.* at 112-113.

**5.**
**C.A.-G.R. SP No. 134573**
**(Salagan Petition assailing the May 22, 2012 and January 29, 2014 resolutions of the Pampanga RTC)**

Salagan claimed in **C.A.-G.R. SP No. 134573** that there was no probable cause to charge her with the crime of syndicated *estafa* in view of the decisions promulgated in C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, and C.A.-G.R. SP No. 127690 finding that no probable cause existed against Sagun, Delfin Lee and Atty. Alvarez, respectively, for syndicated *estafa*.

The CA declared in **C.A.-G.R. SP No. 134573**, however, that the respondent Judge did not gravely abuse her discretion in finding probable cause against Salagan, and upheld the validity of the information filed in the Pampanga RTC against her; and that the warrant of arrest had been issued upon probable cause personally determined by the judge.[56] It ruled that the respondent Judge had properly denied Salagan's second motion to quash the information with prayer to re-determine probable cause based on a supervening event considering that Salagan had erroneously assumed that the separate decisions promulgated by the CA were supervening events that justified the re-determination of probable cause.[57]

The CA disposed on March 18, 2016 in **C.A.-G.R. SP No. 134573**:

**WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **DISMISSED**. Accordingly, the Resolution dated May 22, 2012 and Resolution dated January 29, 2014 of the San Fernando, Pampanga RTC, Branch 42 are hereby **AFFIRMED** insofar as Accused Cristina Salagan is concerned.

**SO ORDERED.**[58]

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[56] *Rollo* (G.R. No. 230680), Vol. 1, p. 358.

[57] *Id*. at 362.

[58] *Id*. at 365.

## Issues

We simplify the legal issues as follows:

(1) Whether or not the HDMF availed itself of the proper remedy to assail the summary judgment rendered by the Makati RTC (**G.R. No. 209424**);

(2) Whether or not there was probable cause for the filing of the information for syndicated *estafa*, and for the issuance of the warrants of arrest against the respondents for that crime (**G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730** and **230680**); and

(3) Whether or not the conduct of a preliminary investigation could be enjoined (**G.R. Nos. 208744** and **210095**).

On various dates, the Court issued TROs[59] to enjoin the implementation and enforcement of the assailed CA decisions and resolutions issued in **C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554**, and **C.A.-G.R. SP No. 127690**. Inasmuch as the warrants of arrest remained valid nonetheless, Delfin Lee was arrested by virtue thereof,[60] and was detained in the Pampanga Provincial Jail since his arrest until this time.[61] The other respondents have remained at large.

## Ruling of the Court

We **PARTIALLY GRANT** the petitions in **G.R. No. 205698, G.R. No. 205780, G.R. No. 209446, G.R. No. 209489, G.R. No. 209852, G.R. No. 210143, G.R. No. 228452, G.R. No. 228730** and **G.R. No. 230680,** and, accordingly, **MODIFY** the assailed decisions of the CA.

On the other hand, we **GRANT** the petitions in **G.R. No. 209424, G.R. No. 208744**, and **G.R. No. 210095,** and, accordingly, **REVERSE** the resolutions of the CA assailed therein.

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[59] *Rollo* (G.R. No. 209446), Vol. VI, pp. 2484-2485, 2754-2755; *Rollo* (G.R. No. 210143), Vol. X, pp. 4756-4758; *Rollo* (G.R. No. 228452), Vol. V, pp. 2261.

[60] *Rollo* (G.R. No. 210143), Vol. X, p. 4932.

[61] *Id.* at 5217.

**1.**
**The January 30, 2012 summary judgment was an interlocutory judgment; hence, the HDMF correctly instituted a petition for *certiorari* instead of an appeal**

The HDMF argues that it correctly instituted the special civil action for *certiorari* to assail the resolutions of the Makati RTC dated January 30, 2012 and December 11, 2012 issued in Civil Case No. 10-1120; that the Yorac Law Firm had lawful authority to represent the HDMF; and that the Makati RTC rendered the questioned resolutions with grave abuse of discretion amounting to lack or excess of jurisdiction.

The HDMF's arguments are partly meritorious.

**1.a.**
**The January 30, 2012 summary judgment was an interlocutory order**

In Civil Case No. 10-1120, Globe Asiatique and Delfin Lee specifically averred separate causes of action against the HDMF, including that for damages. Thus, they prayed for the following reliefs, to wit:

**PRAYER**

WHEREFORE, it is respectfully prayed that after due proceedings, a decision be rendered by the Honorable Court in favor of the plaintiffs and against the defendants, ordering the following:

1. With respect to the First Cause of Action, for defendant PAG-IBIG to accept the replacement of the buyer/borrowers as offered by plaintiff GARHC contained in a list hereto attached as Annex "O" pursuant to the latter's exercise of this option under Section 3.7 of the latest Funding Commitment Agreement in relation to the buyback provision under the Memorandum of Agreement dated 13 July 2009;

2. With respect to the Second Cause of Action, for defendant PAG-IBIG FUND to release the pending loan take-outs and amount of retention due plaintiff GARHC pursuant to the MOA and latest FCA and for all defendants to jointly and solidarily pay plaintiff GARHC the sum of Php 6,562,500.00, representing interest and penalty payments;

3. With respect to the Third Cause of Action, for defendant PAG-IBIG FUND to honor the provisions of its MOA, the latest FCA and CSA, to set aside the cancellation of the FCA and CSA, and restore plaintiff GARHC to its rights under the MOA, latest FCA and CSA;

4. With respect to the Fourth Cause of Action , for defendants to jointly and severally pay plaintiff GARHC the sum of Php1 Million as and by way of attorney's fees, Php500,000.00 as and by way of litigation expenses, and cost of suit; and

5. With respect to the Fifth Cause of Action, for defendants to pay exemplary damages in the amount of PHp500,000.00.

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.[62]

During the proceedings, Globe Asiatique and Delfin Lee filed the motion for summary judgment, stating the reliefs prayed for, as follows:

**PRAYER**

WHEREFORE, it is respectfully prayed that after due notice and hearing, an Order be issued granting the instant Motion for Summary Judgment and simultaneously therewith, to render the Summary Judgment prayed for, declaring and ordering the following:

1. That plaintiffs have proven their case by preponderance of evidence and, therefore, are entitled to specific performance and right to damages as prayed for in the Complaint;

2. That defendants HDMF should faithfully and religiously comply with the pertinent provisions of the FCAs and CSAs as amended by the MOA under the prevailing conditions prior to the precipitate unilateral termination thereof by defendant HDMF, including but not limited to the release of loan take-out proceeds of those accounts whose DOAs with SPAs have already been annotated in the corresponding TCTs as well as the evaluation and approval of the loan applications of those who underwent or will undergo plaintiff GARCH's loan counselling and are qualified for PAG-IBIG loans under the MOA and FCAs;

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[62] *Rollo* (G.R. No. 209424), Vol. II, pp. 770-773.

3. That defendant HDMF's unilateral termination of the MOA, FCAs and CSA be declared illegal and be set aside;

4. That defendants be ordered to automatically off-set the balance of those listed in Annex "E" hereof composed of fully-paid buyer-borrowers against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

5. That defendants be ordered to accept the replacement-buyers listed in Annex "F" hereof, without interest or penalty from the time of defendant HDMF's refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

6. That defendants be ordered to release the corresponding Transfer Certificate of Title(s) (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "e" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof, including that of complaint-intervenor Tessie G. Wang's titles;

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.[63]

Globe Asiatique and Delfin Lee did not include the claim for damages among the reliefs prayed for by their motion for summary judgment.

Granting the motion for summary judgment, the Makati RTC ultimately disposed:

**WHEREFORE,** premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiffs have proven their case by preponderance of evidence. **As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.**

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[63] *Rollo* (G.R. No. 209424), Vol. III, pp. 1139-1141.

x x x x x x x x x

**Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning**.

SO ORDERED.[64] (Bold underscoring supplied)

As the foregoing shows, the Makati RTC set the case for the presentation of evidence to establish the other claims of Globe Asiatique and Delfin Lee stated in their complaint for specific performance, specifically those pertaining to the fourth and fifth causes of action. The claims related to damages, which, being still essential parts of the case, would still have to be established and adjudicated on their merits. Although the recovery of the damages was dependent on the determination that the HDMF had breached its contract with Globe Asiatique, it could not yet be said that the Makati RTC had fully disposed of the case through the summary judgment considering that there were still other reliefs sought by Globe Asiatique and Delfin Lee yet to be tried and determined either way. Under the circumstances, the summary judgment was, properly speaking, but an *interlocutory judgment* of the Makati RTC.

In this connection, the rule on separate judgments – Section 5, Rule 36 of the *Rules of Court* – is relevant. The rule requires the action to proceed as to the remaining but unresolved claims, to wit:

SEC. 5. *Separate judgments.* – When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. **The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims.** In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in

[64] *Id.* at 451-452.

whose favor the judgment is rendered. (Bold underscoring supplied for emphasis)

A partial summary judgment like that rendered on January 30, 2012 by the Makati RTC was in the category of a separate judgment. Such judgment did not adjudicate damages, and still directed that further proceedings be had in order to determine the damages to which Globe Asiatique and Delfin Lee could be entitled. Section 4, Rule 35 of the *Rules of Court* thus came into operation. Section 4 states:

> SEC. 4. *Case not fully adjudicated on motion.* – If on motion under this Rule, **judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary**, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an **order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.** The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly. (Bold underscoring supplied for emphasis)

Worthy to emphasize is that the rendition of a summary judgment does not always result in the full adjudication of all the issues raised in a case.[65] In such event, a partial summary judgment is rendered in the context of Section 4, *supra*. Clearly, such a partial summary judgment – because it does not put an end to the action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for – cannot be considered a final judgment. It remains to be an interlocutory judgment or order, instead of a final judgment, and is not to be dealt with and resolved separately from the other aspects of the case.

In *Pahila-Garrido v. Tortogo,*[66] the distinctions between *final* and *interlocutory* orders were delineated thusly:

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[65] *Philippine Business Bank v. Chua*, G.R. No. 178899, November 15, 2010, 634 SCRA 635, 646-649.

[66] G.R. No. 156358, August 17, 2011, 655 SCRA 553.

The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case*? If it does, the order or judgment is interlocutory; otherwise, it is final.

What was the proper recourse against the partial summary judgment?

Considering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment or order could be appealed. Section 1, Rule 41 of the *Rules of Court* makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order, to wit:

> Section 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from:**
>
> x x x x x x x x x
>
> (f) **A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third party complaints, while the main case is pending, unless the court allows an appeal therefrom**; and
>
> x x x x x x x x x
>
> **In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.**

Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through *certiorari* under Rule

65 of the *Rules of Court*. Thus, the HDMF properly instituted the special civil action for *certiorari* to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

**1.b.**
**The Yorac Law Firm had no authority to file the HDMF's motion for reconsideration of the January 30, 2012 summary judgment rendered by the Makati RTC**

The HDMF is a government-owned and -controlled corporation (GOCC) performing proprietary functions with original charter or created by special law, specifically Presidential Decree (P.D.) No. 1752, amending P.D. No. 1530.[67] As a GOCC, the HDMF's legal matters are to be handled by the Office of the Government Corporate Counsel (OGCC),[68] save for some extraordinary or exceptional circumstances when it is allowed to engage the services of private counsels, provided such engagement is with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the Commission on Audit (COA).[69]

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[67] See *Home Development Mutual Fund v. Commission on Audit,* G.R. No. 142297, June 15, 2004, 432 SCRA 126, 132.

[68] *Administrative Code of 1987,* Book IV, Title III, Chapter 3, Section 10 provides:

SECTION 10. Office of the Government Corporate Counsel. — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

x x x x x x x x x

[69] See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit,* G.R. No. 185544, January 13, 2015, 745 SCRA 269, 286-289.

In *Phividec Industrial Authority v. Capitol Steel Corporation*,[70] the Court underscored that the best evidence to prove the COA's concurrence with the engagement of a private lawyer or law firm was the written concurrence from the COA itself, *viz.*:

> Petitioners primarily rely on a certified true copy of an Indorsement issued by COA Regional Office No. 10 as proof of written concurrence on the part of the COA. All that it contains is a second-hand claim that the COA General Counsel had allegedly concurred in the retainer contract between PHIVIDEC and Atty. Adaza. The written concurrence itself which may be the best evidence of the alleged concurrence was not presented. It is also worth noting that the said Indorsement was dated 4 June 2002, or approximately two years after the filing of the expropriation case by Atty. Adaza.

The records reveal that although the OGCC authorized the HDMF to engage the services of the Yorac Law Firm, the HDMF did not sufficiently prove that the written concurrence of the COA had been obtained.

To substantiate its claim of the COA's concurrence with the engagement of the Yorac Law Firm's legal services, the HDMF presented the certification dated January 10, 2013,[71] *viz.*:

> **CERTIFICATION**
>
> This is to certify that the Commission on Audit (COA) has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection with the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents, and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues
>
> This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve.
>
> 10 January 2013

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[70] G.R. No. 155692, October 23, 2003, 414 SCRA 327, 335.

[71] *Rollo* (G.R. No. 209424), Vol. III, p. 1493.

(signed)
**ATTY. FIDELA M. TAN**
***Corporate Auditor***

It is immediately discernible, however, that the certification was merely the attestation by Atty. Tan that COA had concurred in the retainer agreement entered into by and between the HDMF and the Yorac Law Firm. Such attestation did not establish the written concurrence of the COA on the engagement of the Yorac Law Firm because it did not state that the copy was a correct copy of the original considering that no copy of COA's written concurrence was actually attached to the January 10, 2013 certification. Also, it did not thereby appear that Atty. Tan was the custodian of the records of COA. As the Makati RTC further observed, the attestation had not been made under the official seal of COA but printed only on the joint letterhead of the HDMF and COA, with the latter's address being indicated to be in Mandaluyong City when the COA's office was actually located in Commonwealth Avenue, Quezon City.[72]

Atty. Tan's attestation of the COA's purported concurrence had no evidentiary value due to its non-conformity with the requirements of Section 24 and Section 25, Rule 132 of the *Rules of Court* for presenting the record of a public document, to wit:

**Section 24.** *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. x x x

**Section 25.** *What attestation of copy must state*. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer,

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[72] *Rollo* (G.R. No. 209424), Vol. II, p. 455.

if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (26a)

The foregoing bolstered the fact that the attestation, being at best the second-hand opinion of Atty. Tan as a corporate auditor who did not have the copy of the supposed COA concurrence, could not stand as the written concurrence of the COA contemplated by law for the purpose.

Nonetheless, even if the January 10, 2013 certification was to be regarded as the written concurrence of the COA, the fact that it was issued and presented *after* the Yorac Law Firm had entered its appearance on June 17, 2011 as counsel of the HDMF should not go unnoticed.[73] Records reveal that as of December 7, 2011, the COA was still in the process of evaluating the request for the concurrence on the hiring by the HDMF of the Yorac Law Firm.[74] This forthwith contravened the specific requirement that the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the written concurrence of the COA should first be secured *prior to* the hiring or employment of the private lawyer or law firm.[75]

In view of the HDMF's failure to secure the written concurrence of the COA, the Yorac Law Firm could not have been considered as authorized to represent the HDMF. With the filing of the HDMF's motion for reconsideration vis-a-vis the January 30, 2012 summary judgment of the Makati RTC being unauthorized, the CA did not err in upholding the Makati RTC's treatment of the HDMF's motion as a mere scrap of paper.

**1.c**
**The broader interest of justice and the peculiar legal and equitable circumstances herein justified the relaxation of technical rules**

[73] *Rollo* (G.R. No. 209424), Vol. III, p. 1037.

[74] *Id.* at 1225.

[75] *Oñate v. Commission on Audit,* G.R. No. 213660, July 5, 2016, 795 SCRA 661, 666-667.

The import of failing to file the motion for reconsideration on the part of the HDMF meant that the 60-day period to initiate the petition for *certiorari* should be reckoned from its receipt of the assailed January 30, 2012 summary judgment. Since the HDMF actually filed the petition for *certiorari* on January 18, 2013, and thus went beyond the reglementary period, the petition should be dismissed for being filed out of time.

There are instances, however, when the rigidity of the rule requiring the petition for *certiorari* to be filed within 60 days from the receipt of the judgment, order, or resolution sought to be thereby assailed has been relaxed, such as: (1) when the most persuasive and weighty reasons obtain; (2) when it is necessary to do so in order to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) in case of the good faith of the defaulting party by immediately paying within a reasonable time of the default; (4) when special or compelling circumstances exist; (5) when the merits of the case so demand; (6) when the cause of the delay was not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) when there is no showing that the review sought is merely frivolous and dilatory; (8) when the other party will not be unjustly prejudiced thereby; (9) in case of fraud, accident, mistake or excusable negligence without the appellant's fault; (10) when the peculiar legal and equitable circumstances attendant to each case so require; (11) when substantial justice and fair play are thereby served; (12) when the importance of the issues involved call for the relaxation; (13) in the exercise of sound discretion by the court guided by all the attendant circumstances; and (14) when the exceptional nature of the case and strong public interest so demand.[76]

Herein, the broader interest of justice and the attendant peculiar legal and equitable circumstances dictated that the HDMF's petition for *certiorari* be resolved on its merits despite its filing beyond the reglementary period. The HDMF believed in good

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[76] *Republic v. St. Vincent De Paul Colleges, Inc.,* G.R. No. 192908, August 22, 2012, 678 SCRA 738, 747-750.

faith that it had duly filed the motion for reconsideration vis-à-vis the January 30, 2012 summary judgment. Although the Makati RTC noted the HDMF's failure to secure the COA's concurrence, and resolved to treat the HDMF's motion for reconsideration as a mere scrap of paper, the reglementary period to file the petition for *certiorari* had already lapsed, such failure to file on time was not entirely attributable to the fault or negligence of the HDMF.

**2.**
**There was no probable cause for the filing of the information for syndicated *estafa* and for the issuance of the warrants of arrest for syndicated *estafa* against respondents**

Delfin Lee, Dexter, Sagun and Alvarez were charged with syndicated *estafa*, along with Cristina Salagan, on the basis of the findings of the DOJ that Globe Asiatique had violated its warranties under the FCAs and the July 13, 2009 MOA; that Globe Asiatique had submitted spurious and questionable documents concerning the qualifications of its buyers; that Globe Asiatique had employed fictitious buyers to obtain funds from the HDMF; and that Globe Asiatique had failed to remit to the HDMF the monthly housing loan amortizations of its buyers in the Xevera Project in Pampanga.[77]

The DOJ concluded thusly:

> Given the foregoing the above-named respondents may be charged with the crime of "syndicated estafa" as they fall within the legal definition of a syndicate. A syndicate is defined as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/ associations from the general public. (Paragraph 1, Section 1, P.D. No. 1689; *People of the Philippines v. Vicente Menil,* G.R. Nos 115054-66, September 12, 2009).

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[77] *Rollo* (G.R. No. 209852), Vol. I, pp. 411-414.

x x x x x x x x x

Having earlier established respondents' commission of estafa, it is pristine clear that the 1st and 2nd elements of the offense of *syndicated estafa* has already been satisfied in the instant case. Relative to the 3rd element, we believe that HDMF falls under the entities listed in P.D. 1689 that can be victimized under such law, as the provision specifically includes entities which solicited funds from the general public. x x x

It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme. We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-Ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is a voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.[78]

On its part, the Pampanga RTC found probable cause for the issuance of warrants of arrest against the respondents only because –

The records would show a huge amount of money that was transferred from the coffers of the PAG IBIG FUND and released to the GLOBE ASIATIQUE through a complex scheme involving fraudulent buyers at a scale and over a period of time that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective. Hence, the Court finds probable cause for the existence of a syndicated estafa.[79]

The crucial questions before us relate to: (1) the DOJ's finding of probable cause for the filing of the information against Sagun; and (2) the Pampanga RTC's judicial determination of probable cause for the issuance of the warrant of arrest against the respondents.

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[78] *Id.* at 420-421.

[79] *Id*. at 236.

The concept of probable cause has been discussed in *Napoles v. De Lima*[80] as follows:

x x x During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure:

SEC. 5. *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 when the complaint or information was filed pursuant to section 6 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 or information. (Emphasis supplied)

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires

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[80] G.R. No. 213529, July 13, 2016, 797 SCRA 1, 16-18.

jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."

While the courts are generally not permitted to substitute their own judgments for that of the Executive Branch in the discharge of its function of determining the existence of probable cause during the preliminary investigation,[81] the intervention of the courts may be permitted should there be grave abuse of discretion in determining the existence of probable cause on the part of the investigating prosecutor or the Secretary of Justice.

Thus, in order to settle whether or not the CA correctly reversed the August 10, 2011 *Review Resolution* of the DOJ insofar as it found probable cause to charge Sagun with syndicated *estafa*, and whether or not the warrants of arrest issued against the respondents should be quashed, it is imperative to discuss the nature of syndicated *estafa*.

Section 1 of P.D. No. 1689 defines syndicated *estafa* in the following manner:

> SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders or members of rural banks, cooperative, "samahang nayon(s)", or farmer's association, or of funds solicited by corporations/associations from the general public.
>
> When not committed by a syndicate as above defined, the penalty imposable shall be *reclusion temporal* to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

P.D. No. 1689 seeks to impose a harsher penalty on certain forms of swindling, more particularly, syndicated *estafa*. The preamble of the decree recites:

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[81] *Callo-Claridad v. Esteban,* G.R. No. 191567, March 20, 2013, 694 SCRA 185, 197.

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon (s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public.

P.D. No. 1689 condemns the taking by fraud or deceit of funds contributed by members of rural banks, cooperatives, *samahang nayon* or farmers' associations, or of funds solicited by corporations or associations from the general public as such taking poses a serious threat to the general public. The elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling, as defined in Articles 315 and 316 of the *Revised Penal Code*, is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by the stockholders, or members of rural banks, cooperative, *samahang nayon(s),* or farmers' associations, or of funds solicited by corporations/associations from the general public.[82]

In relation thereto, Article 315(2)(a) of the *Revised Penal Code* specifies that:

Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any means mentioned herein below shall be punished by:

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[82] *People v. Tibayan,* G.R. No. 209655-60, January 24, 2015, 746 SCRA 259, 269.

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions; or by means of other similar deceits.

x x x x x x x x x

The elements of *estafa* by means of deceit under Article 315(2)(a) of the *Revised Penal Code* are, namely: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that as a result thereof, the offended party suffered damage.[83]

Based on the foregoing elements of syndicated *estafa*, the Court holds that the CA did not err in reversing the August 10, 2011 *Review Resolution* of the DOJ insofar as Sagun was concerned and in quashing the warrants of arrest issued against the respondents. In the same manner, we find and so hold that the CA erred in upholding the propriety of the issuance of the warrant of arrest against Salagan.

**2.a**
**In the case of the respondents, there was no syndicate as defined under P.D. No. 1689**

A syndicate is defined by P.D. No. 1689 as consisting of **five or more persons formed with the intention of carrying**

[83] *Id*. at 268.

**out the unlawful or illegal act, transaction, enterprise or scheme**.[84] The Court has clarified in *Remo v. Devanadera*[85] that in order for any group to be considered a syndicate under P.D. No. 1689 –

> x x x **[T]he perpetrators of an estafa must not only be comprised of at least five individuals but must have also used the association that they formed or managed to defraud its own stockholders, members or depositors**. Thus:
>
> > On review of the cases applying the law, we note that the **swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association**. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, **only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*. x** x x. (*Emphasis supplied*).
>
> x x x x x x x x x

Dissecting the pronouncement in *Galvez* for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PO No. 1689:

1. They must be at least five (5) in number;
2. They must have formed or managed a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public.
3. They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme *i.e.*, they used the very association that

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[84] *Catiis v. Court of Appeals,* G.R. No. 153979, February 9, 2006, 482 SCRA 71, 81.

[85] G.R. No. 192925, December 9, 2016, 813 SCRA 610, 633.

> they formed or managed as the means to defraud its own stockholders, members and depositors.

None of the three abovementioned standards for determining the existence of a syndicate was present.

Delfin Lee, Dexter, Sagun, and Salagan were, respectively, the President/Chief Operating Officer, Executive Vice-President, Head of the Documentation Department, and Head of the Accounting/Finance Department of Globe Asiatique.[86] In view of their number being under five, the original charge brought against them was only for simple *estafa*. It was only in the assailed *Review Resolution* of August 10, 2011 that SDSP Villanueva recommended the filing of the charge for syndicated *estafa* due to the addition of Atty. Alvarez as a co-respondent, thereby increasing the number of the respondents to *at least* five. But Atty. Alvarez was the Manager of the HDMF's Foreclosure Department[87] whose only connection with Globe Asiatique was by reason of his having rendered notarial services for the latter.[88] If Atty. Alvarez was not related to Globe Asiatique either by employment or by ownership, he could not be considered as part of the syndicate supposedly formed or managed to defraud its stockholders, members, depositors or the public. This alone immediately removed the respondents' *supposed* association from being found and considered as a *syndicate* in the context of P.D. No. 1689.

Even assuming that Atty. Alvarez was juridically connected with Globe Asiatique in the context of P.D. No. 1689, the association of the respondents did not solicit funds from the general public. Globe Asiatique was incorporated in 1994 as a legitimate real-estate developer "to acquire by purchase, lease, donation or otherwise, to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improve, manage,

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[86] *Rollo* (G.R. No. 209852), Vol. I, p. 381.

[87] *Id*. at 402.

[88] *Id*. at 402.

or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances."[89] It is quite notable, too, that there was no allegation about Globe Asiatique having been incorporated to defraud its stockholders or members. In fact, the HDMF, the only complainant in the *estafa* charges, was not itself a stockholder or member of Globe Asiatique.

Moreover, the DOJ concluded that it was the HDMF itself, not Globe Asiatique, that had solicited funds from the public, to wit:

> x x x HDMF falls under the entities listed in PD 1689 that can be victimized under such law, as the provisions specifically includes entities which solicited funds from the general public. x x x
>
> x x x x x x x x x
>
> **It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme. We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.**[90]

The funds solicited by HDMF from the public were in the nature of their contributions as members of HDMF, and had nothing to do with their being a stockholder or member of Globe Asiatique.

It is further worth noting that the funds supposedly misappropriated did not belong to Globe Asiatique's stockholders or members, or to the general public, but to the HDMF. The pecuniary damage pertained to the FCLs extended to Globe Asiatique through ostensibly fictitious buyers and unremitted

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[89] *Rollo* (G.R. No. 209424), Vol. II, p. 754.

[90] *Rollo* (G.R. No. 209852), Vol. I, pp. 420-421.

monthly housing loan amortizations for the Xevera Project in Pampanga that were supposedly collected by Globe Asiatique in behalf of the HDMF pursuant to the FCLs and MOA.

Based on the established circumstances, therefore, it becomes inevitable for the Court to affirm the CA's following conclusion that:

> x x x [T]he statement made by public respondent that there is probable cause because "xxx a huge amount of money was transferred from the coffers of respondent HDMF and released to GA through a complex scheme xxx that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective," to be in the nature of a speculation only and carries no weight in the determination of probable cause. Jurisprudence dictates that in the determination of probable cause, the same should be based on hard facts and solid evidence and not dwell on possibilities, suspicion and speculation. From the afore-quoted paragraph alone, petitioner's (Delfin Lee) participation, if there was any, in the offense for which he was indicted, was not established or ascertained. Worse, petitioner was not even named. Neither were his cohorts in the alleged defrauding of respondent HDMF.
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> Petitioner Lee and his co-accused were charged with syndicated estafa. For estafa to have been committed by a syndicate, the act must be committed by five or more persons. A considered scrutiny of the assailed Resolution by public respondent which found probable cause to issue a warrant of arrest against petitioner Lee and his co-accused, shows that there was no mention that the acts constituting estafa were done by five or more persons. The resolution merely mentioned "could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective." Moreover, the amount of damage incurred by respondent HDMF was not ascertained. It goes without saying that public respondent did not take it upon herself to determine, based on the evidence submitted, the exact amount of damage incurred by respondent HDMF. Public respondent merely made a sweeping statement that a huge amount of money was transferred from the coffers of the PAG-IBIG Fund to GA.

Under the canons of statutory construction, indeed, the determination of the purpose of the law is a step in the process

of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on "the law of the statute," *i.e.*, the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the courts should seek to carry out this purpose rather than to defeat it.[91] Given the rationale and purpose behind the enactment of P.D. No. 1689, it becomes inevitable to conclude that the crime of syndicated *estafa* can only be committed by the enumerated groups created for the sole purpose of defrauding its members through misappropriating the funds solicited from and contributed by them. Evidently, the evil sought to be prevented by P.D. No. 1689 does not exist in this case.

**2.b**
**Notwithstanding the absence of a syndicate, the respondents made false representations that gave rise to probable cause for simple *estafa* against them**

In *Galvez v. Court of Appeals,*[92] the Court has emphasized that swindling may fall within the ambit of P.D. No. 1689 if it is committed *through* an association. On the other hand, Article 315(2)(a) of the *Revised Penal Code* applies regardless of the number of the accused when: *(a)* the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or *(b)* the offenders are not owners or employees who used the association to perpetrate the crime.

Having shown that the alleged misappropriation was not committed through Globe Asiatique, we now address whether or not the acts of the respondents gave rise to probable cause for simple *estafa* under Article 315(2)(a) of the *Revised Penal Code.*

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[91] *De Castro v. Judicial and Bar Council (JBC)*, G.R. Nos. 191002, 191032, 191057, 191149, 191342, 191420 and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666, 742-743.

[92] G.R. Nos. 187919, 187979, 188030, February 20, 2013, 691 SCRA 445, 469.

An examination of the records reveals that there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple *estafa.* The first three elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* – (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; and (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property – obtained in this case.

The nature and character of deceit or fraud were explained in *Lateo v. People*,[93] to wit:

> [F]raud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

The first two elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* are satisfied if the false pretense or fraudulent act is committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the

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[93] G.R. No. 161651, June 8, 2011, 651 SCRA 262, 275, citing *Alcantara v. Court of Appeals*, G.R. No. 147259, November 24, 2003, 416 SCRA 418, 430.

only motive that induces the offended party to part with his money.[94]

In this connection, the DOJ underscored in its assailed *Review Resolution* that the fraudulent scheme employed by the respondents involved the "special buyers" arrangement. According to the *sinumpaang salaysay* of witnesses Francisco de la Cruz and Veniza Santos Panem, former employees of Globe Asiatique, the "special buyers" arrangement required:

> x x x those who are not yet members of Pag-ibig Fund but who are paid by GA to apply for, and become members of the Fund in exchange of ₱5,000.00 so that their names/membership can be used to take out a housing loan from Pag-ibig of units from housing projects of GA. They assert that these special buyers have really no intention to buy housing units from GA projects but merely lend their Pag-ibig Fund membership to GA for a fee on condition that they will not apply for a loan with Pag-Ibig for a period of two (2) years. The agents/employees of GA are the ones who recruit these "special buyers" also for a commission. They explain that once recruited, these "special buyers" are told to sign loan documents for Pag-Ibig but they will not occupy the housing units for which they applied for a housing loan. These units taken out by Pag-ibig for GA's "special buyers" are then sold to real buyers who buy direct from GA. Whenever real buyers complaint that the units they bought had not yet been taken-out, they are made to execute an *Affidavit of Undertaking* that they are willing to assume the balance on the loan of the "special buyer" and GA will make it appear to Pag-Ibig that the "special buyer" has changed his mind so that the property could then be transferred to the real buyer. They further claim that there are more than "special buyers" than real buyers of GA and that its owners, respondents Delfin and Dexter Lee, themselves ordered the employees to recruit "special buyers".
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> Witness Panem also asserted in her *Sinumpaang Salaysay* that "special buyers" are also employed by GA in its transactions with banks, like the RCBC and PNB. One of the enticement for these "special buyers", aside from the ₱5,000.00 fee, is that they are assured that they will not pay for the housing loan they applied for with Pag-

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[94] *Aricheta v. People,* G.R. No. 172500, September 21, 2007, 533 SCRA 695, 704.

Ibig as in fact it is GA that pays for their housing loans. She also alleged that GA's employees sometimes use fictitious names as "special buyers".[95]

Allegedly using the "special buyers" scheme, Globe Asiatique entered into the FCAs with the HDMF during the period from August 12, 2008 to July 10, 2009 wherein Globe Asiatique represented that: (a) the buyers of its real estate projects were members of Pag-Ibig, hence, qualified to apply for the takeout loans under the Pag-Ibig Housing Loan Program; (b) the members-borrowers and their respective housing loan applications had been properly evaluated and approved in accordance with the applicable guidelines of the Pag-Ibig Housing Loan Program prior to their endorsement to the Pag-Ibig Fund; (c) that all documents submitted to the Pag-Ibig Fund, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding, and enforceable in all other respects that they purported to be; (d) that any person or agent employed or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and (e) that all pertinent laws, rules and regulations had been complied with, among others.[96] As the result thereof, the HDMF extended the FCLs in favor of Globe Asiatique amounting to ₱2.9 billion.

On July 13, 2009, the MOA was forged between the HDMF and Globe Asiatique for the latter to again avail of a loan takeout from the HDMF. Accordingly, additional FCAs were extended to Globe Asiatique totaling ₱3.55 billion. While the MOA did not contain the same representations made in the previous FCAs, it nevertheless required Globe Asiatique to undertake the following corrective measures in case defects in the HDMF membership and housing loan eligibilities of the buyers should arise, namely:

1) Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;

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[95] *Rollo* (G.R. No. 209852), Vol. I, p. 393.

[96] *Id.* at 411-412.

2) Require the borrower to update membership contributions, in case the membership status is inactive;

3) Require the borrower to update any existing Multi-Purpose Loan (MPL) if its in arrears or pay in full if the same has lapsed;

4) Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject of dacion-en-pago.[97]

Had Globe Asiatique, through the respondents, not made the foregoing representations and undertaking, the HDMF would not have entered into the FCAs and granted the loan takeouts to Globe Asiatique to its damage and prejudice.

We next determine the individual participation of the respondents in the "special buyers" scheme.

In *Ching v. Secretary of Justice*,[98] the Court declared that corporate officers or employees through whose act, default or omission the corporation commits a crime were themselves individually guilty of the crime. The Court expounded why:

> The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

The DOJ aptly noted that the following acts of the respondents rendered them criminally accountable for perpetrating the "special buyers" scheme and causing pecuniary damage to the HDMF: **Delfin Lee**, for signing the FCAs and MOA in behalf of Globe Asiatique, and the checks issued by Globe Asiatique

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[97] *Rollo* (G.R. No.209424), Vol. II, p. 599.

[98] G.R. No. 164317, February 6, 2006, 481 SCRA 609, 636-637.

to the "special buyers" and the HDMF;[99] **Dexter**, for giving the orders to recruit "special buyers" and co-signing those checks issued to the special buyers and HDMF;[100] **Sagun**, head of Globe Asiatiques's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and for verifying whether or not said borrowers/buyers are indeed Pag-Ibig members with updated contributions or existing housing loans;[101] and **Salagan,** head of Globe Asiatique's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks, ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF.[102]

We agree that the concerted acts of the respondents could manifest a common criminal design to make it appear that Globe Asiatique had numerous qualified borrowers/buyers that would satisfy the HDMF's conditions for the loan takeouts. Their acts, taken collectively, would probably support a charge of conspiracy, and suggest that they participated in the transactions with a view to furthering the common design and purpose.[103]

As for Atty. Alvarez, we do not subscribe to the CA's view that his act of notarizing various documents, consisting of the individual buyer's affidavit of income, promissory note and developer's affidavit, which were material for the processing and approval of the transactions,[104] was insufficient to establish his having been part of the conspiracy in the execution of the "special buyers" scheme. In our view, the DOJ had reasonable basis to hold against him thusly:

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[99] *Rollo* (G.R. No. 209852), Vol. 1, p. 417.

[100] *Id*. at 418.

[101] *Id*.

[102] *Id*.

[103] See *Zapanta v. People,* G.R. Nos. 192698-99, April 22, 2015, 757 SCRA 172, 190-191.

[104] *Rollo* (G.R. No. 209852), Vol. 1, p. 419.

x x x Atty. Alvarez knew, participated and consented to the illegal scheme perpetrated by respondents Delfin and Dexter Lee, Christina Sagun and Cristina Salagan. It should be underscored that Atty. Alvarez notarized crucial pieces of documents, consisting of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction. We also find the defense of Atty. Alvarez as self-serving, to say the least, considering that part of his job as a notary public is to ascertain the identity of the affiant appearing before him. As it turns out, a large number of the said affiants are either fictitious and/or non-existing, thereby enabling the execution of the grand scheme of his co-respondents. It bears to note that his actions, apart from evidencing his conspiracy, assent and/or cooperation in the accomplishment of the fraud, also constitutes a clear violation of Section 7, Paragraph B (2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees.[105]

In view of the foregoing, the amendment of the information to charge simple *estafa* is warranted pursuant to *Hao v. People,*[106] to wit:

With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple *estafa* and syndicated estafa are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated estafa. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court is

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[105] *Id.* at 419-420.

[106] G.R. No. 183345, September 17, 2014, 735 SCRA 312, 329-330.

necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa*.

**3.**
**The conduct of the preliminary investigation by the DOJ was invalidly enjoined**

In support of its move to reverse and set aside the adverse resolutions of the CA, the DOJ argues in **C.A.-G.R. No. 208744** and **C.A.-G.R. No. 210095** that the CA should not have dismissed its petition for *certiorari* for being allegedly filed out of time because there existed special and compelling reasons to justify the relaxation of the procedural rules. Worthy to note is that the CA had denied petitioner's motion for special extension of time to file the petition for *certiorari* because there was no compelling reason to extend the period for doing so.

Under Section 4,[107] Rule 65 of the *Rules of Court*, as amended by A.M. No. 07-7-12-SC, any aggrieved party has a non-extendible period of 60 days from receipt of the assailed decision, order or resolution within which to file the petition for *certiorari*. The period is non-extendible to avoid causing any unreasonable delay that would violate the constitutional rights of parties to the speedy disposition of the case.[108] Regrettably, when the DOJ finally filed the petition for *certiorari* during the extended period sought, the petition lacked the proper docket number due to inadvertence, which prompted the CA to assign a new docket number to the petition. This move on the part of the CA resulted in the outright dismissal of the petition for having been filed beyond the reglementary period.

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[107] Section 4. When and where to file the petition.

— The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.** (Emphasis ours)

[108] *Manila Electric Company v. N.E. Magno Construction, Inc.,* G.R. No. 208181, August 31, 2016, 802 SCRA 51, 59.

In view of the obtaining circumstances, we find merit in the DOJ's argument.

In *Vallejo v. Court of Appeals*,[109] the Court allowed the petition filed almost four months beyond the reglementary period to proceed. We emphasized therein that meritorious cases should be allowed to proceed despite their inherent procedural defects and lapses in keeping with the principle that the rules of procedure were but tools designed to facilitate the attainment of justice, and that the strict and rigid application of rules that would allow technicalities to frustrate rather than promote substantial justice must always be avoided. The Court explained that excusing a technical lapse and affording the parties a review of the case to attain the ends of justice, instead of disposing of the case on technicality and thereby causing grave injustice to the parties, would be a far better and more prudent course of action.

Time and again, the Court, in resolving the OSG's requests for extension, has taken cognizance of the heavy workload of that office. It should not be any different now. Worthy to note is that the OSG, representing the DOJ, offered suitable explanations and apologies, like the associate solicitor in charge of filing the petition having been rushed to the hospital and thus being denied the opportunity to supervise or see to the filing of the intended petition. Also, the omission of the docket number from the petition that was ultimately filed did not look as if it was aimed either to delay the proceedings or to confuse the CA. The explanation for the delay in the filing of the petition in the CA tendered by the OSG thereon, coupled with its invocation of liberality or the relaxation of the rules, was fully acceptable. As such, the petition should be allowed to proceed. We further find that the CA's dismissal of the petition was disproportionate to the inadvertence committed considering the substantial merits of the DOJ's case. Verily, the petition deserves to be given due course and resolved in view of the fact that the injunction issued by the RTC against the DOJ on the conduct of the preliminary investigation was a patent nullity on its very face.

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[109] G.R. No. 156413, April 14, 2004, 427 SCRA 658, 668.

We now go to the merits of the petitions in **C.A.-G.R. No. 208744** and **C.A.-G.R. No. 210095**.

The Pasig RTC issued the assailed April 10, 2013 order enjoining the DOJ from proceeding with the preliminary investigation of the second, third, and fourth complaints for syndicated *estafa* against Globe Asiatique, *et al*. because of its impression that the summary judgment rendered by the Makati RTC in favor of Globe Asiatique had effectively removed the indispensable element of damage from the criminal complaints.[110] The Pasig RTC undeniably gravely abused its discretion in issuing the writ of preliminary injunction.

It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts. The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality. The CA also observed then:

> [I]njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected (sic) for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ. Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.[111]

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[110] *Rollo* (G.R. No. 208744), Vol. I, p. 62.

[111] *Rollo* (G.R. No. 208744), Vol. II, p. 652.

We emphasize yet again that the conduct of a preliminary investigation, being executive in nature, was vested in the DOJ. As such, the injunction issued by the Pasig RTC inexcusably interfered with the DOJ's mandate under Section 3(2), Chapter 1, Title III, Book IV of the *Administrative Code of 1987* to investigate the commission of crimes and to prosecute the offenders.

Equally worthy of emphasis is that the ruling of the CA in C.A.-G.R. SP No. 121594 attained finality after the Court reviewed such ruling in G.R. No. 201360. Considering that the petitions against the DOJ arose from the same factual milieu and sought the same relief, which was to restrain the DOJ from conducting preliminary investigations against Globe Asiatique and its officers and employees upon the complaints filed before the DOJ, and considering further that the cases involved the same parties and reprised the arguments, the doctrine of the law of the case certainly applied to bar a different outcome. At the very least, the Pasig RTC should have been very well instructed thereby, and should have avoided the incongruous situation of ignoring what was already the clear law of the case.

The doctrine of the law of the case precludes departure in a subsequent proceeding essentially involving the same case from a rule previously made by an appellate court. Applying this doctrine, the Court in *Land Bank of the Philippines v. Suntay*[112] held that:

> We underscore that *Land Bank v. Suntay* (G.R. No. 157903) was the appropriate case for the determination of the issue of the finality of the assailed RARAD Decision by virtue of its originating from Land Bank's filing on April 20, 2001 of its petition for judicial determination of just compensation against Suntay and RARAD Miñas in the RTC sitting as a Special Agrarian Court. Therein, Suntay filed a motion to dismiss mainly on the ground that the petition had been filed beyond the 15-day reglementary period as required by Section 11, Rule XIII of the *Rules of Procedure of DARAB*. After the RTC granted the motion to dismiss, Land Bank appealed to the CA, which sustained the dismissal. As a result, Land Bank came to the Court

[112] G.R. No. 188376, December 14, 2011, 662 SCRA 614.

(G.R. No. 157903), and the Court then defined the decisive issue to be: "whether the RTC erred in dismissing the Land Bank's petition for the determination of just compensation."

The Court ruled in favor of Land Bank. For both Land Bank and Suntay (including his assignee Lubrica), the holding in *Land Bank v. Suntay* (G.R. No. 157903) became the law of the case that now controlled the course of subsequent proceedings in the RTC as a Special Agrarian Court. In *Cucueco v. Court of Appeals*, the Court defined law of the case as "the opinion delivered on a former appeal." *Law of the case* is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. With the pronouncement in G.R. No. 157903 having undeniably become the law of the case between the parties, we cannot pass upon and rule again on the same legal issue between the same parties.[113]

Indeed, the issue submitted for the Pasig RTC's determination had been resolved by the CA in CA-G.R. SP No. 121594 to the effect that the Pasig RTC could not enjoin the DOJ from proceeding with the preliminary investigation of the second complaint. As far as the parties were concerned, therefore, the propriety of the DOJ's conduct of the preliminary investigation was no longer an unresolved issue. But by issuing the writ of preliminary injunction yet again to prevent the preliminary investigation of the second and subsequent complaints by the DOJ, the Pasig RTC acted with manifest whimsicality that amounted to gross and patent abuse of discretion. Such action was void and ineffectual.

**WHEREFORE,** the Court **GRANTS**:

(1) The petitions for review on *certiorari* in **G.R. No. 209424** and, accordingly, **ANNULS** and **SETS ASIDE** the decision

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[113] *Id.* at 643-644.

promulgated on October 7, 2013 by the Court of Appeals in **C.A.-G.R. No. SP No. 128262**; **REVERSES** the resolution of December 11, 2012 issued in Civil Case No. 10-1120 by the Regional Trial Court, Branch 58, in Makati City declaring the partial summary judgment rendered on January 30, 2012 final and executory; **PRONOUNCES** that the partial summary judgment rendered on January 30, 2012 may still be appealed by the aggrieved party upon rendition of the final judgment in Civil Case No. 10-1120; and **DIRECTS** the Regional Trial Court, Branch 58, in Makati City to conduct further proceedings in Civil Case No. 10-1120 with dispatch; and

**(2)** The petitions for review on *certiorari* in **G.R. No. 208744** and **G.R. No. 210095** and, accordingly, **REVERSES** and **SETS ASIDE** the resolution promulgated on July 8, 2013 in C.A.-G.R. No. 130404 denying the motion for extension of the Department of Justice, and the resolution promulgated on August 14, 2013 denying the motion to admit petition for *certiorari* filed by the Department of Justice; **LIFTS** and **QUASHES** the writ of preliminary injunction issued on April 10, 2013 by the Regional Trial Court, Branch 167, in Pasig City enjoining the preliminary investigation for the second, third and fourth criminal complaints filed against the respondents on the ground that such writ of preliminary injunction was issued with grave abuse of discretion amounting to lack of jurisdiction; **DECLARES** that the Department of Justice may now resume the preliminary investigation of the remaining criminal complaints against the respondents for simple *estafa* under Article 315(2)(a) of the *Revised Penal Code*; and **ORDERS** the Regional Trial Court, Branch 167, in Pasig City to dismiss Civil Case No. 73115 entitled *Delfin S. Lee v. Department of Justice*.

The Court **PARTIALLY GRANTS** the petitions for review on *certiorari* in **G.R. No. 205698, G.R. No. 205780, G.R. No. 209446, G.R. No. 209489, G.R. No. 209852, G.R. No. 210143, G.R. No. 228452, G.R. No. 228730** and **G.R. No. 230680** and, accordingly:

(1) **DIRECTS** the **DEPARTMENT OF JUSTICE** to amend the information in Criminal Case No. 18480 entitled *People of*

*the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez* of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga to charge respondents **DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN** and **ALEX M. ALVAREZ** with simple *estafa* under Article 315(2)(a) of the *Revised Penal Code*; and

(2) **ORDERS** the Presiding Judge of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga to suspend proceedings in Criminal Case No. 18480 pending the filing by the **DEPARTMENT OF JUSTICE** of the amended information as directed herein, and to try the respondents as the accused in Criminal Case No. 18480 in accordance therewith, without prejudice to acting on any matter incidental to the conduct of the trial of a criminal case, including applications for bail.

No pronouncement on costs of suit.

**SO ORDERED.**

*Velasco, Jr. J., concurs.*

*del Castillo and Gesmundo, JJ.,* join the separate concurring opinion *of J. Perlas-Bernabe.*

*Perlas-Bernabe, J.,* see separate opinion.

*Caguioa, J.,* see separate concurring opinion.

*Tijam, J.,* see separate concurring opinion.

*Carpio, J.,* dissents, see dissenting opinion.

*Leonardo-de Castro, Martires and Reyes, Jr., JJ.,* join the dissent of *J. Carpio.*

*Leonen, J.,* dissents, see separate opinion.

*Peralta, J.*, no part.

*Jardeleza, J.*, no part, prior OSG action.

## SEPARATE OPINION

**PERLAS-BERNABE, *J.*:**

### I. G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680.

These petitions commonly relate to the determination of probable cause against herein respondents Delfin S. Lee (Delfin Lee), Dexter L. Lee (Dexter Lee), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Alvarez; collectively respondents). In particular:

(*a*) The petitions in **G.R. Nos. 205698**[1] **and 205780**[2] were respectively filed by petitioners, the Home Development Mutual Fund (HDMF; also known as Pag-IBIG) and the Department of Justice (DOJ), to assail the Court of Appeals' (CA) Rulings[3] in CA-G.R. SP No. 121346 which set aside the DOJ's Review Resolution[4] dated August 10, 2011 finding probable cause to indict Sagun, among others, for the crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against her;

(*b*) The petitions in **G.R. Nos. 209446**[5] **and 209489**[6] were respectively filed by petitioners, the People of the Philippines (People) and HDMF, to assail the CA's Ruling[7] in CA-G.R.

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[1] *Rollo* (G.R. No. 205698), Vol. I, pp. 111-198.

[2] *Rollo* (G.R. No. 205780), Vol. I, pp. 8-82.

[3] See CA Decision dated October 5, 2012 and CA Resolution dated February 11, 2013, both penned by Associate Justice Angelita A. Gacutan with Associate Justices Mariflor Punzalan Castillo and Francisco P. Acosta concurring. *Rollo* (G.R. No. 205698), Vol. I, pp. 24-57 and 59-74.

[4] Id. at 405-451. Penned by OIC, Senior Deputy State Prosecutor Theodore M. Villanueva and approved by Prosecutor General Claro A. Arellano.

[5] *Rollo* (G.R. No. 209446), Vol. I, pp. 42-148.

[6] *Rollo* (G.R. No. 209489), Vol. I, pp. 36-150.

[7] *Rollo* (G.R. No. 209446), Vol. I, pp. 153-173. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring.

SP No. 127690 which annulled and set aside the Regional Trial Court (RTC) of Pampanga, Branch 42's (Pampanga-RTC) May 22, 2012 Resolution[8] and August 22, 2012 Resolution[9] judicially finding probable cause against Alvarez, *inter alia*, for the same crime of syndicated *estafa*, and hence, ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(*c*) The petitions in **G.R. Nos. 209852**[10] **and 210143**[11] were respectively filed by HDMF and the People to assail the CA's ruling[12] in CA-G.R. SP No. 127553 which also annulled and set aside the aforesaid Pampanga-RTC's May 22, 2012 Resolution[13] and August 22, 2012 Resolution[14] judicially finding probable cause against Delfin Lee, inter *alia*, for the same crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(*d*) The petitions in **G.R. Nos. 228452**[15] **and 228730**[16] were respectively filed by HDMF and the People to assail the CA's Ruling[17] in CA-G.R. SP No. 127554 which also annulled and set aside the Pampanga-RTC Resolutions[18] judicially finding

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[8] *Id.* at 237-255. Penned by Judge Maria Amifaith S. Fider-Reyes.

[9] This resolves the motion for reconsideration of Alvarez only. *Id*. at 256-260.

[10] *Rollo* (G.R. No. 209852), Vol. I, pp. 45-135.

[11] *Rollo* (G.R. No. 210143), Vol. I, pp. 49-161.

[12] See CA Decision dated November 7, 2013 penned by Associate Justice Franchito N. Diamante with Associate Justices Agnes Reyes Carpio and Melchor Q. C. Sadang concurring. *Rollo* (G.R. No. 209852), Vol. I, pp. 192-220.

[13] *Id*. at 254-272.

[14] This resolves the motions of Delfin Lee and Dexter Lee. *Id*. at 273-285.

[15] *Rollo* (G.R. No. 228452), Vol. I, pp. 3-120.

[16] *Rollo* (G.R. No. 228730), Vol. I, pp. 36-148.

[17] See CA Decision dated November 16, 2016 penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring. *Rollo* (G.R. No. 228452), Vol. I, pp. 144-164.

[18] *Id*. at 209-227 and 228-240.

probable cause against Dexter Lee, *inter alia*, for the same crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him; and

(*e*) The petition in **G.R. No. 230680**[19] filed by Salagan assails the CA's March 18, 2016 Decision[20] and March 16, 2017 Resolution[21] in CA-G.R. SP No. 134573 which affirmed the Pampanga-RTC's May 22, 2012 Resolution[22] and January 29, 2014 Resolution,[23] and accordingly, upheld the latter court's finding of probable cause for syndicated *estafa* and issuance of warrant of arrest insofar as Salagan is concerned.

These cases stemmed from the HDMF's filing of a Complaint-Affidavit[24] for syndicated *estafa*, as defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689,[25] and the National Bureau of Investigation's (NBI) referral letter dated October 29, 2010,[26] by virtue of which, the DOJ conducted a preliminary investigation[27] against respondents, along with several others. In brief, it was alleged that Delfin Lee, as the President and Chief Executive Officer of petitioner Globe Asiatique Realty Holdings Corporation (GA), entered into funding commitment agreements and other transactions with HDMF wherein he made

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[19] *Rollo* (G.R. No. 230680) Vol. I, pp. 3-92.

[20] *Id*. at 343-369. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rodil V. Zalameda and Henri Jean Paul B. Inting concurring.

[21] *Id*. at 370-372.

[22] *Id*. at 114-132.

[23] See *id*. at 22.

[24] The Complaint-Affidavit dated October 29, 2010 was filed by the Officer-in-Charge of HDMF, Emma Linda B. Farria; *rollo* (G.R. No. 205698), Vol. I, pp. 339-350.

[25] Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6, 1980).

[26] See preliminary investigation report dated October 29, 2010; *rollo* (G.R. No. 205698), Vol. I, pp. 330-338.

[27] See report dated December 10, 2010; *id*. at 400-404.

false and fraudulent representations to HDMF that GA had interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga, when in truth, Delfin Lee knew fully well that the corporation did not have such buyers.[28] The fraud against HDMF was allegedly perpetrated by the submission by GA of names of fictitious buyers and documents to HDMF as part of certain housing loan applications that led to fund releases by HDMF in favor of GA.[29] In addition, GA purportedly employed a "special buyers" scheme whereby it recruited persons who did not have any intention to buy its housing units in Xevera, but, in exchange for a fee, lent their names and Pag-IBIG membership to GA so that the said corporation could use the same in obtaining fund releases from HDMF.[30] As stated in the Information, Delfin Lee, together with Dexter Lee, Sagun, and Salagan, in their respective capacities as Executive Vice-President/ Chief Finance Officer/Treasurer, Documentation Department Head, and Accounting/Finance Department Head of GA,[31] as well as Alvarez, as Foreclosure Department Manager of HDMF,[32] acted as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design.

After due proceedings, the DOJ issued a Review Resolution[33] dated August 10, 2011 (DOJ Review Resolution) finding probable cause to indict respondents for the crime complained of. The DOJ found that the elements of syndicated *estafa* are present in the instant case, considering that: (*a*) GA entered into various Funding Commitment Agreements (FCAs)[34] and a Memorandum

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[28] See *rollo* (G.R. No. 205698), Vol. II, p. 613.

[29] See *id*.

[30] See *id*. at 614.

[31] *Rollo* (G.R. No. 205698), Vol. I, p. 407.

[32] *Id*. at 428.

[33] *Id*. at 405-451.

[34] See *id*. at 414.

of Agreement (MOA)[35] with HDMF whereby the former warranted, *inter alia*, that the borrowers are *bona fide* Pag-IBIG members who had been properly evaluated and approved in accordance with the guidelines of Pag-IBIG Housing Loan Program; (*b*) by virtue of the said FCAs and MOA, HDMF was induced to release to GA the aggregate amount of ₱7,007,806,000.00; (*c*) GA had reneged on said warranties as it, among others, employed fictitious buyers to be able to obtain said funds from HDMF; (*d*) when HDMF discovered such irregularities and stopped its fund releases to GA, the latter's almost 100% monthly collection/remittance stopped as well, thereby strongly indicating that the monthly amortizations being remitted by GA were being paid from the fund releases it was receiving from HDMF; and (*e*) HDMF was prejudiced in the amount of ₱6,653,546,000.00 which has yet to be returned by GA.[36]

Accordingly, the Information[37] for syndicated *estafa* was filed before the Pampanga-RTC.[38] Later, the said court, in a Resolution[39] dated May 22, 2012, judicially determined the existence of probable cause against respondents, and consequently, ordered the issuance of warrants of arrest against them. Through various proceedings in different fora, respondents assailed the finding of probable cause against them, and eventually, such issue was raised before the Court through the aforesaid petitions.

The *ponencia* partially granted the petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 in that it found probable cause to prosecute

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[35] Dated July 13, 2009. *Rollo* (G.R. No. 205698), Vol. IV, pp. 2055-2060.

[36] See *rollo* (G.R. No. 205698), Vol. I, pp. 436-441.

[37] Dated August 25, 2011. *Rollo* (G.R. No. 205698), Vol. II, pp. 612-616.

[38] Docketed as Criminal Case No. 18480.

[39] *Rollo* (G.R. No. 209466), Vol. I, pp. 237-255.

Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple *estafa* only, as defined and penalized under Article 315 (2) (a) of the RPC, and accordingly, directed the DOJ to amend the respondents' Information to reflect such indictment. The *ponencia* ruled that there is sufficient basis to support a reasonable belief that respondents, namely: Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez were probably guilty of simple *estafa*. It ratiocinated that through the representations and undertakings made by GA in its "special buyers" scheme, these respondents were able to induce HDMF in entering into the various FCAs to the latter's damage and prejudice. The *ponencia* went on to particularize the respondents' individual acts which made them criminally accountable for perpetrating the "special buyers" scheme, as follows: (*a*) Delfin Lee, for signing the FCAs and MOA in behalf of GA, and the checks issued by GA to the "special buyers" and HDMF; (*b*) Dexter Lee, for giving the orders to recruit "special buyers" and co-signing those checks issued to the "special buyers" and HDMF; (*c*) Sagun, as head of GA's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and verifying whether or not the said borrowers/buyers are indeed Pag-IBIG members with updated contributions or existing housing loans; (*d*) Salagan, as head of GA's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks, ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF; and (*e*) Alvarez, for notarizing crucial pieces of documents purportedly from affiants who turned out to be fictitious and/or non-existing, which directly led to HDMF releasing its funds to GA.[40]

However, the *ponencia* held that respondents cannot be indicted for syndicated *estafa*, pointing out that the association of the said respondents did not solicit funds from the general public as there was no allegation that GA had been incorporated to defraud its stockholders or members, and that in fact, the

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[40] See *ponencia*, pp. 43-44.

only complainant in the *estafa* charges is a single juridical entity, *i.e.*, HDMF, which is not a stockholder or member of GA.[41]

Stripped of its technicalities[42] and as will be explained hereunder, I agree with the *ponencia* in: (*a*) finding probable cause to indict respondents Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple *estafa* only, and not syndicated *estafa*; and (*b*) directing the DOJ to amend the Information against them accordingly.

Article 315 (2) (a) of the RPC reads:

> Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of *estafa* as contemplated in this provision are the following: (*a*) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (*b*) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (*c*) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money

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[41] See *id*. at 36-40.

[42] The procedural flaws in the petitions filed by Sagun, Delfin Lee, Dexter Lee, and Alvarez in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 have been adequately addressed by Senior Associate Justice Antonio T. Carpio in his Dissenting Opinion (see pp. 14-23), which discussion I fully subscribe to.

or property; and (*d*) that, as a result thereof, the offended party suffered damage.[43]

In relation thereto, Section 1 of PD 1689 states that syndicated *estafa* is committed as follows:

> Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)," or farmers' association, or funds solicited by corporations/associations from the general public.

Thus, the elements of syndicated *estafa* are: (*a*) *estafa* or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (*b*) the *estafa* or swindling is committed by a syndicate of five (5) or more persons; and (*c*) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)," or farmers' association, or of funds solicited by corporations/associations from the general public.[44]

With these in mind, it is my opinion that there is probable cause to believe that *estafa* under Article 315 (2) (a) of the RPC was committed by all of the respondents, considering that HDMF was induced to enter into various FCAs and a MOA with GA based on its understanding that GA would only process the applications of *bona fide* Pag-IBIG members who have been properly evaluated and approved in accordance with the program's housing guidelines. Because of the execution of such FCAs and MOA, HDMF released funds to GA via numerous loan takeouts for the latter's Xevera Project. However, unknown

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[43] *People v. Tibayan*, 750 Phil. 910, 919 (2015), citing *People v. Chua*, 695 Phil. 16, 32 (2012).

[44] *Id*. at 269, citing *Galvez v. CA*, 704 Phil 463, 472 (2013).

to HDMF, GA implemented fraudulent designs, such as the "special buyers" scheme, to make it appear that it had various buyers/borrowers for the Xevera Project, when in truth, most of such buyers/borrowers were fictitious, not qualified to avail of such loans, or even persons who merely signed documents in exchange for money offered to them by GA. Case law states that:

> Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[45]

In this case, HDMF was evidently prejudiced by the scheme employed by GA, through its officers and agents, as HDMF unduly released public funds to GA, which it had yet to recover. In fact, as soon as HDMF stopped its fund releases to GA, the latter's Performing Accounts Ratio for the Xevera Project went from 95% to 0%.

Notably, the foregoing is based on either undisputed facts or the audit findings conducted by HDMF functionaries. Anent the latter, the audit conducted by HDMF was made pursuant to its investigatory powers which is incidental to its power "[t]o ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private x x x" under Section 13 (q) of Republic Act No. (RA) 9679,[46] known as "*Home Development Mutual Fund Law of 2009, otherwise known as Pag-IBIG (Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industriya at Gobyerno) Fund*." Therefore, it cannot be denied that the audit was an official function, which hence, must be accorded the presumption of regularity. Case law states that "[t]he presumption of regularity of official acts may be rebutted

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[45] *Galvez v. CA, id.* at 470; citation omitted.

[46] Entitled "AN ACT FURTHER STRENGTHENING THE HOME DEVELOPMENT MUTUAL FUND, AND FOR OTHER PURPOSES," approved on July 21, 2009.

by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness."[47]

In an attempt to shift the "blame" on HDMF for not properly verifying the borrowers/buyers submitted by GA, it has been contended that upon the execution of the MOA, GA was already relieved of its warranties: (*a*) on the proper evaluation and approval of loans of the borrowers/buyers; and (*b*) against misrepresentation of its agents/employees for loan accounts evaluated and approved by GA.

However, this contention is untenable, considering the inescapable fact that **at the time of the execution of the MOA on July 13, 2009, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less ₱2.9 Billion for the purpose**. As such, the crime of *estafa* was, in all reasonable likelihood, **already consummated even before the execution of the MOA**.

Furthermore, even assuming *arguendo* that the provisions of the MOA indeed superseded GA's aforesaid warranties and that the obligation to evaluate and approve the loan applications of the borrowers/buyers of the Xevera Project was already with HDMF, GA remains bound to undertake corrective measures to address any defects regarding the membership and housing loan eligibility of its buyers:

> In cases where defects in HDMF membership and housing loan eligibility of the buyer are found, the DEVELOPER shall undertake the following corrective measures to address the same:
>
> 1) Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;

[47] *Bustillo v. People*, 634 Phil. 547, 556 (2010).

2) Require the borrower to update membership contributions, in case the membership status is inactive;

3) Require the borrower to update any existing Multi-Purpose Loan (MPL) if [it] is in arrears or pay in full if the same has lapsed;

4) Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject to [*dacion en pago*].[48]

Aside from these obligations, it goes without saying that the GA is obliged to only provide and process the applications of legitimate buyers. Verily, it would be nonsensical to suppose that HDMF would release funds to GA had it known that the list of borrowers/buyers and the accompanying documents submitted to it by the latter were fraudulent or fictitious.

Moreover, the HDMF's failure to prevent the fraudulent maneuverings allegedly employed by GA – whether through the negligence of its staff or otherwise – does not negate the fact that fraud was committed against the former. The scheme's discovery is already after the fact and hence, does not discount the posterior commission of fraud. At any rate, it should be highlighted that HDMF, is a government-owned and controlled corporation (GOCC)[49] and hence, an instrumentality of the State. Thus, the rule that the State is not bound by the omission, mistake or error of its officials or agents[50] applies.

As for the respondents' respective roles in the fraudulent scheme establishing the existence of probable cause against them, I fully agree with – and thus, need not repeat – the *ponencia*'s findings. In light of the foregoing, it is my submission that there is probable cause to believe that all respondents, *i.e.*, Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez, conspired and confederated with one another in order to commit the

[48] See Section 3 (c) of the July 13, 2009 MOA; *rollo* (G.R. No. 205698), Vol. IV, p. 2057.

[49] See RA 9679.

[50] *China Banking Corp. v. Commission of Internal Revenue*, G.R. No. 172509, February 4, 2015, 749 SCRA 525, 539.

fraudulent acts against HDMF. In this regard, jurisprudence instructs that "in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose." [51]

That it was GA and HDMF – both corporate entities – which dealt with each other, and not respondents in their personal capacities, does not eliminate the latter's criminal liabilities in this case, if so established after trial. Jurisprudence provides that "**if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense**. The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the [RPC]. The reason for this is obvious: corporation, partnership, association or other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liabilities arising from the criminal offense. This is the import of the clause 'without prejudice to the civil liabilities arising from the criminal offense.'"[52]

Also, it deserves pointing out that while respondents do not deny the existence of fictitious/non-existent buyers and that loan documents were falsified/simulated, they disclaim knowledge of the fraudulent scheme committed against HDMF, as it was allegedly its rogue agents which actually defrauded GA. Clearly, the foregoing constitutes denial and as such, is a matter of defense, the merits of which are better threshed out during trial.[53]

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[51] *People v. Gerero*, G.R. No. 213601, July 27, 2016, 798 SCRA 702, 707, citing *Quidet v. People*, 632 Phil. 1, 11-12 (2010).

[52] *Ong v. CA*, 449 Phil. 691, 710 (2003); emphasis and underscoring supplied.

[53] See *Shu v. Dee*, 734 Phil. 204, 216-217 (2014).

Finally, it is important to elucidate that the RTC of Makati City, Branch 58's (Makati-RTC) January 30, 2012 Resolution in Civil Case No. 10-1120 granting GA and Delfin Lee's motion for summary judgment, and consequently, its complaint for specific performance and damages against HDMF has no bearing, considering its fundamental disparities with the present case. In particular, Civil Case No. 10-1120 involves a cause of action arising from the contractual relations of GA/Delfin Lee and HDMF, which is adjudged under the evidentiary threshold of preponderance of evidence. On the contrary, this case (stemming from Criminal Case No. 18480) only seeks to determine whether probable cause exists to file a criminal case in court against the accused. The ruling in the former cannot be thus binding on the latter. At any rate, the ruling in Civil Case No. 10-1120 was premised on the fact that the July 13, 2009 MOA supposedly superseded, amended, and modified the provisions of the FCAs in that the power to approve the housing applications had already been removed from GA and in turn, was relegated to only loan counseling. Therefore, HDMF cannot renege on the performance of their contract on the ground that the defaulting buyers were fictitious and spurious.

As previously stated, the MOA was executed on July 13, 2009, and at that time, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less 2.9 Billion for the purpose.[54] Thus, even prior to the said amendment, the commission of fraud and the resulting damage to HDMF had, in all reasonable likelihood, already existed, which, in turn, means that the crime of *estafa* had already been probably consummated. The probable consummation of the crime is not erased by the succeeding partial novation[55] of the contract between the parties. Case law dictates that criminal liability for *estafa* is not affected by

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[54] See *rollo* (G.R. No. 205698), Vol. I, p. 414.

[55] "[T]he effect of novation may be partial or total. There is partial novation when there is only a modification or change in some principal conditions of the obligation. It is total, when the obligation is completely extinguished." (*Ong v. Bogñalbal*, 533 Phil. 139, 156 [2006]).

compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party.[56] A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.[57]

In light of the foregoing, the first element of syndicated *estafa* has been shown to be present. Correlatively, as the *estafa* was allegedly committed by at least five (5) individuals, there exists a "syndicate" within the purview of PD 1689, and thus, the second element of syndicated *estafa* is likewise present. However, the third and last element of syndicated *estafa*, as discussed by the *ponencia*,[58] is not present in this case.

As earlier stated, the third element of syndicated *estafa* is that the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)," or farmers' association, **or of funds solicited by corporations/associations from the general public**. Essentially, the wide-scale defraudation of the public through the use of corporations/associations is the gravamen of syndicated *estafa*. This is clearly inferred from the "Whereas Clauses" of PD 1689 which read:

> WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "*samahang nayon*(*s*)", and farmers' associations or corporations/associations **operating on funds solicited from the general public**;
>
> WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "*samahang nayon*(*s*)", and farmers' [association], or of **funds solicited by corporations/associations from the general public**, erodes the confidence of the public in the banking and

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[56] See *Metropolitan Bank and Trust Company v. Reynando*, 641 Phil. 208, 220 (2010).

[57] *People v. Gervacio*, 102 Phil. 687, 688 (1957).

[58] See *ponencia*, pp. 36-39.

cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "*samahang nayon*(*s*)", and farmers' [association] or corporations/ associations operating on funds solicited from the general public[.][59]

After a careful study of this case, I find the third element to be lacking. Based on the allegations of the complaint, it is apparent that the thrust thereof is respondents' purported defraudation of HDMF which induced it to release funds. This is not a criminal case filed by members of the general public, such as buyers of the Xevera Project, claiming that rural banks, cooperatives, "*samahang nayon*(*s*)," and farmers' association or corporations/associations solicited funds from them, but later on resulted into them being defrauded. To be sure, the fact that the funds released by HDMF are in the nature of public funds does not mean that syndicated es*tafa* was committed. The operative factor is whether or not the fraud was committed against the general public. On this point, the case of *Galvez v. CA*[60] illumines, among others, that PD 1689 does not apply when, regardless of the number of the accused, (*a*) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (*b*) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies:

In sum and substance and by precedential guidelines, we hold that, *first*, Presidential Decree No. 1689 also covers commercial banks; *second*, to be within the ambit of the Decree, the swindling must be committed through the association, the bank in this case, which operate on funds solicited from the general public; *third*, when the number of the accused are five or more, the crime is syndicated *estafa* under paragraph 1 of the Decree; *fourth*, if the number of accused is less

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[59] Emphases and underscoring supplied.

[60] See *supra* note 44.

than five but the defining element of the crime under the Decree is present, the second paragraph of the Decree applies; x x x ***fifth*, the Decree does not apply regardless of the number of the accused, when, (*a*) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (*b*) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies**.[61]

In so far as this case is concerned, it is undoubted that the private complainant is HDMF; not the general public who claim to have been defrauded through the use of any juridical entity. Therefore, respondents cannot be indicted for syndicated *estafa*. Instead, they can be indicted only for simple *estafa* under Article 315 (2) (a) of the RPC for the reasons above-explained.

Although the Information filed before the RTC and the consequent warrants of arrest issued against respondents were for the crime of syndicated *estafa*, and not for simple *estafa*, the case of *Spouses Hao v. People*[62] teaches that **said issuances remain valid** but a formal amendment of the Information should be made:

> With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it **follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper**. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.
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> Moreover, we note that simple *estafa* and syndicated *estafa* are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated *estafa*. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.
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> **Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court**

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[61] *Id*. at 474-475; citations omitted, emphasis and underscoring supplied.

[62] 743 Phil. 204 (2014).

**is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa*.**[63] (Emphases and underscoring supplied)

Accordingly, it is my position that respondents should instead be indicted for simple *estafa* only. For this purpose, the DOJ should be directed to amend the Information so as to charge respondents accordingly. Meanwhile, the warrants of arrest issued against them must stand.

## II. G.R. No. 209424.

The petition in **G.R. No. 209424**[64] was filed by HDMF against GA, Delfin Lee, and respondent Tessie G. Wang (Wang; a purported fully-paid buyer of 22 houses and lots in GA's Xevera Project)[65] assailing the CA's ruling[66] in CA-G.R. SP No. 128262. In the said case, the CA upheld the Makati-RTC's January 30, 2012 Resolution[67] in Civil Case No. 10-1120 granting the motion for summary judgment filed by GA, *et al*. and thereby, ordered HDMF to comply with its obligations under the MOA, FCAs, and Collection Servicing Agreements. Dissatisfied, HDMF filed a motion for reconsideration,[68] which was, however, denied by the Makati-RTC in a December 11, 2012 Resolution[69] on the ground that the same was filed by HDMF's engaged private

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[63] *Id*. at 219-220; citations omitted.

[64] *Rollo* (G.R. No. 209424), Vol. I, pp. 143-283.

[65] See *id*. at 299.

[66] See Decision dated October 7, 2013, penned by Associate Justice Stephen C. Cruz (*id*. at 14-34). Associate Justices Elihu A. Ybañez and Danton Q. Bueser issued their respective Separate Concurring Opinions (*id*. at 37-40 and 35-36); while Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez issued separate Dissenting Opinions (*id*. at 41-63 and 64-68).

[67] *Rollo* (G.R. No. 209424), Vol. II, pp. 433-452. *Rollo* (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

[68] Dated February 24, 2012. *Rollo* (G.R. No. 209424), Vol. III, pp. 1264-1296.

[69] *Rollo* (G.R. No. 209424), Vol. II, pp. 453-459.

counsel, Yorac Arroyo Chua Caedo & Coronel Law Firm (Yorac Law), without, however, the requisite approval of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA); hence, the RTC treated the motion as a mere scrap of paper which did not toll the running of the period of appeal.[70] Consequently, HDMF filed a petition for *certiorari*[71] before the CA, which was dismissed mainly on the following grounds: (*a*) the *certiorari* petition is not the proper remedy, considering that the Makati-RTC's ruling was in the nature of a final judgment and hence, subject to an ordinary appeal under Rule 41 of the Rules of Court;[72] and (*b*) the Makati-RTC did not gravely abuse its discretion in dismissing HDMF's motion for reconsideration as it failed to comply with the rules, among others, the requisite authorization from the OGCC and the COA.[73]

In ruling for the grant of **G.R. No. 209424**, the *ponencia* prefatorily held that the Resolution[74] dated January 30, 2012 of the Makati-RTC which granted summary judgment in GA, *et al*.'s favor is, strictly speaking, only a partial summary judgment rendered in the context of Section 4, Rule 35[75] of the

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[70] See *id*. at 455-457.

[71] Dated January 14, 2013. *Rollo* (G.R. No. 209424), Vol. I, pp. 347-431.

[72] See *id*. at 306-308 and 311.

[73] See *id*. at 310.

[74] *Rollo* (G.R. No. 209424), Vol. II, pp. 433-452. *Rollo* (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

[75] Section 4, Rule 35 of the Rules of Court reads:

Section 4. *Case not fully adjudicated on motion*. – If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly.

Rules of Court. It then explained that such Resolution only resolved the issue of whether or not GA, *et al.* were entitled to specific performance, and explicitly stated that the issue on the proper amount of damages to be awarded to them shall still be subject to a presentation of evidence. Since there is still a matter to be resolved by the Makati-RTC, such Resolution partakes of the nature of an interlocutory order. As such, HDMF correctly availed of the remedy of filing a petition for *certiorari* before the CA.[76]

The *ponencia* further found that Yorac Law Firm failed to sufficiently prove that it had the authority to represent HDMF in the proceedings before the Makati-RTC. In this regard, it pointed out that since HDMF is a GOCC, it may only engage private counsels with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the COA. Unfortunately, however, Yorac Law Firm was only able to provide a Certification[77] dated January 10, 2013 signed by the Office of the Supervising Auditor, COA Corporate Auditor Atty. Fidela M. Tan (Atty. Tan), stating that the COA purportedly authorized HDMF to engage Yorac Law Firm as private counsel. According to the *ponencia*, this cannot be given evidentiary weight not only because it is merely an attestation that the COA supposedly concurred in the HDMF's retainer agreement with Yorac Law Firm, but also because it failed to comply with Sections 24 and 25, Rule 132[78] of the Rules of Court.[79]

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[76] See *ponencia*, pp. 23-27.

[77] *Rollo* (G.R. No. 209424), Vol. IV, p. 1493.

[78] Sections 24 and 25, Rule 132 of the Rules of Court read:

Section 24.*Proof of official record*. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent

Finally, the *ponencia* recognized that since Yorac Law Firm was not authorized to appear on behalf of HDMF before the Makati-RTC proceedings, the motion for reconsideration it filed before such court did not toll the reglementary period for the filing of a petition for *certiorari* before the CA. Ordinarily, such petition filed by HDMF before the CA should be dismissed for being filed out of time. However, the *ponencia* held that in the broader interest of justice, as well as the peculiar legal and equitable circumstances in this case, the petition for *certiorari* before the CA should not be dismissed outright due to strict adherence to technical rules of procedure, but must be resolved on its merits. Hence, the *ponencia* ordered the remand of the case to the CA for the determination of the propriety of the Makati-RTC's issuance of a partial summary judgment.[80]

While I concur with the *ponencia* insofar as it found that HDMF correctly availed of the remedy of *certiorari* before the CA, I respectfully disagree with its ruling that Yorac Law Firm had no authority to act as counsel on HDMF's behalf, and that the Makati-RTC must be directed to conduct further proceedings in Civil Case No. 10-1120 with dispatch so that the aggrieved party may appeal the Makati-RTC's issuance of a partial summary judgment in said case.

The general rule is that GOCCs, such as HDMF, are enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. However, in exceptional cases, the written conformity and acquiescence of the Solicitor General

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or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Section 25. *What attestation of copy must state.*— Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must atate, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk having a seal, under the seal of such court.

[79] See *ponencia*, pp. 28-31.

[80] See *id*. at 31-32 and 49.

or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm.[81]

In this case, these written authorizations were complied with by HDMF. Records show that Atty. Tan issued a Certification[82] that the COA concurred in the engagement by HDMF of Yorac Law Firm as its private counsel.[83] The said certification is presumed to have been issued by the said officer in the regular performance of her duties and hence, should be deemed valid, absent any showing to the contrary. Besides, as pointed out by one of the dissenting justices before the CA, if the Makati-RTC was uncertain about the authority of private counsel to represent HDMF, "fairness and prudence dictate that the [same] be given a chance to provide the form of proof acceptable to the RTC,"[84] especially considering the public interest involved in this case. To note, records show that the only party who objected to Yorac Law Firm's representation of HDMF was respondent Wang, who filed a motion to expunge[85] on the sole ground of lack of COA conformity. This motion was never

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[81] See *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 503 (2003), citing Memorandum Circular No. 9 dated August 27, 1998.

[82] *Rollo* (G.R. No. 209424), Vol. IV, p. 1493.

[83] Pertinent portions of the January 10, 2013 Certification read: This is to certify that the Commission on Audit (COA), has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve. (*Id.*)

[84] *Rollo* (G.R. No. 209424), Vol. I, p. 51.

[85] Dated December 9, 2011. *Rollo* (G.R. No. 209424), Vol. III, pp. 1214-1224.

resolved by the Makati-RTC,[86] hence, leaving HDMF in the dark on the merits of the motion to expunge and on the necessity to submit further proof of the COA's authorization. Meanwhile, anent the approval of the OGCC, records disclose that the same was procured through the letters dated December 28, 2010[87] and December 5, 2011[88] signed by Government Corporate Counsel Raoul C. Creencia.[89] In fine, it was grave error for the Makati-RTC to deny the HDMF's motion for reconsideration.

In light of the foregoing submissions and under ordinary circumstances, court procedure dictates that the case be remanded for a resolution on the merits. However, when there is already

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[86] *Rollo* (G.R. No. 209424), Vol. I, p. 206.

[87] *Rollo* (G.R. No. 209424), Vol. III, pp. 1494-1495.

[88] *Id.* at 1496-1497.

[89] See *id.* at 1494 and 1496. Pertinent portions of the December 28, 2010 and December 5, 2011 letters read:

*December 28, 2010* letter

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against the Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated August 29, 1998, Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of x x x Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC.

*December 5, 2011 letter*

This confirms and ratifies the engagement of external counsel for the handling of the cases filed by or against the Globe Asiatique Holding Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation Issues.

In view thereof, and pursuant to the Office 's Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases and the submissions of the law firm in connection therewith, subject to the control and supervision of the OGCC.

enough basis on which a proper evaluation of the merits may be had – as in this case, considering the copies of various pleadings and documents already in the possession of the Court – the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.[90] Thus, I hereby submit that the Court may already resolve the issue of the propriety of the Makati-RTC's issuance of a partial summary judgment in this case.

Jurisprudence is clear that "[s]ummary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial."[91]

A perusal of the pleadings filed by the parties in Civil Case No. 10-1120 would show that genuine issues of fact were raised,[92] and thus, negated the remedy of summary judgment. As encapsulated in the dissent before the CA, these genuine issues are: (*a*) whether GA was limited to conduct loan counseling instead of loan approval under the agreements; (*b*) whether GA, in fact, conducted loan approvals instead of mere loan counseling; (*c*) whether HDMF may buyback accounts despite the absence of a notice to buyback from HDMF; (*d*) whether HDMF refused to release collectibles under the agreements; (*e*) whether GA is guilty of fraud; (*f*) whether HDMF had factual basis to cancel

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[90] See *Jolo's Kiddie Cars/Fun4Kids/Marlo U. Cabili v. Caballa*, G.R. No. 230682, November 29, 2017, citing *Sy-Vargas v. The Estate of Rolando Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, 805 SCRA 438, 448.

[91] *Nocom v. Camerino*, 598 Phil. 214, 233-234 (2009).

[92] See *rollo* (G.R. No. 209424), Vol. I, pp. 56-59.

the CSAs and FCAs; and (g) whether GA's acts were constitutive of breach of its warranties under the agreements.[93] ***Clearly, the Makati-RTC could not turn a blind eye on these triable material factual issues by the mere expedient of saying that the July 13, 2009 MOA superseded the provisions of the FCAs and thus, relegated GA's authority to mere loan counseling, and therefore, rendered it unaccountable for the defaulting buyers, who turned out to be fictitious and spurious***. Surely, the alleged shift of GA's authority to mere loan counseling – assuming the same to be true – still does not definitively settle the foregoing issues and hence, cannot be the sole consideration to grant GA, *et al.*'s complaint for specific performance.[94] As such, the Makati-RTC's rulings were evidently tainted with grave abuse of discretion, and hence, correctly assailed by HDMF through a petition for *certiorari*.

For these reasons, it is my view that since it is already apparent from the records that the Makati-RTC erroneously rendered a partial summary judgment, it is but proper to order a remand of the case to the same court for the conduct of trial on the merits.

**III. G.R. Nos. 208744 and 210095.**

To recount, the petition in **G.R. No. 208744**[95] was filed by the DOJ against Delfin Lee to assail the CA's July 8, 2013[96] and August 14, 2013[97] Resolutions in CA-G.R. SP No. 130404 which essentially disallowed the DOJ's petition for *certiorari* for being filed out of time. In this case, the DOJ sought to

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[93] See Dissenting Opinion of CA Justice Magdangal M. De Leon; *id*. at 59.

[94] Dated November 13, 2010. *Rollo* (G.R. No. 209424), Vol. II, pp. 753-774.

[95] *Rollo* (G.R. No. 208744), Vol. I, pp. 28-87.

[96] See CA Minute Resolution issued by Executive Clerk of Court III Caroline G. Ocampo-Peralta, MNSA; *id*. at 122.

[97] *Id*. at 118-121. Penned by Associate Justice Francisco P. Acosta with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring.

nullify the Order[98] dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 (Pasig-RTC) in Civil Case No. 73115 enjoining the DOJ's preliminary investigation in the criminal cases entitled "*National Bureau of Investigation/ Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.*" (NPS Docket No. XVI-INV-10L-00363; Niebres Complaint), "*National Bureau of Investigation/Jennifer Gloria* (Gloria)*, et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.* (NPS Docket No. XVI-INV-11B-00063), *and National Bureau of Investigation/Maria Fatima Kayona* (Kayona), *et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.*" (NPS Docket No. XVI-INV-11C-00138) for syndicated *estafa.*[99]

On the other hand, the petition in **G.R. No. 210095**[100] was filed by the DOJ also against Delfin Lee to assail the CA's June 26, 2013[101] and November 11, 2013[102] Resolutions in CA-G.R. SP No. 130409 which likewise dismissed the DOJ's petition for *certiorari* for being filed out of time. The petition docketed as CA-G.R. SP No. 130409 is the same petition as that in CA-G.R. SP No. 130404, which was its initial docket number. The problem arose when the petition in CA-G.R. SP No. 130404 was filed by the DOJ without indicating the proper docket number by inadvertence. This prompted the CA to assign a new docket number to the petition, *i.e.*, CA-G.R. SP No. 130409, and the raffling thereof to another *ponente* and division.[103] Eventually, the petition was dismissed outright for having been filed out of time.[104]

Verily, I agree with the *ponencia*'s holding in **G.R. Nos. 208744** and **210095**, considering that it is clear that the DOJ

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[98] *Id.* at 195-198. Penned by Judge Rolando G. Mislang.

[99] See *id.* at 33.

[100] *Rollo* (G.R. No. 210095), Vol. I, pp. 35-131.

[101] *Id.* at 136-137. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Danton Q. Bueser concurring.

[102] *Id.* at 139-142.

[103] See *id.* at 139-140.

[104] *Id.* at 137.

never intended to flout the rules nor employ any dilatory or underhanded tactic as its failure to state the initial docket number to its *certiorari* petition was by sheer inadvertence. As such, the CA should have relaxed the rules and allowed the filing of said petition, following case law which states that "[l]apses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, [and] when they have not prejudiced the adverse party."[105]

More importantly, the Pasig-RTC gravely abused its discretion in enjoining[106] the preliminary investigation of the aforesaid criminal cases mainly on the basis of Makati-RTC's ruling in Civil Case No. 10-1120 – which, as already adverted to, should be subject to re-evaluation. Clearly, the Pasig-RTC's reliance on such basis is misplaced because such civil case involves a cause of action arising from the contractual relations of GA/ Delfin Lee and HDMF; whereas the preliminary investigation proceedings in the aforementioned criminal cases seek to determine whether probable cause exists to file criminal cases in court against the accused, this time based on the alleged double sales fraudulently perpetrated against the home-buyers/ private complainants Niebres, Gloria, and Kayona, *et al*. Given the unmistakable variance in issues, and considering too that the evidentiary thresholds applied in civil cases are different

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[105] *Aguam v. CA*, 388 Phil. 587, 595 (2000).

[106] While case law in *Samson v. Guingona* (401 Phil. 167, 172 [2000]) provides that criminal cases may be enjoined in the following instances: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is *subjudice*; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the Court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; none of these are applicable in the instant case.

from criminal cases, the ruling in the former would not be binding on the latter.

Thus, for these reasons, I agree with the *ponencia*'s ruling that the April 10, 2013 writ of preliminary injunction of the Pasig-RTC should be lifted and quashed. The conduct of preliminary investigation in the three other (3) criminal complaints against Delfin Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138 for syndicated *estafa* should not have been enjoined. As such, the rulings of the Pasig-RTC and the CA regarding this matter should be rectified.

## CONCLUSION

In conclusion, I hereby vote as follows:

(*a*) The petitions in **G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730,** and **230680** should be **PARTLY GRANTED**. For the reasons discussed in this Opinion, the public prosecutor should be **DIRECTED** to amend the Information in Criminal Case No. 18480 so as to charge respondents Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex M. Alvarez only for simple *estafa*, and not syndicated *estafa*. Meanwhile, the warrants of arrest issued against them **STAND**;

(*b*) The petition in **G.R. No. 209424** should be **GRANTED**. The Decision dated October 7, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 128262, affirming the Resolutions dated January 30, 2012 and December 11, 2012 of the Regional Trial Court of Makati, Branch 58 (Makati-RTC) in Civil Case No. 10-1120, should be **REVERSED** and **SET ASIDE**. A new one should be **ENTERED** directing the **REMAND** of the case to the Makati-RTC for the conduct of a full-blown trial on the merits; and

(*c*) The petitions in **G.R. Nos. 208744** and **210095** should be **GRANTED**. The Resolution dated August 14, 2013

in CA-G.R. SP No. 130404 and the Resolution dated June 26, 2013 in CA-G.R. SP No. 130409 of the CA, affirming the Resolution dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 in Civil Case No. 73115, should be **REVERSED** and **SET ASIDE**. Consequently, the April 10, 2013 writ of preliminary injunction issued by the said court should be **LIFTED** and **QUASHED**. The Department of Justice should be allowed to proceed with the preliminary investigation of the three (3) criminal complaints against Delfin S. Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138.

## SEPARATE CONCURRING OPINION

**CAGUIOA, *J.*:**

I concur with the *ponencia* insofar as it finds no probable cause to charge and arrest respondents Delfin S. Lee (Delfin Lee), Dexter L. Lee (Dexter Lee), Christina Sagun (Sagun), Atty. Alex M. Alvarez (Alvarez) and Cristina Salagan (Salagan) for the crime of syndicated *estafa* penalized under Presidential Decree 1689 (PD 1689).[1] I share the *ponencia*'s view that respondents do not qualify as a syndicate as defined in PD 1689.

Under the Revised Penal Code (RPC), any person who shall defraud another by any of the means set forth in Articles 315 and 316 shall be liable for *estafa*.

On April 6, 1980, President Ferdinand E. Marcos issued PD 1689 which treats the crime of syndicated *estafa*. Section 1 thereof, which incorporates Articles 315 and 316 by reference, reads:

SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the [RPC], as amended, shall be punished by life imprisonment to death

[1] In relation to Article 315 of the RPC.

if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*", or farmers' associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be *reclusion temporal* to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

Hence, to sustain a charge for syndicated *estafa*, the following elements must be established: (i) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC is committed; (ii) the *estafa* or swindling is committed by a syndicate of five or more persons; and (iii) defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers' associations or of funds solicited by corporations/associations from the general public.[2]

The resolution of the Petition requires the examination of the second and third elements.

*Second Element*

In concurrence with the *ponencia*, and with the separate opinions of Senior Associate Justice Antonio T. Carpio and Associate Justice Estela M. Perlas-Bernabe, I find that the evidence presented against Alvarez establish his participation as the fifth conspirator in the fraudulent scheme subject of the charge.

To note, the Information in Criminal Case No. 18480 charging respondents with syndicated *estafa*, implicates Alvarez under the following terms:

x x x x x x x x x

[2] *Galvez v. Court of Appeals*, 704 Phil. 463, 472 (2013) [Per *J.* Perez, Special Second Division].

That in carrying out the aforesaid conspiracy x x x accused x x x Alvarez, did then and there unlawfully, feloniously and knowingly notarize crucial pieces of documents, consisting, among others, of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by [Home Development Mutual Fund (HDMF)], all of which are essential for the processing and approval of the purported transaction; x x x.[3]

As aptly explained by Justice Carpio, Alvarez admitted during the course of investigation that he notarized documents[4] for Globe Asiatique Realty Holdings Corporation (GA) in exchange for a fixed monthly fee even as he was employed as manager of HDMF's Foreclosure Department,[5] and that he often notarized these documents in GA's head office during the same period.[6]

Notably, these acts became subject of the case entitled *Alex M. Alvarez v. Civil Service Commission and Home Development Fund,* docketed as G.R. No. 224371.[7] Therein, the Court found Alvarez liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service, and thus, dismissed Alvarez from service with finality.[8]

Again, as Justice Carpio astutely observes, Alvarez, being the manager of HDMF's Foreclosure Department, evidently knew that the documents he was notarizing for GA (*e.g.,* Affidavits of Income, Contracts to Sell and promissory notes, among others) were essential for the processing and approval of the housing loans in question. In the words of Justice Carpio,

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[3] As quoted in the *ponencia*, p. 13.

[4] Including, among others, Affidavits of Income, Contracts to Sell, promissory notes, Deeds of Assignment and Certificates of Acceptance.

[5] Based on the NBI Report dated October 29, 2010, see *J*. Carpio, Dissenting Opinion, p. 25, citing *rollo* (G.R. No. 209446), Vol. II, p. 722.

[6] Based on the transcript of clarificatory questioning of Ms. Veniza Santos Panem, see *J*. Carpio, Dissenting Opinion, *id*. at 23-25, citing *rollo,* Vol. VI (G.R. No. 209446), pp. 2550-2563.

[7] G.R. No. 224371, September 19, 2016 (Unsigned Resolution).

[8] *Id*.

this glaring conflict of interest, coupled with the NBI's finding that majority of the documents corresponding to the fictitious accounts had been notarized by Alvarez,[9] show that he had knowledge of the fraudulent scheme perpetrated by GA, and had actively participated therein.

In this connection, Associate Justice Leonen opines that Section 1 of PD 1689 does not specify the number of individuals who must be charged for an act of fraud to qualify as syndicated *estafa*, but requires only that the number of individuals acting out of a common design to defraud be at least five,[10] since certain contingencies may prevent all individuals involved from standing trial.[11] Hence, he stresses that the primary task of investigators and prosecutors in such cases is to "demonstrate the fraudulent scheme employed by five or more individuals,"[12] and, thereafter, "to demonstrate how an individual accused took part in effecting that scheme."[13]

Justice Leonen's observations are well-taken. Indeed, the identification of the individuals involved in the perpetration of syndicated *estafa* and the determination of the nature of their participation are tasks that lie with investigators and prosecutors. Indeed, it is possible to demonstrate the existence of a fraudulent scheme employed by five or more individuals without having to bring each of them to trial. However, it bears emphasis that at the point when the identity and participation of the individual perpetrators are determined to the extent *sufficient* to demonstrate the fraudulent scheme, investigators and prosecutors are left with no reason to drop said individuals from the criminal charge and exclude them from trial. And should the investigators and prosecutors fail, or decide not to include these known malefactors in the charge of syndicated *estafa*, then the Court is left with

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[9] See *J*. Carpio, Dissenting Opinion, pp. 25-26.

[10] See *J*. Leonen, Dissenting Opinion, p. 4.

[11] *Id*. at 5.

[12] *Id*.

[13] *Id*.

no alternative but to determine the sufficiency of the said charge only on the basis of the number of malefactors so included as accused — this number going into the very definition of the law as to what constitutes syndicated *estafa*.

In any case, I submit that the second element of syndicated *estafa* is already satisfied in view of Alvarez's participation in the fraudulent scheme, as discussed.

*Third Element*

Considering that the fraudulent scheme in question was perpetrated by an entity which does *not* solicit funds from the general public, I find that the third element of syndicated *estafa* is absent. Thus, I likewise concur with the *ponencia* in this respect.

In *Galvez v. Court of Appeals*[14] (*Galvez*), Asia United Bank (AUB) charged private respondents therein with syndicated *estafa* for having deceived AUB into granting their corporation, Radio Marine Network Smartnet, Inc. (RMSI), a ₱250-million Omnibus Credit Line based on the misrepresentation that RMSI had sufficient capital and assets to secure the financial accommodation. Resolving the case, the Court ruled that fraud only qualifies as syndicated *estafa* under PD 1689 when the corporation or association through which it is committed is an entity which receives contributions from the general public:

> On review of the cases applying the law, we note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of [PD] 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. **In other words, only those who formed and manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.**
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> [Respondents], however, are not in any way related either by employment or ownership to AUB. They are outsiders who, by their

[14] *Supra* note 2.

cunning moves were able to defraud an association, which is the AUB. **Theirs would have been a different story, had they been managers or owners of AUB who used the bank to defraud the public depositors.**

This brings to fore the difference between the case of Gilbert Guy, *et al*., and that of *People v. Balasa*, *People v. Romero,* and *People v. Menil, Jr.*

In *People v. Balasa*, the accused formed the *Panata* Foundation of the Philippines, Inc., a non-stock/non-profit corporation and the accused managed its affairs, solicited deposits from the public and misappropriated the same funds.

We clarified in *Balasa* that although, the entity involved, the Panata Foundation, was not a rural bank, cooperative, *samahang nayon* or farmers' association, it being a corporation, does not take the case out of the coverage of [PD] 1689. [PD] 1689's third "whereas clause" states that it also applies to other "corporations/associations operating on funds solicited from the general public." It is this pronouncement about the coverage of "corporations/associations" that led us to the ruling in our [April 25, 2012] Decision that a commercial bank falls within the coverage of [PD] 1689. We have to note though, as we do now, that the *Balasa* case, differs from the present petition because while in *Balasa*, the offenders were insiders, *i.e*., owners and employees who used their position to defraud the public, in the present petition, the offenders were not at all related to the bank. **In other words, while in *Balasa* the offenders used the corporation as the means to defraud the public, in the present case, the corporation or the bank is the very victim of the offenders.**

*Balasa* has been reiterated in *People v. Romero*, where the accused Martin Romero and Ernesto Rodriguez were the General Manager and Operation Manager, respectively, of Surigao San Andres Industrial Development Corporation, a corporation engaged in marketing which later engaged in soliciting funds and investments from the public.

A similar reiteration was by *People v. Menil, Jr*., where the accused Vicente Menil, Jr. and his wife were proprietors of a business operating under the name ABM Appliance and Upholstery. Through ushers and sales executives, the accused solicited investments from the general public and thereafter, misappropriated the same.[15] (Emphasis supplied)

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[15] *Id*. at 473-474.

Based on the foregoing, I find that the third element of syndicated *estafa* does not obtain. To recall, the misappropriated funds in this case pertain to HDMF. While such funds were undoubtedly solicited from the general public, it bears emphasizing that **HDMF was not the corporate vehicle used to perpetrate the fraud. Rather, HDMF was the subject of the fraudulent scheme perpetrated by GA**. These facts, taken together, place the present case beyond the scope of PD 1689.

Justice Carpio is of the position that PD 1689 does not require that the perpetrator or the accused corporation/association be the one to solicit funds from the public, so long as the defraudation results in the misappropriation of money or of funds solicited by corporations/associations from the general public.[16] With all due respect, I disagree. The limited scope of PD 1689 is discernable from its "whereas clauses":

> WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon (s)", and farmers' associations or **corporations/associations operating on funds solicited from the general public**;
>
> WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, **erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation**;
>
> WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public[.] (Emphasis supplied)

The "whereas clauses" are clear — PD 1689 is intended to cover swindling and other forms of frauds involving corporations or associations operating on funds solicited from the general

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[16] See *J.* Carpio, Dissenting Opinion, p. 27.

public. To relax the third element of syndicated *estafa* in the present case is to adopt a liberal interpretation of PD 1689 to respondents' detriment; this cannot be done without doing violence to the well-established rule on the interpretation of criminal and penal statutes.

The early case of *People v. Garcia*[17] lends guidance:

> x x x "Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. **Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation**. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought." x x x[18] (Emphasis supplied)

The absence of the third element takes GA's fraudulent scheme outside of the scope of PD 1689. **Nevertheless, such absence does not have the effect of absolving respondents herein of criminal liability, as the fraudulent scheme remains punishable under Article 315 of the RPC**.

I find that the allegations in the Information, coupled with the evidence offered thus far, establish the existence of probable cause to charge and try respondents for the crime of simple *estafa* under the RPC, particularly under Article 315(2)(a)[19]

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[17] 85 Phil. 651 (1950) [Per *J*. Tuason, *En Banc*].

[18] *Id*. at 656.

[19] RPC, Article 315(2)(a) provides:

ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

thereof due to respondents' involvement in the implementation of GA's "Special Other Working Group Membership Program" (SOWG).[20]

Respondents insist that GA's duty to warrant the veracity of its buyer-borrowers' qualifications had been rendered inexistent by the Memorandum of Agreement dated July 13, 2009 (MOA), owing to the summary judgment rendered by the Regional Trial Court (RTC) of Makati in Civil Case No. 10-1120[21] which provides, in part:

> The MOA dated [July 13, 2009] entered into between [GA] and defendant HDMF which was duly approved by the Board of Trustees of the latter, without any doubt, effectively superseded, amended, and modified the provisions of the continuing [Funding Commitment Agreements (FCAs)] and [Collection Servicing Agreements] which are inconsistent with its provisions specifically in the following areas of concern:
>
> a. Warranty of the developer on the approval of loan applications of [HDMF] member-borrowers who bought houses and lots from the Xevera Bacolor and Mabalacat projects of [GA] considering that under the MOA, [GA] is limited to loan counseling;
>
> b. Warranty against any misrepresentation of the employees or agents of [GA] in connection with the latter's evaluation and approval of loan accounts due to the fact that under the MOA, [GA] is limited to loan counseling; and
>
> c. Right to unilateral termination of the contracts because under the MOA, the contracts can only be terminated upon mutual consent of both parties.[22]

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(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

[20] See *ponencia,* p. 40.

[21] Entitled *Globe Asiatique Realty Holdings Corporation and Delfin Lee (in his capacity as President of the Corporation) v. Home Development Mutual Fund (HDMF) or Pag-Ibig Fund, its Board of Trustees and Emma Linda Faria, Officer in Charge,* for Specific Performance and Damages.

[22] *Rollo* (G.R. No. 209424), Vol. II, p. 447.

Respondents posit that GA *could not* have made any false representations which would have impelled HDMF to approve the loan applications of its buyer-borrowers, so as to render them liable for simple *estafa* under Article 315(2)(a) of the RPC.

I disagree. I find, as do the majority, that GA's systematic endorsement of fictitious and unqualified buyer-borrowers serves as sufficient basis to hold the respondents liable for simple *estafa* — which liability stands regardless of whether GA's warranties under the Funding Commitment Agreements (FCAs) remained in effect.

To recall, the elements of simple *estafa* under Article 315(2)(a) are: (i) there must be a false pretense or fraudulent representation as to the offender's power, influence, qualifications, property, credit, agency, business or imaginary transactions; (ii) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (iii) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (iv) that, as a result thereof, the offended party suffered damage.[23] In order for simple *estafa* of this kind to exist, the false pretense or fraudulent representation must be made prior to, or at least simultaneous with, the delivery of the thing subject of the fraud, it being essential that such false statement or representation constitutes the very cause or motive which induces the victim to part with his/her money.[24]

With respect to the element of false pretense or fraudulent representation, the Court's ruling in *Preferred Home Specialties Inc. v. Court of Appeals*[25] is instructive:

A "representation" is anything which proceeds from the action or conduct of the party charged and which is sufficient to create upon

[23] *People v. Baladjay,* G.R. No. 220458, July 26, 2017, p. 7 [Per *J.* Velasco, Jr., Third Division].

[24] See *Preferred Home Specialties Inc. v. Court of Appeals*, 514 Phil. 574, 597-598 (2005) [Per *J.* Callejo, Sr., Second Division].

[25] *Id.*

the mind a distinct impression of fact conducive to action. "False" may mean untrue, or designedly untrue, implying an intention to deceive, as where it is applied to the representations of one inducing another to act to its own injury. "Fraudulent" representations are those proceeding from, as characterized by fraud, the purpose of which is to deceive. "False pretense" means any trick or device whereby the property of another is obtained.[26]

To be sure, **there is nothing in Article 315 which requires that the matter falsely represented be the subject of an obligation or warranty on the part of the offender**. It is sufficient that the false representation made by the offender had served as the driving force in the victim's defraudation.

On this score, it bears stressing that HDMF agreed to adopt GA's proposed SOWG on the basis of Delfin Lee's representations that a significant number of buyers had expressed interest in purchasing units in its Xevera Projects. In fact, after having secured billions of pesos under the first nine (9) FCAs executed between August 12, 2008 and July 10, 2009, Delfin Lee sought to further secure, as he did secure, additional funding commitment lines through an accelerated loan take-out process, under the guise of a "rapid and notable increase in the number of buyers" for GA's Xevera Projects.

However, as was later admitted by Delfin Lee himself, *at least* one thousand (1,000) of the buyer-borrowers which GA had endorsed to HDMF were questionable. Worse, **Delfin Lee likewise admitted that these questionable accounts were kept current not by the buyer-borrowers on record, but by GA itself**.[27] In turn, the subsequent audit conducted by HDMF revealed that: (i) only 1.85% of the *sampled* accounts under the SOWG category were actually occupied by their corresponding buyer-borrowers; (ii) 83.38% of acquired units under the SOWG category were unoccupied; and (iii) 7.69% of accounts under the SOWG category had been closed. These figures account for at least 296 anomalous SOWG accounts

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[26] *Id*. at 598-599.

[27] *Rollo* (G.R. No. 205698), Vol. I, p. 334.

out of the 320 accounts HDMF sampled during the audit, which, in turn, constitutes 10% of the total number of SOWG accounts booked by GA.[28] What is even more telling is the fact that GA's remittance rate immediately fell from 100% to 0% a month after HDMF suspended loan take-outs in favor of GA's buyers due to its alarming findings.[29]

The sheer volume of anomalous SOWG accounts is indicative of willful and fraudulent misrepresentation on the part of GA, for while the endorsement of a handful of fictitious and/or inexistent buyer-borrowers may reasonably result from negligence or even mere oversight, the endorsement such accounts in the hundreds clearly shows the employment of an elaborate scheme to defraud, and assumes the nature and character of fraud and deceit constitutive of simple *estafa* under Article 315(2)(a):

> **[F]raud, in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty**, **trust, or confidence justly reposed, resulting in damage to another**, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. **And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury**.[30] (Emphasis supplied)

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[28] Figures culled from the results of the HDMF special audit, as narrated by the NBI in its Preliminary Investigation Report dated October 29, 2010 (see *rollo* [G.R. No. 205698], Vol. I, p. 334).

[29] *Rollo* (G.R. No. 205698), Vol. I p. 334.

[30] *Lateo v. People,* 666 Phil. 260, 273-274 (2011) [Per *J.* Nachura, Second Division] cited in the *ponencia*, p. 40; see also *Republic v. Mega Pacific eSolutions, Inc.,* 788 Phil. 160, 196-197 (2016) [Per *C.J.* Sereno, First Division].

To my mind, this elaborate scheme could not have been possible without the complicity of the respondents, given the volume of transactions and amount of money involved in its perpetration. Hence, the respondents should accordingly be charged and made to stand trial.

Moreover, Justice Perlas-Bernabe correctly notes that even if it is assumed, *arguendo,* that the MOA had the effect of negating GA's warranties under the FCAs anent its buyer-borrowers' qualifications, **no less than nine (9) FCAs implementing the SOWG arrangement had nevertheless been executed prior to the execution of the MOA. Accordingly, the offense of simple *estafa* had already been consummated in respect of these nine (9) FCAs, which account for the staggering amount of Two Billion Nine Hundred Million Pesos (2,900,000,000.00) in loan proceeds**.

On the basis of the foregoing, I vote that the petitions docketed as **G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680** be **GRANTED IN PART**, and that the public prosecutor be directed to amend the Information to reflect the correct charge of simple *estafa*, under Article 315(2)(a) of the RPC. Let the warrants of arrest against respondents Delfin S. Lee, Dexter L. Lee, Christina Sagun, and Cristina Salagan **STAND**, and the warrant of arrest against Atty. Alex M. Alvarez be deemed **REINSTATED**.

I concur with the *ponencia* insofar as it **GRANTS** the petition docketed as **G.R. No. 209424**, and **DIRECT** the remand of Civil Case No. 10-1120 entitled *Globe Asiatique Realty Holdings, Corp. et al. v. The Home Development Mutual Fund or Pag-Ibig Fund, et al.* to the Regional Trial Court of Makati City, Branch 58 for further proceedings.

Finally, I concur with the *ponencia* insofar as it **GRANTS** the petitions docketed as **G.R. Nos. 208744 and 210095**, and **LIFTS** the Writ of Preliminary Injunction dated April 10, 2013 issued by the Regional Trial Court of Pasig City, Branch 167.

## SEPARATE OPINION

**TIJAM, *J.*:**

In 2008, Globe Asiatique Realty Holdings Corporation (GA), through its president Delfin Lee, entered into Funding Commitment Agreements (FCA) with Home Development Mutual Fund (HDMF) wherein it represented having interested buyers in its Xevera Projects in Pampanga. Under the arrangement, GA's supposedly existing buyers would be the loan applicants. GA will pre-process the loan applications and in case of default in the amortization, GA would buy back the loan accounts. This was followed by a second FCA, where the borrowers would be composed of Special Other Working Group (OWG) or those HDMF members who are not formally employed. In 2009, GA and HDMF executed a Memorandum of Agreement (MOA) for an additional funding commitment line. More FCAs were executed, reaching an aggregate amount of ₱7,007,806,000.00 released to GA.

HDMF subsequently discovered that some supposed borrowers under the OWG were not aware of the loans they supposedly obtained and that some borrowers were neither members of HDMF nor qualified to avail of housing loan. Consequently, HDMF revoked the authority of GA under the FCA, suspended all take-outs for new housing loans, required the buy-back of the 701 fraudulent accounts, and cancelled the release of fund to GA.

These events led to:

(a) In October 2010, HDMF, through its officer-in-charge Faria, filed a complaint for syndicated *estafa* against GA's officers Delfin Lee and several others [***1st DOJ Complaint***].

(b) In November 2010, GA and Delfin Lee filed a complaint for specific performance against HDMF before Regional Trial Court (RTC) of Makati [***Civil Case***]. They sought to compel HDMF to accept the replacements they proposed in lieu of the buyers who became delinquent in their amortizations.

(c) 2nd, 3rd and 4th Department of Justice (DOJ) criminal complaints against respondents were filed.

***1st DOJ Complaint:***

The DOJ issued its Review Resolution recommending the filing of *estafa* against Delfin Lee, Christina Sagun (Sagun), Christina Salagan (Salagan), Dexter Lee and Atty. Alex M. Alvarez (Atty. Alvarez) with no bail.

Sagun filed a *certiorari* petition with the Court of Appeals (CA) while Atty. Alvarez filed his injunction petition with RTC Caloocan to enjoin DOJ from filing the information.

The CA partially granted Sagun's petition. It held that Sagun's functions were limited to collation of documents. It dismissed the complaint as against Sagun and ordered the quashal of the arrest warrant issued against her.

On the other hand, GA clients, claiming to be victims of double sale made by GA, also filed a complaint for syndicated *estafa* against respondents. ***[2nd DOJ Complaint]***

Delfin Lee filed an injunction petition with RTC Pasig to enjoin the DOJ from proceeding with the 2nd DOJ Complaint on the ground that the Civil Case for specific performance case constitutes a prejudicial question.

The RTC Pasig issued Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI). DOJ filed a *certiorari* petition with CA. CA granted DOJ *certiorari* petition. Delfin Lee appealed to Us. We denied appeal which became final.

DOJ thus filed criminal case for syndicated *estafa* against Delfin Lee, Dexter Lee, Sagun, Salagan and Atty. Alvarez with the RTC Pampanga.

The RTC Pampanga found probable cause for syndicated *estafa* and ordered the issuance of warrants of arrest.

Delfin Lee, Dexter Lee and Salagan moved for reconsideration. Atty. Alvarez also moved for reconsideration.

Pending resolution of his motion for reconsideration, Delfin Lee filed a *certiorari* petition with the CA. Atty. Alvarez, Dexter Lee and Salagan also filed their respective *certiorari* petitions with the CA.

The CA partially granted Delfin Lee's and Atty. Alvarez's petition and quashed the arrest warrants issued against them. The CA dismissed Salagan's petition.

Hence, the petitions (*People v. Alvarez,* G.R. No. 209446; *HDMF v. Alvarez,* G.R. No. 209489; *HDMF v. Delfin Lee,* G.R. No. 209852; *People v. Delfin Lee,* G.R. No. 210143; *People v. Dexter Lee,* G.R. No. 228730; *HDMF v. Dexter Lee,* G.R. No. 228452; and *Salagan v. People and HDMF,* G.R. No. 230680).

***Civil Case for specific performance:***

GA and Delfin Lee filed a complaint for specific performance and damages, seeking to compel HDMF to accept the replacements they had proposed in lieu of the buyers/borrowers who had become delinquent in their amortization and asserting that HDMF's inaction to accept the replacement forced GA to default on its obligations under the MOA and FCAs, against HDMF.

The RTC Makati rendered a summary judgment in favor of GA and Delfin Lee.

Faria and Atty. Berberabe's motion for reconsideration filed by the Yorac Law Firm was denied due to the latter's lack of authority from HDMF. Supposedly, HDMF itself did not moved for reconsideration.

HDMF filed its *certiorari* petition with the CA.

The CA dismissed HDMF petition. In ruling so, the CA held that HDMF availed of the wrong remedy to assail a summary judgment and that the *certiorari* petition was not filed under the authority of the OGCC.

Hence, the petition (*HDMF v. GA,* G.R. No. 209424).

***2nd, 3rd and 4th DOJ complaints:***

To enjoin the 2nd, 3rd, and 4th DOJ complaints, Delfin Lee prayed for the issuance of a TRO with the RTC Pasig.

The RTC Pasig issued TRO and WPI against the conduct of the preliminary investigation in the 2nd, 3rd and 4th DOJ Complaints. It held that the summary judgment rendered by the RTC Makati effectively removed the element of damage in the criminal complaints.

DOJ filed *certiorari* petition with the CA, but denied the petition for having been filed out of time.

Hence, the petitions (*DOJ v. Delfin Lee,* G.R. No. 208744*; DOJ v. Delfin Lee,* G.R. No. 210095).

*I concur with the ponencia ordering the formal amendment of the Information from syndicated estafa to simple estafa and that the arrest warrants remain valid.*

To determine if the first paragraph of Section 1 of Presidential Decree (P.D.) No. 1689 applies, two questions must be determined: *first*, whether HDMF funds may be the subject of syndicated *estafa*; and *second*, whether respondents, as GA officials, fall under the definition of who may commit syndicated *estafa*.

As to the first question, the HDMF funds may be the subject of syndicated *estafa*.

Under paragraph 1 of Section 1, P.D. No. 1689, the funds misappropriated must be:

1) moneys contributed by stockholders or members of rural banks, cooperative, *samahang nayons* or farmers' associations, or

2) funds solicited from the general public.

Section 10 of Republic Act (R.A) No. 9679 or the HDMF Law of 2009 describes the HDMF fund as "private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit." The personal and employer

contributions are to be fully credited to each member and shall earn dividends. The fund also constitutes as a provident fund of each member, to be paid upon termination of membership. In other words, HDMF funds are funds held in trust for the member and are provident funds to be paid to the member, or his estate or beneficiaries, upon termination of his membership. As in the nature of provident funds, the HDMF funds operate as a savings scheme consisting of contributions from the members in monetary form which, in turn, earns dividends, may be used as a loan facility and provides supplementary welfare benefit to members. It is *akin* to funds held by banks, which is still wholly owned by the depositor but is loaned to the bank which the latter may use/invest and thus earns interest for the depositor. In other words, HDMF funds may thus properly be regarded as moneys contributed by HDMF members which may be the subject of syndicated *estafa*.

Nevertheless, as to the second question, the respondents GA officials do not fall under the definition of who may commit syndicated *estafa*. Jurisprudence, as it stands, particularly in *Galvez, et al. v. Court of Appeals, et al.*,[1] requires that the syndicate must have used the association that they manage to defraud the general public of the funds contributed to the association, to wit:

> [W]e note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.[2]

Otherwise stated, the syndicate must have used the rural banks, cooperative, *samahang nayons* or farmers' associations they

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[1] 704 Phil. 463 (2013).

[2] *Id*. at 473.

formed, owned, or managed to misapropriate the moneys contributed by their stockholders or members, or the syndicate must have used the corporation or association they formed, owned, or managed to misappropriate the funds it solicited from the general public.

Here, the GA officials admittedly did not form, own or manage HDMF. It was neither alleged in the Information that the GA officials used HDMF to defraud the general public. Since it was HDMF (the "association" holding the moneys contributed by its members) which is the victim and the juridical person used by the syndicate to defraud, P.D. No. 1689 does not apply.

Finally, independently of whether the threshold number of accused, *i.e.*, five, is met (on whether Atty. Alvarez should properly be included or not), the fact remains that four out of the five accused are neither owners nor employees of HDMF. This places the instant case outside the scope of P.D. No. 1689.

Since the elements of simple *estafa* appear to be present, respondents, including Atty. Alvarez of the HDMF, should be charged of simple *estafa*. The arrest warrants against them stand, and if quashed, should be reinstated.

*I concur with ponencia reversing the CA Decision denying HDMF's certiorari petition against RTC Makati's summary judgment but, instead, of remanding to CA, the case should be remanded to RTC Makati for disposition on the merits.*

The RTC Makati gravely abused its discretion when it rendered a summary judgment in the Civil Case for specific performance when it actually deemed that the issue as to damages necessitates further proceedings.

As suggested by Justice Estela M. Perlas-Bernabe, there is no need to remand the case to the CA to determine if the RTC Makati gravely abused its discretion especially so when proper evaluation of the merits may be had as when copies of various pleadings and documents are in possession of the Court. Instead, the case should be remanded to RTC Makati for further proceedings.

The Court's ruling charging respondents of simple *estafa* and affirming the validity of the arrest warrants does not pre-empt nor render moot the Civil Case for specific performance. Suffice to say that the instant petitions deal with the determination of the probable guilt of respondents for the crime of simple *estafa*; while the Civil Case simply determines contractual breach.

Under these premises, I vote as follows:

(1) The petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680 should be **PARTIALLY GRANTED** in that the Department of Justice is **DIRECTED** to amend the Information in Criminal Case No. 18480 so as to charge respondents for simple *estafa*. The warrants of arrest issued **REMAIN VALID**;

(2) The petition in G.R. No. 209424 should be **GRANTED**. The Decision dated October 7, 2013 of the Court of Appeals in CA-G.R. SP No. 128262, affirming the Resolutions dated January 30, 2012 and December 11, 2012 of the Regional Trial Court of Makati, Branch 58 in Civil Case No. 10-1120 should be **REVERSED and SET ASIDE**. A new one should be entered directing the **REMAND** of the case to RTC Makati for disposition on the merits;

(3) The petitions in G.R. Nos. 208744 and 210095 should be **GRANTED**, since the writ of preliminary injunction issued by the Regional Trial Court of Pasig City, Branch 167, which enjoined the preliminary investigation for the second, third and fourth criminal complaints filed against respondents was tainted with grave abuse of discretion amounting to lack of jurisdiction.

## DISSENTING OPINION

**CARPIO, *J.*:**

This case involves the resolution of this issue: Is the taking of some ₱6.6 billion from the PAG-IBIG Fund, through the

use of over one thousand fictitious borrowers, applied for by a private corporation through its corporate officers, simple *estafa* or syndicated *estafa?* The PAG-IBIG Fund, administered by a government corporation, is sourced from contributions by millions of public and private employees.

The majority holds that this mind-boggling taking of funds is a case of simple *estafa*. I dissent for obviously this is a case of syndicated *estafa*.

Before this Court are consolidated petitions for review filed under Rule 45 of the Rules of Court. The consolidated cases stemmed from the housing loan accounts taken out from Home Development Mutual Fund (HDMF) by Globe Asiatique Realty Holdings Corporation (Globe Asiatique) for its housing projects in Pampanga.

## The Facts

In 2008, Globe Asiatique, represented by its president, Delfin S. Lee, negotiated with HDMF for a Window-1 Contract to Sell/Real Estate Mortgage (CTS-REM) with Buyback Guaranty take out mechanism for its Xevera Bacolor Project in Pampanga. Pursuant thereto, Globe Asiatique entered into Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOA) with HDMF.

On 10 September 2010, then HDMF Officer-in-Charge (OIC) Emma Faria (Faria) wrote a letter to the Director of the National Bureau of Investigation (NBI), requesting assistance in the investigation by HDMF on the housing loan accounts taken out by Globe Asiatique for Xevera and Sameera projects in Pampanga. In her letter, Faria stated that HDMF's own validation of Globe Asiatique's accounts revealed that hundreds of them have been taken out by spurious borrowers while about a thousand more could not be located.

The NBI conducted its own investigation. On 29 October 2010, the NBI forwarded to the Department of Justice (DOJ) a letter recommending that a preliminary investigation be conducted against Delfin S. Lee and others for the crime of

syndicated estafa constituting economic sabotage. The DOJ formed a panel of prosecutors to investigate the complaint which was docketed as **NPS Docket XVI-INV-10J-00319, entitled *National Bureau of Investigation (NBI)/Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corp., Delfin S. Lee, et al.*** (First Criminal Complaint).

On 15 November 2010, Globe Asiatique and Delfin S. Lee filed before the Makati RTC a complaint for **Specific Performance and Damages against HDMF, its Board of Trustees and OIC Faria** (Makati Civil Case). The Complaint was docketed as **Civil Case No. 10-1120, entitled *Globe Asiatique Realty Corp., et al. v. The Home Development Mutual Fund or PAG-IBIG Fund, et al.* and raffled to Makati RTC Branch 58**. The complaint sought to compel HDMF to accept the replacements Globe Asiatique had proposed to take the place of buyers/borrowers who have become delinquents in their payments of their loan amortizations.

Meanwhile, on 10 December 2010, the NBI forwarded to the DOJ another letter recommending the conduct of preliminary investigation against Delfin S. Lee and others for syndicated estafa based on the complaints of HDMF and Globe Asiatique clients Evelyn Niebres, Catherine Bacani, and Ronald San Nicolas. Acting on the NBI recommendation, the DOJ formed a panel of prosecutors to handle the preliminary investigation of the complaint, which was docketed as **NPS Docket No. XVI-INV-10L-00363, entitled *National Bureau of Investigation/ Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al.*** (Second Criminal Complaint). On 18 February 2011, the third criminal complaint for syndicated estafa was filed, docketed as **NPS Docket No. XVI-INV-11B-00063, entitled *National Bureau of Investigation/Jennifer Gloria, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al*.** (Third Criminal Complaint). The fourth criminal complaint for syndicated estafa, docketed as **NPS Docket No. XVI-INV-11C-00138, entitled *National Bureau of Investigation/Maria Fatima Kayonas, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al*.** (Fourth Criminal Complaint) was filed on 25 March 2011.

Delfin S. Lee filed a petition to suspend the proceedings, which the DOJ denied.

Without awaiting the outcome of the pending DOJ cases, Delfin S. Lee filed a **Petition for Injunction dated 27 July 2011 before the Pasig RTC to enjoin the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint**. The case was docketed as **Civil Case No. 73115-PSG** and raffled to Branch 167 of the Pasig RTC, presided by Judge Rolando Mislang (Judge Mislang). In his petition, Delfin S. Lee argued that the Makati Civil Case poses a prejudicial question to the determination of the Second Criminal Complaint, and thus prayed for the suspension of the proceedings in the latter case.

In an Order dated 16 August 2011, Judge Mislang of the Pasig RTC granted Delfin S. Lee's application for TRO, and enjoined the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint. In its Order dated 26 August 2011, the Pasig RTC likewise granted Delfin S. Lee's application for TRO to enjoin the DOJ from filing an Information for syndicated estafa in connection with the First Criminal Complaint. Thereafter, in its **Order dated 5 September 2011**, **the Pasig RTC issued a Writ of Preliminary Injunction, restraining the DOJ from filing the Information in the First Criminal Complaint and from proceeding with the preliminary investigation in the Second Criminal Complaint.**

In a petition docketed as CA-G.R. SP No. 121594, the DOJ assailed the Pasig RTC's Order dated 5 September 2011. In its Decision dated 16 April 2012, the Court of Appeals (CA) ruled that no prejudicial question exists and thus annulled the 5 September 2011 Order of the Pasig RTC. On appeal, this Court in its 4 July 2012 Resolution in G.R. No. 201360 affirmed the CA Decision, and thereafter denied Delfin S. Lee's Motion for Reconsideration. The CA Decision in CA-G.R. SP No. 121594 dated 16 April 2012 became final and executory on 2 January 2013.

In September 2011, HDMF filed before the Pasig RTC a Motion to Inhibit and Leave to File Motion in Intervention.

The DOJ also filed a Motion to Inhibit. In its Order dated 27 January 2012, the Pasig RTC allowed HDMF to intervene but denied the motions to inhibit.

In the meantime, the **DOJ Task Force on Securities and Business Scam** issued a **Review Resolution dated 10 August 2011**, finding probable cause for syndicated estafa (NPS Docket No. XVI-INV-10J-00319) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez.

On the Makati Civil Case, the **Makati RTC issued a Resolution dated 30 January 2012, granting Delfin S. Lee's Motion for Summary Judgment, ruling that Globe Asiatique was entitled to specific performance and damages, except that the exact amount of damages will have to be determined during the trial proper**. In its **Resolution dated 11 December 2012, the Makati RTC denied the Motion for Reconsideration filed by HDMF President and Chief Executive Officer Atty. Darlene Marie Berberabe (Atty. Berberabe) and Faria, and ruled that the Summary Judgment declared in Civil Case No. 10-1120 is already final and executory against HDMF.** HDMF filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 128262. In its Decision dated 7 October 2013, the CA dismissed HDMF's petition, finding no grave abuse of discretion and ruling that HDMF availed of the wrong remedy to assail the Makati RTC Resolutions and that there was no showing that the petition was filed under the authority of the Office of the Government Corporate Counsel (OGCC).

In the meantime, Delfin S. Lee filed before the Pasig RTC a Supplemental Petition dated 11 June 2012, seeking to enjoin the DOJ from proceeding with the Third and Fourth Criminal Complaints, citing the 30 January 2012 Resolution of the Makati RTC in the Makati Civil Case. On 21 March 2013, the Pasig RTC issued a TRO against the DOJ, enjoining the latter from proceeding with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints. Thereafter, in its **Order dated 10 April 2013, the Pasig RTC issued the Writ of Preliminary Injunction, enjoining the DOJ from continuing**

**with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints.**

On 7 June 2013, the DOJ filed a Motion for Special Extension of Time to File Petition for Certiorari before the CA (CA-G.R. SP No. 130404). Thereafter, the DOJ filed on 18 June 2013 the Petition for *Certiorari*, assailing the Pasig RTC Order dated 10 April 2013. Unfortunately, the petition was inadvertently filed without a docket number, resulting in the petition being given a new docket number (CA-G.R. SP No. 130409) and raffled to another *ponente* and division.

On **8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Special Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed**. DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. **In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time.**

As regards **CA-G.R. SP No. 130409, the CA, in its 26 June 2013 Resolution, dismissed the Petition for *Certiorari* filed by the DOJ on 18 June 2013 for being filed out of time**. **The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013**.

In the meantime, on 30 April 2012, the criminal information for syndicated estafa against Delfin S. Lee, Dexter Lee, Atty. Alex Alvarez, Christina Sagun, and Cristina Salagan was raffled to Pampanga RTC, Branch 42, presided by Judge Maria Amifaith S. Fider-Reyes. The case was docketed as Criminal Case No. 18480 entitled "*People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez*."

**On 22 May 2012, the Pampanga RTC issued a Resolution, finding probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as**

**amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.**

**In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.**

**On 29 January 2014, the Pampanga RTC issued a Resolution denying Cristina Salagan's Second Motion to Quash Information with Prayer to Re-Determine Probable Cause Based on Supervening Event.**

**The Cases**

The Court consolidated these cases which involve common questions of law and fact, and the reliefs sought are intertwined.

**G.R. No. 205698**
(*Home Development Mutual Fund (HDMF) PAG-IBIG Fund, v. Christina Sagun*)

This petition for review on *certiorari* assails the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Petition for *Certiorari* and Prohibition is hereby PARTIALLY GRANTED. Consequently, the subject Review Resolution dated August 10, 2011 issued by respondent DOJ is SET ASIDE and DISMISSED as against petitioner Christina Sagun.
>
> SO ORDERED.[1]

The 10 August 2011 DOJ Review Resolution found probable cause against Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez for the crime of syndicated

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[1] *Rollo* (G.R. No. 205698), Vol. I, pp. 56-57.

estafa in the First Criminal Complaint and recommended the filing of the corresponding information against them. The dispositive portion of the DOJ Review Resolution reads:

> WHEREFORE, premises considered, it is most respectfully recommended that this resolution, finding probable cause against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez for the crime of syndicated estafa, as defined and penalized under paragraph 2(a) of Article 315 of the Revised Penal Code, in relation to Section 1 of Presidential Decree No. 1689, be APPROVED and that the corresponding information against them be filed in court WITH NO BAIL RECOMMENDED. It is likewise respectfully recommended that the complaint against Ramon P. Palma Gil, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguiling and John Tungol, be DISMISSED for lack or insufficiency of evidence and that this Resolution be referred to the Office of the Ombudsman so that the appropriate investigation be conducted against the former and present officers of HDMF (Pag-Ibig Fund).

Petitioner HDMF's Motion for Reconsideration was denied by the CA in its Resolution dated 11 February 2013.

**G.R. No. 205780**
(*Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*)

This petition for review on *certiorari* filed by the DOJ and NBI likewise seeks to reverse and set aside the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346.

**G.R. No. 208744**
(*Department of Justice v. Delfin S. Lee*)

This petition for review on *certiorari* assails the CA Resolutions dated 8 July 2013[2] and 14 August 2013[3] in CA-G.R. SP No. 130404.

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[2] *Rollo* (G.R. No. 208744), p. 122.

[3] *Id.* at 118-121.

On 7 June 2013, the DOJ filed with the CA a Motion for Special Extension of Time to File Petition for Certiorari, praying for an additional period of ten days from 9 June 2013, or until 19 June 2013 to file the intended petition. On 18 June 2013, the DOJ filed the petition, assailing the 10 April 2013 Order of the Pasig RTC (Branch 167) in Civil Case No. 73115 which granted Delfin S. Lee's application for the issuance of a writ of preliminary injunction. The assailed Order enjoined the DOJ from continuing with the preliminary investigation of the Second, Third and Fourth Criminal Complaints, thus:

> WHEREFORE, let a writ of preliminary injunction issue enjoining Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.
>
> Petitioner is directed to post a bond in the amount of Php2,000,000.00.[4]

Unfortunately, the petition filed on 18 June 2013 was without a docket number, which resulted in the petition being given another docket number, namely CA-G.R. SP No. 130409 (instead of CA-G.R. SP No. 130404), and the same was raffled to another *ponente* and division.

On 8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed. The DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time. The CA did not consider the petition as filed on 18 June 2013 since the inexcusable inadvertence of the DOJ in filing the petition without

[4] *Id.* at 198.

a docket number resulted in the petition being considered as a freshly filed petition and given the latest docket number, namely, CA-G.R. SP No. 130409. Furthermore, the CA found no compelling reason to reconsider the 8 July 2013 Resolution denying the DOJ's Motion for Extension.

**G.R. No. 209424**

(*Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the Corporation, and Tessie G. Wang*)

This petition for review on *certiorari* assails the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262,[5] which upheld the Resolutions dated 30 January 2012 and 11 December 2012 of the Makati RTC in Civil Case No. 10-1120.[6] The dispositive portion of the CA Decision reads:

> WHEREFORE, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in rendering the assailed Resolution dated January 30, 2012 containing the Summary Judgment and the Resolution dated December 11, 2012 denying the HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby DISMISSED.
>
> SO ORDERED.[7]

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee.

HDMF and Faria filed a Motion for Reconsideration through private counsel, the Yorac Arroyo Chua Caedo & Coronel Law

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[5] *Home Development Mutual Fund v. The Hon. Eugene S. Paras, in his official capacity as the Presiding Judge of Branch 58 of the Regional Trial Court of Makati, Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as President of the corporation and Tessie G. Wang.*

[6] *Globe Asiatique Realty Holdings Corporation and Delfin S. Lee, in his capacity as President of the corporation v. Home Development Mutual Fund (HDMF) or PAG-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge.*

[7] *Rollo* (G.R. No. 209424), Vol. I, pp. 14-34.

Firm. However, the Makati RTC held that the Motion for Reconsideration filed by the private counsel in behalf of HDMF is unauthorized. Atty. Berberabe likewise filed a Motion for Reconsideration. In a Resolution dated 11 December 2012, the Makati RTC denied the motions for reconsiderations filed by Faria and Atty. Berberabe for lack of merit. The Makati RTC further held that the 30 January 2012 Resolution containing the Summary Judgment has become final, executory, and immutable as to HDMF.

**G.R. No. 209446**

(*People of the Philippines v. Alex M. Alvarez*)

This petition for review on *certiorari* assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, the Petition for Certiorari and the Supplemental Petition are PARTIALLY GRANTED and the assailed Resolutions dated May 22, 2012 and August 22, 2012 of the Regional Trial Court, Branch 42 of San Fernando City, Pampanga in so far as petitioner ALEX M. ALVAREZ is concerned are hereby annulled and set aside. Accordingly, the warrant of arrest issued against him is hereby LIFTED, QUASHED/ RECALLED.
>
> Meantime, since the evidence do not support the finding of probable cause against petitioner ALEX M. ALVAREZ, public respondent court is hereby enjoined from proceeding with Criminal Case No. 18480 as against said petitioner only.
>
> SO ORDERED.[8]

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.

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[8] *Rollo* (G.R. No. 209446), Vol. I, pp. 31-32.

In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.

**G.R. No. 209489**

(*Home Development Mutual Fund v. Atty. Alex M. Alvarez*)

This petition for review on *certiorari* filed by HDMF likewise assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690.

**G.R. No. 209852**

(*Home Development Mutual Fund (HDMF) v. Delfin S. Lee*)

This petition for review on *certiorari* assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,[9] which partially granted respondent Delfin S. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.[10] The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the instant petition is hereby PARTIALLY GRANTED. The assailed Resolutions dated May 22, 2012 and August 22, 2012 are hereby ANNULLED and SET ASIDE for the issuance thereof was attended with grave abuse of discretion on the part of public respondent Hon. Ma. Amifaith S. Fider-Reyes, in her capacity as the Presiding Judge of the San Fernando, Pampanga RTC – Branch 42. Consequently, the Warrant of Arrest issued against petitioner Delfin S. Lee is hereby QUASHED, RECALLED AND LIFTED. Afore-named public respondent judge

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[9] *Delfin S. Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).*

[10] *People v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez*, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.

is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Delfin S. Lee is concerned.

Furthermore, all government agencies tasked in the enforcement of the said warrant of arrest including but not limited to the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Bureau of Immigration (BI) are immediately ENJOINED from implementing the same.

SO ORDERED.[11]

**G.R. No. 210095**
(*Department of Justice v. Delfin S. Lee*)

This petition for review on *certiorari* assails the CA Resolutions dated 26 June 2013 and 11 November 2013 in CA-G.R. SP No. 130409. The 26 June 2013 Resolution dismissed the Petition for *Certiorari* filed by the DOJ on 18 June 2013 for being filed out of time. The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013.

The Petition for *Certiorari* was filed by the DOJ before the CA to nullify the Order dated 10 April 2013 of Judge Mislang of the Pasig RTC (Branch 167) in Civil Case No. 73115, enjoining the DOJ from continuing with the preliminary investigation of the second, third, and fourth criminal complaints against Delfin S. Lee.

**G.R. No. 210143**
(*People of the Philippines v. Delfin S. Lee*)

This petition for review on *certiorari* assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,[12] which partially granted respondent Delfin S. Lee's Petition for *Certiorari,* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480. This case is related to the case entitled *Home Development Mutual Fund (HDMF) v. Delfin S. Lee* (G.R. No.

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[11] *Rollo* (G.R. No. 209852), Vol. I, pp. 42-43.

[12] *Delfin S. Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines,and Home Development Mutual Fund (HDMF).*

209852) which likewise seeks to reverse and set aside the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553.

**G.R. No. 228452**
(*Home Development Mutual Fund (HDMF) v. Dexter L. Lee*)

This petition for review on *certiorari* assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554,[13] partially granting respondent Dexter L. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.[14] The dispositive portion of the CA Decision reads:

> ACCORDINGLY, on the foregoing reasons, the petition is PARTIALLY GRANTED. The assailed Resolutions dated May 22, 2012 and August 22, 2012 of Branch 42 of Regional Trial Court of Pampanga City are ANNULLED and SET ASIDE. Thus, the Warrant of Arrest issued against petitioner Dexter L. Lee is hereby QUASHED, RECALLED and LIFTED. Furthermore, the Regional Trial Court, Branch 42 of San Fernando Pampanga is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Dexter L. Lee is concerned.
>
> Moreover, all government agencies tasked in the enforcement of the Warrant of Arrest including but not limited to the Philippine National Police, the National Bureau of Investigation and the Bureau of Immigration are immediately ENJOINED from implementing the said Warrant.
>
> SO ORDERED.[15]

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[13] *Dexter L. Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).*

[14] *People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez*, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.

[15] *Rollo* (G.R. No. 228730), pp. 32-33.

**G.R. No. 228730**
(*People of the Philippines v. Dexter L. Lee*)

This petition for review on *certiorari* likewise assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554, partially granting respondent Dexter L. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480. This case is related to the immediately preceding case entitled *Home Development Mutual Fund (HDMF) v. Dexter L. Lee* (G.R. No. 228452) which also seeks to reverse and set aside the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554.

**G.R. No. 230680**
*(Cristina Salagan v. People of the Philippines and Home Development Mutual Fund ([HDMF])*

This petition for review on *certiorari* assails the CA Decision dated 18 March 2016 in CA-G.R. SP No. 134573, affirming the Resolutions dated 22 May 2012 and 29 January 2014 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480 insofar as accused Salagan is concerned. The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the Petition for Certiorari is DISMISSED. Accordingly, the Resolution dated May 22, 2012 and Resolution dated January 29, 2014 of the San Fernando, Pampanga RTC, Branch 42 are hereby AFFIRMED insofar as Accused Cristina Salagan is concerned.
>
> SO ORDERED.[16]

For clarity, the cases are discussed jointly in accordance with the resolutions or orders being ultimately assailed, thus:

**I. DOJ Review Resolution dated 10 August 2011**

1. **G.R. No. 205698** — *Home Development Mutual Fund (HDMF)PAG-IBIG Fund v. Christina Sagun*

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[16] *Rollo* (G.R. No. 230680), Vol. I, p. 365.

2. **G.R. No. 205780** - *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

**II. Pampanga RTC Resolutions dated 22 May 2012, 22 August 2012, and 29 January 2014**

1. **G.R. No. 209446** — *People of the Philippines v. Alex M. Alvarez*
2. **G.R. No. 209489** — *Home Development Mutual Fund v. Atty. Alex M. Alvarez*
3. **G.R. No. 209852** — *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*
4. **G.R. No. 210143** — *People of the Philippines v. Delfin S. Lee*
5. **G.R. No. 228452** — *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*
6. **G.R. No. 228730** — *People of the Philippines v. Dexter L. Lee*
7. **G.R. No. 230680** — *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

**III. Pasig RTC Order dated 10 April 2013**

1. **G.R. No. 208744** — *Department of Justice v. Delfin S. Lee*
2. **G.R. No. 210095** — *Department of Justice v. Delfin S. Lee*

**IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012**

1. **G.R. No. 209424** — *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

## The Issues

I. Whether the CA erred in setting aside the DOJ Review Resolution dated 10 August 2011 as against Christina Sagun; (G.R. Nos. 205698 and 205780)

II. A. Whether the CA erred in finding no probable cause for syndicated estafa and for the issuance of arrest warrants against Delfin S. Lee, Dexter L. Lee, and Atty. Alex M. Alvarez; (G.R. Nos. 209446, 209489, 209852, 210143, 228452, and 228730)
B. Whether the CA (CA-G.R. SP No. 134573) erred in upholding the validity of the information for syndicated estafa as against Cristina Salagan and the issuance of the warrant of arrest against her. (G.R. No. 230680)

III. A. Whether the CA erred in dismissing the Petition for *Certiorari,* assailing the Pasig RTC Order in Civil Case No. 73115, for being filed out of time; and
B. Whether the Pasig RTC erred in enjoining the DOJ from continuing with the preliminary investigation of the second, third and fourth criminal complaints; (G.R. Nos. 208744 and 210095)

IV. A. Whether the CA erred in dismissing the Petition for *Certiorari* for being the wrong remedy to assail the Summary Judgment; and
B. Whether the Makati RTC erred in issuing the Summary Judgment in Civil Case No. 10-1120. (G.R. No. 209424)

**I.** 1. **G.R. No. 205698** — *Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun*

2. **G.R. No. 205780** — *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

G.R. Nos. 205698 and 205780 both question the propriety of the CA's ruling on Sagun's petition. The petition before the CA questioned the Review Resolution, and not the issuance of the Information and the trial court's subsequent finding of probable cause. The issues before this Court in these two cases may be limited to the following: (1) whether Christina Sagun followed proper procedure, and (2) whether the CA was correct in proceeding to rule on the validity of the Information and of the issuance of the warrants of arrest.

I rule for petitioners HDMF and DOJ on both issues. The *ponencia* did not address the first issue. There was no mention of Sagun's direct resort to the CA after the release of the Review Resolution. The *ponencia* immediately ruled on the second issue and concluded that there was no probable cause for the filing of the Information for syndicated estafa and for the issuance of warrants of arrest against respondents Delfin S. Lee, Dexter Lee, Christina Sagun, Atty. Alex Alvarez, and Cristina Salagan.

***Christina Sagun failed to exhaust administrative remedies***

Aggrieved parties may appeal from resolutions of prosecutors by filing a verified petition for review before the Secretary of Justice. The pertinent portions of the rule governing appeals from resolutions of prosecutors in the National Prosecution Service, otherwise known as the 2000 NPS Rule on Appeal,[17] provide:

SECTION 1. *Scope.* — This Rule shall apply to appeals from resolutions of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation/reinvestigation.

SECTION 2. *Where to appeal.* An appeal may be brought to the Secretary of Justice within the period and in the manner herein provided.

SECTION 3. *Period to appeal.* The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

SECTION 4. *How appeal taken.* An aggrieved party may appeal by filing a verified petition for review with the Office of the Secretary, Department of Justice, and by furnishing copies thereof to the adverse party and the Prosecution Office issuing the appealed resolution.

The exception to the general rule will apply only when there is a clear showing of grave abuse of discretion by the public prosecutor amounting to lack or excess of jurisdiction. Absent

[17] DOJ Department Circular No. 70 dated 6 July 2000.

such showing, the courts do not have the power to substitute their judgment for that of the Secretary of Justice.

In the DOJ's Review Resolution, Christina Sagun's defense is summarized as follows:

> Respondent **Christina Sagun**, for her part, admits that she is the former head of the Documentation Department of GA since 2007. She asserts that the evidence against her in the above-entitled complaint is insufficient inasmuch as the complaint failed to specifically indicate her participation in the alleged crime. She stresses that the enumeration of her specific participation is an essential requirement of due process and is necessary for her to effectively prepare her defense and respond to the charges made against her. She believes that her inclusion in the instant case was in relation to the alleged second buyers of a property who availed of the loan privileges under the Window—1 CTS-REM with buyback guaranty takeout mechanism granted by the HDMF to GA, namely: Girlie Santos Espanillo, Lerma Cariaga Villaflores, Emily Pagdato Bandillo, Jennifer Fernando and Marissa Quizon.
>
> She also emphasizes that the function of the Documentation Department in relation to Window—1 CTS-REM with buyback guaranty takeout mechanism of HDMF is ministerial in nature such as receiving, collating and checking loan documents if they are complete or not and verifying from Pag-IBIG if buyers/borrowers of GA are Pag-IBIG members with updated contribution and if they are qualified for a housing loan. In short, her office does not exercise discretion but merely perfunctory and strictly ministerial power. She maintains that she had not participated in any transactions with private complainants Evelyn Niebres, Catherine Bacani and Ronald San Nicolas. Neither had she made any false statement nor representation to the HDMF.[18]

The DOJ Review Resolution also stated that Christina Sagun prepared the developer's affidavits that Atty. Alex Alvarez notarized.[19]

The same DOJ Review Resolution set aside Christina Sagun's defense as follows:

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[18] Review Resolution, pp. 19-20.

[19] *Id.* at 41.

By the same token, we hereby thrust aside the defenses raised by **Christina Sagun** x x x since, as shown by the Records, they are in the nature of denial which is "an intrinsically weak defense and which must be buttressed with strong evidence of non-culpability to merit credibility." Besides, it was clearly established by the evidence that Christina Sagun, being the head of the Documentation Department, is responsible for (a) collating and checking if the documents submitted by the borrowers/buyers, through GA's Marketing Department, are complete and duly accomplished, and (b) determine and verify from Pag-IBIG, through the submission of Membership Status Verification, whether or not said borrowers/buyers are indeed Pag-IBIG members, or with updated contributions, or [have] no existing housing loans, and thus are qualified to apply for housing loans. x x x. Verily, by the nature of their functions, **Christina Sagun** x x x could have prevented the commission of the herein fraud if only they exercised their functions diligently and in a prudent manner. But they failed and in fact they participated in the fraudulent scheme. x x x.

In the words of the Court, the rationale for making such officers responsible for the offense is that, "they are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. And this principle applies "[W]hether [sic] or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative act."

x x x x x x x x x

Record also shows that during the Board Meeting held on June 20, 2008 wherein the piloting of the OWG membership program in GA's Xevera Project was discussed, then CEO Atty. Romero Quimbo admitted the difficulty of monitoring the sources of income of this group because many of them do not declare their actual earnings such that a credit investigation will be conducted to verify the authenticity of their income. However, during the actual

implementation of the program, the conduct of such credit investigation was delegated to GA. In fact, the Agreements subsequently entered into between HDMF and GA have practically given the latter blanket authority in determining membership and housing loan eligibility and capacity to pay of its buyers. It was also given the authority to evaluate, pre-process and approve housing loan applications. The only control mechanism put in place by HDMF being the post take-out audit or validation within thirty (30) days after loan take-out. However, the Special Audit Report dated July 26, 2010 (Annex "Q" of the Complaint) clearly established that there was non-validation or delayed post take-out on the part of HDMF San Fernando, Pampanga Branch, thus, exposing the Fund to probable loss of some financial investments.[20]

The prerequisite for Sagun's resort to the CA is a clear showing of grave abuse of discretion by the public prosecutors. Under the present circumstances, however, Sagun failed to show that the investigating prosecutors abused their discretion, much less gravely abused their discretion. Sagun, in contrast to her co-respondents in I.S. No. XVIINV-10J-00319, immediately resorted to judicial review before the CA. Delfin S. Lee, Dexter Lee, Cristina Salagan, and Atty. Alex Alvarez all filed appeals before the Secretary of Justice. Unlike Sagun, and despite her protestations about the utterances pre-judging the case made by the Secretary of Justice, that "time was of the essence," and that there was "no plain, speedy and adequate remedy in the ordinary course of law," her co-respondents saw that it was procedurally proper to have the Secretary of Justice reexamine the Review Resolution.

Sagun employed the wrong remedy in assailing the investigating prosecutor's Review Resolution, and Sagun never filed an appeal before the Secretary of Justice. Sagun was never able to validly question the Review Resolution. Thus, both the findings and conclusion in the Review Resolution, as well as the consequent filing of the Information against Sagun, stand. The CA erred in considering Sagun's petition and ruling in her favor. Sagun's immediate filing of a petition before the CA is a procedural shortcut that merits a dismissal.

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[20] *Id.* at 40-41, 44-45. Boldfacing in the original.

***The CA erred in proceeding to rule on the validity of the Information and of the issuance of the warrant of arrest***

The CA wrongfully asserted that when it reviews the DOJ's determination of probable cause, it makes a judicial determination of probable cause which binds the trial court.

Petitioners have done right in relying on *Alcaraz v. Gonzalez*:[21]

> It bears stressing that in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. *Courts are not empowered to substitute their own judgment for that of the executive branch*.
>
> The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.
>
> It bears stressing that the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. Under the 1993 Revised Rules on Appeals (now the 2000 National Prosecution Service Rules on Appeals), resolutions in preliminary investigations or reinvestigations from the Justice Secretary's resolution, except the aggrieved party, has no more remedy of appeal to file a motion for reconsideration of the said resolution of such motion if it is denied by the said Secretary. The remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65 of the Rules of Court since there is no more appeal or other remedy available in the ordinary course of law.

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[21] 533 Phil. 796, 807-808 (2006). Italicization in the original.

*Reyes v. Pearlbank Securities, Inc.*[22] defines probable cause in the following manner, and further explains why the courts generally do not review the findings made by the Secretary of Justice:

> Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.
>
> A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.
>
> These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the

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[22] 582 Phil. 505, 518-520 (2008).

determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice. And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

The reasons put forward by the CA to justify its substitution of the Pampanga RTC's determination of probable cause do not amount to grave abuse of discretion. The Pampanga RTC's determination of probable cause, although in accord with the findings of the DOJ, did not necessarily rely on the DOJ's resolution alone. Hence, in the absence of grave abuse of discretion, there is no reason to disturb the Pampanga RTC's determination of probable cause.

**II.** 1. **G.R. No. 209446** — *People of the Philippines v. Alex M. Alvarez*
2. **G.R. No. 209489** — *Home Development Mutual Fund v. Atty. Alex M. Alvarez*
3. **G.R. No. 209852** — *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*
4. **G.R. No. 210143** — *People of the Philippines v. Delfin S. Lee*
5. **G.R. No. 228452** — *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*
6. **G.R. No. 228730** — *People of the Philippines v. Dexter L. Lee*
7. **G.R. No. 230680** — *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

***Delfin S. Lee and Dexter Lee failed to follow proper procedure***

Delfin S. Lee and Dexter Lee's contumacious attitude to our rules of procedure is demonstrated by the following:

(1) failing to file a motion for reconsideration of the 22 May 2012 resolution of the San Fernando RTC prior to filing a petition for *certiorari* before the CA;

(2) filing a petition for *certiorari* before the CA without waiting for the decision of the San Fernando RTC on his motions for reconsideration of the 22 August 2012 resolution;

(3) failing to file within the reglementary period a petition for *certiorari* to assail the 22 May 2012 resolution of the San Fernando RTC; and

(4) repeated instances of forum-shopping.

On 22 May 2012, the San Fernando RTC issued a Resolution which found probable cause to issue warrants of arrest against Delfin S. Lee and Dexter Lee, among others. On 23 May 2012, Delfin S. Lee and Dexter Lee filed a "Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion." This Motion to Quash raised the following grounds: lack of jurisdiction of the San Fernando RTC due to non-payment of filing fees; judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC; and lack of probable cause for the crime of syndicated estafa.

Delfin S. Lee and Dexter Lee filed another Motion to Quash dated 3 June 2012. This second Motion to Quash raised the following grounds: the facts charged in the Information do not constitute an offense; there is no syndicated estafa because the facts stated in the Information do not state conspiracy; and judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC.

The San Fernando RTC denied Delfin S. Lee and Dexter Lee's Motion in a Resolution dated 22 August 2012. Delfin S.

Lee and Dexter Lee filed two Motions for Reconsideration of the 22 August 2012 Resolution: the first on 8 October 2012, and the second on 13 October 2012. Delfin S. Lee and Dexter Lee then separately filed a special civil action for *certiorari* before the CA (CA-G.R. SP No. 127553 for Delfin S. Lee and CA-G.R. SP No. 127554 for Dexter Lee) without waiting for any resolution from the San Fernando RTC. The CA, in its 7 November 2013 Decision in CA-G.R. SP No. 127553, even stated this deviation from procedure:

> On 26 November 2012, without waiting for the resolution of the above-mentioned Motion, petitioner Lee filed a Petition for Certiorari (With Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) before this Court directed against the Resolutions dated May 22, 2012 and August 22, 2012 issued by public respondent x x x.

As for Dexter Lee, the CA stated in its 16 November 2016 Decision:

> Pending the resolution of the motion before the RTC of Pampanga, petitioner filed a Petition for Certiorari with prayer of a TRO and/or Writ of Preliminary Injunction before this Court assailing the May 22, 2012 and August 22, 2012 Resolutions of RTC Pampanga.

It is hornbook doctrine that a motion for reconsideration must first be filed with the lower court before resorting to the extraordinary writ of *certiorari*. A motion for reconsideration gives the lower court an opportunity to correct the errors imputed to it. Moreover, the special civil action for *certiorari* will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the course of law. In the present case, Delfin S. Lee arrogated to himself the determination of whether the filing of a motion for reconsideration is necessary. However, Delfin S. Lee failed to show any compelling reason for his non-filing of a motion for reconsideration and his immediate recourse to a special civil action for *certiorari* before the CA.

Assuming *arguendo* that a petition for *certiorari* was an available remedy to Delfin S. Lee, he was unable to file the petition within the reglementary period. Delfin S. Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to

Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Delfin S. Lee, however, filed his petition before the CA only on 26 November 2012, or 127 days after the lapse of the 60-day deadline. No reason was given for the inordinate delay.

In similar manner, Dexter Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Dexter Lee, however, filed his petition before the CA only on 23 November 2012, or 124 days after the lapse of the 60-day deadline. Dexter Lee also gave no reason for the inordinate delay.

With their immediate, yet separate, resort to a special civil action for *certiorari*, Delfin S. Lee and Dexter Lee have asked, successively and simultaneously, for judicial relief in different courts, particularly the San Fernando RTC and the CA, with the same end in mind: the dismissal of the syndicated estafa case filed against them.

***Atty. Alex Alvarez engaged in forum-shopping***

Among all respondents, it is Atty. Alex Alvarez who was most brazen in flouting our rules against forum-shopping. Consider the following:

1. Atty. Alvarez filed a Petition for Review before the Secretary of Justice on 3 October 2011 to assail the DOJ's Review Resolution dated 10 August 2011.

2. While the Petition for Review before the Secretary of Justice was pending, Atty. Alvarez filed a Petition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Manila RTC.

3. Atty. Alvarez withdrew the Petition for Review before the Secretary of Justice only on 14 November 2011. The Secretary of Justice has yet to rule upon his withdrawal.

4. On 15 November 2011, Atty. Alvarez filed a petition before the CA docketed as CA-G.R. SP No. 122076. He prayed that

the DOJ cease and desist from filing the Information in NPS Docket No. XVI-INV-10J-00319 and that he be excluded from the Information that may be filed in the case.

5. On 23 April 2012, Atty. Alvarez filed a Notice of Withdrawal of Petition in CA-G.R. SP No. 122076.

6. Still on 23 April 2012, Atty. Alvarez filed a Petition for Injunction and Prohibition (With Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Caloocan City RTC.

7. Atty. Alvarez filed an undated second petition before the CA, docketed as CA G.R. SP No. 127690. He prayed that the Pampanga RTC cease from conducting further proceedings and that the warrant of arrest issued against him be lifted and suspended.

Throughout his numerous filings, Atty. Alvarez has sought only one end: the dismissal of the criminal case filed against him. Atty. Alvarez likewise submitted inaccurate certifications on non-forum shopping in CA-G.R. SP No. 122076, CA-G.R. SP No. 127690, and before the Caloocan City RTC.

Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be 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. For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief 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.[23] The acts of Delfin S. Lee,

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[23] *Santos v. COMELEC*, 447 Phil. 760 (2003).

Dexter Lee, and Atty. Alex Alvarez that were enumerated in the preceding paragraphs satisfy all these conditions.

***The CA exceeded its certiorari jurisdiction***

The CA quashed, recalled, and lifted the warrants of arrest against Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez. In doing so, the CA reviewed and weighed the evidence submitted before the trial court and tried the facts presented before it. It would do well for the CA to recall that its *certiorari* jurisdiction is limited to errors of jurisdiction and not errors of judgment. As we stated in *Leviste v. Alameda*:[24]

> In a petition for *certiorari*, like that filed by petitioner before the appellate court, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment. The court's duty in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

It is premature for the CA to rule on the merits of the case prior to the trial on the merits.

***Atty. Alex Alvarez's indispensable participation in the crime of syndicated estafa***

To emphasize the extent of Atty. Alvarez's participation in this scheme, we quote from the transcript of the clarificatory questioning of Veniza Santos Panem, an employee of Globe Asiatique:

| | |
|---|---|
| Prosecutor Lao | x x x Kilala mo ba si Atty. Alvarez? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Sino si Atty. Alvarez? |

[24] 640 Phil. 620, 650-651 (2010).

| | |
|---|---|
| Veniza Santos Panem | Siya po ang nagnonotaryo ng mga dokumento sa Globe Asiatique. |
| Prosecutor Lao | San sya nag-o-opisina? |
| Veniza Santos Panem | Sa Globe Asiatique po. |
| Prosecutor Lao | Head office ba? |
| Veniza Santos Panem | Head office po. |
| Prosecutor Lao | So siya yung notary public. Regular employee? Lagi mo ba syang nakikita don? Ano sa pagkakaalam mo? |
| Veniza Santos Panem | Lagi ko po syang nakikita doon. |
| Prosecutor Lao | So regular employee siya ng Globe Asiatique? |
| Veniza Santos Panem | Hindi ko po sure pero lagi ko siyang nakikita. |
| Prosecutor Lao | Doon mo siya nakikita sa Globe Asiatique. Doon sya nag-o-opisina? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Anong year? |
| Veniza Santos Panem | Hindi ko po sigurado yung year. |
| Prosecutor Lao | Sa loob ng employment mo sa Globe Asiatique, sinong nauna sa inyo doon bilang empleyado ng Globe Asiatique? |
| Veniza Santos Panem | Ako po. |
| Prosecutor Lao | Ikaw. So gaano katagal? Mga one year after? Two years after or bago pumasok si Atty. Alvarez? |
| Veniza Santos Panem | Hindi ko po sure kung 2007 or 2008 po siya. |
| Prosecutor Lao | Sabi mo siya yung notaryo? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Saan siya nag-o-office? |
| Veniza Santos Panem | Sa amin po. |
| Prosecutor Lao | Doon sa inyo? May opisina siya doon? |
| Veniza Santos Panem | Yes, your Honor. |

| | |
|---|---|
| Prosecutor Lao | May sarili siyang kwarto doon? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Lagi mo siyang makikita doon? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | 8:00 to 5:00? Whole day? |
| Veniza Santos Panem | Hindi naman po whole day. |
| Prosecutor Lao | Mga anong oras? Example Monday to Friday … lagi ba siyang nandoon? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | So hindi siya pala-absent? |
| Veniza Santos Panem | Minsan naman po wala naman po siya. |
| Prosecutor Lao | Pero minsan lang, absent siya minsan, kasi nagnonotaryo siya ng mga documents. |
| Veniza Santos Panem | Meron po siyang secretary na nagno-notaryo. |
| Prosecutor Lao | Secretary niya nagno-notaryo? |
| Veniza Santos Panem | Opo. |
| Prosecutor Lao | Sino yung secretary nya? |
| Veniza Santos Panem | Si Imelda Saulo po. |
| Prosecutor Lao | Kapag wala si Atty. Alvarez, si Imelda ang nagno-notaryo? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Attorney ba si Imelda? |
| Veniza Santos Panem | Hindi po. |
| Prosecutor Lao | Ano siya? |
| Veniza Santos Panem | Hindi ko po alam e. |
| Prosecutor Lao | Ano ang tawag sa opisina nila? |
| Veniza Santos Panem | Legal department po. |
| Prosecutor Lao | Sila sa Legal department sila ni Atty. Alvarez at Imelda Saulo. |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Yung Legal department malapit sa office nyo? |

| | |
|---|---|
| Veniza Santos Panem | Magkatapat po yung room. |
| Prosecutor Lao | So kapag pumapasok si Atty. Alvarez, makikita mo? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Araw-araw ba doon? Madalas mo ba siya [makita] doon? |
| Veniza Santos Panem | Yes, madalas po. |
| Prosecutor Lao | Example pumasok siya ngayong Monday, 8 to 5 nandun siya?Kapag pumapasok siya, usually nandun lang siya sa office? |
| Veniza Santos Panem | Yes, your Honor. |
| Prosecutor Lao | Nagtatagal ba siya doon? |
| Veniza Santos Panem | Hindi po. Mga halfday po. |
| Prosecutor Lao | Halfday. Ano usually morning or afternoon? |
| Veniza Santos Panem | Morning po. |
| Prosecutor Lao | So pag lunchtime umaalis na yan. Tapos babalik bukas na. |
| Veniza Santos Panem | Yes, your Honor.[25] |

Furthermore, the NBI report dated 29 October 2010 stated that:

Upon initial investigation of the sampling of loan folders submitted by Mr. DELFIN LEE for Globe Asiatique, it was discovered that majority of the fake and/or fraudulent loan documents were notarized by ATTY. ALEX ALVAREZ, an employee of Pag-IBIG assigned in its Legal Department and holding office in the HDMF head office. When invited for questioning by the NBI, ATTY. ALVAREZ admitted that he receives a monthly salary of ₱30,000 from Globe Asiatique in exchange for notarizing its documents (regardless of [illegible]). [Illegible] the borrowers to personally appear before him as the documents are brought to him for such notarization in batches. He claimed during the interview that he is not required to secure special permission from the President of Pag-IBIG to undertake limited practice of law (which includes notarizing documents) because only those

[25] *Rollo* (G.R. No. 209446 ), pp. 2550-2563.

with Salary Grade 23 or lower are required to secure such permission, and there is no specific provision governing someone like him with Salary Grade 24.[26]

I cannot countenance Atty. Alvarez's actuations as that of a "mere" notary public. Atty. Alvarez was the Manager of HDMF's Foreclosure Department with Salary Grade 24. Despite being Manager of HDMF's Foreclosure Department, Atty. Alvarez ignored the glaring conflict of interest when he notarized loan applications with HDMF at the office of Globe Asiatique where he held office part-time, moonlighting as head of the legal department of Globe Asiatique. Worse, Atty. Alvarez notarized the loan applications without the personal appearance of the loan applicants. As Manager of HDMF's Foreclosure Department, he would be foreclosing on loans with fictitious borrowers based on mortgage documents that he himself notarized. Atty. Alvarez probably thought that the fictitious loan applicants would never be discovered since as Manager of HDMF's Foreclosure Department he had control of the foreclosures, and he could just expeditiously foreclose the mortgages without disclosing the fictitious mortgagees. For a monthly salary of ₱30,000 from Globe Asiatique, Atty. Alvarez made wholesale guarantees that the loan documents and supporting papers were submitted to him by persons who "personally appeared before him." Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.

***Syndicated Estafa***

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan,

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[26] *Id.* at 722.

and Atty. Alex Alvarez, and issued warrants of arrest against them with no bail recommended.

Article 315(2)(a) of the RPC reads:

> Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> x x x x x x x x x
>
> (2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

PD 1689, which increased the penalty for estafa, if committed by a syndicate provides:

> Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*," or farmers association, or of funds solicited by corporations/associations from the general public.
>
> When not committed by a syndicate as above defined, the penalty imposable shall be *reclusion temporal* to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

Under Section 1 of PD 1689, the elements of syndicated estafa are: (1) estafa or other forms of swindling as defined in Articles 315 and 316 of the RPC are committed; (2) the estafa or swindling is committed by a syndicate of five or more persons; and (3) the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*," or farmers' associations or

of funds solicited by corporations/associations from the general public.[27]

Under PD 1689, syndicated estafa includes cases where fraud results in the misappropriation of funds solicited by corporations/associations from the general public. Thus, the law does not require that the perpetrator or the accused corporation/association be the one to solicit the funds from the public. The law merely requires that the **"defraudation results in the misappropriation of money x x x or of funds solicited by corporations/associations from the general public."**

The alleged fraud perpetrated resulted in the misappropriation of funds of the HDMF or PAG-IBIG Fund which is undisputedly a provident fund of the general public. The PAG-IBIG Fund consists of mandatory contributions solicited by HDMF from all employees in the public and private sectors. The PAG-IBIG Fund includes the mandatory contributions of the approximately 28,000 employees of the Judiciary whose contributions were part of the ₱2.9 Billion loan proceeds received by Globe Asiatique from HDMF through the nine (9) FCAs executed by Globe Asiatique with HDMF. These nine FCAs dated 12 August 2008 (₱500 Million), 11 December 2008 (₱100 Million), 9 January 2009 (₱500 Million), 20 February 2009 (₱500 Million), 23 April 2009 (₱100 Million), 28 April 2009 (₱300 Million), 18 May 2009 (₱300 Million), 16 June 2009 (₱300 Million), and 10 July 2009 (₱300 Million), were executed prior to the execution of the MOA on 13 July 2009.[28] Thus, even before the execution of the MOA dated 13 July 2009, which Globe Asiatique contends relieves it of its warranties, estafa was already consummated.

After the MOA dated 13 July 2009, eight more FCAs were executed between Globe Asiatique and HDMF totaling ₱3.55 Billion: 13 July 2009 (₱500 Million), 24 September 2009 (₱500 Million), 22 October 2009 (₱700 Million), 15 December 2009 (₱250 Million), 5 January 2010 (₱500 Million), 17 March 2010

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[27] *Belita v. Sy*, 788 Phil. 581, 588-589 (2016); *People v. Tibayan*, 750 Phil. 910, 920 (2015).

[28] *Rollo* (G.R. No. 209424), p. 810.

(₱500 Million), 19 March 2010 (₱500 Million), and 12 May 2010 (₱100 Million).[29] On 24 May 2010, HDMF issued a Notice to Delfin S. Lee for Globe Asiatique to validate the 351 buyers which were discovered by HDMF to have either surrendered or withdrawn their loans. In response to the Notice, Delfin S. Lee admitted that they are monitoring about 1,000 accounts which are suspected to be from questionable buyers, and that these accounts remain current with PAG-IBIG because Globe Asiatique had been paying for them.[30] Clearly, Globe Asiatique tried to cover-up or conceal the defaulting questionable buyers by paying on their behalf, thus keeping their accounts current. Globe Asiatique is the instrument used to defraud the HDMF of the PAG-IBIG Fund.

In short, the PAG-IBIG Fund consists of monetary contributions solicited from the general public by HDMF, which is indisputably a corporate entity. Under Section 13 of Republic Act No. 7679, "the Fund (HDMF) shall have the powers and functions specified in this Act and the usual corporate powers." Under Section 14 of the same law, the "corporate powers and functions of the Fund shall be vested in and exercised by the Board of Trustees appointed by the President of the Philippines." The PAG-IBIG Fund is the fund that was defrauded by Delfin S. Lee and his four (4) co-accused through the use, and submission to HDMF, of loan applications and mortgage documents of fictitious loan applicants.

***No grave abuse of discretion in trial court's determination of probable cause***

The Pampanga RTC's determination of probable cause, which was in accord with the findings of the DOJ, shows no grave abuse of discretion. Hence, the claim of Cristina Salagan that there was no probable cause to charge her with syndicated estafa deserves scant consideration.

**III.** 1. **G.R. No. 208744** - *Department of Justice v. Delfin S. Lee*

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[29] *Id.* at 812.

[30] *Id.* at 814.

2. **G.R. No. 210095** - *Department of Justice v. Delfin S. Lee*

***Procedural rules may be relaxed under exceptional circumstances***

I agree with the *ponencia* that the CA should not have dismissed the petitions for being filed out of time because there existed special and compelling reasons for the relaxation of procedural rules.

Rules of procedure are indispensable to facilitate the orderly and speedy adjudication of cases. Courts are constrained to adhere to procedural rules under the Rules of Court. Nevertheless, under Section 6 of Rule 1, courts are granted the leeway in interpreting and applying the rules:

> Sec. 6. *Construction*. – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

However, courts are not given *carte blanche* authority to interpret rules liberally and the resort to liberal application of procedural rules remains as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.[31]

Section 4 of Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, provides for the period for filing petitions for *certiorari*:

> SECTION 4. *When and Where to File the Petition*. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
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[31] *People v. Espinosa*, 731 Phil. 615, 627-628 (2014), citing *Building Care Corp./Leopard Security & Investigation Agency v. Macaraeg*, 700 Phil. 749, 755 (2012).

Although the provision on motion for extension[32] has been deleted in the amended Section 4, such omission does not automatically mean that a motion for extension is already prohibited. As held in *Domdom v. Third & Fifth Divisions of the Sandiganbayan*:[33]

> That no mention is made in the x x x amended Section 4 of Rule 65 of a motion for extension, unlike in the previous formulation, does not make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." Absent such prohibition, motions for extension are allowed, subject to the Court's sound discretion.

The 18 June 2013 Petition for *Certiorari* was filed before the CA within the extended period requested by petitioner. However, due to the unintended omission of the docket number (CA-G.R. SP No. 130404), the petition was assigned a new docket number (CA-G.R. SP No. 130409) and raffled to another *ponente* and division. This resulted in the dismissal of the petition for being filed out of time. As explained by petitioner DOJ, the procedural lapse was due to inadvertence and not intended to delay the proceedings. Considering the merits of the petition and having been filed within the extended period requested, albeit lacking the proper docket number, the CA should have applied the rules liberally and excused the belated filing.[34] It

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[32] Prior to its deletion in the amendment, Section 4 of Rule 65 provides that "No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days."

[33] 627 Phil. 341, 347-348 (2010).

[34] In *Castells v. Saudi Arabian Airlines,* 716 Phil. 667, 673-674 (2013), the Court cited the case of *Labao v. Flores,*649 Phil. 213, 222-223 (2010), for the list of exceptions to the strict application of procedural rules, thus:

(1) most persuasive and weighty reasons;

(2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure;

(3) good faith of the defaulting party by immediately paying within a reasonable time from the time of default;

(4) the existence of special or compelling circumstances;

(5) the merits of the case;

is more prudent for the court to excuse a technical lapse to avoid causing grave injustice not commensurate with the party's failure to comply with the prescribed procedure.[35] Furthermore, the merits of the case may be considered as a special or compelling reason for the relaxation of procedural rules.[36]

***The Pasig RTC disregarded a prior CA and SC ruling on the same issue when it issued the writ of preliminary injunction***

The Petition for *Certiorari* filed with the CA assailed the 10 April 2013 Order of the Pasig RTC enjoining the continuation of the preliminary investigation by the DOJ of the Second, Third, and Fourth Criminal Complaints. The Pasig RTC held that the Summary Judgment dated 30 January 2012 in Civil Case No. 10-1120 (Makati Civil Case) issued by the Makati RTC eliminates the element of damage in the criminal complaints against Delfin S. Lee, which is an integral condition for an estafa case to prosper against the latter. The Pasig RTC explained:

The Court premised its issuance of the TRO based on the Makati RTC Branch 58 Summary Judgment dated 30 January 2012 and Order dated 11 December 2012 declaring the same to be final and executory.

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(6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;

(7) a lack of any showing that the review sought is merely frivolous or dilatory;

(8) the other party will not be unjustly prejudiced thereby;

(9) fraud, accident, mistake or excusable negligence without appellant's fault;

(10) peculiar legal and equitable circumstances attendant to each case;

(11) in the name of substantial justice and fair play;

(12) importance of the issues involved; and

(13) exercise of sound discretion by the judge guided by all the attendant circumstances.

[35] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 218901, 15 February 2017, 818 SCRA 68, citing *Tanenglian v. Lorenzo*, 573 Phil. 472 (2008).

[36] *Bases Conversion Dev't. Authority v. Reyes*, 711 Phil. 631, 643 (2013), citing *Twin Towers Condominium Corp. v. Court of Appeals*, 446 Phil. 280, 298-299 (2003).

The resolution of the Makati Court required intervenor HDMF to honor the terms and conditions of the Funding Commitment Agreement and other contracts entered into between the parties. Clearly thus, intervenor HDMF's performance of its obligations under the Funding Commitment Agreement, Collection Service Agreement and Memorandum of Agreement eliminates the element of damage in the criminal complaints against petitioner which is a condition *sine qua non* for an estafa case to prosper against it [sic]. Note further that although the Court of Appeals ("CA") Decision dissolving the Writ of Preliminary Injunction issued by this Court in restraining the second criminal complaint had been affirmed via a petition for review on certiorari, the subsequent rendition of the Summary Judgment by the Makati RTC 58 constitutes a supervening event to enjoin anew the proceedings in the second criminal complaint as the rendition of which and its eventual finality was clearly not yet extant and could not have been considered by the CA decision when the same was penned. Furthermore, the CA decision refers only to the injunction order issued by the Court and not to the Makati RTC 58 case which is still pending at the time. Reliance therefore on the CA decision as per second criminal complaint can no longer be made in light of the summary judgment and its finality. In the same vein, the injunction order should likewise extend to the third and fourth criminal complaints lodged against herein petitioner for compliance with the Summary Judgment by intervenor HDMF is concomitant with that of petitioner's compliance with his own obligations to the buyers considering that the titles of the private complainants which are presently in the possession of intervenor HDMF ought to be released and delivered to them, negating the breach being cited by the private complainants as the underlying premise for the criminal complaints against petitioner.

In essence, the summary judgment held that there can be no fraud and damages, an essential element for the crime of estafa, because it is HDMF that approved the Pag-Ibig membership and loan applications of the private complainants.

x x x x x x x x x

In the case at bar, grave and irreparable damage would be caused to petitioner because he will most likely be indicted for another non-bailable offense despite the fact that the RTC Makati 58 already held that he committed no fraud against the private complainants. And to expose petitioner to unnecessary trauma, hardship, inconvenience,

anxiety, and fear associated with a criminal prosecution amounts to grave and irreparable injury which must be prevented.

Premises considered, and without prejudice to the final outcome of the certiorari proceeding pending against the assailed Summary Judgment of the Makati RTC 58 on the issue of the existence or non-existence of fraud committed by the respondent herein against intervenor HDMF and/or private complainants, the Court finds at this point in time that petitioner has an existing and valid right to be protected necessitating the issuance of an injunctive relief in its favor.

WHEREFORE, let a writ of preliminary injunction issue enjoining the Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.

Petitioner is directed to post a bond in the amount of Php2,000,000.00.[37]

As stated in this 10 April 2013 Order of the Pasig RTC, there was already a prior CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594 which lifted the previous writ of preliminary injunction issued by the Pasig RTC in its Order dated 5 September 2011, restraining the DOJ from proceeding with the preliminary investigation of the Second Criminal Complaint. The CA ruling annulling the 5 September 2011 Order of the Pasig RTC for having been issued with grave abuse of discretion was affirmed by this Court in a Resolution dated 4 July 2012 in G.R. No. 201360. Clearly, the issue of whether the preliminary investigation of the criminal complaints can be enjoined has already been ruled upon with finality by this Court, which affirmed the ruling of the CA in CA-G.R. SP No. 121594, and which decision became final and executory on 2 January 2013. As ruled by the CA in its Decision dated 16 April 2012 in CA-G.R. SP No. 121594:

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[37] *Rollo* (G.R. No. 208744), pp. 196-198.

**Anent the second DOJ case, the resolution of whether GA is entitled to replace the defaulting buyers/borrowers would not determine the guilt of Lee as the gravamen of the complaint for estafa filed by Niebres and Bacani against GA and Lee was the failure of GA to release to them the title to the respective property which they already paid in full because it turned out that the properties sold to them were subject of loans under the name of other persons. In the case of San Nicolas, on the other hand, he was paying for a property that was also a subject of a loan by another person.**

Contrary to public respondent Judge's finding, the acceptance by HDMF of the replacement buyers that GA is offering will not in any way affect Lee's liability to Niebres, Bacani, and San Nicolas in selling to them units which were already sold to other buyers. x x x.

x x x x x x x x x

What is clear in the second DOJ case is that the properties bought by complainants were subjects of double sale. The sale by GA of the units, already paid in full by Niebres, Bacani and still being paid for by San Nicolas, to other individuals created a temporary disturbance in the rights of the latter as property owners. Even if the Makati RTC would rule in favor of Lee, Niebres, Bacani and San Nicolas would not qualify as replacement buyers. Hence, the preemptive resolution of the civil case before the DOJ could conduct a preliminary investigation in the second DOJ case would not affect the determination of guilt or innocence of Lee for estafa.

To reiterate, injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected [sic] for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of prejudicial question. However, **this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ**. Verily, public respondent Judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information for estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.[38] (Emphasis supplied)

[38] *Id*. at 650-652.

Unfortunately, the Pasig RTC chose to ignore this ruling and issued again an Order for another writ of preliminary injunction, enjoining the DOJ from continuing with the Second, Third, and Fourth Criminal Complaints. It should be stressed that the private complainants in the Second, Third, and Fourth Criminal Complaints are similarly situated: all of them are alleged victims of double sales by Globe Asiatique and Delfin S. Lee. Clearly, the issuance of another writ of preliminary injunction by the Pasig RTC in its 10 April 2013 Order is a blatant disregard of the decision of this Court (which affirmed the CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594). The Summary Judgment rendered by the Makati RTC does not determine the criminal liability of Delfin S. Lee for syndicated estafa in the Second, Third, and Fourth Criminal Complaints which involve double sales. Besides, the Summary Judgment merely orders the HDMF to comply with its obligations under the MOA with Globe Asiatique, including the acceptance of replacement buyers. The acceptance of replacement buyers contemplates defaulting buyers/borrowers of their loan and not double sales. The double sales allegedly perpetuated by Globe Asiatique and Delfin S. Lee in the Second, Third, and Fourth Criminal Complaints, were never an issue in the Makati Civil Case. In fact, the private complainants in the Second, Third, and Fourth Criminal Complaints are not parties to the Makati Civil Case, which was filed by Globe Asiatique and Delfin S. Lee against HDMF, its Board of Trustees, and OIC Faria. Clearly, the 10 April 2013 Order of the Pasig RTC is void for having been issued with grave abuse of discretion.

At this juncture, it bears stressing that the general rule is that criminal prosecution may not be restrained or stayed by injunction or prohibition[39] because public interest requires the immediate and speedy investigation and prosecution of criminal acts for the protection of society.[40] With more reason will

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[39] *Camanag v. Guerrero*, 335 Phil. 945 (1997); *Atty. Paderanga v. Hon. Drilon*, 273 Phil. 290 (1991).

[40] *Domingo v. Sandiganbayan*, 379 Phil. 708 (2000).

injunction not lie when the case is still at the preliminary investigation stage.[41] As the court held in *Atty. Paderanga v. Drilon*:[42]

> Preliminary investigation is generally inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.
>
> The institution of a criminal action depends upon the sound discretion of the fiscal. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. Hence, the general rule is that an injunction will not be granted to restrain a criminal prosecution.

However, there are exceptions to this rule, such as:

1. To afford adequate protection to the constitutional rights of the accused;
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
3. When there is a prejudicial question which is *sub judice*;
4. When the acts of the officer are without or in excess of authority;
5. Where the prosecution is under an invalid law, ordinance or regulation;
6. When double jeopardy is clearly apparent;
7. Where the court has no jurisdiction over the offense;
8. Where there is a case of persecution rather than prosecution;
9. Where the charges are manifestly false and motivated by the lust for vengeance;
10. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied;

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[41] *Samson v. Secretary Guingona, Jr.*, 401 Phil. 167 (2000); *Guingona v. The City Fiscal of Manila*, 222 Phil. 119 (1985).

[42] 273 Phil. 290, 296 (1991).

11. Preliminary injunction has been granted by the Supreme Court to prevent the threatened unlawful arrest of petitioners.[43]

The Pasig RTC case does not fall under any of these exceptions. Thus, Judge Mislang of the Pasig RTC should not have issued the writ of preliminary injunction.

To underscore the wrongful actuations of Judge Mislang in handling the HDMF cases before his sala, this Court dismissed Judge Mislang from the service on 26 July 2016.[44] The pertinent portions of our *per curiam* decision read:

> Judge Mislang issued two (2) TROs, a writ of preliminary injunction and a *status quo* order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Mislang were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed to properly apply the principles and rules on three (3) points, *i.e.*, the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.
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> x x x x x x x x x
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> WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Mislang, Regional Trial Court, Pasig City, Branch 167, GUILTY of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and ORDERS his DISMISSAL from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.
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> SO ORDERED.[45]

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[43] *People v. Grey*, 639 Phil. 535, 551 (2010), citing *Brocka v. Ponce Enrile*, 270 Phil. 271, 276-277 (1990). (Citations omitted)

[44] *Department of Justice v. Mislang*, 791 Phil. 219 (2016).

[45] *Id.* at 228-229, 232.

**IV. G.R. No. 209424** — *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

***Petition for certiorari is the proper remedy***

In its Decision dated 7 October 2013 in CA-G.R. SP No. 128262, the CA held that a summary judgment is a final judgment and that the proper remedy for petitioner HDMF was to file an ordinary appeal under Rule 41 and not a petition for *certiorari* under Rule 65. The CA noted that the petition filed by HDMF lacks: (1) a written authorization from the OGCC that the Yorac Arroyo Chua Caedo & Coronel Law Firm or the HDMF Office of the Legal and General Counsel Group is duly authorized to file the petition; and (2) the written concurrence of the COA for the OGCC to delegate its duty to represent HDMF to file the petition. The CA ruled that the HDMF Office of the Legal and General Counsel Group and the Yorac Arroyo Chua Caedo & Coronel Law Firm had no authority to file the petition for *certiorari*. Thus, the CA dismissed the petition for *certiorari* mainly on technical grounds.

The CA did not rule on the propriety of the summary judgment, thus:

> As to the issue on whether the Summary Judgment as contained in the first assailed Resolution was rendered in accordance with the law, particularly Rule 35 of the Rules of Court, and as to the wisdom and correctness of the Summary Judgment, thereby treating the instant petition as one of appeal, considering that the case involves paramount public interest, We refuse to dwell on the matter as the same, as elucidated above, is clearly not the proper subject of the instant petition for *certiorari* which only province is the determination of lack or excess of jurisdiction, or grave abuse of discretion amounting to lack or excess of jurisdiction.[46]

It should be noted that in its 11 December 2012 Resolution, the Makati RTC held that the Motion for Reconsideration filed by the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF is unauthorized and may be deemed a mere scrap of

[46] *Rollo* (G.R. No. 209424), p. 32.

paper which does not toll the running of the period of appeal. The Makati RTC held that for failure of HDMF to file a valid motion for reconsideration or appeal of the Resolution dated 30 January 2012 containing the summary judgment, such has become "final, executory, and immutable" insofar as HDMF is concerned.

The dispositive portion of the 11 December 2012 Resolution reads:

> WHEREFORE, premises considered, the Court hereby resolves to:
>
> 1. DENY the motions for reconsideration of the January 30, 2012 Resolution of this Court filed by defendants Faria and Atty. Berberabe for lack of merit; and
>
> 2. NOTE with approval the Manifestation filed by plaintiffs in connection with the failure of defendant Home Development Mutual Fund (HDMF) to file a motion for reconsideration or appeal from the January 30, 2012 Resolution of this Court containing the Summary Judgment which, except as to the exact amount of damages the plaintiffs are entitled, finally disposes of this case, rendering the summary judgment herein final, executory, and immutable as to defendant HDMF.
>
> SO ORDERED.[47]

Clearly, the finality of the judgment as against HDMF necessitates the filing of a petition for *certiorari* since a notice of appeal is barred where the judgment sought to be appealed is already final and executory. As held in *Victory Liner, Inc. v. Malinias*:[48]

> Thus, the MTC judgment became final and executory despite the filing of the Motion for Reconsideration thereto, as said motion did not toll the period for filing an appeal therefrom. Yet that did not mean that petitioner was left bereft of further remedies under our Rules. For one, petitioner could have assailed the MTC's denial of the Motion for Reconsideration through a special civil action for

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[47] *Id.* at 459.

[48] 551 Phil. 273, 290-292 (2007).

*certiorari* under Rule 65 alleging grave abuse of discretion amounting to lack of jurisdiction on the part of the MTC in denying the motion. If that remedy were successful, the effect would have been to void the MTC's denial of the Motion for Reconsideration, thus allowing petitioner to again pursue such motion as a means towards the filing of a timely appeal.

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On the other hand, a notice of appeal pursued even with a prior pronouncement by the trial court that the judgment sought to be appealed was already final is either misconceived or downright obtuse. It may have been a different matter if the notice of appeal was undertaken without there being any prior express ruling from the trial court that the appealed judgment was already final and that statement was instead expressed at the time the trial court denies the notice of appeal, for at least in that case, the appellant proceeded with the appeal with the comfort that the trial court had not yet said that the appeal was barred. However, as in this case, where the trial court already notified would-be appellant that the judgment was already final, executory and thus beyond appeal, appellant should suffer the consequences if the notice of appeal is nonetheless stubbornly pursued.

Similarly, in this case, the Motion for Reconsideration filed by HDMF was held unauthorized by the Makati RTC and deemed a mere scrap of paper which did not toll the running of the period of appeal. Thus, compared to Faria and Atty. Berberabe whose motions for reconsideration were denied for lack of merit, the Makati RTC ruled that the summary judgment is "final, executory, and immutable as to defendant HDMF." In light of this ruling, HDMF had to file a petition for *certiorari*, while Faria and Atty. Berberabe filed their notice of appeal.

Furthermore, where there is absolutely no legal basis for the rendition of a summary judgment, a petition for *certiorari* is the appropriate, adequate, and speedy remedy to nullify the assailed judgment to prevent irreparable damage and injury to a party. As held in *Cadirao v. Judge Estenzo*:[49]

Anent the propriety of the remedy availed of by the petitioners, suffice it to state, that although appeal was technically available to

[49] 217 Phil. 93, 102 (1984).

them, certiorari still lies since such appeal does not prove to be a speedy and adequate remedy. Where the remedy of appeal cannot afford an adequate and expeditious relief, certiorari can be allowed as a mode of redress to prevent irreparable damage and injury to a party. Certiorari is a more speedy and efficacious remedy of nullifying the assailed summary judgment there being absolutely no legal basis for its issuance. Moreover, the records show that private respondent had already moved for the issuance of a writ of execution and that respondent Judge merely held in abeyance resolution of the same pending resolution by this Court of the instant petition. Clearly then, even if appeal was available to the petitioners, it is no longer speedy and adequate.

The propriety of *certiorari* as the more speedy and adequate remedy is underscored by the fact that respondents Globe Asiatique and Delfin S. Lee have already filed a Motion for Execution[50] dated 19 March 2013 against HDMF. HDMF contends that if the motion is granted, HDMF will be required to release hundreds of millions or billions of pesos, money which came from the hard-earned contributions of HDMF members, in favor of Globe Asiatique. Moreover, HDMF posits that it will also be compelled to accept the replacement buyers offered by Globe Asiatique, whose accounts may be equally spurious as those of the original buyers whose applications were approved by Globe Asiatique.[51]

On the alleged unauthorized representation of the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF, the records show that the OGCC in fact authorized HDMF to engage the services of the said private law firm as evidenced by the letters dated 28 December 201052[52] and 5 December

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[50] *Rollo* (G.R. No. 209424), pp. 1868-1882.

[51] *Id.* at 271.

[52] *Id.* at 1494-1495. The letter dated 28 December 2010 states:

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998,

2011[53] signed by Government Corporate Counsel Raoul C. Creencia. Furthermore, in the COA Certification dated 10 January 2013,[54] COA Corporate Auditor Atty. Fidela M. Tan attested that the COA has concurred in the retainer agreement between HDMF and the Yorac Arroyo Chua Caedo & Coronel Law Firm. Clearly, the Yorac Arroyo Chua Caedo & Coronel Law Firm is vested with the proper authority to represent HDMF, and was in fact authorized to file the Motion for Reconsideration dated 17 February 2012 on behalf of HDMF.

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Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of Raquel Wealth A. Taguian and Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

x x x x x x x x x

[53] *Id.* at 1496-1497. The letter dated 28 December 2010 states:

This confirms and ratifies the engagement of external counsel for the handling of the cases filed by or against the Globe Asiatique Holdings Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation issues.

In view thereof, and pursuant to this Office's Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases, subject to the control and supervision of this Office. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

[54] *Id*. at 1493. The COA Certification states:

This is to certify that the Commission on Audit (COA) has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac Arroyo Chua Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection with the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents, and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

***Summary Judgment is not proper because there are genuine issues of material facts***

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee against HDMF, and ordered the latter to comply with its obligations under the MOA, FCAs, and CSAs. The dispositive portion of the resolution states:

WHEREFORE, premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiffs have proven their case by preponderance of evidence. As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper[;]

2. Pursuant to the provisions of their MOA amending the continuing FCAs and CSAs, defendant HDMF is hereby ordered to comply faithfully and religiously with its obligations under the said contracts, including but not limited to the release of loan take-out proceeds of those accounts whose Deed[s] of Assignment with Special Power of Attorney have already been annotated in the corresponding Transfer Certificate of Title covering the houses and lots purchased by the PAG-IBIG member-borrowers from plaintiff GARHC as well as the evaluation of the loan applications of those who underwent or will undergo plaintiff GARHC's loan counseling and are qualified for PAG-IBIG FUND loans under the MOA and continuing FCAs and process the approval thereof only if qualified, under the Window 1 Facility as provided for in the MOA and continuing FCAs;

3. The unilateral cancellation by defendant HDMF of the continuing FCAs specifically the latest FCAs of December 15, 2009, January 5 and March 17, 2010 and CSA dated 10 February 2009, is hereby SET ASIDE[;]

4. Defendants are ordered to automatically off-set the balance of those listed in Annex "E" of the Motion for Summary Judgment against the retention money, escrow money, funding commitment fee, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

5. Defendants are ordered to accept the replacement-buyers listed in Annex "F" of the Motion for Summary Judgment, which list is unopposed by defendants, without interest or penalty from the time of defendant HDMF's cancellation of the Collection Servicing

Agreement (CSA) resulting to the refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

6. Defendants are ordered to release the corresponding Transfer Certificate of Title[s] (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "E" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof.

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning.

SO ORDERED.[55]

A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record.[56] The purpose of summary judgment is to grant immediate relief in cases where no genuine triable issue of fact is raised, and thus avoid needless trials and delays. Summary judgment should not be granted unless the records show with certainty that there is no disputable issue as to any material fact which would prevent recovery from the party presenting the motion for summary judgment if a full-blown trial is conducted. The party who moves for summary judgment has the burden of proving the absence of any genuine issue as to any material fact or that the issue posed is patently unsubstantial and does not constitute a genuine issue for trial.[57]

Summary judgment is provided under Rule 35 of the 1997 Rules of Civil Procedure. Sections 1 and 3 of Rule 35 read:

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[55] *Id.* at 451-452.

[56] *Phil. Countryside Rural Bank (Liloan, Cebu), Inc. v. Toring*, 603 Phil. 203 (2009).

[57] *YKR Corporation v. Philippine Agri-Business Center Corp.*, 745 Phil. 666, 685-686 (2014), citing *Viajar v. Judge Estenzo*, 178 Phil. 561, 573 (1979).

Section 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 3. *Motion and proceedings thereon.* – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Section 3 of Rule 35 provides two requisites for the grant of a summary judgment: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Thus, where the pleadings tender a genuine issue which requires the presentation of evidence, the rendition of a summary judgment is not proper. A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived, or false claim.[58]

Contrary to the ruling of the Makati RTC, the pleadings of the parties show the existence of genuine issues of material facts, rendering the summary judgment improper.

In its Complaint dated 13 November 2010,[59] Globe Asiatique claims that: (1) Globe Asiatique has the right to replace the buyers/borrowers who have been delinquent for whatever reason and that the refusal of Pag-IBIG Fund [HDMF] to accept the replacements violated Globe Asiatique's rights to exercise the

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[58] *Phil. Countryside Rural Bank (Liloan, Cebu). Inc, v. Toring, supra* note 56; *Nocom v. Camerino*, 598 Phil. 214 (2009).

[59] *Rollo* (G.R. No. 209424), pp. 753-774.

remedies available to it under the provisions of the MOA and FCA; (2) Pag-IBIG Fund's precipitate cancellation of the latest FCA and its refusal to release the collectibles/loan take-outs to which Globe Asiatique is entitled caused the latter's failure to comply with its obligations under the MOA and FCA; and (3) Pag-IBIG Fund's cancellation of the latest FCA and CSA was intended to cause Globe Asiatique to fail to comply with its obligations under the MOA and as a consequence lose its incentives for its good performance for the past years and the potential to earn under the agreements.

On the other hand, in its Answer with Compulsory Counterclaim dated 8 December 2010,[60] HDMF refutes Globe Asiatique's claims, thus: (1) HDMF has the right to terminate the agreements because of Globe Asiatique's "grand fraudulent scheme through the creation of ghost buyers and fabrication of loan documents" which violates the 13 July 2008 MOA and the 5 January 2010 FCA; (2) the alleged defaulting buyers/borrowers sought to be replaced by Globe Asiatique are in fact fake and fictitious buyers/borrowers; (3) under Section 3.7 (Buyback of Accounts) of the FCA, the remedy of buyback of accounts can only be availed of after receipt of the Notice of Buyback, which Pag-IBIG Fund did not issue for the 400 accounts mentioned by Globe Asiatique in its Complaint, which Globe Asiatique unilaterally canceled; (4) Section 3.7 of the FCA applies only in case of default and not when the cause for buyback is fraud or breach by Globe Asiatique of any of its warranties; (5) the CSA was canceled due to Globe Asiatique's failure to remit the amortization collections for the periods covering August 2-6, 2010 and August 9-13, 2010; (6) Pag-IBIG Fund canceled the 15 September 2010 FCA because of Globe Asiatique's failure to: a) buyback CTS accounts, other than the 400 accounts mentioned in Globe Asiatique's Complaint which Globe Asiatique unilaterally canceled and which were not subjected to Notices of Buyback by Pag-IBIG Fund; and b) remit the collection covering monthly installment payments of housing loan accounts under the CSA; and (7) Globe Asiatique violated

[60] *Id.* at 776-831.

its undertaking and warranty under Sections 3.1[61] and 7.1[62] of the FCA when it approved loan applications which were not eligible under the Pag-IBIG Housing Loan Program.

It is very apparent from the allegations in the parties' respective pleadings that there exist relevant genuine issues which require the presentation of evidence and which need to be resolved in a full-blown trial. Summary judgment cannot take the place of trial since the facts as pleaded by Globe Asiatique are categorically disputed and contradicted by HDMF.

Thus, the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be reversed and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be annulled and set aside. The case should be remanded to the Makati RTC for trial on the merits.

For the orderly disposition of these cases, my vote is summarized as follows:

**I. DOJ Review Resolution dated 10 August 2011**

1. **G.R. No. 205698** — *Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun*

2. **G.R. No. 205780** — *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M.*

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[61] Section 3.1. The DEVELOPER shall receive, evaluate, process and approve the housing loan applications of its member-buyers in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program. The DEVELOPER shall likewise be responsible for the annotation of the Deeds of Assignment with Special Power of Attorney (DOA with SPA)/ Loan and Mortgage Agreement (LMA) for accounts covered by the CTS and REM respectively, on the Individual Certificates of Title covering the house and lot units subject of the loan with the appropriate Register of Deeds (RD), and shall deliver the complete mortgage folders to Pag-IBIG Fund.

[62] Section 7.1. LOAN EVALUATION – The DEVELOPER warrants that the member-borrowers and their respective housing loan applications have been properly evaluated and approved in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program prior to their endorsement to Pag-IBIG Fund.

*Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

The petitions filed by HDMF and DOJ should be **GRANTED**. The 5 October 2012 Decision and the 11 February 2013 Resolution in CA-G.R. SP No. 121346 should be **REVERSED**. The Warrant of Arrest issued in Criminal Case No. 18480 before RTC Branch 42 of San Fernando, Pampanga against Christina Sagun should be **REINSTATED**.

**II. Pampanga RTC Resolutions dated 22 May 2012 and 22 August 2012**

1. **G.R. No. 209446** - *People of the Philippines v. Alex M. Alvarez*

2. **G.R. No. 209489** - *Home Development Mutual Fund v. Atty. Alex M. Alvarez*

3. **G.R. No. 209852** - *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*

4. **G.R. No. 210143** - *People of the Philippines v. Delfin S. Lee*

5. **G.R. No. 228452** - *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*

6. **G.R. No. 228730** - *People of the Philippines v. Dexter L. Lee*

7. **G.R. No. 230680** - *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

The petitions filed by HDMF and OSG should be **GRANTED**. The 3 October 2013 Decision in CA-G.R. SP No. 127690, the 7 November 2013 Decision in CA-G.R. SP No. 127553, and the 16 November 2016 Decision in CA-G.R. SP No. 127554 should be **REVERSED**. The Warrants of Arrest issued in Criminal Case No. 18480 before RTC, Branch 42 of San Fernando, Pampanga against Delfin S. Lee, Dexter L. Lee, and

Atty. Alex M. Alvarez should be **REINSTATED**. The petition filed by Cristina Salagan should be **DISMISSED**, and the Decision dated 18 March 2016 in CA-G.R. SP No. 134573 should be **AFFIRMED**.

**III. Pasig RTC Order dated 10 April 2013**

1. **G.R. No. 208744** - *Department of Justice v. Delfin S. Lee*
2. **G.R. No. 210095** - *Department of Justice v. Delfin S. Lee*

The CA Resolutions dated 14 August 2013 in CA-G.R. SP No. 130404 and the CA Resolution dated 26 June 2013 in CA-G.R. SP No. 130409 should be **REVERSED**. The Order dated 10 April 2013 of the Pasig RTC in Civil Case No. 73115-PSG, issuing the writ of preliminary injunction enjoining the DOJ from continuing the preliminary investigation of the Second, Third, and Fourth Criminal Complaints should be **ANNULLED** and **SET ASIDE**.

**IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012**

1. **G.R. No. 209424** - *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

The CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be **REVERSED** and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be **ANNULLED** and **SET ASIDE**. The case should be **REMANDED** to the Makati RTC for trial on the merits.

**DISSENTING OPINION**

**LEONEN, *J.*:**

I join Senior Associate Justice Antonio T. Carpio in his dissent. I write separately to contribute to a more exhaustive

understanding of syndicated estafa as defined by Presidential Decree No. 1689.

There was probable cause to file informations for syndicated estafa and to issue corresponding warrants of arrest against Delfin S. Lee (Delfin), Dexter L. Lee (Dexter), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Atty. Alvarez). Hence, it was error for the Court of Appeals to set aside the August 10, 2011 Review Resolution of the Department of Justice, to annul and set aside the May 22, 2012 and August 22, 2012 Resolutions penned by Judge Ma. Amifaith S. Fider-Reyes (Judge Fider-Reyes) of Branch 42, Regional Trial Court, San Fernando City, Pampanga in Criminal Case No. 18480, and, lastly, to lift, quash, and recall the warrants of arrest issued pursuant to Judge Fider-Reyes' resolutions.

**I**

I take exception to the *ponencia*'s emphasis on the number of individuals who can be charged and how this number is supposedly determinative of the offense committed by Delfin, Dexter, Sagun, and Salagan. The *ponencia* explains how Atty. Alvarez should supposedly be excluded from the charge of estafa,[1] as "his act of notarizing various documents, . . . that were material for the processing and approval of the transactions, was insufficient to establish his having been part of the conspiracy."[2] The *ponencia* notes that with Atty. Alvarez's exclusion, only four (4) individuals remain to be charged. It maintains that a case for syndicated estafa may not be prosecuted considering that those who remain could not be considered as a syndicate.[3]

Articles 315 and 316 of the Revised Penal Code penalize estafa and other forms of swindling, respectively.[4] Presidential

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[1] *Ponencia*, pp. 38 and 44-45.

[2] *Id*. at 44.

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

[4] REV. PEN. CODE, Arts. 315 and 316.

Article 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

Decree No. 1689 deals with heavier penalties when the acts penalized by Articles 315 and 316 are "committed by a syndicate":

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1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

2nd. The penalty of *prisión correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

(c) By taking undue advantage of the signature of the offended party inblank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised

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(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like, without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment or accommodation. (As amended by Com. Act No. 157, enacted November 9, 1936.)

3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document.

(b) By resorting to some fraudulent practice to insure success in a gambling game.

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

Article 316. Other forms of swindling. — The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same.

Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers' association, or of funds solicited by corporations/ associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.[5]

Thus, syndicated estafa exists if the following elements are present:

1) [E]stafa or other forms of swindling as defined in Articles 315 and 316 of the [Revised Penal Code] was committed; 2) the estafa or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon[s]," or farmers associations or of funds solicited by corporations/ associations from the general public."[6]

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2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.
3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person.4. Any person who, to the prejudice of another, shall execute any fictitious contract.
5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor.
6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

[5] Pres. Decree No. 1689 (1980), Sec. 1.

[6] *Belita v. Sy*, 788 Phil. 580, 589 (2016) [Per *J.* Perez, Third Division], citing *Hao v. People*, 743 Phil. 204 [Per *J.* Brion, Second Division].

The recital of elements demonstrates that two (2) additional elements qualify swindling into syndicated estafa. The first is "commi[ssion] by a syndicate." The second is misappropriation. The object of this misappropriation, in turn, can be either of two (2) categories of funds. The first category is "moneys contributed by stockholders, or members of rural banks, cooperatives, 'samahang nayon(s)', or farmers[']] associations." The second category is "funds solicited by corporations/associations from the general public."

Concerning the first additional element of "commi[ssion] by a syndicate," Section 1 of Presidential Decree No. 1689 proceeds to identify when a syndicate exists. There is a syndicate when there is a collective of five (5) or more individuals, the intent of which is the "carrying out [of] the unlawful or illegal act, transaction, enterprise or scheme."

While Section 1 specifies a minimum number of individuals acting out of a common design to defraud so that a syndicate may be deemed to exist, it does not specify the number of individuals who must be charged for syndicated estafa at any given time. At no point does Section 1 require a minimum of five (5) individuals to stand trial for syndicated estafa. Likewise, it does not state that, failing in any such threshold, prosecution cannot prosper.

Indeed, contingencies may make it so that even if five (5) or more individuals acted in concert to defraud, not everyone involved in the common scheme can stand trial. While some may have been brought into custody, others may remain at large. Some individuals who were part of the scheme may have predeceased the institution of a criminal action. Likewise, some conspirators may remain unidentified even when acts attributable to them have been pinpointed. Exigencies such as these cannot frustrate prosecution under Presidential Decree No. 1689. To hold otherwise would be to render Presidential Decree No. 1689 impotent. Prosecution can then be conveniently undermined by a numerical lacuna that is not the essence of an offense otherwise demonstrably committed.

What is critical is not the number of individuals actually available for or identified to stand trial, but a showing that a deceit mentioned in Articles 315 and/or 316 of the Revised Penal Code was committed by five (5) or more individuals acting in concert. For as long as this is shown, coupled with the requisite misappropriation, prosecution and conviction can proceed.

The primary task of investigators and prosecutors, then, is to demonstrate the fraudulent scheme employed by five (5) or more individuals. Once this is established, it is their task to demonstrate how an individual accused took part in effecting that scheme. When an individual's participation is ascertained, he or she may be penalized for syndicated estafa independently of his or her collaborators. Thus, an information may conceivably be brought against even just a single individual for as long that information makes averments on the scheme perpetrated by that person with at least four (4) other collaborators, as well as the nature of that person's participation in the scheme.

It is also not essential that an accused be formally named or identified as an affiliate such as by being a director, trustee, officer, stockholder, employee, functionary, member, or associate of the corporation or association used as an artifice for the fraudulent scheme. As with the inordinate fixation on the number of individuals being prosecuted, insisting on such an affiliation can also conveniently frustrate the ends of justice. A cabal of scammers can then nominally exclude one (1) of their ilk from their organized vehicle and already be beyond Presidential Decree No. 1689's reach, regardless of the excluded collaborator's actual participation in their fraudulent designs.

Presidential Decree No. 1689 contemplates not only corporations but also associations as avenues for misappropriation. Affiliation with corporations whether as a director, trustee, officer, stockholder, or member is carefully delineated by law. In contrast, associations and affiliations with them are amorphous. Any number of individuals can organize themselves into a collective. Their very act of coming together with an understanding to pursue a shared purpose suffices to make them an association. A regulatory body's official

recognition of their juridical existence and their collective's competence to act as its own person is irrelevant.

Presidential Decree No. 1689's similar treatment of associations with corporations rebuffs the need for an accused's formally designated relationship with the organization which was used to facilitate the fraudulent scheme. The statutory inclusion of the term "association," which is without a specific restrictive legal definition unlike the term "corporation," manifests the law's intent to make as inclusive as practicable its application. It exhibits the law's intent to not otherwise be strangled by prohibitive technicalities on organizational membership.

**II**

Senior Associate Justice Carpio's dissent details how Atty. Alvarez should not be considered a mere notary public so detached from the fraudulent scheme that is subject of these consolidated petitions. Indeed, it would be foolhardy to discount the gravity of the offense committed by dwelling on Atty. Alvarez's nominal lack of "relat[ion] to Globe Asiatique either by employment or by ownership."[7]

The *ponencia* acknowledges that Atty. Alvarez was not affiliated with Globe Asiatique Realty Holdings Corporation (Globe Asiatique) as he was Home Development Mutual Fund's employee and not Globe Asiatique's employee or stockholder. Specifically, he was the Manager of Home Development Mutual Fund's Foreclosure Department.[8] As Senior Associate Justice Carpio emphasizes, Atty. Alvarez's position at Home Development Mutual Fund and his simultaneous "moonlighting as head of the legal department of Globe Asiatique,"[9] at whose headquarters he even held office, incriminates, rather than exonerates, him.

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[7] *Ponencia*, p. 38.

[8] *Id*.

[9] Dissenting Opinion, *J*. Carpio, p. 27.

Evidently, with his continuing employment at Home Development Mutual Fund, Atty. Alvarez could not be simultaneously employed by Globe Asiatique, let alone be formally declared the head of its legal department. This anomaly should not frustrate his liability alongside Delfin, Dexter, Sagun, and Salagan. If at all, it should aggravate his liability because knowing fully well that he was in no position to render services for Globe Asiatique, and that doing so amounted to a conflict of interest, Atty. Alvarez went ahead and did so anyway. His knowing notarization of documents concerning mortgages which he may himself foreclose shows malicious intent. Worse, his services for Globe Asiatique did not amount to innocuous, run of the mill tasks but were an integral component of the overarching fraudulent scheme. In Senior Associate Justice Carpio's words:

> Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.[10]

The *ponencia*'s emphasis on how Atty. Alvarez should be segregated from Delfin, Dexter, Sagun, and Salagan is misplaced. His circumstances should not be used to reduce the persons accused to a number short of the threshold maintained by the *ponencia*. The absurdity of Atty. Alvarez's personal condition cannot conveniently deter prosecution for syndicated estafa.

## III

Granting that Atty. Alvarez cannot be held liable as an integral cog to the uncovered fraudulent apparatus, his exclusion does not *ipso facto* negate the existence of a syndicate of at least five (5) individuals who worked to carry out an illegal scheme through which funds solicited from the general public were misappropriated. Even Atty. Alvarez's hypothetical exclusion does not negate syndicated estafa.

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[10] *Id.*

The fraudulent scheme uncovered in this case did not merely involve Delfin, Dexter, Sagun, Salagan, and Atty. Alvarez. A defining feature of the scheme was the use of "special buyers" who were induced by a fee to enlist for a Home Development Mutual Fund membership and then to lend their names and memberships to Globe Asiatique. It was Globe Asiatique's use of these spurious members' names and memberships which enabled it to siphon funds from Home Development Mutual Fund through fund releases by way of take-out of the special buyers' supposed housing loans.[11]

Such an elaborate machination could not have been exclusively carried out by four (4) individuals. The plot's basic design demanded the involvement of persons other than Delfin and Dexter and high-level executives Sagun and Salagan. At the lowest rungs of the mechanism to effect the plot to involve special buyers were agents who recruited, paid, and induced each of the special buyers to enlist for Home Development Mutual Fund membership, and to allow their names and memberships to be used. At an intermediate level were officers who oversaw the operational aspects of the scheme.

Apart from the plot's basic configuration, the sheer scale to which it appears to have been effected also belies the exclusive involvement of four (4) individuals. As the information subject of Criminal Case No. 18480 underscored, "644 borrowers endorsed by [Globe Asiatique] are not genuine buyers of Xevera [H]omes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers."[12] The carrying out of the scheme was simply too broad to have merely been the result of four (4) persons' exclusive handiwork.

The fraudulent scheme where at least five (5) individuals collaborated is clear to see. Atty. Alvarez's convenient dislocation from the ranks of Globe Asiatique's employees is too far-fetched to be indulged. But even if he were to be excluded,

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[11] *Ponencia*, pp. 11-13.

[12] *Id.* at 12.

the operation of a fraudulent syndicate cannot be discounted. This Court should not render itself blind and condone a miscarriage of justice merely on account of a numerical artifice. Five (5) persons accused, minus one (1) absurdly discharged, do not erase the elaborate stratagem by a syndicate wherein Delfin, Dexter, Sagun, and Salagan are, thus far, the ones identified to have been on top, but which also indispensably involved many others.

**IV**

I also cannot agree to the assertion that there could not be syndicated estafa because "the association of respondents did not solicit funds from the general public"[13] and that "it was . . . not Globe Asiatique, that solicited funds from the public."[14]

The *ponencia* reasons that it was not Globe Asiatique but Home Development Mutual Fund that solicited funds from the public.[15] It adds that "[t]he funds solicited by [Home Development Mutual Fund] from the public were in the nature of their contributions as members of [Home Development Mutual Fund], and had nothing to do with their being a stockholder or member of Globe Asiatique."[16] Thus, "the funds supposedly misappropriated did not belong to Globe Asiatique's stockholders or members, or to the general public, but to [Home Development Mutual Fund]."[17]

The *ponencia* overemphasizes the technicality of Home Development Mutual Fund's separate and distinct juridical personality at the expense of a proper appreciation of the gravity of the offense involved.

Republic Act No. 9679, or the Home Development Mutual Fund Law of 2009, emphasizes the "provident character" of the Home Development Mutual Fund, thus:

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[13] *Id.* at 38.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 39.

[17] *Id.*

Section 10. Provident Character. — The Fund shall be private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit. All the personal and employer contributions shall be fully credited to each member, accounted for individually and transferable in case of change of employment. They shall earn dividends as may be provided for in the implementing rules. The said amounts shall constitute the provident fund of each member, to be paid to him, his estate or beneficiaries upon termination of membership, or from which peripheral benefits for the member may be drawn.

As a provident fund, Home Development Mutual Fund relies on the required remittance of savings by its members. Membership is either mandated or voluntary. Its mandated membership consists of all private individuals covered by the Social Security System, all public employees covered by the Government Service Insurance System, uniformed personnel in the Armed Forces of the Philippines, the Philippine National Police, the Bureau of Jail Management and Penology, the Bureau of Fire Protection, and all Filipinos employed by foreign employers regardless of their place of deployment.[18] Voluntary membership is open to Filipinos aged 18 to 65.[19]

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[18] Per Home Development Mutual Fund's official website <http://www.pagibigfund.gov.ph>, mandatory membership is for:

▪ All employees who are or ought to be covered by the Social Security System (SSS), provided that actual membership in the SSS shall not be a condition precedent to the mandatory coverage in the Fund. It shall include, but are not limited to:

o A private employee, whether permanent, temporary, or provisional who is not over sixty (60) years old;

o A household helper earning at least ₱1,000.00 a month. A household helper is any person who renders domestic services exclusively to a household such as a driver, gardener, cook, governess, and other similar occupations;

o A Filipino seafarer upon the signing of the standard contract of employment between the seafarer and the manning agency, which together with the foreign ship owner, acts as the employer;

o A self-employed person regardless of trade, business or occupation, with an income of at least ₱1,000.00 a month and not over sixty (60) years old;

o An expatriate who is not more than sixty (60) years old and is compulsorily covered by the Social Security System (SSS), regardless of

It is true that Home Development Mutual Fund has a personality distinct and separate from its members and exercises competencies independently of them. However, considering

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citizenship, nature and duration of employment, and the manner by which the compensation is paid. In the absence of an explicit exemption from SSS coverage, the said expatriate, upon assumption of office, shall be covered by the Fund.

An expatriate shall refer to a citizen of another country who is living and working in the Philippines.

▪ All employees who are subject to mandatory coverage by the Government Service Insurance System (GSIS), regardless of their status of appointment, including members of the judiciary and constitutional commissions;

▪ Uniformed members of the Armed Forces of the Philippines, the Bureau of Fire Protection, the Bureau of Jail Management and Penology, and the Philippine National Police;

▪ Filipinos employed by foreign-based employers, whether they are deployed here or abroad or a combination thereof.

[19] Per Home Development Mutual Fund's official website <http://www.pagibigfund.gov.ph>, voluntary membership is for:

An individual at least 18 years old but not more than 65 years old may register with the Fund under voluntary membership. However, said individual shall be required to comply with the set of rules and regulations for Pag-IBIG members including the amount of contribution and schedule of payment. In addition, they shall be subject to the eligibility requirements in the event of availment of loans and other programs/benefits offered by the Fund.

The following shall be allowed to apply for voluntary membership:

- Non-working spouses who devote full time to managing the household and family affairs, unless they also engage in another vocation or employment which is subject to mandatory coverage, provided the employed spouse isa registered Pag-IBIG member and consents to the Fund membership of the non-working spouse;
- Filipino employees of foreign government or international organization, or their wholly-owned instrumentality based in the Philippines, in the absence of an administrative agreement with the Fund;
- Employees of an employer who is granted a waiver or suspension of coverage by the Fund under RA 9679;
- Leaders and members of religious groups;
- A member separated from employment, local or abroad, or ceased to be self-employed but would like to continue paying his/her personal contribution. Such member may be a pensioner, investor, or any other individual with passive income or allowances;

its provident character and its membership base, it is incorrect to say that the misappropriated funds in this case are Home Development Mutual Fund's alone and not the general public's. By Republic Act No. 9679's express language and Home Development Mutual Fund's membership base, that is, practically the same as the general public, it is erroneous to insulate Globe Asiatique from the general public by hyperbolizing Home Development Mutual Fund's role as an intervening layer between them.

In asserting that Globe Asiatique neither solicited funds from the general public nor committed misappropriation, the *ponencia* similarly fails to account for how Globe Asiatique used and manipulated Home Development Mutual Fund. While it is true that the funds collected, and eventually misappropriated, from Home Development Mutual Fund members were in the nature of their contributions which did not accrue to Globe Asiatique, the essence of the fraudulent scheme was that Globe Asiatique used Home Development Mutual Fund as a medium for its pilferage.

The fraudulent scheme could not have been effected had Globe Asiatique not been enabled to act for and on behalf of Home Development Mutual Fund. The *ponencia*'s own recital of facts acknowledges that under the Funding Commitment Agreements, Globe Asiatique pre-processed housing loans and even collected monthly amortizations on the loans obtained by its buyers.[20] Under its special buyers scheme, it even enticed non-members of Home Development Mutual Fund to avail of its membership.

Globe Asiatique's commission by Home Development Mutual Fund is precisely what enabled its fraudulent scheme. The machination of Delfin and his compatriots turned on Globe Asiatique's delegation to act for Home Development Mutual

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- Public officials or employees who are not covered by the GSIS such as Barangay Officials, including Barangay Chairmen, Barangay Council Members, Chairmen of the Barangay Sangguniang Kabataan, and Barangay Secretaries and Treasurers;
- Such other earning individuals/groups as may be determined by the Board by rules and regulations.

[20] *Ponencia*, p. 5.

Fund. The *ponencia* ignores this devious agency and insists on Home Development Mutual Fund's distinct identity. As with its emphasis on the number of individuals charged, it again places a primacy on technicality at the expense of the essence of Presidential Decree No. 1689. Such disregard compels me to differ from its conclusions on the existence of probable cause to indict for syndicated estafa and to issue corresponding warrants of arrest for Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex M. Alvarez.

**ACCORDINGLY**, I vote to GRANT the petitions subject of G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, and 228730.

The October 5, 2012 Decision and February 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121346, the October 3, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127690, the November 7, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127553, and the November 16, 2016 Decision of the Court of Appeals in CA-G.R. SP No. 127554 must be REVERSED.

The warrants of arrest issued by Branch 42, Regional Trial Court, San Fernando City, Pampanga against Christina Sagun, Delfin S. Lee, Dexter L. Lee, and Atty. Alex Alvarez must be REINSTATED.

**EN BANC**

[G.R. Nos. 206438 and 206458. July 31, 2018]

**CESAR MATAS CAGANG,** *petitioner, vs.* **SANDIGANBAYAN, FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN; and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 210141-42. July 31, 2018]

**CESAR MATAS CAGANG**, *petitioner, vs.* **SANDIGANBAYAN, FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN; and PEOPLE OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; THE DENIAL OF A MOTION TO QUASH IS NEITHER APPEALABLE NOR BE A SUBJECT OF A PETITION FOR CERTIORARI; A PETITION FOR CERTIORARI UNDER RULE 65 MAY BE ALLOWED ONLY IF THE PARTY CAN ESTABLISH THAT THE DENIAL WAS TAINTED WITH GRAVE ABUSE OF DISCRETION.—** As a general rule, the denial of a motion to quash is not appealable as it is merely interlocutory. Likewise, it cannot be the subject of a petition for certiorari. The denial of the motion to quash can still be raised in the appeal of a judgment of conviction. The adequate, plain, and speedy remedy is to proceed to trial and to determine the guilt or innocence of the accused. x x x Ordinarily, the denial of a motion to quash simply signals the commencement of the process leading to trial. The denial of a motion to quash, therefore, is not necessarily prejudicial to the accused. During trial, and after arraignment, prosecution proceeds with the presentation of its evidence for the examination of the accused and the reception by the court. Thus, in a way, the accused is then immediately given the opportunity to meet the charges on the merits. Therefore, if the case is intrinsically without any grounds, the acquittal of the accused and all his suffering due to the charges can be most

speedily acquired. x x x A party may, however, question the denial in a petition for certiorari if the party can establish that the denial was tainted with grave abuse of discretion[.] x x x Petitioner alleges that the Sandiganbayan committed grave abuse of discretion when it denied his Motion to Quash/Dismiss, insisting that the denial transgressed upon his constitutional rights to due process and to speedy disposition of cases. A petition for certiorari under Rule 65 is consistent with this theory.

**2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; DISTINGUISHED FROM THE RIGHT TO SPEEDY TRIAL.—** The right to speedy disposition of cases should not be confused with the right to a speedy trial, a right guaranteed under Article III, Section 14(2) of the Constitution[.] x x x The right to a speedy trial is invoked against the courts in a criminal prosecution. The right to speedy disposition of cases, however, is invoked even against quasi-judicial or administrative bodies in civil, criminal, or administrative cases before them. x x x Both rights, nonetheless, have the same rationale: to prevent delay in the administration of justice. x x x While the right to speedy trial is invoked against courts of law, the right to speedy disposition of cases may be invoked before quasi-judicial or administrative tribunals in proceedings that are adversarial and may result in possible criminal liability. The right to speedy disposition of cases is most commonly invoked in fact-finding investigations and preliminary investigations by the Office of the Ombudsman since neither of these proceedings form part of the actual criminal prosecution.

**3. ID.; ID.; ID.; ID.; CONCEPT OF INORDINATE DELAY, ELABORATED; DOCTRINES OF "RADICAL RELIEF," "MERE MATHEMATICAL RECKONING," "BALANCING TEST," AND POLITICAL MOTIVATIONS AS CONSIDERATIONS IN DETERMINING THE EXISTENCE OF INORDINATE DELAY, DISCUSSED.—** The concept of inordinate delay was introduced in *Tatad v. Sandiganbayan*, where this Court was constrained to apply the "radical relief" of dismissing the criminal complaint against an accused due to the delay in the termination of the preliminary investigation. x x x In resolving the issue of whether Tatad's constitutional rights to due process and to speedy disposition of cases were violated, this Court took note that the finding of

inordinate delay applies in a case-to-case basis[.] x x x This Court found that there were peculiar circumstances which attended the preliminary investigation of the complaint, the most blatant of which was that the 1974 report against Tatad was only acted upon by the Tanodbayan when Tatad had a falling out with President Marcos in 1979[.] x x x Thus, the delay of three (3) years in the termination of the preliminary investigation was found to have been inordinate delay, which was violative of petitioner's constitutional rights[.] x x x Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate. The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*, this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction[.] x x x This Court, however, emphasized that "[a] mere mathematical reckoning of the time involved is not sufficient" to rule that there was inordinate delay. Thus, it qualified the application of the *Tatad* doctrine in cases where certain circumstances do not merit the application of the "radical relief" sought. Despite the promulgation of *Tatad*, however, this Court struggled to apply a standard test within which to determine the presence of inordinate delay. *Martin v. Ver*, decided in 1983, attempted to introduce in this jurisdiction the "balancing test" in the American case of *Barker v. Wingo*[.] x x x The *Barker* balancing test provides that courts must consider the following factors when determining the existence of inordinate delay: *first*, the length of delay; *second*, the reason for delay; *third*, the defendant's assertion or non-assertion of his or her right; and *fourth*, the prejudice to the defendant as a result of the delay. For a period of time, this balancing test appeared to be the best way to determine the existence of inordinate delay. Thus, this Court applied both the *Tatad* doctrine and the *Barker* balancing test in the 1991 case of *Gonzales v. Sandiganbayan*[.] x x x The combination of both *Tatad* and the balancing test was so effective that it was again applied in *Alvizo v. Sandiganbayan*, where this Court took note that: [D]elays per se are understandably attendant to all prosecutions and are constitutionally permissible, with the monition that the attendant delay must not be oppressive. Withal, it must not be lost sight of that the concept of speedy

disposition of cases is a relative term and must necessarily be a flexible concept. Hence, the doctrinal rule is that in the determination of whether or not that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.

**4. ID.; ID.; ID.; ID.; ID.; WITH RESPECT TO CASES AT THE LEVEL OF THE OMBUDSMAN, FACT-FINDING INVESTIGATIONS WILL NOT BE INCLUDED IN THE PERIOD FOR DETERMINATION OF INORDINATE DELAY CONSIDERING THAT INVESTIGATIONS ARE NOT ADVERSARIAL PROCEEDINGS; A CASE IS DEEMED TO HAVE COMMENCED FROM THE FILING OF THE FORMAL COMPLAINT; THE OFFICE OF THE OMBUDSMAN MUST PROVIDE A REASONABLE PERIOD FOR FACT-FINDING INVESTIGATIONS AND MAKE CLEAR WHEN CASES ARE DEEMED SUBMITTED FOR DECISION.—** A dilemma arises as to whether the period includes proceedings in quasi-judicial agencies before a formal complaint is actually filed. The Office of the Ombudsman, for example, has no set periods within which to conduct its fact-finding investigations. They are only mandated to act promptly. x x x When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused. This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense. Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.

In *People v. Sandiganbayan, Fifth Division*, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned. With respect to fact-finding at the level of the Ombudsman, the Ombudsman must provide for reasonable periods based upon its experience with specific types of cases, compounded with the number of accused and the complexity of the evidence required. He or she must likewise make clear when cases are deemed submitted for decision. The Ombudsman has the power to provide for these rules and it is recommended that he or she amend these rules at the soonest possible time. These time limits must be strictly complied with. If it has been alleged that there was delay within the stated time periods, the burden of proof is on the defense to show that there has been a violation of their right to speedy trial or their right to speedy disposition of cases. The defense must be able to prove *first*, that the case took much longer than was reasonably necessary to resolve, and *second*, that efforts were exerted to protect their constitutional rights.

**5. ID.; ID.; ID.; ID.; ID.; CONCEPT OF ACQUIESCENCE AND WAIVER OF THE ACCUSED.—** This concept of acquiescence, however, is premised on the presumption that the accused was fully aware that the preliminary investigation has not yet been terminated despite a considerable length of time. Thus, in *Duterte v. Sandiganbayan*, this Court stated that *Alvizo* would not apply if the accused were unaware that the investigation was still ongoing[.] x x x The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has already become *prejudicial* to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

**6. ID.; ID.; ID.; ID.; ID.; INSTITUTIONAL DELAY SHOULD NOT BE TAKEN AGAINST THE STATE; UNREASONABLE ACTIONS BY THE ACCUSED WILL BE TAKEN AGAINST THEM.—** The reality is that

institutional delay a reality that the court must address. The prosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. The courts' dockets are congested. This Court has already launched programs to remedy this situation, such as the Judicial Affidavit Rule, Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial, and the Revised Guidelines for Continuous Trial. These programs, however, are mere stepping stones. The complete eradication of institutional delay requires these sustained actions. Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve individuals who have the resources and who engage private counsel with the means and resources to fully dedicate themselves to their client's case. More often than not, the accused only invoke the right to speedy disposition of cases when the Ombudsman has already rendered an unfavorable decision. The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case. For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense. Certain unreasonable actions by the accused will be taken against them. This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

**7. ID.; ID.; ID.; ID.; ID.; IF THE DELAY IS ALLEGED TO HAVE OCCURRED DURING THE GIVEN PERIODS, THE BURDEN IS ON THE ACCUSED THAT THE DELAY WAS INORDINATE; IF THE DELAY IS ALLEGED TO HAVE OCCURRED BEYOND THE GIVEN PERIODS, THE BURDEN SHIFTS TO THE PROSECUTION TO PROVE THAT THE DELAY WAS REASONABLE AND THAT NO PREJUDICE WAS SUFFERED BY THE ACCUSED.—** [I]nordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the

periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay. The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.

**8. ID.; ID.; ID.; ID.; ID.; WHEN THERE WAS WAIVER OF THE DELAY ON THE PART OF THE ACCUSED AND THE TRANSACTIONS INVOLVED ARE COMPLEX AND NUMEROUS, NO VIOLATION OF THE ACCUSED'S RIGHT TO SPEEDY DISPOSITION OF CASES; THE DISMISSAL OF THE COMPLAINT WOULD BE PREJUDICIAL TO THE STATE.—** Six (6) years is beyond the reasonable period of fact-finding of ninety (90) days. The burden of proving the justification of the delay, therefore, is on the prosecution, or in this case, respondent. x x x This Court finds, however, that despite the pendency of the case since 2003, petitioner only invoked his right to speedy disposition of cases when the informations were filed on November 17, 2011. Unlike in *Duterte* and *Coscolluela*, petitioner was aware that the preliminary investigation was not yet terminated. Admittedly, while there was delay, petitioner has not shown that he asserted his rights during this period, choosing instead to wait until the information was filed against him with the Sandiganbayan. Furthermore, the case before the Sandiganbayan involves the alleged malversation of millions in public money. The Sandiganbayan has yet to determine the guilt or innocence of petitioner. In the Decision dated June 17, 2010 of the Sandiganbayan acquitting petitioner in Crim. Case No. 28331: x x x The records of the case show that the transactions

investigated are complex and numerous. x x x The dismissal of the complaints, while favorable to petitioner, would undoubtedly be prejudicial to the State. "[T]he State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman." The State is as much entitled to due process as the accused. x x x This Court finds that there is no violation of the accused's right to speedy disposition of cases considering that there was a waiver of the delay of a complex case.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; FACTORS TO BE CONSIDERED IN DETERMINING INORDINATE DELAY, ELUCIDATED; LENGTH OF THE DELAY; RECKONING POINT WHEN DELAY STARTS TO RUN IS THE DATE OF THE FILING OF A FORMAL COMPLAINT AND THE PERIOD DEVOTED TO THE FACT-FINDING INVESTIGATIONS PRIOR TO THE FILING OF THE FORMAL COMPLAINT SHALL NOT BE CONSIDERED.—** [T]he reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

2. **ID.; ID.; ID.; ID.; ID.; VALID REASONS FOR THE DELAY; PERIOD FOR RE-INVESTIGATION CANNOT AUTOMATICALLY BE TAKEN AGAINST THE STATE.—** Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent. The period for re-investigation cannot automatically be taken against the State. Re-investigations cannot generally be considered as "vexatious,

capricious, and oppressive" practices proscribed by the constitutional guarantee since these are performed for the benefit of the accused.

3. **ID.; ID.; ID.; ID.; ID.; ASSERTION OF RIGHT BY THE ACCUSED; FAILURE OF THE RESPONDENT TO BRING TO THE ATTENTION OF THE INVESTIGATING OFFICER THE PERCEIVED INORDINATE DELAY CONSTITUTES A WAIVER OF RIGHT TO SPEEDY DISPOSITION OF CASES.—** The Court had ruled in several cases that failure to move for the early resolution of the preliminary investigation or similar reliefs before the Ombudsman amounted to a virtual waiver of the constitutional right. *Dela Peña v. Sandiganbayan (Dela Peña)*, for example, ruled that the petitioners therein slept on their rights, amounting to laches, when they did not file nor send any letter-queries to the Ombudsman during the four-year (4-year) period the preliminary investigation was conducted. x x x Following *Dela Peña*, it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is allowing the delay only to later claim it as a ruse for dismissal. This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases. Needless to say, investigating officers responsible for this kind of delay should be subjected to administrative sanction.

4. **ID.; ID.; ID.; ID.; ID.; PREJUDICE TO THE RESPONDENT; SINCE IT IS NOT ONLY THE RESPONDENT WHO STANDS TO SUFFER PREJUDICE FROM ANY DELAY BUT ALSO THE PROSECUTION WHO WILL FIND IT DIFFICULT TO PROVE THE GUILT OF THE ACCUSED, IT IS FOR THE COURT TO DETERMINE WHO WAS PLACED AT A GREATER DISADVANTAGE FOR THE DELAY.—** The length of the delay and the justification proffered by the investigating officer therefor would necessarily be counterbalanced against any prejudice suffered by the respondent. Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to

any party. x x x In the macro-perspective, though, it is not only the respondent who stands to suffer prejudice from any delay in the investigation of his case. For inordinate delays likewise makes it difficult for the prosecution to perform its bounden duty to prove the guilt of the accused beyond reasonable doubt when the case is filed in court[.] x x x It is for the Courts then to determine who between the two parties was placed at a greater disadvantage by the delay in the investigation.

**CAGUIOA, *J.*, *dissenting opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; IT IS TIME FOR THE COURT TO REVISIT THE SWEEPING STATEMENT IN *DELA PEÑA* SINCE THE FACTORS CONSIDERED THEREIN TO DETERMINE INORDINATE DELAY ADOPTS THE "BALANCING TEST," WHICH FINDS ITS ROOTS IN AMERICAN JURISPRUDENCE; NO CONSTITUTIONAL RIGHT SIMILAR TO THAT OF SPEEDY DISPOSITION EXISTS UNDER THE U.S. CONSTITUTION.—** The *ponencia* finds that while the OMB had in fact incurred in delay in the conduct of preliminary investigation against the petitioner, the latter is precluded from invoking his right to speedy disposition as he failed to assert the same in a timely manner. This finding is primarily anchored on the case of *Dela Peña,* where the Court held that silence on the part of the accused operates as an implied waiver of one's right to speedy disposition. **I respectfully submit that it is time the Court revisits this sweeping statement in *Dela Peña* and that further clarification be made by the Court moving forward.** To recall, *Dela Peña* espouses that the following factors must be considered in determining whether the right to speedy trial or speedy disposition of cases is violated: "(1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay." This criterion adopts the "balancing test" which, as observed by the Court in *Perez v. People* (*Perez*), finds its roots in American jurisprudence, particularly, in the early case of *Barker v. Wingo* (*Barker*). x x x In *Barker,* SCOTUS explained the nature of the accused's right to speedy trial under the Sixth Amendment to the U.S. Constitution (Sixth Amendment), and set forth the four factors to be considered in determining whether such right had been violated — length of delay, the reason for the delay, the

defendant's assertion of his right, and prejudice to the defendant. However, **it bears stressing that this criterion was specifically crafted to address unreasonable delay within the narrow context of a criminal trial, since the scope of the Sixth Amendment right does not extend to cover delay incurred by the prosecution prior to indictment or arrest**. x x x In turn, *Betterman* makes reference to *United States v. Marion* (*Marion*), a case decided prior to *Barker*. In *Marion,* SCOTUS ruled that the protection afforded by the Sixth Amendment right attaches only after a person has been "accused" of a crime. x x x Apart from clarifying the parameters of the Sixth Amendment right, *Marion* and *Betterman* appear to confirm that no constitutional right similar to that of speedy disposition exists under the U.S. Constitution. Hence, *Barker's* balancing test should not be understood to contemplate unreasonable delay during "pre-accusation," or the period within which the State conducts an investigation to determine whether there exists probable cause to arrest or charge a particular suspect.

2. **ID.; ID.; ID.; ID.; ID.; IN THE PHILIPPINE CONTEXT, THE PROTECTION AFFORDED BY THE RIGHT TO SPEEDY DISPOSITION OF CASES COVERS NOT ONLY PRELIMINARY INVESTIGATION BUT THE FACT-FINDING PROCESS AS WELL.—** In the Philippine context, this "pre-accusation" period falls precisely within the scope of the right to speedy disposition protected by the Constitution, particularly, under Section 16, Article III: Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. The right to speedy disposition covers the periods "before, during, and after trial." Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, **covers not only preliminary investigation, but extends further, to cover the fact-finding process**.

3. **ID.; ID.; ID.; ID.; ID.; TO HOLD THAT UNREASONABLE DELAY COMMENCES ONLY FROM THE FILING OF THE FORMAL COMPLAINT WOULD RESULT IN THE IMPAIRMENT OF THE VERY SAME INTEREST WHICH THE RIGHT TO SPEEDY TRIAL PROTECTS; THE SCOPE OF RIGHT TO SPEEDY DISPOSITION COVERS THE VERY MOMENT THE RESPONDENT IS EXPOSED TO PREJUDICE, WHICH MAY OCCUR AS EARLY AS THE FACT-FINDING STAGE.—** Unreasonable delay incurred

during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects —against oppressive pre-trial incarceration, unnecessary anxiety and concern, **and the impairment of one's defense**. To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition *and* trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations). Prejudice is not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority**, I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction**. The scope of right to speedy disposition corresponds *not* to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.

**4. ID.; ID.; ID.; ID.; ID.; THE CONSTITUTIONAL DUTY IMPOSED UPON THE STATE STANDS REGARDLESS OF THE VIGOR WITH WHICH THE INDIVIDUAL CITIZEN ASSERTS HIS RIGHT TO SPEEDY DISPOSITION; IT IS NOT THE RESPONDENT'S DUTY TO FOLLOW UP ON THE PROSECUTION OF HIS CASE FOR IT IS THE PROSECUTION'S RESPONSIBILITY TO EXPEDITE THE SAME WITHIN THE BOUNDS OF REASONABLE TIMELINESS; THUS, ASSERTION OF ONE'S RIGHT SHOULD NOT BE TAKEN AGAINST THOSE WHO ARE SUBJECT OF CRIMINAL PROCEEDINGS.—** The right to speedy disposition is two-pronged. *Primarily,* it serves to extend to the individual citizen a guarantee against State abuse brought about by protracted prosecution. Conversely, it imposes upon the State the

concomitant duty to expedite all proceedings lodged against individual citizens, whether they be judicial, quasi-judicial or administrative in nature. **This constitutional duty imposed upon the State stands regardless of the vigor with which the individual citizen asserts his right to speedy disposition**. Hence, the State's duty to dispose of judicial, quasi-judicial or administrative proceedings with utmost dispatch cannot be negated solely by the inaction of the respondent upon the dangerous premise that such inaction, without more, amounts to an implied waiver thereof. Verily, the Court has held that the State's duty to resolve criminal complaints with utmost dispatch is one that is mandated by the Constitution. Bearing in mind that the Bill of Rights exists precisely to strike a balance between governmental power and individual personal freedoms, it is, to my mind, unacceptable to place on the individual the burden to assert his or her right to speedy disposition of cases when the State has the burden to respect, protect, and fulfill the said right. It is thus not the respondent's duty to follow up on the prosecution of his case, for it is the prosecution's responsibility to expedite the same within the bounds of reasonable timeliness. Considering that the State possesses vast powers and has immense resources at its disposal, it is incumbent upon it **alone** to ensure the speedy disposition of the cases it either initiates or decides. Indeed, as the Court held in *Secretary of Justice v. Lantion,* "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need." Further, as earlier observed, no such similar duty is imposed by the U.S. Constitution. **Proceeding therefrom, I find the adoption of the third factor in *Barker's* balancing test improper. Instead, I respectfully submit that in view of the fundamental differences between the scope of the Sixth Amendment right to speedy trial on one hand, and the right to speedy disposition on the other, the third factor in *Barker's* balancing test (that is, the assertion of one's right) should no longer be taken against those who are subject of criminal proceedings.**

**5. ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT THE CONSTITUTION IMPOSES UPON THE STATE THE POSITIVE DUTY TO ENSURE THE SPEEDY DISPOSITION OF CASES, WAIVER OF SUCH RIGHT**

**SHOULD NOT BE IMPLIED SOLELY FROM THE RESPONDENT'S SILENCE; HENCE, PETITIONER IN THE PRESENT CASE CANNOT BE PRECLUDED FROM INVOKING HIS RIGHT TO SPEEDY DISPOSITION.— Considering that the Constitution, unlike its U.S. counterpart, imposes upon the State the *positive* duty to ensure the speedy disposition of all judicial, quasi-judicial or administrative proceedings, waiver of the right to speedy disposition should not be implied solely from the respondent's silence. To be sure, the duty to expedite proceedings under the Constitution does *not* pertain to the respondent, but to the State. To fault the respondent for the State's inability to comply with such positive duty on the basis of mere silence is, in my view, the height of injustice.** Following these parameters, it is my view that petitioner *cannot* be precluded from invoking his right to speedy disposition in the present case.

**6. ID.; ID.; ID.; ID.; WHILE INSTITUTIONAL DELAY IS A REALITY, IT SHOULD NOT JUSTIFY THE STATE'S ACT OF SUBJECTING ITS CITIZENS TO UNREASONABLE DELAYS THAT IMPINGE ON THEIR FUNDAMENTAL RIGHTS; REASONS.—** The *ponencia* further averred that institutional delay is a reality, and is thus inevitable. It further stated that "[p]rosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. Court dockets are congested." While this "reality" may exist, as it exists in any government, it does not, as it should not, in any way justify the State's act of subjecting its citizens to unreasonable delays that impinge on their fundamental rights. x x x I disagree for two reasons: *First,* this statement is based on the premise that the individual has the burden to do something to expedite the proceedings. To repeat, to require individuals to do so would be to sanction deviation by government agencies, including the courts, from its sacrosanct duty of dispensing justice. Cliché as it may be, it cannot be denied that justice delayed is justice denied. *Second,* the fact that "[m]ost cases handled by the Office of the Ombudsman involve powerful politicians who engage private counsel with the means and resources to fully dedicate themselves to their client's case" does not constitute a sufficient excuse. The State's disadvantage, if any, brought about by the *creativity* of defense counsels is easily balanced out by the second of the four factors laid down in *Dela Peña*, namely, when the court takes into consideration the reasons for the delay in

determining whether the right to speedy disposition has indeed been violated. x x x Thus, even as the Court may recognize institutional delay as a reality, the result of such recognition should be a thrust towards structural and procedural changes. The answer lies in reforming these institutions, but certainly not in sanctioning a violation of an individual's constitutionally guaranteed right to a speedy disposition of his case. Time and again, this Court has recognized the State's inherent right to prosecute and punish violators of the law. This right to prosecute, however, must be balanced against the State's duty to respect the fundamental constitutional rights extended to each of its citizens.

7. **ID.; ID.; ID.; ID.; ELEMENTS THAT MUST CONCUR FOR A VALID WAIVER OF CONSTITUTIONAL RIGHT; THE INTENTION TO RELINQUISH A CONSTITUTIONAL RIGHT CANNOT BE DEDUCED SOLELY FROM SILENCE OR INACTION.—** To constitute a valid waiver of a constitutional right, it must appear that: (i) the right exists; (ii) the persons involved had knowledge, either actual or constructive, of the existence of such right; and, (iii) **the person possessing the right had an actual intention to relinquish the right**. Intent, being a product of one's state of mind, may be inferred only from external acts. **Hence, the intention to relinquish a constitutional right cannot be deduced solely from silence or inaction**. A valid waiver of one's right to speedy disposition cannot thus be predicated on acquiescence alone, but rather, simultaneously anchored on acts indicative of an intent to relinquish. Verily, **"[m]ere silence of the holder of the right should not be easily construed as surrender thereof"**.

8. **ID.; ID.; ID.; ID.; ID.; PETITIONER'S ALLEGED INACTION IN THIS CASE FAILS TO QUALIFY AS AN IMPLIED WAIVER OF HIS RIGHT TO SPEEDY DISPOSITION OF CASES; THAT THE TRANSACTIONS INVOLVED WERE COMPLEX AND NUMEROUS IS NOT SUFFICIENT JUSTIFICATION FOR THE DELAY.— [P]etitioner's alleged inaction in this case still fails to qualify as an implied waiver of his right to speedy disposition**. x x x To recall, *Barker* instructs that the third factor in the balancing test serves as an important factor that should be measured in conjunction with the prejudice that the accused experiences as a consequence of the delay ascribed to the prosecution. **Hence, inaction on the part of the accused, *without more*, should not be *a priori***

> **deemed as an implied waiver of such right**. x x x [P]etitioner cannot be said to have slept on his rights from July 12, 2005 to June 17, 2010, in view of his participation in the 1st Sandiganbayan case. In other words, it was reasonable for petitioner to assume that his participation in the 1st Sandiganbayan case would work towards the termination of PI-2 in his favor, considering that both proceed from closely related incidents. Moreover, the State failed to show that the delay from July 12, 2005 to June 17, 2010 was reasonable. The *ponencia*'s holding that the transactions were complex and numerous, involving 40 individuals in 81 transactions, is not sufficient to justify the delay. As the *ponencia* admits, the COA Report already exhaustively investigated each transaction. It nonetheless ruled that delay was inevitable in the hands of a competent and independent Ombudsman. This fails to justify the delay.

**APPEARANCES OF COUNSEL**

*Into Pantojan Feliciano-Braceros & Lumbatan Law Offices* for petitioner.

*The Solicitor General* for respondents.

**D E C I S I O N**

**LEONEN, *J.*:**

Every accused has the right to due process and to speedy disposition of cases. Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. Nonetheless, the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right.

G.R. Nos. 206438 and 206458 are Petitions for Certiorari with an urgent prayer for the issuance of a temporary restraining

order and/or writ of preliminary injunction[1] assailing the Resolutions dated September 12, 2012[2] and January 15, 2013[3] of the Sandiganbayan. The assailed Resolutions denied Cesar Matas Cagang's (Cagang) Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

G.R. Nos. 210141-42, on the other hand, refer to a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction[4] assailing the June 18, 2013 Order[5] and September 10, 2013 Resolution[6] of the Sandiganbayan. The assailed Resolutions denied Cagang's Motion to Quash Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

Both Petitions question the Sandiganbayan's denial to quash the Informations and Order of Arrest against Cagang despite the Office of the Ombudsman's alleged inordinate delay in the termination of the preliminary investigation.

On February 10, 2003, the Office of the Ombudsman received an anonymous complaint alleging that Amelia May Constantino, Mary Ann Gadian, and Joy Tangan of the Vice Governor's Office, Sarangani Province committed graft and corruption by diverting public funds given as grants or aid using barangay

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[1] *Rollo* (G.R. Nos. 206438 & 206458), pp. 4-69.

[2] *Id*. at 83-540. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.

[3] *Id*. at 71-81. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.

[4] *Rollo* (G.R. Nos. 210141-42), pp. 4-21.

[5] *Id*. at 23. The Order was penned by Associate Justices Alexander G. Gesmundo (Acting Chair), Alex L. Quiroz, and Oscar C. Herrera, Jr. of the Fifth Division of the Sandiganbayan.

[6] *Id*. at 26-27. The Resolution was penned by Associate Justices Roland B. Jurado (Chair), Alexander G. Gesmundo, and Amparo M. Cabotaje-Tang of the Fifth Division of the Sandiganbayan.

officials and cooperatives as "dummies." The complaint was docketed as CPL-M-03-0163 and referred to the Commission on Audit for audit investigation. A news report of Sun Star Davao dated August 7, 2003 entitled "*₱61M from Sarangani coffers unaccounted*" was also docketed as CPL-M-03-0729 for the conduct of a fact-finding investigation.[7]

On December 31, 2002, the Commission on Audit submitted its audit report finding that the officials and employees of the Provincial Government of Sarangani appear to have embezzled millions in public funds by sourcing out the funds from grants, aid, and the Countrywide Development Fund of Representative Erwin Chiongbian using dummy cooperatives and people's organizations.[8] In particular, the Commission on Audit found that:

(1) There were releases of financial assistance intended for non-governmental organizations/people's organizations and local government units that were fraudulently and illegally made through inexistent local development projects, resulting in a loss of ₱16,106,613.00;

(2) Financial assistance was granted to cooperatives whose officials and members were government personnel or relatives of officials of Sarangani, which resulted in the wastage and misuse of government funds amounting to ₱2,456,481.00;

(3) There were fraudulent encashment and payment of checks, and frequent travels of the employees of the Vice Governor's Office, which resulted in the incurrence by the province of unnecessary fuel and oil expense amounting to ₱83,212.34; and

(4) Inexistent Sagiptaniman projects were set up for farmers affected by calamities, which resulted in wastage and misuse of government funds amounting to ₱4,000,000.00.[9]

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[7] *Rollo* (G.R. Nos. 206438 & 206458), pp. 206-207.

[8] *Id.* at 207-208.

[9] *Id.* at 208.

On September 30, 2003, the Office of the Ombudsman issued a Joint Order terminating Case Nos. CPL-M-03-0163 and CPL-M-03-0729. It concurred with the findings of the Commission on Audit and recommended that a criminal case for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019 be filed against the public officers named by the Commission on Audit in its Summary of Persons that Could be Held Liable on the Irregularities. The list involved 180 accused.[10] The case was docketed as OMB-M-C-0487-J.

After considering the number of accused involved, its limited resources, and the volumes of case records, the Office of the Ombudsman first had to identify those accused who appeared to be the most responsible, with the intention to later on file separate cases for the others.[11]

In a Joint Order dated October 29, 2003, the accused were directed to file their counter-affidavits and submit controverting evidence. The complainants were also given time to file their replies to the counter-affidavits. There was delay in the release of the order since the reproduction of the voluminous case record to be furnished to the parties "was subjected to bidding and request of funds from the Central Office."[12] Only five (5) sets of reproductions were released on November 20, 2003 while the rest were released only on January 15, 2004.[13]

All impleaded elective officials and some of the impleaded appointive officials filed a Petition for Prohibition, Mandamus, Injunction with Writ of Preliminary Injunction and Temporary Restraining Order with Branch 28, Regional Trial Court of Alabel, Sarangani. The Regional Trial Court issued a Temporary Restraining Order enjoining the Office of the Ombudsman from enforcing its October 29, 2003 Joint Order.[14]

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[10] *Id*. at 210.

[11] *Id.* at 210-211.

[12] *Id*. at 211.

[13] *Id*. at 212.

[14] *Id*. at 212.

In an Order dated December 19, 2003, the Regional Trial Court dismissed the Petition on the ground that the officials had filed another similar Petition with this Court, which this Court had dismissed.[15] Thus, some of the accused filed their counter-affidavits.[16]

After what the Office of the Ombudsman referred to as "a considerable period of time," it issued another Order directing the accused who had not yet filed their counter-affidavits to file them within seven (7) days or they will be deemed to have waived their right to present evidence on their behalf.[17]

In a 293-page Resolution[18] dated August 11, 2004 in OMB-M-C-0487-J, the Ombudsman found probable cause to charge Governor Miguel D. Escobar, Vice Governor Felipe Constantino, Board Members, and several employees of the Office of the Vice Governor of Sarangani and the Office of the Sangguniang Panlalawigan with Malversation through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019.[19] Then Tanodbayan Simeon V. Marcelo (Tanodbayan Marcelo) approved the Resolution, noting that it was modified by his Supplemental Order dated October 18, 2004.[20]

In the Supplemental Order dated October 18, 2004, Tanodbayan Marcelo ordered the conduct of further fact-finding investigations on some of the other accused in the case. Thus, a preliminary investigation docketed as OMB-M-C-0480-K was conducted on accused Hadji Moner Mangalen (Mangalen) and Umbra Macagcalat (Macagcalat).[21]

In the meantime, the Office of the Ombudsman filed an Information dated July 12, 2005, charging Miguel Draculan

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[15] *Id*. at 212-213.

[16] *Id*. at 213.

[17] *Id*.

[18] *Id*. at 201-490.

[19] *Id*. at 468-490.

[20] *Id*. at 490.

[21] *Id*. at 1091.

Escobar (Escobar), Margie Purisima Rudes (Rudes), Perla Cabilin Maglinte (Maglinte), Maria Deposo Camanay (Camanay), and Cagang of Malversation of Public Funds thru Falsification of Public Documents.[22] The Information read:

That on July 17, 2002 or prior subsequent thereto in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Miguel Draculan Escobar, being the Governor of the Province of Sarangani, Margie Purisima Rudes, Board Member, Perla Cabilin Maglinte, Provincial Administrator, Maria Deposo Camanay, Provincial Accountant, and Cesar Matas Cagang, Provincial Treasurer, and all high-ranking and accountable public officials of the Provincial Government of Sarangani by reason of their duties, conspiring and confederating with one another, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously take, convert and misappropriate the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (₱375,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified Disbursement Voucher No. 101-2002-7-10376 and its supporting documents, making it appear that financial assistance has been sought by Amon Lacungam, the alleged President of Kalalong Fishermen's Group of Brgy. Kalaong, Maitum, Sarangani, when in truth and in fact, the accused knew fully well that no financial assistance had been requested by Amon Lacungan and his association, nor did said Amon Lacungan and his association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (P375,000.00) through the encashment by the accused of Development Bank of the Philippines (DBP) Check No. 11521401 dated July 17, 2002, which amount they subsequently misappropriated to their personal use and benefit, and despite demand, said accused failed to return the said amount to the damage and prejudice of the government and the public interest in the aforesaid sum.

CONTRARY TO LAW.[23]

The Sandiganbayan docketed the case as Crim. Case No. 28331. Escobar, Maglinte, and Cagang were arraigned on

[22] *Id*. at 936-939.

[23] *Id*. at 941.

December 6, 2005 where they pleaded not guilty. Rudes and Camanay remained at large.[24]

On June 17, 2010, the Sandiganbayan rendered a Decision[25] in Crim. Case No. 28331 acquitting Escobar, Maglinte, and Cagang for insufficiency of evidence. Maglinte, however, was ordered to return 100,000.00 with legal interest to the Province of Sarangani. The cases against Rudes and Camanay were archived until the Sandiganbayan could acquire jurisdiction over their persons.[26]

In a Memorandum[27] dated August 8, 2011 addressed to Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales), Assistant Special Prosecutor III Pilarita T. Lapitan reported that on April 12, 2005, a Resolution[28] was issued in OMB-M-C-0480-K finding probable cause to charge Mangalen and Macagcalat with Malversation of Public Funds through Falsification and Violation of Section 3(e) of Republic Act No. 3019.[29] Thus, it prayed for the approval of the attached Informations:

> It should be noted that in a Memorandum dated 10 December 2004 and relative to OMB-M-C-03-0487-J from which OMB-M-C-04-0480-K originated, Assistant Special Prosecutor Maria Janina Hidalgo recommended to Ombudsman Marcelo that the status of state witness be conferred upon Gadian. This recommendation was approved by Ombudsman Marcelo on 20 December 2004. Hence, as may be noted[,] Gadian was no longer included as respondent and accused in the Resolution dated 12 April 2005 and the attached Information.
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> Related cases that originated from OMB-M-C-03-0487-J for which no further preliminary investigation is necessary were filed before

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[24] *Id*.

[25] *Id*. at 491-583. The Decision was penned by Associate Justice Gregory S. Ong (Chair) and concurred in by Associate Justices Jose R. Hernandez and Samuel R. Martires of the Fourth Division of the Sandiganbayan.

[26] *Id*. at 582.

[27] *Id*. at 430-434.

[28] *Id*. at 424-429.

[29] *Id*. at 428-429.

the courts. One of these cases is now docketed as Criminal Case No. 28293 and pending before the Sandiganbayan, First Division. It is noteworthy that in its Order dated 14 November 2006 the Sandiganbayan, First Division granted the Motion to Dismiss of the counsel of Felipe Constantino after having submitted a duly certified true copy of his client's Death Certificate issued by the National Statistics Office. Considering the fact therefore, there is a necessity to drop Constantino as accused in this case and accordingly, revised the attached Information.

An Information for Malversation through Falsification of Public Documents is also submitted for your Honor's approval considering that no such Information is attached to the records of this case.

VIEWED IN THE FOREGOING LIGHT, it is respectfully recommended that, in view of his death, Felipe Constantino no longer be considered as accused in this case and that the attached Informations be approved.[30]

Ombudsman Carpio Morales approved the recommendation on October 20, 2011.[31] Thus, on November 17, 2011, Informations[32] for Violation of Section 3(e) of Republic Act No. 3019 and Malversation of Public Funds through Falsification of Public Documents were filed against Cagang, Camanay, Amelia Carmela Constantino Zoleta (Zoleta), Macagcalat, and Mangalen. The Informations read:

[For Violation of Section 3(e), Republic Act No. 3019]

That on 20 September 2002, or sometime prior or subsequent thereto, in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Provincial Treasurer CESAR MATAS CAGANG, Provincial Accountant MARIA DEPOSO CAMANAY, and Executive Assistant to Vice Governor Felipe Katu Constantino, AMELIA CARMELA CONSTANTINO ZOLETA, and then Vice-Governor and now deceased Felipe Katu Constantino, all of the Provincial Government of Sarangani, committing the offense in relation to the performance of their duties and functions, taking advantage of their

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[30] *Rollo* (G.R. Nos. 210141-42), pp. 433-434.

[31] *Id*. at 434.

[32] *Rollo* (G.R. Nos. 206438 & 206458), pp. 140-147.

respective official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with Barangay Captain UMBRA ADAM MACAGCALAT and HADJI MONER MANGALEN, the alleged President and Treasurer, respectively of Kamanga Muslim-Christian Fishermen's Cooperative ("Cooperative"), did then and there willfully, unlawfully and feloniously cause the disbursement of the amount of Three Hundred and Fifty Thousand Pesos (₱350,000.00) under SARO No. D-98000987 through Development Bank of the Philippines Check No. 282398 dated 20 September 2002 and with HADJI MONER MANGELEN as payee thereof, by falsifying Disbursement Voucher No. 401-200209-148 dated 20 September 2002 and its supporting documents to make it appear that financial assistance was requested and given to the Cooperative, when in truth and in fact, neither was there a request for financial assistance received by the said Cooperative after the check was encashed, as herein accused, conspiring and confederating with each other, did then and there malverse, embezzle, misappropriate and convert to their own personal use and benefit the said amount of ₱350,000.00 thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.

[For Malversation of Public Funds thru Falsification of Public Documents]

That on 20 September 2002, or sometime prior or subsequent thereto, in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Provincial Treasurer CESAR MATAS CAGANG, and now deceased Felipe Katu Constantino, being then the Provincial Treasurer and Vice-Governor respectively, of the Province of Sarangani who, by reason of their public positions, are accountable for and has control of public funds entrusted and received by them during their incumbency as Provincial Treasurer and Vice-Governor respectively, of said province, with accused Provincial Accountant MARIA DEPOSO CAMANAY, and Executive Assistant to Vice Governor Felipe Katu Constantino, AMELIA CARMELA CONSTANTINO ZOLETA, and then Vice-Governor and now deceased Felipe Katu Constantino, all of the Provincial Government of Sarangani, committing the offense in relation to the performance of their duties and functions, taking advantage of their respective official positions, conspiring and confederating with Barangay Captain UMBRA ADAM MACAGCALAT and HADJI MONER MANGALEN, the alleged

President and Treasurer, respectively of Kamanga Muslim-Christian Fishermen's Cooperative ("Cooperative"), did then and there willfully, unlawfully and feloniously falsify or cause to be falsified Disbursement Voucher No. 401-200209-148 dated 20 September 2002 and its supporting documents, by making it appear that financial assistance in the amount of Three Hundred and Fifty Thousand Pesos (₱350,000.00) had been requested by the Cooperative, with CESAR MATAS CAGANG, despite knowledge that the amount of ₱350,000.00 is to be sourced out from SARO No. D-98000987, still certifying that cash is available for financial assistance when Countrywide Development Funds could not be disbursed for financial aids and assistance pursuant to DBM Circular No. 444, and MARIA DEPOSO CAMANAY certifying as to the completeness and propriety of the supporting documents despite non-compliance with Commission on Audit Circular No. 96-003 prescribing the requirements for disbursements of financial assistance and aids, thus facilitating the issuance of Development Bank of the Philippines Check No. 282398 dated 20 September 2002 in the amount of ₱350,000.00 and in the name of HADJI MONER MANGELEN, the alleged Treasurer of the Cooperative, when in truth and in fact, neither was there a request for financial assistance received by the said Cooperative after the check was encashed, as herein accused, conspiring and confederating with each other, did then and there malverse, embezzle, misappropriate and convert to their own personal use and benefit the said amount of ₱350,000.00 thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.[33]

The cases were docketed as Criminal Case Nos. SB-11-0456 and SB-11-0457.

Cagang filed a Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest while Macagcalat and Mangalen separately filed their own Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest. Cagang argued that there was an inordinate delay of seven (7) years in the filing of the Informations. Citing *Tatad v. Sandiganbayan*[34] and *Roque*

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[33] *Rollo* (G.R. Nos. 210141-42), pp. 35-42.

[34] 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

*v. Ombudsman*,[35] he argued that the delay violated his constitutional rights to due process and to speedy disposition of cases.[36] The Office of the Ombudsman, on the other hand, filed a Comment/Opposition arguing that the accused have not yet submitted themselves to the jurisdiction of the court and that there was no showing that delay in the filing was intentional, capricious, whimsical, or motivated by personal reasons.[37]

On September 10, 2012, the Sandiganbayan issued a Resolution[38] denying the Motions to Quash/Dismiss. It found that Cagang, Macagcalat, and Mangalen voluntarily submitted to the jurisdiction of the court by the filing of the motions.[39] It also found that there was no inordinate delay in the issuance of the information, considering that 40 different individuals were involved with direct participation in more or less 81 different transactions.[40] It likewise found *Tatad* and *Roque* inapplicable since the filing of the Informations was not politically motivated.[41] It pointed out that the accused did not invoke their right to speedy disposition of cases before the Office of the Ombudsman but only did so after the filing of the Informations.[42]

Cagang filed a Motion for Reconsideration[43] but it was denied in a Resolution[44] dated January 15, 2013. Hence, Cagang filed

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[35] 366 Phil. 368 (1999) [Per *J*. Panganiban, Third Division].

[36] *Rollo* (G.R. Nos. 206438 & 206458), p. 84.

[37] *Id*. at 85-86.

[38] *Id*. at 83-108. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado (Chair) and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.

[39] *Rollo* (G.R. Nos. 206438 & 206458), pp. 91-92.

[40] *Id*. at 103-104.

[41] *Id*. at 94-95.

[42] *Id*. at 104.

[43] *Id.* at 109-139.

[44] *Id*. at 71-81. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado (Chair) and Alexander G. Gesmundo of the Fifth Division Sandiganbayan.

a Petition for Certiorari[45] with this Court, docketed as G.R. Nos. 206438 and 206458.[46]

In an Urgent Motion to Quash Order of Arrest[47] dated June 13, 2013 filed before the Sandiganbayan, Cagang alleged that an Order of Arrest was issued against him.[48] He moved for the quashal of the Order on the ground that he had a pending Petition for Certiorari before this Court.[49]

In an Order[50] dated June 28, 2013, the Sandiganbayan denied the Urgent Motion to Quash Order of Arrest on the ground that it failed to comply with the three (3)-day notice rule and that no temporary restraining order was issued by this Court.

Cagang filed a Motion for Reconsideration[51] but it was denied by the Sandiganbayan in a Resolution[52] dated September 10, 2013. Hence, he filed a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction,[53] essentially seeking to restrain the implementation of the Order of Arrest against him. This Petition was docketed as G.R. Nos. 210141-42.

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[45] *Id*. at 4-69.

[46] The Sandiganbayan, the Office of the Ombudsman, and the People were ordered to comment on the petition. (*Rollo* [G.R. Nos. 206438 & 206458], p. 1036).

[47] *Rollo* (G.R. Nos. 210141-42), pp. 43-47.

[48] A copy of the Order of Arrest is not attached to the *rollo*.

[49] *Rollo* (G.R. Nos. 210141-42), pp. 44-45.

[50] *Id*. at 23. The Order was penned by Associate Justices Alexander G. Gesmundo (Acting Chair), Alex L. Quirol, and Oscar C. Herrera, Jr. of the Fifth Division of the Sandiganbayan.

[51] *Id.* at 29-34.

[52] *Id*. at 26-27. The Resolution was penned by Associate Justices Roland B. Jurado (Chair), Alexander G. Gesmundo, and Amparo M. Cabotaje-Tang of the Fifth Division of the Sandiganbayan.

[53] *Id*. at 4-21.

On February 5, 2014, this Court issued a Temporary Restraining Order[54] in G.R. Nos. 210141-42 enjoining the Sandiganbayan from continuing with the proceedings of the case and from implementing the warrant of arrest against Cagang. This Court likewise consolidated G.R. Nos. 206438 and 206458 with G.R. Nos. 210141-42.[55] The Office of the Special Prosecutor submitted its separate Comments[56] to the Petitions on behalf of the People of the Philippines and the Office of the Ombudsman.[57]

Petitioner argues that the Sandiganbayan committed grave abuse of discretion when it dismissed his Motion to Quash/ Dismiss since the Informations filed against him violated his constitutional rights to due process and to speedy disposition of cases. Citing *Tatad v. Sandiganbayan*,[58] he argues that the Office of the Ombudsman lost its jurisdiction to file the cases in view of its inordinate delay in terminating the preliminary investigation almost seven (7) years after the filing of the complaint.[59]

Petitioner further avers that the dismissal of cases due to inordinate delay is not because the revival of the cases was politically motivated, as in *Tatad*, but because it violates Article III, Section 16 of the Constitution[60] and Rule 112, Section 3(f)[61]

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[54] *Id*. at 112-113.

[55] *Id*. at 111.

[56] *Rollo* (G.R. Nos. 206438 & 206458) pp. 1062-1074, and *Rollo* (G.R. Nos. 210141-42), pp. 117-129.

[57] Petitioner filed his Reply in G.R. Nos. 206438 & 206458 (*Rollo*, pp. 1522-1526) and filed a Compliance with Motion to Adopt Reply dated 11 September 2015 in G.R. Nos. 210141-42 (*Rollo*, pp. 482-487).

[58] 242 Phil. 563 (1988) [Per *J*. Yap, *En Banc*].

[59] *Rollo* (G.R. Nos. 206438 & 206458), p. 30.

[60] CONST, Art. III, Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[61] RULES OF COURT, Rule 112, Sec. 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

of the Rules of Court.[62] He points out that the Sandiganbayan overlooked two (2) instances of delay by the Office of the Ombudsman: the first was from the filing of the complaint on February 10, 2003 to the filing of the Informations on November 17, 2011, and the second was from the conclusion of the preliminary investigation in 2005 to the filing of the Informations on November 17, 2011.[63]

Petitioner asserts that the alleged anomalous transactions in this case were already thoroughly investigated by the Commission on Audit in its Audit Report; thus, the Office of the Ombudsman should not have taken more than seven (7) years to study the evidence needed to establish probable cause.[64] He contends that "[w]hen the Constitution enjoins the Office of the Ombudsman to 'act promptly' on any complaint against any public officer or employee, it has the concomitant duty to speedily resolve the same."[65]

Petitioner likewise emphasizes that the Sandiganbayan should have granted his Motion to Quash Order of Arrest since there was a pending Petition before this Court questioning the issuance of the Informations against him. He argues that the case would become moot if the Order of Arrest is not quashed.[66]

The Office of the Special Prosecutor, on the other hand, alleges that petitioner, along with his co-accused Camanay, Zoleta, Macagcalat, and Magalen have remained at large and cannot be located by the police, and that they have not yet surrendered or been arrested.[67] It argues that the parameters necessary to

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(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

[62] *Rollo* (G.R. Nos. 206438 & 206458), pp. 42-55.

[63] *Id*. at 51.

[64] *Id*. at 56.

[65] *Id*. at 60.

[66] *Rollo* (G.R. Nos. 210141-42), pp. 13-14.

[67] *Rollo* (G.R. Nos. 206438 & 206458), p. 1062.

determine whether there was inordinate delay have been repeatedly explained by the Sandiganbayan in the assailed Resolutions. It likewise points out that petitioner should have invoked his right to speedy disposition of cases when the case was still pending before the Office of the Ombudsman, not when the Information was already filed with the Sandiganbayan. It argues further that *Tatad* was inapplicable since there were peculiar circumstances which prompted this Court to dismiss the information due to inordinate delay.[68]

The Office of the Special Prosecutor argues that the Sandiganbayan already made a judicial determination of the existence of probable cause pursuant to its duty under Rule 112, Section 5 of the Rules of Court.[69] It points out that a petition for certiorari is not the proper remedy to question the denial of a motion to quash and that the appropriate remedy should be to proceed to trial.[70]

Procedurally, the issues before this Court are whether or not the pendency of a petition for certiorari with this Court suspends the proceedings before the Sandiganbayan, and whether or not the denial of a motion to quash may be the subject of a petition for certiorari. This Court is also tasked to resolve the sole substantive issue of whether or not the Sandiganbayan committed grave abuse of discretion in denying petitioner Cesar Matas Cagang's Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest and Urgent Motion to Quash Order of Arrest on the ground of inordinate delay.

**I**

To give full resolution to this case, this Court must first briefly pass upon the procedural issues raised by the parties.

Contrary to petitioner's arguments, the pendency of a petition for certiorari before this Court will not prevent the Sandiganbayan

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[68] *Id.* at 1069-1072.

[69] *Rollo* (G.R. Nos. 210141-42), p. 125.

[70] *Id*. at 127.

from proceeding to trial absent the issuance of a temporary restraining order or writ of preliminary injunction. Under Rule 65, Section 7[71] of the Rules of Court:

> Section 7. Expediting proceedings; injunctive relief. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

Since this Court did not issue injunctive relief when the Petition in G.R. Nos. 206438 and 206458 was filed, the Sandiganbayan cannot be faulted from proceeding with trial. It was only upon the filing of the Petition in G.R. Nos. 210141-42 that this Court issued a Temporary Restraining Order to enjoin the proceedings before the Sandiganbayan.

As a general rule, the denial of a motion to quash is not appealable as it is merely interlocutory. Likewise, it cannot be the subject of a petition for certiorari. The denial of the motion to quash can still be raised in the appeal of a judgment of conviction. The adequate, plain, and speedy remedy is to proceed to trial and to determine the guilt or innocence of the accused. Thus, in *Galzote v. Briones*:[72]

> …In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction

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[71] As amended by A.M. No. 07-7-12-SC (2007).

[72] 673 Phil. 165 (2011) [Per *J.* Brion, Second Division].

is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.

In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash via a special civil action for certiorari under Rule 65 of the Rules of Court.

As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for certiorari which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above.[73]

Ordinarily, the denial of a motion to quash simply signals the commencement of the process leading to trial. The denial of a motion to quash, therefore, is not necessarily prejudicial to the accused. During trial, and after arraignment, prosecution proceeds with the presentation of its evidence for the examination of the accused and the reception by the court. Thus, in a way, the accused is then immediately given the opportunity to meet the changes on the merits. Therefore, if the case is intrinsically without any grounds, the acquittal of the accused and all his suffering due to the charges can be most speedily acquired.

The rules and jurisprudence, thus, balance procedural niceties and the immediate procurement of substantive justice. In our general interpretation, therefore, the accused is normally invited to meet the prosecution's evidence squarely during trial rather than skirmish on procedural points.

A party may, however, question the denial in a petition for certiorari if the party can establish that the denial was tainted with grave abuse of discretion:

[A] direct resort to a special civil action for certiorari is an exception rather than the general rule, and is a recourse that must be firmly

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[73] *Id.* at 172 citing *Santos v. People*, 585 Phil. 337 (2008) [Per *J*. Chico-Nazario, Third Division].

grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial justice;" the promotion of public welfare and public policy; cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof;" or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for certiorari.

In grave abuse of discretion cases, certiorari is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.[74]

Petitioner alleges that the Sandiganbayan committed grave abuse of discretion when it denied his Motion to Quash/Dismiss, insisting that the denial transgressed upon his constitutional rights to due process and to speedy disposition of cases. A petition for certiorari under Rule 65 is consistent with this theory.

**II**

The Constitution guarantees the right to speedy disposition of cases. Under Article III, Section 16:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The right to speedy disposition of cases should not be confused with the right to a speedy trial, a right guaranteed under Article III, Section 14(2) of the Constitution:

Section 14.

. . . . . .

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be

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[74] *Id.* at 172-173 *citing Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009) [Per *J.* Velasco, *En Banc*].

heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

The right to a speedy trial is invoked against the courts in a criminal prosecution. The right to speedy disposition of cases, however, is invoked even against quasi-judicial or administrative bodies in civil, criminal, or administrative cases before them. As *Abadia v. Court of Appeals*[75] noted:

The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights. Moreover, Section 16, Article III of the Constitution extends the right to a speedy disposition of cases to cases "before all judicial, quasi-judicial and administrative bodies." This protection extends to all citizens, including those in the military and covers the periods before, during and after the trial, affording broader protection than Section 14(2) which guarantees merely the right to a speedy trial.[76]

Both rights, nonetheless, have the same rationale: to prevent delay in the administration of justice. In *Corpuz v. Sandiganbayan*:[77]

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not

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[75] 306 Phil. 690 (1994) [Per *J*. Kapunan, *En Banc*].

[76] *Id*. at 698-699.

[77] 484 Phil. 899 (2004) [Per *J*. Callejo, Sr., Second Division].

susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[78]

While the right to speedy trial is invoked against courts of law, the right to speedy disposition of cases may be invoked before quasi-judicial or administrative tribunals in proceedings that are adversarial and may result in possible criminal liability. The right to speedy disposition of cases is most commonly invoked in fact-finding investigations and preliminary investigations by the Office of the Ombudsman since neither of these proceedings form part of the actual criminal prosecution. The Constitution itself mandates the Office of the Ombudsman to "act promptly" on complaints filed before it:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.[79]

As if to underscore the importance of its mandate, this constitutional command is repeated in Republic Act No. 6770,[80] which provides:

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[78] *Id*. at 917 citing *State v. Frith*, 194 So. 1 (1940); *Smith v. United States*, 3 L.Ed.2d 1041 (1959); *Barker v. Wingo*, 33 L.Ed.2d 101 (1972); and *McCandles v. District Court*, 61 N.W.2d. 674 (1954).

[79] CONST., Art. XI, Sec. 12.

[80] The Ombudsman Act of 1989.

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Neither the Constitution nor Republic Act No. 6770 provide for a specific period within which to measure promptness. Neither do they provide for criteria within which to determine what could already be considered as delay in the disposition of complaints. Thus, judicial interpretation became necessary to determine what could be considered "prompt" and what length of time could amount to unreasonable or "inordinate delay."

The concept of inordinate delay was introduced in *Tatad v. Sandiganbayan*,[81] where this Court was constrained to apply the "radical relief" of dismissing the criminal complaint against an accused due to the delay in the termination of the preliminary investigation.

In *Tatad*, a report was submitted to the Legal Panel, Presidential Security Command sometime in October 1974, charging Francisco S. Tatad (Tatad) with graft and corruption during his stint as Minister of Public Information. In October 1979, Tatad submitted his resignation. It was only on December 29, 1979 that a criminal complaint was filed against him. Then President Ferdinand Marcos accepted his resignation on January 26, 1980. On April 1, 1980, the Tanodbayan[82] referred the complaint to the Criminal Investigation Service, Presidential Security Command for fact-finding. On June 16, 1980, the Investigation Report was submitted finding Tatad liable for violation of Republic Act No. 3019.

Tatad moved for the dismissal of the case but this was denied on July 26, 1982. His motion for reconsideration was denied

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[81] 242 Phil. 563 (1988) [Per *J*. Yap, *En Banc*].

[82] The Tanodbayan is now the Ombudsman. *See* CONST., Art. XI, Sec. 5 & The Ombudsman Act of 1989.

on October 5, 1982. Affidavits and counter-affidavits were submitted on October 25, 1982. On July 5, 1985, the Tanodbayan issued a resolution approving the filing of informations against Tatad. Tatad filed a motion to quash on July 22, 1985. The motion to quash was denied by the Sandiganbayan on August 9, 1985. The Sandiganbayan, however, ordered the filing of an amended information to change the date of the alleged commission of the offense. In compliance, the Tanodbayan submitted its amended information on August 10, 1985. Tatad filed a motion for reconsideration but it was denied by the Sandiganbayan on September 17, 1985. Hence, he filed a Petition for Certiorari and Prohibition with this Court, questioning the filing of the cases with the Sandiganbayan.

On April 10, 1986, this Court required the parties to move in the premises considering the change in administration brought about by the EDSA Revolution and the overthrow of the Marcos regime. On June 20, 1986, the new Tanodbayan manifested that as the charges were not political in nature, the State would still pursue the charges against Tatad.

In resolving the issue of whether Tatad's constitutional rights to due process and to speedy disposition of cases were violated, this Court took note that the finding of inordinate delay applies in a case-to-case basis:

> In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.[83]

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[83] 242 Phil. 563, 573 (1988) [Per *J.* Yap, *En Banc*] *citing Salonga vs. Cruz Paño,* 219 Phil. 402 (1985) [Per *J.* Gutierrez, *En Banc*]; *Mead vs. Argel*, 200 Phil. 650 (1982) [Per *J.* Vasquez, First Division]; *Yap vs. Lutero*, 105 Phil. 3007; and *People vs. Zulueta*, 89 Phil. 752 (1951) [Per *J.* Bengzon, First Division].

This Court found that there were peculiar circumstances which attended the preliminary investigation of the complaint, the most blatant of which was that the 1974 report against Tatad was only acted upon by the Tanodbayan when Tatad had a falling out with President Marcos in 1979:

> A painstaking review of the facts cannot but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.
>
> We find such blatant departure from the established procedure as a dubious, but revealing attempt to involve an office directly under the President in the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may the public's perception of the impartiality of the prosecutor be enhanced.[84]

Thus, the delay of three (3) years in the termination of the preliminary investigation was found to have been inordinate delay, which was violative of petitioner's constitutional rights:

> We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally

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[84] *Id*. at 574-575.

guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutionally guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[85]

Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate. The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*,[86] this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction:

Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the

[85] *Id*. at 575-576.

[86] 335 Phil. 766 (1997) [Per *J.* Melo, Third Division].

Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[87]

As in *Angchangco*, this Court has applied the *Tatad* doctrine in *Duterte v. Sandiganbayan*,[88] *Roque v. Ombudsman*,[89] *Cervantes v. Sandiganbayan*,[90] *Lopez, Jr. v. Ombudsman*,[91] *Licaros v. Sandiganbayan*,[92] *People v. SPO4 Anonas*,[93] *Enriquez v. Ombudsman*,[94] *People v. Sandiganbayan, First Division*,[95] *Inocentes v. People*,[96] *Almeda v. Ombudsman*,[97] *People v. Sandiganbayan, Fifth Division*,[98] *Torres v. Sandiganbayan*,[99] and *Remulla v. Sandiganbayan*.[100]

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[87] *Id*. at 772.

[88] 352 Phil. 557 (1998) [Per *J*. Kapunan, Third Division].

[89] 366 Phil. 368 (1999) [Per *J*. Panganiban, Third Division].

[90] 366 Phil. 602 (1999) [Per *J*. Pardo, First Division].

[91] 417 Phil. 39 (2001) [Per *J*. Gonzaga-Reyes, Third Division].

[92] 421 Phil. 1075 (2001) [Per *J*. Panganiban, *En Banc*].

[93] 542 Phil. 539 (2007) [Per *J*. Sandoval-Gutierrez, First Division].

[94] 569 Phil. 309 (2008) [Per *J*. Sandoval-Gutierrez, First Division].

[95] 723 Phil. 444 (2013) [Per *J*. Bersamin, First Division].

[96] G.R. Nos. 205963-64, July 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/205963-64.pdf> [Per *J*. Brion, Second Division].

[97] G.R. No. 204267, July 25, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/204267.pdf> [Per *J*. Del Castillo, Second Division].

[98] G.R. Nos. 199151-56, July 25, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/199151-56.pdf> [Per *J*. Peralta, Third Division].

[99] G.R. Nos. 221562-69, October 5, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/221562-69.pdf> [Per *J*. Velasco, Jr., Third Division].

This Court, however, emphasized that "[a] mere mathematical reckoning of the time involved is not sufficient"[101] to rule that there was inordinate delay. Thus, it qualified the application of the *Tatad* doctrine in cases where certain circumstances do not merit the application of the "radical relief" sought.

Despite the promulgation of *Tatad*, however, this Court struggled to apply a standard test within which to determine the presence of inordinate delay. *Martin v. Ver*,[102] decided in 1983, attempted to introduce in this jurisdiction the "balancing test" in the American case of *Barker v. Wingo*, thus:

> [T]he right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived ...
>
> [A] claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, in determining whether defendant's right to a speedy trial has been denied . . .[103]

The *Barker* balancing test provides that courts must consider the following factors when determining the existence of inordinate delay: *first*, the length of delay; *second*, the reason for delay; *third*, the defendant's assertion or non-assertion of his or her right; and *fourth*, the prejudice to the defendant as a result of the delay.

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[100] G.R. No. 218040, April 17, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/218040.pdf> [Per *J.* Mendoza, Second Division.

[101] *Licaros v. Sandiganbayan*, 421 Phil. 1075, 1093 (2001) [Per *J.* Panganiban, *En Banc*] citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per *C.J.* Davide, Jr., *En Banc*].

[102] 208 Phil. 658 (1983) [Per *J.* Plana, *En Banc*].

[103] *Id.* at 664 *citing Barker v. Wingo*, 407 U.S. 514 (1972).

For a period of time, this balancing test appeared to be the best way to determine the existence of inordinate delay. Thus, this Court applied both the *Tatad* doctrine and the *Barker* balancing test in the 1991 case of *Gonzales v. Sandiganbayan*:[104]

> It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.[105]

The combination of both *Tatad* and the balancing test was so effective that it was again applied in *Alvizo v. Sandiganbayan*,[106] where this Court took note that:

> [D]elays per se are understandably attendant to all prosecutions and are constitutionally permissible, with the monition that the attendant delay must not be oppressive. Withal, it must not be lost sight of that the concept of speedy disposition of cases is a relative term and must necessarily be a flexible concept. Hence, the doctrinal rule is that in the determination of whether or not that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.[107]

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[104] 276 Phil. 323 (1991) [Per *J*. Regalado, *En Banc*].

[105] Id. at 333-334 *citing* CONST., Art. III, Sec. 16; CONST., Art. III, Sec. 14(2); *Kalaw vs. Apostol*, *et al*., 64 Phil. 852 (1937) [Per *J*. Imperial, First Division]; *Que, et al. vs. Cosico, et al.*, 258 Phil. 211 (1989) [Per *J*. Gutierrez, Jr., Third Division]; *Andres, et al. vs. Cacdac, Jr., et al*., 198 Phil. 600 (1981) [Per *J*. Concepcion, Jr., Second Division]; and *Martin vs. Ver, et al*., 208 Phil. 658 (1983) [Per *J*. Plana, *En Banc*].

[106] 292-A Phil. 144 (1993) [Per *J*. Regalado, *En Banc*].

[107] *Id*. at 155 *citing Pollard vs. United States*, 352 U.S. 354 (1957); I BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 421 (1st ed); and *Barker vs. Wingo*, 407 U.S. 514 (1972).

Determining the length of delay necessarily involves a query on when a case is deemed to have commenced. In *Dansal v. Fernandez*,[108] this Court recognized that the right to speedy disposition of cases does not only include the period from which a case is submitted for resolution. Rather, it covers the entire period of investigation even before trial. Thus, the right may be invoked as early as the preliminary investigation or inquest.

In criminal prosecutions, the investigating prosecutor is given a specific period within which to resolve the preliminary investigation under Rule 112, Section 3 of the Rules of Court.[109] Courts are likewise mandated to resolve cases within a specific time frame. Article VIII, Section 15 of the Constitution provides:

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[108] 383 Phil. 897 (2000) [Per J. Purisima, Third Division].

[109] RULES OF COURT, Rule 110, Sec. 3 provides:

Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents

Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pending, brief, or memorandum required by the Rules of Court or by the court itself.

(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

Under Republic Act No. 8493, or The Speedy Trial Act of 1998, the entire trial period must not exceed 180 days, except

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relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

as otherwise provided for by this Court.[110] The law likewise provides for a time limit of 30 days from the filing of the information to conduct the arraignment, and 30 days after arraignment for trial to commence.[111] In order to implement the law, this Court issued Supreme Court Circular No. 38-98[112] reiterating the periods for the conduct of trial. It also provided for an extended time limit from arraignment to the conduct of trial:

> Section 7. *Extended Time Limit*. — Notwithstanding the provisions of the preceding Sections 2 and 6 for the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit shall be eighty (80) days.

The Circular likewise provides for certain types of delay which may be excluded in the running of the periods:

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[110] Rep. Act No. 8493, Sec. 5 provides:

> Section 5. *Time Limit for Trial*. – In criminal cases involving persons charged of a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of One thousand pesos (₱1,000.00) or both, irrespective of other imposable penalties, the justice or judge shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Sec. 3, Rule 22 of the Rules of Court.

[111] Rep. Act No. 8493, Sec. 7 provides:

> Section 7. *Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial*. – The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.

[112] Implementing the Provisions of Republic Act No. 8493 (1998).

Section 9. *Exclusions*. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) delay resulting from an examination of the physical and mental condition of the accused;
(2) delay resulting from proceedings with respect to other criminal charges against the accused;
(3) delay resulting from extraordinary remedies against interlocutory orders;
(4) delay resulting from pre-trial proceedings: Provided, that the delay does not exceed thirty (30) days;
(5) delay resulting from orders of inhibition or proceedings relating to change of venue of cases or transfer from other courts;
(6) delay resulting from a finding of the existence of a valid prejudicial question; and
(7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. An essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court motu proprio or on motion of either the accused or his counsel or the prosecution, if the court granted such continuance on the basis of his findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

These provisions have since been incorporated in Rule 119, Sections 1,[113] 2,[114] 3,[115] and 6[116] of the Rules of Court.

Several laws have also been enacted providing the time periods for disposition of cases.

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[113] RULES OF COURT, Rule 119, Sec. 1. Time to prepare for trial. — After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order.

[114] RULES OF COURT, Rule 119, Sec. 2 provides: Section 2. Continuous trial until terminated; postponements. — Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

[115] Rules of Court, Rule 119, Sec. 3 provides:
Section 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:
(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:
(1) Delay resulting from an examination of the physical and mental condition of the accused;
(2) Delay resulting from proceedings with respect to other criminal charges against the accused;
(3) Delay resulting from extraordinary remedies against interlocutory orders;
(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

In Republic Act No. 6975, as amended by Republic Act No. 8551, resolution of complaints against members of the Philippine National Police must be done within ninety (90) days from the arraignment of the accused:

Section 55. Section 47 of Republic Act No. 6975 is hereby amended to read as follows:

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(6) Delay resulting from a finding of the existence of a prejudicial question; and

(7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time has not run and no motion for searate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[116] RULES OF COURT, Rule 119, Sec. 6 provides:

Section 6. Extended time limit. — Notwithstanding the provisions of Section 1(g), Rule 116 and the preceding Section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days.

"Section 47. Preventive Suspension Pending Criminal Case. — Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office for a period not exceeding ninety (90) days from arraignment: provided, however, that if it can be shown by evidence that the accused is harassing the complainant and/or witnesses, the court may order the preventive suspension of the accused PNP member even if the charge is punishable by a penalty lower than six (6) years and one (1) day: provided, further, that the preventive suspension shall not be more than ninety (90) days except if the delay in the disposition of the case is due to the fault, negligence or petitions of the respondent: provided, finally, that such preventive suspension may be sooner lifted by the court in the exigency of the service upon recommendation of the chief, PNP. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused."

Republic Act No. 9165,[117] Section 90 provides that trial for drug-related offenses should be finished not later than 60 days from the filing of the information:

Section 90. Jurisdiction. —

. . . . . .

Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

Republic Act No. 9372,[118] Section 48 mandates continuous trial on a daily basis for cases of terrorism or conspiracy to commit terrorism:

Section 48. Continuous Trial. — In cases of terrorism or conspiracy to commit terrorism, the judge shall set the continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial.

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[117] The Comprehensive Dangerous Drugs Act of 2002.

[118] The Human Security Act of 2007.

Republic Act No. 9516[119] amends Presidential Decree No. 1866[120] to provide for continuous trial for cases involving illegal or unlawful possession, manufacture, dealing, acquisition, and disposition of firearms, ammunitions, and explosives:

> Section 4-B. Continuous Trial. — In cases involving violations of this Decree, the judge shall set the case for continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial. Such case shall be terminated within ninety (90) days from arraignment of the accused.

Implementing rules and regulations have also provided for the speedy disposition of cases. The Implementing Rules and Regulations on the Reporting and Investigation of Child Abuse Cases[121] provide that trial shall commence within three (3) days from arraignment:

> Section 21. *Speedy Trial of Child Abuse Cases*. — The trial of child abuse cases shall take precedence over all other cases before the courts, except election and habeas corpus cases. The trial in said cases shall commence within three (3) days from the date the accused is arraigned and no postponement of the initial hearing shall be granted except on account of the illness of the accused or other grounds beyond his control.

The Revised Rules and Regulations Implementing Republic Act No. 9208,[122] as amended by Republic Act No. 10364,[123] mandates the speedy disposition of trafficking cases:

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[119] An Act Further Amending the Provisions of Presidential Decree No. 1866, as Amended (2007).

[120] Entitled Codifying the Law on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Other Relevant Purposes (1983).

[121] IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 7610 (1992).

[122] The Anti-Trafficking in Persons Act of 2003.

[123] The Expanded Anti-Trafficking in Persons Act of 2012.

Section 76. *Speedy Disposition of [Trafficking in Persons] Cases*. —Where practicable and unless special circumstance require; otherwise, cases involving violation of R.A. No. 9208 shall be heard contiguously: with hearing dates spaced not more than two weeks apart. Unnecessary delay should be avoided, strictly taking into consideration the Speedy Trial Act and SC Circular No. 38-98 dated 11 August 1998.

Laws and their implementing rules and regulations, however, do not generally bind courts unless this Court adopts them in procedural rules.[124] In any case, this Court has already made several issuances setting periods for the conduct of trial.

Rule 17, Section 1 of the Rules of Procedure in Environmental Cases[125] provide that trial must not exceed three (3) months from the issuance of the pre-trial order:

Section 1. Continuous trial. — The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.

Rule 14, Section 2 of the Rules of Procedure for Intellectual Property Rights Cases[126] limits the period of presenting evidence to 60 days per party:

Section 2. Conduct of trial. — The court shall conduct hearings expeditiously so as to ensure speedy trial. Each party shall have a maximum period of sixty (60) days to present his evidence-in-chief on the trial dates agreed upon during the pre-trial.

Supreme Court Administrative Order No. 25-2007[127] provides that trial in cases involving the killings of political activists and members of the media must be conducted within 60 days from its commencement:

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[124] *See* CONST., Art. VIII, Sec.5 (5) on this Court's power to promulgate rules of practice and procedure.

[125] A.M. No. 09-6-8-SC (2010).

[126] A.M. No. 10-3-10-SC (2011).

[127] Re: Designation of Courts to Hear, Try, and Decide Cases Involving Killings of Political Activists and Members of the Media (2007).

The cases referred to herein shall undergo mandatory continuous trial and shall be terminated within sixty (60) days from commencement of trial. Judgment thereon shall be rendered within thirty (30) days from submission for decision unless a shorter period is provided by law or otherwise directed by this Court.

The Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial[128] provide for strict time limits that must be observed:

Section 8. Observance of time limits. — It shall be the duty of the trial court, the public or private prosecutor, and the defense counsel to ensure, subject to the excluded delays specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998, compliance with the following time limits in the prosecution of the case against a detained accused:

(a) The case of the accused shall be raffled and referred to the trial court to which it is assigned within three days from the filing of the information;

(b) The court shall arraign the accused within ten (10) days from the date of the raffle;

(c) The court shall hold the pre-trial conference within thirty (30) days after arraignment or within ten (10) days if the accused is under preventive detention; provided, however, that where the direct testimonies of the witnesses are to be presented through judicial affidavits, the court shall give the prosecution not more than twenty (20) days from arraignment within which to prepare and submit their judicial affidavits in time for the pre-trial conference;

(d) After the pre-trial conference, the court shall set the trial of the case in the pre-trial order not later than thirty (30) days from the termination of the pre-trial conference; and

(e) The court shall terminate the regular trial within one hundred eighty (180) days, or the trial by judicial affidavits within sixty (60) days, reckoned from the date trial begins, minus the excluded delays or postponements specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998.

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[128] A.M. No. 12-11-2-SC (2014).

A dilemma arises as to whether the period includes proceedings in quasi-judicial agencies before a formal complaint is actually filed. The Office of the Ombudsman, for example, has no set periods within which to conduct its fact-finding investigations. They are only mandated to act promptly. Thus, in *People v. Sandiganbayan, Fifth Division*,[129] this Court stated that a fact-finding investigation conducted by the Office of the Ombudsman should not be deemed separate from preliminary investigation for the purposes of determining whether there was a violation of the right to speedy disposition of cases:

> The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
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> The argument cannot pass fair scrutiny.
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> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. *Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated*.[130] (Emphasis supplied)

*People v. Sandiganbayan, Fifth Division*[131] must be re-examined.

When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman

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[129] 723 Phil. 444 (2013) [Per *J.* Bersamin, First Division].

[130] *Id*. at 493.

[131] 723 Phil. 444 (2013) [Per *J.* Bersamin, First Division].

will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*,[132] the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.

With respect to fact-finding at the level of the Ombudsman, the Ombudsman must provide for reasonable periods based upon its experience with specific types of cases, compounded with the number of accused and the complexity of the evidence required. He or she must likewise make clear when cases are deemed submitted for decision. The Ombudsman has the power to provide for these rules and it is recommended that he or she amend these rules at the soonest possible time.

These time limits must be strictly complied with. If it has been alleged that there was delay within the stated time periods, the burden of proof is on the defense to show that there has been a violation of their right to speedy trial or their right to speedy disposition of cases. The defense must be able to prove *first*, that the case took much longer than was reasonably necessary to resolve, and *second*, that efforts were exerted to protect their constitutional rights.[133]

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[132] 723 Phil. 444 (2013) [Per *J.* Bersamin, First Division].

[133] *See R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.

What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning."[134] It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision.[135] Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.

The complexity of the issues presented by the case must be considered in determining whether the period necessary for its resolution is reasonable. In *Mendoza-Ong v. Sandiganbayan*[136] this Court found that "the long delay in resolving the preliminary investigation could not be justified on the basis of the records."[137] In *Binay v. Sandiganbayan*,[138] this Court considered "the complexity of the cases (not run-of-the-mill variety) and the conduct of the parties' lawyers"[139] to determine whether the delay is justifiable. When the case is simple and the evidence is straightforward, it is possible that delay may occur even within the given periods. Defense, however, still has the burden to prove that the case could have been resolved even before the lapse of the period before the delay could be considered inordinate.

The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights. In *Alvizo v. Sandiganbayan,*[140] the failure of the accused to timely invoke

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[134] *Licaros v. Sandiganbayan*, 421 Phil. 1075, 1093 (2001) [Per *J.* Panganiban, *En Banc*] citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per *C.J.* Davide, Jr., *En Banc*].

[135] See *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.

[136] 483 Phil. 451 (2004) [Per *J.* Quisumbing, Special Second Division].

[137] *Id.* at 457.

[138] 374 Phil. 413 (1999) [Per *J.* Kapunan, *En Banc*].

[139] *Id.* at 448 *citing Cadalin vs. POEA's Administrator*, 308 Phil. 728 (1994) [Per *J.* Quiason, First Division].

[140] 292-A Phil. 144 (1993) [Per *J.* Regalado, *En Banc*].

the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay:

> Petitioner was definitely not unaware of the projected criminal prosecution posed against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.[141]

In *Dela Peña v. Sandiganbayan*,[142] this Court equated this acquiescence as one that could amount to laches, which results in the waiver of their rights:

> [I]t is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right — a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence."[143]

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[141] *Id.* at 155-156.

[142] 412 Phil. 921 (2001) [Per *C.J.* Davide, *En Banc*].

[143] *Id.* at 932 citing *Guerrero v. Court of Appeals*, 327 Phil. 496 (1996)

This concept of acquiescence, however, is premised on the presumption that the accused was fully aware that the preliminary investigation has not yet been terminated despite a considerable length of time. Thus, in *Duterte v. Sandiganbayan*,[144] this Court stated that *Alvizo* would not apply if the accused were unaware that the investigation was still ongoing:

> Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.[145]

Similarly, in *Coscolluela v. Sandiganbayan*:[146]

> Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether. . .
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> . . . . . .
>
> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable

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[Per *J*. Panganiban, Third Division] and *Alvizo v. Sandiganbayan*, 292-A Phil. 144 (1993) [Per *J*. Regalado, *En Banc*].

[144] 352 Phil. 557 (1998) [Per *J*. Kapunan, Third Division].

[145] *Id*. at 582-583.

[146] 714 Phil. 55 (2013) [Per *J*. Perlas-Bernabe, Second Division].

timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

> A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[147]

Justice Caguioa submits that this Court should depart from *Dela Peña*. He explains that the third factor of the *Barker* balancing test, i.e., waiver by the accused, was applied within the context of the Sixth Amendment[148] of the American Constitution in that it presupposes that the accused has already been subjected to criminal prosecution. He submits that as the right to speedy disposition of cases may be invoked even before criminal prosecution has commenced, waiver by the accused should be inapplicable.

The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has already become *prejudicial* to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

While the *Barker* balancing test has American roots, a catena of cases has already been decided by this Court, starting from *Tatad*, which have taken into account the Philippine experience.

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[147] *Id*. at 63-64 *citing Barker v. Wingo*, 407 U.S. 514 (1972).

[148] U.S. Const., Amendment 6 provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The reality is that institutional delay[149] a reality that the court must address. The prosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. The courts' dockets are congested. This Court has already launched programs to remedy this situation, such as the Judicial Affidavit Rule,[150] Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial,[151] and the Revised Guidelines for Continuous Trial.[152] These programs, however, are mere stepping stones. The complete eradication of institutional delay requires these sustained actions.

Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve individuals who have the resources and who engage private counsel with the means and resources to fully dedicate themselves to their client's case. More often than not, the accused only invoke the right to speedy disposition of cases when the Ombudsman has already rendered an unfavorable decision. The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.

For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense.[153] Certain unreasonable actions by the accused will be taken against them. This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

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[149] See *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631 for a full definition of the term.

[150] A.M. No. 12-8-8-SC (2012).

[151] A.M. No. 12-11-2-SC (2014).

[152] A.M. No. 15-06-10-SC (2017).

[153] See *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per *J.* Kapunan, First Division].

If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*. The prosecution will now have the burden to prove that there was no violation of the right to speedy trial or the right to speedy disposition of cases. *Gonzales v. Sandiganbayan*[154] states that "vexatious, capricious, and oppressive delays," "unjustified postponements of the trial," or "when without cause or justifiable motive a long period of time is allowed to elapse without the party having his [or her] case tried"[155] are instances that may be considered as violations of the right to speedy disposition of cases. The prosecution must be able to prove that it followed established procedure in prosecuting the case.[156] It must also prove that any delay incurred was justified, such as the complexity of the cases involved or the vast amount of evidence that must be presented.

The prosecution must likewise prove that no prejudice was suffered by the accused as a result of the delay. *Corpuz v. Sandiganbayan*[157] defined prejudice to the accused as:

> Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.[158]

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[154] 276 Phil. 323 (1991) [Per *J*. Regalado, *En Banc*].

[155] *Id*. at 333-334.

[156] See *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per *J*. Kapunan, First Division].

[157] 484 Phil. 899 (2004) [Per *J*. Callejo, Sr., Second Division].

[158] *Id*. at 918 *citing Barker v. Wingo*, 33 L.Ed.2d 101 (1972) and *United States v. Marion*, 30 L.Ed.2d 468 (1971).

In *Coscolluela v. Sandiganbayan*:[159]

> Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[160]

The consequences of delay, however, do not only affect the accused. The prosecution of the case will also be made difficult the longer the period of time passes. In *Corpuz v. Sandiganbayan*:[161]

> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in Williams v. United States, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.[162]

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[159] 714 Phil. 55 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[160] *Id.* at 66 citing *Mari v. Gonzales*, 673 Phil. 46 (2011) [Per *J.* Peralta, Third Division].

[161] 484 Phil. 899 (2004) [Per *J.* Callejo, Sr., Second Division].

[162] *Id.* at 918 *citing United States v. Hawk*, 88 L.Ed.2d 640 (1986); *State v. Frith*, 194 So. 1 (1940); and *Williams v. United States*, 250 F.2d. 19 (1957).

The consequences of the prosecution's failure to discharge this burden are severe. Rule 119, Section 9 of the Rules of Court requires that the case against the accused be dismissed if there has been a violation of the right to speedy trial:

> Section 9. Remedy where accused is not brought to trial within the time limit. — If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.
>
> Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section.

*Tatad*, as qualified by *Angchangco*, likewise mandates the dismissal of the case if there is a violation of the right to speedy disposition of cases. The immediate dismissal of cases is also warranted if it is proven that there was malicious prosecution, if the cases were politically motivated, or other similar instances. Once these circumstances have been proven, there is no need for the defense to discharge its burden to prove that the delay was inordinate.

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.

**III**

This Court proceeds to determine whether respondent committed inordinate delay in the resolution and termination of the preliminary investigation against petitioner.

There is no showing that this case was attended by malice. There is no evidence that it was politically motivated. Neither party alleges this fact. Thus, this Court must analyze the existence and cause of delay.

The criminal complaint against petitioner was filed on **February 10, 2003**. On **August 11, 2004**, the Office of the Ombudsman issued a Resolution finding probable cause against petitioner. This Resolution, however, was modified by the Resolution dated **October 18, 2004**, which ordered the conduct of further fact-finding investigation against some of the other respondents in the case. This further fact-finding was resolved by the Office of the Ombudsman on **April 12, 2005**. On **August 8, 2011**, or six (6) years after the recommendation to file informations against petitioner was approved by Tanodbayan Marcelo, Assistant Special Prosecutor II Pilarita T. Lapitan submitted the informations for Ombudsman Carpio Morales' review. Informations against petitioner were filed on **November 17, 2011**.

Six (6) years is beyond the reasonable period of fact-finding of ninety (90) days. The burden of proving the justification of the delay, therefore, is on the prosecution, or in this case, respondent.

Respondent alleged that the delay in the filing of the informations was justified since it was still determining whether accused Mary Ann Gadian (Gadian) could be utilized as a state witness and it still had to verify accused Felipe Constantino's death. The recommendation, however, to utilize Gadian as a state witness was approved by Tanodbayan Marcelo on **December 20, 2004**.[163] Felipe Constantino's death was verified by the Sandiganbayan in its **November 14, 2006** Order.[164] There is, thus, delay from November 14, 2006 to August 8, 2011.

This Court finds, however, that despite the pendency of the case since 2003, petitioner only invoked his right to speedy disposition of cases when the informations were filed on November 17, 2011. Unlike in *Duterte* and *Coscolluela*, petitioner was aware that the preliminary investigation was not yet terminated.

Admittedly, while there was delay, petitioner has not shown that he asserted his rights during this period, choosing instead to wait until the information was filed against him with the Sandiganbayan.

Furthermore, the case before the Sandiganbayan involves the alleged malversation of millions in public money. The Sandiganbayan has yet to determine the guilt or innocence of petitioner. In the Decision dated June 17, 2010 of the Sandiganbayan acquitting petitioner in Crim. Case No. 28331:

> We wish to iterate our observation gathered from the evidence on record that the subject transaction is highly suspect. There is a seeming acceptance of the use of questionable supporting documents to secure the release of public funds in the province, and the apparent undue haste in the processing and eventual withdrawal of such funds. However, obvious as the irregularities may be, which can only lead to distrust in the ability of public officials to safeguard public funds, we are limited to a review only of the evidence presented vis-à-vis the charges brought forth before this Court. Thus, We cannot make any pronouncement in regard to such seeming irregularities.[165]

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[163] *Rollo* (G.R. Nos. 210141-42), p. 433.

[164] *Id*.

[165] *Rollo* (G.R. Nos. 206438 & 206458), pp. 581-582.

The records of the case show that the transactions investigated are complex and numerous. As respondent points out, there were over a hundred individuals investigated, and eventually, 40 of them were determined to have been involved in 81 different anomalous transactions.[166] Even granting that the Commission on Audit's Audit Report exhaustively investigated each transaction, "the prosecution is not bound by the findings of the Commission on Audit; it must rely on its own independent judgment in the determination of probable cause."[167] Delays in the investigation and review would have been inevitable in the hands of a competent and independent Ombudsman.

The dismissal of the complaints, while favorable to petitioner, would undoubtedly be prejudicial to the State. "[T]he State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman."[168] The State is as much entitled to due process as the accused. In *People v. Leviste*:[169]

> [I]t must be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case — in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.[170]

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[166] *Rollo* (G.R. Nos. 210141-42), pp. 119-120.

[167] *Binay v. Sandiganbayan*, 374 Phil. 413, 450 (1999) [Per *J*. Kapunan, *En Banc*].

[168] *Jacob v. Sandiganbayan*, 649 Phil. 374, 392 (2010) [Per *J*. Leonardo-De Castro, First Division].

[169] 325 Phil. 525 (1996) [Per *J*. Panganiban, Third Division].

[170] *Id*. at 538.

This Court finds that there is no violation of the accused's right to speedy disposition of cases considering that there was a waiver of the delay of a complex case. Definitely, granting the present Petitions and finding grave abuse of discretion on the part of the Sandiganbayan will only prejudice the due process rights of the State.

**IV**

This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

*First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

*Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

*Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars,[171] and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay

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[171] *See* ponencia, pp. 24, 28-29 for stating current resolutions and circulars of this Court setting the periods for disposition.

occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

*Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

*Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory

or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

**WHEREFORE,** the Petitions are **DENIED**. The Temporary Restraining Order dated February 5, 2014 is **LIFTED**. The Sandiganbayan is **DIRECTED** to resolve Case No. SB-11-CRM-0456 and Case No. SB-11-CRM-0457 with due and deliberate dispatch.

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.

The ruling in *People v. Sandiganbayan, Fifth Division*[172] that fact-finding investigations are included in the period for determination of inordinate delay is **ABANDONED**.

**SO ORDERED.**

*Carpio* (Acting *Chief Justice*), *Leonardo-de Castro, del Castillo, Tijam,* and *Reyes, Jr., JJ.,* concur.

*Peralta, Jardeleza, Martires,* and *Gesmundo, JJ.,* no part.

*Velasco, Jr., J.,* see concurring opinion.

*Perlas-Bernabe, J.,* join the concurring opinion of *J. Velasco.*

*Bersamin, J., joins the dissent of J. Caguioa.*

*Caguioa, J.,* dissents, see separate dissenting opinion.

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[172] 723 Phil. 444 (201) [Per *J.* Bersamin, First Division].

## CONCURRING OPINION

**VELASCO, JR., *J.*:**

I concur with the *ponencia* of Justice Marvic M.V.F. Leonen. Allow me, however, to submit my elucidation of the factors to be considered in determining inordinate delay.

***a. Length of the delay***

The Court has never set a threshold period for concluding preliminary investigation proceedings before the Office of the Ombudsman premised on the idea that "speedy disposition" is a relative and flexible concept. It has often been held that a mere mathematical reckoning of the time involved is not sufficient in determining whether or not there was inordinate delay on the part of the investigating officer, and that particular regard must be taken of the facts and circumstances peculiar to each case.[1] This is diametrically opposed with Sec. 58 of the 2008 Manual for Prosecutors[2] observed by the National Prosecutorial Service, which states that the investigating prosecutor must terminate the preliminary investigation proceeding within sixty (60) days from the date of assignment, extendible to ninety (90) days for complaints charging a capital offense. And to further contradistinguish, the Judiciary is mandated by the

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[1] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

[2] SEC. 58. *Period to resolve cases under preliminary investigation.* — The following periods shall be observed in the resolution of cases under preliminary investigation:

a) The preliminary investigation of complaints charging a capital offense shall be terminated and resolved within ninety (90) days from the date of assignment to the Investigating Prosecutor.

b) The preliminary investigation of all other complaints involving crimes cognizable by the Regional Trial Courts shall be terminated and resolved within sixty (60) days from the date of assignment.

c) In cases of complaints involving crimes cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, the preliminary investigation — should the same be warranted by the circumstances — shall be terminated and resolved within sixty (60) days from the date of assignment to the Investigating Prosecutor.

Constitution to resolve matters and controversies within a definite timeline.[3] The trial courts are required to decide cases within sixty (60) days from date of submission, twelve (12) months for appellate courts, and two (2) years for the Supreme Court. The prescribed period for the Judicial branch at least gives the party litigants an idea on when they could reasonably expect a ruling from the courts, and at the same time ensures that judges are held to account for the cases not so timely disposed.

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on complaints brought before him. This imposition, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.[4] More importantly, this duty does not license this Court to fix a specific period for the office to resolve the cases and matters before it, lest We encroach upon the constitutional prerogative of the Ombudsman to promulgate its own rules and procedure.[5]

Be that as it may, the Court is not precluded from determining the inclusions and exclusions in determining the period of delay. For instance, in *People v. Sandiganbayan,*[6] We have ruled that the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of cases.

In the said case, the Ombudsman, on November 25, 2002, ordered the Philippine Anti-Graft Commission (PAGC) to submit documents relevant to the exposé on the alleged involvement

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[3] **Article VIII, Section 15(1) of the 1987 Constitution relevantly reads:**

**SECTION 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.**

[4] *Flores v. Hernandez, Sr.*, G.R. No. 126894, March 2, 2000.

[5] Constitution, Article XI, Section 13 (8).

[6] G.R. No. 188165, December 11, 2013.

of then Secretary of Justice Hernando Perez in acts of bribery. The following day, then Ombudsman Simeon Marcelo ordered Cong. Mark Jimenez to submit a complaint-affidavit on the exposé, which directive he complied with on December 23, 2002. On January 2, 2003, a Special Panel was created to evaluate and conduct preliminary investigation. The informations based on the complaint of Cong. Jimenez were all filed on April 15, 2008.

Upholding the dismissal of the criminal information by the Sandiganbayan, the Court ruled thusly:

> The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
>
> The argument cannot pass fair scrutiny.
>
> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.[7] (emphasis added)

This ruling necessitates a re-examination.

In *Ombudsman v. Jurado*,[8] we ruled that:

> x x x It is undisputed that the FFB of the OMB recommended that respondent together with other officials of the Bureau of Customs be criminally charged for violation of Section 3(e) of R.A. No. 3019 and Section 3601 of the Tariff and Customs Code. The same bureau also recommended that respondent be administratively charged. Prior to the fact-finding report of the FFB of the OMB, respondent was

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[7] *Id*.

[8] G.R. No. 154155, August 6, 2008.

never the subject of any complaint or investigation relating to the incident surrounding Magleis non-existent customs bonded warehouse. In fact, in the original complaint filed by the Bureau of Customs, respondent was not included as one of the parties charged with violation of the Tariff and Customs Code. With respect to respondent, there were **no *vexatious, capricious, and oppressive delays* because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB**.

Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of he was not made the subject of any complaint or made to undergo any investigation. x x x (emphasis added)

We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.

On the other hand, if the fact-finding investigation precedes the filing of a complaint as in incidents investigated *motu proprio* by the Ombudsman, such investigation should be excluded from the computation. The period utilized for case build-up will not be counted in determining the attendance of inordinate delay.

It is only when a formal verified complaint had been filed would the obligation on the part of the Ombudsman to resolve the same promptly arise. Prior to the filing of a complaint, the party involved is not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. In this light, the doctrine in *People v. Sandiganbayan* should be revisited.

With respect to investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, the date when the Ombudsman receives the anonymous complaint or when it started its *motu proprio* investigations and the periods of time devoted to said investigations cannot be considered in determining the period of delay. For the respondents, the case build up phase of an anonymous complaint or a *motu proprio* investigation is not yet exposed to an adversarial proceeding. The Ombudsman should of course be aware that a long delay may result in the extinction of criminal liability by reason of the prescription of the offense.

Even if the person accused of the offense subject of said anonymous complaint or *motu proprio* investigations by the Ombudsman is asked to attend invitations by the Ombudsman for the fact finding investigations, this directive cannot be considered in determining inordinate delay. These conferences or meetings with the persons subject of the anonymous complaints or *motu proprio* investigations are simply conducted as preludes to the filing of a formal complaint if it finds it proper. This should be distinguished from the exercise by the Ombudsman of its prosecutory powers which involve determination of probable cause to file information with the court resulting from official preliminary investigation. Thus, the period spent for fact-finding investigations of the ombudsman prior to the filing of the formal complaint by the Field Investigation Office of the Ombudsman is irrelevant in determining inordinate delay.

In sum, the reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

*b. Reasons for the delay*

Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent.

The period for re-investigation cannot automatically be taken against the State. Re-investigations cannot generally be considered as "vexatious, capricious, and oppressive" practices proscribed by the constitutional guarantee since these are performed for the benefit of the accused. As *Braza v. Sandiganbayan*[9] *(Braza)* instructs:

> Indeed, the delay can hardly be considered as "vexatious, capricious and oppressive." x x x Rather, it appears that Braza and the other accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. The re-investigation may have inadvertently contributed to the further delay of the proceedings but this process cannot be dispensed with because it was done for the protection of the rights of the accused. Albeit the conduct of investigation may hold back the progress of the case, the same was essential so that the rights of the accused will not be compromised or sacrificed at the altar of expediency. (emphasis added) x x x

A survey of jurisprudence reveals that most of the complaints dismissed for violation of the right to speedy disposition of a case stems from the Ombudsman's failure to satisfactorily explain the inordinate delay.[10]

*c. Assertion of Right by the Accused*

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[9] G.R. No. 195032, February 20, 2013.

[10] *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988; *Angchangco v. Ombudsman*, G.R. No. 122728, February 13, 1997; *Roque v. Ombudsman*, G.R. No. 129978, May 12, 1999; *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013; and *People v. Sandiganbayan*, G.R. No. 188165, December 11, 2013.

The Court had ruled in several cases that failure to move for the early resolution of the preliminary investigation or similar reliefs before the Ombudsman amounted to a virtual waiver of the constitutional right. *Dela Peña v. Sandiganbayan (Dela Peña)*, for example, ruled that the petitioners therein slept on their rights, amounting to laches, when they did not file nor send any letter-queries to the Ombudsman during the four-year (4-year) period the preliminary investigation was conducted. The Court, citing *Alvizo*, further held therein that:

> x x x The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they are not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in Alvizo, the petitioner therein was insensitive to the implications and contingencies of the projected criminal prosecution posed against him by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence.

Following *Dela Peña*, it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is allowing the delay only to later claim it as a ruse for dismissal. This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases. Needless to say, investigating officers responsible for this kind of delay should be subjected to administrative sanction.

*d. Prejudice to the respondent*

The length of the delay and the justification proffered by the investigating officer therefor would necessarily be counterbalanced against any prejudice suffered by the respondent.

Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party.[11] As taught in *Coscolluela:*

> Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[12] x x x

"*Prejudice*," as a criterion in the speedy disposition of cases, has been discussed in *Corpuz v. Sandiganbayan*[13] in the following manner:

> x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

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[11] *Padua v. Ericta*, No. L-38570, May 24, 1988.

[12] *Supra* note 10.

[13] G.R. No. 162214, November 11, 2004.

In the macro-perspective, though, it is not only the respondent who stands to suffer prejudice from any delay in the investigation of his case. For inordinate delays likewise makes it difficult for the prosecution to perform its bounden duty to prove the guilt of the accused beyond reasonable doubt when the case is filed in court:

> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States,* for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.[14]

It is for the Courts then to determine who between the two parties was placed at a greater disadvantage by the delay in the investigation.

***Time frame for resolution of criminal complaint***

The Ombudsman has the power to formulate its own rules on pleading and procedure. It has in fact laid down its rules on preliminary investigation. All these controversies surrounding inordinate delay can easily be avoided had it prescribed a rule on the disposition period for the investigating graft officer to resolve the preliminary investigation of the formal complaints. **Like the Department of Justice with respect to preliminary investigations by its prosecutors, it should provide a disposition period from the date of the filing of the formal complaint up to a specific date within which the graft prosecutor should determine the existence of probable cause**.

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[14] *Caballes v. Court of Appeals*, G.R. No. 163108, February 23, 2005.

This will potentially solve all the motions and petitions that raise the defense of inordinate delay, putting the perennial issue to rest. In the meantime, the above-enunciated criteria shall be considered in determining the presence of inordinate delay.

## DISSENTING OPINION

**CAGUIOA, *J.*:**

Citing *Dela Peña v. Sandiganbayan*[1] (*Dela Peña*), the *ponencia* holds that "the failure x x x to invoke the right of speedy disposition even when [he] or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right."[2] On this basis, the *ponencia* resolves to deny the Petitions, since "petitioner [Cesar Matas Cagang (petitioner)] has not shown that he asserted his rights [from 2003 to 2011], choosing instead to wait until the information was filed against him with the Sandiganbayan."[3]

With due respect, I disagree.

For the reasons set forth below, I submit that: (i) petitioner's right to speedy disposition had been violated; and (ii) petitioner cannot be deemed to have waived such right by mere inaction.

The facts are not disputed.

Sometime in 2003, the Commission on Audit (COA) launched a fact-finding investigation (COA investigation) involving the officials and employees of the Sarangani provincial government. The COA investigation was prompted by an anonymous complaint filed before the Office of the Ombudsman (OMB) and a news report by SunStar Davao alleging that public funds, in the approximate amount of ₱61,000,000.00, were wrongfully diverted and given as aid to dummy cooperatives.

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[1] 412 Phil. 921 (2001) [*En Banc*, Per *C.J.* Davide, Jr.].

[2] *Ponencia,* p. 33.

[3] *Id.* at 37.

The COA investigation led to the implication of petitioner in two separate preliminary investigations before the OMB, petitioner having served as the Provincial Treasurer of Sarangani during the relevant period. These OMB preliminary investigations, in turn, led to the filing of three separate criminal Informations before the Sandiganbayan charging petitioner with the following offenses:

(i) Malversation of Public Funds through Falsification of Public Documents in 2005, in connection with the release of public aid in favor of the Kalalong Fishermen's Group (1st Sandiganbayan case); and

(ii) Malversation of Public Funds through Falsification of Public Documents *and* violation of Section 3(e) of RA 3019 in 2011, in connection with the release of public aid in favor of the Kamanga Muslim-Christian Fishermen's Cooperative (2nd and 3rd Sandiganbayan cases).

Petitioner alleges that the OMB incurred in delay in the conduct of preliminary investigation with respect to the 2nd and 3rd Sandiganbayan cases, considering the lapse of eight years between the start of preliminary investigation to the filing of the corresponding criminal informations. On such basis, petitioner claims that his constitutional right to speedy disposition was violated. Hence, petitioner prays that the 2nd and 3rd Sandiganbayan cases filed against him be dismissed.

The *ponencia* finds that while the OMB had in fact incurred in delay in the conduct of preliminary investigation against the petitioner, the latter is precluded from invoking his right to speedy disposition as he failed to assert the same in a timely manner.[4] This finding is primarily anchored on the case of *Dela Peña,*[5] where the Court held that silence on the part of the accused operates as an implied waiver of one's right to speedy disposition.[6]

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[4] *Ponencia,* p. 37.

[5] *Supra* note 1.

[6] *Id.* at 932.

**I respectfully submit that it is time the Court revisits this sweeping statement in *Dela Peña* and that further clarification be made by the Court moving forward.**

To recall, *Dela PenÞa* espouses that the following factors must be considered in determining whether the right to speedy trial or speedy disposition of cases is violated: "(1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay."[7]

This criterion adopts the "balancing test" which, as observed by the Court in *Perez v. People*[8] (*Perez*), finds its roots in American jurisprudence, particularly, in the early case of *Barker v. Wingo*[9] (*Barker*).

Quoted below are the relevant portions of the US Supreme Court's (SCOTUS) decision in *Barker*:

> The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, but that fact does not argue for placing the burden of protecting the right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest.
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> **We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right**. This does not mean, however, that the defendant has no responsibility to assert his right. **We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right**. Such a formulation avoids the rigidities of the demand-waiver rule

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[7] *Id.* at 929.

[8] 568 Phil. 491 (2008) [Third Division, Per J. R.T. Reyes].

[9] 407 US 514 (1972).

and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. It would also allow a court to weigh the frequency and force of the objections, as opposed to attaching significant weight to a purely *pro forma* objection.

**In ruling that a defendant has some responsibility to assert a speedy trial claim, we do not depart from our holdings in other cases concerning the waiver of fundamental rights, in which we have placed the entire responsibility on the prosecution to show that the claimed waiver was knowingly and voluntarily made.** Such cases have involved rights which must be exercised or waived at a specific time or under clearly identifiable circumstances, such as the rights to plead not guilty, to demand a jury trial, to exercise the privilege against self-incrimination, and to have the assistance of counsel. **We have shown above that the right to a speedy trial is unique in its uncertainty as to when and under what circumstances it must be asserted or may be deemed waived**. **But the rule we announce today, which comports with constitutional principles, places the primary burden on the courts and the prosecutors to assure that cases are brought to trial.** We hardly need add that, if delay is attributable to the defendant, then his waiver may be given effect under standard waiver doctrine, the demand rule aside.

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**A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis**. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: **Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.**

The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial,

the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

**We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial**.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) **to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system**. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however,

is not always reflected in the record because what has been forgotten can rarely be shown.[10] (Emphasis and underscoring supplied)

In *Barker,* SCOTUS explained the nature of the accused's right to speedy trial under the Sixth Amendment to the U.S. Constitution (Sixth Amendment), and set forth the four factors to be considered in determining whether such right had been violated — length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

However, **it bears stressing that this criterion was specifically crafted to address unreasonable delay within the narrow context of a criminal trial, since the scope of the Sixth Amendment right does not extend to cover delay incurred by the prosecution prior to indictment or arrest**. SCOTUS' ruling in *Betterman v. Montana*[11] (*Betterman*) lends guidance:

> The Sixth Amendment's Speedy Trial Clause homes x x x from arrest or indictment through conviction. **The constitutional right, our precedent holds, does not attach until this phase begins, that is, when a defendant is arrested or formally accused**. x x x[12] (Emphasis supplied and citations omitted)

In turn, *Betterman* makes reference to *United States v. Marion*[13] (*Marion*), a case decided prior to *Barker.* In *Marion,* SCOTUS ruled that the protection afforded by the Sixth Amendment right attaches only after a person has been "accused" of a crime. Hence, in *Marion,* SCOTUS held:

> Appellees do not claim that the Sixth Amendment was violated by the two-month delay between the return of the indictment and its dismissal. Instead, they claim that their rights to a speedy trial were violated by the period of approximately three years between the end of the criminal scheme charged and the return of the indictment; it

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[10] *Id*. at 527-532.

[11] 136 S. Ct. 1609 (2016).

[12] *Id*. at 1613.

[13] 404 U.S. 307 (1971).

is argued that this delay is so substantial and inherently prejudicial that the Sixth Amendment required the dismissal of the indictment. **In our view, however, the Sixth Amendment speedy trial provision has no application until the putative defendant in some way becomes an "accused,"** an event that occurred in this case only when the appellees were indicted x x x.

**The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ." On its face, the protection of the Amendment is activated only when a criminal prosecution has begun and extends only to those persons who have been "accused" in the course of that prosecution. These provisions would seem to afford no protection to those not yet accused, nor would they seem to require the Government to discover, investigate, and accuse any person within any particular period of time**. The Amendment would appear to guarantee to a criminal defendant that the Government will move with the dispatch that is appropriate to assure him an early and proper disposition of the charges against him. "[T]he essential ingredient is orderly expedition and not mere speed." x x x

Our attention is called to nothing in the circumstances surrounding the adoption of the Amendment indicating that it does not mean what it appears to say, nor is there more than marginal support for the proposition that, at the time of the adoption of the Amendment, the prevailing rule was that prosecutions would not be permitted if there had been long delay in presenting a charge. The framers could hardly have selected less appropriate language if they had intended the speedy trial provision to protect against pre-accusation delay. No opinions of this Court intimate support for appellees' thesis, and the courts of appeals that have considered the question in constitutional terms have never reversed a conviction or dismissed an indictment solely on the basis of the Sixth Amendment's speedy trial provision where only pre-indictment delay was involved.[14] (Emphasis and underscoring supplied; citations omitted)

Apart from clarifying the parameters of the Sixth Amendment right, *Marion* and *Betterman* appear to confirm that no constitutional right similar to that of speedy disposition exists under the U.S. Constitution. Hence, *Barker's* balancing test

[14] *Id*. at 313-315.

should not be understood to contemplate unreasonable delay during "pre-accusation," or the period within which the State conducts an investigation to determine whether there exists probable cause to arrest or charge a particular suspect.[15]

In the Philippine context, this "pre-accusation" period falls precisely within the scope of the right to speedy disposition protected by the Constitution, particularly, under Section 16, Article III:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The right to speedy disposition covers the periods "before, during, and after trial."[16] Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, **covers not only preliminary investigation, but extends further, to cover the fact-finding process**. As explained by the Court in *People v. Sandiganbayan*[17]:

> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. **Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.**[18] (Emphasis supplied)

Moreover, in *Torres v. Sandiganbayan*[19] (*Torres*) the Court categorically stated that the speedy disposition of cases covers "not only the period within which the preliminary investigation

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[15] *Id*.

[16] I Joaquin G. Bernas, *Constitutional Rights and Duties* 270 (1974).

[17] 723 Phil. 444 (2013) [First Division, Per *J*. Bersamin].

[18] *Id*. at 493.

[19] 796 Phil. 856 (2016) [Third Division, Per *J*. Velasco, Jr.].

was conducted, but also all stages to which the accused is subjected, **even including fact-finding investigations conducted prior to the preliminary investigation proper**."[20]

Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration, unnecessary anxiety and concern, **and the impairment of one's defense**. To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition *and* trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations).[21]

Prejudice is not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority**, I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction**. The scope of right to speedy disposition corresponds *not* to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.

The right to speedy disposition is two-pronged. *Primarily,* it serves to extend to the individual citizen a guarantee against

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[20] *Id*. at 868. Emphasis supplied.

[21] *Ponencia*, p. 30.

State abuse brought about by protracted prosecution. Conversely, it imposes upon the State the concomitant duty to expedite all proceedings lodged against individual citizens, whether they be judicial, quasi-judicial or administrative in nature. **This constitutional duty imposed upon the State stands regardless of the vigor with which the individual citizen asserts his right to speedy disposition**. Hence, the State's duty to dispose of judicial, quasi-judicial or administrative proceedings with utmost dispatch cannot be negated solely by the inaction of the respondent upon the dangerous premise that such inaction, without more, amounts to an implied waiver thereof.

Verily, the Court has held that the State's duty to resolve criminal complaints with utmost dispatch is one that is mandated by the Constitution.[22] Bearing in mind that the Bill of Rights exists precisely to strike a balance between governmental power and individual personal freedoms, it is, to my mind, unacceptable to place on the individual the burden to assert his or her right to speedy disposition of cases when the State has the burden to respect, protect, and fulfill the said right.

It is thus not the respondent's duty to follow up on the prosecution of his case, for it is the prosecution's responsibility to expedite the same within the bounds of reasonable timeliness.[23] Considering that the State possesses vast powers and has immense resources at its disposal, it is incumbent upon it **alone** to ensure the speedy disposition of the cases it either initiates or decides. Indeed, as the Court held in *Secretary of Justice v. Lantion,*[24] "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him

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[22] See *Almeda v. Office of the Ombudsman (Mindanao),* 791 Phil. 129, 144 (2016) [Second Division, Per *J*. Del Castillo], citing *Cervantes v. Sandiganbayan,* 366 Phil. 602, 609 (1999)[First Division, Per *J*. Pardo].

[23] See *Coscolluela v. Sandiganbayan,* 714 Phil. 55, 64 (2013) [Second Division, Per *J*. Perlas-Bernabe].

[24] 379 Phil. 165-251 (2000) [*En Banc*, Per *J*. Melo].

in times of need."[25] Further, as earlier observed, no such similar duty is imposed by the U.S. Constitution.

**Proceeding therefrom, I find the adoption of the third factor in *Barker's* balancing test improper. Instead, I respectfully submit that in view of the fundamental differences between the scope of the Sixth Amendment right to speedy trial on one hand, and the right to speedy disposition on the other, the third factor in *Barker's* balancing test (that is, the assertion of one's right) should no longer be taken against those who are subject of criminal proceedings.**

I am not unaware of the catena of cases that have applied *Barker's* balancing test, including those wherein the accused's invocation of the right to speedy disposition had been rejected on the basis of its third factor.[26] I maintain, however, that the adoption of *Barker's* third factor in the Philippine context fails to take into account the limited scope of the Sixth Amendment right for which the balancing test had been devised *vis-à-vis* the expanded scope of the right to speedy disposition under the Constitution.

One such case is *Dela Peña,* wherein it was required that an individual at least perform some overt act to show that he was not waiving that right. The ridiculousness of the principle of waiver of the right to speedy disposition of cases, however, could be easily gleaned from the ratiocination in *Dela Peña* itself — wherein it cited the filing of a motion for early resolution as an instance where the individual would be deemed not to have waived the right. It is absurd to place on the individual the burden *to egg on*, so to speak, government agencies to prioritize a particular case when it is their duty in the first place to resolve the same at the soonest possible time. To stress, it is the State which has the **sole** burden to see to it that the cases

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[25] *Id*. at 185.

[26] See *Dela Peña, supra*, note 1; see also *Guerrero v. Court of Appeals,* 327 Phil. 496 (1996) [Third Division, Per *J*. Panganiban]; *Republic v. Desierto*, 480 Phil. 214 (2004) [Special Second Division, Per *J*. Austria-Martinez]; and *Perez v. People*, *supra* note 8.

which it files, or are filed before it, are resolved with dispatch. Thus, to sustain the same principle laid down in *Dela Peña* in present and future jurisprudence is to perpetuate the erroneous notion that the individual, in any way, has the burden to expedite the proceedings in which he or she is involved.

**Considering that the Constitution, unlike its U.S. counterpart, imposes upon the State the *positive* duty to ensure the speedy disposition of all judicial, quasi-judicial or administrative proceedings, waiver of the right to speedy disposition should not be implied solely from the respondent's silence. To be sure, the duty to expedite proceedings under the Constitution does *not* pertain to the respondent, but to the State. To fault the respondent for the State's inability to comply with such positive duty on the basis of mere silence is, in my view, the height of injustice.**

Following these parameters, it is my view that petitioner *cannot* be precluded from invoking his right to speedy disposition in the present case.

The *ponencia* further averred that institutional delay is a reality, and is thus inevitable. It further stated that "[p]rosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. Court dockets are congested."[27] While this "reality" may exist, as it exists in any government, it does not, as it should not, in any way justify the State's act of subjecting its citizens to unreasonable delays that impinge on their fundamental rights. I therefore disagree with the *ponencia* where it said that:

> Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve powerful politicians who engage private counsel with the means and resources to fully dedicate themselves to their client's case. More often than not, respondents only invoke the right to the speedy disposition of cases when the Ombudsman has already rendered an unfavorable decision. The prosecution should not be prejudiced for private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.[28]

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[27] *Ponencia*, p. 33.

[28] *Id*. at 34.

I disagree for two reasons:

*First,* this statement is based on the premise that the individual has the burden to do something to expedite the proceedings. To repeat, to require individuals to do so would be to sanction deviation by government agencies, including the courts, from its sacrosanct duty of dispensing justice. Cliché as it may be, it cannot be denied that justice delayed is justice denied.

*Second,* the fact that "[m]ost cases handled by the Office of the Ombudsman involve powerful politicians who engage private counsel with the means and resources to fully dedicate themselves to their client's case"[29] does not constitute a sufficient excuse. The State's disadvantage, if any, brought about by the *creativity* of defense counsels is easily balanced out by the second of the four factors laid down in *Dela Peña*, namely, when the court takes into consideration the reasons for the delay in determining whether the right to speedy disposition has indeed been violated.

For instance, in *Mendoza-Ong v. Sandiganbayan,*[30] the Court held that the right to speedy disposition of cases was not violated, as the accused herself contributed to the instances of delay for her refusal to provide certain information despite orders from the Court. In *Domondon v. Sandiganbayan (First Division)*,[31] the Court ruled that the right was not violated because the "postponements were caused by numerous pending motions or petitions"[32] filed by the accused themselves.

Thus, even as the Court may recognize institutional delay as a reality, the result of such recognition should be a thrust towards structural and procedural changes. The answer lies in reforming these institutions, but certainly not in sanctioning a violation of an individual's constitutionally guaranteed right to a speedy disposition of his case.

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[29] *Id.*

[30] 483 Phil. 451, 457 (2004) [Special Second Division, Per *J*. Quisumbing].

[31] 512 Phil. 852 (2005) [First Division, Per *J*. Ynares-Santiago].

[32] *Id*. at 863.

Time and again, this Court has recognized the State's inherent right to prosecute and punish violators of the law.[33] This right to prosecute, however, must be balanced against the State's duty to respect the fundamental constitutional rights extended to each of its citizens.

This Court has held that every reasonable presumption against the waiver of fundamental constitutional rights must be afforded.[34] Such waiver "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."[35]

To constitute a valid waiver of a constitutional right, it must appear that: (i) the right exists; (ii) the persons involved had knowledge, either actual or constructive, of the existence of such right; and, (iii) **the person possessing the right had an actual intention to relinquish the right**.[36]

Intent, being a product of one's state of mind, may be inferred only from external acts.[37] **Hence, the intention to relinquish a constitutional right cannot be deduced solely from silence or inaction**. A valid waiver of one's right to speedy disposition cannot thus be predicated on acquiescence alone, but rather, simultaneously anchored on acts indicative of an intent to relinquish. Verily, **"[m]ere silence of the holder of the right should not be easily construed as surrender thereof"**.[38]

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[33] See *Allado v. Diokno,* 302 Phil. 213, 238 (1994) [First Division, Per *J.* Bellosillo].

[34] See generally *Chavez v. Court of Appeals,* 133 Phil. 661 (1968) [*En Banc*, Per *J.* Sanchez].

[35] *People v. Bodoso*, 446 Phil. 838, 850 (2003) [*En Banc*, Per *J.* Bellosillo]; see also *People v. Caguioa,* 184 Phil. 1 (1980) [*En Banc*, Per *C.J.* Fernando].

[36] *Pasion v. Locsin,* 65 Phil. 689, 694-695 (1938) [*En Banc*, Per *J.* Laurel]; emphasis supplied.

[37] On intent, see *J.* Velasco, Jr., Concurring Opinion in *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700*,* March 8, 2016, 786 SCRA 1, 402.

[38] *People v. Bodoso, supra* note 35, at 850-851; emphasis supplied. See also *Alonte v. Savellano, Jr.,* 350 Phil. 700, 720 (1998) [*En Banc*, Per *J.* Vitug].

The principles on waiver of constitutional rights find emphatic application in this case, for unlike other fundamental rights, the right to speedy disposition cannot be confined to a particular point in time, as it necessarily covers an indefinite period which expands and contracts for reasons not solely attributable to the whims of the accused but also on the nature of the offense, the complexity of the case, as well as other factors over which the accused has absolutely no control.

On such basis, I urge that the principle espoused in *Dela Peña* be revisited accordingly.

The case of *R v. Jordan*[39] (*Jordan*) is consistent with the foregoing principles proffered in this dissent. In *Jordan*, the Supreme Court of Canada declared as waived only those periods of time when the delay was attributable to the defense. Thus:

> In this case, the total delay between the charges and the end of trial was 49.5 months. As the trial judge found, **four months of this delay were waived by J when he changed counsel shortly before the trial was set to begin**, necessitating an adjournment. In addition, **one and a half months of the delay were caused solely by J for the adjournment of the preliminary inquiry because his counsel was unavailable for closing submissions on the last day**. This leaves a remaining delay of 44 months, an amount that vastly exceeds the presumptive ceiling of 30 months in the superior court. The Crown has failed to discharge its burden of demonstrating that the delay of 44 months **(excluding defence delay)** was reasonable. While the case against J may have been moderately complex given the amount of evidence and the number of co-accused, it was not so exceptionally complex that it would justify such a delay.[40] (Emphasis and underscoring supplied)

In addition, *Jordan* used different factors in determining if there was a waiver, unlike in the case of *Dela Peña* that limited it to an inquiry on whether the individual asserted his or her right to speedy disposition of cases. The Supreme Court of Canada, in interpreting "meaningful steps that demonstrate a sustained effort to expedite the proceedings" stated:

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[39] 2016 SCC 27, [2016] 1 S.C.R. 631.

[40] *Id.* at 634-635.

As to the first factor, while the defence might not be able to resolve the Crown's or the trial court's challenges, it falls to the defence to show that it **attempted to set the earliest possible hearing dates, was cooperative with and responsive to the Crown and the court, put the Crown on timely notice when delay was becoming a problem, and conducted all applications (including the s. 11(*b*) application) reasonably and expeditiously.** At the same time, trial judges should not take this opportunity, with the benefit of hindsight, to question every decision made by the defence. The defence is required to act reasonably, not perfectly.[41]

To my mind, if the Court intends to insist on including the third of the four factors laid down in *Dela Peña* – the assertion or failure to assert such right by the accused – as upheld by the *ponencia,* then the said factor should be interpreted in the same manner as it was in *Jordan.* Again, bearing in mind that it is primarily the State's duty to see to it that the right to speedy disposition of cases is fulfilled, it bears to stress that it is the State which has the burden to prove that the individual indeed waived his or her right, instead of the other way around.

In fact, in this jurisdiction, the Court had already settled the appreciation of waiver *vis-à-vis* the right to speedy disposition. In *Remulla v. Sandiganbayan,*[42] the Court made a distinction on the seemingly conflicting two sets of cases that have dealt with waiver, and reconciled them. In apparent conflict, in the first set of cases,[43] the Court found that there was no violation of the right to speedy disposition of cases due to the failure to assert such right, while in the second set of cases,[44] the Court found otherwise.

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[41] *Id*. at 633.

[42] G.R. No. 218040, April 17, 2017, 823 SCRA 17 [Second Division, Per *J.* Mendoza].

[43] See *Tilendo v. Sandiganbayan*, 559 Phil. 739 (2007) [Second Division, Per *J*. Carpio], *Guerrero v. Court of Appeals*, *supra* note 26, *Bernat v. Sandiganbayan*, 472 Phil. 869 (2004) [First Division, Per *J*. Azcuna, and *Tello v. People*, 606 Phil. 514 (2009) [First Division, Per *J*. Carpio].

[44] See *Cervantes v. Sandiganbayan*, *supra* note 22; *People v. Sandiganbayan, Fifth Division*, 791 Phil. 37 (2016) [Third Division, Per *J*.

The Court in *Remulla* found no conflict between these two sets of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. Likewise, the Court in the second set of cases took into account several factors in upholding the right to a speedy disposition of cases, such as length of delay, failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. Hence, the Court in the second set of cases found that the lack of follow ups from the accused outweighed the utter failure of the prosecution to explain the delay of the proceedings.[45]

What can be deduced from both sets of cases is that the balancing test necessarily compels the court to approach speedy trial and speedy disposition cases on an *ad hoc* basis. In considering the four factors, the Court cautioned that none of these factors is "either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process."[46]

As regards waiver, the Court in *Remulla* made the following pronouncements:

In addition, **there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized**. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.

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Peralta]; *Inocentes v. People*, 789 Phil. 318 (2016) [Second Division, Per *J.* Brion]; *Coscolluela v. Sandiganbayan*, *supra* note 23; and *Duterte v. Sandiganbayan*, 352 Phil. 557 (1998) [Third Division, Per *J.* Kapunan].

[45] *Supra* note 42, at 33.

[46] *Id*. at 27.

Likewise, contrary to the argument of the OSP, **the U.S. case of *Barker v. Wingo,* from which the balancing test originated, recognizes that a respondent in a criminal case has no compulsory obligation to follow up on his case.** It was held therein that "[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process."[47] (Emphasis supplied)

The Court even went further and stated that the rule that the accused has no duty to follow up on the prosecution of their case is not limited to cases where the accused is unaware of the preliminary investigation as was the case in *Coscolluela v. Sandiganbayan*[48] (*Coscolluela*). On the contrary, the subsequent rulings of *Duterte v. Sandiganbayan*[49] (*Duterte*), *Cervantes v. Sandiganbayan*[50] (*Cervantes*), *People v. Sandiganbayan, Fifth Division*[51] (*People*), and *Inocentes v. People*[52] (*Inocentes*) show that the rule is applicable even if the accused was fully informed and had participated in the investigation.[53] Verily, the factors in the balancing test must not be rigidly applied but must be weighed in light of the factual circumstances of each case.

As applied in the facts of *Remulla*, the Court therein ruled that the failure of the prosecution to justify the nine-year interval before the case was filed in court far outweighed the accused's own inaction over the delay. Citing *Coscolluela, Duterte, Cervantes, People*, and *Inocentes*, the Court reiterated that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether or not the accused objects to the delay.[54]

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[47] *Id*. at 35-36.

[48] *Supra* note 23.

[49] *Supra* note 44.

[50] *Supra* note 22.

[51] *Supra* note 44.

[52] *Supra* note 44.

[53] See *Remulla v. Sandiganbayan*, *supra* note 42, at 36.

[54] *Id*. at 42.

In the recent case of *People v. Macasaet*,[55] the Court pronounced that "the silence of the accused during such period [of delay] could not be viewed as an unequivocal act of waiver of their right to speedy determination of their cases. That the accused could have filed a motion for early resolution of their cases is immaterial. The more than eight years delay the [Prosecutor] incurred before issuing his resolution of the complaints is an affront to a reasonable dispensation of justice and such delay could only be perpetrated in a vexatious, capricious, and oppressive manner."[56]

The following pronouncements in *Almeda v. Office of the Ombudsman (Mindanao)*[57] illustrate why the burden of expediting the cases should not be placed on the accused:

> Regarding delays, it may be said that "[i]t is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire." These principles should apply to respondents in other administrative or quasi-judicial proceedings as well. It must also be remembered that **generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same "within the bounds of reasonable timeliness."**
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> "It is the **duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him."** Failure or inaction may not have been deliberately intended, yet unjustified delay nonetheless causes just as much vexation and oppression. Indeed, delay prejudices the accused or respondent — and the State just the same.[58] (Emphasis and underscoring supplied)

[55] G.R. Nos. 196094, 196720 & 197324, March 5, 2018 [Second Division, Per *J.* Caguioa].

[56] *Id*. at 19.

[57] 791 Phil. 129 (2016) [Second Division, Per *J.* Del Castillo].

[58] *Id*. at 144.

**In any event, I find that even if the third factor of the balancing test were to be applied, petitioner's alleged inaction in this case still fails to qualify as an implied waiver of his right to speedy disposition**.

A review of recent jurisprudence that rely on and follow *Dela PenÞa* illustrates that, far too often, the Court has used this one factor alone in denying the right against speedy disposition of cases.[59] Such practice, as explained, is contrary to the parameters set in *Barker*.

To recall, *Barker* instructs that the third factor in the balancing test serves as an important factor that should be measured in conjunction with the prejudice that the accused experiences as a consequence of the delay ascribed to the prosecution. **Hence, inaction on the part of the accused, *without more*, should not be *a priori* deemed as an implied waiver of such right**.

In this connection, I respectfully submit that even if the third factor of the balancing test, as applied in *Dela Peña,* is adopted herein, petitioner still cannot be deemed to have waived his right to speedy disposition because he purportedly failed to show that he had asserted his right during the period of delay.

It bears emphasizing that petitioner had been criminally charged as a result of two separate investigations -before the OMB — OMB-M-C-0487-J (PI-1) and OMB-M-C-0480-K (PI-2), which began sometime in September 2003 and October 2004, respectively.[60] PI-1 led to the filing of an Information dated **July 12, 2005** for the 1st Sandiganbayan case.[61] Petitioner was acquitted of this charge through the Decision dated **June 17, 2010** rendered by the Fourth Division of the Sandiganbayan.[62]

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[59] See *Perez v. People*, *supra* note 8; *Bernat v. Sandiganbayan*, *supra* note 43, at 875-876; *Valencia v. Sandiganbayan,* 510 Phil. 70, 90 (2005) [First Division, Per *J*. Ynares-Santiago]; and *De Guzman, Jr. v. People*, G.R. Nos. 232693-94, August 23, 2017 (Unsigned Resolution).

[60] See *ponencia,* pp. 4-5.

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

[62] *Id*. at 6.

It appears, however, that on **November 17, 2011**, two Informations were filed for the 2nd and 3rd Sandiganbayan cases.[63] The Informations in question proceed from the results of PI-2, which, in turn, is the subject of the present Petition.

To my mind, the petitioner cannot be said to have slept on his rights from July 12, 2005 to June 17, 2010, in view of his participation in the 1st Sandiganbayan case. In other words, it was reasonable for petitioner to assume that his participation in the 1st Sandiganbayan case would work towards the termination of PI-2 in his favor, considering that both proceed from closely related incidents.

Moreover, the State failed to show that the delay from July 12, 2005 to June 17, 2010 was reasonable. The *ponencia*'s holding that the transactions were complex and numerous, involving 40 individuals in 81 transactions, is not sufficient to justify the delay. As the *ponencia* admits, the COA Report already exhaustively investigated each transaction. It nonetheless ruled that delay was inevitable in the hands of a competent and independent Ombudsman.[64] This fails to justify the delay.

Given that a constitutional right is at stake, the Ombudsman should justify what it had done during the period from July 12, 2005 to June 17, 2010. Indeed, the Ombudsman is not bound by the findings of COA. But the Ombudsman should show the actions it had done with regard to the findings of the COA. Its failure to do so shows the lack of justification for its delay in filing the Informations subject of these Petitions.

I vote to **GRANT** the Petitions.

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[63] *Id*. at 7.

[64] *Id*. at 38.

**EN BANC**

[G.R. Nos. 212761-62. July 31, 2018]

**SENATOR JINGGOY EJERCITO ESTRADA,** *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, HON. SANDIGANBAYAN, FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, and ATTY. LEVITO D. BALIGOD,** *respondents.*

[G.R. Nos. 213473-74. July 31, 2018]

**JOHN RAYMUND DE ASIS,** *petitioner, vs.* **CONCHITA CARPIO MORALES, in her official capacity as OMBUDSMAN, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, Fifth Division,** *respondents.*

[G.R. Nos. 213538-39. July 31, 2018]

**JANET LIM NAPOLES,** *petitioner, vs.* **CONCHITA CARPIO MORALES, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN, FIFTH DIVISION,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORY POWERS; NON-INTERFERENCE IN THE DETERMINATION BY THE OMBUDSMAN OF THE EXISTENCE OF PROBABLE CAUSE IS MAINTAINED BUT THE SUPREME COURT IS NOT PRECLUDED FROM REVIEWING THE OMBUDSMAN'S ACTION WHEN THERE IS A CHARGE OF GRAVE ABUSE OF DISCRETION.—** Both the Constitution and RA 6770, or The Ombudsman Act of 1989,

give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. As 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." This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. Since the Ombudsman is armed with the power to investigate, it is 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. This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; KINDS.—** There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause, made during preliminary investigation, 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 the person believed to have committed the crime as defined by law. **Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not the prosecutor 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.

**3. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; IN ORDER TO ARRIVE AT PROBABLE CAUSE, THE ELEMENTS OF THE CRIME CHARGED SHOULD BE PRESENT.—** Under Sections 1 and 3, Rule 112 of the Revised Rules of Criminal Procedure, **probable cause** is needed to be established by the investigating officer, to determine **whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial,** during preliminary investigation. Thus, 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. It is merely based on opinion and reasonable belief. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he or she has no technical knowledge. x x x In order to arrive at probable cause, the elements of the crime charged should be present. In *Reyes v. Ombudsman (Reyes),* this Court unanimously held that in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**."

**4. CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; ELEMENTS.—** Plunder, defined and penalized under Section 2 of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d) hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or acquired is at least Fifty Million Pesos (₱50,000,000.00).

**5. ID.; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3(e); ELEMENTS.—** [T]he elements of violation of Section 3(e) of RA 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

**6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NOT THE OCCASION FOR THE FULL AND EXHAUSTIVE DISPLAY OF PROSECUTION'S EVIDENCE.—** [A] preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the **presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.** Moreover, the validity and merit of a party's defense or accusation, as well as **the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.**

**LEONEN, *J., separate concurring opinion*:**

**1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORIAL POWERS; CANNOT BE INTERFERED WITH UNLESS THERE IS A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE OFFICE OF THE OMBUDSMAN.—** The Office of the Ombudsman is bestowed with broad investigatory and prosecutorial powers to act on complaints against public officials and government employees. Considered as "the champion of the people and the preserver of the integrity of public service," the Ombudsman is specifically empowered under Article XI, Section 13 of the Constitution to exercise x x x [certain] functions x x x. Section 15 of Republic Act No. 6770 amplifies the Office of the Ombudsman's investigative and prosecutorial powers. For instance, the Office

of the Ombudsman may, in the exercise of its primary jurisdiction, step in and take over the investigation of cases from other agencies. It may also request assistance and information from other government agencies, issue subpoenas, and cite persons in contempt. Such broad investigative powers were vested on the Office of the Ombudsman to shield it from "the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers." In this regard and owing to the independent nature of its office, this Court has generally adopted a policy of non-interference with the Office of the Ombudsman's exercise of its functions, especially with regard to its finding of probable cause. Practical considerations also dictate the exercise of judicial restraint. x x x This Court is not a trier of facts. Unless there is a clear showing of grave abuse of discretion on the part of the Office of the Ombudsman, this Court would defer to its sound discretion as it is in the best position to assess whether the filing of an Information is warranted.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; MERELY INQUISITORIAL AND THE PROSECUTION NEEDS ONLY TO SATISFY ITSELF THAT THERE IS A REASONABLE BELIEF TO HOLD A PERSON LIABLE FOR A CRIME.—** A preliminary investigation, as its name suggests, is a preparatory step in the prosecutorial process, where the prosecutor determines whether there is probable cause to file an Information in court. x x x The rules governing the conduct of a preliminary investigation are outlined in Rule 112, Section 3 of the Rules of Court x x x. Preliminary investigations conducted by the Office of the Ombudsman are x x x subject to the provisions under Section 4 of its Rules of Procedure. The investigating prosecutor may rely on the affidavits and supporting documents submitted by the parties. A hearing is not even mandatory. The prosecutor is given the discretion whether to set a hearing between the parties but only if certain facts or issues need to be clarified. A preliminary investigation, therefore, is "merely inquisitorial." It is neither an occasion for an exhaustive display of evidence nor "the venue for the

full exercise of the rights of the parties." Whether the parties' evidence would pass the threshold of admissibility is not a matter that the prosecution should be concerned with at this stage. The prosecution needs only satisfy itself that there is reasonable belief to hold a person liable for a crime. Neither absolute nor moral certainty is required.

3. **ID.; ID.; ID.; THE TECHNICAL RULES OF EVIDENCE IS INAPPLICABLE IN PRELIMINARY INVESTIGATIONS.—** Given the exploratory nature of a preliminary investigation, the technical rules of evidence would not apply. For instance, the invocation of the *res inter alios acta* rule under Rule 130, Section 28 of the Rules of Court in the context of a preliminary investigation has been considered as improper. x x x A finding of probable cause can even rest on hearsay evidence.

4. **ID.; ID.; CRIMINAL PROCEEDINGS; PROBABLE CAUSE; EXECUTIVE DETERMINATION OF PROBABLE CAUSE AND JUDICIAL DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED.—** The Office of the Ombudsman's determination of the existence of probable cause during a preliminary investigation is an executive function, which is different from the judicial determination of probable cause. In a criminal proceeding, there are two (2) instances where probable cause is determined. The first instance refers to the executive determination of probable cause, which is undertaken by the prosecution for the purpose of determining whether an Information charging an accused should be filed. The second instance refers to the judicial determination, which is assumed by a judge to determine whether a warrant of arrest should be issued. x x x The prosecution determines the existence of probable cause independently from the court. The executive determination of probable cause concerns itself with the indictment of a person or the propriety of filing a criminal information. Once an information is filed, jurisdiction over the case is vested on the court. The judge, upon assumption of jurisdiction, "does not act as an appellate court." He or she does not review the determination made by the prosecutor. Courts "cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause." Instead, the judge makes an independent assessment of the evidence to determine whether there is probable cause to issue a warrant of arrest.

**TIJAM, *J., concurring opinion*:**

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIMITED TO RESOLVING ERRORS OF JURISDICTION.—** In a petition for *certiorari,* the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment. The courts duty in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of *certiorari,* absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

2. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; COURTS OUGHT TO REFRAIN FROM INTERFERING WITH THE PUBLIC PROSECUTOR'S FINDING OF PROBABLE CAUSE.—** As a matter of policy, courts are bound to respect the prosecution's preliminary determination of probable cause absent proof of manifest error, grave abuse of discretion and prejudice. "The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors." "Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties." In any case, if there was palpable error or grave abuse of discretion in the public prosecutor's finding of probable cause, the accused can appeal such finding to the justice secretary and move for the deferment or suspension of the proceedings until such appeal is resolved. The aforesaid policy of non-interference applies with greater force in the case of the Ombudsman.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; ELEMENTS.—** In *Enrile v. People of the Philippines,* the Court enumerated the elements of plunder as follows: (1) That

the offender is a ***public officer*** who acts ***by himself or in connivance*** with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons; (2) That he amassed, accumulated or ***acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:*** (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and (3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.

**4. ID.; REPUBLIC ACT NO. 3019, SECTION 3(e); ELEMENTS.—** [T]he essential elements of Section 3(e) of R.A. No. 3019, are: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

**5. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DUE TO THE**

**NATURE OF PRELIMINARY INVESTIGATION, IT IS BASELESS TO EXAMINE EVERY SINGLE PIECE OF EVIDENCE PRESENTED BY THE PROSECUTION UNDER THE SAME RULES OBSERVED DURING TRIAL.—** Evidently, the facts of this case are identical to *Cambe v. Office of the Ombudsman* x x x. The majority in the *Cambe* case deemed the pieces of evidence relied upon by the Ombudsman sufficient to establish a *prima facie* case against the public respondent Senator. It must be noted that the evidentiary bases of the Ombudsman in that case are identical to those mentioned in the instant case. x x x In that case, the Court did not strictly apply the rules of evidence and primarily held the whistleblowers' testimonies as sufficient to justify the finding of probable cause against respondent Senator. x x x The dissent of Justice Presbitero J. Velasco, Jr. found public respondent Ombudsman to have committed grave abuse of discretion because the allegation that Senator Estrada colluded with his co-respondents in amassing wealth through illegal disbursement of his PDAF was not grounded on "concrete proof." It found the testimonies of the three whistleblowers, either lacking in credibility or insufficient for purposes of establishing Senator Estrada's purported participation in the illegal PDAF scheme. x x x Echoing my separate concurring opinion in *De Lima v. Guerrero,* owing primarily to the nature of preliminary investigation, and being cognizant of the stage at which the case is currently in, it would be baseless, not to mention unfair, to examine every single piece of evidence presented by the prosecution under the same rules observed during trial.

**VELASCO, JR., *J., concurring and dissenting opinion*:**

**1. POLITICAL LAW; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); INVESTIGATORY AND PROSECUTORY POWERS; THE OMBUDSMAN IS GIVEN WIDE LATITUDE IN THE EXERCISE THEREOF BUT THE SUPREME COURT MAY INTERVENE WITH THE OMBUDSMAN'S FINDINGS AND CONCLUSIONS TO DETERMINE WHETHER ITS DETERMINATION OF PROBABLE CAUSE HAS BEEN GRAVELY ABUSED.—** [T]he Ombudsman is given wide latitude, in the exercise of its investigatory and prosecutory powers, to prosecute offenses

involving public officials and employees, pursuant to Sec. 15 of RA No. 6770, otherwise known as the Ombudsman Act of 1989. As such, the Ombudsman possesses the authority to determine whether probable cause exists or not in a given set of facts and circumstances that would warrant the filing of a criminal case against erring government employees. This rule, nevertheless, is not without exception. Under the mantle of its power of judicial review, this Court may inquire into the propriety of, and intervene with, the Ombudsman's findings and conclusions to determine whether its determination of probable cause has been gravely abused.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE PROSECUTION DETERMINES DURING PRELIMINARY INVESTIGATION WHETHER PROBABLE CAUSE EXISTS TO INDICT THE RESPONDENT THEREIN FOR THE CRIME CHARGED.—** Sec. 1, Rule 112, Rules of Court defines preliminary investigation as "an inquiry or proceeding to determine whether sufficient ground exists to engender a well-founded belief that a crime has been committed, that the respondent is probably guilty of this crime, and should be held for trial." Otherwise stated, the prosecution determines during preliminary investigation whether probable cause exists to indict the respondents therein for the crime charged. The significance of a preliminary investigation cannot be gainsaid. Preliminary investigation, although an executive function, is part of a criminal proceeding conducted not only to prosecute the guilty, but to protect the innocent from the embarrassment, expense and anxiety of a public trial. It is the crucial sieve in the criminal justice system which spells for an individual the difference between months, if not years, of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. x x x Thus, the Court has characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice. Accordingly, preliminary investigations should be scrupulously conducted not only to protect the constitutional right to liberty of a potential accused from any material damage, but also to protect the State from the burden of unnecessary expenses in prosecuting and trying cases arising from false, fraudulent or groundless charges.

**3. ID.; ID.; ID.; THE RIGHT OF THE RESPONDENT IS ONLY LIMITED TO EXAMINING THE EVIDENCE SUBMITTED BY THE COMPLAINANT.—** As stated in Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure, the right of the respondent is only limited to examining the evidence submitted by the *complainant.* Neither the Revised Rules of Criminal Procedure nor the Revised Rules of Procedures of the Office of the Ombudsman require the investigating officer to furnish the respondent with copies of the affidavits of his or her co-respondents. Furthermore, following Our pronouncement in *Paderanga v. Drilon,* the Court reiterated that the accused in a preliminary investigation has no right to cross-examine the witnesses whom the complainant may present. Section 3, Rule 112 of the Rules of Court is clear in that the accused only has the right 1) to submit a counter-affidavit, 2) to examine all other evidence *submitted by the complainant* and, 3) where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine.

**4. ID.; ID.; ID.; PROBABLE CAUSE; A FINDING OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT, MORE LIKELY THAN NOT, A CRIME HAS BEEN COMMITTED BY THE SUSPECTS.—** Probable cause, for purposes of filing a criminal information in court, is defined under case law 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 by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. Certainly, prosecutors are given a wide latitude of discretion in determining whether an information should be filed in court or whether the complaint should be dismissed, and the courts must respect the exercise of such discretion when the information filed against the person charged

is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.

**5. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; *RES INTER ALIOS ACTA* RULE; AN EXTRAJUDICIAL CONFESSION IS BINDING ONLY ON THE CONFESSANT AND IS NOT ADMISSIBLE AGAINST HIS CO-ACCUSED; EXCEPTION.—** [U]nder Sec. 28, Rule 130 of the Rules of Court, the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, **an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them.** This rule, otherwise known as *res inter alios acta,* is based on the tenet that it is manifestly unjust and inconvenient if a person should be bound by the acts of mere unauthorized strangers; thus, if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him. Admittedly, the *res inter alios acta* rule admits of certain exceptions, such as the rule on the admissions by conspirators under Sec. 29, Rule 130. Nevertheless, in order that the admission of a conspirator may be received as evidence against his co-conspirator, it is necessary that *first,* the conspiracy be first proved by evidence other than the admission itself; *second,* the admission relates to the common object; and *third,* it has been made while the declarant was engaged in carrying out the conspiracy. It is, therefore, indispensable that the conspiracy must first be established by evidence of intentional participation in the transaction with a view to the furtherance of the common design or purpose.

**6. CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; ELEMENTS.—** To constitute the crime of plunder, the following elements must be alleged and established: "1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; 2. That the offender amasses, accumulates or acquires ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary

benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and, 3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00." x x x The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00.

**7. ID.; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3(E); ELEMENTS.—** [A] prosecution for violation of Sec. 3 (e) of RA No. 3019 requires the concurrence of the following elements: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

**8. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF AFCT; THE DETERMINATION OF A QUESTION OF FACT IS BEYOND THE AMBIT OF THE SUPREME COURT'S POWER OF REVIEW.—** [G]ood faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the

holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. It is actually a question of intention, which can be **ascertained by relying not on a person's own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts. x x x** [T]he issue of whether a person acted in good faith is a question of fact, the determination of which is beyond the ambit of this Court's power of review. Only questions of law may be raised under this Rule as this Court is not a trier of facts.

**PERALTA, *J., concurring and dissenting opinion*:**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT, ANY DISPOSITION OF THE CASE AS TO ITS DISMISSAL OR THE CONVICTION OR ACQUITTAL OF THE ACCUSED RESTS IN THE SOUND DISCRETION OF THE COURT.—** The undisputed fact is that the Information against petitioners have already been filed in court. In fact, a warrant of arrest has been issued and trial has already commenced. The rule in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. Hence, with the filing of the Information before the Sandiganbayan, the present petitions have become moot and academic. The trial court has acquired *exclusive* jurisdiction over the case, and the determination of the accused's guilt or innocence rests within its sole and sound discretion.

**2. CRIMINAL LAW; REPUBLIC ACT NO. 7080; PLUNDER; ELEMENTS.—** [T]he elements of plunder are: "1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; 2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and, 3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00."

**3. ID.; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3(e); ELEMENTS.—** The elements of x x x Section 3(e) [of R.A. No. 3019] are: "(1) the offender is a public officer or a private person charged in conspiracy with the public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference."

**4. ID.; REPUBLIC ACT NO. 7080; PLUNDER; THE VARIOUS ACTS CONSTITUTING VIOLATIONS OF SECTION 3(e) OF REPUBLIC ACT NO. 3019, TAKEN TOGETHER, ARE PREDICATE ACTS OF PLUNDER WHICH SHOULD NOT BE CONSIDERED INDEPENDENT CRIME FOR WHICH PETITIONER IN CASE AT BAR SHOULD BE SEPARATELY INDICTED.—** [The] alleged various acts of giving unwarranted benefits to Napoles and various NGOs and of receiving commissions, kickbacks, or rebates are what comprises, precisely, what is defined under R.A. No. 7080 as a "combination or series of overt or criminal acts" which, when taken together, constitute the crime of plunder. In the instant case, the various acts constituting alleged violations of Section 3(e) of R.A. No. 3019, taken together, are predicate acts of plunder which should not be considered independent crimes for which petitioner Estrada should be separately indicted. Predicate means "found" or "base." Hence, by definition alone, the acts enumerated under Section 1(d) of R.A. No. 7080 are the bases or foundation for the commission of the crime of plunder, without which the said crime cannot be committed. Evidently, the acts allegedly committed by petitioner Estrada which were used as bases to charge him with several counts of violation of Section 3(e) of R.A. No. 3019 are part of the same series of acts used as grounds to indict him for plunder.

**APPEARANCES OF COUNSEL**

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*David Cui-david Buenaventura & Ang Law Offices* for petitioner in G.R. Nos. 213473-74 & G.R. Nos. 213538-39.

*The Solicitor General* for respondents.

## D E C I S I O N

**CARPIO, *J.*:**

### The Case

The present consolidated[1] petitions for certiorari[2] filed by petitioners Senator Jinggoy Ejercito Estrada (Estrada), John Raymund de Asis (De Asis), and Janet Lim Napoles (Napoles) assail the Joint Resolution[3] dated 28 March 2014 and the Joint Order[4] dated 4 June 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0313 and OMB-C-C-13-0397 finding probable cause to indict them, along with several others, for the crime of Plunder, defined and penalized under Section 2 of Republic Act No. (RA) 7080, as amended, and for violation of Section 3(e) of RA 3019.

### The Facts

Petitioners are charged as co-conspirators for their respective participation in the illegal pillaging of public funds sourced from the Priority Development Assistance Fund (PDAF) of Estrada for the years 2004 to 2012. The charges are contained in two (2) complaints, namely: (1) a Complaint for Plunder[5] filed by the National Bureau of Investigation and Atty. Levito D. Baligod (NBI Complaint) on 16 September 2013, docketed as OMB-C-C-13-0313; and (2) a Complaint for Plunder and violation of Section 3(e) of RA 3019[6] filed by the Field

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[1] See orders of consolidation in Court Resolutions dated 30 September 2014 *(rollo* [G.R. Nos. 213473-74], pp. 430-431) and 16 November 2015 *(rollo* [G.R. Nos. 213538-39], unpaged).

[2] Under Rule 65 of the Rules of Court. Pertain to the following petitions: *(a)* petition in G.R. Nos. 212761-62 filed by Estrada; *(b)* petition in G.R. Nos. 213473-74 filed by De Asis; and (c) petition in G.R. Nos. 213538-39 filed by Napoles.

[3] *Rollo* (G.R. Nos. 212761-62), Vol. I, pp. 68-187.

[4] *Id.* at 188-232.

[5] *Id.* at 233-251.

[6] *Id.*, Vol. II, pp. 675-736.

Investigation Office of the Ombudsman (FIO Complaint) on 18 November 2013, docketed as OMB-C-C-13-0397, both before the Ombudsman. Briefly stated, petitioners were implicated for allegedly committing the following acts:

(a) Estrada, as Senator of the Republic of the Philippines, for: (1) authorizing the illegal utilization, diversion, and disbursement of his allocated PDAF through his endorsement of fraudulent non-governmental organizations created and controlled by Napoles' JLN Corporation (JLN-controlled NGOs); (2) acquiring and receiving significant portions of the diverted PDAF funds as his commission, kickbacks, or rebates in the total amount of P183,793,750.00; and (3) giving unwarranted benefits to Napoles and the JLN-controlled NGOs in the implementation of his PDAF-funded projects, causing undue injury to the government in an amount of more than ₱278,000,000.00;[7]

(b) Napoles, as the mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Estrada's PDAF through: (1) the commencement via "business propositions" with Estrada regarding his allocated PDAF; (2) the creation and operation of JLN-controlled NGOs to serve as "conduits" for "ghost" PDAF-funded projects; (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs; (4) the falsification and machinations used in securing funds from the various implementing agencies (IAs) and in liquidating disbursements; and (5) the remittance of Estrada's PDAF for misappropriation; and

(c) De Asis, as driver/messenger/janitor of Napoles, for assisting in the fraudulent processing and releasing of the PDAF funds to the JLN-controlled NGOs through, among others, his designation as President/Incorporator of a JLN-controlled NGO, namely, *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI) and for eventually remitting the PDAF funds to Napoles' control.

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[7] *Id*., Vol. I, p. 94.

The NBI Complaint alleged that, based on the sworn statements of Benhur Luy (Luy) along with several other JLN employees including Marina Sula (Sula) and Merlina Suñas (Suñas) (collectively, the whistleblowers), the PDAF scheme would commence with Napoles and the legislator — in this case, Estrada – discussing the utilization of the latter's PDAF. During this stage, the legislator and Napoles would discuss the list of projects, description or purpose of the projects, corresponding implementing government agency, project cost, and "commission" or "rebate" of the legislator, ranging from 40-60% of the total project cost or the amount stated in the Special Allotment Release Order (SARO). After the negotiations and upon instruction of Napoles, Luy would prepare the so-called "Listing," containing the list of projects allocated by the legislator to Napoles and her NGOs, project title or description, name of the IA under the General Appropriations Act (GAA) Menu, and the project cost. Thereafter, Napoles would submit the "Listing" to the legislator. The legislator would prepare a letter, which incorporated the "Listing" submitted by Napoles, addressed to the Senate President and the Finance Committee Chairperson in the case of a Senator, or to the House Speaker and Chairperson of the Appropriations Committee in the case of a Congressman, who would then endorse such request to the Department of Budget and Management (DBM) for the release of the SARO. Upon receipt by the DBM of a copy of the letter with the endorsement, the legislator would give Napoles a copy of the letter with a "received" stamp and Napoles would give the legislator the agreed advance legislator's commission.

Thereafter, Luy and other Napoles' employees would follow-up the release of the SARO from the DBM, by citing the details of the legislator's letter to expedite the release of the SARO. Upon release of the SARO, the DBM would furnish a copy of it to the legislator, who in turn, would give a copy of it to Napoles. Upon receipt of the copy of the SARO, Napoles would order her employees to prepare the balance of the legislator's commission, which would be delivered by Napoles to the legislator or his/her authorized representative.

Napoles, who chose the NGO owned or controlled by her that would implement the project, would instruct her employee to prepare a letter for the legislator to sign endorsing her NGO to the IA. The legislator would sign the letter endorsing Napoles' NGOs to the IAs, based on the agreement with Napoles. The IA would then prepare a Memorandum of Agreement (MOA) between the legislator, the IA, and the selected NGO. Napoles' employee would secure a copy of the MOA. Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, and the head of the IA would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a 10% share in the project cost.

The succeeding checks would be issued upon compliance with the necessary documentation, i.e. official receipts, delivery receipts, sales invoices, inspection reports, delivery reports, certificates of acceptance, terminal reports, and master lists of beneficiaries. Napoles' employees, upon instruction of Napoles, would pick up the checks and deposit them to the bank accounts of the NGO concerned. Once the funds are in the account of the JLN-controlled NGO, Napoles would call the bank to facilitate the withdrawal of the money, and Napoles' employees would bring the proceeds to the office of JLN Corporation for accounting. Napoles would then decide how much would be left in the office and how much would be brought to her residence in Taguig City. Napoles and her employees would subsequently manufacture fictitious lists of beneficiaries, inspection reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not.

Under this *modus operandi,* Estrada, with the help of Napoles and De Asis, among others, funneled his PDAF amounting to around ₱262,575,000.00[8] to the JLN-controlled NGOs, specifically *Masaganang Ani Para sa Magsasaka Foundation, Inc.* (MAMFI) and *Social Development Program for Farmers Foundation, Inc.* (SDPFFI), and in return, received

[8] *Id.* at 242.

"commissions" or "rebates" amounting to ₱183,793,750.00, through his authorized representative, Pauline Labayen (Labayen) and Ruby Tuason (Tuason).[9]

On the other hand, the FIO Complaint alleged that Estrada and Labayen, in conspiracy with Napoles and her NGOs, committed plunder through repeated misuse of public funds as shown by the series of SAROs issued to effect releases of funds from the PDAF allocation of Estrada to Napoles' NGOs, and through accumulation of more than ₱50,000,000.00 in the form of kickbacks.[10] Estrada likewise violated Section 3(e) of RA 3019 by acting with manifest partiality and evident bad faith in endorsing MAMFI and SDPFFI in violation of existing laws, such as the GAA, Implementing Rules and Regulations of RA 9184, Government Procurement Policy Board Resolution No. 012-2007 and Commission on Audit (COA) Circular 2007-01.

Both the NBI Complaint and the FIO Complaint cited the COA Special Audit Office Report No. 2012-2013 (COA report) in illustrating the PDAF allotments of Estrada in 2007-2009:

| SARO Number | Amount (₱) | IA | NGO |
|---|---|---|---|
| 08-06025 | 16.490 million | National Agribusines Corporation (NABCOR) | MAMFI |
| 09-02770 | 9.700 million | | |
| 08-01697 | 24.250 million[11] | | |
| 08-03116 | 18.915 million[12] | | |
| 09-01612 | 19.400 million | National Livelihood Development Corporation (NLDC) NABCOR NLDC | |
| 09-02769 | 29.100 million | | |
| G-09-07076 | 30.070 million | | |
| G-09-07579 | 24.250 million | | |
| 08-06025 | 19.400 million | | |
| G-09-07579 | 24.250 million | | |

[9] *Id*. at 246.

[10] *Id*., Vol. II, p. 727.

[11] ₱23,710,000.00 in the FIO Complaint.

[12] ₱18,914,000.00 in the FIO Complaint.

| | | | |
|---|---|---|---|
| F-09-09579 | 24.250 million | | SDPFFI |
| 08-01698 | 22.500 million | Technology Resource Center (TRC) | |
| **TOTAL** | **₱262.575 million**[13] | | |

The COA Report also made the following observations applicable to all of the PDAF disbursements of Estrada for 2007-2009: (1) the implementation of most livelihood projects was undertaken by the NGOs, not the IAs, in violation of existing laws; (2) the selection of NGOs and implementation of the projects were not compliant with existing regulations; (3) the selected NGOs, their suppliers and beneficiaries are unknown, or could not be located at their given addresses, or submitted questionable documents, or failed to liquidate or fully document the utilization of funds; and (4) irregularities manifested in the implementation of the livelihood projects, such as multiple attendance of the same beneficiaries to the same or similar trainings and multiple receipt of the same or similar kits.[14]

Pursuant to the Orders of the Ombudsman directing the petitioners and their co-respondents in the complaints to submit their counter-affidavits, Estrada submitted his separate Counter-Affidavits to the NBI Complaint on 8 January 2014, and to the FIO Complaint on 16 January 2014. De Asis failed to submit his counter-affidavit to the NBI Complaint, while Napoles failed to submit her counter-affidavit to both complaints. The petitioners' co-respondents filed their respective counter-affidavits between 9 December 2013 and 14 March 2014.

In both his Counter-Affidavits,[15] Estrada denied having received, directly or indirectly, any amount from Napoles, or any person associated with her, or any NGO owned or controlled by her, and having amassed, accumulated, or acquired ill-gotten wealth. He further denied instructing or directing any of his

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[13] ₱262,034,000.00 in the FIO Complaint.

[14] *Rollo* (G.R. Nos. 212761-62), Vol. II, pp. 722-723.

[15] *Id*. at 737-776 and 777-821.

staff to commit and/or participate in any irregular and unlawful transaction involving his PDAF allocations.

Estrada claimed that he committed no intentional or willful wrongdoing in his choice of NGOs to implement the PDAF projects, and he had no knowledge or notice of any relationship between the NGOs that implemented the projects and Napoles. He further claimed that the "letters where (a) [he] requested certain livelihood programs and projects to be implemented by certain [NGOs] and those where (b) [he] authorized [his] staff to follow[-]up, supervise, sign, and act in [his] behalf to ensure the proper and timely implementation of these projects do not show that [he] authorized the performance of any illegal activity."[16] Answering the charge against him for violation of Section 3(e) of RA 3019, he alleged that there was no manifest partiality or evident bad faith in endorsing the NGOs to implement the PDAF projects, since he only endorsed the NGOs accredited and selected by the IAs, and his act of endorsement was merely recommendatory and not deemed irregular or in violation of law.[17]

On 28 March 2014, the Ombudsman issued the assailed Joint Resolution finding probable cause to charge petitioners and several other respondents in the NBI and FIO Complaints for one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

After considering the testimonial and documentary evidence, the Ombudsman concluded that petitioners conspired with the DBM personnel, and the heads of the IAs, specifically NABCOR, NLDC, and TRC, in amassing ill-gotten wealth by diverting the PDAF of Estrada from its intended project recipients to JLN-controlled NGOs, specifically MAMFI and SDPFFI. Estrada, in particular, took advantage of his official position and amassed, accumulated, and acquired ill-gotten wealth by receiving money from Napoles, through Tuason and Labayen, in the amount of ₱183,793,750.00 in exchange for endorsing

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[16] *Id*. at 771 and 817.

[17] *Id*. at 803-804, 808.

JLN-controlled NGOs to the IAs of his PDAF-funded projects. De Asis, for his part, participated in the conspiracy by facilitating the transfer of the checks from the IAs and depositing the same to the bank accounts of the JLN-controlled NGOs. Furthermore, the Ombudsman found that petitioners, among others, acting in concert are manifestly partial, and in evident bad faith in violation of Section 3(e) of RA 3019 in relation to Estrada's PDAF releases, coursed through NABCOR, NLDC, TRC, MAMFI, and SDPFFI.

The motions for reconsideration were denied in the Joint Order issued by the Ombudsman on 4 June 2014.

Following the denial of the petitioners' motions for reconsideration, the Ombudsman filed several Informations before the Sandiganbayan, charging petitioners with one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

Thus, Estrada, De Asis, and Napoles filed their separate petitions for certiorari assailing the Joint Resolution and Joint Order of the Ombudsman before this Court. The petition filed by Estrada is docketed as G.R. Nos. 212761-62, the petition filed by De Asis is docketed as G.R. Nos. 213473-74, and the petition filed by Napoles is docketed as G.R. Nos. 213538-39.

Estrada subsequently filed a Supplement to the Petition for Certiorari on 28 May 2015 and a Second Supplement to the Petition for Certiorari on 16 March 2018 basically asserting that his indictment is an act of political persecution and violates his constitutional right to equal protection of the laws.

## The Issue

The sole issue left to be resolved in this case is whether or not the Ombudsman committed any grave abuse of discretion in rendering the assailed Resolution and Order ultimately finding probable cause against Estrada, De Asis, and Napoles for the charges against them.

**The Ruling of the Court**

We do not find merit in the petitions.

Both the Constitution[18] and RA 6770,[19] or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees.[20] As 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."[21]

This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.[22] Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.[23] As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[24]

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[18] 1987 CONSTITUTION, Article XI, Section 12 provides: "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof."

[19] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).

[20] *Reyes v. Office of the Ombudsman,* G.R. No. 208243, 5 June 2017, 825 SCRA 436, 446, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

[21] *Id*.

[22] *Id*.; *Cambe v. Office of the Ombudsman,* G.R. Nos. 212014-15, 6 December 2016, 812 SCRA 537, 580; *Clave v. Office of the Ombudsman,* G.R. No. 206425, 5 December 2016, 812 SCRA 187, 196-197; *Joson v. Office of the Ombudsman,* 784 Phil. 172, 189 (2016); *Reyes v. Ombudsman,* 783 Phil. 304, 332 (2016); *Ciron v. Ombudsman Gutierrez,* 758 Phil. 354, 362 (2015).

[23] *Reyes v. Office of the Ombudsman, supra* note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

[24] *Reyes v. Office of the Ombudsman, supra* note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273.

This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well.[25] Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant.[26]

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.[27] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[28] The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so

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[25] *Reyes v. Office of the Ombudsman,* supra note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273; *Cambe v. Office of the Ombudsman, supra* note 22, at 580; *Clave v. Office of the Ombudsman, supra* note 22, at 197; *Joson v. Office of the Ombudsman, supra* note 22, at 189; *Reyes v. Ombudsman, supra* note 22, at 333; *Ciron v. Ombudsman Gutierrez, supra* note 22, at 363.

[26] *Reyes v. Office of the Ombudsman, supra* note 20, at 447, citing *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273, further citing *Republic v. Ombudsman Desierto,* 541 Phil. 57 (2007); *Clave v. Office of the Ombudsman, supra* note 22, at 197; *Joson v. Office of the Ombudsman, supra* note 22, at 189; *Reyes v. Ombudsman, supra* note 22, at 333; *Ciron v. Ombudsman Gutierrez, supra* note 22, at 363.

[27] *Soriano v. Deputy Ombudsman Fernandez,* 767 Phil. 226, 240 (2015); *Reyes v. Ombudsman, supra note* 22, at 332; *Ciron v. Ombudsman Gutierrez, supra* note 22, at 362.

[28] *Duque v. Ombudsman,* G.R. Nos. 224648 and 224806-07, 29 March 2017 (Unsigned Resolution); *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, 7 December 2016, 813 SCRA 273, 300, citing *Casing v. Ombudsman,* 687 Phil. 468 (2012); *Cambe v. Office of the Ombudsman, supra* note 22, at 580; *Clave v. Office of the Ombudsman, supra* note 22, at 197-198; *Reyes v. Ombudsman, supra* note 22, at 332; *Ciron v. Ombudsman Gutierrez, supra* note 22, at 362.

patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.[29]

Thus, for the present petition to prosper, petitioners would have to show this Court that the Ombudsman exercised its power, to determine whether there is probable cause, in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law. On the petitioners lie the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari.*[30]

There are two kinds of determination of probable cause: executive and judicial.[31] The executive determination of probable cause, made during preliminary investigation, 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 the person believed to have committed the crime as defined by law.[32] **Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not the prosecutor 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.**[33] 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.[34]

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[29] *Duque v. Ombudsman, supra* note 28; *Dichaves v. Office of the Ombudsman, supra* note 20, at 300, citing *Casing v. Ombudsman,* 687 Phil. 468 (2012); *Cambe v. Office of the Ombudsman, supra* note 22, at 580; *Clave v. Office of the Ombudsman, supra* note 22, at 197-198; *Reyes v. Ombudsman, supra* note 22, at 332-333; *Ciron v. Ombudsman Gutierrez, supra* note 22, at 362.

[30] *Clave v. Office of the Ombudsman, supra* note 22, at 198.

[31] *Inocentes v. People of the Philippines,* 789 Phil. 318, 331 (2016), citing *People v. Castillo,* 607 Phil. 754, 764 (2009).

[32] *Id.*

[33] *Id.*

[34] *Id.*

Under Sections 1 and 3, Rule 112 of the Revised Rules of Criminal Procedure, **probable cause** is needed to be established by the investigating officer, to determine **whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial,** during preliminary investigation. Thus, 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.[35] It is merely based on opinion and reasonable belief.[36] In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he or she has no technical knowledge.[37]

We have explained the concept of probable cause in *Estrada v. Office of the Ombudsman (Estrada)*[38] in this wise:

> 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 suspects.** Probable cause 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. As well put in *Brinegar v.*

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[35] *Joson v. Office of the Ombudsman, supra* note 22, at 185; *Estrada v. Office of the Ombudsman,* 751 Phil. 821, 873 (2015) (citations omitted); *Hasegawa v. Giron,* 716 Phil. 364, 373 (2013).

[36] *Cambe v. Office of the Ombudsman, supra* note 22, at 580; *Clave v. Office of the Ombudsman, supra* note 22, at 199; *Reyes v. Ombudsman, supra* note 22, at 334; *Estrada v. Office of the Ombudsman, supra* note 35, at 873, (citations omitted); *Aguilar v. Department of Justice,* 717 Phil. 789, 800 (2013); *Hasegawa v. Giron, supra* note 35, at 374; *Ang-Abaya v. Ang,* 593 Phil. 530, 541(2008).

[37] *Dichaves v. Office of the Ombudsman, supra* note 20, at 302-303, citing *Kalalo v. Office of the Ombudsman,* 633 Phil. 160 (2010); *Relampagos v. Office of the Ombudsman,* G.R. Nos. 216812-16, 19 July 2016 (Unsigned Resolution); *Aguilar v. Department of Justice, supra* note 36, at 800; *Hasegawa v. Giron, supra* note 35, at 374.

[38] 751 Phil. 821 (2015).

*United States,* while **probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction."** A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

x x x. To **repeat, probable cause merely implies probability of guilt and should be determined in a summary manner.** Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. x x x.

x x x x x x x x x

x x x. In the United States, from where we borrowed the concept of probable cause, the prevailing definition of probable cause is this:

> In dealing with probable cause, however, as the very name implies, we deal with **probabilities.** These are not technical; they are **the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.** The standard of proof is accordingly correlative to what must be proved.
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> "The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." *McCarthy v. De Armit, 99 Pa. St. 63, 69,* quoted with approval in the *Carroll* opinion. *267 U. S. at 161.* And this "means less than evidence which would justify condemnation" or conviction, as Marshall, C. J., said for the Court more than a century ago in *Locke v. United States,* 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Carroll v. United States, 267 U. S. 132, 162.*
>
> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed

> for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.[39] (Emphasis supplied)

In order to arrive at probable cause, the elements of the crime charged should be present.[40] In *Reyes v. Ombudsman (Reyes),*[41] this Court unanimously held that in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**." We explained that:

> **Owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent.** This is because probable cause — the determinative matter in a preliminary investigation implies mere probability of guilt; thus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice.
>
> Also, it should be pointed out that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, and that the **presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.** Therefore, "the **validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."**
>
> Furthermore, owing to the initiatory nature of preliminary investigations, the **"technical rules of evidence should not be applied"** in the course of its proceedings, keeping in mind that **"the**

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[39] *Estrada v. Office of the Ombudsman, supra* note 35 at 868-871.

[40] *Hasegawa v. Giron, supra* note 35, at 374.

[41] 783 Phil. 304 (2016).

**determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the admissibility or veracity of testimonies presented."** Thus, in *Estrada v. Ombudsman (Estrada),* the Court declared that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay."[42] (Emphasis supplied)

We reiterated the same principles in *Cambe v. Office of the Ombudsman (Cambe):*[43]

x x x [P]robable cause is determined during the context of a preliminary investigation **which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it."** It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly, "owing to the initiatory nature of preliminary investigations, **the technical rules of evidence should not be applied in the course of its proceedings.**" In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay," and that even an invocation of the rule on res inter alios acta at this stage of the proceedings is improper.[44] (Boldfacing and underscoring in the original)

In the present case, petitioners are charged with the crime of plunder and violation of Section 3(e) RA 3019. Plunder, defined and penalized under Section 2[45] of RA 7080, as amended,

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[42] *Id*. at 336-337.

[43] G.R. Nos. 212014-15, 6 December 2016, 812 SCRA 537.

[44] *Id*. at 583-584.

[45] This provision reads:

Section 2. *Definition of the Crime of Plunder; Penalties.* – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons,

has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d)[46]

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amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[46] Section 1(d) states:

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and or business associates by any combination or series of the following means or similar schemes.

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or acquired is at least Fifty Million Pesos (₱50,000,000.00). On the other hand, the elements of violation of Section 3(e)[47] of RA 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

The Ombudsman did not abuse its discretion amounting to lack or excess of jurisdiction in finding probable cause to indict Estrada for one count of plunder and 11 counts of violation of Section 3(e) of RA 3019.

In its Joint Resolution[48] dated 28 March 2014, the Ombudsman found that probable cause exists to indict Estrada for plunder, after finding that the elements of the crime charged are reasonably apparent based on the evidence on record:

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6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[47] This provisions reads:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[48] *Rollo* (G. R. Nos. 212761-62), Vol. I, pp. 68-187.

*First,* it is *undisputed* that Senator Estrada was a public officer at the time material to the charges.

*Second,* he **amassed, accumulated or acquired ill-gotten wealth.**

As disclosed by the evidence, he *repeatedly* received sums of money from Janet Napoles for endorsing her NGOs to implement the projects to be funded by his PDAF.

x x x x x x x x x

As outlined by witnesses Luy, Sula and Suñas which Tuason similarly claimed, once a PDAF allocation becomes available to Senator Estrada, his staff Labayen would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or witness Luy. Napoles or Luy would then prepare a listing of the projects available where Luy would specifically indicate the IAs. This listing would be sent to Labayen who would then endorse it to the DBM under her authority as Deputy Chief-of-Staff of Senator Estrada. **After the listing is released** by the Office of Senator Estrada to the DBM, Napoles would give Tuason or Labayen a down payment for delivery to Senator Estrada. **After the SARO and/or NCA is released,** Napoles would give Tuason the **full payment for delivery to Senator Estrada** through Labayen or by Tuason.

It bears noting that money was paid and delivered to Senator Estrada even **before** the **SARO and/or NCA is released.** Napoles would advance Senator Estrada's down payment from her own pocket upon the mere release by his Office of the listing of projects to the DBM, with the remainder of the amount payable to be given after the SARO representing the legislator's PDAF allocation is released by the DBM and a copy of the SARO forwarded to Napoles.

Significantly, after the DBM issues the SARO, Senator Estrada, through Labayen, would then write another letter addressed to the IAs which would **identify and indorse** Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project, thereby effectively designating in writing the Napoles-affiliated NGO to implement projects funded by his PDAF. Along with the other PDAF documents, the **indorsement letter** of Senator Estrada is transmitted to the IA, which, in turn, handles the preparation of the MOA concerning the project, to be entered into by the Senator's Office, the IA and the chosen NGO.

[Dennis] Cunanan, [Deputy Director General of TRC], in his Counter-Affidavit, claimed that Senator Estrada confirmed to him that he, indeed, chose the NGOs named in the aforementioned letters and insisted that the choice be honored by the TRC:

> 17.4. . . . I remember vividly how ***both Senators Revilla and Estrada admonished me because they thought that TRC was purportedly "delaying" the projects. Both Senators Revilla and Estrada insisted that the TRC should honor their choice of NGO,*** which they selected to implement the projects, since the projects were funded from their PDAF. They both asked me to ensure that TRC would immediately act on and approve their respective projects. *(emphasis, italics and underscoring supplied)*

As previously discussed, the indorsements enabled Napoles to gain access to substantial sums of public funds. The collective acts of Senator Estrada, Napoles, et al. allowed the illegal diversion of public funds to their own personal use.

It cannot be gainsaid that the sums of money received by Senator Estrada amount to "kickbacks" or "commissions" from a government project within the purview of Sec. 1 (d) (2) of RA 7080. He repeatedly received commissions, percentage or kickbacks representing his share in the project cost allocated from his PDAF, in exchange for his **indorsement** of Napole[s'] NGOs to implement his PDAF-funded projects.

Worse, the evidence indicates that he took undue advantage of his official position, authority and influence to unjustly enrich himself at the expense, and to the damage and prejudice of the Filipino people and the Republic of the Philippines, within the purview of Sec. 1 (d) (6) of RA 7080. He used and took undue advantage of his official position, authority and influence as a Senator of the Republic of the Philippines to access his PDAF and illegally divert the allocations to the possession and control of Napoles and her cohorts, in exchange for commissions, kickbacks, percentages from the PDAF allocations.

Undue pressure and influence from Senator Estrada's Office, as well as his endorsement of Napoles' NGOs, were brought to bear upon the public officers and employees of the IAs.

[Francisco] Figura, an officer from the TRC, claimed that the TRC management told him: *"legislators highly recommended certain NGOs/ Foundations as conduit implementors and since PDAFs are their*

*discretionary funds, they have the prerogative to choose their NGO's";* and the TRC management warned him that *"if TRC would disregard it (choice of NGO), they (legislators) would feel insulted and would simply take away their PDAF from TRC, and TRC losses (sic) the chance to earn service fees.*" Figura further claimed that **he tried his best to resist the pressure exerted on him** and did his best to perform his duties faithfully; *[but]* **he and other low-ranking TRC officials had no power to *"simply disregard the wishes of Senator [Estrada],"*** especially on the matter of public bidding for the PDAF projects.

Cunanan, narrates that he met Napoles sometime in 2006 or 2007, who *"introduced herself as the representative of certain legislators wo supposedly picked TRC as a conduit for PDAF-funded projects;"* at the same occasion, Napoles told him that *"her principals were then Senate President Juan Ponce Enrile, Senators Ramon "Bong" Revilla, Jr.,* **Sen. Jinggoy Ejercito Estrada;" letters signed by Estrada prove** that he [Estrada] **directly indorsed** NGOs affiliated with or controlled by Napoles to implement his PDAF projects; in the course of his duties, he *"often ended up taking and/or making* ***telephone verifications*** *and follow-ups and receiving legislators or their staff members;"* during one of these telephone conversations, **Estrada admonished him and *"insisted that the TRC should honor their choice of the NGO....since the projects were funded from their PDAF;" "all the liquidation documents and the completion reports of the NGO always bore the signatures of Ms. Pauline Labayen, the duly designated representative of Sen. Estrada;"*** and he occasionally met with witness Luy, who **pressured** him to expedite the release of the funds by **calling the offices of the legislators.**

NLDC's [Gondelina] Amata also mentioned about undue pressure surrounding *the designation of NLDC as one of the Implementing Agencies for PDAF.* Her fellow NLDC employee [Gregoria] Buenaventura adds that in accordance with her functions, she ***"checked and verified the endorsement letters of Senator [Estrada],*** which designated the NGOs that would implement his PDAF projects **and found them to be valid and authentic;" she also confirmed the authenticity of the authorization given by Estrada to his subordinates** regarding the monitoring, supervision and implementation of PDAF projects; and her evaluation and verification reports were accurate.

Another NLDC officer, [Alexis] Sevidal, claimed that Senator Estrada and Napoles, not NLDC employees, were responsible for

the misuse of the PDAF; **Senator Estrada, through Labayen, was responsible for *"identifying the projects, determining the project costs and choosing the NGOs"* which was *"manifested in the letters of Senator Estrada and Ms. Pauline Labayen...that were sent to the NLDC;"*** and that he and other NLDC employees were **victims of the *"political climate"* and *"bullied into submission by the lawmakers."***

The evidence evinces that Senator Estrada used and took undue advantage of his official position, authority and influence as a Senator to unjustly enrich himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The PDAF was allocated to Senator Estrada by virtue of his position, hence, he exercised control in the selection of his priority projects and programs. He indorsed Napoles' NGOs in consideration for the remittance of kickbacks and commissions from Napoles. These circumstances were compounded by the fact that the PDAF-funded projects were *"ghost projects"* and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts. Undeniably, Senator Estrada unjustly enriched himself at the expense, and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

*Third,* the amounts earned by Senator Estrada through kickbacks and commissions amounted to more than Fifty Million Pesos (₱50,000,000.00).

Witness Luy's ledger shows, among others, that Senator Estrada received the following amounts as and by way of kickbacks and commissions:

| **Year** | **Amount received by Senator Estrada (In PhP)** |
|---|---|
| 2004 | 1,500,000.00 |
| 2005 | 16,170,000.00 |
| 2006 | 12,750,000.00 |
| 2007 | 16,250,000.00 |
| 2008 | 51,250,000.00 |
| 2009 | 2,200,000.00 |
| 2010 | 73,923,750.00 |
| 2012 | 9,750,000.00 |
| **Total:** | **Php183,793,750.00** |

The aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired by Senator Estrada stands at **Php183,793,750.00, at the very least.**

The sums were received by the Senator either personally or through his Deputy Chief-Of-Staff, Labayen, as earlier discussed.

Napoles *provided* those kickbacks and commissions. Witnesses Luy and Suñas, not to mention Tuason, stated that Napoles was assisted in delivering the kickbacks and commissions by her employees and cohorts John Raymond de Asis, Ronald John Lim and Tuason.

Senator Estrada's commission of the acts covered by Section 1 (d) (2) and Section 1 (d) (6) of RA No. 7080 repeatedly took place over the years 2004 to 2012. This shows a pattern – a combination or series of overt or criminal acts – directed towards a common purpose or goal, which is to enable Senator Estrada to amass, accumulate or acquire ill-gotten wealth.

Senator Estrada, taking undue advantage of official position, authority, relationship, connection or influence as a Senator acted, *in connivance* with his subordinate-authorized representative Labayen, to receive commissions and kickbacks for indorsing the Napoles NGOs to implement his PDAF-funded project; and likewise, *in connivance* with Napoles, with the assistance of her employees and cohorts Tuason, de Asis and Lim who delivered the kickbacks to him. These acts are linked by the fact that they were plainly geared towards a common goal which was to amass, acquire and accumulate ill-gotten wealth amounting to at least **Php183,793,750.00** for Senator Estrada.[49] (Emphasis in the original)

In concluding that there is probable cause to indict Estrada for 11 counts of violation of Section 3(e) RA 3019, the Ombudsman likewise examined the evidence on record in finding that it is reasonably apparent that the elements of the crime are present:

*First,* respondents Senator Estrada, Labayen, x x x were all public officers at the time material to the charges. Their respective roles in the processing and release of PDAF disbursements were in the exercise of their administrative and/or official functions.

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[49] *Id*. at 145-157.

Senator Estrada himself chose, in writing, the Napoles-affiliated NGO to implement projects funded by his PDAF. His trusted authorized staff: respondent Labayen, then prepared indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the IAs (NABCOR, TRC and NLDC). This trusted staff member also participated in the preparation and execution of MOAs with the NGOs and the IAs, inspection and acceptance reports, disbursement reports and other PDAF documents.

x x x x x x x x x

From the accounts of witnesses Luy, Sula and Suñas as well as of Tuason, Napoles made a business proposal to Labayen regarding the Senator's PDAF, which Labayen accepted. Senator Estrada later chose NGOs affiliated with/controlled by Napoles to implement his PDAF-funded projects.

x x x x x x x x x

*Second,* Senator Estrada and respondent-public officers of the IAs were manifestly partial to Napoles, her staff and the NGOs affiliated she controlled.

x x x x x x x x x

That Napoles and the NGOs affiliated with/controlled by her were extended undue favor is manifest.

Senator Estrada *repeatedly* and *directly* chose the NGOs headed or controlled by Napoles and her cohorts to implement his projects without the benefit of a public bidding, and without being authorized by an appropriation law or ordinance.

As correctly pointed out by the FIO, the Implementing Rules and Regulations of RA 9184 states that an NGO may be contracted only when so authorized by an appropriation law or ordinance.

x x x x x x x x x

National Budget Circular (NBC) No. 476, as amended by NBC No. 479, provides that PDAF allocations should be directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement government projects. This, however, did not

appear to have impeded Estrada's direct selection of the Napoles affiliated or controlled NGOs, and which choice was accepted *in toto* by the IAs.

Even assuming arguendo that the GAAs allowed the engagement of NGOs to implement PDAF-funded projects, such engagements remain subject to **public bidding** requirements. x x x.

x x x x x x x x x

The aforementioned laws and rules, however, were disregarded by public respondents, Senator Estrada having just chosen the Napoles-founded NGOs. Such blatant disregard of public bidding requirements is highly suspect, especially in view of the ruling in *Alvarez v. People.*

x x x x x x x x x

*Notatu dignum* is the extraordinary speed attendant to the examination, processing and approval by the concerned NABCOR, NLDC and TRC officers of the PDAF releases to the Napoles-affiliated or controlled NGOs. In most instances, the DVs were accomplished, signed and approved on the same day. Certainly, the required, careful examination of the transaction's supporting documents could not have taken place if the DV was processed and approved in one day.

x x x x x x x x x

In addition to the presence of *manifest partiality* on the part of respondent public officers alluded to, *evident bad faith* is present.

x x x x x x x x x

That several respondent public officers unduly benefitted from the diversion of the PDAF is borne by the records.

As earlier mentioned, Tuason claimed that she regularly remitted significant portions (around 50%) of the diverted sums to Estrada, which portions represented Senator Estrada's "share" or "commission" in the scheme, x x x.

x x x x x x x x x

Notably, Tuason admitted having received a 5% commission for acting as liaison between Napoles and Senator Estrada.

Witness Luy's business ledgers validate Tuason's claim that Labayen did, from time to time, receive money from Napoles that was intended for Estrada.

x x x x x x x x x

Indubitably, repeatedly receiving portions of sums of money wrongfully diverted from public coffers constitutes evident bad faith.

*Third,* the assailed PDAF-related transactions caused undue injury to the Government in the aggregate amount of PHP278,000,000.00.

Based on the 2007-2009 COA Report as well as on the independent field verification conducted by the FIO, the projects supposedly funded by Senator Estrada's PDAF were "ghost[s]" or inexistent. There were no livelihood kits distributed to beneficiaries. Witnesses Luy, Sula and Sufias declared that, per directive given by Napoles, they made up lists of fictitious beneficiaries to make it appear that the projects were implemented, albeit none took place.

Instead of using the PDAF disbursements received by them to implement the livelihood projects, respondent De Asis as well as witnesses Luy, Sula and Suñas, all acting for Napoles, continuously diverted these sums amounting to PHP278,000,000.00 to the pocket of Napoles.

Certainly, these repeated, illegal transfers of public funds to Napoles' control, purportedly for projects which did not exist, and just as repeated irregular disbursements thereof, represent quantifiable, pecuniary losses to the Government, constituting undue injury within the context of Section 3 (e) of RA 3019.

*Fourth,* respondents Estrada, Labayen x x x, granted respondent Napoles unwarranted benefits.

x x x x x x x x x

x x x. That they repeatedly failed to observe the requirements of R.A. No. 9184, its implementing rules and regulations, GPPB regulations as well as national budget circulars shows that unwarranted benefits, advantage or preference were given to private respondents.

The NGOs selected by Estrada did not appear to have the capacity to implement the undertakings to begin with. At the time material to the charges, these entities did not possess the required accreditation to transact with the Government, let alone possess a track record in project implementation to speak of.[50]

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[50] *Id*. at 127-140.

In *Clave v. Office of the Ombudsman,*[51] we held that in order to arrive at a finding of probable cause, the Ombudsman only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.

Given the ample supporting evidence it has on hand, the Ombudsman's exercise of prerogative to charge Estrada with plunder and violation of Section 3(e) of RA 3019 was not whimsical, capricious, or arbitrary, as to amount to grave abuse of discretion. Estrada's bare claim to the contrary cannot prevail over such positive findings of the Ombudsman.

In *Reyes,* we unanimously ruled that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes of plunder and violation of Section 3(e) of RA 3019 after its consideration that the testimonial and documentary evidence are substantial enough to reasonably conclude that Reyes had, in all probability, participated in the PDAF scam and, hence, must stand trial therefor. The testimonial and documentary evidence relied upon by the Ombudsman in *Reyes* are: (a) the declarations of the whistleblowers Luy, Sula, and Suñas; (b) Tuason's verified statement which corroborated the whistleblowers accounts; (c) the business ledgers prepared by witness Luy, showing the amounts received by Senator Enrile, through Tuason and Reyes, as his "commission" from the so-called PDAF scam; (d) the 2007-2009 COA Report documenting the results of the special audit undertaken on PDAF disbursements — that there were serious irregularities relating to the implementation of PDAF-funded projects, including those endorsed by Senator Enrile; and (e) the reports on the independent field verification conducted in 2013 by the investigators of the FIO which secured sworn statements of local government officials and purported beneficiaries of the supposed projects which turned out to be inexistent.

We held in *Reyes* that: "[i]ndeed, these pieces of evidence are already sufficient to engender a well-founded belief that

[51] *Supra* note 22.

the crimes charged were committed and Reyes is probably guilty thereof as it remains apparent that: (a) Reyes, a public officer, connived with Senator Enrile and several other persons x x x in the perpetuation of the afore-described PDAF scam, among others, in entering into transactions involving the illegal disbursement of PDAF funds; (b) Senator Enrile and Reyes acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF without the benefit of public bidding and/or negotiated procurement in violation of existing laws, rules, and regulations on government procurement; (c) the PDAF-funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Senator Enrile, through Reyes, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱172,834,500.00."[52]

In *Cambe,* we likewise upheld the Ombudsman's finding of probable cause against Revilla and held that Revilla should stand for trial for plunder and violation of Section 3(e) of RA 3019, considering that after taking all the pieces of evidence together, *i.e.* the PDAF documents, the whistleblowers' testimonies, Luy's business ledger, the COA and FIO reports, these pieces of evidence tend to *prima facie* establish that irregularities had indeed attended the disbursement of Revilla's PDAF and that he had a hand in such anomalous releases, being the head of office which unquestionably exercised operational control thereof. We agreed with the Ombudsman's observation that, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He indorsed [Napoles'] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost projects', and that the rest of the PDAF allocation went into the pockets of

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[52] *Reyes v. Ombudsman, supra* note 22, at 340-341.

Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."[53]

In the present case, the Ombudsman relied upon the same testimonial and documentary evidence relied upon by the Ombudsman in *Reyes* and *Cambe,* specifically: (a) the testimonies of the whistleblowers Luy, Sula, and Suñas; (b) the affidavits of Tuason and other co-respondents in the NBI and FIO Complaints; (c) the business ledgers prepared by Luy, showing the amounts received by Estrada, through Tuason and Labayen, as his "commission" from the so-called PDAF scam; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO. Aside from the said pieces of evidence, the Ombudsman pointed to the PDAF documents, corporate papers of JLN-controlled NGOs, and admissions made by some of Estrada's co-respondents themselves, in concluding that a person of ordinary caution and prudence would believe, or entertain an honest or strong suspicion, that plunder and violation of Section 3(e) of RA 3019 were indeed committed by Estrada, among the respondents named in the Joint Resolution.

Applying our ruling in *Reyes* and *Cambe* to the present case, the Ombudsman, thus, did not abuse its discretion in holding that the same pieces of evidence, taken together, are already sufficient to engender a well-founded belief that the crimes charged were committed and Estrada is probably guilty thereof, since it remains apparent that: (a) Estrada, a public officer, connived with Napoles and several other persons in entering into transactions involving the illegal disbursement of PDAF funds; (b) Estrada acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF in violation of existing laws, rules, and regulations on government procurement; (c) the PDAF-

[53] *Cambe v. Office of the Ombudsman, supra* note 22, at 599.

funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Estrada, through Tuason and Labayen, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱183,793,750.00.

Given that the Court previously unanimously ruled in *Reyes* that the following pieces of evidence: (a) the declarations of the whistleblowers Luy, Sula, and Suñas; (b) Tuason's verified statement which corroborated the whistleblowers' accounts; (c) the business ledgers prepared by Luy; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO, all taken together are already sufficient to engender a well-founded belief that the crimes charged were committed, specifically plunder and violation of Section 3(e) of RA 3019, and petitioners in *Reyes* and *Cambe* were probably guilty thereof, we shall likewise take these into account and uphold in the present case the finding of the Ombudsman as to the existence of probable cause against Estrada based on the said pieces of evidence.

Besides, we held in *Estrada,* that **"the sufficiency of the evidence put forward by the Ombudsman against Sen. Estrada to establish its finding of probable cause** in the 28 March 2014 Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 **was judicially confirmed by the Sandiganbayan, when it examined the evidence, found probable cause, and issued a warrant of arrest against Sen. Estrada** on 23 June 2014."[54]

In *Sec. De Lima v. Reyes,*[55] this Court held that once the trial court finds probable cause, which results in the issuance of a warrant of arrest, such as the Sandiganbayan in this case, with respect to Estrada, **any question on the prosecution's conduct of preliminary investigation becomes moot.**

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[54] *Estrada v. Office of the Ombudsman, supra* note 35, at 865.

[55] 776 Phil. 623, 652 (2016).

Thus, the Ombudsman's exercise of prerogative to charge Estrada with plunder and violation of Section 3(e) of RA 3019 was not whimsical, capricious, or arbitrary, amounting to grave abuse of discretion.

To emphasize, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the **presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.**[56] Moreover, the validity and merit of a party's defense or accusation, as well as **the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.**[57]

Thus, Estrada's defense, similar to De Asis' and Napoles', which is anchored on the absence of all the elements of the crime charged, is better ventilated during trial and not during preliminary investigation.

Moreover, as to De Asis' arguments that there is no evidence that he knowingly took part in the acts of plunder, and that he merely acted as driver, messenger, and janitor in good faith when he delivered money to Napoles' house or he picked up checks and deposited the same in banks,[58] we have already ruled upon the same arguments raised by De Asis and upheld the finding of probable cause against him in the case of *Cambe:*

> Records show that De Asis was designated as the President/Incorporator of KPMFI which was one of the many NGOs controlled by Napoles that was used in the embezzlement of Sen. Revilla's PDAF allocations. Moreover, whistleblowers Luy and Suñas explicitly named De Asis as one of those who prepared money to be given to the

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[56] *Cambe v. Office of the Ombudsman, supra* note 22, at 604; *Reyes v. Ombudsman, supra* note 22, at 336-337.

[57] *Cambe v. Office of the Ombudsman, supra* note 22, at 583; *Reyes v. Ombudsman, supra* note 22, at 337; *Hasegawa v. Giron, supra* note 35, at 376.

[58] *Rollo* (G.R. Nos. 213473-74), pp. 24-26.

lawmaker. Said whistleblowers even declared that De Asis, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank; and that, after the money is withdrawn from the bank, he was also one of those tasked to bring the money to Janet Napoles' house. Indeed, the foregoing prove to be well-grounded bases to believe that, in all probability, De Asis conspired with the other co-accused to commit the crimes charged.

To refute the foregoing allegations, **De Asis presented defenses which heavily centered on his perceived want of criminal intent, as well as the alleged absence of the elements of the crimes charged. However, such defenses are evidentiary in nature, and thus, are better ventilated during trial and not during preliminary investigation. To stress, a preliminary investigation is not the occasion for the fulland exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.**[59] (Emphasis supplied)

As to the finding of probable cause to indict Napoles for the crimes charged, and as to her argument that the NBI and FIO Complaints are defective and insufficient in form and substance as to the charges against her, we likewise find our ruling in *Reyes* applicable to this case:

Anent Janet Napole[s'] complicity in the abovementioned crimes, records similarly show that she, in all reasonable likelihood, played an integral role in the calculated misuse of Senator Enrile's PDAF. As exhibited in the *modus operandi* discussed earlier, once Janet Napoles was informed of the availability of a PDAF allocation, either she or Luy, as the "lead employee" of the JLN Corporation, would prepare a listing of the available projects specifically indicating the IAs. After said listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give a down payment from her own pockets for delivery to Senator Enrile through Reyes, with the remainder of the amount given to the Senator after the SARO and/or NCA is released. Senator Enrile would then indorse Janet Napole[s'] NGOs to undertake the PDAF-funded projects, which were "ghost projects" that allowed Janet Napoles and her cohorts to pocket the PDAF allocation.

[59] *Cambe v. Office of the Ombudsman, supra* note 22, at 604.

Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has *prima facie* been established that: (a) she, in conspiracy with Senator Enrile, Reyes, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Senator Enrile's PDAF, who supposedly abused his authority as a public officer in order to do so; (b) through this *modus operandi,* it appears that Senator Enrile repeatedly received ill-gotten wealth in the form of "kickbacks" in the years 2004-2010; and (c) the total value of "kickbacks" given to Senator Enrile amounted to at least ₱172,834,500.00.

In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that: (a) she conspired with public officials, *i.e.,* Senator Enrile and his chief of staff, Reyes, who exercised official functions whenever they would enter into transactions involving illegal disbursements of the PDAF; (b) Senator Enrile, among others, has shown manifest partiality and evident bad faith by repeatedly indorsing the JLN-controlled NGOs as beneficiaries of his PDAF-funded projects - even without the benefit of a public bidding and/or negotiated procurement, in direct violation of existing laws, rules, and regulations on government procurement;and (c) the "ghost" PDAF-funded projects caused undue prejudice to the government in the amount of ₱345,000,000.00.

x x x x x x x x x

Furthermore, there is no merit in Janet Napole[s'] assertion that the complaints are insufficient in form and in substance for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged. "According to Section 6, Rule 110 of the 2000 Rules of Criminal Procedure, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. **The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense."** In this case, the NBI and the FIO Complaints stated that: (a) Senator Enrile, Reyes, and Janet Napoles, among others, are the ones responsible for the PDAF scam; (b) Janet Napoles, *et al.* are being

accused of Plunder and violations of Section 3 (e) of RA 3019; (c) they used a certain *modus operandi* to perpetuate said scam, details of which were stated therein; (d) because of the PDAF scam, the Philippine government was prejudiced and defrauded in the approximate amount of ₱345,000,000.00; and (e) the PDAF scam happened sometime between the years 2004 and 2010, specifically in Taguig City, Pasig City, Quezon City, and Pasay City. The aforesaid allegations were essentially reproduced in the sixteen (16) Informations — one (1) for Plunder and fifteen (15) for violation of RA 3019 — filed before the Sandiganbayan. Evidently, these factual assertions already square with the requirements of Section 6, Rule 110 of the Rules of Criminal Procedure as above-cited. Upon such averments, there is no gainsaying that Janet Napoles has been completely informed of the accusations against her to enable her to prepare for an intelligent defense. The NBI and the FIO Complaints are, therefore, sufficient in form and in substance.[60] (Boldfacing and underscoring in the original)

Applying our ruling in *Reyes* and *Cambe,* we likewise do not find that the Ombudsman gravely abused its discretion in finding probable cause to indict De Asis and Napoles for the crimes charged in the present case.

Moreover, Justice Presbitero J. Velasco, Jr.'s dissent should not have individually assessed as inadmissible and incompetent the evidence used by the Ombudsman in finding that probable cause exists to indict petitioners for plunder and violation of Section 3(e) of RA 3019.

In *De Lima v. Judge Guerrero,*[61] penned by Justice Velasco, the Court held that the **admissibility of evidence, their evidentiary weight, probative value, and the credibility of the witness are matters that are best left to be resolved in a full-blown trial, not during a preliminary investigation where the technical rules of evidence are not applied** nor at the stage of the determination of probable cause for the issuance of a warrant of arrest. Thus, the better alternative is to proceed

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[60] *Reyes v. Ombudsman, supra* note 22, at 348-351.

[61] G.R. No. 229781, 10 October 2017.

to the conduct of trial on the merits and for the prosecution to present its evidence in support of its allegations.

In any event, we have already ruled on the arguments raised by Justice Velasco in individually refuting the evidence used by the Ombudsman in finding probable cause in the cases of *Reyes* and *Cambe*.

First, there is no basis in ruling at this stage that the whistleblowers' statements, along with those of Estrada's co-respondents, are not admissible as evidence for being hearsay and covered by the *res inter alios acta* rule. We have already unanimously ruled in *Reyes,* and reiterated in *Cambe,* that **technical rules on evidence, such as hearsay evidence and the *res inter alios acta* rule, should not be rigidly applied in the course of preliminary investigation proceedings,** thus:

> Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule. To be sure, the foregoing rule constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings. In *Estrada,* the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay." This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties." Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter. Ultimately, as case law edifies, **"[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation," as in this case.**[62] (Emphasis supplied)

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[62] *Cambe v. Office of the Ombudsman, supra* note 22, at 592-593, citing *Reyes v. Ombudsman,* 783 Phil. 304 (2016).

To reiterate, in *Estrada,* where the present petitioner is the same petitioner, we held that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, **"probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay."**[63] On the applicability of *res inter alios acta* rule, we further stated that: "In OMB-C-C-13-0313 and OMB-C-C-13-0397, the admissions of Sen. Estrada's co-respondents can in no way prejudice Sen. Estrada. Even granting Justice Velasco's argument that the 28 March 2014 Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 mentioned the testimonies of Sen. Estrada's co-respondents like Tuason and Cunanan, their testimonies were merely corroborative of the testimonies of complainants' witnesses Benhur Luy, Marina Sula, and Merlina Suñas and were not mentioned in isolation from the testimonies of complainants' witnesses."[64]

Second, as to Estrada's endorsement letters, **which he admittedly executed,** instructing the IAs to have his PDAF-funded projects implemented by JLN-controlled NGOs, we held in *Cambe* that "the PDAF documents, consisting of the **written endorsements signed by Sen. Revilla himself requesting the IAs to release his PDAF funds to the identified JLN-controlled NGOs,** as well as other documents that made possible the processing of his PDAF, x x x — **directly implicate him for the crimes charged,** as they were nonetheless, all issued under the authority of his Office as Senator of the Republic of the Philippines. In *Belgica v. Ochoa (Belgica),* this Court observed that 'the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.' x x x. It is through this mechanism that individual legislators, such as Sen. Revilla, were able to practically dictate the entire expenditure of the PDAF allocated to their offices throughout the years x x x under the DBM's menu for pork barrel allocations. '[However,] [i]t bears noting that the NGO is directly endorsed

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[63] *Estrada v. Office of the Ombudsman, supra* note 35, at 874.

[64] *Estrada v. Office of the Ombudsman, supra* note 35, at 865.

by the legislator [and that] [n]o public bidding or negotiated procurement [took] place[,]' [in] defiance of [GPPB] Resolution No. 012-2007."[65] Similarly, Estrada's endorsement letters directly implicate him for the crimes charged and there is no basis for his argument that his letters were merely recommendatory.

Third, as to Luy's business ledger, Luy's admission of falsification of PDAF-related documents did not cast serious doubt on its credibility, considering that in *Cambe,* we already held:

> Luy's testimony therefore explicates that although the whistleblowers would sometimes forge the legislators' signatures, such were made with the approval of Napoles based on her prior agreement with the said legislators. It is not difficult to discern that this authorization allows for a more expedient processing of PDAF funds since the documents required for their release need not pass through the legislator's respective offices. It is also apparent that this grant of authority gives the legislators room for plausible deniability: the forging of signatures may serve as a security measure for legislators to disclaim their participation in the event of discovery. Therefore, Luy's testimony completely makes sense as to why the legislators would agree to authorize Napoles and her staff to forge their signatures. As such, **even if it is assumed that the signatures were forged, it does not mean that the legislators did not authorize such forgery.**[66] (Emphasis supplied)

And, fourth, as to the COA Report and FIO verifications, we likewise find that these evidence buttress the finding of probable cause against Estrada as they did against Revilla since we held in *Cambe*:

> The findings of the COA in its SAO Report No. 2012-2013 (COA report) also buttress the finding of probable cause against Sen. Revilla. This report presents in detail the various irregularities in the disbursement of the PDAF allocations of several legislators in the years 2007 to 2009, such as: (a) the IAs not actually implementing

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[65] *Cambe v. Office of the Ombudsman, supra* note 22, at 584-586. Emphasis supplied.

[66] *Cambe v. Office of the Ombudsman, supra* note 22, at 589-590.

the purported projects, and instead, directly releasing the funds to the NGOs after deducting a "management fee," which were done at the behest of the sponsoring legislator x x x; (b) the involved NGOs did not have any track record in the implementation of government projects, provided fictitious addresses, submitted false documents, and were selected without any public bidding and complying with COA Circular No. 2007-001 and GPPB Resolution No. 12-2007; and (c) the suppliers who purportedly provided supplies to the NGOs denied ever dealing with the latter. Resultantly, the COA Report concluded that the PDAF-funded projects of Sen. Revilla were "ghost" or inexistent.

The findings in the COA report were further corroborated by the field verifications conducted by the Field Investigation Office - Office of the Ombudsman (FIO) to determine whether or not Sen. Revilla's PDAF was indeed utilized for its intended livelihood projects. In the course of investigation, it was revealed that the mayors and municipal agriculturists, who had reportedly received livelihood assistance kits/packages, purportedly procured through Sen. Revilla's PDAF, actually denied receiving the same and worse, were not even aware of any PDAF-funded projects intended for their benefit. Moreover, the signatures on the certificates of acceptance and delivery reports were forged, and in fact, the supposed beneficiaries listed therein were neither residents of the place where they were named as such; had jumbled surnames; deceased; or even downright fictitious. The foregoing led the FIO to similarly conclude that the purported livelihood projects were "ghost" projects, and that its proceeds amounting to ₱517,000,000.00 were never used for the same.[67]

Accordingly, as Justice Velasco's dissent put it: "x x x the Ombudsman is given wide latitude, in the exercise of its investigatory and prosecutory powers, to prosecute offenses involving public officials and employees, pursuant to Sec. 15 of RA No. 6770, otherwise known as the Ombudsman Act of 1989. As such, the Ombudsman possesses the authority to determine whether probable cause exists or not in a given set of facts and circumstances that would warrant the filing of a criminal case against erring government employees."[68] Thus,

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[67] *Cambe v. Office of the Ombudsman, supra* note 22, at 598-599.

[68] Concurring and Dissenting Opinion of Justice Velasco, p. 7.

we have consistently held that we will not interfere in the determination by the Ombudsman of the existence of probable cause, absent grave abuse of discretion amounting to lack or excess of jurisdiction.

The Ombudsman is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.[69] The Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused.[70] All that the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof.[71] Even Justice Velasco's dissent stated that:

> Certainly, prosecutors are given a wide latitude of discretion in determining whether an information should be filed in court or whether the complaint shall be dismissed, and **the courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. It is for this reason that Sen. Estrada's asseveration of political persecution has no leg to stand on. Before such a claim may prosper, it must be proved that the public prosecutor – the Ombudsman, in this case – employed bad faith in prosecuting the case, or that it has employed schemes that lead to no other purpose than to place Sen. Estrada in contempt and disrepute. I do not find such malevolent designs in the case at bar.**[72] (Emphasis supplied)

Thus, there is no evidence that the Ombudsman acted in capricious and whimsical exercise of judgment amounting to

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[69] *Ramiscal, Jr. v. Sandiganbayan,* 530 Phil. 773, 792 (2006)

[70] *Cambe v. Office of the Ombudsman, supra* note 22, at 607; *Duque v. Ombudsman, supra* note 28.

[71] *Cambe v. Office of the Ombudsman, supra* note 22, at 607; *Duque v. Ombudsman, supra* note 28.

[72] Concurring and Dissenting Opinion of Justice Velasco, p. 11.

lack or excess of jurisdiction. No manifest error or grave abuse of discretion or bad faith can be imputed to the public prosecutor, or the Ombudsman in this case. In fine, the Ombudsman's finding of probable cause prevails over petitioners' bare allegations of grave abuse of discretion. Accordingly, the Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the Ombudsman.

**WHEREFORE,** we **DISMISS** the petitions for lack of merit and **AFFIRM** the finding of probable cause against all the petitioners.

**SO ORDERED.**

*Leonardo-de Castro, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

*Leonen, and Tijam, JJ.,* see separate concurring opinions.

*Peralta, J.,* see concurring and dissenting opinion.

*Reyes, Jr., J.,* joins the concurring and dissenting opinion of *J. Peralta.*

*Velasco, Jr., J.,* dissents, see dissenting opinion.

*Bersamin, J.,* joins the dissenting opinion of *J. Velasco.*

*Jardeleza, J.,* no part, prior OSG action.

*Martires, J.,* no part due to appoinment on July 31, 2018 as Ombudsman.

*Caguioa, J.,* no part prior CLPCC and SOJ action.

*Gesmundo, J.,* no part.

## SEPARATE CONCURRING OPINION

**LEONEN, *J.*:**

I concur with the ponencia. In addition, I would like to emphasize the following:

The Ombudsman's determination of the existence of probable cause is entitled to great weight and respect. In a preliminary investigation, only the *probability* of an accused's guilt is ascertained. Upon. the filing of an Information with the Sandiganbayan, the latter acquires jurisdiction over the case and retains full discretion on its disposition.

The Office of the Ombudsman is bestowed with broad investigatory and prosecutorial powers to act on complaints against public officials and government employees.[1] Considered as "the champion of the people and the preserver of the integrity of public service,"[2] the Ombudsman is specifically empowered under Article XI, Section 13 of the Constitution to exercise the following functions:

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.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal,

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[1] CONST., Art. XI, Sec. 12 provides:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[2] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* 415 Phil. 145, 151 (2001) [Per *J.* Pardo, *En Banc*].

suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Section 15 of Republic Act No. 6770 amplifies the Office of the Ombudsman's investigative and prosecutorial powers. For instance, the Office of the Ombudsman may, in the exercise of its primary jurisdiction, step in and take over the investigation of cases from other agencies. It may also request assistance and information from other government agencies, issue subpoenas, and cite persons in contempt.[3]

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[3] Rep. Act No. 6770, Sec. 15 provides:

Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

Such broad investigative powers were vested on the Office of the Ombudsman to shield it from "the long tentacles of

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(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: Provided, That the Ombudsman under its rules and regulations may determine what cases may not be made public: Provided, further, That any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

(8) Administer oaths, issue *subpoena* and *subpoena duces tecum,* and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers."[4]

In this regard and owing to the independent nature of its office, this Court has generally adopted a policy of non-interference with the Office of the Ombudsman's exercise of its functions, especially with regard to its finding of probable cause.[5] Practical considerations also dictate the exercise of judicial restraint. In *Dichaves v. Office of the Ombudsman:*[6]

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

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(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints tiled against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

[4] *Deloso v. Domingo,* 269 Phil. 580, 586 (1990) [Per *J.* Griño-Aquino, *En Banc*].

[5] *Dichaves v. Office of the 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]; *Reyes v. Office of the Ombudsman,* G.R. No. 208243, June 5, 2017 [Per *J.* Leonen, Second Division]; *Cambe v. Office of the Ombudsman,* G.R. Nos. 212014-15, December 6, 2016 [Per *J.* Perlas- Bernabe, *En Banc*].

[6] 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].

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[7] (Citations omitted)

This Court is not a trier of facts. Unless there is a clear showing of grave abuse of discretion on the part of the Office of the Ombudsman, this Court would defer to its sound discretion as it is in the best position to assess whether the filing of an Information is warranted.[8]

A preliminary investigation, as its name suggests, is a preparatory step in the prosecutorial process, where the prosecutor determines whether there is probable cause to file an Information in court. Its purpose is two (2)-fold. In *Salonga v. Cruz-Paño:*[9]

> The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.[10]

The rules governing the conduct of a preliminary investigation are outlined in Rule 112, Section 3 of the Rules of Court:

> Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable

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[7] *Id.* at 17.

[8] *Id*. 16-17.

[9] 219 Phil. 402 (1985) [Per *J.* Gutierrez, Jr., *En Banc*].

[10] *Id*. at 428.

cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-

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[11] Rules of Procedure of the Office of the Ombudsman, Adm. Order No. 07, Sec. 4.

examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Preliminary investigations conducted by the Office of the Ombudsman are done in the same manner outlined above subject to the provisions under Section 4 of its Rules of Procedure.[11]

The investigating prosecutor may rely on the affidavits and supporting documents submitted by the parties. A hearing is not even mandatory. The prosecutor is given the discretion whether to set a hearing between the parties but only if certain facts or issues need to be clarified.

A preliminary investigation, therefore, is "merely inquisitorial."[12] It is neither an occasion for an exhaustive display of evidence[13] nor "the venue for the full exercise of the rights of the parties."[14] Whether the parties' evidence would pass the threshold of admissibility is not a matter that the prosecution should be concerned with at this stage. The prosecution needs only satisfy itself that there is reasonable belief to hold a person liable for a crime. Neither absolute nor moral certainty is required:[15]

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[12] *De Lima v. Reyes,* 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division] *citing Pilapil v. Sandiganbayan,* 298 Phil. 368 (1993) [Per *J.* Nocon, *En Banc*].

[13] *Paderanga v. Drilon,* 273 Phil. 290, 299 (1991) [Per *J.* Regalado, *En Banc*]; *Cambe v. Office of the Ombudsman,* G.R. Nos. 212014-15, December 6, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf > [Per *J.* Perlas-Bernabe, *En Banc*].

[14] *People v. Narca,* 341 Phil. 696, 705 (1997) [Per *J.* Francisco, Third Division].

[15] See *Paderanga v. Drilon,* 273 Phil. 290, 296-299 (1991) [Per *J.* Regalado, *En Banc*].

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[16] (Citations omitted)

Given the exploratory nature of a preliminary investigation, the technical rules of evidence would not apply. For instance, the invocation of the *res inter alios acta* rule under Rule 130, Section 28 of the Rules of Court in the context of a preliminary investigation has been considered as improper.[17] In *Cambe v. Office of the Ombudsman*:[18]

It should be borne in mind that probable cause is determined during the context of a preliminary investigation which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it." It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."[19] (Citations omitted)

A finding of probable cause can even rest on hearsay evidence. In *Estrada v. Office of the Ombudsman:*[20]

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[16] *Chan v. Secretary of Justice*, 572 Phil. 118, 132 (2008) [Per *J*. Nachura, Third Division].

[17] *Estrada v. Office of the Ombudsman,* 751 Phil. 821 (2015) [Per *J.* Carpio, *En Banc*]; *Reyes v. Office of the Ombudsman,* G.R. Nos. 212593-94, March 15, 2016 [Per *J*. Perlas-Bernabe, *En Banc*].

[18] G.R. Nos. 212014-15, December 6, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf > [Per *J.* Perlas-Bernabe, *En Banc*].

[19] *Id*. at 16-17.

[20] 751 Phil. 821 (2015) [Per *J*. Carpio, *En Banc*].

[P]robable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. *Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties.* However, in administrative cases, where rights and obligations are finally adjudicated, what is required is "substantial evidence" which cannot rest entirely or even partially on hearsay evidence. Substantial basis is not the same as substantial evidence because substantial evidence excludes hearsay evidence while substantial basis can include hearsay evidence.[21] (Emphasis supplied)

The Office of the Ombudsman's determination of the existence of probable cause during a preliminary investigation is an executive function,[22] which is different from the judicial determination of probable cause. In a criminal proceeding, there are two (2) instances where probable cause is determined. The first instance refers to the executive determination of probable cause, which is undertaken by the prosecution for the purpose of determining whether an Information charging an accused should be filed. The second instance refers to the judicial determination, which is assumed by a judge to determine whether a warrant of arrest should be issued.

In *People v. Castillo*:[23]

*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 ause 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

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[21] *Id*. at 874.

[22] *Dichaves v. Office of the 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 > 17 [Per *J*. Leonen, Second Division].

[23] 607 Phil. 754 (2009) [Per *J*. Quisumbing, Second Division].

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.

Corollary to the principle that a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so, the judge in turn should not override the public prosecutor's determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. *It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.*

Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.[24] (Citations omitted, emphasis supplied)

The prosecution determines the existence of probable cause independently from the court. The executive determination of probable cause concerns itself with the indictment of a person or the propriety of filing a criminal information.

Once an information is filed, jurisdiction over the case is vested on the court. The judge, upon assumption of jurisdiction, "does not act as an appellate court."[25] He or she does not review

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[24] *Id*. at 764-766.

[25] *Mendoza v. People,* 733 Phil. 603, 611 (2014) [Per *J*. Leonen, Second Division].

the determination made by the prosecutor. Courts "cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause."[26] Instead, the judge makes an independent assessment of the evidence to determine whether there is probable cause to issue a warrant of arrest.

In *De Lima v. Reyes,*[27] this Court held that a petition for certiorari questioning the regularity of a preliminary investigation becomes moot upon the filing of an information in court and the issuance of a warrant of arrest against the accused:

> Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court
>
> ....[It] would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent. The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause....
>
> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for *certiorari* questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the

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[26] *Parma, Jr. v. Office of the Deputy Ombudsman,* 576 Phil. 558 (2008) [Per *J.* Velasco, Jr., Second Division] *citing Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto,* 434 Phil. 618 (2002) [Per *J.* Austria-Martinez, First Division].

[27] 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.[28] (Citations omitted)

The pronouncement in *De Lima* has been affirmed subsequently in *Pemberton v. De Lima*[29] and *Cambe v. Office of the Ombudsman.*[30] In these cases, the trial courts already made a judicial determination of probable cause, which resulted in the issuance of a warrant of arrest.

Here, the Office of the Ombudsman found probable cause to indict petitioners for violation of Republic Act No. 7080 and Republic Act No. 3019. It issued the assailed Joint Order dated June 4, 2014 and Joint Resolution dated March 28, 2014. Accordingly, the corresponding Informations have been filed before the Sandiganbayan.[31]

This Court's ruling in *De Lima, Pemberton,* and *Cambe* should likewise apply in this case. Upon the filing of an Information, the prosecution loses jurisdiction over the case. The court to which the information is filed acquires jurisdiction and has full discretion on how the case should proceed.

*Crespo v. Mogul*[32] is instructive:

*The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case.* When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

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[28] *Id*. at 649-653.

[29] 784 Phil. 918 (2016) [Per J. Leonen, Second Division].

[30] G.R. Nos. 212014-15, December 6, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf > [Per J. Perlas-Bernabe, *En Banc*].

[31] *Ponencia,* p. 7.

[32] 235 Phil. 465 (1987) [Per J. Gancayo, *En Banc*].

*The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court.* In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the *quasi-judicial* discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possible designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a

private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

*The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.* Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. *The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.* A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. (Citations omitted, emphasis supplied)

Accordingly, I vote to **DENY** the Petitions for Certiorari. The Sandiganbayan should proceed to determine whether there is probable cause for the issuance of a warrant of arrest against petitioners in Criminal Case Nos. SB14CRM0256, SB14CRM0257, SB14CRM0258, SB14CRM0259, SB14CRM0260, SB14CRM0261, SB14CRM0262, SB14CRM0263, SB14CRM0264, SB14CRM0265, and SB14CRM0266.

## CONCURRING OPINION

**TIJAM, *J.*:**

In this petition, petitioners Senator Jose "Jinggoy" P. Ejercito Estrada (Senator Estrada) and John Raymund De Asis (De Asis) seek to correct the grave abuse of discretion purportedly committed by the public respondent Office of the Ombudsman (Ombudsman) in connection with OMB-C-C-13-1313, entitled *National Bureau of Investigation and Atty. Levito Baligod v.*

*Jose "Jinggoy" P. Ejercito Estrada, et al.* and OMB-C-C-13-0397 entitled *Field Investigation Office v. Jose "Jinggoy" P. Ejercito Estrada.*

Assailed rulings in these consolidated petitions for *certiorari* are:

1. Joint Resolution dated March 28, 2014 of the Ombudsman, which found probable cause to charge petitioners and several other respondents for one count of Plunder and eleven counts of violation of Section 3(e) of Republic Act (R.A.) No. 3019; and

2. Joint Order dated June 4, 2014 of the Ombudsman, which denied petitioners' motion for reconsideration of the March 28, 2014 Joint Resolution of the Ombudsman.

Petitioners pray that this Court:

1. enjoin the Sandiganbayan from taking cognizance of or acting upon the challenged Joint Resolution and Order, and any and all Informations, orders, resolutions, or other issuances, and from issuing any warrants of arrest based on such Informations;

2. enjoin the Ombudsman, its FIO, the NBI, and Atty. Levito Baligod, from conducting any further proceedings relative to the NBI and FIO Complaints; from implementing or taking any other actions based on the challenged Joint Resolution and Order; and from prosecuting any and all criminal cases arising from the complaints and prcoeedings in OMB-C-C-13-0313 and OMB-C-C-13-0397;

3. render judgment declaring Senator Estrada as having been denied due process of law and equal protection of the laws, and consequently; and

4. declare the Joint Resolution and Order null and void.

In a petition for *certiorari,* the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment. The courts duty in the pertinent case is confined to determining

whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of *certiorari,* absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

***Rules in reviewing the findings of the Ombudsman***

As a matter of policy, courts are bound to respect the prosecution's preliminary determination of probable cause absent proof of manifest error, grave abuse of discretion and prejudice. "The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors."[1]

"Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties."[2]

In any case, if there was palpable error or grave abuse of discretion in the public prosecutor's finding of probable cause, the accused can appeal such finding to the justice secretary and move for the deferment or suspension of the proceedings until such appeal is resolved.[3]

The aforesaid policy of non-interference applies with greater force in the case of the Ombudsman. In *Casing v. Hon. Ombudsman, et al.,*[4] this Court explained:

In line with the constitutionally-guaranteed independence of the Office of the Ombudsman and coupled with the inherent limitations in a *certiorari* proceeding in reviewing the Ombudsmans discretion,

[1] *Leviste v. Hon. Alameda, et al.*, 640 Phil. 620, 638 (2010).

[2] *Mendoza v. People, et al.,* 733 Phil. 603, 612 (2014).

[3] *Id.*

[4] 687 Phil. 468 (2012).

we have consistently held that **so long as *substantial evidence* supports the Ombudsman's ruling, his decision should stand.** In a criminal proceeding before the Ombudsman, the Ombudsman merely determines whether probable cause exists, *i.e.,* whether there is a *sufficient ground* to engender a well-founded belief that a crime has been committed and that the respondent is *probably guilty* thereof. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. On this score, *Galario v. Office of the Ombudsman (Mindanao)* is instructive:

> [A] finding of probable cause needs only to rest on evidence showing that *more likely* than not a crime has been committed and there is *enough reason* to believe that it was committed by the accused. **It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.** A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. x x x

A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

x x x x x x x x x

In closing, we reiterate the rule that absent good and compelling reason, the Ombudsmans finding of probable cause or lack thereof deserves great respect from the Court. If it were otherwise, **the Court would be inundated with innumerable petitions ultimately aimed at seeking a review of the Ombudsman's exercise of discretion on whether to file a case in the courts, wreaking havoc to our orderly system of government, based on the principles of separation of powers, and checks and balances. It is only in a clear case of grave abuse of discretion that the Court may properly supplant the Ombudsman's exercise of discretion.**[5] (Citations omitted, emphasis ours, italics and underscoring in the original)

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[5] *Id.* at 476-478, 481.

***Public Respondent Ombudsman did not commit grave abuse of discretion in finding probable cause against Senator Estrada for the crimes of plunder and Section 3(e) of R.A. No. 3019***

In *Gov. Garcia, Jr. v. Office of the Ombudsman, et al.,*[6] the Court explained the concept of probable cause, as follows:

> Probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.[7] (Citation omitted)

In *Enrile v. People of the Philippines,*[8] the Court enumerated the elements of plunder as follows:

> (1) That the offender is a ***public officer*** who acts ***by himself or in connivance*** with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;
>
> (2) That he amassed, accumulated or ***acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:***
>
> (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in

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[6] 747 Phil. 445 (2014).

[7] *Id.* at 459.

[8] 766 Phil. 75 (2015).

connection with any government contract or project or by reason of the office or position of the public officer concerned;

c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries;

(d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f) by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[9] (Emphasis in the original)

Meanwhile, the essential elements of Section 3(e) of R.A. No. 3019, are:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

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[9] *Id*. at 115-116.

In the instant case, I find that the pieces of evidence relied upon by the Ombudsman are sufficient for purposes of establishing probable cause.

Evidently, the facts of this case are identical to *Cambe v. Office of the Ombudsman,*[10] where this Court upheld the March 28, 2014 Resolution of the Ombudsman finding probable cause to indict Senator Ramon "Bong" Revilla Jr. for his alleged involvement in the PDAF scheme. The Court already ruled as to the sufficiency of identical pieces of evidence as to the respondent Senator's purported involvement in the PDAF scheme.

The majority in the *Cambe* case deemed the pieces of evidence relied upon by the Ombudsman sufficient to establish a *prima facie* case against the public respondent Senator. It must be noted that the evidentiary bases of the Ombudsman in that case are identical to those mentioned in the instant case. The relevant portions of the Court's discussion in *Cambe* are summarized below:

| ***Evidence*** | ***Court's findings*** |
|---|---|
| 1.Luy's business ledgers | Corroborate Luy's testimony that Senator Revilla dealt with Napoles and received [kickbacks] |
| 2.COA Report in SAO Report NO. 2012-2013 detailing the irregularities in the PDAF disbursement and Field Investigation Office (FIO) verifications conducted in 2013 | *Prima facie* establishes that the implementing agencies not actually implementing the projects and instead directly releasing the funds to the NGOs, at the behest of Senator Revilla |
| 3.Endorsement letters signed by Sen. Bong Revilla asking the Implementing Agencies to release his PDAF to the Napoles identified NGOs | Directly implicates the Senator because all were issued under his authority |

In that case, the Court did not strictly apply the rules of evidence and primarily held the whistleblowers' testimonies as sufficient to justify the finding of probable cause against respondent Senator. Specifically, the Court made the following findings:

- The Court deemed sufficient Luy's testimony to implicate respondent Senator despite his admission that sometimes the whistleblowers would forge the signatures of the legislators in the PDAF documents. The Court noted that the "forging"of the PDAF documents would be under the authority and subject to prior agreement between Napoles **and the legislators.** The Court deemed such arrangement favorable to the legislators because it would give them plausible deniability of responsibility.

- The Court rejected the application of the *res inter alios acta* rule, stating that technical rules of evidence should not apply during preliminary investigation. The Court also found that even if the testimonies of Luy etc. were to be deemed hearsay, the same can be considered an exception because they are independently relevant statements.

Considering that the pieces of evidence and the factual antecedents of *Cambe* and the instant case are identical, there is no reason to depart from Our ruling therein.

The dissent of Justice Presbitero J. Velasco, Jr. found public respondent Ombudsman to have committed grave abuse of discretion because the allegation that Senator Estrada colluded with his co-respondents in amassing wealth through illegal disbursement of his PDAF was not grounded on "concrete proof." It found the testimonies of the three whistleblowers, either lacking in credibility or insufficient for purposes of establishing Senator Estrada's purported participation in the illegal PDAF scheme. Specifically, Justice Velasco found the following pieces of evidence unreliable for the following reasons:

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[10] G.R. Nos. 212014-15, December 6, 2016, 812 SCRA 537.

| ***Evidence*** | ***Justice Velasco's findings*** |
|---|---|
| 4. Luy's business ledgers | Unreliable because Luy himself, in his affidavit, admitted having forged various PDAF documents, including certificate of inspection and acceptance from the office of the proponent or lawmaker. |
| 5. COA Report in SAO Report NO. 2012-2013 detailing the irregularities in the PDAF disbursement and Field Investigation Office (FIO) verifications conducted 2013 | Not material to establish his involvement because he merely identified the projects to be implemented and recommended a project partner. The COA Reports merely stated that the implementing agencies directly released the funds to the NGOS that were selected in violation of public bidding requirements. |
| 6. Endorsement letters signed by Sen. Jinggoy Estrada asking the Implementing Agencies to release his PDAF to the Napoles identified NGOs | Inadequate to presume his involvement in the scheme |

Evidently, such findings digress from this Court's findings in *Cambe* with respect to the same pieces of evidence. I am thus constrained to agree with the *ponencia* in upholding the Ombudsman as there appears no logical, nor legal reason to treat Senator Estrada differently.

Echoing my separate concurring opinion in *De Lima v. Guerrero,* owing primarily to the nature of preliminary investigation, and being cognizant of the stage at which the

case is currently in, it would be baseless, not to mention unfair, to examine every single piece of evidence presented by the prosecution under the same rules observed during trial.

***Senator Estrada's participation in identifying projects for implementation and recommending the project partner facilitates the illegal disbursement of funds***

The dissent of Justice Velasco, Jr. downplays Senator Estrada's role in the PDAF scheme by stating that *"his participation was limited to merely identifying the projects to be implemented and recommending its project partner."* Hence, the ponencia concluded that such act does not support the allegation that Senator Estrada received commissions from Napoles, nor his involvement in the perpertration of irregularities.

It must be noted, however, that the Court, in *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr. et al.,*[11] ruled that it is precisely this authority of the legislators to identify the projects for implementation which facilitates the Pork Barrel system. To quote the relevant portion of the Court's discussion in:

> Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, **hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in** – as *Guingona, Jr.* puts it — "the *various operational aspects of budgeting,"* including *"the evaluation of work and financial plans for individual activities"* and the *"regulation and release of funds"* in violation of the separation of powers principle. The fundamental rule, as categorically articulated in *Abakada,* cannot be overstated — *from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any*

[11] 721 Phil. 416 (2013).

*role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.* **That the said authority is treated as merely recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers any role in the implementation or enforcement of the law.** Towards this end, the Court must therefore abandon its ruling in *Philconsa* which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.

Besides, it must be pointed out that respondents have nonetheless failed to substantiate their position that the identification authority of legislators is only of recommendatory import. **Quite the contrary, respondents — through the statements of the Solicitor General during the Oral Arguments — have admitted that the identification of the legislator constitutes a mandatory requirement before his PDAF can be tapped as a funding source,** thereby highlighting the indispensability of the said act to the entire budget execution process[.][12] (Citation omitted, Emphasis in the original, and emphasis ours)

Based from the foregoing, Senator Estrada's identification of a project partner should, at the very least, be treated as a *prima facie* indication of his participation in the PDAF scheme.

To end, the majority's opinion merely touches on the preliminary issue regarding the Ombudsman's purported grave abuse of discretion. Petitioners' innocence or guilt on the charges is yet to be determined during trial. Incidentally, petitioners are not prevented nor estopped from raising the same or similar objections as the ones they stated in these petitions. In any case, as discussed above, the circumstances of the instant case fail to establish that the Ombudsman's acts were exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility as to satisfy reversal of its assailed Resolution.

Accordingly, I vote to **DISMISS** the petitions.

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[12] *Id*. at 542-543.

## CONCURRING AND DISSENTING OPINION

**VELASCO, JR., *J.*:**

I join with the majority insofar as it sustained the finding of probable cause against petitioner John Raymund De Asis (De Asis).

I, however, register my dissent from the majority's view that there is probable cause to indict petitioner Senator Jose "Jinggoy" P. Ejercito Estrada (Sen. Estrada).

### Factual Antecedents

The National Bureau of Investigation (NBI) and the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman) filed two separate complaints against petitioners for their alleged participation in the so-called Priority Development Assistance Fund (PDAF) scam that exposed the irregular utilization and disbursement of the PDAF of several members of Congress, the Malampaya Fund (Special Account in the General Fund 151), and funds allocated for the procurement of fertilizers, which was purportedly orchestrated by Janet Lim Napoles (Napoles) in connivance with several government and private personalities.

Docketed as OMB-C-C-13-0313 and entitled *"National Bureau of Investigation and Atty. Levito D. Baligod vs. Jose "Jinggoy" P. Ejercito Estrada, et. al."* (NBI Complaint), the NBI charged Sen. Estrada, his Deputy Chief of Staff, Pauline Therese Mary C. Labayen (Labayen), Alan A. Javellana, Gondelina G. Amata (Amata), Antonio Y. Ortiz, Dennis Lacson Cunanan (Cunanan), Victor Roman Cojamco Cacal, Romulo M. Relevo, Maria Ninez Z. Guañizo, Ma. Julie A. Villaralvo-Johnson, Rhodora Bulatad Mendoza, Gregoria G. Buenaventura (Buenaventura), Alexis G. Sevidal, Sofia D. Cruz, Chita C. Jalandoni, Francisco B. Figura (Figura), Marivic V. Jover, Mario L. Relampagos (Relampagos), "Leah," "Lalaine," "Malon," Ruby Tuason (Tuason), Mylene T. Encarnacion, John/Jane Does, Napoles, and De Asis with Plunder, as defined and penalized

under Sec. 2[1] in relation to Sec. 1(d), sub pars. (1), (2), and (6)[2] of Republic Act (RA) No. 7080, otherwise known as the "Anti-Plunder Law." The NBI alleged that Sen. Estrada acquired and/or received, on various occasions and in conspiracy with his co-respondents, commissions, kickbacks, or rebates in the total amount of at least ₱183,793,750.00 from projects financed by his PDAF from 2004 to 2012.[3]

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[1] Section 2. *Definition of the Crime of Plunder; Penalties* — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Seventy-five million pesos (₱75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State.

[2] Section 1. *Definition of Terms* — As used in this Act, the term – x x x

d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents. subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

x x x x x x x x x

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[3] *Rollo,* pp. 94, 246.

Meanwhile, in its complaint docketed as OMB-C-C-13-0397 and entitled *"Field Investigation Office v. Jose "Jinggoy" P. Ejercito Estrada, et. al."* (FIO Complaint), the FIO charged Sen. Estrada, among others, with violation of Sec. 3(e) of RA No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and Plunder for purportedly giving unwarranted benefits to Napoles and to several Non-Governmental Organizations (NGOs) that she organized, causing injury to the government in an amount exceeding ₱278,000,000.00. The FIO alleged that the Commission on Audit (COA), in its Special Audit Office Report No. 2012-03 (COA Report), unearthed several irregularities in the disbursement and disposition of the 2007-2009 PDAF releases to certain Implementing Agencies (IAs) which implemented the lawmakers' projects, including those chargeable against the PDAF of Sen. Estrada.

Among those charged in the NBI Complaint is De Asis, the driver/messenger/janitor of Napoles during the time material to the complaint, and president of Kaupdanan Para sa Mangunguma Foundation, Inc. (KPMFI), one of the NGOs identified with Napoles. The charge against De Asis stemmed from his alleged assistance in the fraudulent processing and releasing of the PDAF funds to the Napoles NGOs.

On November 19 and 29, 2013, the Ombudsman issued Orders directing the petitioners and their co-respondents in the complaints to submit their counter-affidavits. In compliance therewith, Sen. Estrada submitted his Counter-Affidavit[4] to the NBI Complaint on January 8, 2014, and his Counter-Affidavit[5] to the FIO Complaint on January 16, 2014. De Asis, for his part, failed to submit his counter-affidavit to the NBI Complaint. The petitioners' co-respondents[6] filed their respective counter-affidavits between December 9, 2013 and March 14, 2014.

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[4] *Id.* at 737-776.

[5] *Id.* at 777-821.

[6] These are Tuason, Amata, Buenaventura, Sevidal, Cruz; Sucgang, Javellana, Cacal, Villaralvo-Johnson, Mendoza, Guañizo, Cunanan, Jover, Figura, Nuñez, Paule, Bare, and Relampagos.

Refuting the charges levelled against him, Sen. Estrada denied having received, directly or indirectly, any amount from Napoles, or any person associated with her, or an NGO owned or controlled by her, and having amassed, accumulated, or acquired ill-gotten wealth. He similarly controverted the allegation that he had any knowledge or participation in the transfer of any amount from his PDAF to anyone other than the legally intended recipients or beneficiaries thereof.[7]

Thereafter, upon receiving information from the media that some of the respondents implicated him in the PDAF scam in their respective counter-affidavits, Sen. Estrada filed a request[8] to be furnished with copies of the counter-affidavits of Tuason, Cunanan, Amata, and Relampagos, as well as any filing submitted by all the other respondents and/or additional witnesses of the complainants. The Ombudsman denied the request in its March 27, 2014 Order.[9] In response, Sen. Estrada questioned its denial in a Petition for *Certiorari* before this Court, docketed as G.R. Nos. 212140-41.

On March 28, 2014, the Ombudsman issued a Joint Resolution[10] finding probable cause to charge petitioners and several other respondents in the NBI and FIO Complaints for one (1) count of Plunder and eleven (11) counts of violation of Sec. 3 (e) of R.A. No. 3019.

The scheme purportedly used in the anomalous utilization of the PDAF is outlined in the adverted Joint Resolution in this wise:

> The scheme commences when Napoles first meets with a legislator and offers to "acquire" his or her PDAF allocation in exchange for a "commission" or kickback amounting to a certain percentage of the PDAF.

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[7] *Rollo,* p. 783, p. 7 of Counter Affidavit.

[8] *Id*. at 822-828.

[9] *Id*. at 829-832.

[10] *Id*. at 66-187.

Once an agreement is reached, Napoles would then advance to the legislator a down payment representing a portion of his or her kickback. The legislator would then request the Senate President or the House Speaker, as the case may be, for the immediate release of his or her PDAF. The Senate President or Speaker would then indorse the request to the [Department of Budget and Management (DBM)]. This initial letter-request to the DBM contains a program or list of IAs and the amount of PDAF to be released in order to guide the DBM in its preparation and release of the corresponding SARO.

The kickbacks, around 50% of the PDAF amount involved, are received by legislators personally or through their representatives, in the form of cash, fund transfer, manager's check or personal check issued by Napoles.

After the DBM issues the SARO representing the legislator's PDAF allocation, the legislator would forward a copy of said issuance to Napoles. She, in turn, would remit the remaining portion of the kickback due the legislator.

The legislator would then write another letter addressed to the IAs which would identify his or her preferred NGO to undertake the PDAF-funded project. However, the NGO chosen by the legislator would be among those organized and controlled by Janet Napoles. These NGOs were, in fact, specifically set up by Napoles for the purpose.

Upon receipt of the SARO, Napoles would direct her staff, at the time material to these cases, including witnesses Benhur Luy (Luy), Marina Sula (Sula) and Merlina Suñas (Suñas), to prepare the PDAF documents for the approval of the legislator. These documents reflect, among other things, the preferred NGO to implement the undertaking, the project proposals by the identified NGO/s; and [e]ndorsement letters to be signed by the legislator and/or his staff. Once signed by the legislator or his/her authorized staff, the PDAF documents are transmitted to the IA, which, in turn, handles the preparation of the MOA relating to the project to be executed by the legislator's office, the IA and the chosen NGO.

The projects are authorized as eligible under the DBM's menu for pork barrel allocations. Note that the NGO is directly selected by the legislator. No public bidding or negotiated procurement takes place in violation of RA 9184 or the Government Procurement Reform Act.

Napoles, through her employees, would then follow up the release of the NCA with the DBM.

After the DBM releases the NCA to the IA concerned, the IA would expedite the processing of the transaction and the release of the corresponding check representing the PDAF disbursement. Among those tasked by Napoles to pick up the checks and deposit the same to bank accounts in the name of the NGO concerned were witnesses Luy and Suñas as well as respondent De Asis.

Once the funds are deposited in the NGO's account, Napoles would then call the bank to facilitate the withdrawal thereof. Her staff would then withdraw the funds and remit the same to her, thereby placing said amount under Napoles' full control and possession.

To liquidate the disbursements, Napoles and her staff would then manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports and similar documents that would make it appear that, indeed, the PDAF[-]related project was implemented.[11]

Based from the foregoing, the Ombudsman concluded that petitioners conspired with Napoles, DBM personnel, and the heads of the National Agribusiness Corporation (NABCOR), National Livelihood Development Corporation (NLDC), and Technology Resource Center (TRC)—government agencies tasked with the implementation of the lawmakers' projects—in amassing ill-gotten wealth by diverting the PDAF of Sen. Estrada from its intended project recipients to NGOs controlled by Napoles. Sen. Estrada, in particular, purportedly took advantage of his official position and amassed, accumulated, and acquired ill-gotten wealth by receiving money from Napoles in the amount of ₱183,793,750.00 in exchange for endorsing her NGOs to the IAs of his PDAF-funded projects. The endorsement, in turn, permitted Napoles to gain access to public funds. The collective acts of Sen. Estrada, Napoles, and their cohorts, according to the Ombudsman, enabled public funds to be illegally diverted for their own personal use.[12]

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[11] *Id.* at 119-122.

[12] *Id.* at 123, 127, 150-151.

De Asis, for his part, allegedly participated in the conspiracy by facilitating the transfer of the checks from the IAs and depositing the same to the bank accounts of the Napoles NGOs.

Petitioners separately moved for the reconsideration of the Joint Resolution. Pending resolution of the motion, the Ombudsman issued a Joint Order[13] dated May 7, 2014 allowing Sen. Estrada to be furnished with copies of the requested counter-affidavits and enjoining him to file his comment thereon within a non-extendible period of five (5) days from receipt of the affidavits.

Due to the pendency of G.R. Nos. 212140-41 before Us, Sen. Estrada sought to suspend the proceedings in OMB-CC-13-0313 and OMB-C-C-13-0397 until the case has been resolved with finality. The Ombudsman denied the motion and refused to suspend the proceedings in an Order[14] dated May 15, 2014. The motion for the reconsideration of the said order was similarly denied in an Order[15] dated June 3, 2014.

The Ombudsman then issued a Joint Order[16] dated June 4, 2014 denying petitioners' motions for the reconsideration of the Joint Resolution dated March 28, 2014. The Joint Order effectively rejected petitioners' contention that they were denied due process for failure to be furnished copies of their co-respondents' counter-affidavits. The Ombudsman insists that, upon re-evaluation of Sen. Estrada's request, he was eventually furnished with copies of the requested counter-affidavits and given ample time to formally respond to his co-respondents' claims.

Following the denial of the petitioners' motions for reconsideration, the Ombudsman filed several Informations[17]

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[13] *Id*. at 859-860.

[14] *Id.* at 1639-1642.

[15] *Id*. at

[16] *Id*. at 188-232.

[17] Docketed as Crim. Case Nos. SB14CRM0256, SB14CRM0257, SB14CRM0258, SB14CRM0259, SB14CRM0260, SB14CRM0261,

before the Sandiganbayan, charging petitioners with one (1) count of Plunder and eleven (11) counts of violation of Sec. 3 (e) of R.A. No. 3019.

Petitioners now come before this Court, seeking redress from the March 28, 2014 Joint Resolution and June 4, 2014 Joint Order of the Ombudsman and praying for this Court to: 1) enjoin the Sandiganbayan from taking cognizance of or acting upon the challenged Joint Resolution and Order, and any and all Informations, orders, resolutions, or other issuances, issued, promulgated, and/or filed as a result of such challenged issuances, and from issuing any warrants of arrest based on such Informations; 2) enjoin the Ombudsman, its FIO, the NBI, and Atty. Levito Baligod, from conducting any further proceedings relative to the NBI and FIO Complaints; from implementing, or taking any other actions based on the challenged Joint Resolution and Order; and from prosecuting any and all criminal cases arising from the complaints and proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397; 3) render judgment declaring Sen. Estrada as having been denied due process of law and equal protection of the laws; and 4) consequently declare the Joint Resolution and Order null and void.

**Issues**

I.

Whether or not the Ombudsman committed grave abuse of discretion in refusing to furnish Sen. Estrada copies of his co-respondents' counter-affidavits prior to resolving the preliminary investigation, in violation of his right to due process; and

II.

Whether or not the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict petitioners for Plunder and violation of Sec. 3(e) of RA 3019.

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SB14CRM0262, SB14CRM0263, SB14CRM0264, SBI4CRM0265, SB14CRM0266; *id.* at 1656-1691.

**Discussion**

At the outset, the Ombudsman is given wide latitude, in the exercise of its investigatory and prosecutory powers, to prosecute offenses involving public officials and employees, pursuant to Sec. 15[18] of RA No. 6770, otherwise known as the Ombudsman Act of 1989. As such, the Ombudsman possesses the authority to determine whether probable cause exists or not in a given set of facts and circumstances that would warrant the filing of a criminal case against erring government employees.[19]

This rule, nevertheless, is not without exception. Under the mantle of its power of judicial review, this Court may inquire into the propriety of, and intervene with, the Ombudsman's findings and conclusions to determine whether its determination of probable cause has been gravely abused.[20] This is buttressed by Our pronouncement in *Aguilar v. Department of Justice,* wherein the Court underscored this particular exception to the prosecutor's exclusive prerogative:

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[18] As mandated under in Section 15 of [RA] No. 6770, otherwise known as the Ombudsman Act of 1989:

Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases.

[19] *Joson v. Office of the Ombudsman,* G.R. Nos. 210220-21, April 6, 2016, 788 SCRA 647, 658.

[20] Section 1, Article VIII of the Constitution states: Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

A public prosecutor's determination of probable cause - that is, one made for the purpose of filing an information in court - is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari.* It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration.[21]

Certainly, a public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. By way of exception, however, judicial review is allowed where the petitioner has clearly established that the prosecutor committed grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.

In the extant case, the Court is asked, did the Ombudsman, in the exercise of its prosecutorial power, gravely abuse its discretion and acted beyond the bounds of its jurisdiction? Specifically, did the Ombudsman act in an arbitrary, capricious, whimsical, or despotic manner in determining the existence of probable cause against the petitioners, such that it amounted to an evasion of or virtual refusal to perform a duty enjoined by law?

Sec. 1, Rule 112, Rules of Court defines preliminary investigation as "an inquiry or proceeding to determine whether sufficient ground exists to engender a well-founded belief that a crime has been committed, that the respondent is probably guilty of this crime, and should be held for trial." Otherwise stated, the prosecution determines during preliminary investigation whether probable cause exists to indict the respondents therein for the crime charged.

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[21] G.R. No. 197522, September 11, 2013, 705 SCRA 629, 638.

The significance of a preliminary investigation cannot be gainsaid. Preliminary investigation, although an executive function, is part of a criminal proceeding[22] conducted not only to prosecute the guilty, but to protect the innocent from the embarrassment, expense and anxiety of a public trial. It is the crucial sieve in the criminal justice system which spells for an individual the difference between months, if not years, of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other.[23] More than a tool for prosecution, jurisprudence lays down another more significant objective and purpose of a preliminary investigation. In *People v. Yecyec,*[24] the Court explained that preliminary investigations are designed to exculpate the respondents from the difficulties of a formal trial, unless and until the probability of his or her guilt for the crime charged has been reasonably established:

> The **primary objective of a preliminary investigation is to free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt in a more or less summary proceeding by a competent office designated by law for that purpose.** Secondarily, such summary proceeding also protects the state from the burden of the unnecessary expense [for] an effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges. (Emphasis supplied)

Thus, the Court has characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.[25] Accordingly, preliminary investigations should be scrupulously

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[22] *Heirs of Federico C. Delgado v. Gonzalez,* G.R. No. 184337, August 7, 2009, 595 SCRA 501, 522.

[23] *Arroyo v. Department of Justice,* G.R. No. 199082, September 18, 2012, 681 SCRA 181, 232, citing *Ladlad v. Velasco,* G.R. Nos. 170270-72, June 1, 2007, 523 SCRA 318, 344.

[24] G.R. No. 183551, November 12, 2014, 734 SCRA 719, 730-731, citing *Ledesma v. Court of Appeals,* 344 Phil. 207, 226, 227 (1997).

[25] *Maza v. Gonzalez,* G.R. Nos. 172074-76, June 1, 2007, 523 SCRA 318, 344.

conducted not only to protect the constitutional right to liberty of a potential accused from any material damage,[26] but also to protect the State from the burden of unnecessary expenses in prosecuting and trying cases arising from false, fraudulent or groundless charges.[27]

The foregoing disquisition sheds light on the issue of whether the Ombudsman gravely abused its discretion in issuing the Joint Resolution and Joint Order finding probable cause against the petitioners and holding them for trial for plunder and graft and corruption.

**G.R.Nos. 212761-62 (Sen. Estrada)**

Sen. Estrada seeks to invalidate the Joint Resolution and Joint Order of the Ombudsman for being issued with grave abuse of discretion, following the supposed transgression of his right to due process of law during preliminary investigation. He laments that he was denied due process when the Ombudsman failed to furnish him with copies of the counter-affidavits of his co-respondents *prior* to the resolution of the preliminary investigation. This denial, according to the Senator, violated his right to be fully informed of, and to effectively respond to, the allegations regarding his supposed participation in the PDAF scam.

In addition, Sen. Estrada asserts that there is no admissible nor reasonable evidence that proves that he acquired, amassed, or accumulated ill-gotten wealth from illegal activities, or that he instructed anyone to divert public funds for his personal use.[28] Invoking the doctrine of *res inter alios acta,* he further contends that he cannot be bound by the actions and utterances of his co-respondents and the whistleblowers Luy, Suñas, and Sula; thus, their testimonies, upon which the Ombudsman based its findings of probable cause, cannot be utilized against him. Consequently, he maintains that the public respondent has not

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[26] *Webb v. De Leon,* 317 Phil. 759, 803 (1995).

[27] *Cam v. Casimiro,* G.R. No. 184130, June 29, 2015, 760 SCRA 467, 480.

[28] *Rollo,* p. 20.

sufficiently established all the elements of Plunder or of violation of Sec. 3(e) of RA No. 3019 and that his indictment was merely meant to harass and persecute members of the past administration's political opposition. This pernicious design is purportedly evidenced by the Ombudsman's intentional refusal to investigate or file charges against the political allies of the past administration who were also mentioned in the COA Report,[29] as well as the testimony of one Rodante Berou, an agent of the NBI who testified in Criminal Case Nos. SB14CRM0256 to 0266 that the members of the bureau were instructed to be selective in their investigation of the PDAF Scam. Public respondent's selective prosecution, Sen. Estrada asserts, violated his constitutional right to equal protection of the laws and constituted a grave abuse of its discretion which amounted to lack or excess of jurisdiction.[30]

**The Ombudsman's denial in it March 27, 2014 Order of Sen. Estrada's request did not constitute grave abuse of discretion**

The issue of whether the Ombudsman gravely abused its discretion in failing to furnish Sen. Estrada with copies of his co-respondents' counter-affidavits had been sufficiently settled in this Court's Decision[31] in G.R. Nos. 212140-41.

There, the majority discussed the absence of law or rule requiring the investigating officer to furnish the respondent with copies of the affidavits of his co-respondents. As stated in Section 3(b),[32] Rule 112 of the Revised Rules of Criminal

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[29] Second Supplement to the Petition, p. 2.

[30] *Id*. at 6.

[31] Promulgated on January 21, 2015, 748 SCRA 1.

[32] Section 3. *Procedure.* — The preliminary investigation shall be conducted in the following manner: x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

Procedure, the right of the respondent is only limited to examining the evidence submitted by the *complainant.* Neither the Revised Rules of Criminal Procedure nor the Revised Rules of Procedures of the Office of the Ombudsman require the investigating officer to furnish the respondent with copies of the affidavits of his or her co-respondents.[33]

Furthermore, following Our pronouncement in *Paderanga v. Drilon,*[34] the Court reiterated that the accused in a preliminary investigation has no right to cross-examine the witnesses whom the complainant may present. Section 3, Rule 112 of the Rules of Court is clear in that the accused only has the right 1) to submit a counter-affidavit, 2) to examine all other evidence *submitted by the complainant* and, 3) where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine.[35]

As this Court's pronouncement in G.R. Nos. 212140-41 has already attained finality, the same constitutes *stare decisis* as regards the first issue herein raised and can no longer be disturbed.

**The evidence adduced is insufficient to sustain a prima facie case against Sen. Estrada for Plunder and violation of Sec. 3(e) of RA No. 3019**

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The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

[33] *Estrada v. Office of the Ombudsman, supra* note 31, at 37.

[34] 273 Phil. 290, 299 (1991).

[35] *Estrada v. Office of the Ombudsman, supra* note 31, at 40.

Probable cause, for purposes of filing a criminal information in court, is defined under case law 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."[36] 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.[37] A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[38]

Certainly, prosecutors are given a wide latitude of discretion in determining whether an information should be filed in court or whether the complaint should be dismissed,[39] and the courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.[40] It is for this reason that Sen. Estrada's asseveration of political persecution has no leg to stand on. Before such a claim may prosper, it must be proved that the public prosecutor – the Ombudsman, in this case – employed bad faith in prosecuting the case, or that it has employed schemes

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[36] *People v. Borje, Jr.,* G.R. No. 170046, December 10, 2014, 744 SCRA 399, 409; *Aguilar v. Department of Justice, supra* note 23, at 639-640.

[37] *Kalalo v. Office of the Ombudsman,* G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148, citing *Advincula v. Court of Appeals,* G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-590.

[38] *Reyes v. Pearlbank Securities, Inc.,* G.R. No. 171435, July 30, 2008, 560 SCRA 518.

[39] *De Lima v. Reyes,* G.R. No. 209330, January 11, 2016, 779 SCRA 1, 27, citing *Crespo v. Mogul,* 235 Phil. 465 (1987)

[40] *People of the Philippines v. Castillo,* G.R. No. 171188, June 19, 2009; 590 SCRA 95, citing *Schroeder v. Saldevar,* G.R. No. 163656, April 27, 2007, 522 SCRA 624.

that lead to no other purpose than to place Sen. Estrada in contempt and disrepute.[41] I do not find such malevolent designs in the case at bar.

Nevertheless, *Ang-Abaya v. Ang*[42] emphasizes that for the public prosecutor to determine that there exists a probable cause, **the elements of the crime charged should, in all reasonable likelihood, be present.** This is based on the principle that **every crime is defined by its elements, without which there should be, at the most, no criminal offense.** Hence, it behooves the Ombudsman to maintain a level of certainty that the elements of the crimes charged are extant based on the facts and evidence gathered, and that the respondents are the ones who may be criminally liable therefor. To this end, the Court in *Salapuddin v. Court of Appeals*[43] instructs that, even during preliminary investigations, the investigating prosecutors are required to thoroughly evaluate the evidence before them to ensure that neither the State nor the accused would be burdened with unnecessary and frivolous suits, thus:

> Hence, even at this stage, the investigating prosecutors are duty-bound to sift through all the documents, objects, and testimonies to determine what may serve as a relevant and competent evidentiary foundation of a possible case against the accused persons. They cannot defer and entirely leave this verification of all the various matters to the courts. Otherwise, the conduct of a preliminary investigation would be rendered worthless; the State would still be forced to prosecute frivolous suits and innocent men would still be unnecessarily dragged to defend themselves in courts against groundless charges. Indeed, while prosecutors are not required to determine the rights and liabilities of the parties, a preliminary investigation still constitutes a realistic judicial appraisal of the merits of the case so that the investigating prosecutor is not excused from the duty to weigh the evidence submitted and ensure that what will be filed in court is only such criminal charge that the evidence and inferences can properly warrant.

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[41] *Paredes, Jr. v. Sandiganbayan,* G.R. No. 108251, January 31, 1996, 252 SCRA 641, citing *Dimayuga v. Fernandez,* 43 Phil 304, 306-307 (1922).

[42] G.R No. 178511, December 4, 2008, 573 SCRA 129, 143.

[43] G.R. No. 184681, February 25, 2013, 691 SCRA 578, 599.

In the case at bench, the Ombudsman primarily based its conclusion that Sen. Estrada agreed with Napoles to funnel his PDAF to her NGOs in exchange for commissions corresponding to a percentage of the amounts disbursed to her on the statements of the three whistleblowers, along with that of Tuason, Cunanan, Amata, Buenaventura, Figura, and Relampagos, not on any concrete, much less written proof of such agreement or contract.

I submit that the adverted statements are insufficient to support such conclusion for being inadmissible in evidence.

*First,* under Sec. 28,[44] Rule 130 of the Rules of Court, the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, **an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them.**[45] This rule, otherwise known as *res inter alios acta,* is based on the tenet that it is manifestly unjust and inconvenient if a person should be bound by the acts of mere unauthorized strangers; thus, if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.[46]

Admittedly, the *res inter alios acta* rule admits of certain exceptions, such as the rule on the admissions by conspirators under Sec. 29,[47] Rule 130. Nevertheless, in order that the admission of a conspirator may be received as evidence against

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[44] Section 28. *Admission by third party.* — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

[45] *People v. Cachuela,* G.R No. 191752, June 10, 2013.

[46] *People v. Tena,* G.R. No. 100909, October 21, 1992 (citations omitted).

[47] Section 29. *Admission by co-partner or agent.* — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

his co-conspirator, it is necessary that *first,* the conspiracy be first proved by evidence other than the admission itself; *second,* the admission relates to the common object; and *third,* it has been made while the declarant was engaged in carrying out the conspiracy.[48]

It is, therefore, indispensable that the conspiracy must first be established by evidence of intentional participation in the transaction with a view to the furtherance of the common design or purpose.[49] As the Court stressed in *People v. Furugganan,*[50] "conspiracy must be established, not by conjectures, but by positive and conclusive evidence. In fact, the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt."

Here, no competent and independent evidence, other than the bare statements and admissions of Sen. Estrada's co-respondents, has been presented to establish conspiracy, among others, and his complicity therein. While the Ombudsman adduced evidence to support the scheme described by the whistleblowers, *i.e.,* a) Luy's business ledgers, b) the 2007-2009 COA Report which detailed the irregularities in the disbursement of the PDAF of several lawmakers from 2007-2009, and c) the independent field verifications conducted in 2013 by the FIO,[51] the same does not sufficiently establish Sen. Estrada's participation in the purported conspiracy.

**In his *Sinumpaang Salaysay*[52] dated September 12, 2013, Luy himself admitted having forged various PDAF documents, such as the liquidation papers, certificate of inspection and acceptance from the office of the proponent or lawmaker, among others:**

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[48] *People v. Bokingo,* G.R. No. 187536, August 10, 2011, 655 SCRA 313, 333.

[49] *Medija, Jr. v. Sandiganbayan (First Div.),* 291 Phil. 236, 241 (1993).

[50] 271 Phil. 496, 507 (1991).

[51] *Rollo,* p. 126.

[52] *Id.* at 598-631.

116.T: May iba pa ba kayong gagawin maliban sa report of disbursement patungkol sa liquidation?

S: Mayroon pa po. Pini-prepare din yung list of beneficiaries, certificate of inspection and acceptance coming from the office ng proponent or legislators, certificate of project completion, delivery receipts, sales invoice, official receipts from the supplier, independent auditor's report, accomplishment report, at pictures ng implementation kung mayroong implementation. Kung wala pong implementation, wala po kaming i-attach na pictures. At sa mga nasabing mga dokumento na kailangan ang pirma ng legislators, may mga panahon po na kami na ang pumipirma sa mga pangalan ng mga Chief of Staff ng mga legislators o sa pangalan ng iilang Congressman sa utos ni Madame Janet Lim Napoles.

117. T: Nabanggit mona may mga panahon na kayo ang pumipirma sa pangalan ng mga Chief of Staff ng mga legislators or sa pangalan ng iilang Congressman, ano ang ibig sabihin dito at sinu-sino ang mga kasama mong pumipirma?

S: Kapag kami ay nagli-liquidate at may mga dokumento na kailangan ang pirma ng Chief of Staff ng mga legislators o ng Congressman ay kami na po ang pumipirma para sa kanila sa utos po ni Madame Janel Lim Napoles. Ang mga kasama ko po na pumipirma sa mga nasabing dokumento ay sila Evelyn de Leon, at Merlina Suñas.[53]

The admission of falsification of PDAF-related documents casts serious doubt on the credibility of the documents proffered by the whistleblowers, including Luy's ledger, which the Ombudsman relied upon as presumptive proof of Sen. Estrada's receipt of commissions from the PDAF in the amount of ₱183,793,750.00.

The endorsement letters, which ostensibly show Sen. Estrada's instructions to the IAs to have his PDAF-funded projects implemented by Napoles' NGOs and consequently enabled the latter to divert the funds to her own personal use, are likewise inadequate to presume his involvement in the scheme.

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[53] *Id.* at 618-619.

As stated by the Ombudsman, the IAs were mandated to comply with the guidelines set forth in National Budget Circular (NBC) No. 476[54] and Sec. 53.11[55] of the Revised Implementing Rules and Regulations of the R.A. No. 9184, otherwise known as the Government Procurement Reform Act (GPRA), in the implementation of government projects, particularly those with NGO participation. Sen. Estrada did not have the authority to compel or direct the heads of the IAs on the manner of implementation of his PDAF projects. Hence, the accountability for any irregularities on the implementation of the projects, including the contracting of NGOs and disbursement of funds, falls on the IAs and cannot be attributed to Sen. Estrada.

With respect to the COA Report and FIO verifications, it was determined in these reports that the IAs directly released the funds to the NGOs that were selected without compliance with COA Circular No. 2007-001 and GPPB Resolution No. 12-2007, and that the PDAF projects implemented by some lawmakers are ghost or inexistent. The same, however, does not adequately support the allegation that Sen. Estrada received commissions from Napoles, nor his involvement in the perpetration of these irregularities. His participation was limited to merely identifying the projects to be implemented and recommending its project partner.

Anent the requirement that the statements and admissions of the conspirators must have been made during the existence of the conspiracy to be admissible against the co-conspirators, the same does not obtain in this case. The statements of the whistleblowers, **as well as of Tuason, Cunanan, Relampagos, Buenaventura, Amata, and Figura, were evidently made long after the supposed conspiracy ceased. At any rate, there are no allegations that such statements were made by the affiants during the existence of the conspiracy.**

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[54] Otherwise known as "Guidelines for the Release and Utilization of the PDAF for FY 2001 and thereafter."

[55] 53.11. NGO Participation.

When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs),

Tuason, Cunanan, Relampagos, Amata, Buenaventura, and Figura are similarly charged with Sen. Estrada for purportedly conspiring with Napoles in furthering the PDAF scam. Considering that the alleged conspiracy has not been sufficiently proved by independent evidence, the statements of Sen. Estrada's co-respondents respecting his complicity in the PDAF scam are inadmissible against him as mere hearsay.

*Second,* the allegations fail to show that Sen. Estrada indeed diverted public funds amounting to at least ₱50,000,000.00 for his own personal use in conspiracy with his co-respondents, nor that he caused the disbursement of his PDAF to the Napoles NGOs through illegal means.

To reiterate, the elements of the crime charged should in all likelihood be present in order to engender the well-founded belief that a crime has been committed. This rule is based on the principle that every crime is defined by its elements, without which there should be – at the most – no criminal offense.[56]

The crime of Plunder is defined under Sec. 2 of R.A. 7080 in the following wise:

> Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets

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the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.

[56] *Ang-Abaya v. Ang, supra* note 42.

including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

To constitute the crime of plunder, the following elements must be alleged and established:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That the offender amasses, accumulates or acquires ill-gotten wealth through a combination or series of the following overt or criminal acts:

(a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

(c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries;

(d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[57]

On the other hand, a prosecution for violation of Sec. 3 (e)[58] of RA No. 3019 requires the concurrence of the following elements: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[59] Thus, Sec. 3 (e) of RA No. 3019 states:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The paucity of evidence establishing the elements of the cnmes charged is glaring in the present case.

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[57] *Macapagal-Arroyo v. People of the Philippines,* G.R. No. 220598, July 19, 2016, 797 SCRA 241, 329-330.

[58] Section 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[59] *Garcia v. Office of the Ombudsman,* G.R. No. 197567, November 19, 2014, 741 SCRA 172, 184-185, citing *Lihaylihay v. People,* G.R. No. 191219, July 31, 2013, 702 SCRA 755.

The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00.[60] Yet, there is no evidence pointing to the fact that Sen. Estrada indeed received such amount through illegal means. Tuason's testimony, which the Ombudsman repeatedly relied on to create a direct link between Napoles and Sen. Estrada and to prove his receipt of commissions from her, failed to categorically establish such fact. In the same vein, Luy himself cannot personally attest to the purported delivery of money to Sen. Estrada, as borne by his statements in his *Sinumpaang Salaysay* dated September 12, 2013:

> 67. T: Mayroon bang pagkakataon na ikaw mismo ay nakapagbigay ng pera na "rebates" ng transaction sa Senador o Congressman o sa kung sino mang representative ng pulitiko?
>
> S: Opo. Sa mga Chief-of-Staff ng mga Senador at sa mga Congressman mismo ay nakapag-abot na po ako ng personal. Pero sa mga Senador po ay wala pong pagkakataon na ako mismo ang nag-abot. **Naririnig ko lang kay Madame JANET LIM NAPOLES na nagbibigay daw siya sa mga Senador.**[61] (Emphasis supplied)

Luy's business ledgers, which supposedly validate Tuason's statements, cannot serve to bolster the allegation that Sen. Estrada amassed such amount from the supposed illegal disbursement of his PDAF for being hearsay and lacking in credibility. Indubitably, the receipt of money was not shown to be corroborated by other hard evidence other than the bare assertions of the whistleblowers and Tuason. On the contrary, even the whistleblowers' testimonies lack credence. Luy's knowledge of Sen. Estrada's alleged receipt of commissions and kickbacks was evidently derived only from information fed to him by Napoles and not based on his personal knowledge. This being the case, the same is considered hearsay and lacks probative value.

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[60] *Macapagal-Arroyo v. People of the Philippines,* supra note 57, at 330.

[61] *Rollo,* p. 984.

Without any reliable evidence showing that Sen. Estrada repeatedly received sums of money from Napoles, the *corpus delicti* cannot be established. Consequently, the failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution.[62]

With respect to the violation of Sec. 3 (e) of R.A. No. 3019, the Court explained in *Cosigna v. People*[63] that there are two (2) ways by which a public official violates it in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both.

The public respondent has not shown any concrete proof that Sen. Estrada, by himself or through Labayen, carried out any of the modes of committing the crime. Suffice it to state that Sen. Estrada's endorsement of an NGO or the act of following up on the release of the PDAF allocations cannot, in no uncertain terms, constitute an illegal act. Without more, the endorsements cannot be equated to any intentional or overt instruction to the heads of the IAs to circumvent the laws and procedural requirements in the implementation of his projects.

Sen. Estrada likewise cannot be said to have been complicit with his co-respondents in allegedly giving unwarranted benefits to Napoles by funneling his PDAF to her NGOs. For one, it is the DBM that releases the PDAF to the heads of the IAs, and the latter, in turn, are tasked to disburse it within the parameters of the applicable appropriations law, the GPRA as well as its implementing rules, and NBC Nos. 476[64] and 537.[65] Sen. Estrada

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[62] *Macapagal-Arroyo v. People of the Philippines, supra* note 57, at 331.

[63] G.R Nos. 175750-51, April 2, 2014, 720 SCRA 350, 367-368, citing *Cabrera v. Sandiganbayan,* 484 Phil. 350, 360 (2004).

[64] Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for the Second Semester of FY 2001 and Thereafter.

[65] Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2012.

neither exercises control over the DBM or the IAs, nor is he allowed to dictate the course of the implementation of his projects.

In sum, the conclusion that Sen. Estrada colluded with his co-respondents in amassing wealth through the illegal disbursement of his PDAF proves to be grounded more on conjectures and surmises, rather than tangible and concrete proof. Accordingly, the finding of probable cause against Sen. Estrada crumbles in the absence of competent, admissible, and independent evidence of any overt act on the part of Sen. Estrada to intentionally commit illegal acts constituting plunder and/or violation of Sec. 3 (e) of R.A. No. 3019.

I, therefore, submit that the reversal of the Joint Resolution and Joint Order as to Sen. Estrada is warranted.

**G.R. Nos. 213473-74** ***(De Asis)***

For his part, De Asis contends that the Ombudsman had no valid reason to charge him as the NBI and FIO Complaints do not cover transactions with KPMFI, the Napoles NGO of which he is alleged to be the president. He likewise insists that he had no knowledge of the incorporation of KPMFI and no participation in the management of its affairs; and even on the assumption that he participated in the incorporation and management thereof, it was not among the NGOs found by the Ombudsman to have been used as a conduit in the PDAF scam.[66]

De Asis similarly takes exception to the charge of violation of Sec. 3 (e) of RA No. 3019 in the Joint Resolution, noting that the FIO Complaint did not include him among those charged therefor.[67] He avers that his inclusion in the complaints was based solely on his functions as driver and messenger of Napoles and is insufficient to charge him for the crimes of Plunder and violation of Sec. 3 (e) of RA No. 3019. His alleged act of delivering monies to Sen. Estrada, without proof that he was knowingly and purposely delivering his commissions or kickbacks, belies any reasonable ground to doubt his criminal

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[66] *Rollo,* pp. 41-42.

[67] *Id*. at 49.

intent and overt act constitutive of Plunder. Finally, he claims that, as a private individual, he cannot be held liable for Plunder in the absence of proof that he conspired with the public officials charged.

Notably, the arguments and defenses raised by De Asis herein are similar to those raised in G.R. Nos. 213477-78. Specifically, that his performance of his duties as driver and messenger of Napoles does not amount to a willful participation in the crimes for which he is being charged.

I concur with the majority that the petition is without merit.

*First,* contrary to De Asis' claim, a cursory reading of the NBI Complaint would show that KMPFI is alleged to be one of the Napoles NGOs that Napoles used as a conduit in the diversion of public funds. In any case, his position and/or role in KMPFI are immaterial since the charges against him stem from his alleged participation in directly aiding Napoles to transfer the funds received from the IAs to the bank accounts of her NGOs, in conspiracy with other public officials.

*Second,* good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. It is actually a question of intention, which can be **ascertained by relying not on a person's own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts.**[68]

*Third,* the issue of whether a person acted in good faith is a question of fact, the determination of which is beyond the ambit of this Court's power of review. Only questions of law may be raised under this Rule as this Court is not a trier of

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[68] *Civil Service Commission v. Maala,* G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399.

facts.[69] As the Court stated in G.R. Nos. 213477-78, De Asis' defenses are better ventilated during trial and not during preliminary investigation.

Notably, Sen. Estrada is not the only named public officer involved in this issue; there are others against whom the Ombudsman found probable cause. De Asis, therefore, may be charged with Plunder despite being a private individual due to the existence of probable cause that he acted in concert with other public officers.

In view of the foregoing, I register my vote:

1. To **DISMISS** the petition in G.R. Nos. 213473-74 for lack of merit; and

2. To **GRANT** the petition in G.R. Nos. 212761-62 and to **REVERSE** and **SET ASIDE** the assailed Joint Resolution and Joint Order issued by the Ombudsman on March 28, 2014 and June 4, 2014, respectively, insofar as they found probable cause to indict Sen. Estrada for the crimes indicated therein

Accordingly, I vote to **DISMISS** charges for plunder and violation of Sec. 3 (e) of Republic Act No. 3019 against Sen. Estrada and to order his name dropped in Crim. Case Nos. SB14CRIM0239, SB14CRM0256, SB14CRM0257, SB14CRM0258, SB14CRM0259, SB14CRM0260, SB14CRM0261, SB14CRM0262, SB14CRM0263, SB14CRM0264, SB14CRM0265, and SB14CRM0266.

## CONCURRING AND DISSENTING OPINION

**PERALTA, *J.*:**

I concur in the result, but I submit a different view with respect to the grounds for dismissing the instant petitions. I also express my dissent with respect to the correctness of charging petitioner Senator Jose "Jinggoy" P. Ejercito Estrada separately for violation of Section 3(e) of Republic Act (R.A.) No. 3019.

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[69] *Id*. at 398, citing *Alfredo v. Borras,* G.R. No. 144225, June 17, 2003, 404 SCRA 145.

The instant petitions should have been dismissed for being moot and academic.

The undisputed fact is that the Information against petitioners have already been filed in court. In fact, a warrant of arrest has been issued and trial has already commenced. The rule in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.[1] Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court.[2] The court is the best and sole judge on what to do with the case before it.[3] The determination of the case is within its exclusive jurisdiction and competence.[4]

Hence, with the filing of the Information before the Sandiganbayan, the present petitions have become moot and academic. The trial court has acquired *exclusive* jurisdiction over the case, and the determination of the accused's guilt or innocence rests within its sole and sound discretion.

It is true that the Constitution allows the exercise of the power of judicial review in cases where grave abuse of discretion exists. In this case, however, a petition for *certiorari* before this Court is not the "plain, speedy, and adequate remedy in the ordinary course of law" because, as discussed above, the trial court already acquired jurisdiction over the case. As such, the proper remedy for petitioners was to proceed to trial and present their evidence.[5]

The foregoing notwithstanding, I find it necessary to express my views on the impropriety of some of the indictments against petitioner Estrada. He should not have been charged separately

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[1] *Napoles v. Secretary De Lima, et al.,* 790 Phil. 161, 172 (2016).

[2] *Id.* at 172-173.

[3] *Id.* at 173.

[4] *Id.*

[5] *Id.*

for violations of Section 3(e) of R.A. No. 3019 for reasons discussed below.

Section 2 of R.A. No. 7080 provides as follows:

> ***Definition of the Crime of Plunder; Penalties*** - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth **through a combination or series of overt or criminal acts as described in Section 1(d) hereof,** in the aggregate amount or total value of at least Seventy-five million pesos (₱75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State.[6]

Section 1(d) of the same law defines "ill-gotten wealth" as any asset, property, business enterprise or material possession of any person within the purview of Section 2 thereof, acquired by him, directly or indirectly, through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of means or similar schemes enumerated therein.

Based on the above provisions, the elements of plunder are:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

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[6] Emphasis supplied.

(a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

(c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries;

(d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[7]

On the other hand, Section 3(e) of R.A. No. 3019 reads:

Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted

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[7] *Estrada v. Sandiganbayan,* 421 Phil. 290, 343-344 (2001); *Enrile v. People, et al.,* 766 Phil. 75, 115-116 (2015).

> 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.

The elements of the above-quoted Section 3(e) are:

(1) the offender is a public officer or a private person charged in conspiracy with the public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[8]

Under the Complaint filed by the Field Investigation Office *(FIO)* of the Office of the Ombudsman, petitioner Estrada, among others, was charged with violation of Section 3(e) of R.A. No. 3019 and plunder for supposedly giving unwarranted benefits to Napoles and to several NGOs that she organized, thereby causing injury to the government in an amount exceeding ₱278,000,000.00.

In the Complaint filed by the NBI, petitioner Estrada was charged with plunder for having allegedly acquired and/or received on various occasions, and in conspiracy with his co-respondents, commissions, kickbacks, or rebates from projects financed by his PDAF.

Under the given facts of the present case, had petitioner Estrada not committed the acts constituting alleged violations of Section 3(e) of R.A. No. 3019, would he have been charged with plunder?

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[8] *Ampil v. The Honorable Office of the Ombudsman, et al.,* 715 Phil. 733, 755 (2013); *People v. The Honorable Sandiganbayan (4th Div.),* 642 Phil. 640, 650 (2010).

In other words, is it possible for petitioner Estrada to commit plunder in the instant case without d the acts which were used as bases to charge him with violation of Section 3(e) of RA. No. 3019? I submit that it is not.

These alleged various acts of giving unwarranted benefits to Napoles and various NGOs and of receiving commissions, kickbacks, or rebates are what comprises, precisely, what is defined under R.A. No. 7080 as a "combination or series of overt or criminal acts" which, when taken together, constitute the crime of plunder. In the instant case, the various acts constituting alleged violations of Section 3(e) of R.A. No. 3019, taken together, are predicate acts of plunder which should not be considered independent crimes for which petitioner Estrada should be separately indicted.

Predicate means "found" or "base."[9] Hence, by definition alone, the acts enumerated under Section 1(d) of R.A. No. 7080 are the bases or foundation for the commission of the crime of plunder, without which the said crime cannot be committed. Evidently, the acts allegedly committed by petitioner Estrada which were used as bases to charge him with several counts of violation of Section 3(e) of R.A. No. 3019 are part of the same series of acts used as grounds to indict him for plunder.

In *Estrada v. Sandiganbayan (Third Division),*[10] this Court had the occasion to explain one of the primary reasons for the enactment of R.A. No. 7080, which is to avoid the mischief and folly of filing multiple informations against persons committing various crimes of malversation of public funds, bribery, extortion, theft and graft but, these offenses, nonetheless, make up a complex and manifold network of crimes constituting plunder which causes material damage to the nation's economy. This is clearly evident in the Explanatory Note to Senate Bill No. 733, to wit:

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[9] Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1993, p. 1786; 72 C.J.S. 478.

[10] 427 Phil. 820 (2002).

Plunder, a term chosen from other equally apt terminologies like kleptocracy and economic treason, punishes the use of high office for personal enrichment, committed thru a series of acts done not in the public eye but in stealth and secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units. The acts and/or omissions sought to be penalized do not involve simple cases of malversation of public funds, bribery, extortion, theft and graft but constitute plunder of an entire nation resulting in material damage to the national economy. The above-described crime does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.[11]

Thus, to hold petitioner Estrada liable and indict him separately under a different law (R.A. No. 3019) for the same acts executed as a means of committing plunder would run afoul of the intent of R.A. No. 7080.

In view of the foregoing discussions, I vote to **DISMISS** the petitions for being **MOOT.**

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**EN BANC**

[G.R. No. 237721. July 31, 2018]

## IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN V. SANDIGANBAYAN* – ROLANDO ELBANBUENA *y* MARFIL, *petitioner.*

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[11] *Estrada v. Sandiganbayan (Third Division), supra,* at 851-852.

**SYLLABUS**

1. **CRIMINAL LAW; REPUBLIC ACT NO. 10951; PROVIDES AN EXCEPTIONAL CIRCUMSTANCE WHICH WARRANTS NOT ONLY THE RE-OPENING OF AN ALREADY TERMINATED CASE, BUT ALSO THE RECALL OF AN ENTRY OF JUDGMENT FOR PURPOSES OF MODIFYING THE PENALTY TO BE SERVED.—** As held by this Court in *Hernan v. Sandiganbayan*, the passage of RA No. 10951 is an exceptional circumstance which warrants not only the re-opening of an already terminated case, but also the recall of an Entry of Judgment for purposes of modifying the penalty to be served. Thus, in *Hernan*, this Court re-opened the case for the sole purpose of re-computing the proper sentence to be imposed in accordance with RA No. 10951. In contrast, petitioner Elbanbuena here seeks not only a modification of his sentence in accordance with RA No. 10951; he also seeks **immediate release from confinement** on account of his alleged full service of the re-computed sentence. The determination of whether he is entitled to immediate release, however, would necessarily involve ascertaining, among others, the actual length of time Elbanbuena has *actually* been in confinement and whether time allowance for good conduct should be allowed. Such an exercise would, at the first instance, be better undertaken by a trial court, which is relatively more equipped to make findings of *both* fact and law.

2. **ID.; ID.; ACTIONS SEEKING MODIFICATION OF PENALTIES AND IMMEDIATE RELEASE FROM CONFINEMENT ON ACCOUNT OF FULL SERVICE OF PENALTY; GUIDELINES.—** [T]he Court, in the interest of justice and efficiency, resolves to issue the following guidelines: I. *Scope*. These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by RA No. 10951, of penalties imposed by final judgments; and, (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified. II. *Who may file.* The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition. III. *Where to file.* The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case

shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition. IV. *Pleadings*. (A) *Pleadings allowed*. — The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement, shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict. (B) *Verification*. — The petition must be in writing and verified by the petitioner-convict himself. V. *Comment by the OSG*. Within ten (10) days from notice, the OSG shall file its comment to the petition. VI. *Effect of failure to file comment*. Should the OSG fail to file the comment within the period provided, the court, *motu proprio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted. VII. *Judgment of the court*. To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following: a. The penalty/penalties imposable in accordance with RA No. 10951; b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with RA No. 10951. The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction. VIII. *Applicability of the regular rules*. The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.

## D E C I S I O N

**JARDELEZA, *J.*:**

This is a petition[1] praying for the release of petitioner Rolando M. Elbanbuena (Elbanbuena) pursuant to the provisions of Republic Act (RA) No. 10951[2] and this Court's ruling in *Hernan v. Sandiganbayan*.[3]

Petitioner Elbanbuena worked as a Disbursing Officer of Alingilan National High School in Alingilan, Bacolod. He was charged with four counts of malversation of public funds through falsification of a public document under Articles 217 and 171 in relation to Article 48 of the Revised Penal Code (RPC). After trial, Elbanbuena was found guilty beyond reasonable doubt of the crimes charged in the Information.[4] The dispositive portion of the Decision states:

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[1] *Rollo*, pp. 3-20.

[2] An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as Amended.

[3] G.R. No. 217874, December 5, 2017.

[4] On October 15, 1993, and by virtue of his office, Elbanbuena received Land Bank Check No. 8617487 in the amount of ₱29,000.00, intended for deposit in the school's Maintenance and Other Operating Expenses (MOOE) account. He, however, failed to deposit said check.

On October 18, 1993, Elbanbuena received two (2) Land Bank Check Nos. 8617490 and 8617425 in the amount of ₱100.00 and ₱595.00, respectively. However, he falsified the amounts stated in the checks, making it appear that the checks were issued in the amounts of ₱38,100.00 and ₱24,595.00, respectively. He encashed the checks against the MOOE Fund account in Land Bank and misappropriated the same for his own personal use.

On October 20, 1993, Elbanbuena received Land Bank Check No. 8617486 in the amount of ₱8,350.24. Once again, he falsified the amount in the check by changing the amount in words and figures to ₱98,350.24. He encashed the check against the MOOE Fund account in Land Bank and misappropriated the amount of ₱98,350.24 for his own personal use. *Rollo*, pp. 28-32.

WHEREFORE, the accused is hereby found guilty of the complex crime of Malversation of Public Funds through falsification of public or commercial documents in Criminal Cases Nos. 95-17264, 95-17265, and 95-17266 and for Malversation of Public Funds in Criminal Case No. 95-17263, and the accused is hereby sentenced as follows:

1) To suffer imprisonment in Criminal Cases Nos. 95-17264, 95-17265, 95-17266, from prision mayor maximum or ten (10) years one (1) day to twelve (12) years to reclusion temporal maximum or seventeen (17) years four (4) months and one (1) day to twenty (20) years; in three (3) counts;

2) To suffer imprisonment in Criminal Case No. 95- 17263 of prision mayor medium or eight years one (1) day to ten (10) years to reclusion temporal minimum or twelve (12) years one (1) day to fourteen (14) years and eight (8) months; and

3) To suffer civil interdiction and absolute disqualification during the period of the sentence.

SO ORDERED.[5]

Since Elbanbuena did not appeal the ruling, it became final and executory on August 10, 2000.[6] On January 9, 2003, Elbanbuena started serving his sentence at the New Bilibid Prison in Muntinlupa City.[7]

On August 29, 2017, RA No. 10951 was promulgated. It amended Act No. 3815, otherwise known as the Revised Penal Code, and reduced the penalties for certain crimes. Pertinently, Section 40 of RA No. 10951 provides:

Sec. 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

Art. 217. *Malversation of public funds or property. – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or

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[5] *Id.* at 32.

[6] *Id.* at 33.

[7] *Id.* at 25.

misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

**1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).**

**2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).**

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (Emphasis supplied.)

On December 5, 2017, this Court issued its ruling in *Hernan v. Sandiganbayan*.[8] There, the Court held:

The general rule is that a judgment 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 or law and whether it will be made by the court that rendered it or by the highest court of the land. **When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability.** The same is in line with Section 3(c), Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. **To the Court, the recent passage of Republic Act (R.A.) No. 10951 x x x which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance.** x x x

x x x x x x x x x

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. x x x

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, x x x.

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence

[8] *Supra* note 3.

of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs **the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.**

**Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused**, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.[9] (Emphasis supplied; citations omitted.)

Hence, this petition which seeks, among others, the modification, in conformity with RA No. 10951, of the Decision[10] dated July 5, 2000 rendered by Branch 41 of the Regional Trial Court of Bacolod City and, pursuant thereto, Elbanbuena's immediate release from confinement.

In a Resolution[11] dated April 3, 2018, this Court required the Office of the Solicitor General (OSG) to comment on the petition (and its consolidated cases) and recommend guidelines relative thereto and similar petitions.

On July 4, 2018, the OSG filed its consolidated comment wherein it agreed that petitioners may invoke RA No. 10951 to seek a modification/reduction of the penalties for some of the crimes for which they are presently serving sentence. The OSG, however, took the position that Elbanbuena (and the other

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[9] *Id*.

[10] *Rollo*, pp. 27-32.

[11] *Id*. at 34-37.

petitioners similarly situated) may not be immediately released at this point:

> 12. x x x While R.A. No. 10951 did reduce the imposable penalties for petitioners' crimes under the RPC, the reduced penalties to be *actually* imposed for these crimes have yet to be fixed by a court of competent jurisdiction.
>
> 13. The determination of whether petitioners are now entitled to be released requires that the court exercising jurisdiction over this petition *first*: (a) fix the new penalties for the crimes for which petitioners are presently serving sentence, as provided under R.A. No. 10951; and, thereafter (b) ascertain whether petitioners have indeed fully served their respective sentences based on such new penalties. Both have yet to be made.[12] (Italics in the original.)

As held by this Court in *Hernan v. Sandiganbayan*, the passage of RA No. 10951 is an exceptional circumstance which warrants not only the re-opening of an already terminated case, but also the recall of an Entry of Judgment for purposes of modifying the penalty to be served. Thus, in *Hernan*, this Court re-opened the case for the sole purpose of re-computing the proper sentence to be imposed in accordance with RA No. 10951. In contrast, petitioner Elbanbuena here seeks not only a modification of his sentence in accordance with RA No. 10951; he also seeks **immediate release from confinement** on account of his alleged full service of the re-computed sentence. The determination of whether he is entitled to immediate release, however, would necessarily involve ascertaining, among others, the actual length of time Elbanbuena has *actually* been in confinement and whether time allowance for good conduct should be allowed. Such an exercise would, at the first instance, be better undertaken by a trial court, which is relatively more equipped to make findings of *both* fact and law.

However, and especially in view of the anticipated influx of similar petitions,[13] the Court, in the interest of justice and

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[12] OSG consolidated comment, p. 6.

[13] See list submitted by the Deputy Director General for Operations of the Bureau of Corrections pursuant to the Court's order in *Hernan v. Sandiganbayan*. (*Rollo*, pp. 21-24.)

efficiency, resolves to issue the following guidelines:[14]

I. *Scope*.
These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by RA No. 10951, of penalties imposed by final judgments; and, (2) the immediate release of the petitioner-convict on account of full service of the penalty/ penalties, as modified.

II. *Who may file.*
The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

III. *Where to file.*
The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings*.
(A) *Pleadings allowed.* - The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement, shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

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[14] Pursuant to this Court's power under Section 5(5) of Article VIII of the Constitution which provides:

Sec. 5(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 underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(B) *Verification*. - The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG.*

Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment.*

Should the OSG fail to file the comment within the period provided, the court, *motu proprio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court.*

To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

a. The penalty/penalties imposable in accordance with RA No. 10951;
b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and
c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with RA No. 10951.

The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII. *Applicability of the regular rules.*

The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.

**WHEREFORE,** premises considered, the petition is **GRANTED**. The Decision dated July 5, 2000 in Criminal Cases Nos. 95-17263, 95-17264, 95-17265, and 95-17266 is hereby **REMANDED** to the Regional Trial Court in Muntinlupa City

for the determination of: (1) the proper penalty/penalties in accordance with RA No. 10951; and (2) whether petitioner **ROLANDO ELBANBUENA *y* MARFIL** is entitled to immediate release on account of full service of his sentences, as modified.

Let copies of this Decision also be furnished to the Office of the Court Administrator for dissemination to the First and Second Level courts, and also to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

**SO ORDERED.**

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

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[*] Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.

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# INDEX

—— It is indispensable for the writ of preliminary attachment to issue that there exists a *prima facie* factual foundation for the attachment of properties, and an adequate and fair opportunity to contest it and endeavor to cause its negation or nullification; for the *ex-parte* issuance of a writ of preliminary attachment to be valid, an affidavit of merit and an applicant's bond must be filed with the court in which the action is pending. (*Id*.)

—— The provisional remedy of attachment on the property of the accused may be availed of to serve as security for the satisfaction of any judgment that may be recovered from the accused when the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, in the course of his employment as such, or when the accused has concealed, removed or disposed of his property or is about to do so. (*Id*.)

—— The remedy of attachment is provisional and temporary, designed for particular exigencies, attended by no character of permanency or finality, and always subject to the control of the issuing court. (*Id*.)

**ATTORNEYS**

*Code of Professional Responsibility* —— The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client; the rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation; a lawyer's act of asking a client for a loan is unethical and that the act of borrowing money from a client was a violation of Canon 16.04 of the CPR. (HDI Holdings Phils., Inc. *vs*. Atty. Cruz, A.C. No. 11724 [Formerly CBD No. 14-4109], July 31, 2018) p. 587

*Disbarment* —— Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly of the documentary evidence and the content of which will prove either the falsity or

when determining the existence of inordinate delay: *first*, the length of delay; *second*, the reason for delay; *third*, the defendant's assertion or non-assertion of his or her right; and *fourth*, the prejudice to the defendant as a result of the delay; for a period of time, this balancing test appeared to be the best way to determine the existence of inordinate delay. (*Id*.)

–– No violation of the accused's right to speedy disposition of cases considering that there was a waiver of the delay of a complex case. (*Id*.)

–– The right to speedy disposition of cases should not be confused with the right to a speedy trial, a right guaranteed under Art. III, Sec. 14(2) of the Constitution; the right to a speedy trial is invoked against the courts in a criminal prosecution; the right to speedy disposition of cases, however, is invoked even against quasi-judicial or administrative bodies in civil, criminal, or administrative cases before them; both rights, nonetheless, have the same rationale: to prevent delay in the administration of justice. (*Id*.)

*Right to speedy disposition of cases* — For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense; certain unreasonable actions by the accused will be taken against them; this includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. (Cagang *vs*. Sandiganbayan, G.R. Nos. 206438 and 206458, July 31, 2018) p. 815

***CERTIORARI***

*Petition for* –– There are instances when the rigidity of the rule requiring the petition for *certiorari* to be filed within 60 days from the receipt of the judgment, order, or resolution sought to be thereby assailed has been relaxed, such as: (1) when the most persuasive and weighty reasons obtain; (2) when it is necessary to do so in order to

**COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)**

evidentiary value of the seized items are properly preserved by the apprehending officer or team. (*Id*.)

— Sec. 21 (a), Art. II of the IRR of R.A. No. 9165 provides for a saving clause, requiring the satisfaction, by the prosecution, of a two-pronged requirement: first, to acknowledge and credibly justify the non-compliance with Sec. 21, and second, to show that the integrity and evidentiary value of the seized item were properly preserved. (People *vs*. De Vera *y* Medina, G.R. No. 218914, July 30, 2018) p. 348

— Sec. 21, Art. II of R.A. No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. (Ramos *vs*. People, G.R. No. 233572, July 30, 2018) p. 473

— Sec. 21 requires the apprehending team to immediately after seizure and confiscation, physically inventory and photograph the seized illegal drugs in the presence of the accused 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 thereof. (People *vs*. De Vera *y* Medina, G.R. No. 218914, July 30, 2018) p. 348

— The applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous/illegal drugs: 1) the initial custody requirements must be done immediately after seizure or confiscation; 2) the physical inventory and photographing must be done in the presence of: a. the accused or his representative or counsel; b**.** a representative from the media; c. a representative from the DOJ; and d. any elected public official; 3) the conduct of the physical inventory and photograph shall be done at the: a. place where the search warrant is served; or b. at the nearest police station; or c. nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure. (*Id*.)

(People *vs*. De Vera *y* Medina, G.R. No. 218914, July 30, 2018) p. 348

—— The prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Sec. 21 of R.A. No. 9165, as amended; it has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the 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. (People *vs*. Allingag *y* Torres, G.R. No. 233477, July 30, 2018) p. 454

—— This rigorous requirement, known under R.A. No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed. (People *vs*. De Vera *y* Medina, G.R. No. 218914, July 30, 2018) p. 348

*Illegal possession of dangerous drugs* —— 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. (People *vs*. Cabrellos *y* Dela Cruz, G.R. No. 229826, July 30, 2018) p. 428

—— In order to properly secure the conviction of an accused charged with Illegal Possession of Dangerous Drugs, the prosecution must prove that: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (Ramos *vs*. People, G.R. No. 233572, July 30, 2018) p. 473

—— In prosecuting a case for illegal possession of drugs, the following elements must concur: (1) the accused is in

to prove the guilt of the accused beyond reasonable doubt. (Ramos *vs*. People, G.R. No. 233572, July 30, 2018) p. 473

—— In illegal sale and illegal possession of dangerous drugs, case law instructs that 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. (People *vs*. Cabrellos *y* Dela Cruz, G.R. No. 229826, July 30, 2018) p. 428

**COURTS**

*Judicial discretion* —— By its very nature, involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. (Revilla, Jr. *vs*. Sandiganbayan, G.R. No. 218232, July 24, 2018) p. 17

—— Discretion is guided by: *first*, the applicable provisions of the Constitution and the statutes; *second*, by the rules which this Court may promulgate; and *third*, by those principles of equity and justice that are deemed to be part of the laws of the land; the discretion of the court, once exercised, cannot be reviewed by certiorari nor controlled by mandamus save in instances where such discretion has been so exercised in an arbitrary or capricious manner. (*Id*.)

**CRIMINAL PROCEDURE**

*Preliminary investigation* —— During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint; the prosecutor determines during preliminary investigation whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial; at this stage, the determination of probable cause is an executive function. (Home Dev't. Mutual Fund (HDMF) Pag-Ibig Fund *vs*. Sagun, G.R. No. 205698, July 31, 2018) p. 608

—— To apply, the suit must be exclusively between or among members of the same family; once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper; Art. 151 of the Family Code must be construed strictly, it being an exception to the general rule; any person having a collateral familial relation with the plaintiff other than what is enumerated in Art. 150 of the Family Code is considered a stranger who, if included in a suit between and among family members, would render unnecessary the earnest efforts requirement under Art. 151. (*Id*.)

*Illegitimate children* —— As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common children; however, insofar as illegitimate children are concerned, Art. 176 of the Family Code states that illegitimate children shall be under the parental authority of their mother. (Masbate *vs*. Relucio, G.R. No. 235498, July 30, 2018) p. 515

*Parental authority* —— Family Code provides for the so-called tender-age presumption, stating that no child under seven (7) years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise; the following instances may constitute "compelling reasons" to wrest away custody from a mother over her child although under seven (7) years of age: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease. (Masbate *vs*. Relucio, G.R. No. 235498, July 30, 2018) p. 515

—— Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs; it is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation

emotional development; it also means the least detrimental available alternative for safeguarding the growth and development of the minor. (*Id*.)

**INTERVENTION**

*Remedy of* –– Rule 19 of the Rules of Court is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. (Heirs of Ramon Arce, Jr. *vs*. Dep't. of Agrarian Reform, G.R. No. 228503, July 25, 2018) p. 220

**JUDGES**

*Gross misconduct* –– Persons involved in the administration of justice are expected to uphold the strictest standards of honesty and integrity in the public service; their conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility. (Anonymous *vs*. Judge Buyucan, A.M. No. MTJ-16-1879 [Formerly OCA IPI No. 14-2719-MTJ], July 24, 2018) p. 1

**JUDICIAL DEPARTMENT**

*Judicial power* — A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. (Dep't. of Transportation (DOTR) *vs*. Phil. Petroleum Sea Transport Assoc., G.R. No. 230107, July 24, 2018) p. 144

–– The power not only to settle actual controversies involving rights which are legally demandable and enforceable, but also 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; there is a grave abuse of discretion when there is a patent violation of the Constitution, the law, or existing jurisprudence. (*Id*.)

**JUDGMENTS**

—— An action to revive judgment is one whose exclusive purpose is to enforce a judgment which could no longer be enforced by mere motion; being a mere right of action, the petition for revival of judgment is subject to defenses and counter claims which may have arisen subsequent to the date it became effective, as for instance, prescription, which bars an action upon judgment after ten years or payment; or counterclaims arising out of transactions not connected with the former controversy. (*Id.*)

**JURISDICTION**

*Concept of* —— Defined as the authority to hear and determine a cause or the right to act in a case; in addition to being conferred by the Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted. (Radiowealth Finance Co., Inc. *vs*. Pineda, Jr., G.R. No. 227147, July 30, 2018) p. 419

—— When by law jurisdiction is conferred on a court, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by the rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules. (Revilla, Jr. *vs*. Sandiganbayan, G.R. No. 218232, July 24, 2018) p. 17

**LEGISLATIVE DEPARTMENT**

*Delegation of legislative powers* —— For a valid delegation of power, it is essential that the law delegating the power must be: (1) complete in itself, that it must set forth the policy to be executed by the delegate; and (2) it must fix a standard limits of which are sufficiently determinate or determinable to which the delegate must conform; sufficient standard need not be spelled out and could be

**MOTION TO QUASH**

*Denial of* –– As a general rule, the denial of a motion to quash is not appealable as it is merely interlocutory; it cannot be the subject of a petition for certiorari; the denial of the motion to quash can still be raised in the appeal of a judgment of conviction; the adequate, plain, and speedy remedy is to proceed to trial and to determine the guilt or innocence of the accused. (Cagang *vs*. Sandiganbayan, G.R. Nos. 206438 and 206458, July 31, 2018) p. 815

**OMBUDSMAN**

*Powers of* –– Both the Constitution and R.A. No. 6770 or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees; as 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. (Sen. Estrada *vs*. Office of the Ombudsman, G.R. Nos. 212761-62, July 31, 2018) p. 913

**PHILIPPINE HEALTH INSURANCE CORPORATION (R.A. NO. 7875)**

*Application of* –– PhilHealth is prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of directly rendering care, and from owning or investing in health care facilities; the functions of the PhilHealth personnel are not principally related to health services. (Phil. Health Insurance Corp. *vs*. Commission on Audit, G.R. No. 222710, July 24, 2018) p. 90

*PhilHealth personnels* –– Perform functions which pertain to the effective administration of the National Health Insurance Program or facilitating the availability of funds of health services to its covered employees, and, among others involve the: determination of requirements and issue guidelines in relation to the insurance program;

officer, in the course of his employment as such; the filing of the criminal action for plunder, which is within the jurisdiction of the Sandiganbayan, is deemed to necessarily carry with it the filing of the civil action. (Revilla, Jr. *vs*. Sandiganbayan, G.R. No. 218232, July 24, 2018) p. 17

*Elements* –– Plunder, defined and penalized under Sec. 2 of R.A. No. 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d) hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00). (Sen. Estrada *vs*. Office of the Ombudsman, G.R. Nos. 212761-62, July 31, 2018) p. 913

(Revilla, Jr. *vs*. Sandiganbayan, G.R. No. 218232, July 24, 2018) p. 17

–– The gravamen of the conspiracy charge is that each of the accused, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for petitioner; proof of the agreement need not rest on direct evidence, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense; it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. (Revilla, Jr. *vs*. Sandiganbayan, G.R. No. 218232, July 24, 2018) p. 17

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