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OF THE

PHILIPPINES

FOR THE PERIOD

FEBRUARY 3 - 17, 2020

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 957

IV. CITATIONS 1091

PHILIPPINE REPORTS

Page

Alpuerto, et al., Andres –
Atty Felino M. Ganal, et al. *vs.* 596
Amari, et al., Bishop Shinji of Abiko Baptist
Church, represented by Shinji Amari *vs.*
Ricardo R. Villaflor, Jr. 815
Ampatuan, Spouses Ahmed and
Cerila R. Ampatuan – Heirs of Salvador
and Salvacion Lamirez, namely Martha, et al. *vs.* 97-98
Ang, Spouses Drs. Reynaldo and Susan
Cucio-Ang *vs.* Rosita De Venecia, et al. 645
Atayde, Jr., Atty. Ricardo –
Damaso Sta. Maria, et al. *vs.* 556
Baculi, Provincial Prosecutor Jorge D. *vs.*
Judge Medel Arnaldo B. Belen, Regional
Trial Court, Branch 36, Calamba City, Laguna 565
Belen, Regional Trial Court, Branch 36,
Calamba City, Laguna, Judge Medel Arnaldo B.
– Provincial Prosecutor Jorge D. Baculi *vs.* 565
Bensi, Atty. Alfredo T. – Spouses Darito P. Nocuenca
and Lucille B. Nocuenca *vs.* 430
Borreta as widow of deceased Manuel A. Borreta, Jr.,
Delia B. *vs.* Evic Human Resource Management,
Inc., et al. 42
Braña, et al., Spouses Ernesto E. and Edna C. Braña
– Municipality of Cainta, Rizal *vs.* 1
BSM Crew Service Centre Philippines, Inc./Bernard
Schulte Shipmanagement (Isle Of Man Ltd.)
– Michael Angelo T. Lemoncito *vs.* 130
Canlas, Efren M. *vs.* People of the Philippines, et al. 880
Carpio-Morales, Ombudsman Conchita –
Mansue Nery Lukban *vs.* 756
Casilac, Roel C. *vs.* People of the Philippines 888
Casilang *y* Rino, et al., Dante –
People of the Philippines *vs.* 379
Chevron Holdings, Inc., (Formerly Caltex
(Asia) Limited) – Commissioner of Internal
Revenue *vs.* 863

Page

Chia Lao, Jon Nicholas – Republic of the Philippines, represented by the Special Committee on Naturalization (SCN) *vs.* 499
Chia Lao, et al., Winston Brian – Republic of the Philippines represented by the Special Committee on Naturalization (SCN) *vs.* 499
Coca-Cola Bottlers Phils., Inc. – Anna Mae B. Mateo *vs.* 855
Commissioner of Internal Revenue – Kabalikat para sa Maunlad na Buhay, Inc. *vs.* 526
Commissioner of Internal Revenue *vs.* Chevron Holdings, Inc., (Formerly Caltex (Asia) Limited) 863
Commissioner of Internal Revenue *vs.* Kabalikat para sa Maunlad na Buhay, Inc. 526
Cuizon, Roberto – Lufthansa Technik Philippines, Inc., et al. *vs.* 573
De Venecia, et al., Rosita – Spouses Drs. Reynaldo Ang and Susan Cucio-Ang *vs.* 645
De Zuzuarregui, Anthony – Enrique Javier De Zuzuarregui *vs.* 546
De Zuzuarregui, Enrique Javier *vs.* Anthony De Zuzuarregui 546
Dela Peña, Rico – People of the Philippines *vs.* 742
Domingo, married to Daniel SB. Domingo, Demetria N. – Alvin F. Samonte *vs.* 319
Dongail, et al., P/Insp. Clarence – People of the Philippines *vs.* 784
Elgar, Susan R. *vs.* Judge Soliman M. Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur 178
ES Trucking and Forwarders – Heirs of Catalina P. Mendoza *vs.* 915
Evic Human Resource Management, Inc., et al. – Delia B. Borreta as widow of deceased Manuel A. Borreta, Jr. *vs.* 42
Ganal, et al., Atty. Felino M. *vs.* Andres Alpuerto, et al. 596

Page

Garcia, Spouses Dennis and Cherrylyn "Cherry", doing business under the name and style of Ecolamp Multi-Resources *vs.* Northern Islands Co., Inc. 282
HH & Co. Agricultural Corporation *vs.* Adriano Perlas 608
Iso, Jr., et al., Gaudioso *vs.* Salcon Power Corporation (Now SPC Power Corporation), et al. 667
Kabalikat para sa Maunlad na Buhay, Inc. – Commissioner of Internal Revenue *vs.* 526
Kabalikat para sa Maunlad na Buhay, Inc. *vs.* Commissioner of Internal Revenue 526
Kamad *y* Pakay, Gaida – People of the Philippines *vs.* 329
King's Builders and Development Corporation, et al. – Spouses Prudente D. Soller and Preciosa M. Soller, et al. *vs.* 32
Lamirez, Heirs of Salvador and Salvacion, namely Martha, et al., *vs.* Spouses Ahmed Ampatuan and Cerila R. Ampatuan 97-98
LBC Express-Vis, Inc. *vs.* Monica C. Palco 617
Lemoncito, Michael Angelo T. *vs.* BSM Crew Service Centre Philippines, Inc./Bernard Schulte Shipmanagement (Isle Of Man Ltd.) 130
Llorente, Bernie J. – Metro Psychiatry, Inc. *vs.* 417
Lufthansa Technik Philippines, Inc., et al. *vs.* Roberto Cuizon 573
Lukban, Mansue Nery *vs.* Ombudsman Conchita Carpio-Morales 756
Macabaya, Judge Bonifacio M., Branch 20, Regional Trial Court, Cagayan De Oro City, Misamis Oriental – Leonaria C. Neri, et al. *vs.* 216
Mahinay, Atty. Makilito B. – Wilma L. Zamora *vs.* 439
Mallari *y* Samar, Jonah *vs.* People of the Philippines 687
Malonzo, Anselmo D. *vs.* Sucere Foods Corporation 365
Mañas, joined by wife Lena Isabelle Y. Mañas, Allan *vs.* Rosalina Roca Nicolasora, et al. 13

Page

Mateo, Anna Mae B. *vs.* Coca-Cola Bottlers Phils. Inc. 855
Mendoza, Heirs of Catalina P. *vs.* ES Trucking and Forwarders 915
Metro Psychiatry, Inc. *vs.* Bernie J. Llorente 417
Misa, Jr., Atty. Joaquin L. – Roselyn S. Parks *vs.* 235
Municipality of Cainta, Rizal *vs.* Spouses Ernesto E. Braña and Edna C. Braña, et al. 1
Municipality of Famy, Laguna *vs.* Municipality of Siniloan, Laguna 483
Municipality of Siniloan, Laguna – Municipality of Famy, Laguna *vs.* 483
Mutilan, et al., Saphia *vs.* Cadidia Mutilan, known recently as Cadidia Imam Samporna, et al. 259
Mutilan, known recently as Cadidia Imam Samporna, et al., Cadidia – Saphia Mutilan, et al. *vs.* 259
Neri, et al., Leonaria C. *vs.* Judge Bonifacio M. Macabaya, Branch 20, Regional Trial Court, Cagayan De Oro City, Misamis Oriental 216
Nicolasora, et al., Rosalina Roca – Allan Mañas, joined by wife Lena Isabelle Y. Mañas *vs* 13
Nocuenca, Spouses Darito P. and Lucille B. Nocuenca *vs.* Atty. Alfredo T. Bensi 430
Northern Islands Co., Inc. – Spouses Dennis and Cherrylyn “Cherry” Garcia, doing business under the name and style of Ecolamp Multi-Resources *vs.* 282
Office of the Court Administrator *vs.* Mila A. Salunoy, Court Stenographer, et al. 142
Office of the Court Administrator *vs.* Jerry R. Toledo, then Branch Clerk of Court (now Clerk of Court V), et al. 160
Padua *y* Alvarez *a.k.a.* Jerick Padua *y* Alvarez, Eric – People of the Philippines *vs.* 351
Palco, Monica C. – LBC Express-Vis, Inc. *vs.* 617
Parks, Roselyn S. *vs.* Atty. Joaquin L. Misa, Jr. 235

Page

People of the Philippines – Roel C. Casilac *vs.* 888
Jonah Mallari *y* Samar *vs.* 687
Jessie Tolentino *y* Samia *vs.* 706
People of the Philippines *vs.*
Dante Casilang *y* Rino, et al. 379
Rico Dela Peña 742
P/Insp. Clarence Dongail, et al. 784
Gaida Kamad y Pakay 329
Eric Padua *y* Alvarez *a.k.a.*
Jerick Padua *y* Alvarez 351
Reynaldo Pigar *y* Ambayanan @ "Jerry", et al. 939
ZZZ 725
People of the Philippines, et al. –
Efren M. Canlas *vs.* 880
Perlas, Adriano – HH & Co.
Agricultural Corporation *vs.* 608
Philips Electronics and Lighting, Inc. –
Tocoms Philippines, Inc. *vs.* 241
Pigar *y* Ambayanan @ "Jerry", et al., Reynaldo
– People of the Philippines *vs.* 939
Re: Expenses of Retirement of
Court of Appeals Justices 533
Re: Incident Report of the Security Division and
Alleged Various Infractions Committed by
Mr. Cloyd D. Garra, Judicial Staff Employee II,
Mediation, Planning and Research Division,
Philippine Mediation Center Office, Philippine
Judicial Academy 451
Republic of the Philippines *vs.* San Lorenzo
Development Corporation (SLDC) 805
Republic of the Philippines, represented by the
Special Committee on Naturalization (SCN)
vs. Jon Nicholas Chia Lao 499
Republic of the Philippines represented by the
Special Committee on Naturalization (SCN) *vs.*
Winston Brian Chia Lao, et al. 499
Reyes, et al., Sandra –
Yokohama Tire Philippines, Inc. *vs.* 292

Page

Salcon Power Corporation (Now SPC
Power Corporation), et al. –
Gaudioso Iso, Jr., et al., *vs.* 667
Salunoy, Court Stenographer, et al., Mila A.
– Office of the Court Administrator *vs.* 142
Samonte, Alvin F. *vs.* Demetria N. Domingo,
married to Daniel SB. Domingo 319
San Lorenzo Development Corporation (SLDC) –
Republic of the Philippines *vs.* 805
Santos, Jr., Judge Soliman M., Municipal Circuit
Trial Court, Nabua-Bato, Camarines Sur –
Susan R. Elgar *vs.* 178
Seno, Jr., et al., Manuel F. –
Social Security System *vs.* 465
Singson, in his capacity as Secretary of Department
of Public Works and Highways, et al., Hon. Rogelio
– Spouses Prudente D. Soller and Preciosa M.
Soller, et al. *vs.* 32
Social Security System *vs.*
Manuel F. Seno, Jr., et al. 465
Soller, Spouses Prudente D. and Preciosa M.
Soller, et al. *vs.* King's Builders
and Development Corporation, et al. 32
Soller, Spouses Prudente D. and
Preciosa M. Soller, et al. *vs.*
Hon. Rogelio Singson, in his capacity
as Secretary of Department of Public Works
and Highways, et al. 32
Sta. Clara Estate, Inc. –
Mrs. Consolacion V. Tiña *vs.* 906
Sta. Maria, et al., Damaso *vs.*
Atty. Ricardo Atayde, Jr. 556
Sucere Foods Corporation –
Anselmo D. Malonzo *vs.* 365
Teekay Shipping Philippines, Inc. –
Jolly D. Teodoro *vs.* 399
Teodoro, Jolly D. *vs.*
Teekay Shipping Philippines, Inc. 399

Page

Tiña, Mrs. Consolacion V. *vs.*
Sta. Clara Estate, Inc. 906
Tocoms Philippines, Inc. *vs.*
Philips Electronics and Lighting, Inc. 241
Toledo, then Branch Clerk of Court
(now Clerk of Court V), et al., Jerry R.
– Office of the Clerk of Court *vs.* 160
Tolentino *y* Samia, Jessie *vs.*
People of the Philippines 706
Villaflor, Jr., Ricardo R. –
Bishop Shinji Amari, et al., of Abiko
Baptist Church, represented by Shinji Amari *vs.* 815
Yokohama Tire Philippines, Inc. *vs.*
Sandra Reyes, et al. 292
Zamora, Wilma L. *vs.* Atty. Makilito B. Mahinay 439
ZZZ – People of the Philippines *vs.* 725

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 199290. February 3, 2020]

MUNICIPALITY OF CAINTA, RIZAL, *petitioner, vs.* **SPOUSES ERNESTO E. BRAÑA and EDNA C. BRAÑA and CITY OF PASIG,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 41 PETITION; A PARTY IS ALLOWED TO QUESTION THE DECISION OF THE REGIONAL TRIAL COURT DIRECTLY TO THE SUPREME COURT ON PURE QUESTIONS OF LAW; STRICT OBSERVANCE OF THE PRINCIPLE OF HIERARCHY OF COURTS CAN BE EXCUSED WHERE THE COURT'S RESOLUTION OF THE CASE DOES NOT INVOLVE THE EXAMINATION OR THE CALIBRATION OF THE EVIDENCE PRESENTED BY THE PARTIES, BUT INVOLVES ONLY A PURE QUESTION OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. —** We notice that the Municipality of Cainta directly filed this petition before this Court. The established policy is to strictly observe the judicial hierarchy of courts. However, as provided under Section 2(c), Rule 41 of the Rules of Court, it allows a party to question the decision of the RTC directly to this Court on pure questions of law. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the examination of the probative value of the evidence presented, the truth or falsity of facts being admitted. A question of fact

exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence. If the appellate court can determine the issue raised without reviewing or evaluating the evidence, that is a question of law; otherwise it is a question of fact. Here, the Municipality of Cainta raised the issue that the RTC of Pasig interfered with the jurisdiction of the RTC of Antipolo when the former ruled that Sps. Braña should pay the real estate taxes to the City of Pasig despite the fact that the RTC of Antipolo earlier issued an Injunction order restraining the City of Pasig from further collecting taxes from among the disputed areas under litigation in the boundary case. This Court's resolution of the instant case does not involve the examination or the calibration of the evidence presented by the parties. As such, what is involved in the present case is a pure question of law. Therefore, strict observance to the principle of hierarchy of courts can be excused.

2. POLITICAL LAW; LOCAL GOVERNMENT CODE (REPUBLIC ACT NO. 7160); REAL PROPERTY TAX; THE LOCAL GOVERNMENT UNIT WHERE THE PROPERTY IS SITUATED HAS THE RIGHT TO COLLECT TAXES THEREFROM; THE REGIONAL TRIAL COURT, WHICH HAS JURISDICTION OVER THE BOUNDARY DISPUTE CASE, IS THE BEST FORUM TO DETERMINE THE PRECISE METES AND BOUNDS OF THE RESPECTIVE TERRITORIAL JURISDICTION OF THE CONTENDING LOCAL GOVERNMENT UNITS AND THE EXTENT OF EACH LOCAL GOVERNMENT UNIT'S POWER TO ASSESS AND COLLECT REAL ESTATE TAXES. — Under the Real Property Tax Code, it is provided that the local government unit where the property is located has the authority to assess or appraise the current and fair market value of the property and to collect the taxes due thereon, x x x. The import of these provisions show that the local government unit where the property is situated has the right to collect taxes therefrom. Thus, to determine who has the right to collect taxes from Sps. Braña, it is necessary to determine the location of the property. However, this Court cannot make any definitive ruling on the location of the property due to the pending boundary dispute case between the City of Pasig and the Municipality of Cainta. While it is true that Pasig is the location indicated in the TCTs, the Municipality of Cainta have long assessed the same for tax purposes and

Sps. Braña were paying the real estate taxes to the Municipality of Cainta. It was only in 1997 that the City of Pasig assessed the properties for real estate tax purposes. Thus, while the TCTs state that the location is in Pasig, the same cannot be relied in this case because the location of the property is precisely in dispute. The RTC of Antipolo, which has jurisdiction over the boundary dispute case, would be the best forum to determine the precise metes and bounds of the City of Pasig's and the Municipality of Cainta's respective territorial jurisdiction, as well as the extent of each local government unit's authority, such as its power to assess and collect real estate taxes.

3. **ID.; ID.; ID.; ID.; THE PAYMENT OF REAL ESTATE TAXES MUST CONTINUE NOTWITHSTANDING THE BOUNDARY DISPUTE CASE; THE SUCCEEDING PAYMENT OF REAL ESTATE TAXES DUE ON THE SUBJECT PROPERTIES MUST BE DEPOSITED IN AN ESCROW ACCOUNT, AND THE PROCEEDS OF THE SAME WILL BE RELEASED TO THE LOCAL GOVERNMENT ADJUDGED BY VIRTUE OF A FINAL JUDGMENT ON THE ISSUE OF TERRITORIAL JURISDICTION OVER THE DISPUTED AREAS. —** The obligation of Sps. Braña to pay real estate taxes on the properties cannot be questioned. Payment of real estate taxes must continue notwithstanding the boundary dispute case. However, ordering Sps. Braña to pay real estate taxes to the City of Pasig simply because of the locational entries in the TCTs would be counter-productive considering that the RTC of Antipolo has not yet rendered a definitive ruling as to the precise territorial jurisdiction of the City of Pasig and the Municipality of Cainta. Thus, it would be more prudent to avoid any further animosity between the two local government units. Sps. Braña are ordered to deposit the succeeding payment of real estate taxes due on the subject properties in an account with the Land Bank of the Philippines in escrow for the City of Pasig/the Municipality of Cainta. The proceeds of the same will be released to the local government adjudged by virtue of a final judgment on the issue of territorial jurisdiction over the disputed areas.

APPEARANCES OF COUNSEL

The Municipal Legal Office for petitioner.
Osias V. Recio for respondents Sps. Braña.
Office of the Legal Officer for respondent City of Pasig.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 23, 2008 of the Regional Trial Court of Pasig City, Branch 157 (RTC of Pasig) in SCA No. 1624. Spouses Ernesto E. Braña and Edna C. Braña (collectively, Sps. Braña) filed an action for interpleader against the Municipality of Cainta, Rizal and the City of Pasig on June 26, 1998. The RTC of Pasig ordered Sps. Braña to pay the real estate taxes over their properties to the City of Pasig from the year 1996 up to the present.

The Antecedents

Sps. Braña are the registered owners of six parcels of land located at Phase 9, Pasig Green Park, Cainta Rizal covered by Transfer Certificate of Title (TCT) Nos. 47350, 47351, 47352, 47353, 46600 and 46601[3] (subject properties). Sps. Braña religiously paid real estate taxes on the subject properties to the Municipality of Cainta from 1994 to 1996. Sometime in 1997, the City of Pasig filed a civil case for the collection of unpaid taxes against Sps. Braña docketed as Civil Case No. 5525. The City of Pasig claimed that the subject properties were all geographically located in Pasig City, as such, Sps. Braña should pay real estate taxes over the said subject properties to the City of Pasig.[4] Sps. Braña, thereafter, deposited two checks representing the real estate taxes for the years 1995 to 1998 with the Metropolitan Trial Court (MTC) of Pasig City, Branch 70, where Civil Case No. 5525 is pending.

However, the Municipality of Cainta continued to demand from Sps. Braña payment of real estate taxes over the same

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[1] *Rollo*, pp. 31-38.

[2] Penned by Judge Esperanza Fabon-Victorino; *id.* at 8-27.

[3] *Id.* at 9.

[4] *Id.* at 8-10.

properties. As such, Sps. Braña filed an action for interpleader to compel the Municipality of Cainta and the City of Pasig to litigate with each other; as a pre-emptive measure to another possible tax collection case that the Municipality of Cainta might file against Sps. Braña.[5]

Meanwhile, on January 30, 1994, the Municipality of Cainta filed a petition for the settlement of boundary dispute against the City of Pasig with the Regional Trial Court of Antipolo City, Branch 74 (RTC of Antipolo), docketed as Civil Case No. 94-3006. Among the territories disputed in the aforesaid boundary dispute case are the subject properties.[6]

On December 16, 2002, the RTC of Antipolo in Civil Case No. 94-3006, issued an Injunction Order[7] enjoining and restraining the City of Pasig from: (1) further collecting taxes from the disputed areas under litigation; (2) from pursuing the threatened auction sale of the affected lots; (3) making pronouncements of jurisdictional title right over the disputed areas under litigation; and (4) to reimburse in full the taxes it had received from the paying residents.

In its Answer[8] to the action for interpleader filed by Sps. Braña, the Municipality of Cainta claims that it is entitled to the payment of real estate taxes on the ground that the subject properties are situated in Brgy. San Isidro, Cainta Rizal, which is within the geographical jurisdiction of Cainta under the Progress Map of CAD-688-D or the Cainta-Taytay Cadastral Survey.[9] Further, the subject properties have long been registered for tax purposes in Cainta, before the City of Pasig assessed the same in 1997.[10]

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[5] *Id.* at 36.

[6] *Id.* at 12.

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

[8] *Id.* at 62-70.

[9] *Id.* at 66.

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

For its part, the City of Pasig claims that the locational entries in the TCTs state that the properties are located in Brgy. Santolan, Municipality of Pasig. The payment of taxes to the Municipality of Cainta is, therefore, erroneous. Further, the Department of Finance (DOF) has consistently ruled that the location of the property as indicated in the certificate of title is controlling as to the venue of payment of real estate taxes.[11]

On June 20, 2016, this Court issued a Resolution[12] ordering the parties to move in the premises by: (1) informing the Court as to the status of Civil Case No. 94-3006, the boundary dispute case and Civil Case No. 5525, the tax collection case filed by the City of Pasig against Sps. Braña; (2) the actual status of the payment of real estate taxes on the subject properties; and (3) any supervening event that may be of help to this Court.

On August 15, 2016, Sps. Braña filed a Manifestation and Compliance[13] stating that they paid the real estate taxes for the period of 1995 up to the year 2016 to the City of Pasig. Further, on September 18, 2017, the Municipality of Cainta filed its Compliance[14] stating that Civil Case No. 94-3006 (boundary dispute case) is already submitted for decision, while Civil Case No. 5525 (tax collection case) was archived pending the resolution of the boundary dispute case.

RTC Ruling

On June 23, 2008, the RTC of Pasig issued its Decision[15] in the interpleader case ordering Sps. Braña to pay the real estate taxes from the year 1996 up to the present to the City of Pasig.[16] The RTC of Pasig ruled that while it is improper for the court to declare any finding as to the actual location of the

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[11] *Id.* at 10.

[12] *Id.* at 125-126.

[13] *Id.* at 127-129.

[14] *Id.* at 158-160.

[15] *Supra* note 2.

[16] *Rollo*, p. 26.

subject properties, since the same is within the jurisdiction of the RTC of Antipolo City, the court is still bound by the locational entries appearing on the TCTs. Thus, unless corrected by competent authority, the locational entries in the TCTs, that the properties are situated in Brgy. Santolan, Municipality of Pasig, is controlling.[17] The dispositive portion of the Decision, reads:

> WHEREFORE, judgment is hereby rendered in favor of defendant City of Pasig and against defendant Cainta, ordering plaintiffs to immediately pay defendant Pasig all the unpaid realty taxes assessed and levied upon their properties covered by TCT Nos. 46600, 46601, 47350, 47351, 47352, and 47353 under Tax Declaration Nos. E-010-03274, E-010-03273, D-010-05247, D-010-05248, D-010-05256 and D-010-05257, respectively, from 1996 to the present.
>
> There being no legal basis, the claim for attorney's fees and litigation expenses by all the parties is hereby DENIED.
>
> SO ORDERED.[18]

Aggrieved, the Municipality of Cainta directly filed before Us a Petition for Review on *Certiorari*[19] alleging that:

> 1. The RTC, Branch 157 of Pasig City erroneously asserted and assumed jurisdiction when it adjudicated the territorial and jurisdictional rights of petitioner Cainta and respondent Pasig by granting the claim of the latter to the payment of respondent spouses Braña's real property taxes despite that the jurisdiction to determine said issue belongs to the Antipolo RTC, Branch 74; and
>
> 2. The RTC, Branch 157 of Pasig City erroneously asserted jurisdiction by issuing a *status quo* ruling notwithstanding and in contravention of the Injunction Order dated December 16, 2002 issued by the Antipolo Regional Trial Court, Branch 74.[20]

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[17] *Id.* at 24-26.

[18] *Id.* at 26-27.

[19] *Id.* at 31-38.

[20] *Id.* at 33.

Municipality of Cainta's Arguments

The Municipality of Cainta argues that the Decision of the RTC of Pasig in the interpleader case renders meaningless the Injunction Order issued by the RTC of Antipolo in the boundary dispute case. As such, the Decision of the RTC of Pasig constitutes under interference with the processes and proceedings undertaken by the RTC of Antipolo. The Municipality of Cainta prays that a *status quo* be maintained and spouses Braña should continue paying their real estate taxes to the Municipality of Cainta until final resolution of the boundary dispute in Civil Case No. 94-3006.

City of Pasig's Arguments

The City of Pasig claims that the issue before the instant interpleader case is which local government is entitled to collect real property taxes on a real property, whose locational entries in the titles state Brgy. Santolan, Municipality of Pasig. Thus, the ruling of the court conforms with the Implementing Rules and Regulations[21] of the Local Government Code[22] (LGC) that "pending final resolution of the dispute, the status of the affected area prior to the dispute shall be maintained and continued for all legal purposes."[23]

The City of Pasig further alleges that the pendency of a boundary dispute case does not suspend applicable rules of taxation. The titles of the said properties are conclusive as to the location stated therein. In fact, the DOF stated in its fifth Indorsement that "for purposes of the issuance of a Tax Declaration of a registered land, the location stated in the certificate of title shall be followed unless corrected by competent authority."[24]

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[21] Administrative Order No. 270 — Prescribing the Implementing Rules and Regulations of the Local Government Code.

[22] Republic Act No. 7160.

[23] Administrative Order No. 270, Rule III, Article 18.

[24] *Rollo*, p. 96.

Issue

For resolution is the question of whether the real estate taxes due upon the subject properties owned by Sps. Braña should be paid to the City of Pasig, as ruled by the RTC of Pasig in the interpleader case.

The Court's Ruling

At the outset, We notice that the Municipality of Cainta directly filed this petition before this Court. The established policy is to strictly observe the judicial hierarchy of courts. However, as provided under Section 2(c),[25] Rule 41 of the Rules of Court, it allows a party to question the decision of the RTC directly to this Court on pure questions of law.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the examination of the probative value of the evidence presented, the truth or falsity of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence. If the appellate court can determine the issue raised without reviewing or evaluating the evidence, that is a question of law; otherwise it is a question of fact.[26]

Here, the Municipality of Cainta raised the issue that the RTC of Pasig interfered with the jurisdiction of the RTC of Antipolo when the former ruled that Sps. Braña should pay the real estate taxes to the City of Pasig despite the fact that the

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[25] Rule 41

Appeal from the Regional Trial Court

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Section 2. *Modes of Appeal.*–

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c) Appeal by *certiorari*. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

[26] *Dio v. Subic Bay Marine Exploratorium, Inc.*, 736 Phil. 216, 224 (2014).

RTC of Antipolo earlier issued an Injunction order restraining the City of Pasig from further collecting taxes from among the disputed areas under litigation in the boundary case. This Court's resolution of the instant case does not involve the examination or the calibration of the evidence presented by the parties. As such, what is involved in the present case is a pure question of law. Therefore, strict observance to the principle of hierarchy of courts can be excused.

Be it noted that the present case stemmed from an action for interpleader filed by Sps. Braña against the Municipality of Cainta and City of Pasig to compel them to interplead and to litigate with each other their claims to the real estate taxes levied over the disputed subject properties. Thus, facts as to whether the City of Pasig participated in the preparation of the CAD-688-D or the Cainta-Tagaytay Cadastral Survey and whether the subject properties are within the geographical location of the Municipality of Cainta cannot be decided by this Court in this present case, since the resolution of the same is lodged with the RTC of Antipolo resolving the boundary dispute case between the Municipality of Cainta and the City of Pasig. At present, the boundary dispute case docketed as Civil Case No. 94-3006 is still pending resolution.

The parties admitted that the locational entries in the TCTs of the subject properties of Sps. Braña indicate "Barrio of Santolan, Municipality of Pasig, Metro Manila."[27] It is undisputed that the locational entries were not modified or corrected by any competent authority. Neither did the Municipality of Cainta file any action for the correction or alteration of the indicated location.

Under the Real Property Tax Code,[28] it is provided that the local government unit where the property is located has the authority to assess or appraise the current and fair market value of the property and to collect the taxes due thereon, thus:

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[27] *Rollo*, p. 11.

[28] Presidential Decree No. 464.

Sec. 5. Appraisal of Real Property. – All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**.

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Sec. 57. Collection of tax to be the responsibility of treasurers. – The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality where the property is situated. (Emphasis supplied.)

Also, the LGC reiterated the same, to wit:

Sec. 201. *Appraisal of Real Property.* All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. The Department of Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code.

x x x x x x x x x

Sec. 247. *Collection of Tax*. – The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the responsibility of the city or municipal treasurer concerned.

The import of these provisions show that the local government unit where the property is situated has the right to collect taxes therefrom. Thus, to determine who has the right to collect taxes from Sps. Braña, it is necessary to determine the location of the property. However, this Court cannot make any definitive ruling on the location of the property due to the pending boundary dispute case between the City of Pasig and the Municipality of Cainta.

While it is true that Pasig is the location indicated in the TCTs, the Municipality of Cainta have long assessed the same for tax purposes and Sps. Braña were paying the real estate taxes to the Municipality of Cainta. It was only in 1997 that the City of Pasig assessed the properties for real estate tax purposes. Thus, while the TCTs state that the location is in Pasig, the

same cannot be relied in this case because the location of the property is precisely in dispute. The RTC of Antipolo, which has jurisdiction over the boundary dispute case, would be the best forum to determine the precise metes and bounds of the City of Pasig's and the Municipality of Cainta's respective territorial jurisdiction, as well as the extent of each local government unit's authority, such as its power to assess and collect real estate taxes.

The obligation of Sps. Braña to pay real estate taxes on the properties cannot be questioned. Payment of real estate taxes must continue notwithstanding the boundary dispute case. However, ordering Sps. Braña to pay real estate taxes to the City of Pasig simply because of the locational entries in the TCTs would be counter-productive considering that the RTC of Antipolo has not yet rendered a definitive ruling as to the precise territorial jurisdiction of the City of Pasig and the Municipality of Cainta. Thus, it would be more prudent to avoid any further animosity between the two local government units. Sps. Braña are ordered to deposit the succeeding payment of real estate taxes due on the subject properties in an account with the Land Bank of the Philippines in escrow for the City of Pasig/the Municipality of Cainta. The proceeds of the same will be released to the local government adjudged by virtue of a final judgment on the issue of territorial jurisdiction over the disputed areas.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated June 23, 2008 of the Regional Trial Court of Pasig City, Branch 157 in SCA No. 1624 is hereby **REVERSED** and **SET ASIDE**. The City of Pasig and the Municipality of Cainta are both directed to await the final judgment of their boundary dispute case in Civil Case No. 94-3006. In the meantime, Spouses Ernesto E. Braña and Edna C. Braña are **ORDERED** to deposit the succeeding real estate taxes due on the lots and improvements covered by Transfer Certificate of Title Nos. 47350, 47351, 47352, 47353, 46600, and 46601 in an escrow account with the Land Bank of the Philippines in trust for the City of Pasig/the Municipality of Cainta. The proceeds of the escrow account will be released

upon final judgment of the decision in Civil Case No. 94-3006 as to which local government unit has territorial jurisdiction over the disputed areas.

The Regional Trial Court of Antipolo, Branch 74 is **ORDERED** to resolve the Civil Case No. 94-3006 with dispatch.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 208845. February 3, 2020]

ALLAN MAÑAS, joined by wife LENA ISABELLE Y. MAÑAS, *petitioners, vs.* **ROSALINA ROCA NICOLASORA, JANET NICOLASORA SALVA, ANTHONY NICOLASORA, and MA. THERESE ROSELLE UY-CUA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LEASE; CONTRACT STIPULATION WHICH IS UNRELATED TO THE LESSEE'S CONTINUED USE AND ENJOYMENT OF THE LEASED PROPERTY, SUCH AS THE RIGHT OF FIRST REFUSAL, CANNOT BE PRESUMED INCLUDED IN THE IMPLIED CONTRACT RENEWAL; WITHOUT ANY EXPRESS CONTRACT RENEWAL, THE COURT CANNOT PRESUME THAT BOTH PARTIES AGREED TO REVIVE ALL THE TERMS IN THE ORIGINAL LEASE CONTRACT. — Based on the terms of the Lease Contract, renewal would be at the option of the lessee. However, petitioners did not appear to have expressly informed the lessor of their intent to renew. Instead, after the original Lease Contract had expired, they continued to pay rentals to the lessor. This constitutes an implied lease contract renewal,

as the trial court and the Court of Appeals correctly found. x x x. *Dizon v. Court of Appeals*—a 1999 case that similarly delved into which terms in a lease contract would be revived in implied renewals—is enlightening. x x x. x x x [T]his Court ruled that implied renewals do not include the option to buy, as it is not germane to the lessee's continued use of the property. Moreover, since Overland failed to avail of the option to buy within the stipulated period, it no longer had any right to enforce this option after that period had lapsed. Similarly, in this case, petitioners can only invoke the right to ask for the rescission of the contract if their right to first refusal, as embodied in the original Lease Contract, is included in the implied renewal. x x x. Based on Article 1643, the lessee's main obligation is to allow the lessee to enjoy the use of the thing leased. Other contract stipulations unrelated to this—for instance, the right of first refusal—cannot be presumed included in the implied contract renewal. The law itself limits the terms that are included in implied renewals. One cannot simply presume that all conditions in the original contract are also revived; after all, a contract is based on the meeting of the minds between parties. x x x. The concept of implied renewal is a matter of equity recognized by law. Technically, no contract between a lessor and a lessee exists from the end date of a lease contract to its renewal. But if there is no notice to vacate and the lessee remains in possession of the property leased, it would only be proper that the lessor is still paid for the use and enjoyment of the property. Thus, implied renewal does not extend to all stipulations. Without any express contract renewal, this Court cannot presume that both parties agreed to revive all the terms in the previous lease contract. x x x. Since the implied renewal of the Lease Contract did not include the renewal of the right of first refusal, petitioners have no basis for their claim that the property should have been offered to them before it was sold to respondent Roselle. The Court of Appeals did not err in affirming the trial court's ruling that petitioners failed to state their cause of action.

2. ID.; CONTRACTS; ALLEGATION OF THE INCAPACITY OF THE CONTRACTING PARTY IS A GROUND FOR ANNULMENT OF CONTRACT, NOT RESCISSION; PERSONS WHO ARE NEITHER PARTIES TO THE DEED OF ABSOLUTE SALE, NOR OBLIGED PRINCIPALLY OR SUBSIDIARILY WITH REGARD TO THE SAME, ARE

NOT PROPER PARTIES TO FILE AN ACTION FOR ANNULMENT OF CONTRACT; DISMISSAL OF THE PETITIONERS' COMPLAINT FOR RESCISSION OF CONTRACT OF ABSOLUTE SALE, PROPER. — [P]etitioners made a claim on respondent Roselle's alleged incapacity due to her age, as raised for the first time in their Opposition to her Motion to Dismiss. x x x. Assuming that this allegation was true, petitioners are not the proper parties to raise it. Article 1397 of the Civil Code provides that "persons who are capable cannot allege the incapacity of those with whom they contracted[.]" Even if they were, they still filed the wrong action. The contracting party's incapacity is a ground for annulment of contract, not rescission. x x x. Petitioners pray for the rescission of the contract, but the ground they raised is one for annulment of contract. Article 1397 of the Civil Code specifies who may institute such action: ARTICLE 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract. Thus, even if this Court were to consider petitioners' action as one for annulment of contract, they are still not the proper parties to file such action. They are not parties to the Deed of Absolute Sale, and neither are they obliged principally or subsidiarily with regard to the Deed of Absolute Sale. Thus, the trial court's dismissal of their Complaint would still be proper.

3. **REMEDIAL LAW; LOCAL GOVERNMENT CODE (REPUBLIC ACT NO. 7160); CONCILIATION; ALL PARTIES MUST FIRST UNDERGO BARANGAY CONCILIATION PROCEEDINGS BEFORE FILING A COMPLAINT IN COURT; EXCEPTIONS, NOT PRESENT; DISMISSAL OF THE COMPLAINT FOR NON-COMPLIANCE WITH A CONDITION PRECEDENT, PROPER. —** [T]he Court of Appeals also correctly affirmed the trial court's ruling that petitioners failed to comply with a condition precedent. Section 412 of Republic Act No. 7160 provides: SECTION 412. C*onciliation.* — (a) *Pre-condition to Filing of Complaint in Court.* — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for

adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto. x x x. Generally, all parties must first undergo barangay conciliation proceedings before filing a complaint in court. None of the exceptions under the law are present in this case. Thus, assuming that petitioners had stated a cause of action, their Complaint would still be dismissed for their failure to comply with a condition precedent.

APPEARANCES OF COUNSEL

Ruben Ll. Palomino for petitioners.

Albano & Albano Law Offices for respondent Ma. Therese Roselle Uy-Cua.

D E C I S I O N

LEONEN, *J.*:

Dizon v. Court of Appeals[1] instructs us that a lease contract's implied renewal does not mean that all the terms in the original contract are deemed revived. Only the terms that affect the lessee's continued use and enjoyment of the property would be considered part of the implied renewal. Indeed, the right of first refusal has nothing to do with the use and enjoyment of property.[2]

Before this Court is a Petition for Review on *Certiorari*[3] filed by Spouses Allan and Lena Isabelle Y. Mañas (the Mañas Spouses). They assail the Court of Appeals Decision[4] that

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[1] 361 Phil. 963 (1999) [Per *J.* Martinez, First Division].

[2] *Id.* at 976 citing *Dizon v. Magsaysay*, 156 Phil. 232 (1974) [Per *J.* Makalintal, First Division].

[3] *Rollo*, pp. 10-23.

[4] *Id.* at 25-36. The April 17, 2013 Decision was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices

affirmed the Regional Trial Court's dismissal of their Complaint for Rescission of Contract of Sale and Cancellation of the Certificates of Title and Enforcement of the Right of First Refusal.[5]

On April 18, 2005, the Mañas Spouses entered into a Lease Contract with Rosalina Roca Nicolasora (Rosalina) over a property in Tacloban City that was owned by Rosalina's husband, Chy Tong Sy Yu (now deceased).[6]

The Lease Contract partly stated:

WHEREAS, the LESSEE is also interested in buying the same real property, during the existence of the lease or thereafter, upon notice, from the LESSOR under mutually acceptable terms and conditions;

WHEREOF, premises considered, the parties hereto have covenanted and agreed on the following:

1. That the duration of this Agreement is for one (1) year from the date of execution hereof, unless sooner revoked or cancelled by either party upon serious violation of any of the terms and conditions hereof; Provided, that this lease may be renewed for like period at the option of the LESSEE;

. . .

6. That parties agree also that in case of any conflict or dispute that may subsequently arise out of this covenant, to refer the matter to the Philippine Mediation Center, Bulwagan ng Katarungan, for Mediation and settlement, before any Accredited Mediator who is a Lawyer; Provided, further, that in the remote event that no such settlement is reached before the said Mediator, that the venue of any litigation that may arise, shall be in a competent court in Tacloban City.

. . .

Ramon Paul L. Hernando (now a member of this Court) and Gabriel T. Ingles of the Special Twentieth Division, Court of Appeals, Cebu City.

[5] *Id.* at 46-49.

[6] *Id.* at 26 and 46.

8. Finally, should the LESSOR desire to sell the subject real property, he shall notify first the LESSEE about such intent, and the latter is given Thirty (30) days within which to accept the offer, or make a [counter]-offer, in writing; Provided, that the LESSOR may reject the Counter-offer in writing, within the same period of time, in which case, he shall have the right to sell the same to any interested party.[7]

It appears that the Lease Contract lapsed in 2006, with no express renewal. However, the Mañas Spouses continued using the premises and paying the rentals, without any objections from Rosalina and her children, Janet and Anthony.[8]

On February 14, 2008, Chy Tong Sy Yu sold several parcels of land, including the property being leased to the Mañas Spouses, to Ma. Therese Roselle Uy-Cua (Roselle). The sale was made "with the conformity"[9] of Rosalina, Janet, and Anthony. The titles to the properties were subsequently transferred to Roselle.[10]

However, the Mañas Spouses claimed that they were neither informed of the sale nor offered to purchase the property.[11] They said that only upon receiving a letter[12] dated June 2, 2008 from RMC Trading did they learn of the sale of the property.[13] The letter from RMC Trading stated:

Dear Mr. Manias (*sic*):

Kindly be informed that we are now the new owners of the land where your business/residence is situated, particularly Lot No. 546 B. In this connection we are going to occupy and build something on said land, for our own use and benefit. May we therefore request that you kindly relocate your business/residence to give way to our

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[7] *Id.* at 59-60.

[8] *Id.* at 26-27 and 46.

[9] *Id.* at 46.

[10] *Id.* at 26.

[11] *Id.*

[12] *Id.* at 62.

[13] *Id.* at 27.

construction, within 30 days from your receipt hereof. Thank you for your compliance hereof.

I am

Very truly Yours,

(Sgd.) RUPERTO E. CUA, JR[14]

According to the Mañas Spouses, their right of first refusal embodied in the Lease Contract was violated.[15]

Thus, before the trial court, the Mañas Spouses filed a Complaint praying that the contract of sale be rescinded, the relevant title be canceled, and their right of first refusal or option to buy be enforced.[16]

To this, Roselle filed a Motion to Dismiss[17] on the ground that the Complaint stated no cause of action[18] and that the Mañas Spouses failed to comply with a condition precedent, specifically, barangay conciliation.[19] She also averred that because the contract was only impliedly renewed, the spouses' right of first refusal was not renewed:

4. Defendant-movant [Roselle] submits that the plaintiffs [the Mañas Spouses] have no right of first refusal or priority to buy the leased property for the following reasons:

a.) he never exercised the option to renew the lease contract as provided for under the Contract of Lease. Due to the failure to exercise the option to renew the contract, the same became a month-to-month contract since the manner of payment is made on a monthly basis as shown by the contract itself, thus:

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[14] *Id.* at 62.

[15] *Id.* at 47.

[16] *Id.* at 46.

[17] *Id.* at 63-73.

[18] *Id.* at 63.

[19] *Id.* at 71.

"2. [T]hat the monthly rental shall be SIX THOUSAND PESOS (₱ 6,000.00) which shall be payable on or before the 15th of the succeeding month, . . ."

b.) Since the contract of lease was not renewed, there was an impliedly renewed contract considering that despite of the same (*sic*), the lessee remained in possession for at least a period of 15 days after expiration and that no prior demand to vacate the premises was made by the lessor. . . .

. . .

c.) The implicit renewal of the contract of lease however, did not likewise renew the right of first refusal or priority to buy as granted in the original contract of lease because the only provisions of a contract of lease which are impliedly renewed are those that are germane to possession. The priority to buy or right of first refusal is not germane to possession, rather, it is strange to possession.[20]

Meanwhile, Rosalina, Janet, and Anthony filed an Answer with Counterclaim.[21] Akin to Roselle, they argued that the right of first refusal was "granted only during the original term of the contract of lease,"[22] and that the Complaint was prematurely filed.[23]

In their Opposition to the Motion to Dismiss, the Mañas Spouses claimed that the sale was invalid owing to Roselle's alleged incapacity; that is, she was a minor when the sale was made.[24]

On January 7, 2009,[25] the Regional Trial Court granted Roselle's Motion to Dismiss, effectively dismissing the Mañas Spouses' case. It discussed:

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

[21] *Id.* at 74-78.

[22] *Id.* at 75.

[23] *Id.*

[24] *Id.* at 85-86.

[25] *Id.* at 79-82.

Defendant Uy-Cua argues that the plaintiffs never exercised the option to renew the lease contract after its expiration, thus the condition thereof, granting the latter the right of first refusal (Priority to Buy), was never renewed. Although there was an implied renewal of the contract of lease in (*sic*) a month-to-month basis, in accordance with Article 1670 of the New Civil Code, the plaintiffs' right of first refusal was never renewed for the reason that the said condition is not germane to possession.

Furthermore, defendant Uy-Cua asserted that the filing of the case is premature. The case did not undergo the required Barangay Conciliation, pursuant to RA 7160, a condition precedent before resort to the courts is initiated.

. . .

. . . Nothing in the questioned contract of lease provides for an extension of the life after the term thereof had expired. Verily, the continued occupation by the plaintiffs of th e leased premises after the term has expired, but with the consent of the defendants, constitutes an implied renewal. . . .

. . .

It may be amiss to consider plaintiffs' reliance on the "whereases" narrated in the contract of lease, of which one of them stated that: **"*whereas, the lessee is also interested in buying the same real property during the existence of the lease or thereafter.*"** According to the plaintiffs, the word "THEREAFTER" bestowed upon them to exercise the Right of First Refusal even after the term of the contract has expired. This is absurd. To consider and to give effect to this contention is to create an infinite contractual relationship between the parties. More so, the "whereases" mentioned in the contract are only considered premises and/or introduction, and definitely does not form part of the terms and conditions of the subject contract of lease.

Lastly, on the issue of barangay conciliation, clearly, Section 412 of RA 7160, is controlling. Unless, it is shown that the subject legal process is being availed of in order to pave way for a procedural shortcut.[26] (Emphasis in the original)

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[26] *Id.*

The Mañas Spouses filed a Motion for Reconsideration, but this was denied in a March 16, 2009 Order.[27] The trial court stated:

> The issue that the subject Deed of Absolute Sale is a simulated contract and therefore void was raised by the plaintiffs in their Opposition to the Motion to Dismiss. Although this issue was not threshed out in the assailed Order, this Court believes that to attack the validity of [the] Deed of Absolute Sale for being simulated should be made in an action for Annulment of Contracts, not in an action for Rescission.
>
> This Court had already ruled that the expiration of the subject Contract of Lease carries with it the termination of the Plaintiffs' Right of First Refusal. Such being the case, to notify the Plaintiffs of the defendants' intention to sell the property in question is no longer necessary and has no legal effect; and a suit instituted in order to compel the latter to allow the former to exercise the said right, states no cause of action.[28]

Hence, the Mañas Spouses filed a Notice of Appeal.[29]

In their Brief, they again alleged that Roselle was a minor at the time of sale; hence, the Deed of Absolute Sale was void.[30] They also faulted the trial court for ruling that their Complaint stated no cause of action.[31] They asserted that the trial court incorrectly found that they had no right of first refusal because the contract was not expressly renewed.[32]

In its April 17, 2013 Decision,[33] the Court of Appeals affirmed the Regional Trial Court's rulings, and also made the following findings:

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[27] *Id.* at 104-105.

[28] *Id.* at 104.

[29] *Id.* at 106-108.

[30] *Id.* at 123-126.

[31] *Id.* at 119-120.

[32] *Id.* at 121-122.

[33] *Id.* at 25-36.

A closer scrutiny of the records reveals that even on the face of the Complaint alone, there is absent a cause of action. The Contract of Lease expressly provides for a term/duration for its validity, that is, one (1) year from the date of execution of the said Lease Contract on April 18, 2005. Likewise, provided in the said Contract was that the renewal of the said lease at the option of the lessee. In this case, the continued possession of plaintiffs-appellants as lessees of the leased premises is evidence of his exercise of the option to extend the lease.

In such a case, their continued possession of the leased premises after the end or expiration of the time fixed in the Contract of Lease, with the acquiescence of the lessor, constitutes an implied renewal of the lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687 of the New Civil Code, so that if rentals were stipulated to be paid monthly, the new lease is deemed to have been renewed from month to month and may be terminated each month upon demand by the lessor.[34]

The Mañas Spouses filed a Motion for Reconsideration, which was denied by the Court of Appeals through its July 24, 2013 Resolution.[35]

Thus, the Mañas Spouses filed this Petition for Review on *Certiorari*,[36] arguing that the trial court erred in granting the Motion to Dismiss based on "respondent's defenses and not on the ultimate facts alleged in the Complaint."[37]

On October 23, 2013, this Court required respondents to file their comment.[38]

In her Comment,[39] respondent Roselle maintains that the Lease Contract was not expressly renewed because petitioners had

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[34] *Id.* at 32.

[35] *Id.* at 38-40.

[36] *Id.* at 10-23.

[37] *Id.* at 14.

[38] *Id.* at 133-134.

[39] *Id.* at 162-178.

never notified the lessor that they intended to renew the contract.[40] Instead, she explains, the contract was only impliedly renewed, the manner of payment having been made on a monthly basis.[41]

On the allegation that the sale is void due to her incapacity, respondent Roselle counters that petitioners cannot assail its validity since they stopped being the real parties-in-interest after failing to expressly renew the contract.[42] In addition, she points out that the action filed is for rescission of contract but what petitioners are asking for is the annulment of contract.[43]

In an October 2, 2017 Resolution,[44] this Court required respondents Rosalina, Janet, and Anthony to show cause why they should not be cited in contempt for failing to comply with this Court's April 26, 2017 Resolution requiring them to file their comment.

Respondents Rosalina, Janet, and Anthony later filed an Explanation with Manifestation[45] stating that after their counsel had withdrawn, they did not get the services of another lawyer due to financial constraints.[46] In any case, they stated that they were adopting respondent Roselle's Comment.[47] This Court accepted their explanation and dispensed with the filing of their comment.[48]

On July 30, 2018, this Court required petitioners to file a reply.[49]

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[40] *Id.* at 164.

[41] *Id.* at 167.

[42] *Id.* at 175.

[43] *Id.* at 174-175.

[44] *Id.* at 217-218.

[45] *Id.* at 219-221.

[46] *Id.* at 220.

[47] *Id.*

[48] *Id.* at 223-224.

[49] *Id.* at 243.

In their Reply,[50] petitioners argue that the Lease Contract was expressly renewed, along with all the terms in the original contract, including the right of first refusal.[51]

The issues for this Court's resolution are the following:

First, whether or not the Court of Appeals erred in affirming the Complaint's dismissal on the ground that it stated no cause of action. Subsumed here are the issues of whether or not the lease was impliedly renewed, and whether or not the renewal includes the right of first refusal;

Second, whether or not the Court of Appeals erred in not ruling that the Deed of Absolute Sale must be rescinded due to the incapacity of the vendee, respondent Ma. Therese Roselle Uy-Cua, at the time of the sale; and

Finally, whether or not the Court of Appeals erred in affirming the Complaint's dismissal for failure to comply with a condition precedent.

The Petition should be denied.

I

The issue on the failure to state a cause of action is premised on whether the Lease Contract was expressly renewed, and if so, whether the renewal included the right of first refusal. Thus, we first discuss the issue on the lease contract's renewal.

Based on the terms of the Lease Contract, renewal would be at the option of the lessee.[52] However, petitioners did not appear to have expressly informed the lessor of their intent to renew. Instead, after the original Lease Contract had expired, they continued to pay rentals to the lessor.[53] This constitutes an implied lease contract renewal, as the trial court and the Court

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[50] *Id.* at 240-249.

[51] *Id.* at 243.

[52] *Id.* at 16.

[53] *Id.* at 26.

of Appeals correctly found.[54] Article 1670 of the Civil Code states:

ARTICLE 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

Dizon v. Court of Appeals[55]—a 1999 case that similarly delved into which terms in a lease contract would be revived in implied renewals—is enlightening. In that case, Overland Express Lines, Inc. (Overland) entered into a one-year Contract of Lease with Option to Buy with the Dizons, the property owners. Per the agreement, Overland would pay a monthly rental of ₱3,000.00, while the purchase price was pegged at ₱3,000.00 per square meter.[56]

The lease contract was not expressly renewed after a year had lapsed, though Overland continued to occupy the premises. However, when the monthly rental rate eventually rose to ₱8,000.00, Overland was unable to pay. This prompted the Dizons to file an ejectment suit, which resulted in the trial court ordering Overland to vacate the property and pay reasonable compensation and attorney's fees. Overland went to the Court of Appeals and subsequently to this Court, questioning the trial court's jurisdiction, but its petitions were dismissed.[57]

Insisting on its option to buy, Overland filed a suit for specific performance seeking that a deed of sale be executed, and later, another suit seeking to annul the judgment in the ejectment case. These cases were consolidated and later dismissed. On appeal, the Court of Appeals affirmed the trial court's jurisdiction,

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[54] *Id.* at 32.

[55] 361 Phil. 963 (1999) [Per *J.* Martinez, First Division].

[56] *Id.* at 967.

[57] *Id.* at 967-968.

but it also ruled that Overland had acquired the rights of a vendee upon a perfected contract of sale.[58]

Meanwhile, as the Dizons were already moving to have the judgment in the ejectment case executed, Overland contested the enforceability of the judgment. Its effort yielded much success: the trial court granted a writ of preliminary injunction, and later, the Court of Appeals found that the Dizons' alleged right to eject Overland had no basis.[59]

Hence, both parties came to this Court. Ruling on the consolidated petitions, this Court discussed that the issue on whether the Dizons could eject Overland was based on whether the option to buy in the lease contract was included in the contract's implied renewal.

This Court ruled:

> In this case, there was a contract of lease for one (1) year with option to purchase. The contract of lease expired without the private respondent, as lessee, purchasing the property but remained in possession thereof. Hence, there was an implicit renewal of the contract of lease on a monthly basis. The other terms of the original contract of lease which are revived in the implied new lease under Article 1670 of the New Civil Code are only those terms which are germane to the lessee's right of continued enjoyment of the property leased. Therefore, an implied new lease does not *ipso facto* carry with it any implied revival of private respondent's option to purchase (as lessee thereof) the leased premises. The provision entitling the lessee the option to purchase the leased premises is not deemed incorporated in the impliedly renewed contract because it is alien to the possession of the lessee. Private respondent's right to exercise the option to purchase expired with the termination of the original contract of lease for one year. The rationale of this Court is that:
>
> > . . . Necessarily, if the presumed will of the parties refers to the enjoyment of possession the presumption covers the other terms of the contract related to such possession, such as the amount of rental, the date when it must be paid, the care of the

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[58] *Id.* at 968.

[59] *Id.* at 973.

property, the responsibility for repairs, etc. But no such presumption may be indulged in with respect to special agreements which by nature are foreign to the right of occupancy or enjoyment inherent in a contract of lease.[60] (Citations omitted)

Simply put, this Court ruled that implied renewals do not include the option to buy, as it is not germane to the lessee's continued use of the property. Moreover, since Overland failed to avail of the option to buy within the stipulated period, it no longer had any right to enforce this option after that period had lapsed.

Similarly, in this case, petitioners can only invoke the right to ask for the rescission of the contract if their right to first refusal, as embodied in the original Lease Contract, is included in the implied renewal.

Article 1643 of the Civil Code provides:

ARTICLE 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment of use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

Based on Article 1643, the lessee's main obligation is to allow the lessee to enjoy the use of the thing leased. Other contract stipulations unrelated to this—or instance, the right of first refusal—cannot be presumed included in the implied contract renewal. The law itself limits the terms that are included in implied renewals. One cannot simply presume that all conditions in the original contract are also revived; after all, a contract is based on the meeting of the minds between parties.

In *Arevalo Gomez Corporation v. Lao Hian Liong:*[61]

Article 1670 applies only where, before the expiration of the lease, no negotiations are held between the lessor and the lessee resulting in its renewal. Where no such talks take place and the lessee is not

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[60] *Id.* at 975-976.

[61] 232 Phil. 343 (1987) [Per *J.* Cruz, First Division].

asked to vacate before the lapse of fifteen days from the end of the lease, the implication is that the lessor is amenable to its renewal.[62]

The concept of implied renewal is a matter of equity recognized by law. Technically, no contract between a lessor and a lessee exists from the end date of a lease contract to its renewal. But if there is no notice to vacate and the lessee remains in possession of the property leased, it would only be proper that the lessor is still paid for the use and enjoyment of the property.

Thus, implied renewal does not extend to all stipulations. Without any express contract renewal, this Court cannot presume that both parties agreed to revive all the terms in the previous lease contract.

Dizon v. Court of Appeals finds support in *Dizon v. Magsaysay*,[63] in which this Court also resolved whether an implied renewal of a lease contract includes a renewal of the option to purchase. It held:

> But whatever doubt there may be on this point is dispelled by paragraph (2) of the contract of lease, which states that it was renewable for the same period of two years (upon its expiration on April 1, 1951), "*con condiciones expresas y specificadas que seran convenidas entre las partes*." This stipulation embodied the agreement of the parties with respect to renewal of the original contract, and while there was nothing in it which was incompatible with the existence of an implied new lease from month to month under the conditions laid down in Article 1670 of the Civil Code, such incompatibility existed with respect to any implied revival of the lessee's preferential right to purchase, which expired with the termination of the original contract. On this point the express agreement of the parties should govern, not the legal provision relied upon by the petitioner.[64]

Since the implied renewal of the Lease Contract did not include the renewal of the right of first refusal, petitioners have no basis for their claim that the property should have been offered

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[62] *Id.* at 349.

[63] 156 Phil. 232 (1974) [Per *C.J.* Makalintal, First Division].

[64] *Id.* at 236.

to them before it was sold to respondent Roselle. The Court of Appeals did not err in affirming the trial court's ruling that petitioners failed to state their cause of action.

II

Additionally, petitioners made a claim on respondent Roselle's alleged incapacity[65] due to her age, as raised for the first time in their Opposition to her Motion to Dismiss.[66] In their appeal brief, they alleged:

> 14. Appellants [referring to petitioners] later found out, after appellee Ma. Therese Roselle Uy-Cua filed a Motion to Dismiss and after the other appellees filed their Answer, that the named vendee, Ma. Therese Roselle Uy-Cua, is the minor daughter of Ruperta E. Cua, Jr. At the time of the sale, Ma. Therese Roselle Uy-Cua was a minor, being only 14 years old, and even to this day, Ma. Therese Roselle Uy-Cua is still a minor.[67]

Assuming that this allegation was true, petitioners are not the proper parties to raise it. Article 1397 of the Civil Code provides that "persons who are capable cannot allege the incapacity of those with whom they contracted[.]"[68] Even if they were, they still filed the wrong action. The contracting party's incapacity is a ground for annulment of contract, not rescission. Article 1390 of the Civil Code states:

> ARTICLE 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:
>
> (1) Those where one of the parties is incapable of giving consent to a contract;
>
> (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

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[65] *Rollo*, p. 18.

[66] *Id.* at 104.

[67] *Id.* at 116.

[68] CIVIL CODE, Art. 1397.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Petitioners pray for the rescission of the contract, but the ground they raised is one for annulment of contract. Article 1397 of the Civil Code specifies who may institute such action:

ARTICLE 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue inf1uence, or employed fraud, or caused mistake base their action upon these flaws of the contract.

Thus, even if this Court were to consider petitioners' action as one for annulment of contract, they are still not the proper parties to file such action. They are not parties to the Deed of Absolute Sale, and neither are they obliged principally or subsidiarily with regard to the Deed of Absolute Sale. Thus, the trial court's dismissal of their Complaint would still be proper.

III

Finally, the Court of Appeals also correctly affirmed the trial court's ruling that petitioners failed to comply with a condition precedent. Section 412 of Republic Act No. 7160 provides:

SECTION 412. *Conciliation. — (a) Pre-condition to Filing of Complaint in Court.* — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where Parties May Go Directly to Court*. — The parties may go directly to court in the following instances:

(1) Where the accused is under detention;
(2) Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

(3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support *pendente lite*; and
(4) Where the action may otherwise be barred by the statute of limitations.

Generally, all parties must first undergo barangay conciliation proceedings before filing a complaint in court. None of the exceptions under the law are present in this case. Thus, assuming that petitioners had stated a cause of action, their Complaint would still be dismissed for their failure to comply with a condition precedent.

WHEREFORE, the Petition is **DENIED**. The April 17, 2013 Decision of the Court of Appeals in CA G.R. CV No. 03402 is **AFFIRMED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ*., concur.

FIRST DIVISION

[G.R. No. 215547. February 3, 2020]

SPOUSES PRUDENTE D. SOLLER and PRECIOSA M. SOLLER, RAFFY TELOSA, and GAVINO MANIBO, JR., *petitioners, vs.* **HON. ROGELIO SINGSON, in his capacity as Secretary of Department of Public Works and Highways, ENGR. MAGTANGGOL ROLDAN, in his capacity as District Engineer of the Department of Public Works and Highways-Oriental Mindoro, Second District Office, KING'S BUILDERS AND DEVELOPMENT CORPORATION, and its President, ENGR. ELEGIO MALALUAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 41 PETITION; AN ORDER GRANTING A MOTION TO DISMISS ON THE GROUND OF LACK OF JURISDICTION OVER THE SUBJECT MATTER OPERATES AS A DISMISSAL WITHOUT PREJUDICE, WHICH IS NOT SUBJECT TO AN APPEAL; THE REMEDY OF THE AGGRIEVED PARTY IS TO FILE A PETITION FOR *CERTIORARI*. —** [A] motion to dismiss which has been granted on the ground of lack of jurisdiction over the subject matter operates as a dismissal without prejudice. Relevantly, such order is not subject to an appeal under Section 1 of Rule 41 of the Rules of Court. Under the same provision, the remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65. In this case, not only did petitioners avail of the wrong remedy by filing an appeal by *certiorari* under Rule 45, but they likewise violated the doctrine of hierarchy of courts in assailing the twin Resolutions of the RTC, directly before us.

2. **ID.; RULES OF PROCEDURE; PROCEDURAL RULES MUST BE ESCHEWED WHEN THE STRICT AND RIGID APPLICATION THEREOF WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE. —** [I]in a plethora of cases, the Court relaxed the application of procedural rules. The Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure. Thus, when the strict and rigid application of procedural rules would result in technicalities that tend to frustrate rather than promote substantial justice, they must always be eschewed. In the exercise of its equity jurisdiction, the Court finds it proper to resolve the case on the merits.

3. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; REPUBLIC ACT NO. 8975 (AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY**

INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND OTHER PURPOSES); THE PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS AND WRITS OF PRELIMINARY INJUNCTION BY ALL COURTS, EXCEPT THE SUPREME COURT, AGAINST THE IMPLEMENTATION OR EXECUTION OF SPECIFIED GOVERNMENT PROJECTS PENDING THE ADJUDICATION OF THE CASE, DOES NOT COVER THE ISSUANCE OF A PERMANENT INJUNCTION GRANTED BY A COURT OF LAW ARISING FROM AN ADJUDICATION OF A CASE ON THE MERITS. — Section 3 of R.A. No. 8975 expressly vests jurisdiction upon the Supreme Court to issue any TRO, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government's direction, to restrain, prohibit or compel specified acts. x x x. In the case of *Philco Aero, Inc. v. Secretary Tugade*, this Court recognized the remedy of resorting directly before this Court in cases covered under R.A. No. 8975. Section 3 of R.A. No. 8975 was explicit in excluding other courts in the issuance of injunctive writs. However, in the case of *Bases Conversion and Development Authority v. Uy*, this Court clarified that the prohibition applies only to TRO and preliminary injunction, *viz.*: A perusal of these aforequoted provisions readily reveals that all courts, except this Court, are proscribed from issuing TROs and writs of preliminary injunction against the implementation or execution of specified government projects. **Thus, the ambit of the prohibition covers only temporary or preliminary restraining orders or writs but NOT decisions on the merits granting permanent injunctions.** Considering that these laws trench on judicial power, they should be strictly construed. Therefore, while courts below this Court are prohibited by these laws from issuing temporary or preliminary restraining orders pending the adjudication of the case, said statutes however do not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits.

4. **ID.; COURTS; JURISDICTION; IN DETERMINING THE JURISDICTION OF THE REGIONAL TRIAL COURT, WHAT IS CONTROLLING IS THE PRINCIPAL ACTION, AND NOT THE ANCILLARY REMEDY WHICH IS MERELY AN**

INCIDENT THERETO; AN ACTION FOR INJUNCTION WITH A PRAYER FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT. — As conferred by Section 19 of Batas Pambansa Blg. 129, the RTC has jurisdiction over all civil cases in which the subject matter under litigation is incapable of pecuniary estimation. One of which, as established by jurisprudence, is a complaint for injunction. It is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the character of the relief sought. In this case, the allegations and the reliefs prayed for in the complaint reveal that petitioner, as landowners of the surrounding estate of the highway elevation project, sought to enjoin such construction; or if completed, to restore the affected portion thereof, to their original state. Clearly, the principal action is one for injunction, which is within the jurisdiction of the RTC. To emphasize, the principal action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. Contrary to the OSG's stance, herein complaint is one for injunction with a prayer for issuance of a TRO and/or preliminary injunction. In determining the jurisdiction of the RTC, what is controlling is the principal action, and not the ancillary remedy which is merely an incident thereto.

APPEARANCES OF COUNSEL

Soller & Omila Law Offices for petitioners.
The Solicitor General for public respondents.
Miguel D. Ansaldo, Jr. for private respondents.

D E C I S I O N

REYES, J. JR., *J.*:

Before this Court is an appeal by *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolution[2] dated July 10,

[1] *Rollo*, pp. 21-47.

[2] Penned by Judge Recto A. Calabocal; *id.* at 46-53.

2014 and Resolution[3] dated November 18, 2014 of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 41 which dismissed the petition for the issuance of Permanent Injunction and damages with prayer for Temporary Restraining Order (TRO)/Preliminary Injunction filed by the Spouses Prudente D. Soller and Preciosa M. Soller, Raffy Telosa, and Gavino Manibo, Jr. (petitioners).

The Relevant Antecedents

In their Complaint, petitioners averred that they are the owners of parcels of land located near the Strong Republic Nautical Highway at Poblacion, Bansud, Oriental Mindoro.[4]

As a result, however, of the commencement of the elevation project between kilometer 90 and 92 of the national highway near the Bansud River Bridge by King's Builder and Development Corporation, their safety was placed in imminent danger.[5]

Further bolstering their claim, petitioners alleged that the respondents initiated the elevation of the national highway to around one meter, thereby blocking and retaining floodwaters naturally coming from the nearby Bansud River and farm lands from the direction of the mountains of Conrazon; and submerging houses and lands on the left side of the road including their properties.[6]

Aside from safety issues, petitioners maintained that the elevation of the highway impaired their use and enjoyment of their houses and properties as pedestrians and vehicles alike will have to negotiate a steep climb and descent in going to and from their properties.[7]

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[3] *Id.* at 54-56.

[4] *Id.* at 59.

[5] *Id.* at 60.

[6] *Id.*

[7] *Id.*

Instead of filing their Answer, Secretary Rogelio Singson and Engr. Magtanggol Roldan filed a Motion to Dismiss[8] alleging that the issuance of injunctive writs is prohibited by Presidential Decree No. 1818[9]; and that the doctrine of State's immunity from suit applies in this case.

In a Resolution[10] dated July 10, 2014, the RTC granted the Motion to Dismiss, finding that it has no jurisdiction over the case as stated in Republic Act (R.A.) No. 8975,[11] thus:

> **WHEREFORE**, in light of all the foregoing, the Motion to Dismiss filed by defendants Secretary Rogelio Singson, Department of Public Works and Highways (DPWH) and District Engineer Magtanggol Roldan, DPWH Oriental Mindoro is **GRANTED** and the above-entitled case is hereby ordered **DISMISSED** as a consequence thereof.
>
> **SO ORDERED.**[12]

Petitioners filed a Motion for Reconsideration, which was denied in a Resolution[13] dated November 18, 2014.

Aggrieved, petitioners elevated the matter before this Court.

In its Comment,[14] the Office of the Solicitor General (OSG) essentially avers that the petition must be dismissed outright

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[8] *Id.* at 101-124.

[9] Prohibiting Courts from Issuing Restraining Order or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resources Development Projects of, and Public Utilities Operated by the Government.

[10] Penned by Judge Recto A. Calabocal; *id.* at 48-53.

[11] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

[12] *Id.* at 53.

[13] *Id.* at 54-56.

[14] *Id.* at 149-181.

as it raises factual issues; and that the dismissal of the case was proper as petitioners prayed for the issuance of a TRO in its complaint.

Petitioners, in their Reply,[15] insist that their petition involves a pure question of law as the issue raised therein delves into the jurisdiction of the RTC over the case.

The Issues

Ultimately, petitioners insist on the jurisdiction of the RTC over the subject matter.

The Court's Ruling

Preliminarily, a motion to dismiss which has been granted on the ground of lack of jurisdiction over the subject matter operates as a dismissal without prejudice.[16] Relevantly, such order is not subject to an appeal under Section 1 of Rule 41[17] of the Rules of Court. Under the same provision, the remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65.[18]

In this case, not only did petitioners avail of the wrong remedy by filing an appeal by *certiorari* under Rule 45, but they likewise violated the doctrine of hierarchy of courts in assailing the twin Resolutions of the RTC, directly before us.[19]

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[15] *Id.* at 215-223.

[16] *Development Bank of the Philippines v. Judge Carpio*, 805 Phil. 99, 109-110 (2017).

[17] 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

(h) An order dismissing an action without prejudice.
In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[18] *Id.*

[19] *Quilo v. Bajao*, 445 Phil. 453 (2016).

Nevertheless, in a plethora of cases, the Court relaxed the application of procedural rules. The Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure.[20] Thus, when the strict and rigid application of procedural rules would result in technicalities that tend to frustrate rather than promote substantial justice, they must always be eschewed.[21]

In the exercise of its equity jurisdiction, the Court finds it proper to resolve the case on the merits.

Section 3 of R.A. No. 8975 expressly vests jurisdiction upon the Supreme Court to issue any TRO, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government's direction, to restrain, prohibit or compel specified acts. To be specific:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions*. – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

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[20] *Cortal v. Larrazabal*, 817 Phil. 464, 476-477 (2017).

[21] *Republic of the Philippines v. Dimarucot*, G.R. No. 202069, March 7, 2018.

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

x x x x x x x x x

In the case of *Philco Aero, Inc. v. Secretary Tugade*,[22] this Court recognized the remedy of resorting directly before this Court in cases covered under R.A. No. 8975. Section 3 of R.A. No. 8975 was explicit in excluding other courts in the issuance of injunctive writs. However, in the case of *Bases Conversion and Development Authority v. Uy*,[23] this Court clarified that the prohibition applies only to TRO and preliminary injunction, *viz.*:

A perusal of these aforequoted provisions readily reveals that all courts, except this Court, are proscribed from issuing TROs and writs of preliminary injunction against the implementation or execution of specified government projects. **Thus, the ambit of the prohibition covers only temporary or preliminary restraining orders or writs but NOT decisions on the merits granting permanent injunctions.** Considering that these laws trench on judicial power, they should be strictly construed. Therefore, while courts below this Court are prohibited by these laws from issuing temporary or preliminary restraining orders pending the adjudication of the case, said statutes however do not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits. (Emphasis supplied)

As conferred by Section 19[24] of Batas Pambansa Blg. 129, the RTC has jurisdiction over all civil cases in which the subject matter under litigation is incapable of pecuniary estimation. One of which, as established by jurisprudence, is a complaint for injunction.[25]

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[22] G.R. No. 237486, July 3, 2019.

[23] 537 Phil. 18, 33 (2006).

[24] Sec. 19. *Jurisdiction in civil cases*.— Regional Trial Courts shall exercise exclusive original jurisdiction:

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

[25] *Id.*

It is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the character of the relief sought.[26]

In this case, the allegations and the reliefs prayed for in the complaint reveal that petitioner, as landowners of the surrounding estate of the highway elevation project, sought to enjoin such construction; or if completed, to restore the affected portion thereof, to their original state. Clearly, the principal action is one for injunction, which is within the jurisdiction of the RTC.

To emphasize, the principal action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding.[27] Contrary to the OSG's stance, herein complaint is one for injunction with a prayer for issuance of a TRO and/or preliminary injunction. In determining the jurisdiction of the RTC, what is controlling is the principal action, and not the ancillary remedy which is merely an incident thereto.

WHEREFORE, the instant petition is hereby **GRANTED**. The Resolutions dated July 10, 2014 and November 18, 2014 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41 are **REVERSED and SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41 for further proceedings with deliberate dispatch.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), *Lazaro-Javier*, and *Lopez, JJ.*, concur.

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[26] *Surviving Heirs of Alfredo R. Bautista v. Lindo*, 728 Phil. 630, 637 (2014).

[27] *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, G.R. No. 207938, October 11, 2017, 842 SCRA 464, 474.

FIRST DIVISION

[G.R. No. 224026. February 3, 2020]

DELIA B. BORRETA as widow of deceased MANUEL A. BORRETA, JR., *petitioner, vs.* **EVIC HUMAN RESOURCE MANAGEMENT, INC., ATHENIAN SHIP MANAGEMENT INC., and/or MA. VICTORIA C. NICOLAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 43 PETITION; THE PARTY ADVERSELY AFFECTED BY THE RULING OF THE VOLUNTARY ARBITRATOR OR THE PANEL IS ALLOWED A 10-DAY PERIOD TO FILE A MOTION FOR RECONSIDERATION, AND A 15-DAY PERIOD FROM DENIAL OF THE MOTION FOR RECONSIDERATION TO APPEAL TO THE COURT OF APPEALS BY WAY OF A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; RESPONDENTS' APPEAL BEFORE THE COURT OF APPEALS WAS FILED WITHIN THE REGLEMENTARY PERIOD. — In not a few instances, the Court has variably applied the 10-day period provided in Article 276 of the Labor Code and the 15-day period in Section 4, Rule 43 of the Rules of Court in determining the proper period of appeal from a decision or award rendered by a Voluntary Arbitrator or a Panel thereof to the CA. The period to be followed in appealing decisions or awards of Voluntary Arbitrators or Panel of Arbitrators had been settled once and for all by the Court sitting *en banc* in *Guagua National Colleges v. Court of Appeals.* In this case, the Court ruled that the 10-day period stated in Article 276 of the Labor Code should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrator or the Panel may file a motion for reconsideration. This is in line with the pronouncement in *Teng v. Pahagac* where the Court had clarified that the 10-day period set in Article 276 of the Labor Code gave the aggrieved parties the opportunity to file their motion for reconsideration, in keeping with the principle of exhaustion of administrative remedies. x x x. The Court further clarified

in *Guagua* that once the motion for reconsideration interposed had been resolved, the aggrieved party may now opt to appeal to the CA by way of a petition for review under Rule 43 of the Rules of Court. Pursuant to Section 4 of the said Rule, the aggrieved party has 15 days to file the same. There is no dispute that respondents received on February 26, 2015, a copy of the January 23, 2015 Resolution of the Panel which denied their motion for reconsideration, and filed their appeal to the CA on March 12, 2015. Given that their appeal had been filed 14 days from their receipt of the assailed Resolution of the Panel, respondents' appeal had clearly been filed within the reglementary period provided in Rule 43.

2. **LABOR AND SOCIAL LEGISLATION; VOLUNTARY ARBITRATION PROCEEDINGS; VOLUNTARY ARBITRATION PROCEDURAL GUIDELINES; AS A GOVERNMENTAL INSTRUMENTALITY, THE PANEL OF VOLUNTARY ARBITRATORS HOLDS OFFICE AT THE NATIONAL CONCILIATION AND MEDIATION BOARD (NCMB) OFFICE AND A MOTION FOR RECONSIDERATION FILED BY THE PARTY THEREAT IS PROPER. —** [P]etitioner contends that there is no motion for reconsideration which could have been considered as *duly filed* in this case that may be appealed to the CA as provided in Section 4, Rule 43 of the Rules of Court since respondents' motion for reconsideration had not been filed directly with the Panel in violation of Section 2, Rule III of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings (VA Procedural Guidelines) x x x. For the petitioner, in order for the filing of the motion for reconsideration to be proper, it must be filed at the Voluntary Arbitrators' private addresses or offices. It is also for this reason why the petitioner posits that Section 1 of Rule 22 of the Rules of Court does not apply here because "*there is no rule or requirement that the offices of Voluntary Arbitrators should be closed on Saturdays, Sundays and Holidays*." By no stretch of the imagination can Section 2, Rule III of the VA Procedural Guidelines can be given a meaning as that advanced by the petitioner. Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or unreasonable consequence. A voluntary arbitrator by the nature of his or her functions acts in a quasi-judicial capacity. Even assuming that the Voluntary Arbitrator or the Panel may not strictly be considered as a quasi-judicial

agency, still both the Voluntary Arbitrator and the Panel are comprehended within the concept of a quasi-judicial instrumentality. An "instrumentality" is anything used as a means or agency. Thus, the terms governmental "agency" or "instrumentality" are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed. Since the Panel performs a state function pursuant to a governmental power delegated to them under the Labor Code provisions, it therefore stands to reason that as a governmental instrumentality, the Panel holds office at the NCMB Office and the motion for reconsideration respondents filed thereat had been proper. There is no reason to rule otherwise. The motion was received by the Panel, as in fact it immediately convened upon receipt thereof and acted on the same. While respondents' motion for reconsideration was denied, the denial was not premised on the failure to *directly* file the motion with the Panel as the term is understood by the petitioner, but because the Panel found the motion to be lacking in merit and filed a day late.

3. **ID.; ID.; ID.; THE RULES OF COURT SHALL APPLY SUPPLETORILY OR BY ANALOGY TO ARBITRATION PROCEEDINGS; SECTION 1, RULE 22 OF THE RULES OF COURT, APPLIED TO CASE AT BAR; RESPONDENT'S MOTION FOR RECONSIDERATION OF THE DECISION OF THE PANEL OF VOLUNTARY ARBITRATORS WAS FILED WITHIN THE REGLEMENTARY PERIOD. —** [A]s ruled correctly by the CA, respondent's motion for reconsideration of the Panel's Decision had been timely filed. Section 3 of the VA Procedural Guidelines which provides: SEC. 3. *Directory and Suppletory Application of the Guidelines and Rules of the Court.* **—** The rules governing the proceedings before a voluntary arbitrator shall be the subject of agreement among the parties to a labor dispute and their chosen arbitrator. In the absence of agreement on any or various aspects of the voluntary arbitration proceedings, the pertinent provisions of these Guidelines and the Revised Rules of Court shall apply by analogy or in a directory and suppletory character and effect. clearly recognizes that the Rules of Court shall apply suppletorily or by analogy to arbitration proceedings. As such, Section 1, Rule 22 of the Rules of Court had been properly appreciated in determining the timeliness of the filing of respondents' motion for reconsideration. The said section provides: SEC. 1. *How to*

compute time. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. In this case, respondents have 10 days from February 5, 2015, the day they received a copy of the Panel's Decision, within which to file their motion for reconsideration. However, given that February 15, 2015, falls on a Sunday, respondents have until the next business day, pursuant to Section 1, Rule 22 of the Rules of Court, to file their motion for reconsideration. Hence, when respondents filed their motion on February 16, 2015, the same had been filed within the reglementary period.

4. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THE PRIMARY CONSIDERATION IN THE DETERMINATION IF FORUM SHOPPING IS OBTAINING IN A CASE IS WHETHER THE FILING OF THE ACTIONS WOULD RESULT IN THE RENDITION OF CONFLICTING DECISION BY DIFFERENT TRIBUNALS; NO FORUM SHOPPING WHERE THE PARTIES FILE A SECOND MOTION FOR RECONSIDERATION, AND THEREAFTER FILE AGAIN A THIRD MOTION FOR RECONSIDERATION, BOTH SEEKING TO SET ASIDE THE DECISION OF THE PANEL OF VOLUNTARY ARBITRATORS, AS THE FILING THEREOF ARE PROHIBITED; BEING PROHIBITED PLEADINGS, THEY ARE REGARDED AS MERE SCRAP OF PAPER THAT DO NOT DESERVE ANY CONSIDERATION AND DO NOT HAVE ANY LEGAL EFFECT. —** Section 5, Rule 7 of the Rules of Court embodies the rule against forum shopping. x x x. By filing with the Panel a second motion for reconsideration in the guise of a *Manifestation with Opposition*, and without awaiting the result thereof, appealing before the CA, and thereafter filing once again with the Panel a *Reiterative Motion*, petition avers that respondents committed forum shopping. While the Court agrees with the petitioner that respondents' *Manifestation with Opposition* is in reality a second motion for reconsideration and its *Reiterative Motion* is another motion for reconsideration, as they both principally seek for the setting

aside of the Decision of the Panel, there are good reasons which militate against the finding of forum shopping in this case. Ultimately, the primary consideration in the determination if forum shopping is obtaining in a case is whether the filing of the actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting decision by different tribunals. The *Manifestation with Opposition*, being a second motion for reconsideration, and the *Reiterative Motion*, being technically a third motion for reconsideration, their filing thereof are prohibited under Section 2, Rule 52 of the Rules of Civil Procedure. Being prohibited pleadings, they are regarded as mere scrap of paper that do not deserve any consideration and do not have any legal effect. In addition, the *Reiterative Motion* is no longer within the Panel's competence to decide. It must be taken into account that when respondents filed the same, they had already filed their petition for review before the CA, and the CA had in fact acted upon it by requiring the petitioner to file her comment thereon. Hence, the Panel had lost its jurisdiction over the case at this stage, and therefore, it can no longer afford any kind of relief to the respondents. For these reasons, there can clearly be no forum shopping in this case.

5. ID.; EVIDENCE; TECHNICAL RULES OF PROCEDURE ARE NOT BINDING IN LABOR CASES, AND THE QUANTUM OF PROOF REQUIRED IS ONLY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION; SUICIDE WAS DULY ESTABLISHED. — A careful review of the records would show that suicide had been indubitably established. x x x. However, according to the petitioner, the documentary submissions of the respondents cannot be believed for they lacked probative value since they are mere photocopies. x x x. The Court does not agree. x x x. It must be emphasized that technical rules of procedure are not binding in labor cases, and that the quantum of proof required here is only substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Thus, while it may be true that the documentary evidence adduced by respondents were photocopies, the Court cannot discount the fact that the statements of the crew members of the vessel as well as the autopsy report

issued by the Sri Lankan authority coincide with the NBI autopsy report which concluded that the cause of death to be *"consistent with asphyxia by ligature*." As such, the NBI autopsy report lends credence to and bolsters the account of the respondents that Manuel took his own life. In other words, the NBI autopsy report, autopsy report prepared by Dr. Ruwanpura and Investigation Report, taken together, substantially prove that Manuel's death was due to his deliberate act of killing himself by committing suicide. It is of no moment that the NBI Autopsy Report did not categorically state that suicide or hanging was the cause of death. The fact remains that the same report found no evidence of foul play in the death of Manuel. Perforce, the Court must agree that death by suicide had been sufficiently proved.

6. **LABOR AND SOCIAL LEGISLATION; SEAFARERS; DEATH BENEFITS; IN KEEPING WITH THE AVOWED POLICY OF THE STATE TO GIVE MAXIMUM AID AND FULL PROTECTION TO LABOR, THE CLAUSES IN THE COLLECTIVE BARGAINING AGREEMENT WHICH PROVIDE FOR GREATER BENEFITS TO THE SEAFARER, MUST PREVAIL OVER THE STANDARD TERMS AND BENEFITS FORMULATED BY THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) IN ITS STANDARD EMPLOYMENT CONTRACT, FOR A CONTRACT OF LABOR IS SO IMPRESSED WITH PUBLIC INTEREST THAT THE MORE BENEFICIAL CONDITIONS MUST BE ENDEAVORED IN FAVOR OF THE LABORER; PETITIONER IS ENTITLED TO DEATH BENEFITS, TRANSPORTATION EXPENSES AND BURIAL EXPENSES. —** Crucial to the determination of petitioner's entitlement to death benefits as well as her right to get reimbursement for transportation and burial expenses she incurred are Sections 18.1b, 21, 22, and 25 of the CBA. x x x. The cause of death of the seafarer is immaterial to the determination of petitioner's entitlement to the said benefits. It is clear from the express provision of Section 25.1 of the CBA that respondents hold themselves liable for death benefits for the death of the seafarer under their employ for *any cause*. Under Annex 4 of the CBA, the same shall be in the amount of US$89,100.00. Aside from death benefits, respondents also obligated themselves to pay the transportation expenses for the repatriation of the body of the deceased, as well as the burial

expenses. In this case, the petitioner was able to show that the expenses she incurred for the repatriation of Manuel as well as his burial amounted to ₱162,080.00. Sections 21 and 22 of the CBA did not limit the liability of the respondents to deaths that are directly attributable to sickness or injury, but rather widens its coverage to also include seafarers who died or signed off due to sickness [or] injury. x x x. Respondents cannot also validly argue that the POEA-SEC takes precedence over the terms of the CBA, in that, death must be work-related in order to be compensable. The Court has already settled that, in the event that the clauses in the CBA provide for greater benefits to the seafarer, the same must prevail over the standard terms and benefits formulated by the POEA in its Standard Employment Contract inasmuch as a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in keeping with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution. Thus, the CA ruled correctly when it held that petitioner is entitled to death benefits, transportation expenses and burial expenses.

7. **ID.; ID.; THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995, AS AMENDED (REPUBLIC ACT NO. 10022); THE MANNING AGENCY IS LIABLE FOR THE PAYMENT OF THE COMPULSORY LIFE INSURANCE BENEFIT ONLY WHEN THE SEAFARER DIED OF AN ACCIDENTAL DEATH; PETITIONER IS NOT ENTITLED TO LIFE INSURANCE BENEFITS. —** Section 23 of R.A. No. 10022 provides for the compulsory insurance coverage of migrant workers. x x x. Without question, respondents become liable for the payment of the compulsory life insurance benefit of US$15,000.00 only when the employee died of an accidental death. Inasmuch as the Court had already ruled that Manuel committed suicide, the CA correctly deleted the award of US$15,000.00 by way of life insurance in favor of the petitioner. Even assuming that respondents failed to procure a life insurance coverage for Manuel as mandated by R.A. No. 10022, such failure does not merit the automatic award of the aforementioned sum to the petitioner as the same pertains to the minimum of the life insurance policy coverage to be paid by the insurance company only to qualified beneficiaries

and for such causes as specified therein, and is not a penalty or fine to be paid by the manning agency.

8. **ID.; ID.; PETITIONER IS ENTITILED TO OVERTIME PAY, UNPAID LEAVE PAY, DAILY ALLOWANCE/SUBSISTENCE ALLOWANCE AND OWNER'S BONUS. —** Articles 6 and 11 of the CBA provide for the guidelines to a seafarer's entitlement to overtime pay as well as to leave benefits. x x x. Under 11.2 of the CBA, aside from leave pay, the seafarer shall also be entitled to a daily allowance as specified in Annex 4 thereof. x x x. The terms and conditions of Manuel's employment contract mentioned above would readily show that respondents indeed committed to give him guaranteed overtime pay for 103 hours; leave pay of seven days for each completed month in the sum of US$174.00 per month plus daily allowance/subsistence allowance of US$18 while on paid leave or a total of US$126.00 per month, as well as owner's bonus in the amount of $100.00 a month. With respect to the guaranteed overtime pay, considering that no overtime records were presented by the respondents, following Article 6.5 of the CBA, the same shall be pegged at 160 hours per month at the rate of 1.25 of Manuel's basic hourly rate. x x x. x x x [R]espondents never denied that the CBA as well as Manuel's Employment Contract provided for these benefits. Their defense is that they are no longer liable for these benefits since they had already been paid. x x x. Contrary to the claim of respondents, the evidence they presented only prove payment of the aforementioned benefits from October 1 to October 8, 2013. The remittance of allotment to Manuel's bank account they made on August 6, 2013, September 6, 2013 and October 1, 2013 do not establish payment of the subject benefits as respondents failed to show what these payments had been for. If these allotments were for the guaranteed overtime pay, leave pay plus daily allowance and owner's bonus, respondents could have easily presented a similar Wages Account like the one they presented for the October 1 to 8, 2013 payment for the subject benefits considering that the Wages Account form appears to be a standard form issued by the respondents to its employees whenever they release payments to them. For these reasons, the CA erred in deleting the awards for overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus. However, considering that Manuel commenced working for the respondents on June 25, 2013, and the petitioner had already received the said benefits for the period covering

October 1 to October 8, 2013, respondents shall be liable for overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus for 3 months and 5 days only, instead of four months.

9. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES MAY ONLY BE IMPOSED ON A CONCRETE SHOWING OF BAD FAITH OR MALICE ON THE PART OF THE EMPLOYER; PETITIONER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES, AS BAD FAITH ON THE PART OF THE RESPONDENTS WAS NOT ESTABLISHED.— [S]ince respondents were able to duly prove, and the petitioner had already received the amount of US$670.03 representing Manuel's uncollected salary, the CA correctly deleted the same. Petitioner is also not entitled to moral damages, exemplary damages and attorney's fees as these forms of indemnity may only be imposed on a concrete showing of bad faith or malice on the part of the respondents. In this case, the refusal of the respondents to pay the benefits being claimed by the petitioner, and the delay in the eventual release of the last salary of Manuel, did not arise out of bad faith, but brought about by their firm belief of petitioner's lack of entitlement thereto and the merits of their cause. The mere failure of the respondents to furnish the petitioner with a copy of the CBA does not establish bad faith. It must be taken into account that the terms of the employment contract of Manuel had been faithful to the benefits spelled out in the said CBA, thereby negating petitioner's claim that respondents intended to conceal and mislead her into thinking that no CBA applied to Manuel's employment. Petitioner also failed to substantiate her claim that there indeed had been a police investigation report proving that Manuel had been killed which respondents suppressed. As with the said police investigation report, there is also no showing that respondents did not procure the mandatory life insurance policy for Manuel. No proof was also shown to support petitioner's claim that respondents did not extend any form of assistance in the repatriation of Manuel or that they berated her when she sought the assistance of the government for the said repatriation. Petitioner's contention that respondents' decision to bring the remains of her husband to Sri Lanka, instead of Dammam, Saudi Arabia had been sudden and tainted with bad faith is belied by her very own written consent where she agreed that the autopsy

of the remains of the deceased shall be performed by the authorities in Sri Lanka. For these reasons, the CA had been correct in deleting the said awards.

10. **ID.; ID.; MONETARY AWARDS SHALL EARN 6% LEGAL INTEREST PER ANNUM FROM THE FINALITY OF THE JUDGMENT UNTIL THEIR FULL SATISFACTION. —** Based on the prevailing jurisprudence, the actual base for the computation of 6% per annum legal interest (the prevailing legal interest prescribed under Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013) of the total monetary awards shall be the amount finally adjudged, that is from the finality of this judgment until their full satisfaction.

APPEARANCES OF COUNSEL

Ronald B. De Luna for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

The Facts and The Case

Before this Court is a Petition for Review on *Certiorari*[1] seeking to annul and set aside the October 13, 2015 Decision[2] and the April 12, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 139455 which modified the February 2, 2015 Decision[4] of the Panel of Voluntary Arbitrators (Panel) of the National Conciliation and Mediation Board (NCMB) in VA Case No. AC-73-RCMB-NCR-MVA-094-03-09-2014 by affirming only the $89,100.00 death benefit, and ₱162,080.00

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[1] *Rollo*, pp. 3-59.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Melchor Quirino C. Sadang, concurring; *id.* at 67-96.

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

[4] *Id.* at 105-151.

transportation and burial expenses awarded to petitioner Delia B. Borreta, the widow of Manuel A. Borreta, Jr. (Manuel), and deleting the awards for insurance proceeds, uncollected salary, overtime pay, unpaid leave credits, unpaid daily subsistence allowance, owner's bonus, moral damages, exemplary damages and attorney's fee.

On June 19, 2013, Manuel was employed by respondent Evic Human Resource Management, Inc. (Evic), for and in behalf of its foreign principal, respondent Athenian Ship Management, Inc. (Athenian), as cook on board *M/V Sea Lord*. Respondent Ma. Victoria C. Nicolas is the president of Evic.[5] The terms and conditions of his employment are as follows:

1. That the seafarer shall be employed on board under the following terms and conditions:

1.1 Duration of Contract: 7 MONTHS + 1 MONTH UPON MUTUAL CONSENT OF BOTH PARTIES
1.2 Position: Cook
1.3 Basic Monthly Salary: ALL FIGURES IN USDOLLARS: 746.00
1.4 Hours of Work: HRS/WEEK 40.
1.5 Overtime: /FIXED G.O.T: 554.00 (103 HRS)/OWNER BONUS: 100.00
1.6 Vacation Leave with Pay: /SUB. ALLOW.: 126.00/LV. WAGES:174
1.7 Point of Hire: MANILA PHILIPPINES
1.8 Collective Bargaining Agreement, if any:[6]

On June 25, 2013, Manuel joined the vessel *M/V Sealord* and commenced his duties.[7]

On October 8, 2013, while *M/V Sea Lord* was cruising along the waters of Brazil towards Dammam, Kingdom of Saudi Arabia, Manuel was found lifeless inside the toilet of the vessel's hospital cabin. Because of this tragic incident, the vessel changed course

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[5] *Id.* at 99.

[6] CA *rollo*, p. 349.

[7] *Id.* at 12.

and set sail to Galle, Sri Lanka instead, where Manuel's remains were unloaded.[8]

On October 18, 2013, Senior Counsel Murshid Maharoof (Maharoof) and Junior Counsel Shamir Zavahir (Zavahir) conducted an investigation on the death of Manuel. In the Investigation Report on the Death of Manuel Augastine Borreta, Jr.[9] (Investigation Report) they prepared, the investigators stated that the statements of the master, chief officer, crew members, logged in the vessel log book as well as the details on the medical assistance record showed that Manuel had not been acting like his usual self. On October 7, 2013, he failed to report for work and locked himself in the vessel's gymnasium and then later shut himself inside the hospital. When they tried to communicate with him, Manuel sounded distraught, talked nonsense and fearful that someone was going to kill him. They could only talk to him through the ship's phone. Manuel was offered food the following day but he refused to partake of the same. When Manuel stopped communicating with them, the crew decided to force open the door to the hospital room but found it unlocked and empty. The crew eventually found Manuel inside the vessel's hospital lavatory, with a nylon cord tied around his neck and hanging on a hook, dead. These facts notwithstanding, the investigators failed to identify the cause of Manuel's death. As such, the Death Certificate that was issued indicated the cause of death as "Under investigations."[10]

On October 23, 2013, the remains of Manuel was repatriated to the Philippines.[11] Upon the request of the sister of the deceased, Dr. Roberto Rey C. San Diego, M.D., Medico-Legal Officer of the National Bureau of Investigation (NBI), autopsied the remains of Manuel on October 24, 2013.[12] In Autopsy Report No. N-13-1056 that was subsequently issued, the NBI stated

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[8] *Rollo*, pp. 5-6; CA *rollo*, p. 647.

[9] CA *rollo*, pp. 261-306.

[10] *Id.* at 307.

[11] *Rollo*, p. 6.

[12] CA *rollo*, p. 209.

that the cause of death was "CONSISTENT WITH ASPHYXIA BY LIGATURE."[13]

On December 7, 2013, Dr. Rohan Ruwanpura (Dr. Ruwanpura), Consultant Judicial Medical Officer at Galle, Sri Lanka issued a post-mortem report on the post-mortem examination he conducted on Manuel on October 19, 2013,[14] with the following observations:

> A ligature prepared from white twisted nylon rope was present around the upper neck. It was tied around the neck with a sliding knot [running noose] positioned over the left mastoid region of back of the head.
>
> Removal of the ligature revealed a parchment like abraded mark, mostly regular in shape and about 0.5 cm in width. The mark was deeper and mostly horizontal on right side of the neck, then taking upwards course on front and back aspect of upper part of the neck to form united inverted "V" mark over left mastoid region, in relation to position of the knot.[15]

From the foregoing, Dr. Ruwanpura remarked that "the circumstantial data and [his] autopsy findings are in keeping with self suspension." Thus, pronounced the cause of death to be asphyxia due to hanging.[16]

Subsequently, petitioner filed her claim for benefits arising from the death of Manuel, but the respondents refused to grant her any. Respondents averred that Manuel's death was not compensable because he took his own life.[17] This prompted petitioner to file a Notice to Arbitrate[18] on August 7, 2014, before the NCMB of the Department of Labor and Employment (DOLE) demanding for payment of the following:

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[13] *Id.* at 350-351.

[14] *Id.* at 315-323.

[15] *Id.* at 317.

[16] *Id.* at 322.

[17] *Rollo*, p. 108.

[18] CA *rollo*, pp. 311-314.

1. Compensation for Loss of Life pursuant to the applicable CBA in the amount of US$89,100.00;
2. Death Benefit in the amount of US$50,000.00 and Burial Expenses in the amount of US$1,000.00 pursuant to the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels;
3. Mandatory Insurance Benefit of at least US$10,000.00 pursuant to R.A. 10022;
4. Moral damages in the amount of [PhP] 2,500,000.00;
5. Exemplary damages in the amount of [PhP] 2,500,000.00;
6. Attorney's fees equivalent to ten (10) per cent of the total monetary award.[19]

In asking for compensation for loss of life, petitioner averred that under Article 25 of the Collective Bargaining Agreement (CBA) which covers Manuel's employment contract, respondents unconditionally bound themselves to pay the same in the event of death of a seafarer through any cause while employed by them. The Philippine Overseas Employment Administration's (POEA's) Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, furthermore entitled her to death and burial benefits. Her claim for insurance benefits was likewise supported by Republic Act (R.A.) No. 10022.[20] The wanton and oppressive manner by which respondents refused to accord to her the benefits due her made respondents liable for moral and exemplary damages, as well as attorney's fees.[21]

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[19] *Id.* at 314.

[20] AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.

[21] CA *rollo*, pp. 312-313.

Respondents, for their part, insisted that they were not liable to pay compensation with respect to the death of Manuel since the POEA's Standard Employment Contract (POEA-SEC), as well as the CBA specifically exclude from the payment of benefits for death that are directly attributable to the seafarer. As proof that Manuel committed suicide, respondents presented the following pieces of evidence: (a) Investigation Report on the death of Manuel conducted by Maharoof and Zavahir on October 18, 2013, on board *M/V Sea Lord* which included the individual statements of Manuel's co-workers regarding his death;[22] (b) photocopy of pictures taken of the room where Manuel hanged himself and the retrieval of his body from where he was suspended;[23] (c) Cause of Death Form stating the cause of Manuel's death was under investigation;[24] and (d) Post-Mortem Report issued by Dr. Ruwanpura stating Manuel's cause of death as asphyxia due to hanging.[25] Inasmuch as Manuel committed suicide, petitioner, clearly, is not entitled to any benefits arising therefrom. Even if death by suicide was ruled out, respondents argued that no benefits can still be granted to the petitioner because she failed to present proof that Manuel's death during his employment was due to any work-related cause as required under the POEA-SEC or the CBA.[26]

Moreover, respondents posited that the petitioner cannot claim insurance benefits under R.A. No. 10022 because only death through natural and accidental causes are covered by the said law. Since suicide is neither natural nor accidental, the same is not compensable under R.A. No. 10022.[27] Since respondents are justified in denying petitioner's claims, there is also no cogent reason to award moral damages, exemplary damages and attorney's fees in her favor.[28]

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[22] *Id.* at 261-301.

[23] *Id.* at 302-306.

[24] *Id.* at 307.

[25] *Id.* at 315-322.

[26] *Id.* at 239-249.

[27] *Id.* at 249-252.

[28] *Id.* at 253-256.

On February 2, 2015, the Panel rendered a Decision[29] in favor of the petitioner. The individual accounts of Manuel's co-workers of his bizarre attitude failed to convince the Panel that Manuel took his own life. It also found unworthy of belief the reports of the various investigators given that the same were prepared 10 days after Manuel's death. The Panel likewise made much of the NBI Autopsy Report which made no mention of the word "hanging" or "suicide," but only concluded the cause of death as "consistent with asphyxia by ligature." Thus, the Panel ruled that petitioner's narration of her warm and happy telephone conversations with Manuel where the latter shared his dreams for her and his siblings contradicted respondents' claim of suicide.[30] Since there is no substantial evidence to warrant a finding of suicide, the Panel held that petitioner was entitled to death benefits under the CBA.[31] Even assuming that it had been duly proved that Manuel took his own life, petitioner would still be entitled to death benefits considering that Manuel died while in respondents' employ and because the CBA makes them liable therefor, regardless of the cause of death. In addition to death benefits, Section 25.1 of the CBA makes respondents' liable to the petitioner for transportation and burial expenses.[32] As for the insurance benefits, the Panel held that petitioner must be granted the same since suicide had not been established.[33] The Panel also awarded to the petitioner uncollected salaries due to Manuel given that the respondents' did not deny the same. It also found that substantial evidence had been presented showing Manuel's entitlement to guaranteed overtime pay, unpaid leave pay, unpaid daily allowance and owner's bonus. Hence, awarded the same to the petitioner.[34] The Panel disposed in this wise:

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[29] *Supra* note 4.

[30] *Rollo*, pp. 130-131.

[31] *Id.* at 133-135.

[32] *Id.* at 131, 136.

[33] *Id.* at 133, 135.

[34] *Id.* at 135-136.

WHEREFORE, all the foregoing premises being duly considered, in the light of the facts as borne by the evidence on record, as well as based on the law and jurisprudence, [judgment] is hereby rendered as follows:

First, Death Benefits are hereby granted in the Philippine currency equivalent to US $89,100.00 in accordance with the CBA covering the late [Manuel] A. [Borreta], Jr.

Second, the proceeds of the AWWA, RA 10022-mandated insurance in the Philippine currency equivalent of US $15,000.00

Third, the following are likewise awarded:

a. US $670.03 representing Borreta Jr.'s uncollected salary; (if there is proof by original receipt of payment, this should be deleted)

b. Reimbursement of the [total] burial and transport expenses in the amount of [₱]162,080.00

c. [Guaranteed] overtime pay for four (4) months in the amount of US $3,730.00

d. Unpaid leave credit/pay in the amount of US $696.00

e. Unpaid duly subsistence allowance US $504.00

f. Owner's Bonus in the amount of US $400.00

All awards in dollars shall be delivered in Philippine Currency equivalent at current rate of exchange at the time [this] decision is promulgated.

Fourth, Moral damages in the amount of [PhP] 1.5 Million are also awarded in their Philippine currency equivalent.

Fifth, Exemplary damages in the amount of [PhP] 1.5 Million are likewise granted in [their] Philippine currency equivalent.

Sixth[,] Attorney's fees in the amount of 10% of all the monetary awards, as follows:

a. Peso Award:
   i. Award: [PhP] 3,162,080.00
   ii. Attorney's fees [PhP] 316,208.00

b. U.S. Dollar Awards:
   i. Total Awards: $ 109,4030
   ii. Attorney's fees: $ 10,943

Seventh, [r]espondents are directed to pay interest from the death of M.A. Borreta Jr., on 08 Oct 2013 up to finality of this DECISION, and 12% interest from finality of this DECISION up to [the] full satisfaction of judgment.

Eight[,] all the respondents are jointly and severally liable to satisfy the judgment, in accordance with law.

Parties are hereby reminded that in their SUBMISSION AGREEMENT dated 18 September 2014, they have obligated themselves, "inter alia", "TO ABIDE BY AND COMPLY WITH THE DECISION OF THE ARBITRATORS ON THE ISSUES AND CONSIDER SAID DECISION AS FINAL AND BINDING UPON THE PARTIES HEREIN."

The spirit of the law governing voluntary arbitration is to effect a voluntary implementation of the decision rendered by the arbitrators, who, after all, were selected by the parties themselves. This is precisely what makes voluntary arbitration different from compulsory arbitration. Let then the parties herein remain faithful to that intent.

Let the parties be true to their commitment. And let the difference of this mode of dispute settlement be upheld as distinguished from the other modes, in the higher interest of substantive justice, as enshrined in the Philippine Constitution.

SO ORDERED.[35]

Respondents moved for reconsideration but the Panel denied it in a Resolution[36] dated January 23, 2015.[37] Aside from denying the motion for lack of merit, the Panel also ruled that the same was filed out of time. Considering that respondents received the February 2, 2015 Decision on February 5, 2015, the motion should have been filed on February 15, 2015, the last day for the filing of the same even if the 10th day fell on a Sunday. Since respondents filed their motion for reconsideration the

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[35] *Id.* at 148-150.

[36] *Id.* at 152-163.

[37] It appears that the Panel's Resolution should have been dated February 23, 2015, instead of January 23, 2015, considering that respondents filed their motion for reconsideration of the Panel's Decision on February 16, 2015.

following day, the filing thereof was already a day late, rendering the Panel's assailed Decision final and executory.

On April 23, 2015, petitioner moved for the resolution of her motion for execution of the Decision of the Panel.[38]

On March 3, 2015, respondents filed a Manifestation with Opposition to Complainant's Motion for Execution (Manifestation with Opposition).[39] Records disclosed that the Panel had not acted on the same.

Aggrieved, respondents filed on March 12, 2015 a Petition for Review (with Urgent Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction) before the CA.[40]

Subsequently, or sometime in May 2015, respondents filed with the Panel a pleading entitled Reiterative Motion to Set Case for Clarificatory Conference (Reiterative Motion).[41]

On appeal, the CA recognized the suppletory application of the Rules of Court and prevailing jurisprudence in the computation of periods in the filing of pleadings in court. Since the last day of the 10-day period to appeal fell on a Sunday, the CA held that the respondents timely filed their motion for reconsideration the next working day, or on February 16, 2015. It also held that respondents did not engage in forum shopping when they filed their Manifestation with Opposition as the same was just a response to petitioner's motion for execution, and not a second motion for reconsideration. In the same vein, respondents' Reiterative Motion only addressed petitioner's motion to resolve her motion for execution.

Contrary to the ruling of the Panel, the CA found that respondents have successfully proved by substantial evidence

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[38] CA *rollo*, p. 626.

[39] *Id.* at 210-224.

[40] *Id.* at 3-74.

[41] *Id.* at 626, 633-637.

that Manuel killed himself on October 8, 2013. Such notwithstanding, respondents remain liable under the parties' CBA for death benefits, particularly Section 25.1 thereof. Since the same provision provides that the employer will shoulder the costs for the transportation and burial of Manuel's body in the Philippines, the CA ordered the respondents to, reimburse petitioner the transportation and burial expenses she incurred.

As for the other awards, the CA held that petitioner was not entitled to the same. It held that life insurance may only be awarded in case of accidental death. Since death by suicide cannot in any way be ruled as accidental, petitioner was not entitled to claim the life insurance benefit under R.A. No. 10022. The CA deleted the awards for unpaid salary, guaranteed overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus in light of the evidence presented by the respondents that the same had already been paid to, and received by the petitioner.[42]

The CA also ruled that petitioner was not entitled to moral and exemplary damages, and attorney's fees, and thus deleted the same.[43] The CA disposed in this wise:

> **WHEREFORE, premises considered, the APPEAL is PARTLY GRANTED. The assailed Decision dated 2 February 2015 is hereby MODIFIED,** to the extent that the awards for insurance proceeds, amounting to US$15,000[,] uncollected salary amounting to US$670.03, overtime pay amounting to US$3730.00, unpaid leave credits/pay in the amount of US$696.00, unpaid daily subsistence allowance in the amount for US$504.00, [owners' bonus in the amount of] US$400.00 are **all DELETED**.
>
> The awards for moral and exemplary damages and attorney's fees, for lack of factual and legal basis, are likewise **DELETED**.
>
> [Respondents] **REMAIN LIABLE** to pay US$89,100.00 for death benefits and [PhP] 162,080.00 for transportation and burial expenses as provided by their CBA with their seafarers. As ruled above, these

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[42] *Id.* at 168-176.

[43] *Rollo,* pp. 67-94.

are subject to an interest of 6% per annum reckoned from the date of filing of the Notice to Arbitrate on 7 August 2014 until the finality of this Decision. Thereafter, the interest of 6% per annum shall be imposed on these amounts until fully paid.

SO ORDERED.[44]

Aggrieved, the petitioner moved for reconsideration, but the CA denied it in a Resolution[45] dated April 12, 2016.

Not accepting defeat, petitioner is now before the Court *via* the present petition.

The Issues Presented

Petitioner raises the following issues for the Court's consideration:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE CONSTITUTION, THE LAW AND ESTABLISHED JURISPRUDENCE WHEN IT DID NOT DISMISS THE PETITION FOR REVIEW FILED BEFORE IT BY HEREIN RESPONDENTS FOR LACK OF APPEL[L]ATE JURISDICTION OVER THE SAME.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE RULES AND PREVAILING JURISPRUDENCE WHEN IT DID NOT ALSO DISMISS THE PETITION FOR REVIEW FILED BEFORE IT BY HEREIN RESPONDENTS FOR THEIR WILLFUL AND DELIBERATE ACTS OF FORUM SHOPPING.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW AND THE RULES WHEN IT DID NOT DISMISS RESPONDENTS' PETITION FOR REVIEW ON THE ADDITIONAL GROUND THAT RESPONDENT'S MOTION FOR THE RECONSIDERATION OF THE VA PANEL'S DECISION OF 02 FEBRUARY 2015 WAS NOT DULY FILED.

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[44] *Id.* at 95.

[45] *Supra* note 3.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE RULES AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED THE WELL-ENTRENCHED RULE THAT FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES ARE ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY.

A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDING OF THE VA PANEL A QUO THAT NO ADEQUATE EVIDENCE EXITS THAT SEAFARER BORRETA, JR. COMMITTED SUICIDE.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDING OF THE VA PANEL A QUO HOLDING RESPONDENTS LIABLE TO PAY INSURANCE BENEFIT[S] UNDER R.A. 10022.

C. THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE RULING OF THE VA PANEL A QUO HOLDING RESPONDENTS LIABLE FOR CBA MANDATED OVERTIME PAY, LEAVE PAY, SUBSISTENCE ALLOWANCE AND OWNER'S BONUS.

D. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW AND JURISPRUDENCE AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE VA PANEL'S AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[46]

The Arguments of the Parties

Petitioner contends that the CA should not have entertained the appeal for being filed out of time. She points out that since respondents have only 10 days from receipt on February 26, 2015 of the Panel's January 23, 2015 Resolution, they should

[46] *Id.* at 12-13.

have filed their appeal on March 8, 2015. The 15-day period to appeal under Rule 43 of the Rules of Court is not applicable to voluntary arbitration cases under the Labor Code. Since respondents' appeal was filed only on March 12, 2015, the same was filed four days late, rendering the assailed Decision and Resolution of the Panel final and executory; hence, not appealable. Perforce, the CA should have dismissed the appeal outright.[47]

Moreover, the appeal should have been dismissed at once for respondents' failure to move for the reconsideration of the Panel's Decision. Petitioner explains that respondents motion for reconsideration before the Panel had not been duly filed inasmuch as their motion was not filed within 10 days from their receipt of the Panel's Decision, and the same was not filed directly with the Panel. It is of no moment that the 10th day within which respondents have to file their motion falls on a Sunday. The rule which states that when the last day to file a pleading falls on a Saturday, Sunday or Holiday, the same may be filed on the next business day finds no application in this case considering that the Voluntary Arbitrators that comprised the Panel were private individuals, and there is no law or rule that prohibits them from holding office on a Saturday, Sunday or holiday. Since respondents' motion for reconsideration was not filed in accordance with the mandatory law and rules governing voluntary arbitration proceedings, the CA should have dismissed their appeal straightway.[48]

Petitioner disagrees with the CA that respondents did not engage in forum shopping. Contrary to the view of the CA, the Manifestation with Opposition was not filed to oppose the motion for execution she filed, but was in reality a second motion for reconsideration as it sought the reversal and setting aside of the Panel's Decision despite the denial of respondents' earlier motion for reconsideration. Without waiting for the resolution of the said Manifestation with Opposition, respondents filed

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[47] *Id.* at 12-19.

[48] *Id.* at 27-29.

with the CA their appeal, which also sought for the reversal and setting aside of the very same February 2, 2015 Decision of the Panel. Their contumacious acts, however, did not end there. After filing their appeal with the CA and failing to obtain the Temporary Restraining Order (TRO) or injunctive writ they prayed for, they filed their Reiterative Motion before the Panel, which in substance was just another second motion for reconsideration. Respondents did not inform the CA about it and even lied in their Compliance[49] when they stated that, *"to the best of their knowledge, NO other cases and/or proceedings involving the same parties and issues are pending before the Honorable Court or other courts."* All the actions actively and simultaneously pursued by the respondents before the Panel and the CA involved the same and related issues and are all aimed at obtaining the same relief — the reversal of the Decision of the Panel in two fora. Such is clearly a case of forum shopping warranting the outright dismissal of respondents' appeal before the CA.[50]

On the merits, petitioner asseverates that the factual findings of the Panel should have been respected by the CA because the same were in accord with the law and evidence on record. She staunchly maintains that there was nothing on record which showed that Manuel committed suicide. Like the Panel, petitioner avers that the statements of the crew members about the actuations of Manuel do not lead to a logical conclusion that he took his own life for being hazy, equivocal, and non-committal. The reports (Investigation Report;[51] Master's Report[52]) relative to the said incident were also not worthy of belief because they lack spontaneity as they were prepared 10 days after the incident. Even the Cause of Death Form issued by the Sri Lankan authorities failed to conclude Manuel's death as suicide, as in fact it only stated the cause thereof to be under investigation.

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[49] *Id.* at 416-417.

[50] *Id.* at 19-27.

[51] *Supra* note 9.

[52] CA *rollo*, p. 271.

The subsequent December 7, 2013 Post-Mortem Report released by Dr. Ruwanpura finding the cause of death as "asphyxia due to hanging" was also suspected for being issued some two months after the incident. It could not even be verified whether the said Post-Mortem Report had been properly translated. The statements of the crew members, Investigative Report, Master's Report and the December 7, 2013 Post-Mortem Report actually lacked probative value for being mere photocopies. No police investigation report conducted by the harbor authorities of Galle, Sri Lanka was presented. The NBI Autopsy Report made no mention of the words "hanging" or "suicide," but merely labelled the cause of Manuel's death as "consistent with asphyxia by ligature." The findings that Manuel did not sustain any injuries are not supported by the evidence on record as the NBI Autopsy Report[53] showed otherwise. In fact, said findings appear to be more consistent with strangulation, a clear indication of foul play. *Viz.*:

EXTERNAL INJURIES:

Head and Neck: Ligature mark, antero-lateral aspect, contused and abraded, 48.0 cm. long. The right extremity is directed involving upwards and backwards, towards the right auricural area and ending at a point 15.0 cm. behind and 4.0 cm. below the right external auditory meatus. Widest area of 1.0 cm. and narrowest at 0.4 cm.

x

Upper Extremities:

Contusion:

1.) 5.0 x 1.0 cm., dorsal aspect on the lateral side of the right thumb and index finger.

x x x

Lower Extremities:

Contusion:

1.) 10.0 x 5.0 cm., antero-medial aspect on the middle 3rd of the right leg.

Since respondents fail to prove their claim of suicide, they are liable not only for death benefits, transportation expenses

[53] *Id.* at 350-351.

and burial expenses, but they must also pay the insurance benefits pursuant to R.A. No. 10022. Anent her claims for other monetary benefits, petitioner maintains that respondents must be made to pay the CBA mandated guaranteed overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus for their failure to present competent and credible evidence showing payment of the same to Manuel. She claims that the US$670.03 paid to Manuel only covers the period from October 1, 2013 to October 8, 2013, leaving the mandated benefits of Manuel from June 2013, the start of his employment, up to the whole month of September 2013, unpaid. While the respondents presented documents showing payment of Manuel's wages for the months prior to October 2013, the same did not reflect that the same were in fact payments for Manuel's guaranteed overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus for June 2013, until the end of September 2013.

Petitioner insists that respondents' bad faith had been duly established by the following circumstances – (a) concealment and refusal to furnish the petitioner with a copy of the CBA in order to mislead Manuel and his widow, petitioner herein, into thinking that no CBA applied to the former; (b) suppression of Police Investigation Report which could have shown that Manuel had been killed; (c) failure to procure the mandatory life insurance policy for Manuel and refusal to pay the life insurance benefit thereunder; (d) refusal to provide any form of assistance to Manuel's next of kin when his remains were repatriated; (e) withholding of Manuel's last earned salary unless a quitclaim is signed by the petitioner freeing respondents from liability arising out of her husband's death; (f) eventual release of the said last earned salary only after five long months from the death of Manuel; (g) berating petitioner for seeking the Government's help in the repatriation of Manuel; and (h) the sudden decision to bring Manuel's remains to Galle, Sri Lanka despite the fact that the ship's destination is Dammam, Kingdom of Saudi Arabia – all justify the award in her favor of moral and exemplary damages. Furthermore, their unjustified refusal to grant her legitimate claims compelled her to litigate, therefore, entitles her to attorney's fees.

Respondents, for their part, averred that the petitioner should stop her insatiable quest for financial gain as the CA only removed the highly questionable benefits she had been awarded by the Panel but retained the US$89,100.00 death benefits and ₱162,080.00 transportation and burial expenses awarded in her favor, and which amounts they no longer contest.[54]

Contrary to petitioner's supposition on forum shopping, respondents contend that their recourse had been valid and legally justifiable. There is nothing in their Manifestation with Opposition that would even suggest that the same was a second motion for reconsideration. Respondents explain that their "Manifestation" merely expressed their displeasure with the violation of their right to due process, while their "Opposition" conveyed their disapproval to petitioner's motion for the execution of the assailed Decision rendered by the Panel. It is inconsequential that respondents also pray for the reversal of the decision of the Panel in the said pleading. It must be taken into account that the petitioner moved for the execution of the Panel's Decision on the very same day the Panel denied respondents' Motion for Reconsideration with Urgent Motion for Clarificatory Conference.[55] It is precisely for that reason why they filed a "Manifestation" with an "Opposition." Respondents add that it is very unlikely that conflicting decisions will arise given that what was pending before the NCMB is petitioner's motion for execution and not any of respondents' motion.[56]

Respondents assert that they timely moved for the reconsideration of the Panel's Decision. Contrary to the contention of the petitioner, the Panel is bound by the provisions of the Civil Code and the Rules of Court pertaining to the computation of the period within which an act must be performed. Following Section 1, Rule 22 of the Rules of Court, their motion was timely filed the next working day, since the last day of the

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[54] *Rollo*, pp. 447-449.

[55] CA *rollo*, pp. 146-199.

[56] *Rollo*, pp. 449-451.

filing of the same falls on a Sunday. There is also no rhyme or reason for petitioner's insistence that the motion must be filed directly with any Panel member inasmuch as all proceedings were conducted through the facilities of the NCMB. They likewise maintain that *Philippine Electric Corporation v. Court of Appeals*[57] which provides for a 10-day period to appeal before the CA from receipt of the Decision of the Panel that was cited by the petitioner does not apply in this case in light of the pronouncement of the Supreme Court *En Banc* in a number of cases declaring the appeal period to be 15 days.[58]

While respondents claim that petitioner is not entitled to death benefits, transportation and burial expenses, they asseverate that the benefits awarded by the CA to the petitioner should no longer be disturbed as the same represent the most judicious and fair interpretation of the law and contracts under the circumstances.[59]

The Ruling of the Court

Respondents' appeal before the CA had been duly filed pursuant to Rule 43 of the Rules of Court

Petitioner avers that since respondents filed their appeal with the CA 14 days from their receipt of a copy of the Decision of the Panel, the same was filed out of time considering that pursuant to Article 276 of the Labor Code, the appeal must be brought within 10 days. Article 276, formerly Article 262-A, of the Labor Code provides:

ART. 276. Procedures. The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties.

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[57] See *id.* at 15; 749 Phil. 686, 709 (2014): see *id.* at 15.

[58] *Rollo*, pp. 451-458.

[59] *Id.* at 448, 459-460.

All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the Voluntary Arbitrator or panel of Voluntary Arbitrators. Hearings may be adjourned for cause or upon agreement by the parties.

Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

In not a few instances, the Court has variably applied the 10-day period provided in Article 276 of the Labor Code and the 15-day period in Section 4, Rule 43 of the Rules of Court in determining the proper period of appeal from a decision or award rendered by a Voluntary Arbitrator or a Panel thereof to the CA.

In 2004, the Court in *Sevilla Trading Company v. Semana*;[60] *Manila Midtown Hotel v. Borromeo*;[61] and *Nippon Paint Employees Union-Olalia v. Court of Appeals*[62] ruled that the decision of the Voluntary Arbitrator becomes final and executory after the lapse of the 15-day reglementary period within which to file a petition for review under Rule 43. In 2005, the Court

[60] 472 Phil. 220 (2004).

[61] 482 Phil. 137 (2004).

[62] 485 Phil. 675 (2004).

made reference for the first time to the 10-day period for the filing of a petition for review from decisions or awards of Voluntary Arbitrators in *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*[63] This 10-day period was then applied in the same year in *Philex Gold Philippines, Inc. v. Philex Bulawan Supervisors Union*[64] in declaring the appeal to have been timely filed. The 15-day reglementary period to appeal under Rule 43 was reiterated in 2007 in *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*;[65] in 2008 in *AMA Computer College-Santiago City, Inc. v. Nacino;*[66] and *Mora v. Avesco Marketing Corporation*;[67] in 2009 in *Samahan ng mga Manggagawa sa Hyatt-Nuwhrain-APL v. Voluntary Arbitrator Bacungan*;[68] in 2010 in *Saint Luis University, Inc. v. Cobarrubias*,[69] in 2011 in *Samahan Ng Mga Manggagawa sa Hyatt v. Hon. Voluntary Arbitrator Magsalin*;[70] and in 2013 in *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.-Cebu Plant*.[71] However, in the 2014 case of *Philippine Electric Corporation (PHILEC) v. Court of Appeals*;[72] 2015 case of *Baronda v. Court of Appeals;*[73] and 2017 case of *NYK-FIL Ship Management, Incorporated v. Dabu*,[74] the Court applied the 10-day appeal period.[75]

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[63] 502 Phil. 748 (2005).

[64] 505 Phil. 224 (2005).

[65] 562 Phil. 743 (2007).

[66] 568 Phil. 465 (2008).

[67] 591 Phil. 827 (2008).

[68] 601 Phil. 365 (2009).

[69] 640 Phil. 682 (2010).

[70] 665 Phil. 584 (2011).

[71] 709 Phil. 350 (2013).

[72] 749 Phil. 686 (2014).

[73] 771 Phil. 56 (2015).

[74] G.R. No. 225142, September 13, 2017, 839 SCRA 601.

[75] *Guagua National Colleges v. Court of Appeals*, G.R. No. 188492, August 28, 2018.

The period to be followed in appealing decisions or awards of Voluntary Arbitrators or Panel of Arbitrators had been settled once and for all by the Court sitting e*n banc* in *Guagua National Colleges v. Court of Appeals.*[76] In this case, the Court ruled that the 10-day period stated in Article 276 of the Labor Code should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrator or the Panel may file a motion for reconsideration.[77] This is in line with the pronouncement in *Teng v. Pahagac*[78] where the Court had clarified that the 10-day period set in Article 276 of the Labor Code gave the aggrieved parties the opportunity to file their motion for reconsideration, in keeping with the principle of exhaustion of administrative remedies. *Viz.*:

> In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor, is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.
>
> By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA *via* Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.
>
> The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the

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[76] *Id.*

[77] *Id.*

[78] 649 Phil. 460 (2010).

given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by Congressional intent.

By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable. In *Industrial Enterprises, Inc. v Court of Appeals*, we ruled that relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.[79] (Citation omitted)

The Court further clarified in *Guagua* that once the motion for reconsideration interposed had been resolved, the aggrieved party may now opt to appeal to the CA by way of a petition for review under Rule 43 of the Rules of Court. Pursuant to Section 4 of the said Rule, the aggrieved party has 15 days to file the same.[80]

There is no dispute that respondents received on February 26, 2015, a copy of the January 23, 2015 Resolution of the Panel which denied their motion for reconsideration, and filed their appeal to the CA on March 12, 2015. Given that their appeal had been filed 14 days from their receipt of the assailed Resolution of the Panel, respondents' appeal had clearly been filed within the reglementary period provided in Rule 43.

But petitioner contends that there is no motion for reconsideration which could have been considered as *duly filed*

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[79] *Supra* note 75.

[80] *Id.*

in this case that may be appealed to the CA as provided in Section 4,[81] Rule 43 of the Rules of Court since respondents' motion for reconsideration had not been filed directly with the Panel in violation of Section 2, Rule III of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings (VA Procedural Guidelines) which provides:

SEC. 2. *Where to file Pleadings.* – All pleadings relative to the voluntary arbitration case shall be filed directly with the chosen voluntary arbitrator at his designated business or professional office copy furnished the Regional Branch of the board having jurisdiction over the workplace of the complainant.

For the petitioner, in order for the filing of the motion for reconsideration to be proper, it must be filed at the Voluntary Arbitrators' private addresses or offices.[82] It is also for this reason why the petitioner posits that Section 1[83] of Rule 22 of the Rules of Court does not apply here because "*there is no rule or requirement that the offices of Voluntary Arbitrators should be closed on Saturdays, Sundays and Holidays*."[84]

By no stretch of the imagination can Section 2, Rule III of the VA Procedural Guidelines can be given a meaning as that advanced by the petitioner. Nothing is better settled than that courts are not to give words a meaning which would lead to

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[81] SEC. 4. *Period to appeal*. – The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, **or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.** x x x (Emphasis supplied)

[82] *Rollo*, pp. 28-29.

[83] SEC. 1. *How to compute time*. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

[84] *Rollo*, p. 28.

absurd or unreasonable consequence.[85] A voluntary arbitrator by the nature of his or her functions acts in a quasi-judicial capacity.[86] Even assuming that the Voluntary Arbitrator or the Panel may not strictly be considered as a quasi-judicial agency, still both the Voluntary Arbitrator and the Panel are comprehended within the concept of a quasi-judicial instrumentality.[87] An "instrumentality" is anything used as a means or agency. Thus, the terms governmental "agency" or "instrumentality" are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed.[88]

Since the Panel performs a state function pursuant to a governmental power delegated to them under the Labor Code provisions,[89] it therefore stands to reason that as a governmental instrumentality, the Panel holds office at the NCMB Office and the motion for reconsideration respondents filed thereat had been proper.[90] There is no reason to rule otherwise. The motion was received by the Panel, as in fact it immediately convened upon receipt thereof and acted on the same. While respondents' motion for reconsideration was denied, the denial was not premised on the failure to *directly* file the motion with the Panel as the term is understood by the petitioner, but because the Panel found the motion to be lacking in merit and filed a day late.[91]

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[85] *Microsoft Corporation v. Manansala*, 772 Phil. 14, 22 (2015), citing *Automotive Parts & Equipment Company, Inc. v. Lingad*, 140 Phil. 580, 587 (1969).

[86] *Oceanic Bic Division (FFW) v. Romero*, 215 Phil. 340, 349 (1984).

[87] *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262, 270 (1995).

[88] *Alcantara, Jr. v. Court of Appeals*, 435 Phil. 395, 404 (2002), citing *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262, 270 (1995).

[89] *Id.*

[90] CA *rollo*, p. 146.

[91] *Rollo*, p. 162.

However, as ruled correctly by the CA, respondents motion for reconsideration of the Panel's Decision had been timely filed. Section 3 of the VA Procedural Guidelines which provides:

> SEC. 3. *Directory and Suppletory Application of the Guidelines and Rules of the Court.* – The rules governing the proceedings before a voluntary arbitrator shall be the subject of agreement among the parties to a labor dispute and their chosen arbitrator. In the absence of agreement on any or various aspects of the voluntary arbitration proceedings, the pertinent provisions of these Guidelines and the Revised Rules of Court shall apply by analogy or in a directory and suppletory character and effect.[92]

clearly recognizes that the Rules of Court shall apply suppletorily or by analogy to arbitration proceedings. As such, Section 1, Rule 22 of the Rules of Court had been properly appreciated in determining the timeliness of the filing of respondents' motion for reconsideration. The said section provides:

> SEC. 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

In this case, respondents have 10 days from February 5, 2015, the day they received a copy of the Panel's Decision, within which to file their motion for reconsideration. However, given that February 15, 2015, falls on a Sunday, respondents have until the next business day, pursuant to Section 1, Rule 22 of the Rules of Court, to file their motion for reconsideration. Hence, when respondents filed their motion on February 16, 2015, the same had been filed within the reglementary period.

Respondents are not guilty of forum shopping

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[92] *Id.* at 78.

Petitioner insists that respondents resorted to forum shopping when they filed before the Panel a *Manifestation with Opposition* after their motion for reconsideration was denied, and another motion entitled *Reiterative Motion* after they had already filed their petition for review with the CA and before the Panel can rule on its *Manifestation* with Opposition, as they actively sought the review and reversal of the ruling of the Panel with the latter and the CA simultaneously and successively.

Section 5, Rule 7 of the Rules of Court embodies the rule against forum shopping. It provides:

SEC. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Citing *City of Taguig v. City of Makati*,[93] the Court, in *Zamora v. Quinan, Jr.*,[94] has exhaustively discussed the concept of forum shopping in this wise:

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[93] 787 Phil. 367, 383-388 (2016).

[94] G.R. No. 216139, November 29, 2017, 847 SCRA 251, 256-262.

In *City of Taguig v. City of Makati*, this Court was able to thoroughly discuss the concept of forum shopping through the past decisions of this Court, thus:

> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:
>
> > Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.
>
> *First Philippine International Bank v. Court of Appeals* recounted that forum shopping originated as a concept in private international law:
>
> > To begin with, forum shopping originated as a concept in private international law, where nonresident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
> >
> > In this light, *Black's Law Dictionary* says that forum shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to *Words and Phrases*, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co*. recounted that:

> The rule on forum shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.
>
> Presently, Rule 7, Section 5 of the 1997 Rules of Civil Procedure requires that a Certification against Forum Shopping be appended to every complaint or initiatory pleading asserting a claim for relief. x x x

x x x x x x x x x

Though contained in the same provision of the 1997 Rules of Civil Procedure, the rule requiring the inclusion of a Certification against Forum Shopping is distinct from the rule against forum shopping. In *Korea Exchange Bank v. Gonzales*:

> The general rule is that compliance with the certificate of forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.

Top Rate Construction discussed the rationale for the rule against forum shopping as follows:

> It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by

> the different *fora* upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

Jurisprudence has recognized that forum shopping can be committed in several ways:

> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia or res judicata*). (Emphasis in the original)

Similarly, it has been recognized that forum shopping exists "where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court."

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief

> prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

> (1) the former judgment is *final*; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits*; (4) there is - between the first and the second actions - *identity* of parties, of subject matter, and of causes of action. (Emphasis in the original)

These settled tests notwithstanding:

> Ultimately, what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same of substantially the same relicts, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issue. (Citations omitted)

By filing with the Panel a second motion for reconsideration in the guise of a *Manifestation with Opposition*, and without awaiting the result thereof, appealing before the CA, and thereafter filing once again with the Panel a *Reiterative Motion*, petition avers that respondents committed forum shopping.

While the Court agrees with the petitioner that respondents' *Manifestation with Opposition* is in reality a second motion for reconsideration and its *Reiterative Motion* is another motion for reconsideration, as they both principally seek for the setting aside of the Decision of the Panel, there are good reasons which militate against the finding of forum shopping in this case.

Ultimately, the primary consideration in the determination if forum shopping is obtaining in a case is whether the filing of the actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting

decision by different tribunals.[95] The *Manifestation with Opposition*, being a second motion for reconsideration, and the *Reiterative Motion*, being technically a third motion for reconsideration, their filing thereof are prohibited under Section 2,[96] Rule 52 of the Rules of Civil Procedure. Being prohibited pleadings, they are regarded as mere scrap of paper that do not deserve any consideration and do not have any legal effect.[97] In addition, the *Reiterative Motion* is no longer within the Panel's competence to decide. It must be taken into account that when respondents filed the same, they had already filed their petition for review before the CA,[98] and the CA had in fact acted upon it by requiring the petitioner to file her comment thereon.[99] Hence, the Panel had lost its jurisdiction over the case at this stage, and therefore, it can no longer afford any kind of relief to the respondents. For these reasons, there can clearly be no forum shopping in this case.

Suicide had been duly established

A careful review of the records would show that suicide had been indubitably established. As aptly ruled by the CA:

> The signed statements of Manuel's co-workers who were with him on the vessel on that fateful day allow Us to reconstruct with clarity the events leading to his death. Rather than being hazy, unequivocal, and non-committal, they were detailed, categorical, and certain, having been based on their actual experiences on the day Manuel died and with their personal interactions with the deceased. More importantly, We have found no fatal inconsistency that would warrant a different conclusion, that there was a cover-up of another cause of death, or that there was motive for *all of Manuel's co-workers*

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[95] *De Lima v. City of Manila*, G.R. No. 222886, October 17, 2018.

[96] SEC 2. Second motion for reconsideration. – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[97] See *Heirs of Albano v. Spouses Ravanes*, 790 Phil. 557, 573 (2016); *Reyes v. People*, 764 Phil. 294, 305 (2015).

[98] CA *rollo*, p. 3.

[99] *Id.* at 526.

to lie about the death of their fellow seaman. A number of them even found him to be a nice and quiet person who prefers spending time alone.

Relevantly, judging from the noticeable variations in handwriting, writing styles, and the content of the narratives of Manuel's co-employees, We can only find their statements to have been executed voluntarily and willfully. Particularly even more credible are the detailed reports of the ship's Chief Officer and the Chief Engineer executed on 9 October 2013. The Chief Officer's Report was even signed and witnessed by crew members.

There is thus every reason to seriously consider and believe all their signed statements.

To elaborate, Manuel's co-workers commonly agreed that Manuel did not report to work on 7 October 2013; that he had shut himself inside the gymnasium; that having been informed [of] Manuel's behavior, the master of the ship called for a meeting to inform everyone of the developments; that while everyone was gathering, Manuel moved from the gymnasium into the hospital.

His co-workers then narrated that while Manuel was locked in the hospital room, some of them talked to him through the telephone, which included the Chief Engineer, Leo Odio, seafarers Richard Lamug, Deneb Jake Alcantara and Dennis Tinaja. These persons attested that Manuel did not sound calm or stable at all, but that he was fearful that somebody was going to kill him.

The seamen continued that Manuel's room remained locked, so that none of them could enter the same. On 8 October 2013, Manuel was offered food which he declined, after which he refused to talk to anyone. His companions knocked but received no reply; later in the day, following Manuel's continuous silence, the crew forced their way in the hospital room but found it unlocked.

As to Manuel's demise, We can infer from the statements of Rolando Leonardo, the Chief Officer, and the Chief Engineer the grim circumstances thereof. These officers corroborate each other's statements that having discovered that Manuel was no longer in the room, they found the hospital restroom locked; with their co-workers, they then peered into a ventilation whereupon Engineer Ohio beheld Manuel "standing motionless with a small nylon rope tied on his neck and hanging to the Hat's hooks." Leonardo's words paint a starker picture, as he was able to describe that "Manuel's tongue is

already outside of his mouth about 1 cm and his hands almost violet." The crew members then forced the door open and took Manuel's body down.

These employees' statements are corroborated by the meticulous Investigative Report immediately conducted by two lawyers when the ship managed to dock on October 18, 2013, by the Log Book Entries and email correspondence with the Medical Office, and the photographs of the crew taking down Manuel's body.

Lingering doubts are then dispelled by the final Post Mortem Report dated 7 December 2013, executed by one Dr. Rohan Ruwanpura, a Judicial Medical Officer in Sri Lanka, x x x.

The Report concluded that Manuel died from asphyxia due to hanging and informed that there were no injuries present upon Manuel's body.

Significantly, all these - that Manuel had isolated himself, that no one else entered the rooms wherein he had concealed his person, that he had no other injuries, and that he was later found hanging – make foul play or any other conclusion implausible.[100]

However, according to the petitioner, the documentary submissions of the respondents cannot be believed for they lacked probative value since they are mere photocopies. She also alludes to a certain police investigation report of the harbor authorities in Galle, Sri Lanka that proves the circumstances of the death of Manuel but which she claims respondents suppressed. Thus, for the petitioner, the CA erred when it sets aside the ruling of the Panel which found that no adequate evidence exists to prove that Manuel committed suicide.

The Court does not agree. In ruling that suicide had not been duly proved, the Panel relied on the "*consistent, coherent and spontaneous narration by [the petitioner] of her pleasant, joyful and very happy telephone conversation with the deceased x x x.*"[101] From her statement, the Panel was able to conclude that Manuel could not have possibly taken his own life since he and the petitioner did not have a dysfunctional family as

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[100] *Rollo*, pp. 81-83.

[101] *Id.* at 130.

in fact, they *had a very close, warm and loving relationship*,[102] and Manuel *was a very caring husband, filled with beautiful dreams and plans for his wife and siblings*.[103] Apart from these general statements, no proof whatsoever could be found on the records that would sufficiently establish the veracity of the same. As correctly observed by the CA, the petitioner "*could have supported her allegations with text messages and emails[,] or could have narrated her conversations with her husband and the frequency thereof to at least lend her version some credibility and weight. Absent these, [the court is] bound to uphold the well-settled rule that bare allegations are unworthy of belief*."[104]

It must be emphasized that technical rules of procedure are not binding in labor cases,[105] and that the quantum of proof required here is only substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[106] Thus, while it may be true that the documentary evidence adduced by respondents were photocopies, the Court cannot discount the fact that the statements of the crew members of the vessel as well as the autopsy report issued by the Sri Lankan authority coincide with the NBI autopsy report which concluded that the cause of death to be *"consistent with asphyxia by ligature*." As such, the NBI autopsy report lends credence to and bolsters the account of the respondents that Manuel took his own life. In other words, the NBI autopsy report, autopsy report prepared by Dr. Ruwanpura and Investigation Report, taken together, substantially prove that Manuel's death was due to his deliberate act of killing himself by committing suicide. It is of no moment that the NBI Autopsy Report did not categorically state that suicide or hanging was

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[102] *Id.*

[103] *Id.*

[104] *Id.* at 83-84.

[105] *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission*, 381 Phil. 254, 264 (2000).

[106] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 56.

the cause of death. The fact remains that the same report found no evidence of foul play in the death of Manuel. Perforce, the Court must agree that death by suicide had been sufficiently proved.

Petitioner is entitled to death benefits and reimbursement for transportation and burial expenses

Crucial to the determination of petitioner's entitlement to death benefits as well as her right to get reimbursement for transportation and burial expenses she incurred are Sections 18.1 b, 21, 22, and 25 of the CBA. However, as observed by the CA, the copy of the CBA attached to the petition filed before it did not completely cite Section 21, while Section 25 was missing. As such, the CA adopted the parties' citation of Section 25 and lifted from the copy of the CBA submitted to it the available portions of Section 21.[107] *Viz.*:

> [SEC. 25.1] – If a seafarer dies through any cause whilst in the employment of the Company including death from natural causes and death occurring whilst traveling to and from the vessel, or as a result of marine or other similar peril, the Company shall pay the sums specified in the attached Annex 4 (four) to a nominated beneficiary and to each dependent child up to a maximum of 4 (four) under the age of 18. The Company should also transport at its own expense the body to Seafarer's home where practical and at the families' request and pay the cost of burial expenses. If the seafarer shall leave no nominated beneficiary, the aforementioned sum shall be paid to the person empowered by law or otherwise to administer the estate of the Seafarer. For the purpose of this clause, a seafarer shall be regarded as "in employment of the company" for as long as the provision[s] of Article[s] 21 and 22 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated in accordance with Article 18.1b
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> x x x x x x x x x
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> [SEC.] 21.2 A seafarer who is hospitalized abroad owing to sickness or injury shall be entitled to medical attention (including hospitalization) at the company's expense for as long as such attention

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[107] *Rollo*, pp. 85-86.

is required or until the seafarer is repatriated to the port of engagement, whichever is the earlier.

[Section] 21.3 A seafarer repatriated to their port of engagement, unfit as a result of sickness or injury, shall be entitled to medical attention (including hospitalization) at the company's expenses:

a. in case of sickness, for up to 130 days after repatriation, subject to the submission of satisfactory medical reports;

b. in the case of injury, for so long as medical attention is required or until a medical determination is made in accordance with clause 24.2 concerning permanent disability.

[Section] 21.4 Proof of continued entitlement to medical attention shall be submission of satisfactory medical reports, endorsed, where necessary, by a company appointed doctor.[108]

On the other hand, [Section] 22 provides:

> When a seafarer is landed at any port because of sickness or injury a pro rata payment of their basic wages plus guaranteed or, in the case of officers, fixed overtime, shall continue until [they] have been repatriated at the company's expense as specified in Article 19.
>
> 22.1 Thereafter the seafarer shall be entitled to sick pay at the rate equivalent to their basic wage while they remain sick up to a maximum rate of 130 days after repatriation.
>
> 22.2 However, in the event if incapacity due to an accident the basic wages shall be paid until the injured seafarer has been cured or until a medical determination is made in accordance with clause 24.2 concerning permanent disability.
>
> 22.3 Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports, endorsed, where necessary, by a company appointed doctor. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the company and the seafarer and the decision of this doctor shall be final and binding on both parties.

x x x x x x x x x

[108] *Id.*

18.1 The employment shall be terminated:

x x x x x x x x x

b. when signing off owing to sickness or injury, after medical examination in accordance with Article 21.

The cause of death of the seafarer is immaterial to the determination of petitioner's entitlement to the said benefits. It is clear from the express provision of Section 25.1 of the CBA that respondents hold themselves liable for death benefits for the death of the seafarer under their employ for *any cause*. Under Annex 4 of the CBA, the same shall be in the amount of US$89,100.00.[109] Aside from death benefits, respondents also obligated themselves to pay the transportation expenses for the repatriation of the body of the deceased, as well as the burial expenses. In this case, the petitioner was able to show that the expenses she incurred for the repatriation of Manuel as well as his burial amounted to ₱162,080.00.[110] Sections 21 and 22 of the CBA did not limit the liability of the respondents to deaths that are directly attributable to sickness or injury, but rather widens its coverage to also include seafarers who died or signed off due to sickness of injury. Thus, the Court agrees with the following pronouncement of the CA:

Now brought to light and in consideration of Articles 21 and 22, the CBA, in defining "in employment of the company" actually expanded the coverage of Section 25.1. **Without this qualification**, "in the employment of the company" simply means those who are actively working in the employ of Athenian Ship Management, Inc. However, the "for the purpose" clause "in employment of the company" **widens its coverage to also include** (a) employees who died as a result of sickness or injury during their employment as provided under Articles 21 and 22 of the CBA; and (b) employees who had to sign off due to sickness or injury under Articles 21 and 22 of the agreement.

Otherwise stated, rather than limiting the scope of coverage of Section 25.1, the last sentence of its first paragraph widens it. It never affected or narrowed the phrase "any cause" in Section 25.1.

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[109] CA *rollo*, p. 371.

[110] *Id.* at 380-387.

To further make it simpler, the part of Section 25.1 pertaining to "any cause" responds to the question, "what causes of deaths are covered?", while "in the employment" answers to the query, "given that all causes of death are covered, *who else* are considered employed?"[111]

Respondents cannot also validly argue that the POEA-SEC takes precedence over the terms of the CBA, in that, death must be work-related in order to be compensable. The Court has already settled that, in the event that the clauses in the CBA provide for greater benefits to the seafarer, the same must prevail over the standard terms and benefits formulated by the POEA in its Standard Employment Contract inasmuch as a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in keeping with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution.[112] Thus, the CA ruled correctly when it held that petitioner is entitled to death benefits, transportation expenses and burial expenses.

Petitioner is not entitled to insurance benefits under R.A. No. 10022

Section 23 of R.A. No. 10022 provides for the compulsory insurance coverage of migrant workers. It reads:

> Section 23. A New Section 37-A of Republic Act No. 8042, as amended, is hereby added to read as follows:
>
> SEC. 37-A. *Compulsory Insurance Coverage of Agency Hired workers.* – In addition to the performance bond to be filed by the recruitment/manning agency under Section 10, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory life insurance policy which shall be secured at no cost to the said worker. Such insurance policy shall be effective for the duration of the migrant worker's employment contract and shall cover, at the minimum:

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[111] *Rollo*, pp. 89-90.

[112] *Maersk-Filipinas Crewing, Inc. v. Malicse*, G.R. Nos. 200576 & 200626, November 20, 2017, 845 SCRA 69, 80 citing *Legal Heirs of Deauna v. Fil-Star Maritime Corporation*, 688 Phil. 582, 601 (2012).

(a) Accidental death, with at least fifteen thousand United States dollars (US$15,000.00) survivor's benefit payable to the migrant worker's beneficiaries;

Without question, respondents become liable for the payment of the compulsory life insurance benefit of US$15,000.00 only when the employee died of an accidental death. Inasmuch as the Court had already ruled that Manuel committed suicide, the CA correctly deleted the award of US$15,000.00 by way of life insurance in favor of the petitioner.

Even assuming that respondents failed to procure a life insurance coverage for Manuel as mandated by R.A. No. 10022, such failure does not merit the automatic award of the aforementioned sum to the petitioner as the same pertains to the minimum of the life insurance policy coverage to be paid by the insurance company only to qualified beneficiaries and for such causes as specified therein, and is not a penalty or fine to be paid by the manning agency.

Petitioner is entitled to overtime pay, owner's bonus, and unpaid leave pay plus daily allowance pay

Articles 6[113] and 11[114] of the CBA provide for the guidelines to a seafarer's entitlement to overtime pay as well as to leave benefits. The articles state:

Overtime
[Sec.] 6

6.1 Any hours of duty in excess of the 8 (eight) shall be paid by overtime, the hourly overtime rate shall be 1.25 the basic hourly rate calculated by reference to the basic wage for the category concerned and the weekly working hours (Annex 2).

6.2 At least 103 (one hundred three) hours guaranteed overtime shall be paid monthly to each seafarer.

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[113] CA *rollo*, pp. 332-333.

[114] *Id.* at 333.

6.3 Overtime shall be recorded individually and in duplicate either by the Master or Head of the Department.

6.4 Such record shall be handed to the seafarer for approval every month or at shorter intervals. Both copies must be signed by the Master and/or Head of the department as well as the seafarer, after which the record is final. One copy shall be handed over the seafarer. x x x

6.5 If no overtime records are kept as required in 6.3 and 6.4 above, the seafarer shall be paid monthly a lump sum for overtime worked calculated at **160 hours** at the hourly overtime rate without prejudice to any further claim for payment for overtime hours worked in excess of this figure. x x x

Leave
[Sec.] 11

11.1 Each seafarer shall, on the termination of employment for whatever reason, be entitled to payment of **7 days' leave** for each completed month of service and pro rata for a shorter period.

11.2 Payment for leave shall be at the rate of pay applicable at the time of termination plus a daily allowance as specified in ANNEX 4. x x x

Under 11.2 of the CBA, aside from leave pay, the seafarer shall also be entitled to a daily allowance as specified in Annex 4 thereof. Annex 4[115] of the CBA provides:

ANNEX 4
Schedule of Cash Benefits

x x x x x x x x x

Article 11
Leave:

Daily Allowance whilst on paid leave: US$ 18

The terms and conditions of Manuel's employment contract[116] mentioned above would readily show that respondents indeed

[115] *Id.* at 371.

[116] *Id.* at 349.

committed to give him guaranteed overtime pay for 103 hours; leave pay of seven days for each completed month in the sum of US$174.00 per month plus daily allowance/subsistence allowance of US$18 while on paid leave or a total of US$126.00 per month, as well as owner's bonus in the amount of $100.00 a month.

With respect to the guaranteed overtime pay, considering that no overtime records were presented by the respondents, following Article 6.5 of the CBA, the same shall be pegged at 160 hours per month at the rate of 1.25 of Manuel's basic hourly rate.

At this juncture, the Court must note that the aforesaid Articles 6 and 11 are nowhere to be found in the copy of the CBA that is attached to the records of this case. Be that as it may, the Court cannot simply disregard the same. It bears stressing that respondents were fully apprised of these claims at the outset since these claims were already included and fully discussed by the petitioner in her Position Paper.[117] Respondents, in fact, responded thereto by filing their Reply (To Complainant's Position Paper)[118] and their Rejoinder.[119] In the said pleadings, respondents never denied that the CBA as well as Manuel's Employment Contract provided for these benefits. Their defense is that they are no longer liable for these benefits since they had already been paid. As proof, they adduced the following pieces of evidence: (a) acknowledgement receipt for the payment of wages in the amount of US$670.30, duly signed by the petitioner;[120] (b) check voucher for the said amount;[121] (c) Wages Account[122] for the period covering October 1, 2013 to October 8, 2013 itemizing the benefits included in the US$670.30 payment

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[117] *Id.* at 324-347.

[118] *Id.* at 406-421.

[119] *Id.* at 469-480.

[120] *Id.* at 168.

[121] *Id.* at 169.

[122] *Id.* at 170.

as follows: (1) basic wage; (2) fixed overtime; (3) owner's bonus; (4) leave pay; and (5) EWA; and (d) proof of remittance of allotment to Manuel's bank account.[123]

Contrary to the claim of respondents, the evidence they presented only prove payment of the aforementioned benefits from October 1 to October 8, 2013. The remittance of allotment to Manuel's bank account they made on August 6, 2013, September 6, 2013 and October 1, 2013 do not establish payment of the subject benefits as respondents failed to show what these payments had been for. If these allotments were for the guaranteed overtime pay, leave pay plus daily allowance and owner's bonus, respondents could have easily presented a similar Wages Account like the one they presented for the October 1 to 8, 2013 payment for the subject benefits considering that the Wages Account form appears to be a standard form issued by the respondents to its employees whenever they release payments to them.

For these reasons, the CA erred in deleting the awards for overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus. However, considering that Manuel commenced working for the respondents on June 25, 2013, and the petitioner had already received the said benefits for the period covering October 1 to October 8, 2013, respondents shall be liable for overtime pay, leave pay, daily allowance/subsistence allowance and owner's bonus for 3 months and 5 days only, instead of four months.

Petitioner is not entitled to uncollected: salary, moral damages, exemplary damages and attorney's fee.

As discussed above, since respondents were able to duly prove, and the petitioner had already received the amount of US$670.03 representing Manuel's uncollected salary, the CA correctly deleted the same.

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[123] *Id.* at 171-176.

Petitioner is also not entitled to moral damages, exemplary damages and attorney's fees as these forms of indemnity may only be imposed on a concrete showing of bad faith or malice on the part of the respondents.[124] In this case, the refusal of the respondents to pay the benefits being claimed by the petitioner, and the delay in the eventual release of the last salary of Manuel, did not arise out of bad faith, but brought about by their firm belief of petitioner's lack of entitlement thereto and the merits of their cause. The mere failure of the respondents to furnish the petitioner with a copy of the CBA does not establish bad faith. It must be taken into account that the terms of the employment contract of Manuel had been faithful to the benefits spelled out in the said CBA, thereby negating petitioner's claim that respondents intended to conceal and mislead her into thinking that no CBA applied to Manuel's employment. Petitioner also failed to substantiate her claim that there indeed had been a police investigation report proving that Manuel had been killed which respondents suppressed. As with the said police investigation report, there is also no showing that respondents did not procure the mandatory life insurance policy for Manuel. No proof was also shown to support petitioner's claim that respondents did not extend any form of assistance in the repatriation of Manuel or that they berated her when she sought the assistance of the government for the said repatriation. Petitioner's contention that respondents' decision to bring the remains of her husband to Sri Lanka, instead of Dammam, Saudi Arabia had been sudden and tainted with bad faith is belied by her very own written consent where she agreed that the autopsy of the remains of the deceased shall be performed by the authorities in Sri Lanka.[125] For these reasons, the CA had been correct in deleting the said awards.

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[124] *Maersk-Filipinas Crewing, Inc. v. Malicse*, G.R. Nos. 200576 & 200626, November 20, 2017; *supra* note 112, at 85.

[125] CA *rollo*, p. 207.

The monetary benefits awarded to the petitioner shall earn legal interest at the rate of 6% per annum from the date of the finality of the Decision until fully paid

The case of *Lara's Gifts & Decor, Inc. v. Midtown Industrial Sales, Inc.*[126] clarified the correct rate of imposable interest, thus:

To summarize the guidelines on the imposition of interest as provided in *Eastern Shipping Lines* and *Nacar* are further modified for clarity and uniformity, as follows:

With regard to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof is imposed, as follows:

1. **When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, goods, credits or judgments, the interest due shall be that which is stipulated by the parties in writing, provided it is not excessive and unconscionable, which, in the absence of a stipulated reckoning date, shall be computed from default, *i.e.,* from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by the parties, by law or regulation. Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.**

2. **In the absence of stipulated interest, in a loan or forbearance of money, goods, credits or judgments, the rate of interest on the principal amount shall be the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas*, which shall be computed from default, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by law or regulation. Interest due on the principal amount accruing as of judicial demand shall**

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[126] G.R. No. 225433, August 28, 2019.

SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.

3. **When the obligation, not constituting a loan or forbearance of money, goods, credits or judgments, is breached, an interest on the amount of damages awarded may be imposed *in the discretion of the court* at the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas*, pursuant to Article 2210 and 2011 of the Civil Code. No interest, however, shall be adjudged on unliquidated claims or damages until the demand can be established with reasonable certainty. Accordingly, where the amount of the claim or damages is established with reasonable certainty, the prevailing legal interest shall begin to run from the time the claim is made extrajudicially or judicially (Art. 1169, Civil Code) UNTIL FULL PAYMENT, but when such certainty cannot be so reasonably established at the time the demand was made, the interest shall begin to run only from the date of the judgment of the trial court (at which time the quantification of damages may be deemed to have been reasonably ascertained) UNTIL FULL PAYMENT. The actual base for the computation of the interest shall, in any case, be on the principal amount finally adjudged, without compounding any interest unless compounded interest is expressly stipulated by law or regulation.** (Emphases in the original; citations omitted)

Based on the prevailing jurisprudence, the actual base for the computation of 6% per annum legal interest (the prevailing legal interest prescribed under Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013)[127] of the total monetary awards shall be the amount finally adjudged, that is from the finality of this judgment until their full satisfaction.[128]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The assailed October 13, 2015 Decision and the April 12, 2016 Resolution of the Court of Appeals in CA-G.R. SP. No. 139455 are **AFFIRMED with**

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[127] *Id.*

[128] See *Transglobal Maritime Agency, Inc. v. Chua, Jr.*, G.R. No. 222430, August 30, 2017.

MODIFICATION, in that aside from the US$89,100.00 death benefits and reimbursement for transportation and burial expenses in the amount of ₱162,080.00, respondents are also adjudged liable to pay the petitioner the following: (a) guaranteed overtime pay for 160 hours a month at the rate of 1.25 of Manuel's basic hourly rate for three (3) months and five days; (b) leave pay of (7) seven days for each completed month in the sum of US$174.00 per month for three (3) months and five (5) days; (c) daily allowance/subsistence allowance of US$18.00 while on paid leave or a total of US$126.00 per month for three (3) months and five (5) days; and (d) owner's bonus of US$100.00 a month for three (3) months and five (5) days. The monetary awards granted shall earn legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.

The case is **REMANDED** to the Panel of Voluntary Arbitrators for the proper computation of the monetary benefits awarded.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), *Lazaro-Javier*, and *Lopez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 226043. February 3, 2020]

HEIRS OF SALVADOR and SALVACION LAMIREZ, namely MARTHA, JHONY, and JAVIER LAMIREZ, represented by DOLORES PARREÑAS; HEIRS OF ALFONSO and FLORINDA ESCLADA, namely ABELARDO, ALFREDO, HELEN, MARILYN, ELIZABETH, and ALFONSO, JR., represented by GILDA E. LACANDULA; and HEIRS OF PROVIDENCIA and RODRIGO LLUPAR,

represented by ETHELDA LLUPAR,[1] *petitioners, vs.* **SPOUSES AHMED AMPATUAN and CERILA R. AMPATUAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; CONCEPTS; BAR BY PRIOR JUDGMENT AND CONCLUSIVENESS OF JUDGMENT, DISTINGUISHED. — *Res judicata* is a legal principle where a party is barred from raising an issue or presenting evidence on a fact that has already been judicially tried and decided. It is "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." The application of the principle is provided under Rule 39, Section 47 of the Rules of Court x x x. As explained in *Presidential Decree No. 1271 Committee v. De Guzman*, *res judicata* is premised on the idea that judgments must be final and conclusive; otherwise, there would be no end to litigation. In applying *res judicata*, courts must first distinguish between two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment. In *Spouses Aboitiz v. Spouses Po*, this Court explained the difference between the two: *Res judicata* in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action." It applies when the following are present: (a) there is a final judgment or order; (b) it is a judgment or order on the merits; (c) it was "rendered by a court having jurisdiction over the subject matter and parties"; and (d) there is "identity of parties, of subject matter, and of causes of action" between the first and second actions. *Res judicata* in the concept of conclusiveness of judgment applies when there is an identity of issues in two (2) cases between the same parties involving different causes of action. Its effect is to bar "the relitigation of particular facts or issues" which have already been adjudicated in the other case.

2. ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; ANY RIGHT, FACT OR MATTER IN ISSUE DIRECTLY ADJUDICATED OR NECESSARILY INVOLVED IN THE DETERMINATION OF AN ACTION BEFORE A

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[1] The spelling of the names varies throughout the *rollo*.

COMPETENT COURT IN WHICH JUDGMENT IS RENDERED ON THE MERITS, IS CONCLUSIVELY SETTLED BY THE JUDGMENT THEREIN AND CANNOT AGAIN BE LITIGATED BETWEEN THE PARTIES AND THEIR PRIVIES WHETHER OR NOT THE CLAIM, DEMAND, PURPOSE, OR SUBJECT MATTER OF THE TWO ACTIONS IS THE SAME; ONLY THE IDENTITIES OF PARTIES AND ISSUES ARE REQUIRED FOR THE OPERATION OF THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT. — Since the Court of Appeals reasoned that the specific performance case would involve a re-litigation of the same facts or issues as the recovery of possession case, the more accurate concept would have been conclusiveness of judgment. In *Spouses Antonio v. de Monje*: [W]here there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. Stated differently, conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.

3. **ID.; ID.; ID.; ID.; *RES JUDICATA* IN THE CONCEPT OF BAR BY PRIOR JUDGMENT IS NOT APPLICABLE**

WHERE THE RIGHTS ASSERTED AND THE RELIEFS PRAYED FOR ARE DIFFERENT IN THE TWO CASES, ALTHOUGH THE IDENTITY OF THE PARTIES IS THE SAME; THE FINALITY OF THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) ON THE RECOVERY OF POSSESSION CASE, WOULD NOT BAR THE ADJUDICATION OF THE PRESENT SPECIFIC PERFORMANCE CASE, AS THE RIGHTS ASSERTED AND THE RELIEFS PRAYED FOR ARE DIFFERENT IN THE TWO CASES AND THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD HAS NO JURISDICTION OVER AN ACTION FOR SPECIFIC PERFORMANCE CASE. — In this case, the Court of Appeals seems to have confused the two concepts. It held that there was already "bar by prior judgment" even if the case for recovery of possession and the action for specific performance had different rights asserted and reliefs sought. It reasoned that "the resolution on the second case . . . as to whether [respondents] may be obliged to comply with the assailed provision in the Compromise Agreement, *i.e.*, to offer the land to the government under [the Voluntary Offer to Sell] scheme, essentially hinges on the rights that have been previously determined with finality" in the first case. While the identity of the parties is the same, the rights asserted and the reliefs prayed for are different in the two cases. In the recovery of possession case, respondents asserted their alleged right of ownership and prayed for recovery of possession and payment of leasehold rentals under agrarian reform laws. In the specific performance case, petitioners assert their rights in the Compromise Agreement and pray for its enforcement. The Department of Agrarian Reform Adjudication Board likewise has no jurisdiction over an action for specific performance. Strictly speaking, the finality of the first case would not bar the adjudication of the present case.

4. ID.; ID.; ID.; ID.; *RES JUDICATA* THROUGH CONCLUSIVENESS OF JUDGMENT WOULD NOT LIE WHERE THE ISSUES RAISED IN A SUBSEQUENT ACTION HAVE NOT BEEN FULLY RESOLVED IN A PRIOR JUDGMENT; THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD'S DECISION IN THE RECOVERY OF POSSESSION CASE CANNOT OPERATE AS *RES JUDICATA* THROUGH CONCLUSIVENESS OF JUDGMENT,

AS IT NEVER PASSED UPON THE RESPONDENTS' COMPLIANCE WITH THE STIPULATIONS IN THE COMPROMISE AGREEMENT, WHICH WAS THE ISSUE RAISED IN THE SUBSEQUENT ACTION FOR SPECIFIC PERFORMANCE. — Properly couched, the issue raised in petitioner's action for specific performance is whether respondents can be compelled to comply with the stipulations in the Compromise Agreement. To pass upon this issue, the trial court must address the preliminary issue of whether respondents actually complied with the stipulations in the Compromise Agreement. This must be conclusively resolved first before the Decision in the recovery of possession case can operate as *res judicata* through conclusiveness of judgment. A review of its Decision, however, shows that the Department of Agrarian Reform Adjudication Board never actually passed upon the issue of compliance. It merely stated that petitioners, being agrarian reform beneficiaries, were obligated to pay leasehold rentals to respondents x x x. Respondents did not magically acquire titles to the disputed property. Any legal right they possessed was by virtue of their Compromise Agreement with petitioners. It was imperative, therefore, that respondents first comply with its stipulations before asserting any rights under it. Moreover, a perusal of the Compromise Agreement shows that its main intent was to prevent petitioners' predecessors-in-interest, the disputed lot's actual occupants and cultivators, from being displaced. It expressly mandated that they "shall not be displaced and transferred to any area without their respective consent [.] By instituting the case for recovery of possession, respondents would have violated the stipulations of the Compromise Agreement, since a favorable decision has the effect of displacing petitioners' predecessors-in-interest without their consent. Petitioners' predecessors-in-interest could then institute an action to protect their rights under the same agreement. The Department of Agrarian Reform Adjudication Board's Decision, therefore, had no effect on the validity of the Compromise Agreement, because the ruling did not pass upon any of its stipulations. Since the issues have not been fully resolved, petitioners, as the successors-in-interest, could institute an action for the enforcement of the Compromise Agreement. *Res judicata* would not lie.

5. **ID.; ID.; ID.; COMPROMISE JUDGMENT; NEITHER THE COURTS NOR QUASI-JUDICIAL BODIES CAN IMPOSE**

UPON THE PARTIES A JUDGMENT DIFFERENT FROM THEIR COMPROMISE AGREEMENT OR AGAINST THE VERY TERMS AND CONDITIONS OF THEIR AGREEMENT WITHOUT CONTRAVENING THE PRINCIPLE THAT A CONTRACT IS THE LAW BETWEEN THE PARTIES. — Strangely, the Department of Agrarian Reform Adjudication Board concluded that it was petitioners, not respondents, who refused to comply with the Compromise Agreement by allegedly refusing to pay their tenurial dues—an obligation *not actually stipulated* in the Compromise Agreement. In *Viesca v. Gilinsky*: [I]t is settled that neither the courts nor quasi-judicial bodies can impose upon the parties a judgment different from their compromise agreement or against the very terms and conditions of their agreement without contravening the universally established principle that a contract is the law between the parties. The courts can only approve the agreement of parties. They cannot make a contract for them.

6. **ID.; ID.; ID.; ID.; *RES JUDICATA* THROUGH BAR BY PRIOR JUDGMENT WILL NOT LIE WHERE THE PRIOR JUDGMENT WAS ISSUED BY A TRIBUNAL HAVING NO JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION; *RES JUDICATA* THROUGH BAR BY PRIOR JUDGMENT WOULD NOT LIE BECAUSE THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) WHICH RENDERED THE DECISION HAS NO JURISDICTION OVER THE SUBJECT MATTER, AS THE LAND HOLDING HAS NOT YET BEEN SUBMITTED TO THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM. —** Even assuming that the Court of Appeals correctly categorized respondents defense as *res judicata* through bar by prior judgment, it would still not lie. This principle requires a prior valid judgment issued by a tribunal having jurisdiction over the subject matter. x x x x x x. Indeed, under the 2003 Rules of Procedure, the Department of Agrarian Reform Adjudication Board has jurisdiction over cases "involving the ejectment and dispossession of tenants and/or leaseholders" or "the review of leasehold rentals[.]" However, this controversy arose precisely because respondents *never submitted the property to the coverage of the Comprehensive Agrarian Reform Program*, as required by the Compromise Agreement. In stating that "at this point of

time, the Ampatuans have yet to subject the landholding" under the Comprehensive Agrarian Reform Program, even the Department of Agrarian Reform Adjudication Board admits this. Yet, it still held that petitioners' predecessors-in-interest, as agrarian reform beneficiaries, should pay leasehold rentals "until such time that said property is covered by the agrarian reform program and its landowners are justly compensated," even if petitioners' predecessors-in-interest were not yet agrarian reform beneficiaries. The Department of Agrarian Reform Adjudication Board assumed jurisdiction over respondents' action based on a condition in the Compromise Agreement that *respondents never actually fulfilled*. In *Department of Agrarian Reform v. Paramount Holdings Equities*, this Court held that the Board had no jurisdiction over disputes arising from properties that had not been the subject of any notice of coverage under the Comprehensive Agrarian Reform Program nor proven to involve agricultural tenancy.

7. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (REPUBLIC ACT NO. 6657); FOR THE DARAB TO ACQUIRE JURISDICTION OVER THE CASE, THERE MUST EXIST A TENANCY RELATION BETWEEN THE PARTIES; INDISPENSABLE ELEMENTS OF TENANCY; NOT PROVED. — The Department of Agrarian Reform Adjudication Board simply presumed that petitioners' predecessors-in-interest became respondents' tenants after the titles had been issued in respondents' names. Tenancy, however, cannot be presumed, but must be proven. As echoed in *Bumagat v. Arribay*, among the requisites to establish tenancy is consent between the parties: [A] case involving agricultural land does not immediately qualify it as an agrarian dispute. The mere fact that the land is agricultural does not *ipso facto* make the possessor an agricultural lessee or tenant. There are conditions or requisites before he can qualify as an agricultural lessee or tenant, and the subject being agricultural land constitutes just one condition. For the DARAB to acquire jurisdiction over the case, there must exist a tenancy relation between the parties. "[I]n order for a tenancy agreement to take hold over a dispute, it is essential to establish all its indispensable elements, to wit: 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to

bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee." Petitioners' predecessors-in-interest never appeared to have consented to be respondents' tenants. Petitioners' filing of the present case was a clear indication of this. There was, thus, no tenurial agreement between the parties.

8. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ANY DECISION RENDERED WITHOUT JURISDICTION OVER THE SUBJECT MATTER IS CONSIDERED A VOID JUDGMENT, WHICH HAS NO BINDING LEGAL EFFECT; WITHOUT A JUDGMENT, *RES JUDICATA* WOULD NOT LIE; PETITIONERS ARE NOT BARRED FROM FILING AN ACTION TO ENFORCE THE STIPULATIONS OF THE COMPROMISE AGREEMENT. — Even if the case for recovery of possession could be considered an agrarian dispute under Republic Act No. 6657, the Department of Agrarian Reform Adjudication Board would still have no jurisdiction over it. Rule II, Section 1.11 of the 2003 Rules of Procedure provides that the Board, as with the Provincial Adjudicator, has jurisdiction over cases that involve determining agricultural land titles "for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding[.]" To be clear, neither petitioners nor their predecessors-in-interest disputed the issuance of titles in respondents' names. All they asked for was that respondents comply with their part of the Compromise Agreement and submit the property under the Comprehensive Agrarian Reform Program. In any case, determinations of titles under Section 1.11 must be made for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries. Since respondents had yet to submit the property under the Comprehensive Agrarian Reform Program, any determination on the preservation of the tenure of petitioners, or their predecessors-in-interest, would have been premature. The Department of Agrarian Reform Adjudication Board, therefore, had no jurisdiction over respondents' action. Worse, its Decision effectively rewarded respondents for blatantly violating the terms of the Compromise Agreement while penalizing petitioners for refusing to comply with an obligation that was never stipulated in the Compromise Agreement. Any decision rendered without

jurisdiction over the subject matter is considered a void judgment, which has no binding legal effect. Without a judgment, then, *res judicata* would not lie. In *Amoguis v. Ballado*: Where there is no jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment has absolutely no legal effect, "by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void." Because there is in effect no judgment, *res judicata* does not apply to commencing another action despite previous adjudications already made. There being no *res judicata*, either through conclusiveness of judgement or bar by prior judgment, petitioners are not barred from filing an action to enforce the stipulations of the Compromise Agreement.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Benjamin P. Fajardo, Jr. for respondents.

D E C I S I O N

LEONEN, *J.*:

Res judicata bars a party from raising an issue or matter that has already been decided on with finality. There can be no *res judicata* where the issues raised in a subsequent action have never been passed upon in the prior judgment. *Res judicata* will likewise not lie if the prior decision was decided by a tribunal not having jurisdiction over the subject matter.

This Court resolves a Petition for Review on *Certiorari*[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals,

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[2] *Rollo*, pp. 11-34.

[3] *Id.* at 36-45. The January 15, 2016 Decision was penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos of the Twenty-Third Division of the Court of Appeals, Cagayan de Oro City.

[4] *Id.* at 51-52. The June 29, 2016 Resolution was penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices

which affirmed the Regional Trial Court's dismissal[5] of an action for specific performance on the ground of *res judicata*.

This controversy arose from a land dispute brought to the Ministry of Agriculture and Natural Resources, Bureau of Lands in 1981. Spouses Salvador and Salvacion Lamirez, Spouses Alfonso and Florinda Esclada, and Spouses Providencia and Rodrigo Llupar (collectively, the Lamirez Spouses, *et al.*) had a claim against Spouses Ahmed and Cerila Ampatuan (the Ampatuan Spouses) as to who should be entitled over a property in Allah, Esperanza, Sultan Kudarat identified as Lot No. 1562-B, Pls-397-D.[6]

On June 18, 1996, the parties agreed to settle the case through a Compromise Agreement. It provided that the disputed property would be titled in the Ampatuan Spouses' names, but once titled, they would be offering the property, through a Voluntary Offer to Sell, to the government under the Comprehensive Agrarian Reform Program. The Lamirez Spouses, *et al.* would be the beneficiaries, with the area they were actually occupying to be tentatively sold at ₱120,000.00 per hectare, the final value depending on the Land Bank of the Philippines' valuation.[7] The Compromise Agreement read:

COMPROMISE AGREEMENT

COME NOW PARTIES in the above-entitled cases, to the Honorable Office of the Land Management Bureau, respectfully submit this compromise agreement as the basis for the final settlement and adjudication of the above-entitled cases upon such terms and conditions which the parties hereby agree, to wit:

1. The lot subject of this conflict shall be titled in the name of the Applicant respondent and/or his wife CERILA AMPATUAN and

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Edgardo T. Lloren and Rafael Antonio M. Santos of the Twenty-Third Division of the Court of Appeals, Cagayan de Oro City.

[5] *Id.* at 64-67, Resolution; and 68-69, Order. Both rulings in Civil Case No. 23 were penned by Acting Presiding Judge Jordan H. Reyes of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19.

[6] *Id.* at 37.

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

the papers for the perfection of his/their rights thereto may henceforth be processed so that titles to the afore-stated conflicted areas be issued to them;

2. That subject area once titled to the said applicant-respondent and/or his wife shall be offered to the government under the scheme of voluntary offer for sale;

3. That the claimants/protestants who are actually occupying the portion of the area covered by titles issued to applicant-protestant and or his wife shall be the beneficiaries of the actual area they actually occupy of the date of the execution hereof and shall not be displaced and transferred to any area without their respective consent;

4. That the actual area occupied by protestants shall be sold to them thru VOS at a price of ONE HUNDRED TWENTY THOUSAND PESOS per hectare, provided that in the event the valuation thereof by the Land Bank shall be less than the said amount, the protestants shall pay the applicant respondent the difference thereof upon such terms and conditions that may be entered into by the parties later;

5. That this compromise agreement is entered into by the parties on main intent that the parties who are the actual occupants on the land shall not be displaced;

6. That this compromise agreement not being contrary to law, morals, public order and public policy, the same is prayed for by the parties to be admitted and made final basis for the Adjudication of this case.[8]

Pursuant to the Compromise Agreement, the Bureau of Lands issued titles in the Ampatuan Spouses' names on February 28, 1997. Original Certificate of Title No. P-17169 was issued to Ahmed Ampatuan while Original Certificate of Title No. 17170 was issued to Cerila Ampatuan. Consequently, the Compromise Agreement became the basis for the Bureau of Lands' disposition of the land dispute.[9]

Sometime after, the Ampatuan Spouses filed a case for recovery of possession and back rentals against the Lamirez Spouses, *et al.* before the Office of the Provincial Agrarian

[8] *Id.*

[9] *Id.* at 38.

Reform Adjudicator (Provincial Adjudicator). They alleged that the Lamirez Spouses, *et al.* refused to pay back rentals over the property while the Voluntary Offer to Sell was still being negotiated. The Lamirez Spouses, *et al.*, on the other hand, alleged that they demanded the Ampatuan Spouses to comply with the Compromise Agreement, but the latter refused to do so.[10]

On October 25, 2004, the Provincial Adjudicator rendered a Decision in favor of the Ampatuan Spouses and ordered the Lamirez Spouses, *et al.* to immediately cease cultivation of the land and to vacate the property.[11] The dispositive portion of the Decision read:

WHEREFORE, in view of the foregoing judgment is hereby rendered:

1) Ordering all respondents, or any person or entity acting for and in their behalf, to immediately cease and desist from cultivating the following landholding subject of the complaint:

a) Lot No. 2088-E-1, Csd-12-006291 of an area of 72,964 square meters, more or less, registered in the name of Ahmed Ampatuan on March 19, 1997 under Original Certificate of Title No. 17170 (FP-126503-97-21447) and located at Allah, Esperanza, Sultan Kudarat;

b) Lot No. 2088-E-2, Csd-12-006291 of an area of 76,742 square meters, more or less, registered in the name of Ahmed K. Ampatuan on March 19, 1997 under Original Certificate of Title No. 17169 (FP-126503-97-21448) and located at Allah, Esperanza, Sultan Kudarat.

2) Ordering same respondents, or any person acting for and in their stead, to peacefully vacate said landholding and surrender the same in favor of complainants, namely, Ahmed Ampatuan and Cerila Ampatuan, or their duly authorized representatives.[12]

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

[11] *Id.* at 39.

[12] *Id.*

The Provincial Adjudicator found that until the property in issue was placed under the Comprehensive Agrarian Reform Program's coverage, the Ampatuan Spouses remained the landowners and the Lamirez Spouses, *et al.* were their tenants. As such, while the payment of rentals was not in the Compromise Agreement, the Lamirez Spouses, *et al.*, as tenants, were obligated to pay lease rentals to the Ampatuan Spouses.[13]

The Lamirez Spouses, *et al.* appealed, but the Department of Agrarian Reform Adjudication Board Central Office, in its February 22, 2007 Decision, affirmed the Provincial Adjudicator's ruling. They moved for reconsideration, but their Motion was also denied.[14]

Undaunted, the Lamirez Spouses, *et al.* filed a Petition for *Certiorari*, but even this was also denied by the Court of Appeals in a September 18, 2009 Decision. An Entry of Judgment dated February 4, 2010 certified that the September 18, 2009 Decision became final and executory on November 11, 2009. A Writ of Execution was issued by the Provincial Adjudicator on August 12, 2010.[15]

On November 12, 2010, the Heirs of Salvador and Salvacion Lamirez, namely Martha, Jhony, and Javier; the Heirs of Alfonso and Florinda Esclada, namely Abelardo, Alfredo, Helen, Marilyn, Elizabeth, and Alfonso, Jr.; and the Heirs of Providencia and Rodrigo Llupar (collectively, the Heirs of the Lamirez Spouses, *et al.*) filed a Complaint for specific performance or damages, seeking the enforcement of the Compromise Agreement. In their Answer with Counterclaim, the Ampatuan Spouses raised the defense of *res judicata*.[16]

On August 2, 2012, the Regional Trial Court issued a Resolution[17] dismissing the Complaint on the ground of *res*

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

[14] *Id.* at 39.

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

[16] *Id.* at 40.

[17] *Id.* at 64-67.

judicata. The subsequent Motion for Reconsideration was also denied in a December 14, 2012 Order.[18] Aggrieved, the Heirs of the Lamirez Spouses, *et al.* appealed[19] to the Court of Appeals.

On January 15, 2016, the Court of Appeals rendered a Decision[20] affirming the Regional Trial Court's findings and legal conclusions.

According to the Court of Appeals, *res judicata* was applicable since the Decision in the recovery of possession case had already determined with finality the parties' rights over the disputed property.[21] It found that in their counterclaim, the Heirs of the Lamirez Spouses, *et al.* were able to seek the specific performance of the Compromise Agreement, which had already been resolved by the Department of Agrarian Reform Adjudication Board.[22] It held that they cannot demand that the Ampatuan Spouses offer the land pursuant to the Compromise Agreement, since they "acted in bad faith in refusing to fulfill their tenurial obligations to the [Ampatuan Spouses]":[23]

It must be noted that DARAB Decision had become final and executory when this Court denied appellants' petition for certiorari and thereby issued an Entry of Judgment of the appealed case dated 4 February 2010. What is clearly established in the administrative case is the existence of tenurial relations between the parties with appellees as owners of the land and appellants as farmer-tenants thereof. As per Compromise Agreement, appellants conceded to the titling of the area in dispute in the name of appellees with the corresponding arrangement that the same will be eventually offered under the CARP through the VOS scheme with appellants as beneficiaries. The execution of the instrument cured the unauthorized entry, occupation and cultivation of the landholding by appellants but not their failure and continued refusal to pay lease rentals to the appellees even upon

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[18] *Id.* at 68-69.

[19] *Id.* at 40.

[20] *Id.* at 36-45.

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

[22] *Id.* at 44.

[23] *Id.* at 42.

and after the effectivity of their agreement, as aptly stressed by the DARAB.[24]

The Heirs of the Lamirez Spouses, *et al.* moved for reconsideration,[25] but their Motion was denied in a June 29, 2016 Resolution.[26] Hence, they filed this Petition.[27]

Petitioners argue that the prior Decision on the recovery of possession case did not operate as *res judicata* to this case. They contend that while there was an identity of parties,[28] there was no identity of rights asserted and reliefs prayed for. They claim that respondents filed the previous case based on a right of ownership and prayed for recovery of possession and back rentals; meanwhile, they filed the specific performance case based on their rights under the Compromise Agreement, with its enforcement as the relief sought.[29]

Petitioners likewise argue that since respondents were only able to acquire titles to the disputed property through the Compromise Agreement, their refusal to comply constitutes bad faith.[30]

Respondents counter[31] that petitioners were the ones found to have acted in bad faith by not fulfilling their tenurial obligations under the Compromise Agreement, which in turn prevented respondents from performing their reciprocal obligations. They point out that in the recovery of possession case, petitioners had already pursued the same cause of action—specific performance—in their counterclaim, which was later

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[24] *Id.*

[25] *Id.* at 46-49.

[26] *Id.* at 51-52.

[27] *Id.* at 11-34.

[28] *Id.* at 21.

[29] *Id.* at 22.

[30] *Id.* at 23.

[31] *Id.* at 91-94, Comment.

found unmeritorious. Thus, respondents insist that there was no error in the application of *res judicata* in this present case.[32]

In rebuttal,[33] petitioners contend that whether they pay rentals was not a condition for respondents to refuse to comply with the Compromise Agreement. They also maintain that the recovery of possession case and this present case were founded on different causes of action.[34]

From the parties' arguments, the issue before this Court is whether or not the Court of Appeals erred in holding that the action seeking the Compromise Agreement's enforcement was barred by the Department of Agrarian Reform Adjudication Board's final and executory Decision on the payment of leasehold rentals.

I

Res judicata is a legal principle where a party is barred from raising an issue or presenting evidence on a fact that has already been judicially tried and decided. It is "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[35] The application of the principle is provided under Rule 39, Section 47 of the Rules of Court:

> SECTION 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> . . . .
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> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that

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[32] *Id.* at 92-93.

[33] *Id.* at 104-108, Reply.

[34] *Id.* at 105.

[35] *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731, 763 (2016) [Per *J.* Leonen, Second Division] citing *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551, 563 (2002) [Per *J.* Quisumbing, Second Division].

could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

As explained in *Presidential Decree No. 1271 Committee v. De Guzman*,[36] *res judicata* is premised on the idea that judgments must be final and conclusive; otherwise, there would be no end to litigation.[37]

In applying *res judicata*, courts must first distinguish between two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment. In *Spouses Aboitiz v. Spouses Po*,[38] this Court explained the difference between the two:

Res judicata in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action." It applies when the following are present: (a) there is a final judgment or order; (b) it is a judgment or order on the merits; (c) it was "rendered by a court having jurisdiction over the subject matter and parties"; and (d) there is "identity of parties, of subject matter, and of causes of action" between the first and second actions.

Res judicata in the concept of conclusiveness of judgment applies when there is an identity of issues in two (2) cases between the same parties involving different causes of action. Its effect is to bar "the relitigation of particular facts or issues" which have already been adjudicated in the other case.[39] (Citations omitted)

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[36] 801 Phil. 731 (2016) [Per *J.* Leonen, Second Division].

[37] *Id.* at 765.

[38] 810 Phil. 123 (2017) [Per *J.* Leonen, Second Division].

[39] *Id.* at 152-153.

In this case, the Court of Appeals seems to have confused the two concepts. It held that there was already "bar by prior judgment"[40] even if the case for recovery of possession and the action for specific performance had different rights asserted and reliefs sought. It reasoned that "the resolution on the second case . . . as to whether [respondents] may be obliged to comply with the assailed provision in the Compromise Agreement, *i.e.*, to offer the land to the government under [the Voluntary Offer to Sell] scheme, essentially hinges on the rights that have been previously determined with finality"[41] in the first case.

While the identity of the parties is the same, the rights asserted and the reliefs prayed for are different in the two cases. In the recovery of possession case, respondents asserted their alleged right of ownership and prayed for recovery of possession and payment of leasehold rentals under agrarian reform laws. In the specific performance case, petitioners assert their rights in the Compromise Agreement and pray for its enforcement. The Department of Agrarian Reform Adjudication Board likewise has no jurisdiction over an action for specific performance. Strictly speaking, the finality of the first case would not bar the adjudication of the present case.

Since the Court of Appeals reasoned that the specific performance case would involve a re-litigation of the same facts or issues as the recovery of possession case, the more accurate concept would have been conclusiveness of judgment. In *Spouses Antonio v. de Monje*:[42]

> [W]here there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court

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[40] *Rollo*, p. 41.

[41] *Id.* at 42.

[42] 646 Phil. 90 (2010) [Per *J.* Peralta, Second Division].

in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

Stated differently, conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.[43]

Properly couched, the issue raised in petitioner's action for specific performance is whether respondents can be compelled to comply with the stipulations in the Compromise Agreement. To pass upon this issue, the trial court must address the preliminary issue of whether respondents actually complied with the stipulations in the Compromise Agreement. This must be conclusively resolved first before the Decision in the recovery of possession case can operate as *res judicata* through conclusiveness of judgment.

A review of its Decision, however, shows that the Department of Agrarian Reform Adjudication Board never actually passed upon the issue of compliance. It merely stated that petitioners, being agrarian reform beneficiaries, were obligated to pay leasehold rentals to respondents:

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[43] *Id.* at 99-100 citing *Agustin v. Delos Santos*, 596 Phil. 630 (2009) [Per *C.J.* Puno, First Division]; *Hacienda Bigaa, Inc. v. Epifanio V. Chavez*, 632 Phil. 574 (2010) [Per *J.* Brion, Second Division]; *Chris Garments Corporation v. Sto. Tomas*, 596 Phil. 14 (2009) [Per *J.* Quisumbing, Second Division]; and *Heirs of Rolando N. Abadilla v. Galarosa*, 527 Phil. 264 (2006) [Per *J.* Austria-Martinez, First Division].

The execution of their Compromise Agreement only beefed up with clarity and certainty the respective rights and obligations of both parties. While at this point of time, the Ampatuans have yet to subject the landholding in issue to CARP coverage, there are no manifest indications that complainants reneged from their commitment to offer the same. Henceforth, until such time that said property is covered by the agrarian reform program and its landowners are justly compensated, respondents as farmer-beneficiaries therein are bound by law to pay the appropriate lease rentals to the complainants as recognized landowners. Such tenurial obligations respondents concertedly failed and intentionally refused to perform. Respondents as farmer-beneficiaries, are deemed tenant lessees and are bound to perform their obligations as such viz-a-viz their rights and privileges. They cannot deny from carrying out that duty. Yet, as records would show, respondents vehemently declined to comply, save perhaps on account of a fortuitous event or *force majeure* which they have failed to show.

Worthy to emphasize that, in case the land is covered by the CARP and pursuant to the doctrine laid down in YAP cases (G.R. Nos. 118712 and 118745, the DAR issued Administrative Order No. 02 Series of 1996 which states:

> III. POLICY:
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> . . . .
>
> B. If the land is tenanted, the ARBs shall continue to pay lease rentals based on existing guidelines on leasehold operations until such time that the landowner signs the Deed of Transfer, or the LBP deposits the compensation proceeds in the name of the landowner, as the case may be. In case there is any standing crop on the land at the time of acquisition, the landowner shall retain his share of the harvest thereof pursuant to Section 28 of RA 6657 and other related laws.

Their argument that it has never been stipulated in the Compromise Agreement that they must pay lease rentals to the Ampatuans bears no legal excuse. Treated so, respondents are really obliged to pay lease rentals to complainants but which as records in the case would show, they have failed to comply for no justifiable reason. Since it is their persistence that they should be named as agrarian reform beneficiaries (ARBs) over the disputed landholding, they must logically, in turn, instill that tenurial obligation to continue paying lease rentals to the landowners, complainants therein, until such time

that the latter is fully and justly compensated by the Land Bank.[44] (Citation omitted)

For reference, the Compromise Agreement stipulated that after respondents have acquired titles to the property, the property should be offered for sale to the government under the Comprehensive Agrarian Reform Program:

2. That subject area once titled to the said applicant-respondent and/or his wife shall be offered to the government under the scheme of voluntary offer for sale;

3. That the claimants/protestants who are actually occupying the portion of the area covered by titles issued to applicant-protestant and or his wife shall be the beneficiaries of the actual area they actually occupy of the date of the execution hereof and shall not be displaced and transferred to any area without their respective consent;

. . . .

5. That this compromise agreement is entered into by the parties on main intent that the parties who are the actual occupants on the land shall not be displaced[.][45]

Even the Department of Agrarian Reform Adjudication Board conceded that respondents had yet to fulfill the stipulations in the Compromise Agreement when it stated that "at this point of time, the Ampatuans have yet to subject the landholding in issue" under the Comprehensive Agrarian Reform Program.[46] However, it merely brushed aside respondents' noncompliance by stating that "there [were] no manifest indications"[47] that they would renege on their commitments. It did ***not*** make a conclusive judgment that respondents had complied with the stipulations in the Compromise Agreement.

Strangely, the Department of Agrarian Reform Adjudication Board concluded that it was petitioners, not respondents, who

[44] *Rollo*, pp. 42-43.

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

[46] *Id.* at 42.

[47] *Id.*

refused to comply with the Compromise Agreement by allegedly refusing to pay their tenurial dues—an obligation *not actually stipulated* in the Compromise Agreement. In *Viesca v. Gilinsky*:[48]

> [I]t is settled that neither the courts nor quasi-judicial bodies can impose upon the parties a judgment different from their compromise agreement or against the very terms and conditions of their agreement without contravening the universally established principle that a contract is the law between the parties. The courts can only approve the agreement of parties. They cannot make a contract for them.[49]

Respondents did not magically acquire titles to the disputed property. Any legal right they possessed was by virtue of their Compromise Agreement with petitioners. It was imperative, therefore, that respondents first comply with its stipulations before asserting any rights under it.

Moreover, a perusal of the Compromise Agreement shows that its main intent was to prevent petitioners' predecessors-in-interest, the disputed lot's actual occupants and cultivators, from being displaced. It expressly mandated that they "shall not be displaced and transferred to any area without their respective consent[.]"[50]

By instituting the case for recovery of possession, respondents would have violated the stipulations of the Compromise Agreement, since a favorable decision has the effect of displacing petitioners' predecessors-in-interest without their consent. Petitioners' predecessors-in-interest could then institute an action to protect their rights under the same agreement.

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[48] 553 Phil. 498 (2007) [Per *J.* Chico-Nazario, Third Division].

[49] *Id.* at 522-523 citing *Philippine Bank of Communications v. Echiverri*, 197 Phil. 842 (1980) [Per *J.* Teehankee, First Division]; *Municipal Board of Cabanatuan City v. Samahang Magsasaka, Inc.*, 159 Phil. 493 (1975) [Per *J.* Esguerra, First Division]; and *De Guia v. Romillo, Jr.*, 262 Phil. 524 (1990) [Per *J.* Griño-Aquino, First Division].

[50] *Rollo*, p. 38.

The Department of Agrarian Reform Adjudication Board's Decision, therefore, had no effect on the validity of the Compromise Agreement, because the ruling did not pass upon any of its stipulations. Since the issues have not yet been fully resolved, petitioners, as the successors-in-interest, could institute an action for the enforcement of the Compromise Agreement. *Res judicata* would not lie.

II

Even assuming that the Court of Appeals correctly categorized respondents' defense as *res judicata* through bar by prior judgment, it would still not lie. This principle requires a prior valid judgment issued by a tribunal having jurisdiction over the subject matter.

The quasi-judicial powers of the Department of Agrarian Reform had been previously provided in Executive Order No. 229,[51] series of 1987:

> SECTION 17. *Quasi-Judicial Powers of the DAR*. The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

The Department of Agrarian Reform Adjudication Board was a creation of Executive Order No. 129-A,[52] series of 1987, to serve as the administrative arm through which the Department of Agrarian Reform would exercise its quasi-judicial functions:

> SECTION 13. *Agrarian Reform Adjudication Board*. There is hereby created an Agrarian Reform Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of

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[51] Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program.

[52] Reorganization Act of the Department of Agrarian Reform.

the Secretary as members. A Secretariat shall be constituted to support the Board. The Board shall assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board.

When Republic Act No. 6657[53] was enacted, it retained the grant and scope of the Department of Agrarian Reform's jurisdiction:

SECTION 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

Pursuant to its mandate, the Department of Agrarian Reform Adjudication Board promulgated its 1989 Rules of Procedure, which, among others, delegated jurisdiction over agrarian reform cases to the Regional and Provincial Adjudicators:

SECTION 2. *Delegated Jurisdiction*. — The Regional Agrarian Reform Adjudicators (RARAD) and the Provincial Agrarian Reform Adjudicators (PARAD) are empowered and authorized to receive, hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their respective territorial jurisdiction.[54]

Subsequently, the 1994 Rules of Procedure specified the extent of the jurisdiction of the Department of Agrarian Reform Adjudication Board, along with the Regional and Provincial Adjudicators:

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[53] Comprehensive Agrarian Reform Law of 1988.

[54] DARAB RULES OF PROCEDURE (1989), Rule II, Sec. 2 as cited in *Heirs of Zoleta v. Land Bank of the Philippines*, 816 Phil. 389 (2017) [Per *J.* Leonen, Second Division].

RULE II
Jurisdiction of the Adjudication Board

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction*. — The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

d) Those cases arising from or connected with membership or representation in compact farms, farmers' cooperative and other registered farmers' associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) Those involving the sale, alienation, mortgage, foreclosure, preemption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under

Section 12 of Presidential Decree No. 946, except sub-paragraph (q) thereof and Presidential Decree No. 815.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

h) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECTION 2. Jurisdiction of the Regional and Provincial Adjudicator. — The RARAD and the PARAD shall have concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction.

At the time of the dispute before the Department of Agrarian Reform Adjudication Board, the 2003 Rules of Procedure governed. It provides:

RULE II

Jurisdiction of the Board and its Adjudicators

SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by Republic Act (RA) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), and other related agrarian laws;

1.2 The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree (PD) No. 27 and the Comprehensive Agrarian Reform Program (CARP);

1.3 The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the

administration and disposition of the DAR or Land Bank of the Philippines (LBP);

1.4 Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

1.5 Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

1.7 Those cases involving the review of leasehold rentals;

1.8 Those cases involving the collection of amortizations on payments for lands awarded under PD No. 27, as amended, RA No. 3844, as amended, and RA No. 6657, as amended, and other related laws, decrees, orders, instructions, rules, and regulations, as well as payment for residential, commercial, and industrial lots within the settlement and resettlement areas under the administration and disposition of the DAR;

1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlement and re-settlement areas under the administration and disposition of the DAR;

1.10 Those cases involving boundary disputes over lands under the administration and disposition of the DAR and the LBP, which are transferred, distributed, and/or sold to tenant-beneficiaries and are covered by deeds of sale, patents, and certificates of title;

1.11 Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding; and

1.12 Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under

Section 12 of PD No. 946 except those cases falling under the proper courts or other quasi-judicial bodies;

1.13 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECTION 2. *Appellate Jurisdiction of the Board*. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

In its Decision, the Department of Agrarian Reform Adjudication Board assumed its jurisdiction based on the finding that there was a tenurial relationship between the parties. It stated:

[U]ntil such time that said property is covered by the agrarian reform program and its landowners are justly compensated, respondents as farmer-beneficiaries therein are bound by law to pay the appropriate lease rentals to the complainants as recognized landowners. Such tenurial obligations respondents concertedly failed and intentionally refused to perform. Respondents as farmer-beneficiaries, are deemed tenant lessees and are bound to perform their obligations as such viz-a-viz their rights and privileges.[55]

According to this reasoning, petitioners' predecessors-in-interest were deemed "farmer-beneficiaries" under the Comprehensive Agrarian Reform Program, and as such, were obligated to pay leasehold rentals until the landowners could be compensated by the government:

Worthy to emphasize that, in case the land is covered by the CARP and pursuant to the doctrine laid down in YAP cases (G.R. Nos. 118712 and 118745, the DAR issued Administrative Order No. 02 Series of 1996 which states:

III. POLICY:

. . . .

[55] *Rollo*, p. 43.

B. If the land is tenanted, the ARBs shall continue to pay lease rentals based on existing guidelines on leasehold operations until such time that the landowner signs the Deed of Transfer, or the LBP deposits the compensation proceeds in the name of the landowner, as the case may be. In case there is any standing crop on the land at the time of acquisition, the landowner shall retain his share of the harvest thereof pursuant to Section 28 of RA 6657 and other related laws.

Their argument that it has never been stipulated in the Compromise Agreement that they must pay lease rentals to the Ampatuans bears no legal excuse. Treated so, respondents are really obliged to pay lease rentals to complainants but which as records in the case would show, they have failed to comply for no justifiable reason. Since it is their persistence that they should be named as agrarian reform beneficiaries (ARBs) over the disputed landholding, they must logically, in turn, instill that tenurial obligation to continue paying lease rentals to the landowners, complainants therein, until such time that the latter is fully and justly compensated by the Land Bank.[56]

Indeed, under the 2003 Rules of Procedure, the Department of Agrarian Reform Adjudication Board has jurisdiction over cases "involving the ejectment and dispossession of tenants and/or leaseholders"[57] or "the review of leasehold rentals[.]"[58] However, this controversy arose precisely because respondents *never submitted the property to the coverage of the Comprehensive Agrarian Reform Program*, as required by the Compromise Agreement. In stating that "at this point of time, the Ampatuans have yet to subject the landholding"[59] under the Comprehensive Agrarian Reform Program, even the Department of Agrarian Reform Adjudication Board admits this.

Yet, it still held that petitioners' predecessors-in-interest, as agrarian reform beneficiaries, should pay leasehold rentals "until such time that said property is covered by the agrarian

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

[57] DARAB RULES OF PROCEDURE (2003), Rule II, Sec. 1(1.4).

[58] DARAB RULES OF PROCEDURE (2003), Rule II, Sec. 1(1.7).

[59] *Rollo*, p. 42.

reform program and its landowners are justly compensated,"[60] even if petitioners' predecessors-in-interest were not yet agrarian reform beneficiaries.

The Department of Agrarian Reform Adjudication Board assumed jurisdiction over respondents' action based on a condition in the Compromise Agreement that *respondents never actually fulfilled*. In *Department of Agrarian Reform v. Paramount Holdings Equities*,[61] this Court held that the Board had no jurisdiction over disputes arising from properties that had not been the subject of any notice of coverage under the Comprehensive Agrarian Reform Program nor proven to involve agricultural tenancy:

Upon the Court's perusal of the records, it has determined that the PARO's petition with the PARAD failed to indicate an agrarian dispute.

Specifically, the PARO's petition failed to sufficiently allege any tenurial or agrarian relations that affect the subject parcels of land. Although it mentioned a pending petition for coverage filed with DAR by supposed farmers-tillers, there was neither such claim as a fact from DAR, nor a categorical statement or allegation as to a determined tenancy relationship by the PARO or the Secretary of Agrarian Reform. The PARO's petition merely states:

> 3.3 That the Provincial Office only came to know very recently about such transaction when the Office received on two separate occasions a memorandum directive dated 22 October and 25 April 2002 from the Office of the DAR Secretary to investigate and if warranted file a corresponding petition for nullification of such transaction anent the petition for coverage of the actual occupants farmers-tillers led by spouses Josie and Lourdes Samson who informed the Office of the DAR Secretary about such transaction[.]

It is also undisputed, that even the petition filed with the PARAD failed to indicate otherwise, that the subject parcels of land had not been the subject of any notice of coverage under the Comprehensive Agrarian Reform Program (CARP). Clearly, the PARO's cause of action was merely founded on the absence of a clearance to cover

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[60] *Id.* at 43.

[61] 711 Phil. 30 (2013) [Per *J.* Reyes, First Division].

the sale and registration of the subject parcels of land, which were claimed in the petition to be agricultural.

Given the foregoing, the CA correctly ruled that the DARAB had no jurisdiction over the PARO's petition.[62] (Citation omitted)

The Department of Agrarian Reform Adjudication Board simply presumed that petitioners' predecessors-in-interest became respondents' tenants after the titles had been issued in respondents' names. Tenancy, however, cannot be presumed, but must be proven.

As echoed in *Bumagat v. Arribay*,[63] among the requisites to establish tenancy is consent between the parties:

[A] case involving agricultural land does not immediately qualify it as an agrarian dispute. The mere fact that the land is agricultural does not *ipso facto* make the possessor an agricultural lessee or tenant. There are conditions or requisites before he can qualify as an agricultural lessee or tenant, and the subject being agricultural land constitutes just one condition. For the DARAB to acquire jurisdiction over the case, there must exist a tenancy relation between the parties. "[I]n order for a tenancy agreement to take hold over a dispute, it is essential to establish all its indispensable elements, to wit: 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee."[64]

Petitioners' predecessors-in-interest never appeared to have consented to be respondents' tenants. Petitioners' filing of the present case was a clear indication of this. There was, thus, no tenurial agreement between the parties.

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

[63] 735 Phil. 595 (2014) [Per *J.* Del Castillo, Second Division].

[64] *Id.* at 607 citing *Isidro v. Court of Appeals*, 298-A Phil. 481 (1993) [Per *J.* Padilla, Second Division] and *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 643 (2003) [Per *J.* Carpio, First Division].

Even if the case for recovery of possession could be considered an agrarian dispute under Republic Act No. 6657,[65] the Department of Agrarian Reform Adjudication Board would still have no jurisdiction over it.

Rule II, Section 1.11 of the 2003 Rules of Procedure provides that the Board, as with the Provincial Adjudicator, has jurisdiction over cases that involve determining agricultural land titles "for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding[.]"

To be clear, neither petitioners nor their predecessors-in-interest disputed the issuance of titles in respondents' names. All they asked for was that respondents comply with their part of the Compromise Agreement and submit the property under the Comprehensive Agrarian Reform Program. In any case, determinations of titles under Section 1.11 must be made for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries. Since respondents had yet to submit the property under the Comprehensive Agrarian Reform Program, any determination on the preservation of the tenure of petitioners, or their predecessors-in-interest, would have been premature.

The Department of Agrarian Reform Adjudication Board, therefore, had no jurisdiction over respondents' action. Worse, its Decision effectively rewarded respondents for blatantly violating the terms of the Compromise Agreement while penalizing petitioners for refusing to comply with an obligation that was never stipulated in the Compromise Agreement.

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[65] Republic Act No. 6657 (1988), Sec. 3 provides:

SECTION 3. *Definitions*. — For the purpose of this Act, unless the context indicates otherwise:

. . . .

(d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

Any decision rendered without jurisdiction over the subject matter is considered a void judgment, which has no binding legal effect. Without a judgment, then, *res judicata* would not lie. In *Amoguis v. Ballado*:[66]

> Where there is no jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment has absolutely no legal effect, "by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void." Because there is in effect no judgment, *res judicata* does not apply to commencing another action despite previous adjudications already made.[67] (Citations omitted)

There being no *res judicata*, either through conclusiveness of judgement or bar by prior judgment, petitioners are not barred from filing an action to enforce the stipulations of the Compromise Agreement.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' January 15, 2016 Decision and June 29, 2016 Resolution in CA-G.R. CV No. 03201-MIN, as well as the Regional Trial Court's August 2, 2012 Resolution and December 14, 2012 Order in Civil Case No. 23, are **REVERSED** and **SET ASIDE**.

Since the Compromise Agreement consists of coverage under the Comprehensive Agrarian Reform Program, this incident should be referred to the Secretary of Agrarian Reform, who will then determine whether the property should be covered by compulsory acquisition under the program. A copy of this Decision is, thus, furnished to the Secretary of Agrarian Reform for administrative determination.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

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[66] G.R. No. 189626, August 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64639> [Per *J.* Leonen, Third Division].

[67] *Id.* citing *Arevalo v. Benedicto*, 157 Phil. 175, 181 (1974) [Per *J.* Antonio, Second Division] and *Hilado v. Chavez*, 482 Phil. 104 (2004) [Per *J.* Callejo, Second Division].

FIRST DIVISION

[G.R. No. 247409. February 3, 2020]

MICHAEL ANGELO T. LEMONCITO, *petitioner, vs.* **BSM CREW SERVICE CENTRE PHILIPPINES, INC./ BERNARD SCHULTE SHIPMANAGEMENT (ISLE OF MAN LTD.),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; WHERE THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) CONCLUDES THAT A SEAFARER, EVEN ONE WITH AN EXISTING MEDICAL CONDITION, IS "FIT FOR SEA DUTY", IT MUST, ON ITS FACE, BE TAKEN TO MEAN THAT THE SEAFARER IS WELL IN A POSITION TO ENGAGE IN EMPLOYMENT ABOARD A SEA VESSEL WITHOUT DANGER TO HIS HEALTH. —** After undergoing a pre-employment medical examination (PEME), petitioner was declared fit to work and was permitted to board MV British Ruby on July 22, 2015. Although a PEME is not expected to be an in-depth examination of a seafarer's health, still, it must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea. Thus, if it concludes that a seafarer, even one with an existing medical condition, is "fit for sea duty," it must, on its face, be taken to mean that the seafarer is well in a position to engage in employment aboard a sea vessel without danger to his health.
2. **ID.; ID.; ID.; TO BE CONCLUSIVE AND TO GIVE PROPER DISABILITY BENEFITS TO THE SEAFARER, THE ASSESSMENT MUST BE COMPLETE AND DEFINITE IN ORDER TO TRULY REFLECT THE TRUE EXTENT OF THE SICKNESS OR INJURIES OF THE SEAFARER AND HIS CAPACITY TO RESUME WORK AS SUCH; OTHERWISE, THE MEDICAL REPORT SHALL BE SET ASIDE AND THE DISABILITY GRADING CONTAINED THEREIN SHALL BE IGNORED; THE FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ARRIVE AT**

A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN THE PRESCRIBED PERIODS AND IF THE SEAFARER'S MEDICAL CONDITION REMAINS UNRESOLVED, THE LAW STEPS IN TO CONSIDER THE LATTER'S DISABILITY AS TOTAL AND PERMANENT. — In their final Medical Report dated July 1, 2016, the company-designated doctors stated: x x x. On its face, there was no categorical statement that petitioner is fit or unfit to resume his work as a seaman. It simply stated: a) petitioner was previously cleared of his lower respiratory tract infection; b) petitioner's blood pressure is adequately controlled with medications; and c) petitioner was cleared cardiac wise as of July 1, 2016. In other words, this assessment is incomplete, nay, inconclusive. In fact, this medical report leaves more questions than answers. x x x. Undoubtedly, the Medical Report dated July 1, 2016 is not complete and adequate, therefore, it must be ignored. ***Ampo-on v. Reinier Pacific International Shipping, Inc.*** explains: Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists. **The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains**

unresolved, the law steps in to consider the latter's disability as total and permanent.

3. ID.; ID.; ID.; SEAFARERS, WHO SUFFERED FROM EITHER CARDIOVASCULAR DISEASES OR HYPERTENSION, AND WERE UNDER THE TREATMENT OF OR EVEN ISSUED FIT-TO-WORK CERTIFICATIONS BY COMPANY-DESIGNATED DOCTORS BEYOND 120 OR 240 DAYS FROM THEIR REPATRIATION, ARE GRANTED PERMANENT TOTAL DISABILITY COMPENSATION. — [W]ithout a valid final and definitive assessment from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent. By operation of law, therefore, petitioner is already totally and permanently disabled. Besides, jurisprudence grants permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or even issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

APPEARANCES OF COUNSEL

Justiniano B. Panambo, Jr. for petitioner.
Reyes Reyes & Rivera-Lumibao Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following issuances of the Court of Appeals in CA-G.R. SP No. 153662 entitled "*BSM Crew Service Centre Philippines, Inc., et al. v. Michael Angelo T. Lemoncito*:"

1) Decision[2] dated November 9, 2018, which dismissed petitioner Michael Angelo Lemoncito's complaint for

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Pedro B. Corales and concurred in by

permanent total disability benefits, sickness allowance benefit, exemplary damages, moral damages, and attorney's fees; and

2) Resolution[3] dated April 26, 2019, denying petitioner's motion for reconsideration.

Antecedents

On July 16, 2015, respondent BSM Crew Service Centre Philippines, Inc. (BSM), on behalf of its principal respondent Bernard Schulte Shipmanagement (BSS), hired petitioner Michael Angelo Lemoncito as a motor man for a duration of nine (9) months. Petitioner was covered by the collective bargaining agreement (CBA) between International Maritime Employees' Council and Associated Marine Officers' and Seamen's Union of the Philippines. After being declared fit to work, petitioner boarded MV British Ruby on July 22, 2015.[4]

While on board, petitioner complained of fever and cough productive of whitish phlegm and throat discomfort. His blood pressure reached 173/111, for which he was given medication. On February 22, 2016, he was medically repatriated. On February 26, 2016, he was referred to the Marine Medical Services under the care of company-designated doctors Percival Pangilinan and Dennis Jose Sulit. After a series of tests, he was diagnosed with lower respiratory tract infection and hypertension. He was given an interim disability assessment of Grade 12 - "*slight, residual or disorder*." The company-designated doctors opined that petitioner's hypertension was not work-related. His hypertension had multifactorial causes: genetics, predisposition, poor lifestyle, high salt intake, smoking, diabetes mellitus and "*increased sympathetic activities*." He was prescribed Nebilet and Twynsta and advised to return for re-evaluation.[5]

Associate Justices Jane Aurora C. Lantion, and Marie Christine Azcarraga-Jacob, all members of the Special Seventh Division, *rollo*, pp. 55-70.

[3] *Id.* at 51-52.

[4] *Id.* at 56.

[5] *Id.* at 56-57.

On July 1, 2016, the company-designated doctors issued their 16th and final report where they noted that petitioner had been previously cleared of his lower respiratory tract infection and that his hypertension was responding to medication.[6]

Disagreeing with conclusions of the company-designated doctors, petitioner consulted Dr. Antonio Pascual, who issued a Medical Report dated September 12, 2016. Dr. Pascual certified that petitioner had 1) Hypertensive Heart Disease, Stage 2; and 2) Degenerative Osteoarthritis, Thoracic Spine. Consequently, Dr. Pascual declared petitioner "unfit to work as a seaman."[7]

On the basis of Dr. Pascual's certification, petitioner invoked the grievance procedure embodied in the CBA and lodged a complaint for total permanent disability benefits, sickness allowance, damages and attorney's fees before the Panel of Voluntary Arbitrators.

In support of his complaint, petitioner essentially alleged: as a motor man, he was tasked to take care of all the motors and mechanical equipment on board as well as ensure that the engines are in tiptop condition from eight (8) to sixteen (16) hours a day. This was his routine for twenty-four (24) uninterrupted years. Despite the treatment given him by the company-designated doctors, he never recovered from his debilitating illness. His condition was work-related, thus, compensable.[8]

Respondents countered, in the main: aside from his bare allegations, petitioner did not adduce substantial evidence to prove that the nature of his work contributed to his hypertension. Under the Philippine Overseas Employment Agency - Standard Employment Contract (POEA-SEC), hypertension is only compensable when it is uncontrolled with end organ damage to the kidneys, brain, heart or eyes. Besides, petitioner failed

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[6] *Id.* at 57.

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

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

to observe the third-doctor-referral rule under the POEA-SEC when he independently consulted his physician, Dr. Pascual.[9]

Petitioner replied: If there is a conflict between the findings of the company-designated doctor and the seafarer's doctor, that which is favorable to the seafarer should be upheld. He was totally and permanently disabled considering that more than seven (7) months had passed since he failed to resume his duties as seaman.[10]

Rulings of the Panel of Voluntary Arbitrators

By Decision dated May 30, 2017, the Panel of Voluntary Arbitrators found petitioner to be totally and permanently disabled. His hypertension was presumed to be work-related. Petitioner's non-compliance with the third-doctor-referral rule should not be taken against him because the company- designated doctors failed to make a fitness assessment within the required 120-day period. Besides, records showed that petitioner was unable to obtain gainful employment during the 240-day assessment period. The panel, thus, decreed:

> **WHEREFORE**, premises considered, judgment is hereby rendered **ORDERING** the respondents to jointly and severally pay the complainant the amount of NINETY[-]SIX THOUSAND NINE HUNDRED NINE U.S. DOLLARS (US$96,909.00) as his total permanent disability benefit; TWO THOUSAND FOUR HUNDRED SIXTEEN U.S. DOLLARS (US$2,416.00) as sickness allowance and attorney's fees equivalent to ten percent (10%) of the total monetary award or in their Philippine peso equivalent at the prevailing exchange rate on the actual date of payment.
>
> All other claims are **DISMISSED** for lack of merit.
>
> SO ORDERED.[11]

Respondents' motion for reconsideration was, subsequently, denied through Resolution dated October 20, 2017.[12]

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[9] *Id.* at 59.

[10] *Id.*

[11] *Id.* at 60.

[12] *Id.* at 61.

Proceedings before the Court of Appeals

On petition for review, respondents argued: Petitioner failed to prove by substantial evidence that his hypertension was compensable. The company-designated doctors made their final assessment well within the assessment period prescribed by the POEA-SEC. The Panel of Voluntary Arbitrators erred in disregarding the mandatory third-doctor-referral rule and giving weight to Dr. Pascual's findings. In fact, Dr. Pascual only saw petitioner once. The company-designated doctors examined petitioner for four (4) months, thus, their findings were more credible.[13]

Petitioner reechoed the arguments he raised before the Panel of Voluntary Arbitrators.[14]

By its assailed Decision[15] dated November 9, 2018, the Court of Appeals reversed. It held that the findings of the company-designated doctors were more credible and petitioner failed to prove by substantial evidence that he was totally and permanently disabled. In case of conflict between the findings of the company-designated doctors and the seafarer's doctor, the procedure embodied in the POEA-SEC should be observed. It is also up to the labor tribunals and the courts to assess which of the assessments is more credible. Since the company-designated doctors had more detailed knowledge of petitioner's condition, their assessment was more credible. Petitioner's failure to return to his employment within the 120-day period did not automatically entitle him to total and permanent disability benefits. Besides, the company-designated doctors were able to make their final assessment that petitioner was fit to work within the 240-day assessment period. The Court of Appeals further observed:

> In the case at bench, Lemoncito was medically repatriated on February 22, 2016 and was immediately referred to the company-

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[13] *Id.* at 62.

[14] *Id.*

[15] *Id.* at 55-70.

designated physicians. He was on continuous medications and re-examination even after the lapse of the 120-day period on June 21, 2016. As a matter of fact, during Lemoncito's check-up on June 8, 2016, he was "shifted to another anti-hypertensive medication" and advised to come back on June 22, 2016 for re-evaluation. Indubitably, the 120-day period had been extended by 240 days or until October 19, 2016 because Lemoncito's condition required further medical attention. However, on July 1, 2016, the company-designated physicians issued the 16th and Final Report stating that Lemoncito is "cleared cardiac wise" and enclosing therein Dr. Pangilinan's prognosis that Lemoncito "is considered to have no significant pulmonary findings" and Dr. Sulit's declaration that he is fit to work. Clearly, the company-designated physicians did not sit idly in assessing Lemoncito's fitness to resume sea duties and made a categorical declaration before the lapse of the 240-day period. Hence, We find and so rule that the assessment of the company-designated physicians is final and binding. Consequently, Lemoncito is considered fit to work, and thus not entitled to disability benefits.[16]

The Court of Appeals ordained:

WHEREFORE, the instant petition for review is hereby **GRANTED**. The May 30, 2017 Decision and October 20,2017 Resolutions of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board in Voluntary Arbitration Case No. MVA-045-RCMB- NCR-232-14-10-2016 are **ANNULLED** and **SET ASIDE**. The complaint of [Michael] Angelo T. Lemoncito is **DISMISSED** for lack of merit.

SO ORDERED.[17]

Petitioner's motion for reconsideration was denied under Resolution[18] dated April 26, 2019.

The Present Petition

Petitioner now invokes this Court's discretionary appellate jurisdiction via Rule 45 of the Rules of Court to review and reverse the assailed Court of Appeals' issuances.

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

[17] *Id.* at 69.

[18] *Id.* at 51-52.

In his Petition[19] dated July 9, 2019, petitioner essentially alleged: his hypertension is work-related because he acquired it during his employment. His duties as motor man also contributed to his hypertension. Because of the termination of his medical treatment by the company-designated doctors, he was compelled to seek out his own doctor. The company-designated doctors failed to make a final assessment within the 120-day window prescribed by law, thus, he is deemed to be totally and permanently disabled. True, the assessment period may be extended to 240 days, but respondents were unable to present a justification for the extension. He substantially complied with the third-doctor-referral rule.

In their Comment[20] dated October 7, 2019, respondents riposte: The company-designated doctors initially made a Grade 12 interim assessment well within the mandatory 120-day assessment period. Petitioner's medication, however, was shifted to another anti-hypertension drug, and as a result, he needed to be further observed. This was the reason why the final "fit-to-work" assessment got issued beyond the 120-day period but within the 240-day extended period. Petitioner's failure to abide by the mandatory third-doctor-referral rule was fatal, thus, he was bound by the final assessment made by the company-designated doctors. Petitioner's hypertension is not compensable under the POEA-SEC, because there is no showing that it caused organ damage.

Issue

Can petitioner be declared as totally and permanently disabled by reason of his hypertension?

Ruling

We grant the petition.

After undergoing a pre-employment medical examination (PEME), petitioner was declared fit to work and was permitted to board MV British Ruby on July 22, 2015. Although a PEME

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

[20] *Id.* at 72-102.

is not expected to be an in-depth examination of a seafarer's health, still, it must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea. Thus, if it concludes that a seafarer, even one with an existing medical condition, is "fit for sea duty," it must, on its face, be taken to mean that the seafarer is well in a position to engage in employment aboard a sea vessel without danger to his health.[21]

As it turned out though, petitioner, while on board, complained of fever and cough productive of whitish phlegm and throat discomfort. His blood pressure also reached 173/111. This all happened during his seventh month on board. On February 22, 2016, he was medically repatriated. On February 26, 2016, his treatment commenced in the hands of the company-designated doctors at Marine Medical Services. After a series of tests, he was diagnosed with lower respiratory tract infection and hypertension. He was given an interim disability rating of Grade 12, after which he underwent continuous medical treatment until July 1, 2016.

In their final Medical Report dated July 1, 2016, the company-designated doctors stated:

> This is a follow-up report of Motorman Michael Angelo T. Lemoncito who was initially seen here at Marine Medical Services on February 26, 2016 and was diagnosed to have **Lower Respiratory Tract Infection; Hypertension**.
>
> He was previously cleared by the Pulmonologist with regards to his Lower Respiratory Tract Infection.
>
> He was seen by the Cardiologist who noted his blood pressure to be adequately controlled with medications.
>
> The specialist opines that patient is now cleared cardiac wise effective as of July 1, 2016.[22]

On its face, there was no categorical statement that petitioner is fit or unfit to resume his work as a seaman. It simply stated:

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[21] *Manansala v. Marlow Navigation Phils., Inc., et al.*, 817 Phil. 84, 102-103 (2017).

[22] *Rollo*, p. 24.

a) petitioner was previously cleared of his lower respiratory tract infection; b) petitioner's blood pressure is adequately controlled with medications; and c) petitioner was cleared cardiac wise as of July 1, 2016. In other words, this assessment is incomplete, nay, inconclusive. In fact, this medical report leaves more questions than answers.

For instance, the phrase "*petitioner's blood pressure is adequately controlled with medications*" is too generic and equivocal. It does not give a clear picture of the state of petitioner's health nor does it give a thorough insight into petitioner's fitness or unfitness to resume his duties as a seafarer. Do they mean that since his hypertension can now be controlled by medications he is already fit to resume his work? Or do they mean that though his hypertension can now be controlled, he still needs constant monitoring? No one knows.

Likewise, the phrase "*patient is now cleared cardiac wise*" does not provide much information. Does it mean that since he is cleared of any cardiac disease, he is already fit to work as a seafarer? Or does it mean that though he is cleared of any cardiac disease as of July 1, 2016, he still needs further monitoring? Does being cleared of any cardiac disease automatically mean petitioner has a clean bill of health? The report does not say.

Undoubtedly, the Medical Report dated July 1, 2016 is not complete and adequate, therefore, it must be ignored. ***Ampo-on v. Reinier Pacific International Shipping, Inc.***[23] explains:

> Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.

[23] G.R. No. 240614, June 10, 2019.

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.

Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent. (Emphasis supplied)

To repeat, without a valid final and definitive assessment from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent.[24] By operation of law, therefore, petitioner is already totally and permanently disabled. Besides, jurisprudence grants permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or even issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.[25]

ACCORDINGLY, the petition is **GRANTED**. The assailed Decision dated November 9, 2018 and Resolution dated April 26, 2019 of the Court of Appeals in CA-G.R. SP No. 153662 are **REVERSED** and **SET ASIDE**. The Decision dated May 30, 2017 and Resolution dated October 20, 2017 of the Panel of Voluntary Arbitrators are **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

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[24] *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.

[25] *Balatero v. Senator Crewing (Manila) Inc., et al.*, 811 Phil. 589, 600 (2017).

EN BANC

[A.M. No. P-07-2354. February 4, 2020]
(Formerly A.M. No. 07-5-140-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MILA A. SALUNOY, Court Stenographer and CESAR D. UYAN, SR., former Clerk of Court, Municipal Trial Court, Mati, Davao Oriental,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERK OF COURT; HAS GENERAL ADMINISTRATIVE SUPERVISION OVER ALL PERSONNEL OF THE COURT; MUST BE AN INDIVIDUAL OF COMPETENCE, HONESTY AND INTEGRITY. —** As laudably depicted in The 2002 Revised Manual for Clerks of Court, a clerk of court is indispensable in any judicial system, to wit: A Judge alone cannot make the Court function as it should. In the over-all scheme of judicial business, many non-judicial concerns, intricately and inseparably interwoven with the trial and adjudication of cases, must perforce be performed by other individuals that make up the team that complements the Court. Of these individuals, the Clerk of Court eclipses the others in function, responsibilities, importance and prestige. The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. The nature of the work and of the office mandates that the Clerk of Court be an individual of competence, honesty, and integrity.

2. **ID.; ID.; ID.; ID.; ID.; AS GUARDIANS OF COURT FUNDS, IT IS THEIR DUTY TO ENSURE THAT THE PROPER PROCEDURES ARE FOLLOWED IN THE COLLECTION OF CASH BONDS. —** Among all those duties entrusted to a Clerk of Court is the safekeeping of court funds. Such function of the Clerk of Court as the guardian of such funds was emphasized in the case of *Re: Report on the Financial Audit*

Conducted at the Municipal Trial Court, Baliuag, Bulacan, to wit: Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Thus, an unwarranted failure to [fulfill] these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.

3. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; VARIOUS CIRCULARS ISSUED BY THE COURT AS GUIDANCE IN THE HANDLING AND MANAGEMENT OF COURT FUNDS. — [V]arious circulars were issued by this Court as guidance as regards the handling and management of court funds: (1) **OCA Circular No. 50-95** which provides for guidelines and procedures in the manner of collecting and depositing court funds; (2) **OCA Circular No. 113-2004** which orders the submission of Monthly Reports of Collections and Deposits; (3) **Administrative Circular No. 35-2004** which states the duty of the Clerk of Court as regards the keeping of a cash book and cash collection to be deposited with the Land Bank of the Philippines; (4) **Administrative Circular No. 3-2000** which among others requires the upkeep of a book embodying all the fees received and collected by the court and demands that all fiduciary collection shall be immediately deposited by the clerk of court, upon receipt thereof, with an authorized government depository bank; (5) **Supreme Court Circular No. 13-92** which provides for the duty of the clerk of court to make the necessary deposits of the court's collection from bailbonds, rental deposits and other fiduciary collection; (6) **Supreme Court Circular No. 5-93** which requires the clerk of court to deposit court collections with Land Bank of the Philippines or with the Municipal, City or Provincial Treasurer as the case may be; and (7) **The 2002 Revised Manual for Clerks of Court** which states the guidelines for the accounting of court funds. Sufficiency in number of these

issuances seeks to emphasize not only the administration of court funds, but also the accountability of court employees.

4. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE OFFENSES; GROSS NEGLECT OF DUTY, GRAVE MISCONDUCT, AND SERIOUS DISHONESTY ARE PUNISHABLE BY DISMISSAL FROM THE SERVICE; IMPOSABLE ADMINISTRATIVE DISABILITIES. — Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty are grave offenses which are punishable by dismissal from the service. Also, the following administrative disabilities shall be imposed: (1) cancellation of eligibility; (2) forfeiture of retirement and other benefits, except accrued leave credits, if any; (3) perpetual disqualification from holding public office; and (4) bar from taking civil service examinations.

5. ID.; ID.; ID.; PENALTY OF FINE; AMOUNT THEREOF LIES IN THE DISCRETION OF THE COURT; CASE AT BAR. — In addition, the penalty of fine should be imposed; and the amount of which lies within the sound discretion of the Court. As a guideline, Section 51(d) of the RRACCS provides that the penalty of fine shall be in an amount not exceeding six months salary of respondent. Verily, in the exercise of this Court's discretion, we deem it proper to impose the penalty of fine equivalent to Uyan's salary for one month which shall be deducted from his accrued leave benefits in view of the mitigating circumstances of advanced age and his length of service.

APPEARANCES OF COUNSEL

Manuel M. Lepardo, Jr. for Mila A. Salunoy.
Arnulfo M. Agleron, Sr. for Cesar D. Uyan, Sr.

D E C I S I O N

***PER CURIAM*:**

In view of the retirement of Cesar D. Uyan, Sr. (Uyan), Clerk of Court II of the Municipal Trial Court (MTC) of Mati, Davao Oriental, the Fiscal Monitoring Division, Court Management

Office (CMO), directed him to submit documents relative to his financial transactions for the period of February 1995 to June 2004.[1]

In compliance thereto, Uyan personally appeared at the CMO, Office of the Court Administrator (OCA) to submit the following documents: (1) Judiciary Development Fund (JDF) Reports for December 1993 to December 2003; (2) Fiduciary Fund Reports for the period December 1995 to December 1998; (3) List of Fiduciary Fund Collections covering the period December 1995 to December 2001; (4) JDF Cashbook for September 1995 to June 2004; (5) General Fund Cashbook for December 1995 to November 2003; (6) Special Allowance for the Judiciary Cashbook for December 2003 to June 2004; and (7) Fiduciary Fund Cashbook for December 1995 to June 2004.[2]

An audit proceeding, thus, ensued. Thelma Bahia, Chief of the CMO-OCA, identified several irregularities and shortages in the accounts of Uyan, to wit:

1.	For the [JDF]	
	Total Collections	₱800,339.49
	Total Deposits	[-] 787,565.09
	Balance of Accountability - shortage	₱ 12,774.40
2.	For the General Fund (GF)	
	Total Collections	₱203,642.52
	Total Deposits	[-] 119,578.50
	Balance of Accountability - shortage	₱[8]4,064.02
3.	For Special Allowance for the Judiciary Fund (SAJF)	
	Total Collections	₱ 3,313.00
	Total Deposits	[-] 1,453.20
	Balance of Accountability - shortage	₱ 1,860.60
4.	For Fiduciary Fund	
	Total Collections	₱3,481,865.38
	Total Withdrawals	[-] 2,236,026.30
	Total Unwithdrawn Fiduciary Fund	₱1,245,839.00

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[1] *Rollo*, Vol. I, p. 1.

[2] *Id.*

Balance per Bank as of 6/30/04		₱ 553,403.11
Less: Interest Earned as of June 30, 2004	₱57,851.24	
Less: Withdrawn Interest	34,372.79	[-] 23,478.45
Bank Balance as of 6/30/04		₱ 529,924.66
Total Unwithdrawn Fiduciary Fund		₱1,245,839.00
Adjusted Bank Balance as of 6/30/04		[-] 529,924.66
Balance of Accountability - shortage		₱ 715,914.34

The shortage in the Fiduciary Fund resulted from the following:

Undeposited Collections	₱669,411.00
Withdrawn Cash bonds without Deposits	170,000.00
Unidentified Withdrawals	(126,217.38)
Over withdrawals of Cash bonds	1,500.00
Bank Debit Memo - Cost of Checks	1,220.72
Total	₱ 715,914.34[3]

Later on, Uyan appeared at the Fiscal Monitoring Office (FMO) and brought with him an Affidavit[4] of Mila Luna A. Salunoy (Salunoy), Court Stenographer of MTC, Mati, Davao Oriental, admitting that she appropriated some missing funds from the Fiduciary Fund for her personal use.

The records show that Uyan started working with the Judiciary Branch on January 4, 1971 and retired from service on July 21, 2004. As he served for a total of 33 years, 6 months and 18 days, he incurred a terminal leave of 472.816 days with estimated money value of ₱385,613.89.[5] However, as he was not yet completely cleared from his accountabilities, Uyan has yet to receive his retirement pay.

The OCA issued a Memorandum[6] dated March 30, 2007. Relying on the findings of the CMO, the OCA established that there were shortages in the account of Uyan. The unexplained withdrawals also in the amount of ₱76,399.00 and ₱4,455.33 were likewise noted. Although it recognized the admission of

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[3] *Id.* at 44.

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

[5] Based on computation of the FMO; *id.* at 37.

[6] *Id.* at 1-6.

Salunoy as the individual who misappropriated the missing funds, the OCA likewise found Uyan to be remiss in his duties as clerk of court, whose responsibility is to supervise the financial transactions of the court. Consequently, the OCA submitted the following recommendations:

Premises considered, we submit the following recommendations for the approval of the Honorable Court, to wit:

1. This report be docketed as a regular administrative complaint against Ms. Mila Luna A. Salunoy, Court Stenographer, Municipal Trial Court, Mati, Davao Oriental.

2. Mr. Cesar Uyan and Ms. Mila Luna A. Salunoy, retired Clerk of Court and Court Stenographer, respectively, of Municipal Trial Court, Mati, Davao Oriental be DIRECTED to:

a. RESTITUTE the following amounts representing the shortages in their respective fund, to wit:

General Fund	₱ 4,064.02
Special Allowance for Judiciary	1,860.60
Judiciary Development Fund	12,774.40
Fiduciary Fund	721,414.78
Total	₱ 740,113.80

And submit to the Fiscal Monitoring Division, Court Management Office, OCA, the machine validated deposit slip evidencing such restitution;

3. Ms. Mila Luna A. Salunoy be DIRECTED to explain [as to] why no disciplinary action shall be taken against her for the above shortages.

4. Mr. Cesar D. Uyan, Retired Clerk of Court II, MTC, Mati, Davao Oriental, be DIRECTED to:

a. EXPLAIN within ten (10) days from notice why no adminsitrative sanction shall be imposed upon him for failure to monitor and properly account the financial transaction of the court.

b. PRODUCE the valid and authenticated documents within ten (10) days from notice supporting the unidentified withdrawals and deposits amounting to [₱]76,399.00 and [₱]4,455.33, respectively.

5. Officer-in-Charge Maturan B. Magdoboy be DIRECTED to STRICTLY comply with all court circulars and issuances in the proper handling of Judiciary Fund.

Respectfully submitted.[7]

Such Memorandum was reworded in a Resolution[8] dated July 18, 2007 of this Court.

To this, Uyan filed his letter-response which basically denied his liability alleging that it was Salunoy who misused the court funds.[9]

In a Resolution[10] dated November 28, 2007, this Court noted the letter-explanation of Uyan and likewise referred the same to the OCA for evaluation, report, and recommendation.

In compliance thereto, the OCA issued a Memorandum[11] dated March 5, 2008 which reiterated its directive to Salunoy to file her comment and to Uyan to produce valid and authenticated documents supporting the unidentified withdrawals and deposits.

Salunoy filed her belated Written Comment/Explanation,[12] which essentially averred that: (1) she was not the sole collector of the court funds as Uyan was likewise designated to perform such function in case of her absence; and (2) Uyan started to demand money from her out of the collection which was paid to the court.

Salunoy's letter was noted in a Resolution[13] dated July 23, 2008 and was referred to the OCA for evaluation, report, and recommendation.

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

[8] *Id.* at 25-27.

[9] *Id.* at 28-29.

[10] *Id.* at 31.

[11] *Id.* at 35-39.

[12] *Id.* at 50-58.

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

The OCA issued a Memorandum[14] dated December 2, 2008, which included Uyan as respondent together with Salunoy in an administrative matter; and referred to Executive Judge Niño A. Batingana the case for investigation, report, and recommendation.

Said Memorandum was reiterated in a Resolution[15] dated January 19, 2009.

Said administrative case was subsequently referred to Executive Judge Loida S. Posadas-Kahulugan.[16] This directive was echoed in a Resolution[17] dated December 7, 2009.

The case, however, was once again transferred to Acting Executive Judge Albert S. Axalan (Investigating Judge Axalan) as investigator. In an Order dated August 5, 2010, Investigating Judge Axalan ordered the parties to appear before the court for preliminary conference.[18]

The OCA presented as witness Romulo Tamanu, Jr., (Tamanu) a Management Audit and Analyst IV of the Supreme Court, who was tasked to conduct an audit as to the financial accounts of Uyan in view of his retirement. Tamanu testified that after the conduct of an audit, he discovered the shortages of unremitted collections from February 1995 to June 2004 in the amount of ₱740,113.80. In his findings, Tamanu found that such shortages came about mainly from undeposited fiduciary fund collections.[19] Moreover, Tamanu narrated that the cash bond collections especially for the period of January 2002 to June 2004 were not deposited on time and in full amount.[20]

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[14] *Id.* at 74-79.

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

[16] *Id.* at 82-83.

[17] *Id.* at 87-88.

[18] *Id.* at 90-91.

[19] *Rollo*, Vol. 2, pp. 35-36.

[20] *Rollo*, Vol. 1, p. 140.

For her part, Salunoy averred that she is a court stenographer of MTC, Mati City, Davao Oriental; and was designated as cashier by Uyan on July 1, 2001. As acting cashier, she collected the General Fund, Special Allowance for Judiciary Fund, Judicial Development Fund, and Fiduciary Funds. At first, she deposited all fees collected at the end of the week, but this practice was cut short after Uyan questioned her as to why she would deposit all collections for the week every Friday. Uyan suggested to Salunoy to deposit the collected amounts on some other dates. Complying with the order of Uyan, Salunoy was forced to bring home her collections as she has no vault in the office. Salunoy alleged that some of the undeposited collected fees were placed in the hands of Uyan with a promise that he will return the same the following week. However, Uyan sometimes failed to keep such promise. As the practice continued, the unreturned money relative to the collection of the previous weeks was "covered" by the amount recently collected that will be deposited in the bank, making it appear as if the collection was for the past week. There would be a time, to Salunoy's recollection, that the new collection could no longer cover the previous collection that is now reflected in the corresponding cash book.[21]

Moreover, Salunoy testified that she lent the funds of the court to her other co-employees and that the names of such employee-borrowers were indicated at the back of the receipts which she issued way back in 2001. Such employees included Uyan and late Presiding Judge Isabelo Rabe.[22]

Salunoy denied having voluntarily executed the Affidavit which Uyan presented to the FMO.[23]

On the other hand, Uyan denied Salunoy's allegation that he borrowed money from the collected court fees and reiterated that it was Salunoy who is responsible for the incurred shortages.[24]

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[21] *Rollo*, Vol. 2, p. 37.

[22] *Id.* at 17-19.

[23] *Supra* note 21.

[24] *Rollo*, Vol. 2, p. 39.

In view of Salunoy's admission, Investigating Judge Axalan issued a Partial Report and Recommendation,[25] placing Salunoy under preventive suspension. Moreover, Investigating Judge Axalan ordered the conduct of a separate investigation regarding the undetermined amount of funds which may have been lost because of the unauthorized borrowings.

In a Final Report and Recommendation,[26] Investigating Judge Axalan found both Salunoy and Uyan administratively liable for the shortages. As to Uyan, the Investigating Judge found that he is accountable for such loss being the designated custodian of the court's funds under Section B, Chapter 1[27] of the 1991 Manual for Clerks of Court. The Investigating Judge also took note of Uyan's admission when he stated in the formal offer that he was negligent and lax in the performance of his duty. As to Salunoy, the Investigating Judge operated on her admission in lending court funds to co-employees, which basically highlighted her culpability. The recommendation reads:

> FOR ALL THE FOREGOING, and it appearing that Uyan and Salunoy were hand in glove in the defalcation of the funds of the Municipal Trial Court of Mati City, Davao Oriental, without whose separate and individual acts and/or concerted actions, the loss and impairment of court's fund in the total amount of ₱740,113.80 would not have been made possible, the undersigned investigating judge respectfully recommends that [sic]:
>
> 1. That both Uyan and Salunoy be found guilty of gross neglect of duty, dishonesty and grave misconduct;
> 2. That both Uyan and Salunoy be ordered to restitute the amount of ₱740,113.80 representing their shortage;

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

[26] *Id.* at 27-45.

[27] The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties, and premises, said officer is the custodian. Thus, the Clerk of Court is generally all the treasurer, accountant, guard and physical plant manager thereof.

3. That Salunoy be dismissed from the service with forfeiture of all retirement benefits excluding earned leave credits, with prejudice to re-employment in any government service; [and]

4. That all retirement benefits of Uyan, excluding accrued leave credits, be likewise forfeited with prejudice to re-employment in any government service.

RESPECTFULLY RECOMMENDED.[28]

The earlier Partial Report and Recommendation was set aside in view of the aforementioned.[29]

The OCA, in a Memorandum[30] dated October 22, 2012, likewise found Uyan and Salunoy administratively liable for gross neglect of duty, dishonesty, and grave misconduct. In ruling so, the OCA maintained that Uyan failed to perform his duties with the degree of diligence and competence expected of a clerk of court thereby incurring accountabilities as regards the shortages in the General Fund, Special Allowance for Judiciary Fund, JDF, and Fiduciary Fund; while Salunoy who is a cash clerk failed to keep the funds entrusted in her custody by lending the same to court employees. The OCA's recommendation reads:

IN VIEW OF THE FOREGOING, this Office respectfully recommends for the consideration of the Court that:

1. respondent Cesar D. Uyan, Sr., former Clerk of Court, Municipal Trial Court, Mati, Davao Oriental, be held GUILTY of gross neglect of duty, dishonesty and grave misconduct with forfeiture of all retirement benefits, excluding accrued leave credits with prejudice to re-employment in any government office, including government-owned and controlled corporations;

2. respondent Mila A. Salunoy, Court Stenographer, Municipal Trial Court, Mati, Davao Oriental, be held GUILTY of gross neglect of duty, dishonesty and grave misconduct and be DISMISSED from

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[28] *Rollo*, Vol. 2, p. 45.

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

[30] *Id.* at 76-93.

the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations;

3. respondent Uyan and respondent Salunoy be ORDERED to jointly and severally RESTITUTE the amount of Seven Hundred Forty Thousand and One Hundred Thirteen Pesos and Eighty Centavos (₱740,113.80) representing their shortage in the General Fund, Special Allowance for the Judiciary, Judiciary Development Fund, and Fiduciary Fund; and

4. the Employees Leave Division, Office of the Administrative Services, OCA be DIRECTED to compute the balance of the earned leave credits of respondent Uyan and respondent Salunoy and forward the same to the Finance Division, Fiscal Management Office; OCA, which shall compute their equivalent monetary value. The amount, as well as the other benefits respondents may be entitled to, and their withheld salaries and allowances shall be applied as part of the restitution of the shortage.

The Court agrees with the findings of the OCA and adopts its recommendations.

As laudably depicted in The 2002 Revised Manual for Clerks of Court,[31] a clerk of court is indispensable in any judicial system, to wit:

> A Judge alone cannot make the Court function as it should. In the over-all scheme of judicial business, many non-judicial concerns, intricately and inseparably interwoven with the trial and adjudication of cases, must perforce be performed by other individuals that make up the team that complements the Court. Of these individuals, the Clerk of Court eclipses the others in function, responsibilities, importance and prestige.
>
> The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian.

The nature of the work and of the office mandates that the Clerk of Court be an individual of competence, honesty, and integrity.[32]

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[31] Chapter 1(B), p. 4.

[32] *Id.* at 5.

Among all those duties entrusted to a Clerk of Court is the safekeeping of court funds. Such function of the Clerk of Court as the guardian of such funds was emphasized in the case of *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*,[33] to wit:

> Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Thus, an unwarranted failure to [fulfill] these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.

For this purpose, various circulars were issued by this Court as guidance as regards the handling and management of court funds: (1) **OCA Circular No. 50-95** which provides for guidelines and procedures in the manner of collecting and depositing court funds; (2) **OCA Circular No. 113-2004** which orders the submission of Monthly Reports of Collections and Deposits; (3) **Administrative Circular No. 35-2004** which states the duty of the Clerk of Court as regards the keeping of a cash book and cash collection to be deposited with the Land Bank of the Philippines; (4) **Administrative Circular No. 3-2000** which among others requires the upkeep of a book embodying all the fees received and collected by the court and demands that all fiduciary collection shall be immediately deposited by the clerk of court, upon receipt thereof, with an authorized government depository bank; (5) **Supreme Court Circular No. 13-92** which provides for the duty of the clerk of court to make the necessary deposits of the court's collection from bailbonds, rental deposits and other fiduciary collection; (6) **Supreme Court Circular No. 5-93** which requires the clerk of court to deposit court collections with Land Bank of the Philippines or with

[33] 753 Phil. 31, 37 (2015).

the Municipal, City or Provincial Treasurer as the case may be; and (7) **The 2002 Revised Manual for Clerks of Court** which states the guidelines for the accounting of court funds.

Sufficiency in number of these issuances seeks to emphasize not only the administration of court funds, but also the accountability of court employees.

However, despite the reiterations, Uyan failed to properly account for the court's funds in his custody which necessarily and consequently resulted in the cash shortages in the General Fund, Special Allowance for the Judiciary, JDF, and Fiduciary Fund amounting to ₱740,113.20. Moreover, the unaccounted withdrawals nor the delay in the remittance of cash bond collections was neither explained. As the Clerk of Court, Uyan has the responsibility to comply with the rules pertaining to the collection, turnover and safekeeping of such funds; and a violation of which constitutes a dereliction of his duty which amounts not only to dishonesty,[34] but also to gross neglect of duty and grave misconduct, *viz.*:

> Clerks of Court are the custodians of the courts' "funds and revenues, records, properties, and premises." They are "liable for any loss, shortage, destruction or impairment" of those entrusted to them. Any [shortage] in the amounts to be remitted and the delay in the actual remittance "constitute gross neglect of duty for which the clerk of court shall be held administratively liable."[35]

Uyan cannot escape liability by mere invocation of Salunoy's designation as cashier. His responsibility is not, in any way, diminished by mere delegation of his function to collect and remit funds. To stress, the duty to deposit court collections remains with Uyan as the clerk of court. By assigning such function to Salunoy, Uyan has the responsibility to strictly monitor that Salunoy was religiously carrying out her task.[36]

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[34] See *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 523 (2002).

[35] *Office of the Court Administrator v. Viesca*, 758 Phil. 16, 25 (2015).

[36] See *Office of the Court Administrator v. Atty. Paduganan-Peñaranda*, 630 Phil. 169, 179 (2010).

This, Uyan failed to do. In fact, it is apparent that Uyan disregarded his duty in overseeing whether Salunoy is fulfilling her duty when it took him four years before he inquired on the court's monthly bank statements.[37] As it is, he completely surrendered his obligation to the court to Salunoy when he should have been vigilant in the performance of his duties.

Corollary, Salunoy also has the duty and obligation to comply with the rules concerning collection and deposit of court funds. Being the designated cash clerk, she shared accountability with Uyan as regards the management and sakefeeping of court funds. However, Salunoy failed to live up to the same when she willfully lent funds in her custody to her fellow court employees.

Moreover, Salunoy's argument that she merely obeyed the orders of Uyan who is her superior in allowing the borrowing of funds is non-acceptable. It must be underscored that Salunoy's responsibility is to the court, and not to the clerk of court. Veritably, it is Uyan who should be considered as paragon of integrity and honesty.

Not only does Salunoy and Uyan's actuation constitute a neglect of duty, dishonesty, and grave misconduct, but a downright violation of the Constitution's mandate of accountability of public funds. No less than the Constitution dictates that *public office is a public trust*.

Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty are grave offenses which are punishable by dismissal from the service.[38] Also, the following administrative disabilities shall be imposed: (1) cancellation of eligibility; (2) forfeiture of retirement and other benefits, except accrued leave credits, if any; (3) perpetual disqualification from holding public office; and (4) bar from taking civil service examinations.[39]

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[37] *Rollo*, Vol. 1, p. 8.

[38] Revised Rules on Administrative Cases in the Civil Service, Sec. 46.

[39] *Id.* at Sec. 52.

In view of Uyan's retirement, the penalty of dismissal is no longer applicable. However, the imposition of administrative disabilities as accessory penalties subsists.

In addition, the penalty of fine should be imposed; and the amount of which lies within the sound discretion of the Court.[40]

As a guideline, Section 51(d) of the RRACCS provides that the penalty of fine shall be in an amount not exceeding six months salary of respondent.[41]

Verily, in the exercise of this Court's discretion, we deem it proper to impose the penalty of fine equivalent to Uyan's salary for one month which shall be deducted from his accrued leave benefits in view of the mitigating circumstances of advanced age and his length of service.

While we sympathize with Uyan who is in the autumn of his life after serving the Judiciary for more than three decades, the Court has the duty to impose punishment to those who violate the sanctity of the law:

> The Court has to enforce what is mandated by the law, and to impose a reasonable punishment for violations thereof. Aside from being the custodian of the court's funds and revenues, property and premises, a clerk of court is also entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override

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[40] See *Re: Non-submission of Monthly Financial Reports of Ms. Erlinda P. Patiag, Clerk of Court, Municipal Trial Court in Cities, Gapan City, Nueva Ecija,* A.M. No. 11-6-60-MTCC, June 18, 2019, citing *Office of the Court Administrator v. Guan*, 764 Phil. 1, 12 (2015).

[41] Sec. 51. *Duration and Effect of Administrative Penalties.* – The following rules shall govern the imposition of administrative penalties:

x x x x x x x x x

(d) The penalty of fine shall be in an amount not exceeding six (6) months salary of respondent. The computation thereof shall be based on the salary rate of the respondent when the decision becomes final and executory. Fines shall be paid within a period not exceeding one (1) year reckoned also from the date when decision becomes final and executory.

the mandatory nature of the circulars designed to promote full accountability for government funds.[42]

The same should be made applicable to Salunoy who fell short of the expectation required of her as a public officer.

As in *Office of the Court Administrator v. Atty. Lometillo*,[43] the imposition of punishment against the erring officers is deficient. The OCA should conduct a thorough investigation and institute the necessary action against those court employees who borrowed public funds for their personal benefit.

The pillars of the Judiciary necessarily includes court employees who swore to protect the Institution with high standards of rectitude and accountability. Their unswerving obligation must be upheld at all times. Any form of digression which tends to diminish the public's faith in the judicial system exacts elimination of those responsible for such perception.

WHEREFORE, premises considered, judgment is rendered as follows:

1. Respondent **Cesar D. Uyan, Sr.**, former Clerk of Court, Municipal Trial Court, Mati, Davao Oriental, is **GUILTY** of gross neglect of duty, dishonesty and grave misconduct. The accessory penalties of cancellation of eligibility, forfeiture of retirement and other benefits, except accrued leave credits, if any, perpetual disqualification from holding public office, and bar from taking civil service examinations shall be imposed upon him and he is **ORDERED** to pay a **FINE** equivalent to his salary for one month computed at the salary rate of his former position to be deducted from the monetary value of his earned leaves and/or other retirement benefits;

2. Respondent **Mila A. Salunoy**, Court Stenographer, Municipal Trial Court, Mati, Davao Oriental, is **GUILTY**

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[42] *Supra* note 36.

[43] 662 Phil. 106 (2011).

of gross neglect of duty, dishonesty and grave misconduct. The penalty of **DISMISSAL** from the service and the accessory penalties of cancellation of eligibility, forfeiture of retirement and other benefits, except accrued leave credits, if any, perpetual disqualification from holding public office, and bar from taking civil service examinations shall be imposed upon her.;

3. Respondent Uyan and respondent Salunoy are **ORDERED** to jointly and severally **RESTITUTE** the amount of Seven Hundred Forty Thousand and One Hundred Thirteen Pesos and Eighty Centavos (740,113.80) representing their shortage in the General Fund, Special Allowance for the Judiciary, Judiciary Development Fund, and Fiduciary Fund. An interest of 6% per annum is imposed on this amount from finality of the Decision until full payment; and

4. The Employees Leave Division, Office of the Administrative Services, OCA, is **DIRECTED** to compute the balance of the earned leave credits of respondent Uyan and respondent Salunoy and forward the same to the Finance Division, Financial Management Office, OCA, which shall compute their equivalent monetary value. The amount, as well as the other benefits respondents may be entitled to, and their withheld salaries and allowances shall be applied as part of the restitution of the shortage;

5. The Office of the Court Administrator is **DIRECTED** to conduct an investigation as to the practice of borrowing of court funds in the Municipal Trial Court of Mati City, Davao Oriental and institute necessary action against all those responsible; and

6. The Judge of the Municipal Trial Court of Mati City, Davao Oriental is **DIRECTED** to monitor all financial transactions of the court in strict adherance to the issuances of this Court regarding the proper handling of Judiciary funds. He or she shall be equally liable for

the infractions committed by the employees under his or her command and supervision.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

EN BANC

[A.M. No. P-13-3124. February 4, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. JERRY R. TOLEDO, then Branch Clerk of Court [now Clerk of Court V], and MENCHIE A. BARCELONA, Clerk III, both of the Regional Trial Court, Branch 259, Parañaque City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; THE PRIMARY DUTY OF THE CLERK OF COURT TO SAFEKEEP ALL THE RECORDS AND PIECES OF EVIDENCE SUBMITTED TO THE COURT IN CASES PENDING BEFORE IT, INCLUDING THE PROPERTIES FURNISHED TO HIS OFFICE, EXTENDS TO ENSURING THAT THE RECORDS AND EXHIBITS IN EACH CASE ARE COMPLETE AND ACCOUNTED FOR, AND CONTINUES EVEN AFTER THE TERMINATION OF THE CASE, AS LONG AS THE SAME HAVE YET TO BE DISPOSED OR DESTRUCTED IN ACCORDANCE WITH THE EXISTING RULES; THE CLERK OF COURT SHALL ASSUME LIABILITY FOR ANY LOSS,

SHORTAGE, DAMAGE OR DESTRUCTION OF COURT RECORDS, EXHIBITS AND PROPERTIES. — The Manual for Clerks of Court and the Rules of Court define the role of a clerk of court in the administration of justice. Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads: All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court. Section 7 of Rule 136 of the Rules of Court also provides: SEC. 7. Safekeeping of property. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. A clerk of court's primary duty is the safekeeping of all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office. This obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of the case as long as the same have yet to be disposed or destructed in accordance with the existing rules. Accordingly, it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties. Atty. Toledo miserably failed to establish a systematic and efficient documentation and record management in Branch 259 of the RTC of Parañaque City. He acknowledged that prior to the missing evidence incident, there was no inventory of the pieces of physical evidence in criminal cases pending before the court. Neither was there a logbook to keep track of the date and time when each evidence was placed in the steel cabinet, as well as the persons who had access to said evidence and got hold of the same. He likewise admitted that he had no idea what pieces of evidence were kept inside the court's steel cabinet. Obviously, Atty. Toledo failed to take the initial precaution to preserve and safeguard the evidence placed in the court's possession.

2. **ID.; ID.; ID.; ID.; A BRANCH CLERK OF COURT IS RESPONSIBLE FOR THE SHORTCOMINGS OF HIS SUBORDINATE TO WHOM THE ADMINISTRATIVE FUNCTION PERTAINING TO HIM IS DELEGATED. —** In her Comment dated May 20, 2006, Barcelona stated that she lacked the necessary training and experience in maintaining legal records and safely keeping the physical evidence in the

custody of the court. She claimed that she had been performing clerical work since she was transferred to Branch 259 and that her task is limited to encoding subpoenas, court orders, decisions, resolutions, and issuances in criminal cases. She confirmed that when the key to the steel cabinet was turned over to her, there was no inventory of the evidence kept in the vault. She also maintained that she did not know how to carry out her tasks as she was not apprised of the duties of an evidence custodian. Barcelona's averments bare Atty. Toledo's carelessness in supervising the activities of his subordinates especially the court personnel to whom his administrative function was merely delegated. He relied entirely on Barcelona and passed to her all the responsibilities of an evidence custodian without ensuring that she possesses the skill set to effectively perform custodial duties. Atty. Toledo should have known better. As the Branch Clerk of Court, he remains responsible for the shortcomings of his subordinate to whom the administrative function pertaining to him was delegated.

3. ID.; ID.; ID.; EVIDENCE CUSTODIAN; DUTIES THEREOF; AN EVIDENCE CUSTODIAN IS REQUIRED TO EXERCISE REASONABLE CARE AND DILIGENCE IN THE PERFORMANCE OF HIS OR HER DUTY TO SAFELY KEEP THE PHYSICAL EVIDENCE IN THE COURT'S CUSTODY. — Equally accountable with Atty. Toledo was Barcelona who also failed to exercise reasonable care and diligence in performing her duties as evidence custodian. Barcelona was clearly remiss in her duty as evidence custodian. She did not observe such diligence required under the circumstances when she ordered Esguerra to simply place the *shabu* evidence under her computer table, in total disregard of its legal value as the very *corpus delicti* of the offense. She cannot take refuge behind the claim that she had no training and experience in handling physical evidence in the court's custody. It would have been easier for her to approach Atty. Toledo and confess that she did not have the adequate training and experience for the job of an evidence custodian than pretend to know and fulfill the responsibilities mistakenly. As aptly pointed out by the OCA, all that is needed in the safekeeping of court evidence or property is the exercise of ordinary prudence and common sense, which Barcelona obviously failed to do. Moreover, even without a specific instruction from anyone, common sense should have impelled Barcelona to list down

the physical evidence received by the court for its safekeeping inclusive of the vital details pertaining thereto such as the date and time of reception and the identity of the person who handed the evidence to her. She should have conducted a periodic and continuous inventory of the evidence kept in the steel cabinet if only to ensure that they are intact, complete, and readily available for inspection or upon request of the parties. This precautionary measure could have averted an untoward incident as in the present case. After all, while the loss of court exhibits is an event that is unexpected, it can certainly be prevented.

4. ID.; ID.; ID.; NEGLECT OF DUTY; SIMPLE NEGLECT OF DUTY IS DEFINED AS THE FAILURE TO GIVE PROPER ATTENTION TO A TASK EXPECTED OF AN EMPLOYEE RESULTING FROM EITHER CARELESSNESS OR INDIFFERENCE; THERE IS GROSS NEGLECT OF DUTY WHEN A PUBLIC OFFICIAL OR EMPLOYEE'S NEGLIGENCE IS CHARACTERIZED BY THE GLARING WANT OF CARE, OR BY ACTING OR OMITTING TO ACT IN A SITUATION WHERE THERE IS A DUTY TO ACT, NOT INADVERTENTLY, BUT WILLFULLY AND INTENTIONALLY, WITH A CONSCIOUS INDIFFERENCE TO THE CONSEQUENCES, INSOFAR AS OTHER PERSONS MAY BE AFFECTED. — The Court agrees with the findings of the OCA that Atty. Toledo and Barcelona have both been negligent in the performance of their duty to safely keep the physical evidence in the court's custody. However, we find them guilty of gross neglect of duty and not merely simple neglect of duty. Simple neglect of duty is defined as "the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference." However, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty. More precisely, there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected." The Court cannot take a blind eye on the quantity of the unaccounted drug evidence and the manner by which

the fact of loss was discovered by the employees of Branch 259. x x x [A] total of 1.254 kilograms of *shabu* in *custodia legis* disappeared without a trace. Atty. Toledo and Barcelona could have prevented this had they taken precautionary measures to safely keep and monitor the physical evidence in the court's custody.

5. **ID.; ID.; ID.; ID.; INEXCUSABLE LAPSES IN THE SAFEKEEPING OF THE DRUG EVIDENCE CONSTITUTE FLAGRANT AND PALPABLE BREACH TANTAMOUNT TO GROSS NEGLECT OF DUTY, AS THEY UNDERMINE THE INTEGRITY OF THE DECISIONS RENDERED IN THE CRIMINAL CASES. —** [T]he close proximity of the relevant dates in this case does not escape the Court's attention. The ocular inspection was conducted and the drug evidence were discovered missing on November 11, 2003. The RTC Decision in Criminal Case No. 01-1229 was rendered on November 10, 2003 while the decision in Criminal Case No. 03-0408 was promulgated on December 22, 2003. Because of Barcelona's and Atty. Toledo's display of laxity in the custody of evidence, the *corpora delicti* in these two criminal cases vanished even before the actions were terminated. To the mind of the Court, their inexcusable lapses in the safekeeping of the drug evidence constitute flagrant and palpable breach tantamount to gross neglect of duty as they undermine the integrity of the decisions rendered in Criminal Case No. 01-1229 and Criminal Case No. 03-0408.

6. **ID.; ID.; ID.; THE CONDUCT AND BEHAVIOR OF EVERYONE CONNECTED WITH AN OFFICE CHARGED WITH THE DISPENSATION OF JUSTICE, FROM THE PRESIDING JUDGE TO THE LOWLIEST CLERK, SHOULD BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY; COURT CONDEMNS AND WOULD NEVER COUNTENANCE ANY CONDUCT, ACT OR OMISSION ON THE PART OF ALL THOSE INVOLVED IN THE ADMINISTRATION OF JUSTICE WHICH WOULD VIOLATE THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISH OR EVEN JUST TEND TO DIMINISH THE FAITH OF THE PEOPLE IN THE JUDICIARY. —** We have repeatedly stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should

be circumscribed with the heavy burden of responsibility. Conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Atty. Toledo was appointed Clerk of Court of Branch 259 in 1996 while Barcelona was transferred to said court as clerk in 1994. At that time, Branch 259 was already designated as a special court for heinous crimes. In 2000, it was designated as a special court for drug cases. These considerations reasonably tell us that Atty. Toledo and Barcelona were well-aware of the degree of responsibility imposed upon them as evidence custodians and the efficiency expected of them in the reception and storage of evidence considering the nature of the cases that Branch 259 handles. Regrettably, they failed to exercise utmost prudence and diligence in the performance of their duties and adhere to the exacting standards expected of court employees. As the Court held in *Office of the Court Administrator v. Cabe*: Time and again, we have emphasized the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of public faith. They must be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. As we have held in the case of *Mendoza v. Mabutas*, this Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

7. **ID.; ID.; ID.; GROSS NEGLECT OF DUTY MERITS THE PENALTY OF DISMISSAL FROM THE SERVICE EVEN IF THE OFFENSE WAS COMMITTED FOR THE FIRST TIME. —** In 2008, Atty. Toledo had been administratively charged for violation of the lawyer's oath, violation of the Code of Professional Responsibility, oppression, dishonesty, harassment, and immorality in A.M. No. P-07-2403 where the OCA recommended his suspension for a period of three (3) months for conduct unbecoming a public official and a court employee. Although the Court dismissed the complaint, it reminded Atty. Toledo to be more circumspect in his public and private dealings. With the loss of court exhibits under his watch, Atty. Toledo apparently disregarded the Court's warning and continued to show lack of diligence in his administrative function, completely unmindful of the heavy burden and

responsibility he carries in the dispensation of justice. In view of the above disquisitions, we, thus, find Atty. Toledo and Barcelona liable for gross neglect of duty which merits the penalty of dismissal from the service even if the offense was committed for the first time under the Revised Rules of Administrative Cases in the Civil Service.

D E C I S I O N

***PER CURIAM*:**

We resolve the administrative matter involving Atty. Jerry Toledo (Atty. Toledo), Clerk of Court V, and Menchie R. Barcelona (Barcelona), Clerk III, of the Regional Trial Court (RTC), Branch 259, Parañaque City for the loss of physical evidence in Criminal Case No. 01-1229 (*People of the Philippines v. Enrico Javier*) and Criminal Case No. 03-0408 (*People of the Philippines v. Norie Ampuan*). Barcelona was the trial court's evidence custodian and clerk-in-charge for criminal cases while Atty. Toledo was then the Branch Clerk of Court.

The antecedents follow.

On November 18, 2003, Barcelona notified Atty. Toledo that the 960.20 grams of *shabu* presented as evidence in Criminal Case No. 01-1229, a case for violation of Section 16, Article III of Republic Act (R.A.) No. 6425,[1] was missing from the steel cabinet where court exhibits were stored. Thereafter, Barcelona and Atty. Toledo informed Presiding Judge Zosimo V. Escano (Judge Escano) about the incident.[2]

On November 19, 2003, Judge Escano ordered Atty. Toledo to submit a report on the said case.

In the Report[3] dated November 24, 2003, Atty. Toledo disclosed that upon inspection of the steel cabinet on November

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[1] The Dangerous Drugs Act of 1972.

[2] *Rollo*, pp. 973-974.

[3] *Id.* at 29-30.

18, 2003, it was found out that the following evidence were missing:

PHYSICAL EVIDENCE	QUANTITY	CASE NO.	CASE TITLE
Methamphetamine Hydrochloride (*shabu*) placed in a cake box[4]	960.20 grams	Criminal Case No. 01-1229	People of the Philippines v. Enrico y Javier
Methamphetamine Hydrochloride (*shabu*) placed inside a cylindrical lockset box[5]	293.92 grams	Criminal Case No. 03-0408	People of the Philippines v. Ampuan

Records of the trial court and that of the Office of the Public Prosecutor show that it was Aren Esguerra (Esguerra), Stenographer III, who received the evidence in Criminal Case No. 01-1229. Esguerra averred that she handed the evidence to Barcelona after it was identified by the prosecution witness in a hearing conducted on February 10, 2003. But Barcelona instructed Esguerra to place the specimen under her computer table.[6] Meanwhile, Barcelona personally received the evidence in Criminal Case No. 03-0408 on October 16, 2003 and thereafter kept it in the steel cabinet.

In an Indorsement[7] dated December 1, 2003, Judge Escano forwarded Atty. Toledo's Report to the Office of the Court Administrator (OCA). Acting thereon, Deputy Court Administrator Christopher O. Lock (DCA Lock) referred the matter to then National Bureau of Investigation (NBI) Director Reynaldo Wycoco. After an investigation by the Anti-Graft Division, on August 31, 2004, the NBI issued its Report[8] recommending that Barcelona be administratively charged with gross negligence and criminally charged for failure to account

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[4] *Id.* at 12.

[5] *Id.*

[6] *Id.* at 36-37.

[7] *Id.* at 27.

[8] *Id.* at 11-15.

for the confiscated/seized/surrendered dangerous drug under Section 27 of R.A. No. 9165.[9] It stated that Barcelona was grossly remiss in her duty as evidence custodian to safeguard the subject physical evidence while in the court's custody. It likewise provided that the results of the investigation shall be furnished to DCA Lock so that disciplinary action can be taken against Judge Escano and Atty. Toledo for their inefficiency in supervising court employees in the safekeeping of evidence.[10]

On January 9, 2006, Atty. Wilhelmina D. Geronga of the Legal Office of the OCA recommended that the NBI Report be treated as a complaint against Judge Escano, Atty. Toledo, and Barcelona for Gross Neglect of Duty.[11]

In her Comment[12] dated May 20, 2006, Barcelona asserted that she could not recall having received the evidence in Criminal Case No. 01-1229 from Esguerra. She insisted that it was impossible for her to receive the evidence in February 2003 since she only had the key to the steel cabinet in May 2003 when Neneng Maghirang (Maghirang), Clerk III, gave it to her. Moreover, there was no proof that Esguerra handed the evidence to her. Barcelona admitted that she had no experience and training in handling physical evidence under the custody of the court.

In his Comment[13] dated May 19, 2006, Atty. Toledo maintained that the NBI Report did not show his alleged failure to exercise due diligence in supervising court employees in the safekeeping of evidence. He explained the procedures and instructions relative to the receipt and handling of court exhibits to ensure their safety while in the custody of the trial court. Atty. Toledo recommended the continuation of the investigation to determine the identity of the real culprit/s.

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[9] Comprehensive Dangerous Drugs Act of 2002.

[10] *Id.* at 15.

[11] *Id.* at 1-4.

[12] *Id.* at 105-118.

[13] *Id.* at 121-125.

In a Resolution[14] dated November 22, 2006, the Second Division of the Court resolved to re-docket the instant administrative matter as an initial preliminary inquiry against Atty. Toledo and Barcelona and refer the matter to Executive Judge Raul E. De Leon (Judge De Leon) for investigation, report and recommendation.

On October 23, 2007, Judge De Leon issued the following recommendations:

1. That the corresponding penalty be imposed on respondent Ms. Menchie Barcelona for being GUILTY of NEGLIGENCE in the performance of her duties and responsibilities as evidence custodian over the loss of 960.20 grams of [*shabu*] in Criminal Case No. 01-1229 entitled People vs. Javier as well as the loss of 293.92 grams of *shabu* in Criminal Case No. [03-0408] entitled People vs. Ampuan.

2. That the corresponding penalty be imposed on erstwhile Branch Clerk of Court respondent Atty. Jerry R. Toledo for being GUILTY of NEGLIGENCE for violation of Section 7, Rule 136 of the Rules of Court and Section E (2) par. 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court.[15]

Judge De Leon found that both Atty. Toledo and Barcelona did not give plausible explanations for the loss of the court exhibits and even tried to escape liability by blaming each other. He declared that Atty. Toledo was "very lax in his duties and responsibilities and did not even know the pieces of physical evidence kept in the steel cabinet since they did not conduct any inventory relative thereto." Barcelona, on the other hand, gave an inconsistent testimony as to her access to the steel cabinet even before she had possession of the key in May 2003. Judge De Leon stressed that Barcelona testified that she was the one who placed the court exhibit back in the steel cabinet after the first hearing in Criminal Case No. 01-1229 in 2002, contrary to her claim that she did not have access to the steel cabinet until May 2003.[16]

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[14] *Id.* at 146.

[15] *Id.* at 819.

[16] *Id.* at 815-818.

The OCA's Report and Recommendation

On February 6, 2013, Court Administrator Jose Midas P. Marquez recommended: that the case against Atty. Toledo and Barcelona be redocketed as regular administrative matter; that Atty. Toledo be found guilty of simple neglect of duty and be meted the penalty of suspension of two months and one day without pay; and that Barcelona be found guilty of simple neglect of duty and be meted the penalty of suspension of one month and one day without pay. Both Atty. Toledo and Barcelona were further warned that a repetition of the same or similar acts in the future shall be dealt with more severely by the Court.[17]

The OCA agreed with the findings and recommendation of Judge De Leon and enunciated that Atty. Toledo, as then Branch Clerk of Court, had the primary duty of safekeeping all physical evidence coming into the court's custody pursuant to Sec. E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court and Section 7, Rule 136 of the Rules of Court. Hence, he cannot shift the entire burden on Barcelona and blame her for the loss of the court exhibits as he remains responsible for the lapses of his subordinate. Moreover, considering that Branch 259 was designated as a special court for drugs cases, Atty. Toledo was expected to exercise heightened prudence and caution in the reception of all physical evidence and to monitor his court staff in handling and storing them while in the court's custody. But the evidence on record shows that Atty. Toledo failed to satisfy these expectations. The OCA went on to state that Barcelona had also been negligent in the exercise of her functions as manifested by her failure to conduct an inventory of the court's physical evidence inside the steel cabinet. The OCA concluded that the loss of more than one kilo of *shabu* in Criminal Case Nos. 01-1229 and 03-0408 without the knowledge of Atty. Toledo and Barcelona erodes the much-valued public confidence in the courts of justice.[18]

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[17] *Id.* at 983-984.

[18] *Id.* at 977-983.

Our Ruling

The Manual for Clerks of Court and the Rules of Court define the role of a clerk of court in the administration of justice. Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads:

All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Section 7 of Rule 136 of the Rules of Court also provides:

SEC. 7. Safekeeping of property. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

A clerk of court's primary duty is the safekeeping of all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office. This obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of the case as long as the same have yet to be disposed or destructed in accordance with the existing rules. Accordingly, it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties.[19]

Atty. Toledo miserably failed to establish a systematic and efficient documentation and record management in Branch 259 of the RTC of Parañaque City. He acknowledged that prior to the missing evidence incident, there was no inventory of the pieces of physical evidence in criminal cases pending before the court.[20] Neither was there a logbook to keep track of the date and time when each evidence was placed in the steel cabinet, as well as the persons who had access to said evidence and got hold of the same. He likewise admitted that he had no idea

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[19] *Judge Botigan-Santos v. Gener*, 817 Phil. 655, 661 (2017).

[20] TSN, February 26, 2007, *rollo*, p. 567.

what pieces of evidence were kept inside the court's steel cabinet.[21] Obviously, Atty. Toledo failed to take the initial precaution to preserve and safeguard the evidence placed in the court's possession.

Atty. Toledo's management blunder did not end there. In her Comment dated May 20, 2006, Barcelona stated that she lacked the necessary training and experience in maintaining legal records and safely keeping the physical evidence in the custody of the court. She claimed that she had been performing clerical work since she was transferred to Branch 259 and that her task is limited to encoding subpoenas, court orders, decisions, resolutions, and issuances in criminal cases.[22] She confirmed that when the key to the steel cabinet was turned over to her, there was no inventory of the evidence kept in the vault.[23] She also maintained that she did not know how to carry out her tasks as she was not apprised of the duties of an evidence custodian,[24] Barcelona's averments bare Atty. Toledo's carelessness in supervising the activities of his subordinates especially the court personnel to whom his administrative function was merely delegated. He relied entirely on Barcelona and passed to her all the responsibilities of an evidence custodian without ensuring that she possesses the skill set to effectively perform custodial duties. Atty. Toledo should have known better. As the Branch Clerk of Court, he remains responsible for the shortcomings of his subordinate to whom the administrative function pertaining to him was delegated.[25]

The case of *De la Victoria v. Cañete*[26] gives an elucidation on this point:

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[21] TSN, February 21, 2007, *id.* at 295.

[22] *Id.* at 108.

[23] *Id.* at 110.

[24] *Id.* at 108.

[25] *Office of the Court Administrator v. Cabe*, 389 Phil. 685, 697 (2000).

[26] 427 Phil. 775, 782-783 (2002).

Although respondent Mendez had been remiss in his safekeeping of the said exhibits resulting in their loss, respondent Cañete cannot escape responsibility for the loss of the exhibits. **As Branch Clerk of Court he was mandated to safely keep all records, papers, files, exhibits, and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. More specifically, with respect to all exhibits used as evidence and turned over to the Court, it was his duty to see to it that his subordinates to whom the safekeeping thereof was delegated performed their duties.** In the case of respondent Mendez, strictly speaking, his duty as translator of the Court, was only to attend court hearings, administer oaths to witnesses, mark all exhibits introduced in evidence, and prepare and sign all the minutes of the session, but not to keep documents in his custody. **If custody of the exhibits in question had been entrusted to respondent Mendez, respondent Cañete's duty was to see to it that the documents were kept properly. His excuse, that even before he became Branch Clerk of Court, respondent Teofilo M. Mendez had already been entrusted with the custody of case records, cannot justify his failure to exert his authority and perform a duty that by law primarily devolved on him as Branch Clerk of Court.**[27] (Emphases supplied)

Equally accountable with Atty. Toledo was Barcelona who also failed to exercise reasonable care and diligence in performing her duties as evidence custodian. Esguerra attested in her Affidavit dated November 25, 2003:

That, on February 10, 2003, I was again the stenographer on duty and when Criminal Case No. 01-1229 was called, Prosecutor Uy presented SP04 Armando Octavio to the witness stand;

That, Prosecutor Uy then requested the court for the [*shabu*] subject of this case which a court employee relayed to the evidence custodian and shortly thereafter the *shabu* was handed to Prosecutor Uy and presented the same to SPO4 Armando Octavio for identification;

That, at the end of the hearing[,] Prosecutor Uy again handed to me the [*shabu*] subject of this case which I again received and I immediately turned over the same to Ms. Menchie Barcelona, who is the criminal in-charge and evidence custodian of the court who

[27] *De la Victoria v. Cañete*, 427 Phil. 775, 782-783 (2002).

told me to place the said [*shabu*] under her computer table and I told her, "*Baka mawala iyan ha*," to which Ms. Barcelona replied, "*Basta, ilagay mo lang diyan*";

That, as per her instruction and within Ms. Barcelona['s] view, I placed the [*shabu*] under her computer table and that was the last time I saw that [*shabu*]."[28]

Barcelona was clearly remiss in her duty as evidence custodian. She did not observe such diligence required under the circumstances when she ordered Esguerra to simply place the *shabu* evidence under her computer table, in total disregard of its legal value as the very *corpus delicti* of the offense. She cannot take refuge behind the claim that she had no training and experience in handling physical evidence in the court's custody. It would have been easier for her to approach Atty. Toledo and confess that she did not have the adequate training and experience for the job of an evidence custodian than pretend to know and fulfill the responsibilities mistakenly. As aptly pointed out by the OCA, all that is needed in the safekeeping of court evidence or property is the exercise of ordinary prudence and common sense,[29] which Barcelona obviously failed to do.

Moreover, even without a specific instruction from anyone, common sense should have impelled Barcelona to list down the physical evidence received by the court for its safekeeping inclusive of the vital details pertaining thereto such as the date and time of reception and the identity of the person who handed the evidence to her. She should have conducted a periodic and continuous inventory of the evidence kept in the steel cabinet if only to ensure that they are intact, complete, and readily available for inspection or upon request of the parties. This precautionary measure could have averted an untoward incident as in the present case. After all, while the loss of court exhibits is an event that is unexpected, it can certainly be prevented.

The Court agrees with the findings of the OCA that Atty. Toledo and Barcelona have both been negligent in the

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

[29] *De la Victoria v. Cañete*, *supra* note 27, at 981.

performance of their duty to safely keep the physical evidence in the court's custody. However, we find them guilty of gross neglect of duty and not merely simple neglect of duty.

Simple neglect of duty is defined as "the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference."[30] However, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty.[31] More precisely, there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected."[32]

The Court cannot take a blind eye on the quantity of the unaccounted drug evidence and the manner by which the fact of loss was discovered by the employees of Branch 259. Roberto N. Catorce (Catorce), the trial court's legal researcher, was preparing his report in Criminal Case No. 01-1229 when he found out that the 960.20 grams of drugs subject of the said case was not mentioned in the transcript of stenographic notes. He then inquired from Barcelona who immediately inspected the steel cabinet where the physical evidence were stored. Clearly, the loss of the drug evidence would not have been uncovered had Catorce not asked about it. If that were not enough, it was only in the course of the inspection intended to locate the 960.20 grams of *shabu* when it was found out that the drug evidence in Criminal Case No. 03-0408 weighing 293.92 grams was also missing. Thus, a total of 1.254 kilograms of *shabu* in *custodia legis* disappeared without a trace. Atty. Toledo and Barcelona could have prevented this had they taken precautionary measures

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[30] *Re: Ricky R. Regala*, A.M. No. CA-18-35-P, November 27, 2018.

[31] *Office of the Court Administrator v. Atty. Gaspar*, 659 Phil. 437, 442 (2011).

[32] *Office of the Court Administrator v. Dequito*, 799 Phil. 607, 617 (2016).

to safely keep and monitor the physical evidence in the court's custody.

Further, the close proximity of the relevant dates in this case does not escape the Court's attention. The ocular inspection was conducted and the drug evidence were discovered missing on November 11, 2003. The RTC Decision in Criminal Case No. 01-1229 was rendered on November 10, 2003 while the decision in Criminal Case No. 03-0408 was promulgated on December 22, 2003. Because of Barcelona's and Atty. Toledo's display of laxity in the custody of evidence, the *corpora delicti* in these two criminal cases vanished even before the actions were terminated. To the mind of the Court, their inexcusable lapses in the safekeeping of the drug evidence constitute flagrant and palpable breach tantamount to gross neglect of duty as they undermine the integrity of the decisions rendered in Criminal Case No. 01-1229 and Criminal Case No. 03-0408.

We have repeatedly stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion.[33] Atty. Toledo was appointed Clerk of Court of Branch 259 in 1996 while Barcelona was transferred to said court as clerk in 1994. At that time, Branch 259 was already designated as a special court for heinous crimes. In 2000, it was designated as a special court for drug cases. These considerations reasonably tell us that Atty. Toledo and Barcelona were well-aware of the degree of responsibility imposed upon them as evidence custodians and the efficiency expected of them in the reception and storage of evidence considering the nature of the cases that Branch 259 handles. Regrettably, they failed to exercise utmost prudence and diligence in the performance of their duties and adhere to the

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[33] *Office of the Court Administrator v. Judge Ramirez*, 489 Phil. 262, 272 (2005).

exacting standards expected of court employees. As the Court held in *Office of the Court Administrator v. Cabe*:[34]

> Time and again, we have emphasized the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of public faith. They must be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. As we have held in the case of *Mendoza v. Mabutas*, this Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

In 2008, Atty. Toledo had been administratively charged for violation of the lawyer's oath, violation of the Code of Professional Responsibility, oppression, dishonesty, harassment, and immorality in A.M. No. P-07-2403[35] where the OCA recommended his suspension for a period of three (3) months for conduct unbecoming a public official and a court employee. Although the Court dismissed the complaint, it reminded Atty. Toledo to be more circumspect in his public and private dealings. With the loss of court exhibits under his watch, Atty. Toledo apparently disregarded the Court's warning and continued to show lack of diligence in his administrative function, completely unmindful of the heavy burden and responsibility he carries in the dispensation of justice.

In view of the above disquisitions, we, thus, find Atty. Toledo and Barcelona liable for gross neglect of duty which merits the penalty of dismissal from the service even if the offense was committed for the first time under the Revised Rules of Administrative Cases in the Civil Service.

WHEREFORE, the Court finds respondents, Atty. Jerry R. Toledo, then Branch Clerk of Court [now Clerk of Court V] and Menchie A. Barcelona, Clerk III, both of the Regional Trial Court, Branch 259, Parañaque City, **GUILTY** of Gross Neglect

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[34] *Supra* note 25, at 698-699.

[35] *Re: Toledo v. Atty. Toledo*, 568 Phil. 24 (2008).

of Duty and are hereby **DISMISSED** from the service. Accordingly, their respective civil service eligibility are **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are hereby **FORFEITED**. Likewise, they are **PERPETUALLY DISQUALIFIED** from reemployment in any government agency or instrumentality, including any government-owned and -controlled corporation or government financial institution.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Hernando, J., on official leave.

EN BANC

[A.M. No. MTJ-16-1880. February 4, 2020]
(Formerly OCA IPI No. 13-2565-MTJ)

SUSAN R. ELGAR, *complainant*, *vs*. **JUDGE SOLIMAN M. SANTOS, JR., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; A JUDGE'S FAILURE TO INTERPRET THE LAW OR TO PROPERLY APPRECIATE THE EVIDENCE PRESENTED DOES NOT NECESSARILY RENDER HIM ADMINISTRATIVELY LIABLE, FOR ONLY JUDICIAL ERRORS TAINTED WITH FRAUD, DISHONESTY, GROSS IGNORANCE, BAD FAITH, OR DELIBERATE INTENT TO DO AN INJUSTICE WILL BE ADMINISTRATIVELY SANCTIONED. — The Court, likewise, agrees with OCA that

the following acts alone do not make Judge Santos administratively liable: (1) advising the complainant to bring her co-heirs who were residing abroad before the court; (2) not limiting the case to the validity of the Deed of Donation *Mortis Causa*; and (3) requiring information on the lots which were not subject matter of the petition. As correctly ruled by the OCA, these acts are judicial in nature and involved Judge Santos' appreciation of the probate case. In *Salvador v. Judge Limsiaco, Jr.*, as cited in *Magdadaro v. Judge Saniel, Jr.*, the Court ruled: It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. **Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.** To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. Here, complainant failed to show that Judge Santos' acts were motivated by bias or bad faith. The Court is also not convinced that such acts constitute gross ignorance of the law. Thus, assuming that Judge Santos erred in his appreciation of the case, the remedy of complainant should have been to assail them in an appropriate judicial proceeding where Judge Santos could have corrected himself or could have been corrected by a higher court.

2. ID.; ID.; A JUDGE'S DISREGARD OF THE MEDIATION RULES UNDER A.M. NO. 01-10-5-SC-PHILJA CONSTITUTES VIOLATION OF SUPREME COURT RULES, DIRECTIVES AND CIRCULARS. — [T]he Court finds that Judge Santos failed to take cognizance of A.M. No. 01-10-5-SC-PHILJA in failing to refer the case to mediation. In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province,* the Court explained that to decongest court dockets and enhance access to justice, the Court, through A.M. No. 01-10-5-SC-PHILJA, approved the institutionalization of mediation in the Philippines through court-annexed mediation. Under this set of rules, mediatable cases where amicable settlement is possible must be referred by the trial courts to the Philippine Mediation Center (PMC). Here, the case involved a petition for the allowance of the Deed of Donation *Mortis Causa*, which is governed by the rules on the Settlement of Estate of Deceased Person under the Rules of Court. Being a

mediatable case, Judge Santos, who from his actuations, is presumed to have discerned the possibility of amicable settlement among the parties, should have referred the case to the PMC. However, Judge Santos failed to do so. In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province,* the Court ruled that the judge could not have feigned ignorance of A.M. No. 01-10-5-SC-PHILJA since the Philippine Judicial Academy frequently conducts convention and seminars for judges and clerks of court nationwide regarding the implementation of court-annexed mediations and judicial dispute resolutions. Further, as early as 2008, cases from MCTC Nabua-Bato, Nabua, Camarines Sur were already being referred to the PMC. Thus, there was no reason for Judge Santos not to refer to the PMC Special Proceedings No. 1870 which was initiated in 2010.

3. ID.; ID.; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; SECTIONS 1 AND 2, CANON 2; WHILE THE COURTS ARE ENJOINED TO MAKE THE PARTIES AGREE ON AN EQUITABLE COMPROMISE, THE JUDGES' EFFORTS TO MAKE THE PARTIES AGREE SHOULD BE WITHIN THE BOUNDS OF PROPRIETY AND WITHOUT THE SLIGHTEST PERCEPTION OF IMPARTIALITY. — The Court also finds Judge Santos guilty of violating Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary which provide: CANON 2. INTEGRITY Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges. SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer. SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. The Court has previously ruled: x x x x x x. "It is obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave I such a manner that the parties before them should have confidence in their impartiality." While the courts are enjoined to make the parties agree on an equitable compromise, the judges' efforts to make the parties agree should be within the bounds of propriety and without the slightest perception of impartiality. Here, from the

very beginning, Judge Santos has shown his predisposition to resolve the case by way of an amicable settlement when on August 19, 2010, he directed the parties to propose specific terms and conditions for possible amicable settlement, and constantly cajoled them to do so through his Orders. He did not deny that in his effort to persuade the parties, he committed the following acts: (1) he sent text messages to complainant's counsel urging the latter to work out a settlement with oppositor; (2) he conducted an *ex parte* meeting with complainant and her counsel inside his chambers to propose several options for a settlement; and (3) he convinced the oppositor to amicably settle during their accidental meeting in Naga City on August 4, 2011, or more than a year from the time of filing the Petition for the Allowance of the Deed of Donation *Mortis Causa*.

4. ID.; ID.; ID.; ID.; WHILE A.M. NO. 03-01-09 SC MANDATES JUDGES TO PERSUADE THE PARTIES TO ARRIVE AT A SETTLEMENT OF THE DISPUTE, IT, HOWEVER, DOES NOT GIVE JUDGES AN UNBRIDLED LICENSE TO DO THIS OUTSIDE THE CONFINES OF THE OFFICIAL PROCEEDINGS AT THE RISK OF PUTTING INTO QUESTION THE INTEGRITY OF THE JUDICIARY; WHILE A JUDGE MAY HAVE BEEN IMPELLED BY GOOD MOTIVES IN ENCOURAGING THE PARTIES TO ARRIVE AT AN AMICABLE SETTLEMENT, HIS ACTS OF TEXTING COMPLAINANT'S COUNSEL, CONDUCTING AN *EX- PARTE* MEETING WITH COMPLAINANT AND HER COUNSEL INSIDE HIS CHAMBERS, AND CONVINCING THE OPPOSITOR TO SETTLE AMICABLY DURING THEIR ACCIDENTAL MEETING, EXCEEDED THE BOUNDS OF PROPRIETY AND CAST DOUBT ON THE INTEGRITY AND IMPARTIALITY OF THE COURT. — [O]CA Circular No. 70-2003 cautions judges "to avoid in chamber sessions without the other party and his counsel present, and to observe prudence at all times in their conduct to the end that they not only act impartially and with propriety but are also perceived to be impartial and improper." Notably, A.M. No. 03-01-09 SC, which was adverted to by Judge Santos to justify his actions, mandates judges to persuade the parties to arrive at a settlement of the dispute. However, it does not give the judge an unbridled license to do this outside the confines of the official proceedings at the risk of putting into question the integrity of the judiciary. While Judge Santos may have been impelled by good motives

in encouraging the parties to arrive at an amicable settlement, his aforementioned acts particularly texting complainant's counsel and convincing the oppositor to amicably settle during their accidental meeting in Naga City, are not part of the court's official proceedings and thus, cast doubt on the integrity and impartiality of the courts. Moreover, Judge Santos' *ex parte* meeting with complainant and her counsel done inside his chambers is specifically prohibited by OCA Circular No. 70-2003.

5. **ID.; ID.; DELAY IN DISPOSITION OF CASES; THE JUDGE'S OVERBEARING DESIRE TO CONVINCE THE PARTIES TO ARRIVE AT AN AMICABLE SETTLEMENT SHOULD NOT GET IN THE WAY OF ARRIVING AT A JUST AND SPEEDY DISPOSITION OF THE LITIGANTS' CONFLICTING CLAIMS. —** Worse, because of Judge Santos' overbearing persistence to make the parties settle amicably, he has unduly hampered the proceedings in Special Proceedings No. 1870. In *Re: Report on the Judicial Audit conducted in the RTC, Branch 9, Silay City,* the Court found Judge Graciano H. Arinday, Jr. (*Judge Arinday*) guilty of gross inefficiency because of the delay he incurred in disposing of the cases assigned to him and which were already submitted for decision. In two of the cases where he incurred delay, the Court ruled that Judge Arinday was too liberal in granting the parties more than one year to amicably settle their dispute. While the *Judge Arinday* case involved a delay in the disposition of the cases which were already submitted for decision, the Court finds the pronouncement in the same applicable in determining the reasonableness of the delay in Special Proceedings No. 1870. Here, as correctly pointed out by the OCA, the case went on from January 7, 2010 to December 11, 2012 when the petition was finally withdrawn without it proceeding beyond the pre-trial stage. While a few delays were attributable to the parties due to the absence of counsel, the filing of motion for postponement, and change of counsel, the Court finds that based on Judge Santos' actuations spanning around almost three years, it was mainly his overbearing desire to convince the parties to arrive at an amicable settlement that led to the unreasonable delay. While the Court does not find any bad faith or ill motive on the part of Judge Santos in pushing for an amicable settlement, this should not get in the way of arriving at a just and speedy disposition of the litigants' conflicting claims.

6. ID.; ID.; A JUDGE SHOULD REFRAIN FROM USING HIS POSITION TO BROWBEAT COMPLAINANT'S COUNSEL JUST BECAUSE HE DID NOT AGREE WITH THE LATTER'S POSITION. — As regards Judge Santos' issuance of the Extended Order, he again exceeded the bounds of propriety when he unduly castigated complainant's counsel x x x. Judge Santos should have refrained from using his position to browbeat complainant's counsel just because he did not agree with the latter's position. Further, he should have refrained from rendering the Extended Order considering that he already granted the withdrawal of the petition in Special Proceedings No. 1870. Thus, there was no longer any occasion to issue the Extended Order.

7. ID.; ID.; GROSS IGNORANCE OF THE LAW; DISCUSSED; WHEN THE INEFFICIENCY SPRINGS FROM A FAILURE TO RECOGNIZE SUCH A BASIC AND ELEMENTAL RULE, A LAW OR A PRINCIPLE IN THE DISCHARGE OF HIS FUNCTIONS, A JUDGE IS EITHER TOO INCOMPETENT AND UNDESERVING OF THE POSITION AND THE PRESTIGIOUS TITLE HE HOLDS OR HE IS TOO VICIOUS THAT THE OVERSIGHT OR OMISSION WAS DELIBERATELY DONE IN BAD FAITH AND IN GRAVE ABUSE OF JUDICIAL AUTHORITY. — In *Department of Justice v. Judge Mislang,* the Court explained what constitutes gross ignorance of the law in this wise: Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A Judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgement. x x x Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. **But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions**. For liability to attach for ignorance of the law, the

assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. **When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.** In both cases, the judge's dismissal will be in order.

8. ID.; ID.; ID.; BLATANT DISREGARD OF THE RULES ON PRE-TRIAL CONSTITUTES GROSS IGNORANCE OF THE LAW AND PROCEDURE. — The Court likewise finds Judge Santos guilty of gross ignorance of the law. x x x. Judge Santos' gross ignorance of the law lies not so much in the issuance of the Order dated August 7, 2012, which appeared to incorporate a pre-trial order. The Court finds that what appeared as a pre-trial order incorporated in the said Order is not final. In fact, after the pre-trial hearing, Judge Santos issued a Pre-trial Order dated September 4, 2012. However, the Court finds that Judge Santos committed a blatant error when in his Order dated August 7, 2012, he gave the oppositor the privilege of submitting at his option a pre-trial brief. x x x. This contravenes the expressed rule under Section 6, Rule 18 of the Rules of Court that the filing of the respective pre-trial briefs by the parties at least three days before the date of pre-trial is mandatory. x x x. Worse, during the pre-trial hearing, Judge Santos expressed that in the absence of oppositor's pre-trial brief, he was treating oppositor's previous submissions to the court, *i.e., Opposition, Supplement to the Opposition in lieu of Position Paper,* and *Compliance,*

as containing the elements of a pre-trial brief. x x x. Judge Santos' act of considering oppositor's submissions as his pre-trial brief is clearly not sanctioned by Section 6, Rule 18 of the Rules of Court which mandates the parties to file a pre-trial brief. Section 5 of the same Rule even provides that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial, which in turn will result to allowing the plaintiff to present his evidence *ex parte* and for the court to render judgment on the basis thereof. Thus, when he issued the Pre-Trial Order dated September 4, 2012, Judge Santos disregarded the mandatory nature of the submission of pre-trial briefs considering that the oppositor did not submit his pre-trial brief. Judge Santos' lack of understanding of the rules on pre-trial, constitutes gross ignorance of the law and procedure.

9. REMEDIAL LAW; RULE 140 OF THE RULES OF COURT, AS AMENDED BY A.M. NO. 01-8-10-SC; CHARGES AGAINST JUDGES; GUIDELINES IN THE IMPOSITION OF PENALTIES IN ADMINISTRATIVE MATTERS INVOLVING MEMBERS OF THE BENCH; ADMINISTRATIVE CHARGES AGAINST MEMBERS OF THE BENCH ARE CLASSIFIED AS SERIOUS, LESS SERIOUS AND LIGHT; WHERE A JUDGE OR JUSTICE OF THE LOWER COURT IS FOUND GUILTY OF MULTIPLE OFFENSES UNDER RULE 140 OF THE RULES OF COURT, THE COURT SHALL IMPOSE SEPARATE PENALTIES FOR EACH VIOLATIONS. — x x x [I]n *Boston Finance and Investment Corporation v. Judge Gonzalez*, the Court set the following guidelines in the imposition of penalties in administrative matters involving members of the Bench and court personnel, thus: (a) Rule 140 of the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts. **If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation;** and (b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances. Rule 140, as amended by A.M. No. 01-8-10-

SC of the Rules of Court, classifies the administrative charges against members of the Bench as serious, less serious and light. The corresponding penalties for a finding of guilt on any of these charges are provided in Section 11, Rule 140, as amended by A.M. No. 01-8-10-SC:

10. ID.; ID.; ID.; RESPONDENT JUDGE FOUND GUILTY OF VIOLATION OF SUPREME COURT RULES, DIRECTIVES AND CIRCULARS, SIMPLE MISCONDUCT, GROSS INEFFICIENCY OR UNDUE DELAY, AND GROSS IGNORANCE OF THE LAW; PROPER IMPOSABLE PENALTIES. — [J]udge Santos committed the following offenses: 1. Failure to refer the case to the PMC as prescribed in A.M. No. 01-10-5-SC-PHILJA; 2. Pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety, *i.e.*, texting complainant's counsel, conducting an *ex parte* meeting with complainant and her counsel inside his chambers, and convincing the oppositor to settle amicably during their accidental meeting in Naga City; 3. Causing undue delay in terminating the preliminary conference amounting to gross inefficiency; 4. Issuing the Extended Order unduly castigating complainant's counsel after the withdrawal of the petition, thereby exceeding the bounds of propriety; and 5. Giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature as stated in Section 6, Rule 18 of the Rules of Court. Judge Santos' first second, and third offenses are less serious charges. Specifically, the first offense constitutes a violation of Supreme Court rules, directives, and circulars under Section 9(4), Rule 140 of the Rules of Court. The second offense amount to simple misconduct under Section 9(7), Rule 140 of the Rules of Court, there being no corrupt or wrongful motive on the part of Judge Santos. On the other hand, the third offense which amounts to gross inefficiency or undue delay falls under Section 9(1), Rule 140 of the Rules of Court. Applying Section 11, Rule 140, the Court deems it proper to impose a penalty of ₱12,000.00 each for the first and third offenses. As to the second offense, the Court previously found Judge Santos in A.M. No. MTJ-15-1850 guilty of violating Section 2, Canon 2 of the New Code of Judicial Conduct for initiating a conference among the parties in a pending case for the purpose of settling the cases pending not only before him but also those pending outside his *sala*. Thus, the Court deems it proper to impose the maximum penalty of ₱20,000.00. As to

the fourth charge, the Court likewise finds it as not attended by corrupt or wrongful motive on the part of Judge Santos in issuing the Extended Order. Thus, it only amounts to simple misconduct which is a less serious charge under Section 9(7), Rule 140 of the Rules of Court. Thus, the Court deems it proper to impose a penalty of ₱12,000.00. Lastly, the fifth offense constitutes gross ignorance of the law under Section 8(9), Rule 140 of the Rules of Court which is a serious charge. Thus, applying Section 11, Rule 140, the Court deems it proper to impose the penalty of ₱22,000.00.

D E C I S I O N

INTING, *J.*:

This administrative matter stemmed from the Complaint-Affidavit[1] filed by Susan R. Elgar (complainant) against Judge Soliman M. Santos, Jr. (Judge Santos), in his capacity as the Presiding Judge of Municipal Circuit Trial Court (MCTC), Nabua-Bato, Camarines Sur. Complainant charged him with gross ignorance of the law and violations of the Code of Judicial Conduct and Canons of Judicial Ethics relative to Special Proceedings No. 1870, entitled "In Re: Petition for the Allowance of the Deed of Donation *Mortis Causa* by the Late Wenceslao Elgar."[2]

The Antecedents

Complainant's Version

In her verified Complaint-Affidavit[3] filed on January 17, 2013, complainant alleged that her deceased husband, Wenceslao F. Elgar, executed on August 18, 1999 a Deed of Donation *Mortis Causa* giving her two parcels of agricultural land located in San Jose, Nabua, Camarines Sur.[4]

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[1] *Rollo*, pp. 1-11.

[2] *Id.* at 307.

[3] *Id.* at 2-11.

[4] *Id.* at 2, 307.

Thus, on January 7, 2010, she filed a petition for the allowance of the Deed of Donation *Mortis Causa* before the MCTC, Nabua-Bato, Camarines Sur docketed as Special Proceedings No. 1870.[5]

Then Acting Presiding Judge Bernhard B. Beltran declared the petition to be sufficient in form and in substance, and assumed jurisdiction over the petition, which was a case for probate. However, before the date of the initial hearing, Judge Santos assumed his post as the regular presiding judge of the MCTC.[6]

On August 19, 2010, Wenceslao V. Elgar, Jr. (oppositor), the deceased's son by his first marriage, appeared and opposed the petition. Thus, Judge Santos issued an Order[7] of even date resetting the proceedings to October 28, 2010 for preliminary conference, and directing the parties to submit position papers; and to propose specific terms and conditions for possible amicable settlement.[8]

Complainant alleged that she came to realize that Judge Santos had an ardent advocacy to amicably settle and terminate cases considering the notices/writings posted on the walls, both inside and outside of the courtroom, and even in the staff room, all promoting amicable settlement. Furthermore, Judge Santos issued papers to lawyers and litigants advocating amicable settlement.[9]

Complainant also alleged that Judge Santos continuously besieged her counsel with text messages urging the latter to work out a settlement with oppositor. At times, Judge Santos asked her and her counsel if they could meet him for a conference in the morning on the day of the hearing itself.[10]

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[5] *Id.*

[6] *Id.* at 2, 307-308.

[7] *Id.* at 21.

[8] *Id.* at 2-3, 308.

[9] *Id.* at 3, 308.

[10] *Id.*

On October 15, 2010, Judge Santos issued an Order[11] advising the oppositor to bring before the court his siblings, who were all residents of the United States of America (USA) and outside the court's jurisdiction — so that all the rightful heirs may have their respective shares in the estate. Judge Santos again urged the parties to amicably settle the case.

After complainant submitted her Pre-Trial Brief, Judge Santos issued an Order[12] dated October 28, 2010 resetting the preliminary conference to January 18, 2011 because he wanted the parties to amicably settle the case and all the heirs to have their respective shares.[13] Judge Santos opined that the proceedings should not be confined to the determination of the validity of the Deed of Donation *Mortis Causa* since this could result in a bloody and prolonged litigation. He also instructed the parties' counsel to comply with the court's "Prescribed Pre-Trial Brief Contents and Outline."[14]

Subsequently, Judge Santos issued various Orders[15] directing the oppositor to submit his pre-trial brief telling the parties to amicably settle, and calling the attention of the parties to submit their compliances.[16]

On January 18, 2011, the preliminary conference did not push through due to the absence of the oppositor's counsel. However, Judge Santos talked to complainant and her counsel inside his chambers. He proposed several options for a settlement when in fact none had been offered by the parties. Thus, on even date, Judge Santos issued an Order[17] resetting the preliminary conference and/or pre-trial.[18] He stated therein that

[11] *Id.* at 33.

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

[13] *Id.* at 3, 308-309.

[14] *Id.* at 3-4, 309.

[15] *Id.* at 63 and 64.

[16] *Id.* at 4, 310.

[17] *Id.* at 65-66.

[18] *Id.* at 4, 310.

the trial court took the opportunity on two separate occasions to discuss to the parties that he was trying to explore the possibility of an amicable settlement between them, ideally including the other heirs concerned.[19]

On February 23, 2011, Judge Santos directed the parties to submit information and documents clarifying the status of the seven parcels of land which were earlier adverted to by complainant in her previous submissions to the court, apparently in preparation for an amicable settlement. Complainant averred that Judge Santos overstepped his authority since the petition did not include the seven parcels of land and the combined assessed values of the properties were already outside the jurisdiction of the MCTC.[20]

On March 9, 2011, Judge Santos again reset the preliminary conference to May 17, 2011.[21] Judge Santos then directed the parties and their counsel to confer with him inside his chambers. During the meeting, the oppositor made a general proposal for the swapping of properties which complainant did not accept.[22]

Thus, complainant was surprised when Judge Santos issued an Order[23] dated April 26, 2011 identifying the properties for swapping and prescribing the requirements for the written agreement as if the parties already agreed.[24]

Complainant further alleged that the preliminary conference scheduled on May 17, 2011 did not materialize due to the absence of oppositor and his counsel. The preliminary conference scheduled on June 29, 2011 was also postponed on account of the filing of a motion for postponement by complainant's counsel. It was then reset to August 4, 2011.[25]

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[19] *Id.* at 311.

[20] *Id.* at 5, 311.

[21] *Id.* at 75.

[22] *Id.* at 5, 311.

[23] *Id.* at 76.

[24] *Id.* at 5, 311.

[25] *Id.* at 5-6, 311.

Subsequently, the oppositor filed a Motion for Recusal[26] followed by a Manifestation[27] accusing Judge Santos of impropriety when on August 4, 2011, they accidentally met in Naga City and Judge Santos insisted that the case be settled. However, in his Resolution[28] dated August 15, 2011, Judge Santos did not recuse himself.[29]

Thus, on November 8, 2011, the preliminary conference proceeded and Judge Santos again discussed an amicable settlement of the case. Complainant informed Judge Santos that her counsel was not available and insisted that she should not participate. She also made it clear that she would not sign anything and that she was not amenable to any proposal. At this point, Judge Santos banged his arm on the table. Judge Santos only stopped badgering complainant when she started to cry. The preliminary conference was then moved to December 14, 2011.[30]

After several more resettings, there was still no agreement on Judge Santos' proposal to swap properties. Hence, the final mediation conference was scheduled on March 21, 2012.[31] At the hearing, the oppositor manifested that he was not amenable to any settlement. The counsel agreed not to have any pre-trial since the petition was a special proceedings case.[32]

Thus, after almost two years, the preliminary conference, which started on October 28, 2010 was finally terminated when in his Order[33] dated June 21, 2012, Judge Santos set the presentation of evidence for the petitioner on August 28, September 11 and 25, October 16, and November 6, 2012.[34]

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[26] *Id.* at 77-79.

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

[28] *Id.* at 82-84.

[29] *Id.* at 84.

[30] *Id.* at 6, 312.

[31] *Id.*

[32] *Id.* at 7, 312.

[33] *Id.* at 88.

[34] *Id.* at 7, 312.

However, on August 7, 2012, Judge Santos issued an Order[35] reversing his Order dated June 21, 2012, and mandating the parties to undergo pre-trial hearing.[36] He enumerated and listed the matters for stipulations and admission, documents to be submitted, and issues to be taken up by the parties during the pre-trial hearing.[37]

On August 28, 2012, Judge Santos insisted that the pre-trial hearing be conducted first. He said that he already prepared what should be taken up during the hearing as stated in his Order dated August 7, 2012 and the parties may choose what is acceptable to them and to reject those which are not. Complainant's counsel opposed and argued that the pre-trial should not be dictated by what is embodied in the Order dated August 7, 2012. To this, Judge Santos disagreed and claimed that he was being proactive. Further, while complainant's counsel told Judge Santos that oppositor should first file a pre-trial brief, Judge Santos countered that it was no longer necessary. He explained that the oppositor had the option to file his pre-trial brief, and the expected contents of the oppositor's pre-trial brief could be inferred from the pleadings previously filed.

Subsequently, complainant filed a motion for inhibition, but it was denied by Judge Santos. He reasoned that since he denied the oppositor's motion for recusal, he should likewise deny complainant's motion for inhibition.[38]

Feeling hopeless with her case, complainant decided to move for the withdrawal of her petition.[39] Subsequently, on December 11, 2012, Judge Santos issued an Order[40] granting complainant's motion withdrawing the petition. However, eight days after withdrawing the petition, Judge Santos issued an Extended

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[35] *Id.* at 89-94.

[36] *Id.* at 89.

[37] *Id.* at 90-93.

[38] *Id.* at 7-8, 313.

[39] *Id.* at 9.

[40] *Id.* at 173.

Order[41] dated December 19, 2012 castigating complainant's counsel and casting aspersions against her character.[42] Complainant averred that there was no reason for the issuance of the Extended Order as there was no pending incident.

Complainant averred that the series of acts done by Judge Santos in pressuring her to agree to an amicable settlement against her will, and willfully disobeying and ignoring both substantial and remedial law in the guise of equity, reflected badly on the judiciary.[43]

Respondent's Version

In his Comment[44] dated March 1, 2013, Judge Santos argued that he was not ignorant of the rules and that his persistence to arrive at an amicable settlement was directed at both parties. He explained that his act of applying some pressure was normal in any amicable settlement as long as it was not undue or improper. In fact, under Administrative Matter (A.M.) No. 03-1-09-SC,[45] "[t]he court shall endeavor to make the parties agree to an equitable compromise or settlement at any stage of the proceedings before rendition of judgment."[46]

Judge Santos justified his alleged actions which complainant described as constituting gross ignorance of the law: (1) directing the oppositor to bring before the court his co-heirs who were residing at the USA; (2) not limiting his actions to determining the validity of the Deed of Donation *Mortis Causa*; and (3) requiring information and documents to clarify the status of the seven parcels of land under the name of the decedent which

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[41] *Id.* at 174-179.

[42] *Id.* at 9, 313.

[43] *Id.* at 9, 313.

[44] *Id.* at 181-207.

[45] Rules on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (effective August 16, 2004).

[46] *Rollo*, p. 192.

were not subject of the petition.[47] He explained that he committed these acts because the oppositor claimed that complainant's action was not a simple case for allowance of the Deed of Donation *Mortis Causa*, but was a case that concerned all of the compulsory heirs of the decedent and their rightful share in the estate.[48] Furthermore, one of the two lots donated by the decedent to complainant, whom oppositor admitted was a compulsory heir, was already in the name of oppositor.[49]

Judge Santos admitted that he constantly texted complainant's counsel. However, he argued that there was nothing unethical in his actions as he was merely trying to bring the parties to a fair and just amicable settlement.[50]

As to the allegations of conducting *ex parte* meetings or conferences before the scheduled hearings, Judge Santos alleged that the meetings were done sometimes with one or the other party separately and sometimes with both parties present. He argued that these were proper and ethical since his acts were mediation techniques sanctioned under A.M. No. 03-1-09-SC.[51]

Judge Santos, likewise, defended his Order[52] dated April 26, 2011. He alleged that contrary to complainant's allegation, oppositor made an oral proposal for the swap of at least the Sta. Elena Baras property with the two lots which were donated by the decedent to the complainant. It was understood that the proposal for swapping which may include another lot would be formalized in writing so that complainant could intelligently respond thereto. Thus, in his Order dated April 26, 2011, Judge Santos reminded the parties about the draft of the proposal in the form of an extrajudicial settlement of estate. Notably,

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[47] *Id.* at 194.

[48] *Id.* at 195.

[49] *Id.*

[50] *Id.* at 197.

[51] *Id.* at 197.

[52] *Id.* at 76.

complainant's silence for a considerable time on this matter amounted to acquiescence or estoppel.[53]

Judge Santos also admitted to accidentally meeting the oppositor in Naga City. He claimed that he seized the rare opportunity to personally convey his consistent message that the parties enter into an amicable settlement.[54]

Judge Santos further averred that he did not compel, but merely encouraged complainant to participate during the November 8, 2011 preliminary conference in the absence of her counsel. Further, records showed that complainant did not join the conference as she refused to do so. Judge Santos also denied banging his arm on the table and badgering the complainant.[55]

As to the delay in terminating the preliminary conference, Judge Santos argued that the delay should not be attributed to him as he must be given a certain amount of discretion and wisdom in determining whether a settlement between the parties is still possible. Judge Santos blamed the delay on the insincerity of some of the parties and their counsel in their professed willingness to enter into an amicable settlement.[56] He even proactively drafted an agreement reflecting the proposal of the parties, but in the end the parties failed to arrive at an agreement during the final mediation conference held on June 21, 2012.[57] Further, there were unusual postponements or resetting by one or both counsel due to various non-appearances, non-submissions and unreadiness of both parties, and changes in the handling counsels.[58]

As to his Decision to conduct a pre-trial, Judge Santos argued that such was already explained in his Order[59] dated August 7,

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[53] *Id.* at 199-200.

[54] *Id.* at 200.

[55] *Id.* at 199-200.

[56] *Id.* at 201.

[57] *Id.* at 202.

[58] *Id.* at 201.

[59] *Id.* at 89-94.

2012. He explained therein that such was in accordance with the Rules of Court since under Section 2, Rule 18, which governs ordinary actions, pre-trial is mandatory. On the other hand, Section 2, Rule 72 of the Rules of Court provides that "[i]n the absence of special provisions, the rules provided for the ordinary actions shall be, as far as practicable, applicable in special proceedings." Further, since complainant submitted her pre-trial brief, she was estopped from questioning the holding of a pre-trial.[60]

Judge Santos also averred that complainant failed to mention that after the pre-trial hearing, he issued a Pre-Trial Order dated August 28, 2012 which complainant did not assail.[61] Instead, complainant filed a motion for inhibition against him.[62]

As to his denial of the motion for inhibition, Judge Santos referred to the Resolutions he issued in Special Proceedings No. 1870 wherein he denied the Motion to Recuse filed by the oppositor and the Motion for Inhibition filed by complainant.[63] Essentially, Judge Santos discussed in his various Resolutions that he remained impartial to the parties,[64] and that complainant did not present any extrinsic evidence to establish bias, bad faith, malice or corrupt purpose.[65]

Lastly, Judge Santos explained that in the Extended Order, he discussed that there was pride on the part of complainant's counsel who could not take the denial of her motion for inhibition. Thus, she conducted herself in a way that may have caused prejudice to or undermined her client's cause. Judge Santos also gave an advice to complainant's counsel to review and reflect on the "pride and prejudice" aspects of her conduct and

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[60] *Id.* at 204.

[61] *Id.* at 203.

[62] *Id.*

[63] *Id.* at 205.

[64] *Id.* at 84.

[65] *Id.* at 169.

handling of complainant's case as it may have implications on her law practice.[66]

The parties then filed their respective Reply[67] and Rejoinder.[68]

The Report and Recommendation of the Office of the Court Administrator (OCA)

In its Report[69] dated September 17, 2015, the OCA found Judge Santos guilty of gross ignorance of the law and violation of the New Code of Judicial Conduct for the Philippine Judiciary amounting to simple misconduct.[70]

At the outset, the OCA did not find Judge Santos liable for the following acts: (1) allowing the oppositor to bring to the court his co-heirs, who are all residents of the USA, and, therefore, outside the jurisdiction of the trial court; (2) not limiting his determination to the validity of the Deed of Donation *Mortis Causa*; (3) requiring information and documents concerning seven parcels of land which are not the subject matter of the petition; and (4) ordering the conduct of a regular pre-trial in a special proceeding case. The OCA explained that these matters are judicial in nature and therefore, must be corrected through the appropriate legal remedy.[71]

However, the OCA held Judge Santos liable for the following acts: (1) his stubborn persistence in making the parties agree to amicably settle the petition; and (2) undue delay in the termination of the preliminary conference.[72]

The OCA ruled that while there was nothing wrong with conducting conciliation proceedings intended to terminate the

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[66] *Id.* at 206.

[67] *Id.* at 288-295.

[68] *Id.* at 296-302.

[69] *Id.* at 307-321.

[70] *Id.* at 319-321.

[71] *Id.* at 317.

[72] *Id.*

case and while Judge Santos had no malicious intent in doing such, his unrelenting efforts have effectively derailed the speedy disposition of the case.[73] Here, two years have passed from the time of filing of the complaint on January 7, 2010 until the withdrawal of the petition on December 11, 2012 without the case going beyond the pre-trial stage.[74] The OCA also ruled that Judge Santos could not deny that the parties repeatedly made it known to him that they did not want to settle amicably.[75]

The OCA further ruled that Judge Santos violated Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct in committing the following acts: (1) issuing the Extended Order which principally scolded and lectured complainant's counsel about "pride and prejudice" and which was highly uncalled for since he already issued an order granting the motion to withdraw the petition;[76] and (2) sending text messages to complainant's counsel and conducting *ex parte* meetings and conferences.[77]

Finally, the OCA ruled that Judge Santos committed gross ignorance of the law when he issued a prefabricated pre-trial order despite the fact that the pre-trial hearing was not yet terminated and the oppositor failed to file his pre-trial brief.[78]

As to the penalty, the OCA deemed the penalty of a fine to be sufficient considering that this was the first time for Judge Santos to be administratively charged of gross ignorance of the law.[79] The OCA also considered the violation of the Code of Judicial Conduct amounting to simple misconduct as an aggravating circumstance.[80] Thus, the OCA recommended that

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[73] *Id.* at 318.

[74] *Id.* at 317-318.

[75] *Id.* at 318.

[76] *Id.* at 319.

[77] *Id.*

[78] *Id.* at 319-320.

[79] *Id.* at 320.

[80] *Id.*

Judge Santos be fined in the amount of ₱30,000.00 and that he be reminded to be more circumspect in his desire to settle cases amicably so as not to hinder their disposition.[81]

Pending the proceedings, Judge Santos filed a Manifestation[82] dated October 1, 2016 indicating that he has been appointed as judge of Branch 61, Regional Trial Court, Naga City.

The Court's Ruling

The Court partly adopts the findings and recommendations of the OCA.

At the outset, the Court affirms the OCA's recommendation not to hold Judge Santos administratively liable for conducting a pre-trial in a special proceedings case. It would suffice to say that his decision to conduct a pre-trial which applies to ordinary civil actions has sufficient legal basis. Specifically, Section 2, Rule 72 provides that "[i]n the absence of special provisions, the rules provided for the ordinary actions shall be, as far as practicable, applicable in special proceedings."[83]

The Court, likewise, agrees with OCA that the following acts alone do not make Judge Santos administratively liable: (1) advising the complainant to bring her co-heirs who were residing abroad before the court; (2) not limiting the case to the validity of the Deed of Donation *Mortis Causa*; and (3) requiring information on the lots which were not subject matter of the petition.

As correctly ruled by the OCA, these acts are judicial in nature and involved Judge Santos' appreciation of the probate case. In *Salvador v. Judge Limsiaco, Jr.*,[84] as cited in *Magdadaro v. Judge Saniel, Jr.*,[85] the Court ruled:

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[81] *Id.* at 321.

[82] *Id.* at 332-333.

[83] *Id.* at 204.

[84] 519 Phil. 683 (2006).

[85] 700 Phil. 513 (2012).

It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. **Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned**. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[86]

Here, complainant failed to show that Judge Santos' acts were motivated by bias or bad faith. The Court is also not convinced that such acts constitute gross ignorance of the law. Thus, assuming that Judge Santos erred in his appreciation of the case, the remedy of complainant should have been to assail them in an appropriate judicial proceeding where Judge Santos could have corrected himself or could have been corrected by a higher court.

However, the same cannot be said of Judge Santos' other acts which, as discussed below, are either tainted with impropriety or, though judicial in nature, constitutes a blatant disregard of established rules and procedures.

Judge Santos' disregard of mediation rules under A.M. No. 01-10-5-SC-PHILJA

At the outset, the Court finds that Judge Santos failed to take cognizance of A.M. No. 01-10-5-SC-PHILJA in failing to refer the case to mediation. In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province*,[87] the Court explained that to decongest court dockets and enhance access to justice, the Court, through A.M. No. 01-10-5-SC-PHILJA, approved the institutionalization of mediation in the Philippines through court-annexed mediation.[88] Under this set of rules, mediatable cases where amicable

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[86] *Id.* at 520, citing *supra* note 84 at 687.

[87] 819 Phil. 518 (2017).

[88] *Id.* at 538.

settlement is possible must be referred by the trial courts to the Philippine Mediation Center (PMC).[89]

Here, the case involved a petition for the allowance of the Deed of Donation *Mortis Causa*, which is governed by the rules on the Settlement of Estate of Deceased Persons under the Rules of Court.[90] Being a mediatable case, Judge Santos, who from his actuations, is presumed to have discerned the possibility of amicable settlement among the parties, should have referred the case to the PMC.[91] However, Judge Santos failed to do so.

In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province,*[92] the Court ruled that the judge could not have feigned ignorance of A.M. No. 01-10-5-SC-PHILJA since the Philippine Judicial Academy frequently conducts conventions and seminars for judges and

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[89] *Id.* at 539.

[90] Article 728 of the New Civil Code provides that "[d]onations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession." Further, under Article 838 of the Civil Code,"[n]o will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court." Thus, the allowance of the Deed of Donation *Mortis Causa* in this case falls under the set of rules on the Settlement of Estate under the Rules of Court.

[91] Under A.M. No. 01-10-5-SC-PHILJA, the following cases are referrable to mediation:

a) All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;
b) Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law;
c) The civil aspect of BP 22 cases; and
d) The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code.

As per the website of the Philippine Judicial Academy, the civil aspect of theft (not qualified theft), estafa (not syndicated or large scale estafa), and libel may also be referred to court-annexed mediation. <http://philja.judiciary.gov.ph/pfaq.html, last visited November 25, 2019>.

[92] *Supra* note 87.

clerks of court nationwide regarding the implementation of court-annexed mediations and judicial dispute resolutions.[93]

Further, as early as 2008, cases from MCTC Nabua-Bato, Nabua, Camarines Sur were already being referred to the PMC. Thus, there was no reason for Judge Santos not to refer to the PMC Special Proceedings No. 1870 which was initiated in 2010.

Judge Santos' overbearing acts to make the parties settle amicably and unjustified delay in conducting the proceedings

The Court also finds Judge Santos guilty of violating Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary which provide:

CANON 2 INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

The Court has previously ruled:

"x x x a judge's official conduct and his behavior in the performance of judicial duties should be free from the appearance of impropriety and must be beyond reproach. One who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him, for his private as well as his official conduct must at all times be free from the appearance of impropriety. Because appearance is as important as reality in the performance of judicial functions, like Caesar's wife, a judge must not only be pure but also beyond suspicion. A judge has the duty to not only render a just and

[93] *Id.* at 540.

impartial decision, but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity.

"It is obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality."[94] (Italics and citation omitted.)

While the courts are enjoined to make the parties agree on an equitable compromise, the judges' efforts to make the parties agree should be within the bounds of propriety and without the slightest perception of impartiality.

Here, from the very beginning, Judge Santos has shown his predisposition to resolve the case by way of an amicable settlement when on August 19, 2010, he directed the parties to propose specific terms and conditions for possible amicable settlement, and constantly cajoled them to do so through his Orders. He did not deny that in his effort to persuade the parties, he committed the following acts: (1) he sent text messages to complainant's counsel urging the latter to work out a settlement with oppositor; (2) he conducted an *ex parte* meeting with complainant and her counsel inside his chambers to propose several options for a settlement; and (3) he convinced the oppositor to amicably settle during their accidental meeting in Naga City on August 4, 2011, or more than a year from the time of filing the Petition for the Allowance of the Deed of Donation *Mortis Causa*.

In *Borromeo v. Santos*,[95] the Court once admonished herein Judge Santos for initiating a conference among the parties in a case pending before him. The conference was supposedly for the purpose of settling the cases pending not only before him but also those pending outside his *sala*. The Court ruled that such act cast doubt on Judge Santos' impartiality. More

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[94] *Sibayan-Joaquin v. Judge Javellana*, 420 Phil. 584, 589-590 (2001).

[95] A.M. No. MTJ-15-1850, February 16, 2015, Second Division, Min. Res.

importantly, the Court ruled that Judge Santos' dealings with litigants' counsel outside of the courtroom to discuss a possible settlement could give rise to doubts as to the propriety of the act.[96] The Court ruled:

> x x x While the explanation of Judge Santos in holding the conference among the lawyers of the Parañal siblings is laudable, the same, however, casts doubt on his impartiality and integrity as a judge and erodes the confidence of the people in the judicial system. No matter how noble his intentions may have been, it was improper for Judge Santos to meet the lawyers in a restaurant to discuss a possible settlement, among others. Judge Santos should not have put himself in such a position as to arouse suspicion of improper conduct. He should have known that his dealings with the litigants' counsels outside of the courtroom would give rise to doubts as to the propriety of the same Judge Santos failed to live up to the norm that "judges should not only be impartial, independent and honest but should be believed and perceived to be impartial, independent and honest.[97]

Furthermore, OCA Circular No. 70-2003 cautions judges "to avoid in chamber sessions without the other party and his counsel present, and to observe prudence at all times in their conduct to the end that they not only act impartially and with propriety but are also perceived to be impartial and improper."[98]

Notably, A.M. No. 03-1-09 SC,[99] which was adverted to by Judge Santos to justify his actions, mandates judges to persuade the parties to arrive at a settlement of the dispute.[100] However,

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[96] *Id.*

[97] *Id.*

[98] See also *Edaño v. Judge Asdala*, 651 Phil. 183 (2010). See also *Capuno v. Judge Jeramillo, Jr.*, 304 Phil. 383, 392 (1994), citing *Bibon v. David*, A.M. No. MTJ-87-67, March 24, 1988, *En Banc*, Min. Res.

[99] Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

[100] A.M. No. 03-1-09 SC provides in part:

4. Before the continuation of the pre-trial conference, the judge must study all the pleadings of the case, and determine the issues thereof

it does not give the judge an unbridled license to do this outside the confines of the official proceedings at the risk of putting into question the integrity of the judiciary.

While Judge Santos may have been impelled by good motives in encouraging the parties to arrive at an amicable settlement, his aforementioned acts, particularly texting complainant's counsel and convincing the oppositor to amicably settle during their accidental meeting in Naga City, are not part of the court's official proceedings and thus, cast doubt on the integrity and impartiality of the courts. Moreover, Judge Santos' *ex parte* meeting with complainant and her counsel done inside his chambers is specifically prohibited by OCA Circular No. 70-2003.

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and the respective positions of the parties thereon to enable him to intelligently steer the parties toward a possible amicable settlement of the case, or, at the very least, to help reduce and limit the issues. The judge should not allow the termination of pre-trial simply because of the manifestation of the parties that they cannot settle the case. He should expose the parties to the advantages of pre-trial. He must also be mindful that there are other important aspects of the pre-trial that ought to be taken up to expedite the disposition of the case.

The Judge with all tact, patience, impartiality and with due regard to the rights of the parties shall endeavor to persuade them to arrive at a settlement of the dispute. The court shall initially ask the parties and their lawyers if an amicable settlement of the case is possible. If not, the judge may confer with the parties with the opposing counsel to consider the following:

a. Given the evidence of the plaintiff presented in his pre-trial brief to support his claim, what manner of compromise is considered acceptable to the defendant at the present stage?

b. Given the evidence of the defendant described in his pre-trial brief to support his defense, what manner of compromise is considered acceptable to the plaintiff at the present stage?

If not successful, the court shall confer with the party and his counsel separately.

If the manner of compromise is not acceptable, the judge shall confer with the parties without their counsel for the same purpose of settlement.

Worse, because of Judge Santos' overbearing persistence to make the parties settle amicably, he has unduly hampered the proceedings in Special Proceedings No. 1870.

In *Re: Report on the Judicial Audit conducted in the RTC, Branch 9, Silay City*,[101] the Court found Judge Graciano H. Arinday, Jr. (*Judge Arinday*) guilty of gross inefficiency because of the delay he incurred in disposing of the cases assigned to him and which were already submitted for decision. In two of the cases where he incurred delay, the Court ruled that Judge Arinday was too liberal in granting the parties more than one year to amicably settle their dispute.[102]

While the *Judge Arinday* case involved a delay in the disposition of the cases which were already submitted for decision, the Court finds the pronouncement in the same applicable in determining the reasonableness of the delay in Special Proceedings No. 1870. Here, as correctly pointed out by the OCA, the case went on from January 7, 2010 to December 11, 2012 when the petition was finally withdrawn without it proceeding beyond the pre-trial stage. While a few delays were attributable to the parties due to the absence of counsel, the filing of motion for postponement, and change of counsel, the Court finds that based on Judge Santos' actuations spanning around almost three years, it was mainly his overbearing desire to convince the parties to arrive at an amicable settlement that led to the unreasonable delay. While the Court does not find any bad faith or ill motive on the part of Judge Santos in pushing for an amicable settlement, this should not get in the way of arriving at a just and speedy disposition of the litigants' conflicting claims.

Judge Santos' act of unduly castigating complainant's counsel through the Extended Order which was issued even after the petition was already withdrawn

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[101] 410 Phil. 126 (2001).

[102] *Id.* at 130.

As regards Judge Santos' issuance of the Extended Order,[103] he again exceeded the bounds of propriety when he unduly castigated complainant's counsel in this wise:

x x x Now, the court is of the definite impression that an element of pride on the part of counsel, in not being able to take the denials of her motions for inhibition of the Presiding Judge, has caused her to conduct herself in this case in a way that may already have caused prejudice to or undermined her client's cause.

x x x x x x x x x

x x x The honorable thing for counsel whose motions for inhibition were denied is to "take the blows," proceed with the case (in this case, set for initial presentation of petitioner's evidence), face the music, face the judge. Instead, counsel goes into her own denial mode, refusing to accept the denials of her motions for inhibition. It looks like pride has taken over counsel's conduct and handling of petitioner's case to her possible prejudice.

x x x x x x x x x

Can you imagine a counsel manifesting in writing to a court that "she will not be presenting evidence on said dates or in any future date the Court shall *motu proprio* schedule" (underscoring supplied)? What is this if not manifest insubordination by an officer of the court? In fact by the time of the last hearing on 11 December 2012, there was already sufficient basis to discipline counsel for petitioner on grounds of legal ethics but this court did not want to add more fuel, as it were, to the fire of the inhibition incident.

x x x x x x x x x

Fellow judges, including a Court of Appeals Associate Justice, have told this judge, "that's what parties and lawyers do if dai kursunada an judge. Right man ninda to withdraw the Complaint or Petition." We do not know whether petitioner or counsel has a better alternative in mind other than forum-shopping. This court, while this case has gone out of its hands, deems fit to address that question shortly.

In the meantime, also as a matter of sincere fraternal advice, it should do well for Atty. Bermejo to review and reflect on the "Pride and Prejudice" aspects of her conduct and handling of petitioner's

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[103] *Rollo*, pp. 174-179.

case, as may have implications for her law practice. Learn from this experience, including on correctly discerning bias or impartiality of the judge. Whether for future litigation or for the better alternative to be discussed below, sometimes the client's cause is better served when counsel sacrifices herself (rather than the cause or the case) or takes herself out of the picture, considering the dynamics of personalities involved. That too is wise law practice, and when warranted, can bring better results for the client's cause.[104]

Judge Santos should have refrained from using his position to browbeat complainant's counsel just because he did not agree with the latter's position. Further, he should have refrained from rendering the Extended Order considering that he already granted the withdrawal of the petition in Special Proceedings No. 1870. Thus, there was no longer any occasion to issue the Extended Order.

Judge Santos' blatant disregard of the rules on pre-trial

The Court likewise finds Judge Santos guilty of gross ignorance of the law.

In *Department of Justice v. Judge Mislang*,[105] the Court explained what constitutes gross ignorance of the law in this wise:

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. x x x Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. **But a blatant disregard of**

[104] *Id.* at 174-176. Emphasis and italics omitted.

[105] 791 Phil. 219 (2016).

the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. **When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.** In both cases, the judge's dismissal will be in order.[106] (Emphasis supplied; citations omitted.)

Judge Santos' gross ignorance of the law lies not so much in the issuance of the Order dated August 7, 2012, which appeared to incorporate a pre-trial order. The Court finds that what appeared as a pre-trial order incorporated in the said Order is not final. In fact, after the pre-trial hearing, Judge Santos issued a Pre-trial Order[107] dated September 4, 2012.

However, the Court finds that Judge Santos committed a blatant error when in his Order dated August 7, 2012, he gave the oppositor the privilege of submitting at its option a pre-trial brief. The Order provides in part:

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[106] *Id.* at 227-228.

[107] *Rollo*, pp. 280-285.

In fairness to the oppositor who was represented by former counsel Atty. Beltran, *whose submissions however still bind him*, his current counsel Atty. Gina P. Beltran MAY make further submissions by way of a proper Pre-Trial Brief, IF she wishes to, within 10 days from receipt hereof, considering that no such Brief was submitted by Atty. Beltran (although, as noted above, his "Compliance dated 27 October 2010 but filed 8 March 2011 has (*sic*) some elements of a Pre-Trial Brief)[108]

This contravenes the expressed rule under Section 6, Rule 18 of the Rules of Court that the filing of the respective pre-trial briefs by the parties at least three days before the date of pre-trial is mandatory. Section 6, Rule 18 provides:

SEC. 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (Underscoring supplied.)

Worse, during the pre-trial hearing, Judge Santos expressed that in the absence of oppositor's pre-trial brief, he was treating

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[108] *Id.* at 93.

oppositor's previous submissions to the court, *i.e.*, *Opposition, Supplement to the Opposition in Lieu of Position Paper,* and *Compliance*, as containing the elements of a pre-trial brief.[109] The records of the pre-trial hearing provide in part:

ATTY. BERMEJO:

Your Honor, this is not ready for pre-trial, they did not submit any Pre-Trial Brief it's unfair for my client. I have no way of knowing what are their proposals are, unless, Your Honor, I have to check all their pleadings.

COURT:

Counsel, I gave Atty. Ballebar that opportunity in the last section of the Order, if she wishes to submit a Pre-trial Brief within 10 days from receipt hereof, considering that no such brief was submitted by Atty. Beltran, although as noted above, his compliance dated 27 October 2010 but filed 8 March 2011 has some element of a Pre-trial Brief. The court made reference to 3 submissions by oppositor's counsel. In these 3 submission[,] there are already there elements of a Pre-Trial Brief, one did not necessarily to designate a particular submission as Pre-Trial Brief in order for it to amount to that.[110]

Judge Santos' act of considering oppositor's submissions as his pre-trial brief is clearly not sanctioned by Section 6, Rule 18 of the Rules of Court which mandates the parties to file a pre-trial brief. Section 5 of the same Rule even provides that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial, which in turn will result to allowing the plaintiff to present his evidence *ex parte* and for the court to render judgment on the basis thereof.

Thus, when he issued the Pre-Trial Order dated September 4, 2012, Judge Santos disregarded the mandatory nature of the submission of pre-trial briefs considering that the oppositor did not submit his pre-trial brief.

Judge Santos' lack of understanding of the rules on pre-trial, constitutes gross ignorance of the law and procedure.

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[109] *Id.* at 90, 108-109.

[110] *Id.* at 108-109.

Penalties

As pointed out by my esteemed colleague, Justice Estela M. Perlas-Bernabe, in *Boston Finance and Investment Corporation v. Judge Gonzalez*, the Court set the following guidelines in the imposition of penalties in administrative matters involving members of the Bench and Court personnel, thus:

(a) Rule 140 of the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts. **If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation**; and

(b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances. (Emphasis supplied.)

Rule 140, as amended by A.M. No. 01-8-10-SC of the Rules of Court, classifies the administrative charges against members of the Bench as serious, less serious and light.[111]

The corresponding penalties for a finding of guilt on any of these charges are provided in Section 11, Rule 140, as amended by A.M. No. 01-8-10-SC:

Section 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

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[111] SEC. 7. *Classification of charges*. — Administrative charges are classified as serious, less serious, or light.

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

l. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

l. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or
2. Censure;
3. Reprimand;
4. Admonition with warning.

To recapitulate, Judge Santos committed the following offenses:

1. failure to refer the case to the PMC as prescribed in A.M. No. 01-10-5-SC-PHILJA;

2. pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety, *i.e.*, texting complainant's counsel, conducting an *ex parte* meeting with complainant and her counsel inside his chambers, and convincing the oppositor to settle amicably during their accidental meeting in Naga City;

3. causing undue delay in terminating the preliminary conference amounting to gross inefficiency;

4. issuing the Extended Order unduly castigating complainant's counsel after the withdrawal of the petition, thereby exceeding the bounds of propriety; and

5. giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature as stated in Section 6, Rule 18 of the Rules of Court.

Judge Santos' first, second, and third offenses are less serious charges. Specifically, the first offense constitutes a violation of Supreme Court rules, directives, and circulars under Section 9 (4),[112] Rule 140 of the Rules of Court. The second offense amounts to simple misconduct under Section 9 (7),[113] Rule 140 of the Rules of Court, there being no corrupt or wrongful motive on the part of Judge Santos. On the other hand, the third offense which amounts to gross inefficiency or undue delay falls under Section 9 (1),[114] Rule 140 of the Rules of Court.

Applying Section 11, Rule 140, the Court deems it proper to impose a penalty of ₱12,000.00 each for the first and third offenses.

As to the second offense, the Court previously found Judge Santos in A.M. No. MTJ-15-1850 guilty of violating Section 2, Canon 2 of the New Code of Judicial Conduct for initiating a conference among the parties in a pending case for the purpose of settling the cases pending not only before him but also those pending outside his *sala*. Thus, the Court deems it proper to impose the maximum penalty of ₱20,000.00.

As to the fourth charge, the Court likewise finds it as not attended by corrupt or wrongful motive on the part of Judge Santos in issuing the Extended Order. Thus, it only amounts to simple misconduct which is a less serious charge under Section 9 (7),[115] Rule 140 of the Rules of Court. Thus, the Court deems it proper to impose a penalty of ₱12,000.00.

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[112] SEC. 9. *Less Serious Charges*. — Less serious charges include:
x x x x x x x x x
4. Violation of Supreme Court rules, directives, and circulars;

[113] SEC. 9. *Less Serious Charges*. — Less serious charges include:
x x x x x x x x x
7. Simple Misconduct.

[114] SEC. 9. *Less Serious Charges*. — Less serious charges include:
1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

[115] SEC. 9. *Less Serious Charges*. — Less serious charges include:
x x x x x x x x x
7. Simple Misconduct.

Lastly, the fifth offense constitutes gross ignorance of the law under Section 8 (9),[116] Rule 140 of the Rules of Court which is a serious charge. Thus, applying Section 11, Rule 140, the Court deems it proper to impose the penalty of ₱22,000.00.

WHEREFORE, the Court finds Judge Soliman M. Santos, Jr., formerly of Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, and now of Regional Trial Court, Naga City, Branch 61 **GUILTY** of violation of Supreme Court rules, directives and circulars, simple misconduct, gross inefficiency or undue delay and gross ignorance of the law.

Judge Soliman M. Santos, Jr. is **ORDERED** to pay the following **FINES**: (1) ₱12,000.00 for failure to refer the case to the Philippine Mediation Center as prescribed in A.M. No. 01-10-5-SC-PHILJA; (2) ₱20,000.00 for pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety; (3) ₱12,000.00 for causing undue delay in terminating the preliminary conference amounting to gross inefficiency; (4) ₱12,000.00 for issuing the Extended Order unduly castigating complainant's counsel after the withdrawal of the petition, thereby exceeding the bounds of propriety; and (5) ₱22,000.00 for giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature as stated in Section 6, Rule 18 of the Rules of Court.

Judge Soliman M. Santos, Jr. is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Decision be attached to his personal record.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Hernando, J., on official leave.

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[116] SEC. 8. *Serious charges.* — Serious charges include:

x x x x x x x x x

9. Gross ignorance of the law or procedure;

EN BANC

[A.M. No. RTJ-16-2475. February 4, 2020]
(Formerly A.M. No. 16-07-261-RTC)

LEONARIA C. NERI, ABETO LABRA SALCEDO, JR., JOCELYN ENERIO SALCEDO, EVANGELINE P. CAMPOSANO, and HUGO S. AMORILLO, JR., *complainants, vs.* **JUDGE BONIFACIO M. MACABAYA, Branch 20, Regional Trial Court, Cagayan de Oro City, Misamis Oriental,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; A JUDGE WHO BORROWS MONEY FROM LITIGANTS IN CASES PENDING BEFORE HIS COURT VIOLATES PARAGRAPH 7, SECTION 8, RULE 140 OF THE RULES OF COURT, WHICH IS ALSO A GROSS MISCONDUCT CONSTITUTING VIOLATION OF THE NEW CODE OF JUDICIAL CONDUCT; PROPER IMPOSABLE PENALTY. —** After a judicious review of the records, the Court finds no cogent reason to reject or overturn the findings and recommendation of the CA's Investigating Justice, which we hereby adopt *in toto* x x x. x x x. [R]espondent Judge is found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from litigants in cases pending before his court) which is also a gross misconduct constituting violation of the Code of Judicial Conduct. Under Section 8 of Rule 140 of the Rules of Court, it is a serious charge to borrow money or property from lawyers and litigants in a case pending before the court. Under Section 11(A) of the same rule, an act that violates the Code of Judicial Conduct constitutes gross misconduct, which is also a serious charge. In either instance, a serious charge is punishable by (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

2. **ID.; ID.; JUDGES WHO CANNOT MEET THE EXACTING STANDARDS OF JUDICIAL CONDUCT AND INTEGRITY HAVE NO PLACE IN THE JUDICIARY; PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED UPON THE RESPONDENT JUDGE IN CASE AT BAR. —** All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is a mission. Judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression. Those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary. Perforce, the investigating Justice deems it appropriate to recommend the imposition of an administrative penalty of dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits against the respondent judge. Against the foregoing backdrop, it becomes this Tribunal's bounden duty to decree respondent's dismissal from the service.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint against Judge Bonifacio M. Macabaya (respondent) of Branch 20 of the Regional Trial Court of Cagayan de Oro City (RTC) relative to his acts of borrowing and taking money and properties from litigants who had cases pending before his *sala*.

Factual Antecedents

In separate Sworn Statements filed with Executive Judge Dennis Z. Alcantar (Executive Judge Alcantar) of the Regional Trial Court (RTC) in Cagayan de Oro City on May 12, 2015, on May 19, 2015, and on May 27, 2015, respectively, Leonaria C. Neri (Neri), the spouses Abeto L. Salcedo, Jr. (Abeto) and Jocelyn Salcedo (Jocelyn) (Sps. Salcedo), Evangeline P.

Camposano *a.k.a.* Evangeline C. Becera (Camposano), and Hugo S. Amorillo, Jr. (Amorillo) (collectively, complainants) alleged that respondent judge and his wife borrowed money from them at various times while their respective cases were pending before the *sala* of respondent judge.[1]

As summarized by the Office of the Court Administrator (OCA), the following are the contents of the foregoing Sworn Statements:

Neri's Accusation

Neri's case involves a foreclosure of mortgage over a property owned by her daughter, Elizabeth Neri Garces, also known as "Dayen", and the latter's husband, Dr. Garces, which was filed against the said spouses by the Land Bank of the Philippines sometime in 2011, and raffled off to Branch 20 of the RTC of Cagayan de Oro City. Neri alleged that when she and her said daughter went to see respondent, the latter told them that Landbank wanted to take the property but he [respondent] did not sign the Order yet. The respondent then suggested for them to hire Atty. [Alvin] Calingin as their counsel and they heeded respondent's suggestion.[2]

This complainant likewise alleged that sometime in April 2012, while the case was undergoing judicial dispute resolution proceedings, respondent invited her (Neri) to the Persimmon Bakery at Cagayan de Oro City; that while there, respondent, who at that time was in the company of a certain Cesar Gorillo, borrowed ₱50,000.00 from her, and that she had to withdraw this amount from the Banco de Oro (BDO) at Cagayan de Oro City; that the driver of respondent drove her to the BDO to withdraw said amount and back to the Persimmon Bakery, where respondent and Gorillo were waiting for her; that after she gave the money to respondent, the latter "executed a personal borrowing receipt."[3]

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[1] *Id.* at 503.

[2] *Id.* at 504.

[3] *Id.*

Without stating when, Neri further claimed that respondent borrowed another ₱35,000.00 from her, and that she brought this sum to his house at Candida, Bulua, Cagayan de Oro City; that respondent's wife was present when he took delivery of the money; that a few days later, using his cousin as intermediary, respondent borrowed another ₱15,000.00 from her; that the name of respondent's cousin is shown on the receipt, which bore the signature of respondent's cousin. Complainant added that her own cousin, Chryster Neri Babanto, was present when she handed the money to respondent's cousin.[4]

On July 23, 2014, respondent again called for her, and asked her to meet with him at the Centrio, a mall in Cagayan de Oro City; that although respondent had not yet paid the loans he had earlier secured from her, he again asked to borrow money from her; that at first, she was hesitant to lend respondent any additional sum, so she called up Dr. Garces and the latter expressed apprehension over the case pending before respondent; that she tried to allay the apprehension of Dr. Garces and told him that they could not do anything about it and that anyway respondent had promised her that "[the] case will be settled;" that it was only then that Dr. Garces relented, and so she (Neri) had the money withdrawn by a certain Athena at Centrio; that in the company of one Benedicta Bagtong, she gave the amount of ₱50,000.00 to respondent's wife, who at that time was eating with respondent at the Pepper Lunch in Centrio, together with their driver; that after delivering the money, respondent told her, "Don't worry Manang because I will render a decision and you will get your property."[5]

Complainant claimed that despite respondent's assurance, the case has remained undecided, and that respondent's accumulated loans to her and to Dr. Garces have not been paid.[6]

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[4] *Id.*

[5] *Id.* at 505.

[6] *Id.*

Sps. Salcedos' Accusation

The Sps. Salcedo claimed that they have cases before respondent which had been pending since 2010; that one of these cases is a criminal case for reckless imprudence resulting in homicide with abandonment, while the other is a civil case for breach of contract.[7]

These spouses alleged that sometime in September 2010, Abeto and respondent, along with the latter's wife and respondent's driver, went to the Ramen Tei Restaurant in Cagayan de Oro City, to eat; that while there, respondent "asked from [him] speakers for his videoke business;" that in compliance with respondent's request, he bought two sets of speakers amounting to ₱7,900.00 and gave these to respondent in the presence of the latter's wife and driver.[8]

The spouses further alleged that three days later, respondent and his wife went to their house at 8F Abellanosa Street, Cagayan de Oro City, and asked to borrow money from them, saying that he was a newly appointed judge and had not received his salary yet; that on this occasion, respondent said he needed ₱40,000.00 for "*baon*" and for his round trip ticket in going to Manila; that he (Abeto) replied that he had no money at the time, but respondent said that he would send someone to pick up the money once he (complainant) had it; that after two days, respondent sent his sheriff, Venus Gilbolingo, to their house to pick up the money; that instead of giving the money to the sheriff, they (Salcedo spouses) themselves went to respondent's chambers in Branch 20 of the RTC, where they delivered to respondent the amount of ₱40,000.00, in the presence of his wife.[9]

The spouses further alleged that when respondent and his wife went again to their house sometime in October 2010, he (Abeto) was constrained to give away their "driftwood" when

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[7] *Id.*

[8] *Id.*

[9] *Id.* at 505-506.

respondent's wife asked him if she could have it, after she said that it was beautiful; that respondent also requested him to have it delivered to their house; that as these two were about to leave, respondent's wife also saw an empty karaoke box and asked him if she could buy it; that he told her that she could have it too; that in the afternoon of the same day, a Sunday, they delivered the driftwood and karaoke box to the house of respondent's cousin in Candida Subdivision, Cagayan de Oro City, where respondent and his wife first resided; that in fact respondent and his wife personally received the items from them.[10]

According to these complainants-spouses, a week later, respondent intimated to him (Abeto) that he would need food and fish for their daily consumption because he had not received his salary yet, and so, every Saturday or Sunday beginning October until the end of November 2010, he (Abeto) would deliver to respondent's house seven to eight kilos of fish, for which he had to spend between ₱1,400.00 and ₱1,500.00 for each delivery.

Abeto also claimed that on November 12, 2010, he (Abeto) gave respondent ₱5,000.00 through cash transfer, using the facility of the [Cebuana] Lhuiller.

Finally, Abeto recalled that sometime in September 2010, respondent told him, "Jun, your case of Reckless Imprudence resulting in Homicide with Abandonment, I will give a penalty here of eight (8) to ten (10) years so that the accused cannot apply for probation and I promise that I will render the decision in less than two (2) years." Abeto claims that to-date this case has not been decided.[11]

Camposano's Accusation

Camposano alleged that she has two cases pending before respondent's Branch 20. The first one was filed in 1995 and had been archived before respondent was appointed as presiding

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[10] *Id.* at 506.

[11] *Id.*

judge of Branch 20; and the second one involving "Brainweb Foundation, Incorporated" (complete title, docket number, and nature were not indicated) was filed on May 2, 2014.[12]

Camposano claimed that sometime in the second semester of 2014, respondent asked for her phone number while they were inside the court; that respondent later called her and asked to meet with her at the Gaisano Food Court in Bulua, Cagayan de Oro City; that while there, he told her that he has a problem and that he wanted to borrow money from her; and so on that occasion she lent him ₱50,000.00.[13]

A month later, respondent called her up again, telling her as before, that he had a problem and that he needed ₱50,000.00. They met at the Limketkai Mall, where on this occasion she gave him ₱50,000.00.[14]

Several weeks later, respondent called her up anew, telling her that he needed money again. At first, she told him that she had no money as she was "hard up with [her] business," but respondent was persistent because "his need for money is very urgent." She ended up giving him ₱25,000.00 that time.[15]

Asked why she continued to lend respondent money, even if his previous loans had not yet been paid, she said that it was not about the money, but because "he is the presiding judge of the court where [my] cases are pending." She, however, did not follow respondent's instruction that she negotiate for the settlement of her cases with the other party because she wanted justice, not negotiation.[16]

This complainant now asserts that respondent "can no longer render a decision" on her cases because he may also be receiving money from the other parties just like he received money from

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[12] *Id.* at 506-507.

[13] *Id.* at 507.

[14] *Id.*

[15] *Id.*

[16] *Id.*

her. She claims that she was told by the other party, the defendant Cecilio Chavez, that he has a strong connection or influence with respondent, and she had reason to believe him because this Cecilio Chavez is always seen going to parties with respondent. She even claims that respondent's court stenographer Vicky Arroyo (Vicky) knows about this.[17]

Amorillo's Accusation

Sometime in 2010, Amorillo, and his wife filed an application for temporary restraining order against the order of closure of their restaurant by the mayor of Cagayan de Oro City; that sometime in 2011, while inside the courtroom during one of the hearings, a woman seated behind him and his wife introduced herself as the respondent's wife; that after the hearing and the other people inside the courtroom had left, they were personally introduced to respondent by respondent's wife.[18]

Amorillo further claimed that the next day, while he and his wife were in their house at Zone 1, Bulua, Cagayan de Oro City between 6:00 p.m. and 7:00 p.m., their restaurant supervisor called up his wife, informing them that somebody by the name of "Judge Macabaya" was looking for them; and this call was made after respondent and his wife had left the restaurant.[19]

On the afternoon of the following day, their restaurant supervisor again called up his wife, telling her that respondent and his wife were at the restaurant and that they wanted to go to the Amorillos' house; that Mrs. Amorillo's, however, told the supervisor that she and her husband would go to the restaurant themselves; that when they finally met at the restaurant, Amorillo greeted respondent and his wife, "*Kumusta, napasyal ho kayo*?" To which respondent replied, "*May kailangan kami sa inyo*;" that Amorillo's wife asked respondent, "*Ano po* [*iyon*]?" and respondent answered, "*Manghihiram sana kami, eh.*" On hearing this, the Amorillos looked at each other. Respondent then said,

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[17] *Id.*

[18] *Id.* at 507-508.

[19] *Id.* at 508.

"*Manghihiram kami ng* ₱100,000.00;" that when Amorillo's wife told respondent that they did not have that big amount, respondent replied, "*Kahit magkano lang*," that Amarillo's wife, relented and said, "*Sige, titingnan ko muna kung magkano ang maipapahiram ko sa inyo*."[20]

Later on, Amorillo learned from his wife that she gave respondent and his wife ₱30,000.00. Amorillo also claimed that they also gave respondent an additional ₱20,000.00 which was handed to the latter by their restaurant supervisor named Leonila Ismael; his wife likewise informed him that the amounts she had given to respondent and his wife had already reached a total of ₱100,000.00.[21]

Amorillo and his wife claimed that after waiting in vain for six months for respondent and his wife to pay back their loans, he (Amorillo) and his wife went to respondent's house, although it was only he who entered the house; that respondent and his wife were in the house at that time. Per Amarillo's statement, the following conversation took place on this occasion[22] —

> x x x I said, "Judge, andito ho ako para maningil na ho dun sa hiniram ninyo." x x x "Nagalit. Nagalit in a way na nakita ko yung facial expression." [Respondent] said, "Ha, akala ko binigay niyo na sa akin yun." I said, "Ho? Hindi po ako mayaman para mamigay ng pera." And I became sarcastic, "Hindi po ako pilantropo." x x x "Pinaghirapan po namin [ang] perang yan." [Respondent] answered, "Natulungan ko naman kayo sa kaso niyo ah. Di bale, babayaran ko yan. Lalapit din kayo sa akin. Hihingi din kayo ng tulong. My answer was this, "Judge, huwag niyo akong takutin, pareho tayong taga Maynila." x x x[23]

In the midst of their exchange, respondent's wife butted in, saying, "Akala namin bigay nyo na."[24]

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 509.

[24] *Id.*

The above mentioned accusations were endorsed to the OCA. In a Memorandum dated July 7, 2015, Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino (DCA Aldecoa-Delorino) directed respondent to comment on said accusations.[25]

On September 14, 2015, respondent filed his Comment. He therein denounced the accusations against him as fabricated, self-serving, unsubstantiated, and instigated by Executive Judge Alcantar. In point of fact, respondent utterly failed to dispute, much less overthrow, the material allegations of the accusations; if anything, respondent zeroed in on the alleged bias, prejudice, and vindictiveness that must have impelled DCA Aldecoa-Delorino, supposedly in cahoots with Executive Judge Alcantar, Judge Evelyn Gamotin-Nery (Gamotin-Nery), Judge Florencia Sealana-Abbu (Sealana-Abbu), and Judge Gil Bollozos (Bollozos) all of the RTC of Cagayan de Oro City, to cause the formulation of the accusations, whose ultimate end and purpose, according to respondent, was to have him dismissed from the service.[26]

In a Memorandum dated July 18, 2016, DCA Aldecoa-Delorino endorsed the administrative complaints to this Court. DCA Aldecoa-Delorino recommended that complainants' accusations be treated as an administrative complaint and that the same be referred to an Associate Justice of the Court of Appeals (CA) for investigation, report, and recommendation.[27]

In a Resolution dated September 14, 2016, the Third Division of this Court docketed the accusations as A.M. No. RTJ-16-2475. The same Resolution directed the Executive Justice of the CA, Mindanao Station, to raffle these cases among the Justices therein for investigation, report, and recommendation within 90 days from the receipt of the records thereof.[28]

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[25] *Id.*

[26] *Id.*

[27] *Id.* 509-510.

[28] *Id.* at 510.

Investigation

Immediately thereafter, notices were sent to the parties, setting the case for preliminary conference.[29] Before the preliminary conference, Neri however manifested that she was no longer interested in pursuing her complaint against respondent, citing her failing health and claiming that the cases pending at the *sala* of respondent had already been settled.[30]

Even then, trial on the merits ensued, in the course of which respondent cross-examined his accusers.[31]

With regard to Camposano: Respondent tried to make her admit that she was merely coerced into filing a case against him by Executive Judge Alcantar, by his fellow judges at the Cagayan de Oro RTC, Judges Gamotin-Nery, Sealana-Abbu, Bollozos, and a certain Vicky Arroyo, his court stenographer at Branch 20. It is significant to note, however, that during his cross-examination of this complainant, respondent avoided touching upon the issue of his borrowing money from her (Camposano). Which means that this complainant's accusation against respondent virtually stood unchallenged.[32]

As to the accusation of Amorillo: It is respondent's contention that his aforementioned fellow judges in the RTC of Cagayan de Oro City had united to work for his ouster from the service. This contention is clearly devoid of merit not only because respondent has not adduced a shred of evidence that there had been bad blood or strained relations between him and his said fellow judges at the Cagayan de Oro RTC, but also because respondent, despite the ample opportunity accorded unto him, did not confront or challenge Amorillo in regard to the latter's accusation that respondent borrowed various sums of money from Amorillo and his wife.[33]

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[29] *Id.*

[30] *Id.* at 511.

[31] *Id.* at 510-522.

[32] *Id.* at 513.

[33] *Id.* at 513-517.

With respect to the claims of the Sps. Salcedo: Respondent returned to his old theme that if Salcedo spouses filed cases against him, it was because these spouses yielded to the instigation of his detractors, DCA Aldecoa-Delorino, Executive Judge Alcantar, and others. Yet, Jocelyn never wavered from her claim that respondent borrowed money from her and from her husband; that respondent also asked for speakers, driftwood, and the empty karaoke box; and that respondent moreover asked them to deliver fish for respondent's daily consumption during the time respondent had not yet allegedly received his salary. Even though respondent made light sport of the Cebuana Lhuillier receipt which tended to show that the Sps. Salcedo presented to prove that they sent money to him, Jocelyn nonetheless insisted that she and her husband had indeed sent respondent the money covered by the Cebuana Lhullier receipt.[34]

Respondent's defense

Taking the witness stand in his defense, respondent testified on the alleged prejudice, vindictiveness and bias against him by DCA Aldecoa-Delorino and accused her of conspiring with Cagayan de Oro RTC Executive Judge Alcantar, and with fellow Judges Gamotin-Nery, Sealana-Abbu, and Bollozos at the Cagayan de Oro RTC to ensure that he is dismissed from the service based on the accusations of complainants.[35] He also assailed the character of the complainants Camposano, Amorillo, and Sps. Salcedo. He insisted that their respective allegations against him are unsubstantiated by the evidence and are riddled with inconsistencies.[36]

Discussion and Recommendation

In his Resolution of September 28, 2017, Investigating Justice Ronaldo B. Martin (Investigating Justice) of the CA found the testimonies of Camposano, Amorillo, and Sps. Salcedo candid, straightforward, and categorical. The Investigating Justice

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[34] *Id.* at 518-522.

[35] *Id.* at 522.

[36] *Id.* at 523.

observed that said complainants remained steadfast in their claims that respondent did indeed borrow money in various amounts from them. The Investigating Justice also noted that during respondent's cross-examination of these complainants, respondent clearly avoided touching upon the point that he borrowed money from these complainants; and that if anything, respondent merely limited himself to belaboring the theory that complainants were just simply coerced into filing complaints against him as part of the alleged grand design of DCA Aldecoa-Delorino, Executive Judge Alcantar, and Judges Gamotin-Nery, Sealana-Abbu, and Bollozos to oust him from the service.[37] The dispositive portion of the Report reads:

> **IN VIEW OF THE FOREGOING**, it is respectfully recommended that respondent Judge Bonifacio M. Macabaya, Presiding Judge of the Regional Trial Court, Branch 20, in Cagayan de Oro City, be **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to re-employment in any government agency or instrumentality.
>
> RESPECTFULLY SUBMITTED.

The Issue

The chief issue that clamors for resolution by this Court is whether respondent should be held administratively liable as charged.

Ruling of the Court

After a judicious review of the records, the Court finds no cogent reason to reject or overturn the findings and recommendation of the CA's Investigating Justice, which we hereby adopt *in toto*:

> Here, respondent Judge is accused by complainants, namely: Amorillo Camposano, Neri and spouses Salcedo, of borrowing money from them while their respective cases were pending before respondent Judge's sala. To reiterate, the administrative charge for gross misconduct stemmed from sworn statements that complainants

[37] *Id.* at 532.

executed before Executive Judge Dennis Z. Alcantar of the RTC in Cagayan de Oro City and forwarded to the OCA. The OCA endorsed the administrative case to the Supreme Court which gave due course to the complaint and referred the same to the investigating Justice for investigation, report and recommendation.

In the case at bar, complainants were not represented by counsel and in the course of the proceedings, Neri even manifested that she is no longer interested in pursuing her complaint against the respondent Judge. However, the investigating Justice takes judicial notice of the fact that while withdrawing her complaint, Neri stressed that what is alleged in her sworn statement is the truth.

Despite not being represented by counsel, Amorillo, Camposano and spouses Salcedo endeavored to present their respective judicial affidavits in support of their claim of gross misconduct on the part of respondent Judge. In fact, the respective affidavit of Amorillo, Camposano and Jocelyn Salcedo were marked in evidence and upon testifying as to its veracity, respondent Judge extensively cross-examined said complainants.

The gist of complainants' respective complaints is that while their respective cases were pending before the sala of respondent Judge, the latter sought them outside the courtroom and borrowed a large sum of money from them. In the case of spouses Salcedo, respondent Judge and his wife even asked for speakers, driftwood, empty karaoke box and weekly delivery of fish for their daily consumption. The fact that they all have pending cases before respondent Judge, complainants were thus constrained to accommodate respondent Judge and give him money.

The act complained of is classified as a serious charge pursuant to Section 8(7), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, which reads:

SEC. 8. Serious charges. - Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
3. Gross misconduct constituting violations of the Code of Judicial Conduct;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;

7. **Borrowing money or property from lawyers and litigants in a case pending before the court**;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits. (Emphasis supplied)

In this regard, the investigating Justice must stress that the burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. Corollarily, it is well-settled that in administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.

Anent the allegation that respondent Judge borrowed money from litigants in cases pending before this court, there is substantial evidence to hold respondent Judge liable for violation of Section 8(7) of Rule 140 of the Rules of Court.

While it is acknowledged that complainants do not have documentary evidence in support of the alleged loans, with the exception of the Cebuana Lhuiller receipt that spouses Salcedo offered in evidence to attest to the fact that they sent ₱5,000.00 to respondent Judge on November 12, 2011, the investigating Justice is convinced of the veracity of their respective claims. Testimonies are to be weighed, not numbered; thus it has been said that a finding of guilt may be based on the uncorroborated testimony of a single witness when the tribunal finds such testimony positive and credible.

The sworn statements of the complainants as reiterated in their respective judicial affidavits are straightforward and uncomplicated. In the simplest of terms, they narrated how respondent Judge separately approached them while they have cases pending before his court and borrowed money from them. The investigating Justice finds no reason to doubt their credibility. Amorillo, Camposano and Jocelyn respectively testified in a candid, straightforward and categorical manner. Complainants remained steadfast in their assertion that respondent Judge borrowed from them despite the fact that it was respondent Judge himself who cross-examined them.

It is noteworthy that during his exhaustive cross-examination of complainants, respondent Judge did not in fact meet head on the allegations that he borrowed money from complainants. It would have been a perfect time for him to confront complainants and establish the falsity of their claim. Curiously, respondent Judge instead opted to harp on his theory that complainants were just coerced to file a complaint against him as part of the grand design of Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino and Judges Alcantar, Neri, Abbu and Bollozos to harass him and cause his dismissal from service. Respondent Judge merely skimmed over the crux of the controversy which is the alleged borrowing of money from litigants who have cases in his court.

Even in his counter affidavit, respondent Judge only made a cursory denial of the alleged borrowing of money from complainants. Once, again, respondent Judge was transfixed in his conspiracy theory that the aforementioned judges were out to get him. Unfortunately, respondent Judge failed altogether to establish any motive on the part of the aforementioned personalities to falsely accuse him of gross misconduct. Respondent Judge himself admitted that there was no animosity between him and the RTC judges that he claims are conspiring to cause his dismissal from service.

More importantly, the investigating Justice cannot accept respondent Judge's theory that Judge Evelyn Gamotin-Nery, in conspiracy with Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino and Judges Alcantar, Abbu and Bollozos, orchestrated the filing of administrative cases against him because he earned Judge Nery's ire when he was appointed as an Acting Judge in the RTC of Malaybalay City, Bukidnon. It must be underscored that respondent Judge is espousing the arguments that Judge Nery is envious of the ₱6,000.00 allowance that he gets as said acting judge of the RTC of Malaybalay City, and wanted to appropriate said amount for herself. However, aside from being unfounded, the investigating Justice finds respondent Judge's rationalization incredulous. It is highly unlikely that an esteemed judge would go so low as to ruin a fellow judge's career for a measly sum of ₱6,000.00. Such money is preposterous, if not absurd.

Also, the investigating Justice cannot accord any probative weight on the certification that respondent Judge presented in evidence, the sole purpose of which was to rebut the authenticity of the Cebuana Lhuillier receipt that spouses Salcedo submitted in evidence. Indeed, said certification has no probative value for being hearsay.

Well-entrenched is the rule that a private certification is hearsay where the person who issued the same was never presented as a witness. The same is true of letters. While hearsay evidence may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination. The lack of objection may make an incompetent evidence admissible, but admissibility of evidence should not be equated with weight of evidence. Indeed, hearsay evidence whether objected to or not has no probative value.

In fine, respondent Judge's general denial carries little weight. As the preceding paragraphs will show, the charge against respondent Judge is very specific, testified to by complainants, which respondent Judge had the opportunity to directly address and explain, but he merely glossed over. Respondent Judge's claim that the complaints against him are merely instigated by Judges Alcantar, Neri, Abbu and Bollozos is uncorroborated and self-serving.

In view of the absence of a specific denial on the part of respondent Judge, he is thereby deemed to have tacitly admitted the allegation that he had indeed obtained a loan from each of the complainants while their cases are pending before his court. It is settled that the purpose of requiring specific denials from the defendant is to make the defendant disclose the "matters alleged in the complaint which he [or she] succinctly intends to disprove at the trial, together with the matter which he [or she] relied upon to support the denial."

Even assuming *arguendo* that complainants were encouraged to come forward and disclose their experience with respondent Judge by Executive Judge Dennis Z. Alcantar, the same does not detract from the veracity of the complainants' claim. The fact remains that respondent Judge did borrow money from complainants who are litigants with pending cases before his court. The act alone is patently inappropriate and constitutes gross misconduct on the part of respondent Judge.

The proscription against borrowing money or property from lawyers and litigants in a case pending before the court is imposed on Judges to avoid the impression that the Judge would rule in favor of a litigant because the former is indebted to the latter.

The impropriety of borrowing money from litigants in cases before the court is underscored by the broad tenets of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. Under Section

13 of Canon 4, "judges and members of their families shall neither ask for, nor accept, any gifts, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties."

Once again, there is a need to stress that judges must adhere to the highest tenets of judicial conduct. Because of the sensitivity of his position, a judge is required to exhibit, at all times, the highest degree of honesty and integrity and to observe exacting standards of morality, decency and competence. He should adhere to the highest standards of public accountability lest his action erode the public faith in the Judiciary.

As a magistrate, the respondent Judge should have known that he is the visible representation of the law, and more importantly, of justice. It is from him that the people draw their will and awareness to obey the law. For the judge to return that regard, he must be the first to abide by the law and weave an example for others to follow. On this point, respondent Judge clearly failed in his mandate when he unabashedly sought out complainants who are litigants with pending cases before his court and repeatedly borrowed money from them, even going so far as asking spouses Salcedo to provide fish/viand for respondent Judge's family for more than a month. The repetitiveness of respondent Judge's acts shows his proclivity in transgressing the law and conducting himself in a manner that is unbecoming a member of the bench.

All told, respondent Judge is found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from litigants in cases pending before his court) which is also a gross misconduct constituting violation of the Code of Judicial Conduct.

Under Section 8 of Rule 140 of the Rules of Court, it is a serious charge to borrow money or property from lawyers and litigants in a case pending before the court. Under Section 11(A) of the same rule, an act that violates the Code of Judicial Conduct constitutes gross misconduct, which is also a serious charge. In either instance, a serious charge is punishable by (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is a mission. Judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression.

Those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary. Perforce, the investigating Justice deems it appropriate to recommend the imposition of an administrative penalty of dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits against respondent Judge.[38]

Against the foregoing backdrop, it becomes this Tribunal's bounden duty to decree respondent's dismissal from the service.

WHEREFORE, Judge Bonifacio M. Macabaya, Presiding Judge of Branch 20 of the Regional Trial Court of Cagayan de Oro City (RTC), is hereby found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from litigants in cases pending before the court) which is also a gross misconduct constituting violation of the New Code of Judicial Conduct. He is **DISMISSED** from the service, with forfeiture of all retirement benefits, (except accrued leave credits), with prejudice to re-employment in any government agency or instrumentality. Immediately upon receipt by respondent of this decision, he is deemed to have vacated his office and his authority to act as judge is considered automatically terminated.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ*., concur.

Hernando, J., on official leave.

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[38] *Rollo* (Vol. II), pp. 1064-1071.

SECOND DIVISION

[A.C. No. 11639. February 5, 2020]

ROSELYN S. PARKS, *complainant, vs.* **ATTY. JOAQUIN L. MISA, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 8.01, CANON 8 AND RULE 11.03, CANON 11; A LAWYER WHO USES DEROGATORY AND DEFAMATORY LANGUAGE IN HIS AFFIDAVIT VIOLATES THE CANONS AND RULES OF THE CODE OF PROFESSIONAL RESPONSIBILITY; ALTHOUGH A LAWYER'S LANGUAGE MAY BE FORCEFUL AND EMPHATIC, IT SHOULD ALWAYS BE DIGNIFIED AND RESPECTFUL, BEFITTING THE DIGNITY OF THE LEGAL PROFESSION, AS THE USE OF INTEMPERATE LANGUAGE AND UNKIND ASCRIPTIONS HAS NO PLACE IN THE DIGNITY OF JUDICIAL FORUM. — After careful review of the records, the Court concurs with the findings of Commissioner Mamon that the language contained in Atty. Misa's counter-affidavit, making reference to the personal behavior and circumstances of Roselyn run afoul to the precepts of the Code of Professional Responsibility. In *Gimeno v. Zaide*, it was held that the prohibition on the use of intemperate, offensive, and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or any other person, is based on the following canons and rules of the Code of Professional Responsibility: Canon 8 — A lawyer **shall conduct himself with courtesy, fairness and candor toward his professional colleagues**, and shall avoid harassing tactics against opposing counsel. Rule 8.01 — A lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper**. Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. Rule 11.03 — A lawyer **shall abstain from scandalous, offensive or menacing language or behavior before the Courts**. It must be noted that Roselyn was not even a party to the subject criminal case under investigation by Asst. Prosecutor Melanio E. Cordillo,

Jr. The statements made in the counter-affidavit that Roselyn was a known drug addict, a fraud, and making insinuation that her marriage was a "fixed marriage" were pointless and uncalled for, and thus only show that the clear intention of Atty. Misa was to humiliate or insult Roselyn. All the foregoing leads the Court to conclude that Atty. Misa violated the canons and rules of the Code of Professional Responsibility for his use of derogatory and defamatory language in his affidavit. After all, "[t]hough a lawyer's language may be forceful and emphatic, **it should always be dignified and respectful**, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."

APPEARANCES OF COUNSEL

Rosendo C. Ramos for complainant.

R E S O L U T I O N

DELOS SANTOS, *J.*:

Antecedents

In her Complaint,[1] Roselyn S. Parks (Roselyn) alleged the following: (1) that on September 12, 2013 at about 7:45 in the evening, respondent Atty. Joaquin L. Misa, Jr. (Atty. Misa), acting as legal authority, allowed his client, Anthony Ting, to commit criminal offense of demolishing a portion of the concrete wall of the house of her father, Rosendo T. Suniega (Rosendo); (2) that the foregoing act was without lawful order from the court; (3) that the said Anthony Ting inflicted bodily harm against Rosendo in the presence of Atty. Misa; (4) that by the reason of the same incident, Rosendo filed a case for Malicious Mischief and Less Serious Physical Injuries against Anthony Ting, Atty. Misa and several others; (5) that Atty. Misa executed a counter-affidavit containing defamatory and libelous statement against her, even if she was not a party to the complaint filed by her father, Rosendo; and (6) that the said derogatory statements

[1] *Rollo*, pp. 2-6.

were essentially made public by submitting the counter-affidavit to Asst. Prosecutor Melania E. Cordillo Jr., which reads as follows:

> 13. It was then that I noticed ROSELYN round the corner of Mindanao and Mindoro walking towards my direction, wildly clapping as if there was something to applaud about. I turned to her and said, "What do you think will happen if they (U.S. IMMIGRATION) find out about your fix marriage (in Las Vegas)." And THAT got her to join REYNOLD and the rest of them in yelling inanities, insults, hooting and taking pictures while I stood by quietly. Incidentally, copies of e-mail from ROSELYN's cousin Mary Jane "JING" SUNIEGA to the undersigned with attached wedding photos are hereto enclosed as ANNEX "A".
>
> [x x x x x x x x x]
>
> 16. To their credit the police thoroughly investigated the antecedents x x x[.]
>
> 17. They heard about the eviction of BEBOT x x x[.] They were told about ROSELYN's fixed marriage and how her money has made bigger monsters out of them.
>
> [x x x x x x x x x]
>
> 20. Since the complaint affidavit was probably prepared by ROSELYN, a known DRUG ADDICT and a FRAUD x x x it thought not to be given any credence whatsoever and forthwith dismissed.[2]

According to Roselyn, the defamatory remarks were not even relevant to the criminal case under investigation and apparently made to insult, dishonor, and humiliate her. She claimed that the remarks and conduct of Atty. Misa demonstrated lack of moral character, probity, and good behavior, in violation of his oath as a member of the bar and Section 20 (f), Rule 138 of the Rules of Court.[3]

In his Answer,[4] Atty. Misa denied that he acted as a legal authority during the time and place alleged by Roselyn. He admitted pendency of the criminal case filed against them, but

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[2] *Id.* at 2-5.

[3] See *id.* at 5.

[4] *Id.* at 29-34.

denied that the said case was valid and/or makes out a *prima facie* case. Atty. Misa likewise admitted the filing of the counter-affidavit, but denied that it is a proof to show that he allowed any hostile acts.[5] As for his allegation that Roselyn was a drug addict and a fraud, Atty. Misa countered that it was Roselyn's irrational behavior, "acting out" on the night in question, dousing fuel to fire, which drew attention to questions about what sort of person she is.[6] He denied allegations that questioned his integrity and fitness as a member of the law profession, because he claimed that however insulting, dishonoring, and humiliating the questioned allegations might have been, they were privileged, relevant, material, and "required by the justice of the cause with which [he was] charged." Lastly, he averred that Section 20 (f), Rule 138 referred to by Roselyn should be read in its entirety and in conjunction with Section 51 (a) (3) of Rule 130 of the Rules of the Court.[7]

The Integrated Bar of the Philippines (IBP) Report and Recommendation

Investigating Commissioner Suzette A. Mamon (Commissioner Mamon) agreed with Atty. Misa that the counter-affidavit and its contents can be categorized as a privileged communication. However, she ruled that the doctrine on privilege communication *vis*-à-*vis* the rule on libel or defamation is not absolute. She added that the pleading must yield to the rule on relevancy of the declarations or statements uttered or made relative to the subject matter or case in issue before the court or proceeding.[8] In this case, she found that the defamatory remarks stated in Atty. Joaquin's counter-affidavit was not even relevant and material to the criminal case of Malicious Mischief under investigation, but apparently made for the purpose of insulting, dishonoring, and humiliating Roselyn.[9] Thus, in her Report and

[5] *Id.* at 31.

[6] *Id.* at 32.

[7] See *id.*

[8] *Id.* at 177.

[9] *Id.* at 178.

Recommendation[10] dated October 21, 2014, Commissioner Mamon ruled that there was a reasonable ground to conclude that Atty. Misa committed transgressions of the rules and Canon of Professional Responsibility and recommended that Atty. Misa be reprimanded and/or admonished to refrain from employing language unbecoming of a member of the bar.[11]

In its Resolution No. XXI-2015-132[12] dated January 31, 2015, the IBP Board of Governors resolved to adopt and approve with modification the report and recommendation of Commissioner Mamon, such that Atty. Misa be suspended from the practice of law for one (1) month. Atty. Misa sought for reconsideration,[13] whereby the IBP Board of Governors resolved[14] to reduce the penalty back to reprimand as recommended by Commissioner Mamon.

Issue

Did Atty. Misa violate the Code of Professional Responsibility by his use of derogatory and defamatory language against Roselyn in his counter-affidavit?

Ruling

After careful review of the records, the Court concurs with the findings of Commissioner Mamon that the language contained in Atty. Misa's counter-affidavit, making reference to the personal behavior and circumstances of Roselyn run afoul to the precepts of the Code of Professional Responsibility.

In *Gimeno v. Zaide*,[15] it was held that the prohibition on the use of intemperate, offensive, and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or

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[10] *Id.* at 172-179.

[11] *Id.* at 179.

[12] *Id.* at 171.

[13] *Id.* at 164-166.

[14] *Id.* at 169; Resolution No. XXII-2016-333, May 28, 2016.

[15] 759 Phil. 10 (2015).

any other person, is based on the following canons and rules of the Code of Professional Responsibility:

Canon 8 — A lawyer **shall conduct himself with courtesy, fairness and candor toward his professional colleagues**, and shall avoid harassing tactics against opposing counsel.

Rule 8.01 — A lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper**.

Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03 — A lawyer **shall abstain from scandalous, offensive or menacing language or behavior before the Courts**. (Emphases supplied)

It must be noted that Roselyn was not even a party to the subject criminal case under investigation by Asst. Prosecutor Melanio E. Cordillo, Jr. The statements made in the counter-affidavit that Roselyn was a known drug addict, a fraud, and making insinuation that her marriage was a "fixed marriage" were pointless and uncalled for, and thus only show that the clear intention of Atty. Misa was to humiliate or insult Roselyn.

All the foregoing leads the Court to conclude that Atty. Misa violated the canons and rules of the Code of Professional Responsibility for his use of derogatory and defamatory language in his affidavit. After all, "[t]hough a lawyer's language may be forceful and emphatic, **it should always be dignified and respectful**, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."[16]

WHEREFORE, respondent **ATTY. JOAQUIN L. MISA, JR.** (Atty. Misa) is found **GUILTY** of violating Rule 8.01, Canon 8 and Rule 11.03, Canon 11 of the Code of Professional Responsibility. Atty. Misa is hereby **ADMONISHED** to refrain from using language that is abusive, offensive or otherwise improper in his pleadings, and is **STERNLY WARNED** that

[16] *Washington v. Dicen*, A.C. No. 12137 (Resolution), July 9, 2018.

a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Resolution be served on the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance and be attached to Atty. Misa's personal record as attorney.

SO ORDERED.

Perlas-Bernabe (Chairperson), *Reyes, A. Jr.*, and *Inting, JJ.*, concur.

Hernando, J., on official leave.

SECOND DIVISION

[G.R. No. 214046. February 5, 2020]

TOCOMS PHILIPPINES, INC., *petitioner*, *vs.* **PHILIPS ELECTRONICS AND LIGHTING, INC.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; IN RULING UPON A MOTION TO DISMISS GROUNDED UPON FAILURE TO STATE A CAUSE OF ACTION, COURTS MUST ONLY CONSIDER THE FACTS ALLEGED IN THE COMPLAINT, WITHOUT REFERENCE TO MATTERS OUTSIDE THEREOF. — Failure to state a cause of action in an initiatory pleading is a ground for the dismissal of a case. Rule 16, Section 1(g) of the Rules of Court states that: 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 (g) That **the pleading asserting the claim** states no cause of action[.] Though obvious from the text of the

provision, it bears emphasis that the non-statement of the cause of action must be apparent from the complaint or other initiatory pleading. For this reason, it has been consistently held that in ruling upon a motion to dismiss grounded upon failure to state a cause of action, courts must only consider the facts alleged in the complaint, without reference to matters outside thereof. Thus, an early commentary on the Rules of Court describes a motion to dismiss as "the usual, proper, and ordinary method of testing the legal sufficiency of a *complaint*."

2. **ID.; ID.; CAUSE OF ACTION; DEFINED; THE ELEMENTS OF A CAUSE OF ACTION ARE: A LEGAL RIGHT ACCRUING TO THE PLAINTIFF; A DUTY ON THE DEFENDANT'S PART TO RESPECT SUCH RIGHT; AND AN ACT OR OMISSION BY THE DEFENDANT VIOLATIVE OF THE RIGHT OF THE PLAINTIFF OR CONSTITUTING A BREACH OF THE OBLIGATION OF DEFENDANT TO THE PLAINTIFF. —** "A cause of action is the act or omission by which a party violates a right of another." It has three constitutive elements: first, a legal right accruing to the plaintiff; second, a duty on the defendant's part to respect such right; and third, an act or omission by the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff. Tocoms bases its cause of action for damages upon Articles 19, 20, and 21 of the Civil Code, and its "constitutionally vested right to property and to peaceful, uninterrupted, and fair conduct of business." According to Tocoms, the acts committed by PELI during and after the effectivity of the agreement are tainted with bad faith and malice in view of the significant investments made by the former during the effectivity of the Distribution Agreement and in the run-up to the expiration thereof in 2012.

3. **CIVIL LAW; PRINCIPLE OF ABUSE OF RIGHTS; NATURE AND PURPOSE THEREOF, DISCUSSED. —** The nature and purpose of Article 19 of the Civil Code was discussed in *Globe Mackay Radio and Cable Corp. v. CA*, *viz.*: This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation

on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a light is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

4. **ID.; ID.; ELEMENTS OF ABUSE OF RIGHTS; THE PRINCIPLE OF ABUSE OF RIGHTS MAY BE INVOKED IF IT IS PROVEN THAT A RIGHT OR DUTY WAS EXERCISED IN BAD FAITH, REGARDLESS OF WHETHER IT WAS FOR THE SOLE INTENT OF INJURING ANOTHER; ALL PERSONS EXERCISING THEIR LEGAL RIGHTS HAVE THE DUTY TO ACT WITH JUSTICE, GIVE EVERYONE HIS DUE, AND TO OBSERVE HONESTY AND GOOD FAITH, AND THE FAILURE TO DISCHARGE SUCH DUTIES IS COMPENSABLE IF THE ACT IS CONTRARY TO LAW, CONTRARY TO MORALS, GOOD CUSTOMS, OR PUBLIC POLICY. —** Most recently in *Chevron Philippines, Inc. v. Mendoza*, this Court has held that abuse of rights under Article 19 has three elements, namely: (1) the existence of a legal right or duty, (2) an exercise of such right or discharge of such duty in bad faith, and (3) such exercise of right or discharge of duty was made with the sole intent of prejudicing or injuring another. However, the Court has also held that: There is x x x no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case. Cases such as *University of the East v. Jader* and the *Globe Mackay* case, where the Court did not utilize the foregoing threefold test in finding a violation of Article 19, have therefore led to the following observation, *viz.*: [T]he principle [of abuse of rights] may be invoked if it is proven that a right or duty was exercised in bad faith, regardless of whether it was for the sole intent of injuring another. Thus,

it is the absence of good faith which is essential for the application of this principle. The foregoing discussion highlights *bad faith* as the crucial element to a violation of Article 19. The *mala fide* exercise of a legal right in accordance with Article 19 is penalized by Article 21, under which "[a]ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Stated differently, Article 19 imposes upon all persons exercising their legal rights the duty to act with justice, give everyone his due, and to observe honesty and good faith. Failure to discharge such duties is compensable under Article 20 if the act is "contrary to law"; and under Article 21 if the act is legal but "contrary to morals, good customs, or public policy."

5. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; IN DETERMINING THE SUFFICIENCY OF A CAUSE OF ACTION, THE TEST IS, WHETHER OR NOT, ADMITTING HYPOTHETICALLY THE TRUTH OF THE ALLEGATIONS OF FACT MADE IN THE COMPLAINT, THE COURT MAY VALIDLY GRANT THE RELIEF PRAYED FOR IN THE COMPLAINT. —** In determining the sufficiency of a cause of action, the test is, whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the court may validly grant the relief prayed for in the complaint. As correctly pointed out by the Senior Associate Justice during the deliberations of this case, if the foregoing allegations in Tocoms' complaint are hypothetically admitted, these acts constitute bad faith on the part of respondent PELI in the exercise of its rights under the Distributorship Agreement, in violation of Article 19, and as punished by Article 21. Consequently, the court may validly award damages in favor of Tocoms as prayed for in its Complaint. While all the foregoing acts committed by PELI are indeed justifiable under the terms of the Distributorship Agreement, the question of whether or not these acts were committed with malice or in bad faith—in light of the allegations in the Complaint—still remains disputed.

6. **CIVIL LAW; PRINCIPLE OF ABUSE OF RIGHTS; BAD FAITH INCLUDES A BREACH OF KNOWN DUTY THROUGH SOME MOTIVE OR INTEREST OR ILL WILL THAT PARTAKES OF THE NATURE OF FRAUD, AND IS, THEREFORE, A QUESTION OF INTENTION, WHICH**

CAN BE INFERRED FROM ONE'S CONDUCT AND/OR CONTEMPORANEOUS STATEMENTS; BAD FAITH CANNOT BE PRESUMED, BUT MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. — While it has submitted voluminous documents to show that its actions were justified by the terms of the Distributorship Agreement, PELI has not had the opportunity to prove that the foregoing acts mentioned in the Complaint were indeed made without malice and bad faith, since it was not even able to file an answer to Tocoms' complaint. The legal concept of bad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong. It includes "*a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous xxx statements*". Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence. As such, the case must be reinstated so that PELI may once and for all prove its *bona fides* in its dealings with Tocoms, in connection with the expiration of their Distribution Agreement.

APPEARANCES OF COUNSEL

Rom-Voltaire C. Quizon for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

REYES, A. JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court dated October 24, 2014, assailing the Decision[2] dated March 13, 2014 and the Resolution[3] dated August 29, 2014 of the Court of Appeals (CA) in CA-G.R. SP

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[1] *Rollo* (Vol. 1), pp. 35-63.

[2] Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. *Id.* at 8-22.

[3] *Id.* at 24-27.

No. 130873, which reversed the denial of the Motion to Dismiss filed by Philips Electronics and Lighting, Inc. (PELI) in Civil Case No. 73779-TG before the Regional Trial Court of Pasig City, Branch 266.

Civil Case No. 73779-TG is a suit for damages and injunction[4] filed by Tocoms Philippines, Inc. (Tocoms) on February 4, 2013 against several defendants including PELI. The appellate court explains the factual background of the case, *viz.*:

> In its Complaint, [Tocoms] alleged that: Philips Singapore, a foreign corporation, and its agent in the Philippines, [PELI], appointed [Tocoms] as distributor in the country of Philips Domestic Appliance, as shown by a contract entered into between them denominated as the Distribution Agreement which was regularly renewed on a yearly basis; from 2001 to 2008, [Tocoms], with more than 250 stores nationwide and through its goodwill and reputation, had introduced and established Philips Domestic Appliance to the market; [Tocoms] consistently delivered on its commitment and has even surpassed its sales target on a yearly basis; before the end of 2012, [Tocoms] had made disclosures to the representatives of Philips as to its marketing plans for the year 2012 and had complied with all the requirements of Philips in preparation for the renewal of the Distributorship Agreement; however, in a January 2, 2013 meeting called by Oh, [PELI]'s General Manager, [Tocoms] was handed a letter signed by Thurer, [PELI]'s Vice President/Manager Asia Pacific, informing [Tocoms] that the Distributorship Agreement will not be renewed; the sudden termination of the agreement came as a surprise considering that [Tocoms] has been [PELI]'s distributor since 2001 and it has been consistently delivering its commitments to [PELI]; it was not given sufficient notice of the sudden change of the distributorship; [Tocoms] discovered that as early as December 2012, [PELI], with evident malice and bad faith and in collusion with the new distributor, Fabriano, has been selling to Fabriano the products subject of the Distribution Agreement at a much lower price, to the great prejudice of [Tocoms]; as a result. Western Marketing, one of [Tocoms'] strongest clients, is set to return its existing inventory amounting to more or less Five Million Pesos (₱5,000,000.00), accusing [Tocoms] of dishonest dealings; Fabriano prodded Western Marketing to return the products to [Tocoms] with a promise to deliver the same at a

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[4] *Id.* at 224-240.

much lower price; [Tocoms] is under threat of incurring more losses with the return of stocks from other stores, amounting to more or less Two Million Pesos (₱2,000,000.00).

[Tocoms] further alleged that: in the meantime, [PELI] has given an unreasonable, unfair and one-sided demand to buy-back all inventory that remain in possession of [Tocoms] under the following terms: 1) phased out models at less forty percent [40%] of the actual price, 2) Class B products at less sixty percent [60%] of the actual price, and 3) products to be returned by clients are not included in the buy-back; the buy-back of the inventory under the said terms would result to losses on the part of [Tocoms] in the amount of Twelve Million Pesos (₱12,000,000.00), more or less; [Tocoms] is being coerced into accepting the said terms and conditions when [PELI] recalled the Import Commodity Clearance or ICC stickers that allow the selling of the items to the public; further [Tocoms] sent a letter demanding that [PELI] buy-back the inventory still in its possession, subject to the following terms: 1) phased out models at landed cost plus twelve percent [12%] since most of these items are still being sold at the store level and announcement as to the phasing out is yet to be made to the dealers, 2) Class B stocks at less forty percent [40%] only, 3) the parties agree first on the transfer price, which is at landed cost plus twelve percent [12%], 4) all new stocks in the master box and the return of new stocks from the stores shall not be subject to inspection and selection, 5) all Class B stocks to be transferred to the new distributor, and 6) terms of payment shall be fifty percent [50%] downpayment of the agreed value and fifty percent [50%] based on the actual pick up values, and [PELI] failed and refused to heed said demand.

[Tocoms] prayed for payment of actual and exemplary damages, and attorney's fees. It also applied for the issuance of a temporary restraining order and/or preliminary mandatory injunction, enjoining [PELI], Philips Singapore and Fabriano from proceeding with the change in distributorship, enjoining Fabriano from selling the subject Philips products in the market, and directing [PELI] and Philips Singapore to release the ICC stickers to allow [Tocoms] to sell the products to its clients and the public.

In its Motion to Dismiss, [PELI] alleged that the trial court has not acquired jurisdiction over its person since there was an invalid service of summons; that it is not a real party-in-interest in the case and was improperly impleaded; that venue was improperly laid, and that the complaint failed to state a cause of action.

In the first assailed Order dated May 30, 2013, public respondent judge denied [PELI]'s Motion to Dismiss. Public respondent declared that the allegations in the complaint show a cause of action as [Tocoms] is averring that its rights under the Constitution, the Human Relations provisions of the Civil Code and the subject Distribution Agreement have been violated by [PELI] on account of the latter's acts subject of the complaint, and that [PELI] has committed acts that are clearly tainted with malice and bad faith. As to the service of summons, public respondent held that Philips Singapore is represented in the Philippines by its resident agent, [PELI], and its officers, Oh and Thurer, who all hold office in Bonifacio Global City, Taguig City, and that the summons was served upon a certain Maricel Magallanes who claimed to be [PELI]'s corporate secretary, and hence, service thereof was valid. As to whether Oh, Thurer and [PELI] are real party-in-interest, public respondent ruled in the affirmative, reiterating that they are the agents of Philips Singapore, one of the contracting parties in the Distribution Agreement. As to the issue of venue, public respondent held that it is properly laid since Oh, Thurer and [PELI], agents of Philips Singapore, are holding office in Taguig City, and that the provision in the Distribution Agreement as to the filing of actions in the courts of Singapore does not preclude the parties therein from bringing the case in other venues as the said provision is not shown to be restrictive or exclusive.

[PELI]'s Motion for Partial Reconsideration was denied in the second assailed Resolution dated July 1, 2013.[5]

PELI thus filed a Petition for *Certiorari* with the CA to assail the denial of its Motion to Dismiss. The appellate court, in granting PELI's petition, held that the trial court committed grave abuse of discretion in denying PELI's motion to dismiss. The CA held that the complaint's essential thrust was a prayer for damages resulting from the non-renewal of the Distributorship Agreement. In determining whether the complaint failed to state a cause of action, the appellate court considered not only the complaint and its annexes but also the evidence presented by PELI in the hearing on Tocoms' application for a Writ of Preliminary Injunction, justifying its decision to do so on the basis of the ruling in *Santiago v. Pioneer Savings and Loan Bank*.[6]

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[5] *Id.* at 10-12.

[6] 241 Phil. 113, 117 (1988).

It held that the trial court should have considered all the pleadings and evidence on record in deciding the question of whether or not the complaint states a cause of action. Thus, the appellate court found that Tocoms' complaint failed to state a cause of action because the Distribution Agreement upon which the complaint is based is non-exclusive in character and was already expired at the time the complaint was filed.

Tocoms filed a Motion for Reconsideration dated March 13, 2014, which the CA denied in the herein assailed resolution; hence, this petition, which raises the following errors:

1. THE [CA] SERIOUSLY ERRED IN HOLDING THAT THE [TRIAL COURT] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PELI'S MOTION TO DISMISS ON THE GROUND THAT THE COMPLAINT FAILED TO STATE A CAUSE OF ACTION.

2. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS PRAYING FOR DAMAGES THAT RESULTED FROM THE NON-RENEWAL OF THE DISTRIBUTION AGREEMENT.

3. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS MERELY CLAIMING DAMAGES ON ACCOUNT OF PELI'S ENGAGEMENT OF ANOTHER DISTRIBUTOR.

4. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS CLAIMING DAMAGES ON ACCOUNT OF PELI'S REFUSAL OR FAILURE TO RENEW THE DISTRIBUTION AGREEMENT.[7]

The pivotal question raised by these errors is whether or not Tocoms' complaint states a cause of action against PELI.

I

Failure to state a cause of action in an initiatory pleading is a ground for the dismissal of a case. Rule 16, Section 1 (g) of the Rules of Court states that:

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:

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[7] *Rollo* (Vol. 1), p. 46.

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(g) That **the pleading asserting the claim** states no cause of action[.] (Emphasis supplied)

Though obvious from the text of the provision, it bears emphasis that the non-statement of the cause of action must be apparent from the complaint or other initiatory pleading. For this reason, it has been consistently held that in ruling upon a motion to dismiss grounded upon failure to state a cause of action, courts must only consider the facts alleged in the complaint, without reference to matters outside thereof.[8] Thus, an early commentary on the Rules of Court describes a motion to dismiss as "the usual, proper, and ordinary method of testing the legal sufficiency of a *complaint*."[9]

As early as 1949, this Court has held that "*where the ground is that the complaint does state no cause of action*, [a motion to dismiss] *must be based only on the allegations in the complaint*."[10] This has been the consistent pronouncement[11]

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[8] I Vicente J. Francisco, *The Revised Rules of Court in the Philippines* 681 (1965), citing *Dalandan v. Julio*,119 Phil. 678 (1964); *Lim v. De los Santos*, 118 Phil. 800 (1963); *Mindanao Realty Corp. v. Kintanar*, 116 Phil. 1130 (1962); *Uy Chao v. De la Rama Steamship Co., Inc.*, 116 Phil. 392 (1962); *Reinares v. Arrastia and Hizon*, 115 Phil. 726 (1962); *Convets, Inc. v. Nat. Dev. Co.*, 103 Phil. 46 (1958); *Zobel v. Abreu*, 98 Phil. 343 (1956); *Dimayuga v. Dimayuga*, 96 Phil. 859 (1955); *De Jesus v. Belarmino*, 95 Phil. 365 (1954); *Francisco v. Robles*, 94 Phil. 1035 (1954).

[9] I Vicente J. Francisco, *The Revised Rules of Court in the Philippines* 628 (1965).

[10] *Ruperto v. Fernando and Tianco*, 83 Phil. 943 (1949).

[11] *Heirs of Juliana Clavano v. Judge Genato*, 170 Phil. 275 (1977); *Socorro v. Vargas*, 134 Phil. 641 (1968); *Adamos v. J. M. Tuason & Co., Inc.*, 134 Phil. 470 (1968); *La Suerte Cigar v. Central Azucarera de Davao*, 132 Phil. 163 (1968); *Emilia v. Bado*, 131 Phil. 711 (1968); *Ramos v. Condez*, 127 Phil. 601 (1967); *Solancho v. Ramos*, 126 Phil. 179 (1967); *Republic Bank v. Cuaderno*, 125 Phil. 1076 (1967); *Quiem v. Seriña*, 126 Phil. 1426 (1966); *Mun. of Tacurong v. Abragan*, 130 Phil. 542 (1968); *A.U. Valencia & Co. v. Layug*, 103 Phil. 747 (1958); *Wise & Co., Inc. v. City of Manila*, 101 Phil. 244 (1957); *Aurelio v. Baquiran*, 100 Phil. 274 (1956); *Marabiles v. Quito*, 100 Phil. 64 (1956); *Carreon v. Province of Pampanga*, 99 Phil. 808 (1956).

of this Court up until 1983, when *Tan v. Dir. of Forestry*[12] came out. The *Tan* ruling carved out an exception to the general rule which has since been crystallized in subsequent jurisprudence.[13] In *Dabuco v. Court of Appeals*,[14] it was explained that "[t]he theory behind *Tan* is that the trial court must not rigidly apply the device of hypothetical admission of allegations when, on the basis of evidence already presented, such allegations are found to be false." The crucial factual circumstance relied upon by the *Tan* court in allowing the consideration of evidence *aliunde* was the fact that:

there was a hearing [on the petition for preliminary injunction] held in the instant case wherein answers were interposed and evidence introduced. In the course of the hearing, petitioner-appellant had the opportunity to introduce evidence in support of the allegations in his petition, which he readily availed of. Consequently, he is stopped from invoking the rule that to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint must be considered.[15]

The *Tan* court further relied on the case of *Locals No. 1470, No. 1469, and No. 1512 of International Longshoremen's Ass'n. v. Southern Pac. Co.*, which held that:

For present purposes, it may be conceded that the complaint stated a valid cause of action; but the court below admitted documentary evidence by stipulation, and considered that evidence. This procedure without objection, enabled the court to go beyond the disclosures of the bill of complaint to the crucial point of law upon which the controversy turned.[16]

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[12] 210 Phil. 244 (1983).

[13] *Heirs of Loreto Maramag v. Maramag*, 606 Phil. 782 (2009); *Perkin Elmer Singapore Pte. Ltd. v. Dakila Trading Corp.*, 556 Phil. 822 (2007); *China Road v. Court of Appeals*, 401 Phil. 590 (2000); *Fil-Estate Golf and Dev't., Inc. v. CA*, 333 Phil. 465 (1996); *Marcopper Mining Corp. v. Garcia*, 227 Phil. 166 (1986).

[14] 379 Phil. 939, 951 (2000).

[15] *Supra* note 12, at 255-256.

[16] 131 F.2d 605 (1942).

As in *Tan*, a hearing was likewise held on Tocoms' prayer for preliminary injunction, where PELI adduced documentary and testimonial evidence, which the appellate court found sufficient to determine that there was a failure to state a cause of action. Tocoms did not question the CA's expansion of the inquiry to include the evidence adduced by PELI; and therefore, like the petitioner in *Tan*, it should be deemed estopped from questioning the conclusions made by the CA thereby.

Nevertheless, the Court reiterates that the *Tan* doctrine is an exception and not the rule. A motion to dismiss for failure to state a cause of action must be resolved within the four corners of the complaint and its annexes, given its purpose as a filter for reducing court dockets by eliminating unmeritorious claims at the earliest opportunity.

However, it must be noted that Tocoms incorporated the Distribution Agreement into its Complaint as Annex "A"; and it is a settled rule that the attachments of a pleading are an integral part thereof.[17] It was therefore proper for both courts *a quo* to consider the terms of Distribution Agreement even without resorting to the *Tan* exception.

II

"A cause of action is the act or omission by which a party violates a right of another."[18] It has three constitutive elements: first, a legal right accruing to the plaintiff; second, a duty on the defendant's part to respect such right; and third, an act or omission by the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff.[19]

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[17] *Bangko Sentral ng Pilipinas v. Legaspi*, 782 Phil. 147 (2016); *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd.*, 555 Phil. 295 (2007); *Jornales v. Central Azucarera de Bais*, 118 Phil. 909, 911 (1963).

[18] RULES OF COURT, Rule 2, Section 2.

[19] *Philippine National Bank v. Abello*, G.R. No. 242570, September 18, 2019; *ASB Realty Corp. v. Ortigas & Co. Ltd. Partnership*, 775 Phil. 262, 283 (2015).

Tocoms bases its cause of action for damages upon Articles 19, 20, and 21 of the Civil Code, and its "constitutionally vested right to property and to peaceful, uninterrupted, and fair conduct of business."[20] According to Tocoms, the acts committed by PELI during and after the effectivity of the agreement are tainted with bad faith and malice in view of the significant investments made by the former during the effectivity of the Distribution Agreement and in the run-up to the expiration thereof in 2012.

The nature and purpose of Article 19 of the Civil Code was discussed in *Globe Mackay Radio and Cable Corp. v. CA*,[21] *viz.*:

> This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a light is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.[22]

Most recently in *Chevron Philippines, Inc. v. Mendoza*,[23] this Court has held that abuse of rights under Article 19 has three elements, namely: (1) the existence of a legal right or

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[20] Complaint, *rollo* (Vol. 1), pp. 232-233.

[21] *Globe Mackay Cable and Radio Corp. v. Court of Appeals*, 257 Phil. 783 (1989).

[22] *Id.* at 788-789.

[23] G.R. Nos. 211533 & 212071, June 19, 2019.

duty, (2) an exercise of such right or discharge of such duty in bad faith, and (3) such exercise of right or discharge of duty was made with the sole intent of prejudicing or injuring another. However, the Court has also held that:

> There is x x x no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case.[24]

Cases such as *University of the East v. Jader*[25] and the *Globe Mackay*[26] case, where the Court did not utilize the foregoing threefold test in finding a violation of Article 19, have therefore led to the following observation, *viz.*:

> [T]he principle [of abuse of rights] may be invoked if it is proven that a right or duty was exercised in bad faith, regardless of whether it was for the sole intent of injuring another. Thus, it is the absence of good faith which is essential for the application of this principle.[27]

The foregoing discussion highlights *bad faith* as the crucial element to a violation of Article 19. The *mala fide* exercise of a legal right in accordance with Article 19 is penalized by Article 21, under which "[a]ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Stated differently, Article 19 imposes upon all persons exercising their legal rights the duty to act with justice, give everyone his due, and to observe honesty and good faith. Failure to discharge such duties is compensable under Article 20 if the act is "contrary

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[24] *Albenson Enterprises Corp. v. Court of Appeals*, 291 Phil. 17, 27 (1993).

[25] 382 Phil. 697 (2000).

[26] *Supra* note 21.

[27] Rommel J. Casis, *An Analysis of Philippine Law and Jurisprudence on Torts and Quasi-Delicts* 515 (2012), citing *Sea Commercial Company, Inc. v. Court of Appeal*s, 377 Phil. 221 (1999).

to law"; and under Article 21 if the act is legal but "contrary to morals, good customs, or public policy."[28]

Turning now to the case at bar, in the light of the foregoing discussion, we reconsider the allegations made by Tocoms in its Complaint, *viz.*:

3.06 Prior to the end of 2012, the plaintiff without the slightest information that defendant Philips would terminate the Distributorship Agreement dated 20 July 2011, had already made disclosures to the representatives of defendant Philips as to its marketing plans, among others, for the year 2013. In fact, the plaintiff has complied with all the requirements that were imposed by defendant Philips, in preparation for the renewal of the distributorship agreement for the coming year.

3.07 However, to the shock and utter disbelief of the plaintiff, on January 2, 2013, the plaintiff was informed in a hastily called meeting at the instance of defendant Angela Oh, the General Manager of Philips Consumer Lifestyle of defendant Philips Electronics and Lighting, Inc.,that defendant Philips shall no longer be renewing the Distributorship Agreement with the plaintiff. The letter was signed by Philips Consumer Lifestyle's Vice President/General Manager Asia Pacific, defendant Selina Thurer.

3.08 Worse, the plaintiff was not given sufficient notice prior to the defendant Philips' announcement to the trade on the change of distributorship, so much so that many of the plaintiff's clients were caught by surprise. Consequently, plaintiff was left in a quandary on how to deal with its clients' queries and issues relating to the sudden change of distributorship.

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3.11 More importantly, the abrupt termination of the Distributorship Agreement was done in bad faith and with clear malice. Recently, the plaintiff has found out that as early as December 2012, or prior to the termination of the Distribution Agreement, the defendants, in collusion with defendant Fabriano S.P.A. Inc., have been selling to defendant Fabriano S.P.A.,Inc. the products that are subject of the Distribution Agreement at a much lower price per unit cost.

3.12 As a consequence thereof, the plaintiff is being accused by its clients of dishonest dealings by selling the products at higher prices,

[28] *Mata v. Agravante*, 583 Phil. 64 (2008).

thereby besmirching the good reputation and business standing of the plaintiff, which it had painstakinly built through the years.

3.13 On account thereof, one of the plaintiff's strongest clients, specifically Western Marketing, is set to return its existing inventory, amounting to more or less Five Million (Php5,000,000.00) pesos, upon the prodding of defendant Fabriano S.P.A. Inc. The return of stocks by Western will certainly lead to grave and irreversible losses on the plaintiff.

3.14 The plaintiff is presently under threat of incurring more losses with the return of stocks from other stores that will amount at this time to more or less Two Million (Php2,000,000.00) pesos.

3.15 Worse, defendant Philips, in the alleged exercise of its right pursuant to the Distribution Agreement has given an unreasonable, unfair and one sided demand, to buy-back all inventory that remain in the possession of the plaintiff under the following terms and conditions, among others:

a. Phased out models at less forty (40%) percent of the actual price;

b. Class B products as less sixty (60%) percent of the actual price;

c. Products to be returned by clients of plaintiff are not included in the buy-back of defendant Philips.

3.16 It is certainly unreasonable and oppressive for defendant Philips to buy remaining inventory of the plaintiff in an amount less forty (40%) percent of the actual price, considering that phased out models are sold at landed cost plus twelve (12%) percent; most of the phased out items are still being sold at the store level; and the announcement declaring the items as phased out models is yet to be made to the dealers.

3.17 Likewise, the demand of defendant Philips to buy-back remaining inventory of the plaintiff classified as Class B products at less sixty (60%) percent, and the refusal of the defendant from buying the stocks that were returned by Philips, are certainly unconscionable, if not oppressive and confiscatory, for the simple reason that it would mean gargantuan financial losses on the part of the plaintiff. The plaintiff stands to lose more or less Twelve Million (Php12,000,000.00) pesos.

3.18 Meantime, the plaintiff is practically being held hostage with defendant Philips' recall of the ICC stickers that prohibit the plaintiff from selling its inventory to the public. The plaintiff is left only with two choices, either to accept the buy back terms of the defendants,

or to incur losses resulting from the inventory that they cannot sell in view of the prohibition.

3.19 In view of the stubborn refusal of defendant Philips to buy-back the inventory/stocks remaining in the possession of the plaintiff and the stocks to be returned by plaintiff's clients under a fair and reasonable arrangement, the plaintiff has incurred actual damages in the amount of Php20,000,000.00[.]

3.20 The claim for damages of the plaintiff is principally anchored on the Human Relations Provisions of the Civil Code of the Philippines among others. Thus–

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

x x x x x x x x x

4.03 The bad faith and malice on the part of the defendants were further shown when defendant Fabriano S.P.A. Inc. prodded a client of the plaintiff, specifically Western Marketing, to just return the Philips products to the plaintiff as it can sell the same products at a very much lower price.

4.04 Clearly, such act of bad faith and malice and in collusion with each other, defendants Philips and Fabriano S.P.A. had besmirched the reputation and business standing of the plaintiff for which the former should be held liable for exemplary damages to deter others from committing the same act of bad faith and malice.[29]

In determining the sufficiency of a cause of action, the test is, whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the court may validly grant the relief prayed for in the complaint.[30] As correctly pointed

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[29] *Rollo* (Vol. 1), pp. 230-234.

[30] *Spouses Fernandez v. Smart Communications, Inc.*, G.R. No. 212885,

out by the Senior Associate Justice during the deliberations of this case, if the foregoing allegations in Tocoms' complaint are hypothetically admitted, these acts constitute bad faith on the part of respondent PELI in the exercise of its rights under the Distributorship Agreement, in violation of Article 19, and as punished by Article 21. Consequently, the court may validly award damages in favor of Tocoms as prayed for in its Complaint. While all the foregoing acts committed by PELI are indeed justifiable under the terms of the Distributorship Agreement, the question of whether or not these acts were committed with malice or in bad faith — in light of the allegations in the Complaint — still remains disputed.

While it has submitted voluminous documents to show that its actions were justified by the terms of the Distributorship Agreement, PELI has not had the opportunity to prove that the foregoing acts mentioned in the Complaint were indeed made without malice and bad faith, since it was not even able to file an answer to Tocoms' complaint. The legal concept of bad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong. It includes "*a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous x x x statements*."[31] Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence.[32] As such, the case must be reinstated so that PELI may once and for all prove its *bona fides* in its dealings with Tocoms, in connection with the expiration of their Distribution Agreement.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated March 13, 2014, and the Resolution dated August 29, 2014 of the Court of Appeals, in

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July 17, 2019, *Guillermo v. Philippine Information Agency*, 807 Phil. 555 (2017); *Aquino v. Quiazon*, 755 Phil. 793 (2015).

[31] *Adriano v. Lasala*, 719 Phil. 408 (2013).

[32] *Philippine Airlines v. Miano*, 312 Phil. 287 (1995), citing *LBC Express, Inc. v. Court of Appeals*, 306 Phil. 624 (1994).

CA-G.R. SP No. 130873, are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 73779-TG before the Regional Trial Court of Pasig City, Branch 266, is hereby **REINSTATED**. The Regional Trial Court of Pasig City, Branch 266, is hereby ordered to try Civil Case No. 73779-TG with utmost dispatch.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Inting, and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

THIRD DIVISION

[G.R. No. 216109. February 5, 2020]

SAPHIA MUTILAN, SAUDA MUTILAN, and MOHAMMAD M. MUTILAN, *petitioners, vs.* **CADIDIA MUTILAN, known recently as CADIDIA IMAM SAMPORNA, and THE REGISTER OF DEEDS OF MARAWI CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; QUESTION AS TO TITLES OF PROPERTIES SHOULD NOT BE PASSED UPON IN TESTATE OR INTESTATE PROCEEDINGS, BUT SHOULD BE VENTILATED IN A SEPARATE ACTION; EXCEPTIONS. —** As a general rule, the question as to titles of properties should not be passed upon in testate or intestate proceedings, but should be ventilated in a separate action. However, for purposes of expediency and convenience, this general rule is subject to exceptions, such that: (1) “the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final

determination in a separate action"; and (2) the probate court is competent to decide the question of ownership "if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent" to the probate court's assumption of jurisdiction and "the rights of third parties are not impaired."

2. ID.; ID.; ID.; THE JURISDICTION TO TRY CONTROVERSIES BETWEEN HEIRS OF A DECEASED PERSON REGARDING THE OWNERSHIP OF PROPERTIES ALLEGED TO BELONG TO HIS ESTATE IS VESTED IN PROBATE COURTS; ALL THE HEIRS WHO TAKE PART IN THE DISTRIBUTION OF THE DECEDENT'S ESTATE ARE BEFORE THE PROBATE COURT, AND SUBJECT TO THE JURISDICTION THEREOF, IN ALL MATTERS AND INCIDENTS NECESSARY TO THE COMPLETE SETTLEMENT OF SUCH ESTATE, SO LONG AS NO INTERESTS OF THIRD PARTIES ARE AFFECTED. — In *Bernardo v. Court of Appeals*, this Court held that the question of ownership of certain properties, whether they belong to the conjugal partnership or to the husband exclusively, is within the jurisdiction of the probate court, which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent: [T]he jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate has been recognized to be vested in probate courts. This is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means determination of all the assets of the estate and payment of all the debts and expenses. Thereafter, distribution is made of the decedent's liquidated estate among the persons entitled to succeed him. The proceeding is in the nature of an action of partition in which each party is required to bring into the mass whatever community property he has in his possession. To this end and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute. All the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected.

3. ID.; ID.; ID.; THE *SHARI'A* DISTRICT COURT ACTING AS PROBATE COURT, PROPERLY EXERCISED ITS JURISDICTION WHEN IT PASSED UPON THE QUESTION OF TITLE AND THE EXCLUSION OF PROPERTIES FROM THE INVENTORY OF THE DECEASED ESTATE, AS THE INTERESTED PARTIES ARE ALL HEIRS OF THE DECEDENT AND THERE ARE NO THIRD PARTIES WHOSE RIGHTS WILL BE IMPAIRED; UNDER THE CODE OF MUSLIM PERSONAL LAWS, THE DECISION OF THE *SHARI'A* DISTRICT COURT, ACTING AS PROBATE COURT, SHALL BE FINAL, WHERE THE PETITIONERS DID NOT RAISE ISSUES AFFECTING THE ORIGINAL AND APPELLATE JURISDICTION OF THE SUPREME COURT UNDER THE CONSTITUTION. — The Code of Muslim Personal Laws provides that "[t]he *Shari'a* District Court shall have exclusive original jurisdiction over . . . all cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property[.]" Its decisions shall be final, except when it shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution. x x x. Here, the *Shari'a* District Court, acting as a probate court, issued an Omnibus Order on October 15, 2008 approving the inventory of Mahid's estate, which excluded the two (2) parcels of land in respondent's name. In another Order dated January 30, 2009, it ruled upon the Writ of Possession on the same parcels of land x x x. Thus, the *Shari'a* District Court acted pursuant to the Code of Muslim Personal Laws, which provides: ARTICLE 38. *Regime of property relations.* — The property relations between the spouses, in the absence of any stipulation to the contrary in the marriage settlements or any other contract, shall be governed by the regime of complete separation of property in accordance with this Code and, in a suppletory manner, by the general principles of Islamic law and the Civil Code of the Philippines. Considering that the interested parties here are all heirs of the decedent and there are no third parties whose rights will be impaired, this case falls under the exception to the general rule. The *Shari'a* District Court properly exercised its jurisdiction when it passed upon the question of title and excluded the parcels of land in respondent's name from the inventory of Mahid's

estate. Per the Code of Muslim Personal Laws, its decision shall be final, and more so, since petitioners did not raise issues affecting the original and appellate jurisdiction of the Supreme Court under the Constitution.

4. **ID.; ID.; ID.; THE RULE THAT A PROBATE COURT'S DETERMINATION OF OWNERSHIP OVER PROPERTIES FORMING PART OF THE ESTATE IS ONLY PROVISIONAL APPLIES ONLY AS BETWEEN THE REPRESENTATIVES OF THE ESTATE AND STRANGERS THERETO; PETITIONERS ARE DEEMED TO HAVE ACQUIESCED TO THE EXCLUSION OF THE SUBJECT PROPERTIES FROM THE INVENTORY OF THE DECEASED ESTATE AND THE RESPONDENT'S OWNERSHIP OVER THEM, AS THEY FAILED TO CONTEST THE SAME BEFORE THE *SHARI'A* DISTRICT COURT, ACTING AS A PROBATE COURT. —** True, as petitioners contend, a probate court's determination of ownership over properties forming part of the estate is only provisional. But as explained in *Romero v. Court of Appeals*, "this rule is applicable only as between the representatives of the estate and strangers thereto." Since petitioners and respondent are all heirs and parties in the settlement proceeding of Mahid's estate, petitioners should have contested the exclusion of the properties before the *Shari'a* District Court, then acting as a probate court. However, they did not lift a finger to ask the probate court to include the properties in the inventory. By failing to do so, petitioners are deemed to have acquiesced to the exclusion of the properties from the inventory, along with respondent's ownership over them. In *Pacioles, Jr. v. Chuatoco-Ching*, where the respondent and her representative could have opposed the petitioner's inventory and sought the exclusion of the properties she considered hers, but instead adopted the inventory, this Court held that she and her representative acquiesced with petitioner's inventory.

5. **ID.; ID.; ID.; THE PROBATE COURT MAY PROVISIONALLY INCLUDE PROPERTIES TO THE DECEASED'S ESTATE, WITHOUT PREJUDICE TO THE OUTCOME OF A SEPARATE ACTION TO DETERMINE OWNERSHIP, WHERE THE PROPERTIES ARE STILL TITLED UNDER THE TORRENS SYSTEM IN THE NAMES OF THE DECEASED AND HIS SPOUSE; THE DETERMINATION**

OF THE ISSUE OF OWNERSHIP IN A SEPARATE PROCEEDING WOULD BE UNNECESSARY WHERE THE PROPERTIES INVOLVED ARE ALREADY COVERED BY TORRENS TITLE IN THE SURVIVING SPOUSE'S NAME ALONE, AS THE "CERTIFICATE OF TITLE" IS THE BEST EVIDENCE OF OWNERSHIP OF A PROPERTY. — In *Heirs of Reyes v. Reyes*, this Court affirmed the probate court's provisional inclusion of properties to the deceased's estate, without prejudice to the outcome of a separate action to determine ownership, because the properties were still titled under the Torrens system in the names of the deceased and his spouse. Unlike in *Heirs of Reyes*, the parcels of land in this case were already titled in respondent's name alone. Thus, to determine the issue of ownership in a separate proceeding would be unnecessary. It is settled that the "certificate of title is the best evidence of ownership of a property." Thus, the titles issued to respondent, being Torrens titles, are conclusive upon the parties: In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens Title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his [of her] title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title.

6. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A NOTARIZED DEED OF ABSOLUTE SALE ENJOYS A PRESUMPTION OF REGULARITY AND AUTHENTICITY, ABSENT STRONG, COMPLETE, AND CONCLUSIVE PROOF OF ITS FALSITY; PETITIONERS' ALLEGATION OF FALSITY OF THE DEEDS OF ABSOLUTE SALE, NOT PROVED. —** [R]espondent's titles were derived from the notarized Deeds of Absolute Sale between her and the seller, which are presumed valid, regular, and authentic. Notarized deeds of absolute sale such as these enjoy a presumption of regularity and authenticity absent "strong, complete, and conclusive proof of its falsity." Since they assail the genuineness of the Deeds, petitioners must prove their allegation of falsity with clear, strong, and conclusive evidence. Here, however, both the Regional Trial Court and the Court of Appeals did not give merit to petitioners' allegation of falsity of the Deeds of

Absolute Sale. As the trial court found, the documentary evidence submitted by petitioners—an Acknowledgment Receipt issued by the seller to Mahid indicating ₱2 million as partial payment for the properties, the loan obtained by Mahid from one Engr. Cosain Dalidig, and various official receipts of a store in Wao—are purely immaterial and do not show any link to the two (2) Deeds of Absolute Sale between respondent and the seller.

7. **ID.; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ISSUE ON THE GENUINENESS OF THE DEED OF ABSOLUTE SALE IS A QUESTION OF FACT NOT PROPER IN A PETITION FOR REVIEW ON *CERTIORARI*. —** [W]hether a deed of absolute sale is genuine is a question of fact not proper in a petition for review on *certiorari*, as only questions of law may be raised in a petition under Rule 45 of the Rules of Court. Moreover, the trial court's factual findings, especially when affirmed by the Court of Appeals, are generally conclusive upon this Court.

8. **ID.; ID.; PARTIES; REAL PARTY IN INTEREST; PARTIES, WHO ARE NOT PRIVY TO THE DEEDS OF ABSOLUTE SALE, ARE NOT THE REAL PARTIES IN INTEREST TO QUESTION THEIR VALIDITY. —** An action for the annulment of contracts may be instituted by all who are obliged to it principally or subsidiarily. By the principle of relativity or privity of contracts, contracts take effect only between the parties, their assigns, and heirs. While the principle acknowledges that contractual obligations are transmissible to a party's assigns and heirs, petitioners here do not claim to be heirs of any party to the Deeds of Absolute Sale. They claim their interest as heirs of Mahid, the husband of respondent. But as established, it is actually respondent who was party to the sale, not Mahid. Therefore, petitioners, not being privy to the Deeds of Absolute Sale, are not the real parties in interest to question their validity.

9. **ID.; ID.; ID.; ID.; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY IN INTEREST, THE ONE WHO STANDS TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT, OR THE PARTY ENTITLED TO THE AVAILS OF THE SUIT; A REAL PARTY IN INTEREST IS THE PRESENT REAL OWNER OF THE RIGHT SOUGHT TO BE ENFORCED, WHOSE INTEREST IS A PRESENT SUBSTANTIAL INTEREST, NOT A MERE EXPECTANCY,**

OR A FUTURE, CONTINGENT, SUBORDINATE, OR CONSEQUENTIAL INTEREST; RATIONALE. — Generally, every action must be prosecuted or defended in the name of the real party in interest, the one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." To be a real party in interest, one "should appear to be the present real owner of the right sought to be enforced, that is, his [or her] interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest." In *Stronghold Insurance Company, Inc. v. Cuenca*, this Court explained the rationale for such requirement: The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. Indeed, considering that all civil actions must be based on a cause of action, defined as the act or omission by which a party violates the right of another, the former as the defendant must be allowed to insist upon being opposed by the real party in interest so that he is protected from further suits regarding the same claim. Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end." The rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.

10. ID.; ID.; ID.; ID.; PERSONS HAVING NO MATERIAL INTEREST TO PROTECT CANNOT INVOKE THE COURT'S JURISDICTION AS THE PLAINTIFF IN AN ACTION; NOR DOES A COURT ACQUIRE JURISDICTION OVER A CASE WHERE THE REAL PARTY IN INTEREST IS

NOT PRESENT OR IMPLEADED. — Petitioners here are not vested with direct and substantial interest in the subject parcels of land. They are not the present real owners of the right sought to be enforced. They claim their interests only as heirs of Mahid, who was not proven to have any right or interest in the parcels of land titled in respondent's name. x x x. Not being real parties in interest, petitioners cannot invoke the jurisdiction of the court. Persons having no material interest to protect cannot invoke its jurisdiction as the plaintiff in an action. "Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded."

11. **ID.; ID.; ID.; INDISPENSABLE PARTIES; THE INCLUSION OF AN INDISPENSABLE PARTY IS A JURISDICTIONAL REQUIREMENT; THE FAILURE TO IMPLEAD INDISPENSABLE PARTIES WILL RENDER ALL SUBSEQUENT ACTIONS OF THE LOWER COURTS NULL AND VOID AS TO BOTH THE ABSENT AND PRESENT PARTIES FOR LACK OF JURISDICTION, OR THE CASE SHALL BE REMANDED TO THE TRIAL COURT FOR THE INCLUSION OF INDISPENSABLE PARTIES; THE CASE MAY BE DISMISSED WHERE THE PLAINTIFF REFUSES TO COMPLY WITH AN ORDER TO JOIN INDISPENSABLE PARTIES. —** Indispensable parties or parties in interest without whom no final determination can be had of an action, shall be joined either as plaintiffs or defendants. Two consequences can arise for the failure to implead indispensable parties: There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed. All subsequent actions of lower courts are void as to both the absent and present parties. To reiterate, the inclusion of an indispensable party is a jurisdictional requirement[.] Here, both the Regional Trial Court and the Court of Appeals found that Diator, the seller in the Deeds of Absolute Sale, and Mahid's estate are indispensable parties, without whom no final determination can be had of the action for annulment filed by petitioners. Since this case is dismissed for lack of jurisdiction by the trial court, the second case is not an option.

APPEARANCES OF COUNSEL

Subejano & Ditucalan for petitioners.
Ganie G. Abubacar for respondents.

D E C I S I O N

LEONEN, *J.*:

The probate court can decide the question of title or ownership over properties when the interested parties are all heirs and the rights of third parties are not impaired. When, however, a separate civil action is still filed to decide the question of ownership, it is mandatory that it be instituted by the real parties in interest, and the indispensable parties be impleaded. These are jurisdictional requirements, which, when failed to be satisfied, prove fatal to the civil action.

This Court resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Resolution[4] of the Regional Trial Court of Marawi City.

Sometime in 1979, Cadidia Imam Samporna (Cadidia) married Mahid Mira-ato Mutilan (Mahid) under Muslim Law. Prior to this, Mahid had a previous marriage to an Egyptian

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[1] *Rollo,* pp. 10-35.

[2] *Id.* at 124-134. The March 17, 2014 Decision in CA-G.R. CV No. 02333-MIN was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo T. Lloren and Marie Christine Azcarraga-Jacob of the Twenty-Third Division of the Court of Appeals, Cagayan de Oro City.

[3] *Id.* at 160-161. The December 2, 2014 Resolution was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos of the Twenty-Third Division of the Court of Appeals, Cagayan de Oro City.

[4] *Id.* at 36-40. The October 27, 2017 Resolution was penned by Presiding Judge Antonio M. Guiling of the Regional Trial Court of Lanao Del Sur, Branch 9.

national, with whom he begot a son, Mohammad M. Mutilan (Mohammad).[5]

In 1993, Cadidia allowed Mahid to marry Saphia Mutilan (Saphia) under Muslim law.[6]

On December 12, 1999, Cadidia bought two (2) parcels of land and correspondingly executed two (2) Deeds of Absolute Sale with Rodolfo "Boy" Yu Diator (Diator), on behalf of his mother Alice Yu Diator. The first Deed of Absolute Sale involved a 1,111-square meter lot in Banggolo, Poblacion, Marawi City, covered by Transfer Certificate of Title No. T-406, worth ₱26,500,000.00. The second Deed of Absolute Sale involved a 739-square meter lot in Batoali, Poblacion, Marawi City, covered by Transfer Certificate of Title No. T-782, worth ₱6,800,000.00. The Deeds of Absolute Sale were thereafter notarized.[7]

On December 26, 1999, Cadidia executed two (2) Affidavits and had them notarized. In the Affidavits, she stated that the consideration for the two (2) parcels of land exclusively came from her separate funds.[8]

In 2003, Mahid, with Cadidia's consent, contracted another marriage with Sauda Mutilan (Sauda) under Muslim law.[9]

On December 6, 2007, while on his way to Cagayan de Oro City airport, Mahid got into a vehicular crash and died.[10]

On April 8, 2008, Saphia filed a Petition for Judicial Settlement of the Estate of Mahid M. Mutilan before the *Shari'a* District Court, Fourth *Shari'a* Judicial Court of Marawi City.[11]

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[5] *Rollo*, p. 125. In some parts of the *rollo*, Mohammad is named Mohammad-Ali.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 125-126.

[11] *Id.* at 126.

On the same date, the Office of the Register of Deeds of Marawi City issued Transfer Certificate of Title No. T-4627 in Cadidia's name for the 1,111-square meter lot. Later, on April 28, 2008, Transfer Certificate of Title No. T-4631 was also issued to Cadidia for the 739-square meter lot.[12]

On June 23, 2008, the *Shari'a* District Court issued an Order and Letters of Administration appointing Cadidia as administratix of Mahid's entire estate.[13] Subsequently, on October 15, 2008, it issued an Omnibus Order approving the inventory of Mahid's estate, which excluded the two (2) parcels of land in Cadidia's name.[14]

On January 30, 2009, the *Shari'a* District Court granted the Motion to Quash the Writ of Possession dated May 30, 2008, thus quashing the April 30, 2008 Writ of Possession it had issued over the two (2) parcels of land. Thus, the titles issued in Cadidia's name for these lots were excluded from the inventory of Mahid's estate.[15]

On March 19, 2009, Saphia, Sauda, and Mohammad filed a Complaint before the Regional Trial Court of Marawi City, seeking the annulment of the Deeds of Absolute Sale and Certificates of Title issued in Cadidia's name for allegedly being spurious and illegally issued. They alleged that it was Mahid, during his lifetime, who bought the two (2) parcels of land.[16]

In her Answer filed on April 14, 2009, Cadidia raised special affirmative defenses and prayed that the Complaint be dismissed for lack of merit.[17]

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 36 and 38.

[17] *Id.* at 127.

On January 25, 2010, a certain Asliah Mutilan filed a Motion to Intervene and to Admit Attached Complaint-in-Intervention.[18]

In a June 23, 2010 Resolution,[19] the Regional Trial Court ruled in favor of Cadidia and dismissed the Complaint for lack of merit. The dispositive portion of the Decision read:

> **WHEREFORE**, after evaluation of all the pleadings, the exhibits, evidences presented to the court, including the arguments of the counsel, the court finds the complaint of plaintiff Saphia Mutilan, Sauda Mutilan, Mohammad-Ali Mutilan, intervenor, Baby Asliah Mutilan without merit and ordered the case **DISMISSED** with cost to be paid by the defendants.
>
> **SO ORDERED**.[20] (Emphasis in the original)

The Regional Trial Court found that Saphia, Sauda, Mohammad, and Asliah were not parties in interest in the two (2) Deeds of Absolute Sale executed by Cadidia and Diator. Since they were heirs only of Mahid, and not of either Cadidia or Diator, the trial court deemed their relationship to the parties as purely speculative and collateral.[21]

The trial court also held that Saphia, Sauda, Mohammad, and Asliah's failure to implead Diator, the seller, as an indispensable party rendered their Complaint dismissible. It further found that they committed forum shopping for their failure to pursue their claim in the *Shari'a* District Court, where Mahid's estate was being settled.[22]

Saphia, Sauda, and Mohammad jointly moved for reconsideration, while Asliah separately filed her own. Both Motions, however, were denied by the Regional Trial Court.[23]

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[18] *Id.*

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

[20] *Id.* at 40.

[21] *Id.* at 39.

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

[23] *Id.* at 127.

Thus, Saphia, Sauda, and Mohammad appealed to the Court of Appeals.[24]

In a March 17, 2014 Decision,[25] the Court of Appeals held that the probate court or the *Shari'a* District Court, and not the Regional Trial Court, had jurisdiction over the subject matter, as the only interested parties were all the decedent's heirs who had already appeared in the estate settlement proceedings, and the third parties' rights were not impaired. Moreover, it found that invoking the jurisdiction of the Regional Trial Court after the unfavorable judgment of the probate court was an act of forum shopping.[26]

The Court of Appeals also ruled that Saphia, Sauda, and Mohammad, not being parties to the Deeds of Absolute Sale, were not real parties in interest in the action seeking their annulment. As such, the Court of Appeals found that they failed to show prejudice on their rights, and their claimed interests were mere "expectancy or a contingent interest."[27]

Finally, the Court of Appeals held that the failure to implead indispensable parties, such as the lots' seller and the decedent's estate, proved fatal to the Complaint.[28] Accordingly, the dispositive portion of the Court of Appeals' Decision read:

> **WHEREFORE**, premises considered, the appeal is hereby **DENIED**. The assailed Resolution rendered by the Regional Trial Court dated June 23, 2010 is **AFFIRMED**.
>
> **SO ORDERED**.[29] (Emphasis in the original)

Saphia, Sauda, and Mohammad moved for reconsideration,[30] but the Court of Appeals denied the Motion in the assailed

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[24] *Id.* at 124.

[25] *Id.* at 124-134.

[26] *Id.* at 130.

[27] *Id.* at 131.

[28] *Id.* at 133.

[29] *Id.*

[30] *Id.* at 136-147.

December 2, 2014 Resolution.[31] Thus, on February 6, 2015, they filed this Petition for Review on *Certiorari*.[32]

Petitioners assert that the probate court's findings on the excluded properties is only provisional as to the issue of title and ownership. They also contend that because their rights as Mahid's heirs will be prejudiced, they have a right to institute the action to annul the Deeds of Absolute Sale. They further insist that the non-joinder of indispensable parties is not a ground for the dismissal of their action.[33]

In her Comment,[34] respondent alleges that the probate court is competent to decide the question of ownership because the interested parties are all heirs. She contends that Mahid, from whom petitioners derived their rights, was not a party to the Deeds of Absolute Sale, and even if the Deeds would be annulled, the real party in interest would be Mahid's estate. Thus, respondent argues that the Petition should be dismissed because petitioners are not real parties in interest. She also claims that the court cannot grant the relief prayed for, there was insufficient payment of docket fees, and the Complaint did not allege the assessed value of the real properties.[35]

The issues for this Court's resolution are as follows:

First, whether or not the *Shari'a* District Court's findings, which excluded the properties in respondent Cadidia Imam Samporna's name from the deceased's estate, are binding upon the deceased's other heirs such that they can no longer file a separate civil action to determine the ownership of the properties;

Second, whether or not petitioners Saphia, Sauda, and Mohammad Mutilan, who are heirs only of the deceased

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

[32] *Id.* at 10-35.

[33] *Id.* at 22-27.

[34] *Id.* at 169-187. Respondent filed the Comment on July 15, 2015 upon being required by this Court on April 13, 2015.

[35] *Id.* at 171-185.

husband—not being party to the Deeds of Absolute Sale entered into by respondent wife—are real parties in interest in a Complaint seeking to annul the Deeds; and

Finally, whether or not petitioners' failure to implead the indispensable parties renders this case dismissible.

The Petition has no merit.

I

The Code of Muslim Personal Laws provides that "[t]he *Shari'a* District Court shall have exclusive original jurisdiction over . . . all cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property[.]"[36] Its decisions shall be final, except when it shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.[37]

As a general rule, the question as to titles of properties should not be passed upon in testate or intestate proceedings, but should be ventilated in a separate action.

However, for purposes of expediency and convenience, this general rule is subject to exceptions, such that: (1) "the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action"; and (2) the probate court is competent to decide the question of ownership "if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent" to the probate court's assumption of jurisdiction and "the rights of third parties are not impaired."[38]

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[36] CODE OF MUSLIM PERSONAL LAWS, Art. 143(b).

[37] CODE OF MUSLIM PERSONAL LAWS, Art. 145.

[38] *Romero v. Court of Appeals,* 686 Phil. 203, 213 (2012) [Per *J.* Sereno, Second Division] citing *Coca v. Pizarras,* 171 Phil. 246 (1978) [Per *J.* Aquino,

In *Bernardo v. Court of Appeals*,[39] this Court held that the question of ownership of certain properties, whether they belong to the conjugal partnership or to the husband exclusively, is within the jurisdiction of the probate court, which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent:

> [T]he jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate has been recognized to be vested in probate courts. This is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means determination of all the assets of the estate and payment of all the debts and expenses. Thereafter, distribution is made of the decedent's liquidated estate among the persons entitled to succeed him. The proceeding is in the nature of an action of partition in which each party is required to bring into the mass whatever community property he has in his possession. To this end and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute. All the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected.[40] (Citations omitted)

In *Pascual v. Pascual*,[41] this Court held that since the parties interested are all heirs of the deceased claiming title under him, the question as to whether the transfer made by the deceased to his heir is fictitious, may properly be raised in testate or intestate proceedings when or before the estate is distributed.

Second Division]; *Agtarap v. Agtarap*, 666 Phil. 452, 468-469 (2011) [Per *J.* Nachura, Second Division]; *Natcher v. Court of Appeals*, 418 Phil. 669, 679 (2001) [Per *J.* Buena, Second Division]; *Coca v. Pizarras,* 171 Phil. 246, 252 (1978) [Per *J.* Aquino, Second Division]; *Bernardo v. Court of Appeals,* 117 Phil. 385, 389 (1963) [Per *J.* Barrera, *En Banc*]; and *Pascual v. Pascual*, 73 Phil. 561, 562 (1942) [Per *J.* Moran, *En Banc*].

[39] 117 Phil. 385 (1963) [Per *J.* Barrera, *En Banc*].

[40] *Id.* at 390-391.

[41] 73 Phil. 561 (1942) [Per *J.* Moran, *En Banc*].

In *Coca v. Pizzaras*,[42] this Court applied the exception for two (2) reasons: (1) the probate court had already received evidence on the ownership of the property in the motion for exclusion from inventory; and (2) the only interested parties are heirs who all appeared in the intestate proceeding.

In *Natcher v. Court of Appeals*,[43] a probate court was held to be the best forum to adjudge the issue of advancement made by the decedent to his wife, as well as other matters involving the estate settlement.

In *Agtarap v. Agtarap*,[44] this Court likewise applied the exception after finding that the parties are all heirs of the deceased, the resolution on the issue of ownership would not impair third parties' rights, and the determination of whether the subject properties are conjugal is incidental for the probate court to settle the estate.

Here, the *Shari'a* District Court, acting as a probate court, issued an Omnibus Order on October 15, 2008 approving the inventory of Mahid's estate, which excluded the two (2) parcels of land in respondent's name.[45] In another Order dated January 30, 2009, it ruled upon the Writ of Possession on the same parcels of land:

> Perusal of the Addendum with Annexes "A" to "F" shows that both the two (2) properties are titled in the name of Mrs. Cadidia Imam Samporna. The writ of possession in so far as the Banggolo and Batoali Properties are concerned should, therefore, be quashed.[46]

Thus, the *Shari'a* District Court acted pursuant to the Code of Muslim Personal Laws, which provides:

> ARTICLE 38. *Regime of property relations*. — The property relations between the spouses, in the absence of any stipulation to

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[42] 171 Phil. 246 (1978) [Per *J.* Aquino, Second Division].

[43] 418 Phil. 669 (2001) [Per *J.* Buena, Second Division].

[44] 666 Phil. 452 (2011) [Per *J.* Nachura, Second Division].

[45] *Rollo,* p. 126.

[46] *Id.* at 130.

the contrary in the marriage settlements or any other contract, shall be governed by the regime of complete separation of property in accordance with this Code and, in a suppletory manner, by the general principles of Islamic law and the Civil Code of the Philippines.

Considering that the interested parties here are all heirs of the decedent and there are no third parties whose rights will be impaired, this case falls under the exception to the general rule. The *Shari'a* District Court properly exercised its jurisdiction when it passed upon the question of title and excluded the parcels of land in respondent's name from the inventory of Mahid's estate. Per the Code of Muslim Personal Laws, its decision shall be final, and more so, since petitioners did not raise issues affecting the original and appellate jurisdiction of the Supreme Court under the Constitution.

True, as petitioners contend, a probate court's determination of ownership over properties forming part of the estate is only provisional. But as explained in *Romero v. Court of Appeals*,[47] "this rule is applicable only as between the representatives of the estate and strangers thereto."[48]

Since petitioners and respondent are all heirs and parties in the settlement proceeding of Mahid's estate, petitioners should have contested the exclusion of the properties before the *Shari'a* District Court, then acting as a probate court. However, they did not lift a finger to ask the probate court to include the properties in the inventory.[49] By failing to do so, petitioners are deemed to have acquiesced to the exclusion of the properties from the inventory, along with respondent's ownership over them.

In *Pacioles, Jr. v. Chuatoco-Ching*,[50] where the respondent and her representative could have opposed the petitioner's

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[47] 686 Phil. 203 (2012) [Per *J.* Sereno, Second Division].

[48] *Id.* at 214.

[49] *Rollo,* p. 57.

[50] 503 Phil. 707 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

inventory and sought the exclusion of the properties she considered hers, but instead adopted the inventory, this Court held that she and her representative acquiesced with petitioner's inventory.

In *Heirs of Reyes v. Reyes*,[51] this Court affirmed the probate court's provisional inclusion of properties to the deceased's estate, without prejudice to the outcome of a separate action to determine ownership, because the properties were still titled under the Torrens system in the names of the deceased and his spouse. Unlike in *Heirs of Reyes*, the parcels of land in this case were already titled in respondent's name alone. Thus, to determine the issue of ownership in a separate proceeding would be unnecessary.

It is settled that the "certificate of title is the best evidence of ownership of a property."[52] Thus, the titles issued to respondent, being Torrens titles, are conclusive upon the parties:

> In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens Title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his [of her] title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title.[53]

Moreover, respondent's titles were derived from the notarized Deeds of Absolute Sale between her and the seller, which are presumed valid, regular, and authentic. Notarized deeds of absolute sale such as these enjoy a presumption of regularity

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[51] 399 Phil. 282 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[52] *Malabanan v. Malabanan, Jr.,* G.R. No. 187225, March 6, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65059> [Per *J.* Leonen, Third Division].

[53] *Ignacio v. Reyes,* 813 Phil. 717, 732 (2017) [Per *J.* Peralta, Third Division] citing *Bolisay v. Judge Alcid*, 174 Phil. 463, 470 (1978) [Per *J.* Barredo, Second Division].

and authenticity absent "strong, complete, and conclusive proof of its falsity."[54] Since they assail the genuineness of the Deeds, petitioners must prove their allegation of falsity with clear, strong, and conclusive evidence.

Here, however, both the Regional Trial Court and the Court of Appeals did not give merit to petitioners' allegation of falsity of the Deeds of Absolute Sale. As the trial court found, the documentary evidence submitted by petitioners—an Acknowledgment Receipt issued by the seller to Mahid indicating ₱2 million as partial payment for the properties, the loan obtained by Mahid from one Engr. Cosain Dalidig, and various official receipts of a store in Wao—are purely immaterial and do not show any link to the two (2) Deeds of Absolute Sale between respondent and the seller.[55]

Besides, whether a deed of absolute sale is genuine is a question of fact[56] not proper in a petition for review on *certiorari*, as only questions of law may be raised in a petition under Rule 45 of the Rules of Court.[57] Moreover, the trial court's factual findings, especially when affirmed by the Court of Appeals, are generally conclusive upon this Court.[58]

II

An action for the annulment of contracts may be instituted by all who are obliged to it principally or subsidiarily.[59] By the

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[54] *Rodriguez v. Your Own Home Development Corp.*, G.R. No. 199451, August 15, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64599> [Per *J.* Leonen, Third Division] and *Almeda v. Heirs of Almeda,* 818 Phil. 239, 256 (2017) [Per *J.* Tijam, First Division].

[55] *Rollo,* p. 40.

[56] *Almeda v. Heirs of Almeda,* 818 Phil. 239, 255 (2017) [Per *J.* Tijam, First Division] citing *Sps. Bernales v. Heirs of Julian Sambaan,* 624 Phil. 88, 97 (2010) [Per *J.* Del Castillo, Second Division].

[57] RULES OF COURT, Rule 45, Sec. 1.

[58] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per *J.* Leonen, Second Division].

[59] CIVIL CODE, Art. 1397.

principle of relativity or privity of contracts, contracts take effect only between the parties, their assigns, and heirs.[60]

While the principle acknowledges that contractual obligations are transmissible to a party's assigns and heirs, petitioners here do not claim to be heirs of any party to the Deeds of Absolute Sale. They claim their interest as heirs of Mahid, the husband of respondent. But as established, it is actually respondent who was party to the sale, not Mahid. Therefore, petitioners, not being privy to the Deeds of Absolute Sale, are not the real parties in interest to question their validity.

Generally, every action must be prosecuted or defended in the name of the real party in interest,[61] the one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[62] To be a real party in interest, one "should appear to be the present real owner of the right sought to be enforced, that is, his [or her] interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest."[63] In *Stronghold Insurance Company, Inc. v. Cuenca*,[64] this Court explained the rationale for such requirement:

> The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. Indeed, considering that all civil actions must be based on a cause of action, defined as the act or omission by which a party violates the right of another, the former as the defendant must be allowed to insist upon being opposed by

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[60] CIVIL CODE, Art. 1311.

[61] RULES OF COURT, Rule 3, Sec. 2.

[62] RULES OF COURT, Rule 3, Sec. 2.

[63] *Stronghold Insurance Co., Inc. v. Cuenca,* 705 Phil. 441, 454 (2013) [Per *J.* Bersamin, First Division].

[64] 705 Phil. 441 (2013) [Per *J.* Bersamin, First Division].

the real party in interest so that he is protected from further suits regarding the same claim. Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end."

The rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[65] (Citations omitted)

Petitioners here are not vested with direct and substantial interest in the subject parcels of land. They are not the present real owners of the right sought to be enforced. They claim their interests only as heirs of Mahid, who was not proven to have any right or interest in the parcels of land titled in respondent's name. The Regional Trial Court even found:

[T]he Deed of Absolute Sale was contracted as early as 1997 and possession was exercised by [respondent] without anybody assailing her ownership and exercise of possession including her husband Dr. Mahid who was still alive at [that] time. What was not assailed by [Mahid] during his lifetime cannot be assailed by his heirs upon his death.[66]

Not being real parties in interest, petitioners cannot invoke the jurisdiction of the court. Persons having no material interest to protect cannot invoke its jurisdiction as the plaintiff in an action.[67] "Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded."[68]

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[65] *Id.* at 455-456.

[66] *Rollo,* p. 39.

[67] *Stronghold Insurance Co., Inc. v. Cuenca,* 705 Phil. 441, 455 (2013) [Per *J.* Bersamin, First Division].

[68] *Id.*

III

Indispensable parties or parties in interest without whom no final determination can be had of an action, shall be joined either as plaintiffs or defendants.[69] Two consequences can arise for the failure to implead indispensable parties:

> There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.
>
> All subsequent actions of lower courts are void as to both the absent and present parties. To reiterate, the inclusion of an indispensable party is a jurisdictional requirement[.][70] (Citations omitted)

Here, both the Regional Trial Court and the Court of Appeals found that Diator, the seller in the Deeds of Absolute Sale, and Mahid's estate are indispensable parties, without whom no final determination can be had of the action for annulment filed by petitioners.[71] Since this case is dismissed for lack of jurisdiction by the trial court, the second case is not an option.

WHEREFORE, the Petition is **DENIED.** The March 17, 2014 Decision and December 2, 2014 Resolution of the Court Appeals in CA-G.R. CV No. 02333-MIN are **AFFIRMED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

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[69] RULES OF COURT, Rule 3, Sec. 7.

[70] *Florete, Jr. v. Florete,* 778 Phil. 614, 652 (2016) [Per *J.* Leonen, Second Division].

[71] *Rollo*, pp. 39 and 133.

SECOND DIVISION

[G.R. No. 226495. February 5, 2020]

SPOUSES DENNIS and CHERRYLYN "CHERRY" GARCIA, doing business under the name and style of ECOLAMP MULTI-RESOURCES, *petitioners*, *vs.* **NORTHERN ISLANDS CO., INC.,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE IS THE WEIGHT, CREDIT, AND VALUE OF THE AGGREGATE EVIDENCE ON EITHER SIDE AND IS USUALLY CONSIDERED TO BE SYNONYMOUS WITH THE TERM "GREATER WEIGHT OF EVIDENCE" OR "GREATER WEIGHT OF THE CREDIBLE EVIDENCE", AND IS DETERMINED BY CONSIDERING ALL THE FACTS AND CIRCUMSTANCES OF THE CASE, CULLED FROM THE EVIDENCE, REGARDLESS OF WHO ACTUALLY PRESENTED IT. —** In civil cases, like in a complaint for a sum of money, the burden of proof lies on the party who asserts the affirmative of the issue. In such a case, the party, whether plaintiff or defendant, must establish his case by preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase, which, in the last analysis, means probability of truth. It is that evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto. Further, preponderance of evidence is determined by considering all the facts and circumstances of the case, culled from the evidence, regardless of who actually presented it.

2. **ID.; ID.; ID.; DELIVERIES OF THE GOODS TO THE PETITIONERS, WHICH WERE ESTABLISHED BY PREPONDERANCE OF EVIDENCE, CREATED AN OBLIGATION ON THE PART OF THE PETITIONERS TO PAY THE RESPONDENT THE VALUE THEREOF.**

— The Court finds that respondent Northern proved its cause of action by preponderance of evidence. x x x As aptly found by the CA, the goods delivered and received in April to July 2004 created an obligation on the part of Ecolamp to pay respondent Northern as it fell due. In this case, however, petitioner Spouses Garcia failed to present evidence to prove payment thereof. [D]eliveries to Ecolamp having been established by preponderance of evidence, the Court finds that the CA did not err in ordering petitioner Spouses Garcia to pay respondent Northern the value of the 3D appliances in the amount of ₱6,478,700.00 as shown by the various delivery cargo receipts the details of which correspond to the details found in the bills of lading. In addition, the Court finds the CA's imposition of 12% interest *per annum* from date of last extrajudicial demand on May 4, 2005 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision in place. Thereafter, the principal amount due as adjusted by interest shall likewise earn an interest at 6% *per annum* until its full satisfaction.

3. ID.; CIVIL PROCEDURE; APPEALS; ISSUES RAISED BY A PARTY WHICH ARE FACTUAL IN NATURE CANNOT BE ENTERTAINED IN A RULE 45 PETITION, AS THE COURT'S JURISDICTION THEREIN IS LIMITED TO REVIEWING AND REVISING ERRORS OF LAW THAT MIGHT HAVE BEEN COMMITTED BY THE LOWER COURTS. — The other issues raised by petitioner Spouses Garcia are clearly factual in nature. As such, these issues cannot be entertained in a Rule 45 petition wherein the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the lower courts. Thus, the Petition should be denied in the absence of any *exceptional circumstance* as to merit the Court's review of factual questions that have already been settled by the tribunals below.

APPEARANCES OF COUNSEL

The Law Firm of Batara Lansang Partners and Associates for petitioners.

Zamora & Poblador for respondent.

RESOLUTION

INTING, *J.*:

This is a Verified Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated November 26, 2015 and the Amended Decision[3] dated August 17, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 98237.

The assailed decisions reversed the Decision dated September 21, 2011 of Branch 215, Regional Trial Court (RTC), Quezon City dismissing the Complaint for Sum of Money with Damages filed by Northern Islands Co., Inc., (respondent Northern) against Spouses Dennis (Dennis) and Cherrylyn (Cherrylyn) Garcia (collectively referred to as petitioner Spouses Garcia), doing business under the name and style of Ecolamp Multi-Resources (Ecolamp).

Antecedents

Respondent Northern is a corporation engaged in the business of selling 3D household appliances. It designated Ecolamp as its exclusive distributor in Southern Mindanao. From March to July 2004, Ecolamp ordered various 3D house appliances from respondent Northern with an aggregate value of ₱8,040,825.17. However, Ecolamp failed to pay despite demands. Hence, the complaint for sum of money.[4]

Respondent Northern averred that the goods ordered from March to July 2004 were shipped and delivered to Ecolamp in its place of business in Davao City *via* Sulpicio Lines, Inc. (Sulpicio Lines) and accepted by Ecolamp in good order and condition as shown by the Delivery Cargo Receipts, Bill of

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[1] *Rollo*, pp. 15-62.

[2] *Id.* at 65-77; penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of the Court), concurring.

[3] *Id.* at 78-94.

[4] *Rollo*, p. 66.

Lading, and Proforma Bills of Lading. The goods must be paid within 120 days from receipt, and any unpaid amount shall earn an interest of 18% *per annum*. When the obligation fell due, respondent Northern demanded payment, through a letter dated February 1, 2005, but Ecolamp failed to settle its obligations. Respondent Northern prayed for the issuance of a writ of preliminary attachment and that petitioner Spouses Garcia be ordered to jointly and severally pay Ecolamp's outstanding obligation amounting to ₱8,040,825.17 plus ₱1,303,132.45 interest as of August 31, 2005, moral and exemplary damages, and attorney's fees.

Petitioner Spouses Garcia denied receipt of any delivery of goods from respondent Northern for the period of March to July 2004. Petitioner Spouses Garcia averred that the person who signed the delivery cargo receipts did not do so on behalf of Ecolamp and that the total amount appearing in the bills of lading was not equivalent to ₱8,040,825.17. Petitioner Spouses Garcia further stressed that respondent Northern failed to submit copies of the sales invoices proving Ecolamp's indebtedness. Thus, respondent Northern has no cause of action against them.[5]

On October 13, 2005, the RTC issued an Order granting respondent Northern's application for writ of preliminary attachment. Consequently, acting on the writ of preliminary attachment issued on November 7, 2005, Sheriff Adolfo P. Garcia, Jr. levied on six real properties registered in the name of Dennis married to Cherrylyn.[6]

During trial, the following testified for respondent Northern: (1) Grace G. Cheu (Grace), Vice President for Finance; (2) Genevive D. Ayok (Genevive), Accounting Department Personnel; (3) Michelle M. Espiritu (Michelle), Accounting Assistant; (4) Fe A. Del Rosario (Fe), Warehouse Coordinator, all of respondent Northern; (5) Analiza Cabillo Jeruz (Analiza), Claims Officer; and Tirso M. Tan (Tirso), Branch Manager both of Sulpicio Lines, Davao City.

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[5] *Id.* at 67.

[6] *Id.*

On the other hand, only Cherrylyn took the witness stand for Ecolamp's defense.

The testimony of Grace showed that the delivery cargo receipts, bill of lading, and proforma bills of lading were sufficient evidence to prove the deliveries to Ecolamp covering the period of March to July 2004. Besides, when Grace informed Cherrylyn of Ecolamp's indebtedness, the latter manifested her willingness to pay ₱1,000,000.00; but no payment was made.[7]

Genevive, on the other hand, testified that she personally received the purchase orders from Ecolamp *via* a facsimile transmission and prepared the corresponding sales invoices. Petitioner Spouses Garcia were given duplicate copies of the sales invoices. Based on the purchase orders and sales invoices, Genevive prepared the picking lists and requisition for packing which indicated the quantity, the type of goods, and the name of the customer. Thereafter, a packing list was prepared. This was used by the warehouse department in its transaction with the shipping company. However, respondent Northern could not present in court the copies of sales invoices, picking lists, and packing lists because Gilbert Guy[8] took possession of these documents when he assumed the operations of respondent Northern. Genevive further alleged that Starlite Cargo Xpress (Starlite) delivered the goods to Ecolamp. The values appearing on the bills of lading were the actual values of the goods based on the requisition for packing.[9]

Per Michelle's testimony, she prepared the statement of account of Ecolamp relative to its purchase orders for March to July 2004 and delivered to Ecolamp the duplicate copies of the sales invoices. On May 4, 2005, respondent Northern sent a demand letter to petitioner Spouses Garcia for the payment of ₱8,040,825.27.

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[7] *Id.*

[8] A stockholder of respondent Northern, who was also trying to collect from petitioner Spouses Garcia. *Id.* at 281.

[9] *Id.* at 68.

Further, Fe testified that Starlite and Sulpicio Lines delivered the goods to respondent Northern's customers.

Lastly, Analiza and Tirso alleged that the purchase orders for March to July were delivered to Ecolamp and received by Alvin Gludo (Alvin), its representative, as his signature appeared on the delivery cargo receipts.[10]

On the other hand, for the defense, Cherrylyn testified that respondent Northern would issue a sales invoice for every purchase order. For Ecolamp, respondent Northern issued pink and blue sales invoices. The pink sales invoice was issued before payment, and the blue sales invoice was issued after payment has been made. In this instance, Ecolamp was not issued a pink sales invoice on March to July 2004, which would show that no transaction happened between Ecolamp and respondent Northern; and that there was no unpaid obligation on the part of Ecolamp for that period. Cherrylyn further denied that Ecolamp's obligation was due within 120 days from delivery.

Cherrylyn further testified that Ecolamp transacted with respondent Northern in October 2004, but all payments due for that period had been settled and that Ecolamp did not receive any letter concerning its failure to reach the sales quota of ₱8,000,000.00 for 2004.[11]

Ruling of the RTC

On September 21, 2011, the RTC rendered a Decision dismissing the complaint of respondent Northern and ruled that the requisition for packing, picking and packing lists, delivery cargo receipts, and bills of lading could only be given significance upon proof of existence of the purchase orders and sales invoices. The RTC further ruled that because of respondent Northern's failure to prove the existence, execution, and the reason for the loss of the purchase orders and sales invoices, the rule on presentation of secondary evidence, therefore, was not applicable.

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[10] *Id.*

[11] *Id.* at 69.

Ruling of the CA

On appeal to the CA by respondent Northern, the CA rendered a Decision[12] dated November 26, 2015 granting the appeal. The dispositive portion of the CA Decision reads:

> WHEREFORE, the appeal is GRANTED. The September 21, 2011 Decision of the Regional Trial Court, Branch 215, Quezon City in Civil Case No. Q-05-53699 is hereby REVERSED and SET ASIDE. Northern Islands Co., Inc.'s complaint for sum of money is GRANTED and Spouses Dennis and Cherrylyn "Cherry" Garcia, doing business under the name and style of Ecolamp Multi Resources, are hereby ORDERED to pay ₱5,200,900.00 plus 12% interest *per annum* from date of last extrajudicial demand on May 4, 2005 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision. Thereafter, the principal amount due as adjudged by interest shall likewise earn interest at 6% *per annum* until fully paid.
>
> SO ORDERED.[13]

Petitioner Spouses Garcia filed a Motion for Reconsideration of the Decision dated November 26, 2015 while respondent Northern filed a Motion for Partial Reconsideration and prayed among others that in light of overwhelming documentary evidence, the amount of goods delivered is more than ₱5,200,900.00,[14] as decreed by the CA.

On August 17, 2016, the CA rendered the now assailed Amended Decision,[15] which the dispositive portion thereof reads:

> WHEREFORE, defendants-appellees Spouses Dennis and Cherrylyn Garcia's Motion for Reconsideration is DENIED while plaintiff-appellant Northern Islands Co., Inc.'s Motion for Partial Reconsideration is PARTIALLY GRANTED. Accordingly, Our November 26, 2015 Decision is hereby MODIFIED as follows:

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[12] *Id.* at 65-77.

[13] *Id.* at 76.

[14] *Id.* at 135.

[15] *Id.* at 78-94.

WHEREFORE, the appeal is GRANTED. The September 21, 2011 Decision of the Regional Trial Court. Branch 215, Quezon City in Civil Case No. Q-05-53699 is hereby REVERSED and SET ASIDE. Northern Islands Co., Inc.'s complaint for sum of money is GRANTED and Spouses Dennis and Cherrylyn "Cherry" Garcia, doing business under the name and style of Ecolamp Multi Resources, are hereby ORDERED to pay ₱6,478,700.00 plus 12% interest *per annum* from date of last extrajudicial demand on May 4, 2005 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision. Thereafter, the principal amount due as adjudged by interest shall likewise earn interest at 6% *per annum* until fully paid.

SO ORDERED.[16]

Petitioner Spouses Garcia insist that the CA erred in finding any contract of sale between Ecolamp and respondent Northern;[17] that the finding of the CA of a perfected and consummated contract was grounded entirely on speculations, surmises, or conjectures without citation of specific evidence on which they were based.[18] Petitioner Spouses Garcia maintain that the bills of lading or the contracts of carriage between the shipper and the carrier were not contracts of sale, or contracts to sell between the shipper and the third party or between them and respondent Northern.[19]

Our Ruling

The petition is bereft of merit.

In civil cases, like in a complaint for a sum of money, the burden of proof lies on the party who asserts the affirmative of the issue. In such a case, the party, whether plaintiff or defendant, must establish his case by preponderance of evidence. Preponderance of evidence is the weight, credit, and value of

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[16] *Id.* at 93.

[17] *Id.* at 59.

[18] *Id.*

[19] *Id.* at 35-36.

the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence."[20] Preponderance of evidence is a phrase which, in the last analysis, means probability of truth.[21] It is that evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[22]

Further, preponderance of evidence is determined by considering all the facts and circumstances of the case, culled from the evidence, regardless of who actually presented it.[23]

The Court finds that respondent Northern proved its cause of action by preponderance of evidence.

It is not denied that respondent Northern failed to present copies of the sales invoices for March to July 2004, but there were delivery cargo receipts that were made part of the records of the case which showed that deliveries were made to Ecolamp for the period of April to July 2004.[24] In fact, Analiza and Tirso testified that a certain Alvin, whose signature appeared on the delivery cargo receipts, received the goods on behalf of Ecolamp.[25] Here, Cherrylyn testified that Ecolamp's employees were authorized to receive deliveries on its behalf. Likewise, Cherrylyn did not specifically disclaim that Alvin was one of Ecolamp's employees.

Worth stressing is the fact that the delivery address appearing on the various bills of lading was the same as Ecolamp's address as testified to by Cherrylyn.[26] All these circumstances lead to

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[20] *Evangelista v. Sps. Andolong, et al.*, 800 Phil. 189, 195 (2016), citing *Spouses Ramos v. Obispo*, 705 Phil. 221, 230 (2013).

[21] *Id.*

[22] *Id.*

[23] *Supreme Transliner, Inc. v. Court of Appeals*, 421 Phil. 692, 699 (2001).

[24] *Rollo*, p. 86.

[25] *Id.*

[26] *Id.*

the conclusion that there were indeed goods delivered and received by Ecolamp, although only within the period of April to July 2004.

As aptly found by the CA, the goods delivered and received in April to July 2004 created an obligation on the part of Ecolamp to pay respondent Northern as it fell due.[27] In this case, however, petitioner Spouses Garcia failed to present evidence to prove payment thereof.

In sum, deliveries to Ecolamp having been established by preponderance of evidence, the Court finds that the CA did not err in ordering petitioner Spouses Garcia to pay respondent Northern the value of the 3D appliances in the amount of ₱6,478,700.00 as shown by the various delivery cargo receipts the details of which correspond to the details found in the bills of lading. In addition, the Court finds the CA's imposition of 12% interest *per annum* from date of last extrajudicial demand on May 4, 2005 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision in place.

Thereafter, the principal amount due as adjusted by interest shall likewise earn an interest at 6% *per annum* until its full satisfaction.[28]

The other issues raised by petitioner Spouses Garcia are clearly factual in nature. As such, these issues cannot be entertained in a Rule 45 petition wherein the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the lower courts.[29] Thus, the Petition should be denied in the absence of any *exceptional circumstance*[30] as to merit the Court's review of factual questions that have already been settled by the tribunals below.

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[27] *Id.*

[28] *Id.* at 74, citing *Nacar vs. Gallery Frames, et al.*, 716 Phil. 267, 283 (2013).

[29] See *Far Eastern Surety and Insurance Co., Inc. vs. People*, 721 Phil. 760, 770 (2013) citing *Remalante v. Tibe*, 241 Phil. 930 (1988).

[30] See *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005).

WHEREFORE, the petition is **DENIED**. The Court **AFFIRMS** the Amended Decision of the Court of Appeals in CA-G.R. CV No. 98237 dated August 17, 2016.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

FIRST DIVISION

[G.R. No. 236686. February 5, 2020]

YOKOHAMA TIRE PHILIPPINES, INC., *petitioner, vs.* **SANDRA REYES and JOCELYN REYES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IF A CRIMINAL CASE IS DISMISSED BY THE TRIAL COURT OR IF THERE IS AN ACQUITTAL, A RECONSIDERATION OF THE ORDER OF DISMISSAL OR ACQUITTAL MAY BE UNDERTAKEN, WHENEVER LEGALLY FEASIBLE, INSOFAR AS THE CRIMINAL ASPECT THEREOF IS CONCERNED AND MAY BE MADE ONLY BY THE PUBLIC PROSECUTOR; OR IN THE CASE OF AN APPEAL, BY THE STATE ONLY, THROUGH THE OFFICE OF THE SOLICITOR GENERAL (OSG); THE PRIVATE COMPLAINANT OR OFFENDED PARTY MAY NOT UNDERTAKE SUCH APPEAL, BUT MAY ONLY DO SO AS TO THE CIVIL ASPECT OF THE CASE; RATIONALE.** — It is settled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal

aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the Office of the Solicitor General (OSG). The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned. The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.

2. **ID.; ID.; ID.; ID.; PRIVATE OFFENDED PARTY MAY NOT UNDERTAKE AN APPEAL RAISING ISSUES ON THE ADMISSIBILITY OF EVIDENCE WHICH IT SUBMITTED TO PROVE THE GUILT OF THE ACCUSED, AS THESE ISSUES NECESSARILY REQUIRE A REVIEW OF THE CRIMINAL ASPECT OF THE CASE, AND, AS SUCH, IS PROHIBITED. —** [T]he Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal. In its petition for *certiorari* filed with the RTC, petitioner seeks the annulment of the MTC decision acquitting herein respondents. In so doing, petitioner raises issues on the admissibility of evidence which it submitted to prove the guilt of the accused. These issues necessarily require a review of the criminal aspect of the case and, as such, is prohibited. As discussed above, only the State,

and not herein petitioner, who is the private offended party, may question the criminal aspect of the case.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE TRIAL COURT'S DENIAL OF THE ADMISSIBILITY OF THE PROSECUTION'S EVIDENCE, ITS APPRECIATION OF THE ENTIRETY OF EVIDENCE PRESENTED BY BOTH PARTIES TO THE CASE, AND ITS SUBSEQUENT FINDING THAT THE PROSECUTION FAILED TO PROVE THE CRIME CHARGED, ARE ASSAILABLE AS ERRORS OF JUDGMENT AND NOT OF JURISDICTION, AND, THUS, ARE NOT REVIEWABLE BY THE EXTRAORDINARY REMEDY OF *CERTIORARI*; WHERE A PETITION FOR *CERTIORARI* ALLEGES GRAVE ABUSE OF DISCRETION, THE PETITIONER SHOULD ESTABLISH THAT THE RESPONDENT COURT OR TRIBUNAL ACTED IN A CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER IN THE EXERCISE OF ITS JURISDICTION AS TO BE EQUIVALENT TO LACK OF JURISDICTION; TERM "GRAVE ABUSE OF DISCRETION", EXPLAINED. — [T]he Court agrees with the ruling of the RTC that the disputed acts of the MTC in denying admissibility to the subject ink cartridges as part of the prosecution's evidence, its appreciation of the entirety of evidence presented by both parties to the case, and its subsequent finding that the prosecution failed to prove the crime charged, are assailable as errors of judgment and are not reviewable by the extraordinary remedy of *certiorari*. The Court finds no error in the ruling of the RTC that petitioner was not able to establish its allegation of grave abuse of discretion on the part of the MTC. Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. Thus, this Court has explained that: The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and

despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross x x x. As found by the RTC, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the MTC. If at all, the mistake committed by the MTC is only an error of judgment and not of jurisdiction, which would have amounted to a grave abuse of discretion.

4. **ID.; EVIDENCE; ADMISSIBILITY; ADMISSIBILITY OF AN EVIDENCE DISTINGUISHED FROM PROBATIVE VALUE; A PARTICULAR ITEM OF EVIDENCE MAY BE ADMISSIBLE, BUT ITS EVIDENTIARY WEIGHT DEPENDS ON JUDICIAL EVALUATION WITHIN THE GUIDELINES PROVIDED BY THE RULES OF EVIDENCE. —** This Court sustains the RTC ruling that even if the subject ink cartridges are admitted as evidence, it does not necessarily follow that they are given probative weight. The admissibility of an evidence is different from its probative value. Thus, this Court held in *Mancol, Jr. v. Development Bank of the Philippines* that: x x x [a]dmissibility of evidence should not be confused with its probative value. The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue." "Thus, a particular item of evidence may be admissible, but its evidentiary

weight depends on judicial evaluation within the guidelines provided by the rules of evidence." Petitioner chose to simply focus on the MTC's act of denying admissibility to the subject ink cartridges. Petitioner lost sight of the fact that respondents were acquitted not because the ink cartridges were excluded as evidence but because the MTC, after considering the entirety of evidence presented by the prosecution, found that the latter failed to prove all the elements of the crime charged.

5. **CRIMINAL LAW; ATTEMPTED THEFT; ESSENTIAL ELEMENT OF TAKING IN THE CRIME OF THEFT, NOT PROVED. —** [E]ven if the seized ink cartridges were admitted in evidence, the Court agrees with the OSG that the probative value of these pieces of evidence must still meet the various tests by which their reliability is to be determined. Their tendency to convince and persuade must be considered separately because admissibility of evidence is different from its probative value. As contended by the OSG, "[e]ven granting *arguendo* that the MTC indeed committed an error in ruling that there was illegal search and seizure in this case, the prosecution still has to prove that the seized cartridges were indeed the property of petitioner." However, the prosecution failed in this respect. This Court agrees with the OSG that since the employee of petitioner who allegedly discovered the theft of the subject cartridges, and who was supposedly the one who put identifying marks thereon was not presented in court, nobody could verify if the cartridges seized from respondents were the ones missing from the stockroom. Parenthetically, what is very damaging to the cause of the prosecution is its failure to present the alleged video recording which supposedly shows respondents in the act of putting ink cartridges inside a bag. Thus, the Court finds neither error nor grave abuse of discretion on the part of the MTC when it ruled that the prosecution failed to prove the essential element of taking in the alleged crime of theft.

CAGUIOA, *J.*, *concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; REQUISITES FOR THE RIGHT AGAINST DOUBLE JEOPARDY TO ATTACH. —** [T]he understanding of what the right against double jeopardy entails has remained the same even with the subsequent changes in the Constitution. Jurisprudence has provided that for the said

right to attach, the following requisites must be present: (1) a valid indictment, (2) a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.

2. ID.; ID.; ID.; ID.; ID.; FINALITY-OF-ACQUITTAL DOCTRINE; AS A SAFEGUARD AGAINST DOUBLE JEOPARDY, THE FINALITY-OF-ACQUITTAL DOCTRINE PROVIDES THAT "A JUDGMENT OF ACQUITTAL, WHETHER ORDERED BY THE TRIAL OR THE APPELLATE COURT, IS FINAL, UNAPPEALABLE, AND IMMEDIATELY EXECUTORY UPON ITS PROMULGATION"; RATIONALE. — To give life to the right against double jeopardy, the Court has, in numerous occasions, adhered to the finality-of-acquittal doctrine, which provides that "a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation." As the Court in *People v. Court of Appeals and Francisco* explained: x x x In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. **In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable.** The cases of *United States v. Yam Tung Way, People v. Bringas, Gandicela v. Lutero, People v. Cabarles, People v. Bao*, to name a few, are illustrative cases. **The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.** As succinctly observed in *Green v. United States* "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense**, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

3. ID.; ID.; ID.; ID.; ID.; THE FINALITY-OF-ACQUITTAL DOCTRINE DOES NOT APPLY WHEN THE PROSECUTION WAS DENIED DUE PROCESS; ERRORS

OR IRREGULARITIES, WHICH DO NOT RENDER THE PROCEEDINGS IN THE COURT BELOW AN ABSOLUTE NULLITY, WILL NOT DEFEAT A PLEA OF *ANTREFOIS ACQUIT*. — The finality-of-acquittal doctrine, of course, is not without exception. The finality-of-acquittal doctrine does not apply when the prosecution — the sovereign people, as represented by the State — was denied a fair opportunity to be heard. Simply put, the doctrine does not apply when the prosecution was denied its day in court — or simply, denied due process. As the Court explained in the case of *People v. Hernando*: Notwithstanding, the error committed can no longer be rectified under the cardinal rule on double jeopardy. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Respondents have been formally acquitted by respondent Court, albeit erroneously. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antrefois acquit*. **The proceedings in the Court below were not an absolute nullity as to render the judgment of acquittal null and void. The prosecution was not without the opportunity to present its evidence or even to rebut the testimony of Leonico Talingdan, the witness on new trial. It cannot be justifiably claimed, therefore, that the prosecution was deprived of its day in Court and denied due process of law, which would have rendered the judgment of acquittal a nullity and beyond the pale of a claim of double jeopardy.** What was committed by respondent Judge was a reversible error but which did not render the proceedings an absolute nullity.

4. **ID.; ID.; ID.; ID.; ID.; ERROR IN THE TRIAL OR APPRECIATION OF THE EVIDENCE BY THE TRIAL COURT THAT LED TO THE ACQUITTAL OF THE ACCUSED, NO MATTER HOW FLAGRANT OR GRAVE, IS IMMATERIAL, AS ACCUSED'S RIGHT AGAINST DOUBLE JEOPARDY ALREADY ATTACHED UPON HIS OR HER ACQUITTAL, AND SUCH RIGHT DEMANDS THAT THE CASE BE TERMINATED IMMEDIATELY, WITH ANY FORM OF RE-LITIGATION BARRED; NO AMOUNT OF ERROR OF JUDGMENT WILL RIPEN INTO AN ERROR OF JURISDICTION SUCH THAT THE ACQUITTAL WOULD BE REVIEWABLE BY AN**

APPELLATE COURT THROUGH A PETITION FOR *CERTIORARI*; IT IS ONLY IN CASES WHERE THE STATE WAS DENIED ITS DAY IN COURT THAT A DECISION ACQUITTING THE ACCUSED, OR AN ORDER TERMINATING THE CASE WITHOUT THE ACCUSED'S CONSENT, MAY BE REVISITED.— x x x [N]ot every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by *certiorari*. Borrowing the words of the Court in *Republic v. Ang Cho Kio*, "[n]o error, **however flagrant**, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed." As applied in this case, it is thus immaterial whether the MTC was correct or that there was indeed insufficient evidence to convict the accused-respondents. Whether the MTC was correct in its ruling on the merits, the fact remains that the accused-respondents' right against double jeopardy already attached upon their acquittal, and such right demands that the case be terminated immediately, with any form of re-litigation barred. In other words, the *ponencia* need not have done a re-evaluation of the evidence before the MTC. Again, whether the MTC committed any error in its appreciation of the evidence, no matter how flagrant or grave, was already immaterial. No amount of error of judgment will ripen into an error of jurisdiction such that the acquittal would be reviewable by an appellate court through a petition for *certiorari*. It is only in cases where the State was denied its day in court — like in *Galman* — that a decision acquitting the accused, or an order terminating the case without the accused's consent, may be revisited.

5. **ID.; ID.; ID.; ID.; RATIONALE FOR THE NARROW EXCEPTION TO THE FINALITY-OF-ACQUITTAL DOCTRINE. —** [I]t is well to emphasize the purpose for this insistence on having a very narrow exception to the finality-of-acquittal doctrine. To borrow the words of the Court in *Velasco*: The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in **unequal contest** with the State x x x" Thus, Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American

system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.**" x x x Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness **to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression**; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, **"(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.**

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Quiambao Law Offices for respondents.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the July 10, 2017 Decision[1] and the November 7, 2017 Order[2] of the Regional Trial Court (*RTC*) of Angeles City, Branch 56 in Case No.

[1] Penned by Judge Irin Zenaida S. Buan; *rollo*, pp. 468-471.

[2] *Id.* at 544.

R-ANG-16-00138-SC. The disputed RTC Decision dismissed herein petitioner's petition for *certiorari* under Rule 65 of the same Rules questioning a portion of the Decision of the Municipal Trial Court (*MTC*) of Clarkfield, Pampanga, in Criminal Case No. 12-5960 which acquitted herein respondents of the crime of attempted theft. The challenged RTC Order, on the other hand, denied petitioner's Motion for Reconsideration of the above Decision of the RTC.

The facts are as follows:

Herein respondents, together with one Celeste Tagudin (*Tagudin*), were former employees of herein petitioner company.

On June 17, 2011, petitioner filed a criminal complaint[3] for qualified theft against respondents and Tagudin, accusing them of having taken HP ink cartridges from the company's stock room through stealth and without the consent of petitioner or any of its authorized representatives.

In a Resolution/Recommendation[4] dated March 22, 2012, the Assistant City Prosecutor (*ACP*) of Angeles City recommended that the complaint against Tagudin be dismissed for insufficiency of evidence, while an Information for Attempted Theft be filed against respondents. The City Prosecutor of Angeles City approved the Resolution /Recommendation of the ACP. Thus, on May 23, 2012, an Information for Attempted Theft was filed with the MTC of Clarkfield, Pampanga and the case was docketed as Criminal Case No. 12-5960.

On June 14, 2012, petitioner filed a Motion for Reconsideration[5] of the March 22, 2012 Resolution of the Angeles City ACP, but the same was denied by the latter in his Resolution/ Recommendation[6] dated June 20, 2012, which was, likewise, approved by the City Prosecutor.

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[3] Annex "C" to Petition, *id.* at 73-89.

[4] Annex "D" to Petition, *id.* at 125-127.

[5] Annex "E" to Petition, *id.* at 128-142.

[6] Annex "F" to Petition, *id.* at 143.

Thereafter, trial proceeded. Hence, on November 10, 2015, the MTC of Clarkfield, Pampanga rendered its Decision[7] acquitting herein respondents of the crime of attempted theft.

Herein petitioner, then, filed a petition[8] for *certiorari* with the RTC, docketed as R-ANG-16-00138, contending that the MTC acted without or in excess of jurisdiction and/or with grave abuse of discretion in ruling that the pieces of HP ink cartridges found by petitioner's representatives inside the vehicle of one of respondents, which was subsequently presented as evidence by the prosecution, were inadmissible for having been obtained in violation of the law and of respondents' right against unreasonable search and seizure. Petitioner prayed for the annulment of the November 10, 2015 Decision of the MTC.

In its Decision[9] dated July 10, 2017, the RTC dismissed the *certiorari* petition for lack of merit.

Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC in its Order[10] dated November 7, 2017.

Hence, the present petition based on the following arguments:

RTC-ANGELES CITY UNDULY DEVIATED FROM THE ESTABLISHED LAWS AND SETTLED JURISPRUDENCE THAT:

I

THE COURTS MUST ABIDE BY THE EVIDENCE FORMALLY OFFERED DURING THE TRIAL SUCH THAT OBJECT AND OTHER EVIDENCE ALREADY ADMITTED SHOULD BE THE BASES OF THE FINDINGS OF FACTS AND THE JUDGMENT OF THE COURTS x x x.

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[7] Penned by Presiding Judge Ma. Arabella G. Eusebio-Rodolfo; Annex "U" to Petition, *id.* at 410-422.

[8] Annex "V" to Petition, *id.* at 423-451.

[9] Annex "X" to Petition, *id.* at 468-471.

[10] Annex "DD" to Petition, *id.* at 544.

II

THE LAW AGAINST UNREASONABLE SEARCHES AND SEIZURE IS A RESTRAINT AGAINST THE GOVERNMENT AND NOT PRIVATE ENTITIES x x x.[11]

Petitioner contends that the RTC committed error in affirming the assailed decision of the MTC. Ultimately, petitioner basically seeks to annul the decision of the MTC which acquitted herein respondents. In so doing, petitioner contends that the pieces of HP ink cartridges which were submitted as part of the evidence for the prosecution should have been admitted and considered by the MTC in determining the guilt or innocence of respondents. Petitioner argues that, under prevailing jurisprudence, the constitutional guarantee against unreasonable searches and seizures, which was cited by the MTC in excluding the HP ink cartridges from the prosecution's evidence, is made applicable as a restraint against the government only and not against private entities.

The petition lacks merit.

At the outset, the Court notes that petitioner lacked authority in filing a special civil action for *certiorari* with the RTC to seek the annulment of the decision of the MTC which acquitted herein respondents from the crime of attempted theft.

It is settled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom.[12] Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through

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[11] *Rollo*, pp. 28-29.

[12] *Lydia Cu v. Trinidad Ventura*, G.R. No. 224567, September 26, 2018; *Allan S. Cu v. Small Business Guarantee and Finance Corporation, etc.*, G.R. No. 211222, August 7, 2017; *Chiok v. People, et al.*, 774 Phil. 230, 246 (2015).

the Office of the Solicitor General (OSG).[13] The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case.[14] However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.[15]

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant.[16] The interest of the private complainant or the private offended party is limited only to the civil liability.[17] In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General.[18] The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.[19]

Thus, this Court's ruling in the earlier case of *People v. Santiago*[20] is instructive, to wit:

> It is well settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect

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[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] 255 Phil. 851 (1989).

may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in [the] name of said complainant.[21]

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.

In its petition for *certiorari* filed with the RTC, petitioner seeks the annulment of the MTC decision acquitting herein respondents. In so doing, petitioner raises issues on the admissibility of evidence which it submitted to prove the guilt of the accused. These issues necessarily require a review of the criminal aspect of the case and, as such, is prohibited. As discussed above, only the State, and not herein petitioner, who is the private offended party, may question the criminal aspect of the case.

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[21] *Id.* at 861-862. (Emphasis supplied)

In any event, even granting that petitioner has the requisite authority to question the subject RTC Decision, this Court, after a careful review of the arguments of the parties, finds no error in the questioned Decision of the RTC.

In the instant case, the Court agrees with the ruling of the RTC that the disputed acts of the MTC in denying admissibility to the subject ink cartridges as part of the prosecution's evidence, its appreciation of the entirety of evidence presented by both parties to the case, and its subsequent finding that the prosecution failed to prove the crime charged, are assailable as errors of judgment and are not reviewable by the extraordinary remedy of *certiorari*.

The Court finds no error in the ruling of the RTC that petitioner was not able to establish its allegation of grave abuse of discretion on the part of the MTC. Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[22]

Thus, this Court has explained that:

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

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[22] *Chua v. People, et al.*, G.R. No. 195248, November 22, 2017, 846 SCRA 74, 81-82.

been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross x x x.[23]

As found by the RTC, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the MTC. If at all, the mistake committed by the MTC is only an error of judgment and not of jurisdiction, which would have amounted to a grave abuse of discretion.

This Court sustains the RTC ruling that even if the subject ink cartridges are admitted as evidence, it does not necessarily follow that they are given probative weight. The admissibility of an evidence is different from its probative value. Thus, this Court held in *Mancol, Jr. v. Development Bank of the Philippines*[24] that:

x x x [a]dmissibility of evidence should not be confused with its probative value.

The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue." "Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence."[25]

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[23] *Yu v. Judge Reyes-Carpio, et al.*, 667 Phil. 474, 481-482 (2011).

[24] G.R. No. 204289, November 22, 2017, 846 SCRA 131.

[25] *Id.* at 143-144. (Citations omitted)

Petitioner chose to simply focus on the MTC's act of denying admissibility to the subject ink cartridges. Petitioner lost sight of the fact that respondents were acquitted not because the ink cartridges were excluded as evidence but because the MTC, after considering the entirety of evidence presented by the prosecution, found that the latter failed to prove all the elements of the crime charged.

Stated differently, even if the seized ink cartridges were admitted in evidence, the Court agrees with the OSG that the probative value of these pieces of evidence must still meet the various tests by which their reliability is to be determined. Their tendency to convince and persuade must be considered separately because admissibility of evidence is different from its probative value. As contended by the OSG, "[e]ven granting *arguendo* that the MTC indeed committed an error in ruling that there was illegal search and seizure in this case, the prosecution still has to prove that the seized cartridges were indeed the property of petitioner."[26] However, the prosecution failed in this respect. This Court agrees with the OSG that since the employee of petitioner who allegedly discovered the theft of the subject cartridges, and who was supposedly the one who put identifying marks thereon was not presented in court, nobody could verify if the cartridges seized from respondents were the ones missing from the stockroom. Parenthetically, what is very damaging to the cause of the prosecution is its failure to present the alleged video recording which supposedly shows respondents in the act of putting ink cartridges inside a bag.

Thus, the Court finds neither error nor grave abuse of discretion on the part of the MTC when it ruled that the prosecution failed to prove the essential element of taking in the alleged crime of theft, to wit:

> First. The prosecution attempted to establish the fact of taking through a set of pictures (exhibits DD to UU) allegedly lifted from a video file - in DVD form - copied from a video recording allegedly taken inside stockroom no. 2 on October 22, 2010. **The pictures were not even**

[26] *Rollo*, p. 605.

clear - mostly black; with the exception on (sic) Exhibit RR and SS - resembling a female individual, identified by prosecution witness as accused Sandra Reyes. Accused Jocelyn was not even depicted in any of the pictures. However, the video recording itself nor (sic) the DVD copy thereof was not presented nor identified by any witness.

The testimony of witness Dolo as to the report of Edward Buan - in support of the aforementioned pictures - was not sufficient to prove the fact of taking. **Without the testimony of Buan - as to the truth of the contents of his report - there could be no sufficient basis for the testimonies of the other prosecution witnesses.** In fact, witness Dolo had no personal knowledge of the statements made in Buan's report nor did he had (sic) prior knowledge of the video recording taken in stockroom no. 2 on October 22, 2012.

Witness Jose Bermundo testified that Buan told him about the missing HP ink cartridges in stockroom no. 2. This was, without question, **second-hand information**. Bermudo testified that he gave his camera to Buan - to be installed by Buan inside stockroom no. 2. Bermudo testified that he watched the alleged video recording and narrated what he allegedly saw therein; **but he never presented nor identified the video recording from which he based most of his testimony**.

Witness Jovita Matias testified that he lifted pictures from the DVD copy of the video recording; however, his testimony on what were depicted on the pictures (Exhibits DD to UU) could not be given much weight, **as the pictures themselves were not clear and the video file from which the said pictures were lifted from was (sic) not presented**. If it were true that the video recording clearly showed accused Sandra in the act of taking the cartridges, then the pictures which had been lifted from said video recording should have clearly depicted such fact. **Thus, it is the court's opinion that the best evidence of the fact of taking should have been the video recording itself; however, no witness for the prosecution ever identified said video recording nor any DVD copy thereof.**

The court cannot consider any evidence which has not been presented, identified and offered.

All of the prosecution witnesses had no personal knowledge of the fact of taking: thus, there was no clear and convincing evidence as to the fact of taking.[27]

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[27] *Id.* at 603-605. (Emphasis and underscoring supplied)

In sum, this Court finds that the RTC did not err when it held that the MTC did not commit grave abuse of discretion in rendering its assailed decision.

WHEREFORE, the instant petition is **DENIED**. The July 10, 2017 Decision and the November 7, 2017 Order of the Regional Trial Court of Angeles City, Branch 56 in Case No. R-ANG-16-00138-SC are **AFFIRMED**.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur. The *ponencia* was correct in denying the petition and in recognizing the right of the accused against double jeopardy.

Brief review of the facts

Petitioner Yokohama Tire Philippines, Inc. (Yokohama) filed a complaint for qualified theft against Sandra Reyes and Jocelyn Reyes (collectively, the accused-respondents), former employees of Yokohama, for allegedly taking ink cartridges from the company's stock room without the company's consent.

After preliminary investigation, the prosecutor found probable cause to indict the accused-respondents with attempted theft. Thus, an Information was filed charging the accused-respondents with attempted theft before the Municipal Trial Court of Clarkfield, Pampanga (MTC).

After trial, the MTC issued its Decision acquitting the accused-respondents of the crime.

Aggrieved by the Decision issued by the MTC, Yokohama filed a petition for *certiorari* with the Regional Trial Court (RTC), arguing that the MTC issued the Decision with grave

abuse of discretion amounting to lack or excess of jurisdiction by acquitting the accused-respondents on the basis of its finding that the ink cartridges were inadmissible in evidence for having been obtained in violation of the accused-respondents' right against unreasonable searches and seizures.

The RTC, however, dismissed the petition for *certiorari*. Undaunted, Yokohama sought recourse directly to the Court, ascribing error on the part of the RTC for dismissing its petition for *certiorari*. Yokohama's main argument was that the MTC committed grave abuse of discretion in applying the exclusionary rule under Section 3(2), in relation to Section 2, Article III of the Constitution, when the said exclusionary rule applies only when the violator of the right was the State or its agents and not private parties.

The *ponencia* denies the present petition for two reasons, namely, that the petition was filed without the conformity of the Office of the Solicitor General (OSG) and that the RTC did not err in not ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the MTC.

I fully agree with the result of the *ponencia*'s ruling. But while I ultimately agree with the result, I respectfully submit that a different framework should have been adopted by the *ponencia* in arriving at the conclusion. In ruling the way it did, the *ponencia* explained:

> As found by the RTC, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the MTC. If at all, the mistake committed by the MTC is only an error of judgment and not of jurisdiction, which would have amounted to a grave abuse of discretion.
>
> This Court sustains the RTC ruling that even if the subject ink cartridges are admitted as evidence, it does not necessarily follow that they are given probative weight. The admissibility of an evidence is different from its probative value. x x x
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> x x x x x x x x x

Stated differently, even if the seized ink cartridges were admitted in evidence, the Court agrees with the OSG that the probative value of these pieces of evidence must still meet the various tests by which their reliability is to be determined. Their tendency to convince and persuade must be considered separately because admissibility of evidence is different from its probative value. As contended by the OSG, "[e]ven granting *arguendo* that the MTC indeed committed an error in ruling that there was illegal search and seizure in this case, the prosecution still has to prove that the seized cartridges were indeed the property of petitioner." However, the prosecution failed in this respect. This Court agrees with the OSG that since the employee of petitioner who allegedly discovered the theft of the subject cartridges, and who was supposedly the one who put identifying marks thereon was not presented in court, nobody could verify if the cartridges seized from respondents were the ones missing from the stockroom. Parenthetically, what is very damaging to the cause of the prosecution is its failure to present the alleged video recording which supposedly shows respondents in the act of putting ink cartridges inside a bag.

Thus, the Court finds neither error nor grave abuse of discretion on the part of the MTC when it ruled that the prosecution failed to prove the essential element of taking in the alleged crime of theft[.][1]

Based on the foregoing reasoning, one can be led into believing that errors in judgment may ripen into errors in jurisdiction depending on the gravity or severity of the error committed.

It is in this regard that I disagree.

The right against double jeopardy

The right against double jeopardy was brought into the Philippine legal system by the Decision of the Supreme Court of the United States (SCOTUS) in *Kepner v. United States*[2] (*Kepner*). In the said case, the Supreme Court of the Philippines reversed a ruling of the court of first instance acquitting the accused therein of *estafa*. When the accused therein appealed to the SCOTUS, the SCOTUS reversed the ruling of the Supreme Court of the Philippines, holding that the principles of law in

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[1] *Ponencia*, pp. 6-7.

[2] 195 U.S. 100 (1904).

the United States which were deemed by then President William McKinley as necessary for the maintenance of individual freedom — which includes the right against double jeopardy — were brought to the Philippines by Congress' act of passing the Philippine Bill of 1902. The SCOTUS explained:

> When Congress came to pass the act of July 1, 1902, it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. **In view of the expressed declaration of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights**, there would seem to be no room for argument that, in this form, **it was intended to carry to the Philippine Islands those principles of our Government which the President declared to be established as rules of law for the maintenance of individual freedom**, at the same time expressing regret that the inhabitants of the islands had not theretofore enjoyed their benefit.[3] (Emphasis and underscoring supplied)

Kepner was the standing doctrine when the 1935 Constitution was being drafted. In the deliberations, efforts were exerted to reject *Kepner* and to change the wording of the constitutional provision such that the right against double jeopardy would be applicable only once the accused has been acquitted or convicted "by final judgment."[4] These efforts, however, were rejected.[5]

Since then, the understanding of what the right against double jeopardy entails has remained the same even with the subsequent changes in the Constitution. Jurisprudence has provided that for the said right to attach, the following requisites must be present: (1) a valid indictment, (2) a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused,

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[3] *Id.* at 124.

[4] The proposed wording was "No person shall be twice put in jeopardy of punishment for an offense upon which the final judgment has been rendered."

[5] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 589 (2009 Edition).

or the dismissal or termination of the case against him without his express consent.[6]

To give life to the right against double jeopardy, the Court has, in numerous occasions, adhered to the finality-of-acquittal doctrine, which provides that "a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation."[7] As the Court in *People v. Court of Appeals and Francisco*[8] explained:

> As earlier mentioned the circumstances of the case at bar call for a judicial inquiry on the permissibility of appeal after a verdict of acquittal in view of the constitutional guarantee against double jeopardy
>
> In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. **In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable.** The cases of *United States v. Yam Tung Way, People v. Bringas, Gandicela v. Lutero, People v. Cabarles, People v. Bao*, to name a few, are illustrative cases. **The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.** As succinctly observed in *Green v. United States* "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense**, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."[9] (Emphasis and underscoring supplied)

The finality-of-acquittal doctrine, of course, is not without exception. The finality-of-acquittal doctrine does not apply when

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[6] *Condrada v. People*, 446 Phil. 635, 641 (2003).

[7] *Chiok v. People*, 774 Phil. 230, 248 (2015).

[8] 468 Phil. 1 (2004).

[9] *Id.* at 12-13.

the prosecution — the sovereign people, as represented by the State — was denied a fair opportunity to be heard. Simply put, the doctrine does not apply when the prosecution was denied its day in court — or simply, denied due process. As the Court explained in the case of *People v. Hernando*:[10]

> Notwithstanding, the error committed can no longer be rectified under the cardinal rule on double jeopardy. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Respondents have been formally acquitted by respondent Court, albeit erroneously. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antrefois acquit*. **The proceedings in the Court below were not an absolute nullity as to render the judgment of acquittal null and void. The prosecution was not without the opportunity to present its evidence or even to rebut the testimony of Leonico Talingdan, the witness on new trial. It cannot be justifiably claimed, therefore, that the prosecution was deprived of its day in Court and denied due process of law, which would have rendered the judgment of acquittal a nullity and beyond the pale of a claim of double jeopardy.** What was committed by respondent Judge was a reversible error but which did not render the proceedings an absolute nullity.[11] (Emphasis and underscoring supplied)

The foremost example of this denial of due process was the case of *Galman v. Sandiganbayan*[12] (*Galman*) where, despite the acquittal of the several accused in the assassination of former Senator Benigno Aquino, Jr., the Court declared that double jeopardy could not be invoked because the whole trial was a sham. The Court found that the trial "was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of

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[10] 195 Phil. 21 (1981).

[11] *Id.* at 32.

[12] 228 Phil. 42 (1986).

acquittal and total absolution as innocent of all the respondents-accused."[13]

Due to the influence that the Executive exerted over the independence of the court trying the *Galman* case, the Court ruled that the Decision therein was issued in violation of the prosecution's due process. For instance, the Court found that in the trial in the Sandiganbayan, there were, among others, (1) suppression of evidence, (2) harassment of witnesses, (3) deviation from the regular raffle procedure in the assignment of the case, (4) close monitoring and supervision of the Executive and its officials over the case, and (5) secret meetings held between and among the President, the Presiding Justice of the Sandiganbayan, and the Tanodbayan. From the foregoing, the Court saw the trial a sham.

From these observations, the Court ruled in *Galman* that the right against double jeopardy, absolute as it may appear, may be invoked only when there was a valid judgment terminating the first jeopardy. The Court explained that no right attaches from a void judgment, and hence the right against double jeopardy may not be invoked when the decision that "terminated" the first jeopardy was invalid and issued without jurisdiction.[14]

The facts of *Galman* constitute the very narrow exception to the application of the right against double jeopardy. The unique facts surrounding *Galman* — and other similar scenarios where the denial of due process on the part of the prosecution was so gross and palpable — is the limited area where an acquittal may be revisited through a petition for *certiorari*. As reiterated by the Court in the case of *People v. Velasco*[15] (*Velasco*), "the doctrine that 'double jeopardy may not be invoked after trial' may apply only when the Court *finds that the 'criminal trial was a sham' because the prosecution representing the sovereign people in the criminal case was denied due process*."[16]

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[13] *Id.* at 83.

[14] *Id.* at 90.

[15] 394 Phil. 517 (2000).

[16] *Id.* at 555.

Verily, this means that not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by *certiorari*. Borrowing the words of the Court in *Republic v. Ang Cho Kio*,[17] "[n]o error, **however flagrant**, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[18]

As applied in this case, it is thus immaterial whether the MTC was correct or that there was indeed insufficient evidence to convict the accused-respondents. Whether the MTC was correct in its ruling on the merits, the fact remains that the accused-respondents' right against double jeopardy already attached upon their acquittal, and such right demands that the case be terminated immediately, with any form of re-litigation barred.

In other words, the *ponencia* need not have done a re-evaluation of the evidence before the MTC. Again, whether the MTC committed any error in its appreciation of the evidence, no matter how flagrant or grave, was already immaterial. No amount of error of judgment will ripen into an error of jurisdiction such that the acquittal would be reviewable by an appellate court through a petition for *certiorari*. It is only in cases where the State was denied its day in court — like in *Galman* — that a decision acquitting the accused, or an order terminating the case without the accused's consent, may be revisited.

To end, it is well to emphasize the purpose for this insistence on having a very narrow exception to the finality-of-acquittal doctrine. To borrow the words of the Court in *Velasco*:

> The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in **unequal contest** with the State x x x" Thus, Green expressed the

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[17] 95 Phil. 475 (1954).

[18] *Id.* at 480.

concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.**"

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. **The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability.** With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness **to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression**; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, **"(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.**[19] (Emphasis and underscoring supplied)

Based on these premises, I vote to **DENY** the Petition.

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[19] *People v. Velasco*, *supra* note 15 at 555-557.

SECOND DIVISION

[G.R. No. 237720. February 5, 2020]

ALVIN F. SAMONTE, *petitioner*, *vs.* **DEMETRIA N. DOMINGO, married to DANIEL SB. DOMINGO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; ELUCIDATED. —** "*Res judicata* (meaning, a "matter adjudged") is a fundamental principle of law that precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment." In *Degayo v. Magbanua-Dinglasan*, the Court explained the effect of *res judicata*: It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; TWO CONCEPTS, DIFFERENTIATED; *RES JUDICATA* IN THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT, APPLIES IN CASE AT BAR. —** There are two (2) concepts of *res judicata*: 1) bar by prior judgment, which is found in Section 47(b) of Rule 39; and 2) conclusiveness of judgment, which is referred to in paragraph c of the same rule and section. In *Puerto Azul Land, Inc. v. Pacific Wide Realty Dev't. Corp.,* the Court discussed the difference between the two: There is a bar by prior judgment where there is identity of parties, subject matter, and causes of action between the first case where the judgment was rendered and the second case that is sought to be barred. There is conclusiveness of judgment, on the other hand, where there is identity of parties in the first and second cases, but no identity of causes of action. Verily, *res judicata* in the concept of conclusiveness of judgment applies in this case. It is not disputed that both the present case

and Civil Case No. 12-128721 involve the same parties and subject matter; only the cause of action is different. *Res judicata* in the concept of conclusiveness of judgment "precludes the relitigation only of a particular fact or issue necessary to the outcome of a prior action between the same parties on a different claim or cause of action."

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; SOLE ISSUE FOR RESOLUTION IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWENERSHIP BY ANY OF THE PARTIES. — "In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties." Thus, "courts may pass upon the issue of ownership only for purposes of ascertaining who has the better right of possession. Any ruling on ownership is merely provisional and does not bar an action between the same parties regarding title to the property."

4. ID.; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; AS A RULE, JUDGMENTS BY A COURT OF COMPETENT JURISDICTION, WHICH HAVE ATTAINED FINALITY, ARE NOT SUBJECT TO REVERSAL, MODIFICATION OR ALTERATION AND ARE, THUS, IMMUTABLE; CASE AT BAR. — Since the Deed of Sale of Residential House was declared null and void in Civil Case No. 12-128721 and affirmed in CA-G.R. CV No. 107254, which decision has attained finality during the pendency of this case, Domingo can no longer claim any right to possess the subject property based on the said deed of sale. This issue has already been settled and can no longer be disturbed in this case. It is a general rule that "judgments by a court of competent jurisdiction, which have attained finality, are not subject to reversal, modification or alteration and are, thus, immutable." This doctrine was extensively discussed in *Vios v. Pantango, Jr.*, thus: It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Larry P. Ignacio for respondent.

D E C I S I O N

REYES, A. JR., ***J.*****:**

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Court filed by Alvin F. Samonte (Samonte), assailing the Decision[2] of the Court of Appeals (CA) 12th Division dated August 17, 2017 and the CA Special Former 12th Division Resolution[3] dated February 13, 2018 in CA-G.R. SP No. 144022. The CA affirmed the Decision[4] of the Regional Trial Court (RTC) of Manila, Branch 24, which in turn, reversed and set aside the ruling of the Metropolitan Trial Court (MeTC) of Manila, Branch 3.

THE FACTS

The subject of the present controversy is a residential house made of light materials with an area of 58.5 square meters, located in New Antipolo Street, District of Tondo II-B, Manila (subject property).

Demetria N. Domingo (Domingo) filed a Complaint for Unlawful Detainer[5] against Samonte before the MeTC, docketed as Civil Case No. 188910-CV. Domingo alleged that she bought the subject property from Samonte by virtue of a Deed of Sale of Residential House[6] executed on July 8, 2011. However,

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[1] *Rollo*, pp. 12-26.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Leoncia R. Dimagiba, *id.* at 33-42.

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

[4] Penned by Presiding Judge Maria Victoria A. Soriano-Villadolid; *id.* at 61-66.

[5] *Id.* at 81-85.

[6] *Id.* at 86.

despite her demands, Samonte refused to vacate the subject property and even had some portions rented out to tenants.[7]

In his Answer,[8] Samonte denied Domingo's allegations and averred that no sale of the subject property took place. According to Samonte, he obtained a loan from Domingo amounting to ₱59,000.00. Since he was in dire need of money, he acceded to Domingo's request to sign a document, which he believed to be a contract of mortgage. He claimed that Domingo defrauded him and took advantage of his situation as he badly needed the money.[9]

THE RULING OF THE MeTC

In a Judgment[10] dated May 15, 2013, the MeTC dismissed Domingo's complaint for failure to prove that: a.) a contract of lease existed between the parties; and b.) a demand letter was actually sent to and received by Samonte.[11] The case was disposed of as follows:

> **WHEREFORE**, premises considered and for failure of plaintiff Demetria N. Domingo to substantiate her claim by preponderance of evidence against defendant Alvin F. Samonte, the complaint herein is hereby DISMISSED for lack of cause of action.
>
> **SO ORDERED**.[12]

THE RULING OF THE RTC

On appeal, the RTC Branch 24 overturned the MeTC ruling. It held that the MeTC erred in dismissing the complaint since an action for unlawful detainer may be filed not only by a lessor, but also by any other person, against whom possession is withheld upon the termination of the right to hold possession by virtue

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[7] *Id.* at 82.

[8] *Id.* at 93-97.

[9] *Id.* at 94.

[10] Penned by Presiding Judge Juan O. Bermejo, Jr.; *id.* at 118-122.

[11] *Id.* at 120.

[12] *Id.* at 121-122.

of any contract. Also, there was an allegation in the Complaint that a demand to vacate was sent to Samonte, which the RTC Branch 24 found to be a sufficient compliance with the jurisdictional requirement of previous demand. The decretal portion of the Decision[13] dated August 5, 2015 reads:

> **WHEREFORE**, premises considered, the assailed Judgment dated 15 May 2013 of the Metropolitan Trial Court of Manila, Branch 3, is hereby REVERSED and SET ASIDE and judgment is hereby rendered ordering [Samonte] and all persons claiming rights under him to vacate the subject property and to restore possession thereof to [Domingo].
>
> SO ORDERED.[14]

Samonte's motion for reconsideration[15] was denied by the RTC Branch 24 in a Resolution[16] dated January 12, 2016.

Aggrieved, Samonte filed a petition for review[17] with the CA. During the pendency thereof, Samonte manifested that he instituted a case for annulment of deed of sale and damages, docketed as Civil Case No. 12-128721 with the RTC of Manila, Branch 32 (RTC Branch 32).[18]

On May 25, 2016, the RTC Branch 32 rendered a Decision[19] declaring the Deed of Sale of Residential House null and void. The RTC Branch 32 ratiocinated that the transaction between the parties was merely an equitable mortgage to secure Samonte's debt to Domingo. These debts were paid when, through Samonte's instructions, the tenants residing on the subject property remitted their rental fees to Domingo instead.[20] This

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[13] *Id.* at 61-66.

[14] *Id.* at 66.

[15] *Id.* at 159-164.

[16] *Id.* at 76-80.

[17] *Id.* at 46-59.

[18] *Id.* at 16, 136-158.

[19] Penned by Presiding Judge Thelma Bunyi-Medina; *id.* at 136-158.

[20] *Id.* at 158.

ruling was affirmed by the CA in a Decision[21] dated August 10, 2017 in CA-G.R. CV No. 107254, which Decision became final and executory on September 15, 2017.[22]

THE RULING OF THE CA in CA-G.R. SP No. 144022

Resolving Samonte's appeal on the unlawful detainer case, the CA rendered the assailed Decision[23] dated August 17, 2017. The dispositive portion of the Decision states:

WHEREFORE, the petition is DENIED.

The [August 5, 2015 Decision] and [January 12, 2016] Resolution of the Regional Trial Court (RTC) of Manila, Branch 24 in Civil Case No. 13-130138 are AFFIRMED *in toto*.

SO ORDERED.[24]

The CA found no cogent reason to depart from the findings of the RTC Branch 24 that Domingo was able to prove her right of possession over the subject property on the basis of the execution of the Deed.[25] The CA made it clear, however, that the determination of ownership in the case is provisional for the sole purpose of settling the issue of possession.[26]

Samonte filed a motion for reconsideration,[27] contending that the Decision of the RTC Manila Branch 32 declaring the Deed of Sale of Residential House void and which the CA 10th Division affirmed, is a supervening event that warrants a reconsideration of the assailed CA Division.[28]

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[21] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan (now a Member of this Court), concurring; *id.* at 179-190.

[22] *Id.* at 192.

[23] *Id.* at 33-42.

[24] *Id.* at 41.

[25] *Id.* at 39.

[26] *Id.* at 41.

[27] *Id.* at 159-164.

[28] *Id.* at 160.

In a Resolution[29] dated February 13, 2018, the CA denied the motion.

Hence, this petition for review on *certiorari* lodged by Samonte. Domingo manifested through her Compliance[30] that she has decided not to interpose a comment to the petition.

ISSUE

Whether Domingo has the right to possess the subject property, considering that the Deed she relied upon in filing her complaint was declared null and void in a separate case.

RULING OF THE COURT

The Petition is meritorious.

In the present case for unlawful detainer, the RTC Branch 24 ruled that Domingo has the better right of possession as the buyer of the subject property based on the Deed of Sale of Residential House. This was affirmed by the CA in its Decision dated August 17, 2017 in CA-G.R. SP No. 144022. However, in a separate action for the annulment of the deed of sale, the RTC Branch 32 declared the Deed of Sale of Residential House null and void. This ruling was sustained by the CA in CA-G.R. CV No. 107254. Ordinarily, suits for annulment of sale, or title, or document affecting property do not operate to abate ejectment actions respecting the same property.[31] However, it must be underscored that the Decision of the CA affirming the nullity of the deed of sale has become final and executory on September 15, 2017, as evidenced by the Entry of Judgment issued on January 15, 2018.[32]

In view of the foregoing, *res judicata* has set in this case to the effect that the Deed of Sale of Residential House, upon which Domingo anchored her right to possess the subject

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

[30] *Id.* at 195-196.

[31] *Arambulo and Arambulo III v. Gungab*, 508 Phil. 612, 623 (2005).

[32] *Rollo*, p. 192.

property, is nullified. "*Res judicata* (meaning, a "matter adjudged") is a fundamental principle of law that precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment."[33] In *Degayo v. Magbanua-Dinglasan*,[34] the Court explained the effect of *res judicata*:

It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[35] (Citation omitted)

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, which reads:

Section 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

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[33] *Puerto Azul Land, Inc. v. Pacific Wide Realty Dev't. Corp.*, 743 Phil. 222, 231 (2014).

[34] 757 Phil. 376 (2015).

[35] *Id.* at 382.

There are two (2) concepts of *res judicata*: 1) bar by prior judgment, which is found in Section 47 (b) of Rule 39; and 2) conclusiveness of judgment, which is referred to in paragraph c of the same rule and section.[36] In *Puerto Azul Land, Inc. v. Pacific Wide Realty Dev't. Corp.*,[37] the Court discussed the difference between the two:

> There is a bar by prior judgment where there is identity of parties, subject matter, and causes of action between the first case where the judgment was rendered and the second case that is sought to be barred. There is conclusiveness of judgment, on the other hand, where there is identity of parties in the first and second cases, but no identity of causes of action.[38] (Emphasis and citations omitted)

Verily, *res judicata* in the concept of conclusiveness of judgment applies in this case. It is not disputed that both the present case and Civil Case No. 12-128721 involve the same parties and subject matter; only the cause of action is different. *Res judicata* in the concept of conclusiveness of judgment "precludes the relitigation only of a particular fact or issue necessary to the outcome of a prior action between the same parties on a different claim or cause of action."[39]

To be clear, the issue in Civil Case No. 12-128721 is the validity of the deed of sale, whereas the controversy in this case pertains to the physical possession of the subject property. "In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties."[40] Thus, "courts may pass upon the issue of ownership only for purposes of ascertaining who has the better right of possession. Any ruling on ownership is merely provisional and does not

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[36] *Spouses Noceda v. Arbizo-Directo*, 639 Phil. 483 (2010).

[37] *Supra* note 33.

[38] *Id.* at 232.

[39] *Ching v. San Pedro College of Business Administration*, 772 Phil. 204, 228 (2015).

[40] *Spouses Barias v. Heirs of Boeno, et al.*, 623 Phil. 82, 88 (2009).

bar an action between the same parties regarding title to the property."[41]

Since the Deed of Sale of Residential House was declared null and void in Civil Case No. 12-128721 and affirmed in CA-G.R. CV No. 107254, which decision has attained finality during the pendency of this case, Domingo can no longer claim any right to possess the subject property based on the said deed of sale. This issue has already been settled and can no longer be disturbed in this case. It is a general rule that "judgments by a court of competent jurisdiction, which have attained finality, are not subject to reversal, modification or alteration and are, thus, immutable." This doctrine was extensively discussed in *Vios v. Pantango, Jr.*,[42] thus:

> It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.[43]

In view of the foregoing, the petition is **GRANTED**. The Decision dated August 17, 2017 and the Resolution dated February 13, 2018 in CA-G.R. SP No. 144022 are **REVERSED** and **SET ASIDE**. The Complaint for Unlawful Detainer is **DISMISSED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Lazaro-Javier,[*] and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

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[41] *Province of Camarines Sur v. Bodega Glassware*, 807 Phil. 865 (2017).

[42] 597 Phil. 705 (2009).

[43] *Id.* at 719.

[*] Per Raffle dated November 25, 2019.

SECOND DIVISION

[G.R. No. 238174. February 5, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GAIDA KAMAD *y* PAKAY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In order to sustain a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

2. **ID.; ID.; SECTION 21, ARTICLE II OF R.A. NO. 9165, AS AMENDED; AMENDMENTS INTRODUCED BY REPUBLIC ACT NO. 10640; THE PROCEDURAL SAFEGUARDS THAT ARE EMBODIED IN SECTION 21, ARTICLE II OF R.A. NO. 9165, AS AMENDED BY 10640, ARE MATERIAL AS THEIR COMPLIANCE AFFECTS THE *CORPUS DELICTI* WHICH IS THE DANGEROUS DRUG ITSELF AND WARRANTS THE IDENTITY AND INTEGRITY OF THE SUBSTANCES AND OTHER EVIDENCE THAT ARE SEIZED BY THE APPREHENDING OFFICERS; NON-COMPLIANCE WITH THE LAW'S 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 SEIZURES AND CUSTODY OVER CONFISCATED ITEMS. —** In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21, Article II of R.A. No. 9165, as amended by 10640, are material as their compliance affects the *corpus delicti* which is the

dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. x x x. It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service (Department of Justice [DOJ]) or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the Implementing Rules and Regulations (IRR) of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items. The Court reiterates though that failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects and is fatal to the prosecution's case.

3. **ID.; ID.; SECTION 21, ARTICLE II OF R.A. NO. 9165; A PHYSICAL INVENTORY AND PHOTOGRAPH OF THE ITEMS THAT WERE PURPORTEDLY SEIZED FROM THE ACCUSED SHOULD HAVE BEEN MADE AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, WHICHEVER IS PRACTICABLE, IN THE PRESENCE OF THE ACCUSED OR HIS REPRESENTATIVE OR COUNSEL AND AN ELECTED PUBLIC OFFICIAL, A REPRESENTATIVE FROM THE DEPARTMENT OF JUSTICE (DOJ), AND A REPRESENTATIVE FROM THE MEDIA; NOT COMPLIED WITH. —** Since the offense subject of this appeal was committed before the amendment introduced

by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply x x x. Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must, likewise, be made in the presence of the accused or his representative or counsel and three witnesses, namely; (1) an elected public official; (2) a representative from the DOJ; and (3) a representative from the media. These individuals shall then be required to sign the copies of the inventory and be given a copy thereof. Here, as culled from the records and highlighted by the testimonies of the police officers themselves, none of the required witnesses was present during the inventory stage. Neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of these witnesses. To recapitulate, the tip was received around 10:00 a.m. of March 5, 2010 and at 1:30 p.m. of the same day, the police officers proceeded to the target area to conduct surveillance. Given the time of the surveillance and arrest, the police officers had more than enough time to secure the attendance of the witnesses had they really wanted to.

4. ID.; ID.; ID.; ID.; ABSENCE OF THE THREE-REQUIRED WITNESSES, WHEN JUSTIFIED. — In *People v. Reyes,* the Court enumerated certain instances when absence of the required witnesses may be justified, *viz.*: It must be emphasized that the prosecution must be 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 the 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 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.

5. ID.; ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED WITNESSES, WITHOUT REASONABLE EXCUSE OR

JUSTIFICATION, CONSTITUTES A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY AND RAISES DOUBTS ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS THAT WERE ALLEGEDLY SEIZED FROM THE ACCUSED-APPELLANT, WHICH MILITATES AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT. — The failure of the police officers to provide a reasonable excuse or justification for the absence of these witnesses clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21. The absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the accused-appellant. It militates against a finding of guilt beyond reasonable doubt. The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused.

6. **ID.; ID.; ID.; MINOR LAPSES OR DEVIATIONS FROM THE PRESCRIBED PROCEDURE ARE EXCUSED SO LONG AS IT CAN BE SHOWN BY THE PROSECUTION THAT THE ARRESTING OFFICERS PUT IN THEIR BEST EFFORT TO COMPLY WITH THE SAME AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS PROVEN AS A FACT. —** The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact. In the recent case of *People of the Philippines v. Lim*, the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy.

7. ID.; ID.; ID.; THE PRESUMPTION AS TO THE REGULARITY IN THE PERFORMANCE BY POLICE OFFICERS OF THEIR OFFICIAL DUTIES CANNOT PREVAIL WHEN THERE HAS BEEN A CLEAR AND DELIBERATE DISREGARD OF PROCEDURAL SAFEGUARDS BY THE POLICE OFFICERS THEMSELVES. — [T]he prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to the regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang* is instructive on the matter: Minor deviation from the procedure under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of x x x justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused. x x x.

8. ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO JUSTIFY ITS NON-COMPLIANCE WITH THE REQUIREMENTS FOUND IN SECTION 21, SPECIFICALLY, THE PRESENCE OF THE THREE REQUIRED WITNESSES DURING THE ACTUAL INVENTORY OF THE SEIZED ITEMS, IS FATAL TO ITS CASE; ABSENT FAITHFUL COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS WHICH IS INTENDED TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS IN

DRUGS CASES, AND TO SAFEGUARD THE ACCUSED FROM UNFOUNDED AND UNJUST CONVICTIONS, AN ACQUITTAL BECOMES THE PROPER RECOURSE. — The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case. It is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People v. Hilario*, the Court ruled that: The prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves as judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense. [T]he Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the accused-appellant. Absent faithful compliance with Section 21, Article II of R.A. No. 9165, which is primarily intended to, *first*, preserve the integrity and evidentiary value of the seized items in drugs cases, and *second*, to safe guard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, A. JR., *J.*:

Before the Court is a Notice of Appeal[1] assailing the Decision[2] dated October 26, 2017 of the Court of Appeals (CA) in CA-

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[1] CA *rollo*, pp. 122-123.

[2] Penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a Member of this Court), concurring; *id.* at 104-117.

G.R. CR No. 08077, which affirmed the Decision[3] dated January 27, 2016 of the Regional Trial Court (RTC) of Taguig City, Branch 70, in Criminal Case No. 17025-D, finding Gaida Kamad *y* Pakay (accused-appellant) guilty beyond reasonable doubt of violation of Section 5,[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." The accused-appellant was meted the penalty of Life Imprisonment and a Fine of Five Hundred Thousand Pesos (₱500,000.00).

The Facts

In an Information[5] dated March 8, 2010, the accused-appellant was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

> That on or about the 5th day of March, 2010 in the City of Taguig[,] Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused, without being authorized by law did then and there willfully, unlawfully and feloniously sell, deliver and give away to a poseur[-]buyer one (1) heat[-]sealed transparent plastic sachet containing zero point zero three (0.03) gram of white crystalline substance, commonly known as "shabu," a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

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[3] Rendered by Presiding Judge Louis P. Acosta; *id.* at 67-75.

[4] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[5] CA *rollo*, pp. 13-14.

[6] *Id.* at 13.

Version of the Prosecution

Around 10:00 a.m. of March 5, 2010, a confidential informant arrived at the Anti-Illegal Drugs Station in Taguig City, and reported the selling of illegal drugs in Cagayan de Oro Street, Quiapo Dos, Maharlika Village, Taguig City by the accused-appellant.[7]

Police Officer 2 Benedict Balas (PO2 Balas) verified the information given by the confidential informant and learned that the name of the accused-appellant is Gaida Kamad alias "Mamang." Team Leader Police Chief Inspector Porfirio Calagan (PCI Calagan) formed a team to conduct a buy-bust operation against the accused-appellant. During the briefing, PO2 Balas was designated as the poseur-buyer, and was given two marked ₱1,000.00 bills, one marked ₱500.00 bill and one marked ₱100.00 bill to be used as buy-bust money.[8]

PO2 Vergelio Del Rosario, Jr. (PO2 Del Rosario) prepared the Pre-operation Report and Coordination Form which were sent to the Philippine Drug Enforcement Agency-Metro Manila Regional Office and the Southern Police District.[9]

Around 1:30 p.m., the buy-bust team composed of PO2 Balas, PCI Calagan, PO2 Richard Sambua and one PO2 Laurel, together with the confidential informant, proceeded to Maharlika Village on board a white Mitsubishi taxicab. Upon reaching the target area, PO2 Balas and the confidential informant alighted from the vehicle and walked to Cagayan de Oro Street.[10]

While they were walking, they passed by an old lady whom the confidential informant introduced to PO2 Balas as the seller.[11]

The accused-appellant asked PO2 Balas how much *shabu* he would be buying. PO2 Balas answered that he would be

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[7] *Id.* at 88.

[8] *Id.* at 88-89.

[9] *Id.* at 89.

[10] *Id.* at 16 and 89.

[11] *Id.*

purchasing ₱2,000.00 worth of *shabu*. The accused-appellant replied that she did not have much *shabu* at the time since her supply has not been delivered yet but told PO2 Balas that if he really needs it, she has ₱500.00 worth of *shabu*.[12] She then took the *shabu* out of her pants and showed it to PO2 Balas.[13]

PO2 Balas told the accused-appellant that he would buy the *shabu*. After he handed over the marked ₱500.00 bill to the accused-appellant, the latter took the money and put it inside her pocket.[14]

PO2 Balas scratched his head as a pre-arranged signal to his teammates that the sale had already been consummated. He then introduced himself as a police officer and proceeded to arrest the accused-appellant after apprising her of her constitutional rights and the cause of her arrest. After marking the dangerous drugs bought and confiscated by him, he asked the accused-appellant to empty her pockets and so he was able to recover the ₱500.00 marked money used for the buy-bust operation.[15]

After the accused-appellant was arrested, a commotion took place in the area with some persons throwing stones on the police officers and their parked taxicab. This prompted them to immediately bring the accused-appellant to the police station where she and the confiscated items were turned over to the investigator, PO2 Del Rosario (PO2 Del Rosario).[16]

Thereafter, PO2 Del Rosario prepared the Request for Laboratory Examination and the other documents necessary for the inventory. PO2 Balas brought the accused-appellant to the Philippine National Police Crime Laboratory in Makati City for examination.[17]

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[12] *Id.*

[13] *Id.* at 16-17 and 89.

[14] *Id.* at 17 and 90.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 17 and 90-91.

The examination of the confiscated drugs, conducted by Forensic Chemist Police Chief Inspector Abraham Tecson, yielded a positive result for the presence of methamphetamine hydrochloride, also known as *shabu*.[18]

Version of the Defense

The accused-appellant vehemently denied the charge against her and claimed that no buy-bust operation took place on the said date.[19]

According to the accused-appellant, she is a 60-year-old illiterate who is living alone in Taguig City (at the time of the arrest). She worked as a water vendor in her neighborhood and, on the day of the arrest, she was outside her house and was refilling a drum that was being used at a nearby public restroom. While sitting on her chair, three unidentified armed men arrived and frisked her. They asked her if she saw someone running and when she answered "no," they frisked her again and instructed her to go with them. They then dragged her to an alley and brought her to the police station where she found out that they were police officers.[20]

At the police station, the police officers asked for her name and then placed the items in front of her. She was then incarcerated without being informed of the accusations against her.[21]

The RTC, in its Decision[22] dated January 27, 2016, found the accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentenced her to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The dispositive portion of the RTC Decision reads:

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[18] *Id.* at 107.

[19] *Id.* at 108.

[20] *Id.* at 52 and 108.

[21] *Id.*

[22] *Id.* at 67-75.

WHEREFORE, in the premises, the [accused-appellant] is hereby found **GUILTY** beyond reasonable doubt of selling without any authority 0.03 gram of Methylampethamine Hydrochloride or "shabu", a dangerous drug, in violation of Sec. 5, Article II of R.A. [No.] 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)**.

Meanwhile, pursuant to Section 21 of [RA. No.] 9165, Magella Monashi, Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of his authorized representative is hereby ordered to take charge and to have custody of the "shabu", subject matter of this case, or proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

Costs against the accused.

SO ORDERED.[23] (Emphases in the original)

On appeal,[24] the CA found the grounds relied upon by the accused-appellant devoid of merit and affirmed the ruling of the RTC. In its Decision[25] dated October 26, 2017, the CA disposed as follows:

ACCORDINGLY, the appeal is **DENIED**. The assailed Decision dated January 27, 2016 of the [RTC], Branch 70 of Taguig City in Criminal Case No. 17025-D which found [the accused-appellant] guilty beyond reasonable doubt of a violation of Section 5, Article II of [R.A.] No. 9165 is **AFFIRMED**.

SO ORDERED.[26] (Emphases in the original)

Hence, this appeal.

The issue for the Court's resolution is whether or not the accused-appellant's conviction for illegal sale of dangerous drugs,

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[23] *Id.* at 23.

[24] *Id.* at 24.

[25] *Id.* at 104-117.

[26] *Id.* at 116.

defined and penalized under Section 5, Article II of R.A. No. 9165, should be upheld.

Ruling of the Court

The appeal is meritorious.

In order to sustain a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[27]

The accused-appellant maintains that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21, Article II of R.A. No. 9165.

In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640,[28] are material as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. Specifically, Section 21, Article II, as amended, provides the following rules:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

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[27] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[28] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF THE REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" which took effect on August 7, 2014.

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 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 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 and custody over said items.

x x x x x x x x x[29] (Emphasis ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service (Department of Justice [DOJ]) or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the

[29] *R.A. No. 10640*, Section 1 amended *R.A. No. 9165*, Section 21.

original Section 21[30] of R.A. No. 9165 could be impracticable for the law enforcers' compliance,[31] and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the Implementing Rules and Regulations (IRR) of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items.

The Court reiterates though that failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects and is fatal to the prosecution's case. As the Court declared in *People v. Que*:[32]

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[30] 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[.]

x x x x x x x x x

[31] See *People of the Philippines v. Ramoncito Cornel y Asuncion*, G.R. No. 229047, April 16, 2018.

[32] G.R. No. 212994, January 31, 2018, 853 SCRA 487.

People v. Morales explained that "failure to comply with paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Noncompliance with them tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. x x x.[33] (Citations omitted)

In the same vein, the Court, in *People v. Mendoza*,[34] explained that the presence of these witnesses would not only preserve an unbroken chain of custody but also prevent the possibility of tampering with or "planting" of evidence, *viz.*:

Without 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 [R.A.] 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. x x x[35]

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply, to wit:

(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

[33] *Id.* at 503-504.

[34] 736 Phil. 749 (2014).

[35] *Id.* at 764.

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 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[.]

Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must, likewise, be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; and (3) a representative from the media. These individuals shall then be required to sign the copies of the inventory and be given a copy thereof.

Here, as culled from the records and highlighted by the testimonies of the police officers themselves, none of the required witnesses was present during the inventory stage. Neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of these witnesses. To recapitulate, the tip was received around 10:00 a.m. of March 5, 2010 and at 1:30 p.m. of the same day, the police officers proceeded to the target area to conduct surveillance. Given the time of the surveillance and arrest, the police officers had more than enough time to secure the attendance of the witnesses had they really wanted to.

In *People v. Reyes*,[36] the Court enumerated certain instances when absence of the required witnesses may be justified, *viz.*:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec.

[36] *People v. Reyes*, G.R. No. 219953, April 23, 2018, 862 SCRA 352.

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 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.[37] (Citation omitted)

The above-ruling was again reiterated by the Court in *People of the Philippines v. Vicente Sipin*,[38] where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz.*:

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.[39] (Citation omitted and emphasis deleted)

The failure of the police officers to provide a reasonable excuse or justification for the absence of these witnesses clearly magnified the lack of concrete effort on their part to comply

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[37] *Id.* at 367.

[38] G.R. No. 224290, June 11, 2018.

[39] *Id.*

with the requirements of Section 21. The absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the accused-appellant. It militates against a finding of guilt beyond reasonable doubt.

The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused.

In *People v. Relato*,[40] the Court explained:

> In a prosecution of the sale and possession of methamphetamine hydrochloride [*shabu*] prohibited under [R.A.] No. 9165, the State not only carries the heavy burden of proving the elements of the offense x x x, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. x x x.[41] (Citations omitted)

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

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[40] 679 Phil. 268 (2012).

[41] *Id.* at 277-278.

In the recent case of *People of the Philippines v. Lim*,[42] the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the Decision reads:

> To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of Chain of Custody [IRR] directs:
>
> > A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.
>
> While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should henceforth be enforced as a mandatory policy:
>
> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended and its IRR.
> 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

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[42] G.R. No. 231989, September 4, 2018.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[43] (Citations omitted)

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to the regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[44] is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of x x x justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official

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[43] *Id.*

[44] 686 Phil. 1024 (2012).

duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution — especially when the pieces of evidence were derived from a buy-bust operation — "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."[45] (Citations omitted)

The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case.

It is mandated by no less than the Constitution[46] that an accused in a criminal case shall be presumed innocent until

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[45] *Id.* at 1053-1054.

[46] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

the contrary is proved. In *People v. Hilario*,[47] the Court ruled that:

> The prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.[48] (Citations omitted)

All told, the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the accused-appellant. Absent faithful compliance with Section 21, Article II of R.A. No. 9165, which is primarily intended to, *first*, preserve the integrity and evidentiary value of the seized items in drugs cases, and *second*, to safe guard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated October 26, 2017 of the Court of Appeals in CA-G.R. CR No. 08077, which affirmed the Decision dated January 27, 2016 of the Regional Trial Court of Taguig City, Branch 70, in Criminal Case No. 17025-D finding accused-appellant Gaida Kamad *y* Pakay guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellant Gaida Kamad *y* Pakay is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** the accused-appellant from detention, unless she is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Decision.

Let entry of judgment be issued.

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[47] G.R. No. 210610, January 11, 2018, 851 SCRA 1.

[48] *Id.* at 30.

SO ORDERED.

Peralta,[*] *C.J., Perlas-Bernabe, S.A.J. (Chairperson), Inting,* and *Delos Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. 239781. February 5, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERIC PADUA *y* ALVAREZ *a.k.a.* JERICK PADUA *y* ALVAREZ,**[*] *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS. —** In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution is required to prove the following elements: (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.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE THEREWITH IS REQUIRED TO ENSURE THAT RIGHTS OF THE ACCUSED ARE SAFEGUARDED. —** In prosecution of drug-related cases, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. The dangerous drug itself is the very *corpus delicti* of the violation of the law. Therefore, compliance with the chain of custody rule is crucial. Chain of custody

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[*] Designated additional Member per Raffle dated November 25, 2019.

[*] Also spelled "Alvares" in some parts of the records.

means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt. Thus, **strict compliance** with the procedures laid down under **Section 21 of R.A. No. 9165** is required to ensure that rights are safeguarded. Section 21 of R.A. No. 9165 requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory and photographing must be done in the presence of(a) the accused or his/her: representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

3. **ID.; ID.; ID.; ID.; PROSECUTION BEARS THE BURDEN OF PROVING THAT THERE IS A VALID CAUSE FOR NONCOMPLIANCE WITH THE PROCEDURE; CASE AT BAR. —** Here, the physical inventory and photograph of the seized item were not done at the place of the arrest but only at the police station. There was no showing by the prosecution that these were done due to extraordinary circumstances that would threaten the safety and security of the apprehending officers and/or the witnesses required by law or of the items seized. Moreover, the absence of the witnesses required by law - an elected public official, representative of the DOJ and the media - to witness the physical inventory and photograph of the seized items is glaring. In fact, their signatures do not appear in the Inventory Receipt. The Court stressed in *People v. Vicente Sipin y De Castro*: The prosecution bears the burden of proving a valid cause for noncompliance 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 miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

4. **ID.; ID.; ID.; ID.; INSTANCES THAT MUST BE ALLEGED AND PROVED TO JUSTIFY NONCOMPLIANCE WITH THE REQUIREMENT ON WITNESSES. —** It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

5. **ID.; ID.; ID.; ID.; ABSENCE OF THE NECESSARY WITNESSES DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE, AS LONG AS EARNEST EFFORT TO SECURE THE REQUIRED WITNESSES HAS BEEN PROVED; CASE AT BAR. —** Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires: It is well to note that the 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. x x x The prosecution miserably failed to explain why the police officers did not secure the presence of an elected public official, a representative from the DOJ, and the media.

The testimonies of the prosecution witnesses also failed to establish that there was earnest effort to coordinate with and secure the presence of the required witnesses.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERALTA, *C.J.*:

On appeal is the April 6, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07432, which affirmed the February 26, 2015 Decision[2] of Regional Trial Court (*RTC*), Branch 204, Muntinlupa City, in Criminal Case No. 09-096, finding accused-appellant Eric Alvarez Padua (*Padua*), *a.k.a.* Jerick Alvarez Padua, guilty of violating Section 5, Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

The accusatory portion of the Information[3] reads:

That on or about the 5th day of February 2009, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, willfully, unlawfully, and feloniously sell, deliver, and give away to another a Methylamphetamine Hydrochloride, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet weighing 0.01 gram, in violation of the above-cited law.

During arraignment, Padua pleaded not guilty when the Information was read to him in Tagalog, a dialect known and understood by him.

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan concurring; *rollo*, pp. 2-23.

[2] CA *rollo*, pp. 16-25.

[3] Records, pp. 1-2.

At the pre-trial conference, the prosecution and defense proposed and made the following admissions: (1) that the person in court who responds to the name Jerick Padua *y* Alvarez @ "Eric" is the same Jerick Padua *y* Alvarez @ "Eric" who is the accused in this case; (2) that this court has jurisdiction over the person of the accused and over this case; (3) that PS/Insp. Richard Allan Mangalip is a member of the PNP Crime Laboratory, Makati City, as of February 6, 2009, and that he is an expert in Forensic Chemistry; (4) that pursuant to the Request for Laboratory Examination, PS/Insp. Mangalip conducted a laboratory examination on the accompanying specimen which consists of one (1) small heat-sealed transparent plastic sachet with markings "JP" containing 0.01 gram of white crystalline substance, the same examination yielded positive result of the presence of Methylamphetamine Hydrochloride, a dangerous drug; and (5) the execution and authenticity of Physical Science Report No. D-078-095.[4]

The prosecution presented as its witnesses: Police Officer (*PO*) 1 Bob Yangson, the poseur-buyer in the buy-bust operation conducted against Padua, and PO2 Rondivar Hernaez, the backup officer of the said operation. On the other hand, the defense presented the accused and her sister, Lycka Alvarez Padua.

Version of the Prosecution

The antecedent facts, as narrated by the Office of the Solicitor General (*OSG*), are as follows:

On February 5, 2009, acting on a tip from an asset, Police Senior Superintendent Elmer Jamias instructed PO2 Hernaez to conduct surveillance in Upper Sucat, Purok 1 Highway and to monitor appellant, who was said to be engaged in selling illegal drugs. Upon verification, PO2 Hernaez confirmed that indeed, appellant was selling illegal drugs.

Thereafter, PO2 Hernaez looked for an asset to help the police buy illegal drugs from appellant. After PO2 Hernaez found an asset to facilitate the transaction, Police Chief Inspector Eduardo Paningbatan directed PO2 Hernaez to act as. backup to PO1 Yangson, who would be acting as poseur-buyer.

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[4] Pre-trial Order, *id.* at 53-54.

PO2 Hernaez and the rest of the team prepared a [Pre-] Operational Report and a Coordination Form that was submitted to the Philippine Drug Enforcement Agency (PDEA). Police Chief Inspector Paningbatan handed the buy-bust money, consisting of one bill worth Two Hundred Pesos (Php200.00) and another bill worth One Hundred Pesos (Php100.00). The initials "BY" were placed on the buy-bust money.

Later in the evening, the buy-bust team, composed of PO2 Hernaez, PO1 Yangson, PO3 Gastanes, SPO1 Zamora, PO3 Bornilla, PO3 Villareal, PO2 Salvador Genova, and PO3 Bonifacio Aquino, arrived at Purok 1, Sucat. PO1 Yangson and the asset went to the jeepney terminal along the highway in Upper Sucat, while PO2 Hernaez was positioned ten to fifteen meters away from them.

PO1 Yangson and the asset talked to appellant. Thereafter, appellant handed a plastic sachet to PO1 Yangson, who took the same and, in turn, gave the buy-bust money. At that moment, PO1Yangson lighted a cigarette, the pre-arranged signal that the transaction was consummated. PO2 Hernaez immediately approached appellant and arrested him. PO1 Yangson showed to PO2 Hernaez a small heat-sealed transparent plastic sachet containing white crystalline substance. Afterwards, PO1 Yangson introduced himself as a police officer and informed appellant of his constitutional rights.

After bringing appellant to the police station, the arresting officers conducted an inventory of the item seized during the buy-bust operation. They took a picture of the plastic sachet and PO1 Yangson placed the markings "JP" thereon. Thereafter, PO2 Hernaez and PO1 Yangson brought the item to the crime laboratory. The specimen tested positive for the presence of Methylamphetamine Hydrochloride.[5]

Version of the Defense

On February 5, 2009, appellant was on his way out from his house when he met two men, who asked him if he is Jerick Padua. He denied that he is Jerick and said that his name is Eric. One of the men, who was wearing a white shirt, told him that they are police officers, and that they are inviting him to the police station for questioning.[6]

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[5] Appellee's Brief, CA *rollo*, pp. 86-87.

[6] Appellant's Brief, *id.* at 46-47.

Believing that he committed no wrong, appellant accepted the invitation of the police officers and went with them. Appellant was then brought to the police office located at the Muntinlupa City Hall. After about thirty minutes, the police officer, who was wearing a white shirt, handed him a document and asked him to sign it. He was told that it was merely for blotter purposes.[7]

When he refused, another police officer punched him and forced him to sign the document. Minutes later, his sister, Lycka Padua, arrived and talked to the police officers. Appellant later learned that the police officers were asking for Twenty Thousand Pesos (₱20,000.00) from his sister to settle the matter.[8]

Appellant's sister, Lycka Padua, corroborated appellant's testimony and averred that she was washing the dishes with her sister Ericka when they heard voices of several men. They peeped through the window and saw these men approach appellant's house. These men asked her brother, herein appellant, if he is Jerick Padua, conducted a body search on him, and brought him to the city hall. When their father arrived, she told him what happened and she was directed by her father to follow Padua. At the city hall, she saw appellant seated on a bench, handcuffed, and his statement being documented. She then learned that the police officers were charging appellant for selling illegal drugs and was told to post bail for his brother's liberty. Their family, however, could not raise the amount required.[9]

Ruling of the RTC

After trial, the RTC handed a guilty verdict on Padua for violating Section 5, Article II of R.A. No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*. The *fallo* of the February 26, 2015 RTC Decision states:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, ERIC

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[7] *Id.*

[8] CA *rollo*, pp. 46-47.

[9] *Id.* at 47.

PADUA y ALVAREZ a.k.a. JERICK PADUA y ALVARES is sentenced to LIFE IMPRISONMENT and to pay a FINE of Php500,000.00.

The preventive imprisonment undergone by the accused shall be credited in his favor.

The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Let a commitment order be issued committing accused to the New Bilibid Prisons for the service of his sentence pending any appeal that he may file in this case.

SO ORDERED.[10]

The RTC ruled that the prosecution was able to establish the identity of the buyer, the seller, the money paid to the seller, and the delivery of the prohibited drug. The RTC found the prosecution evidence worthy of credence and had no reason to disbelieve the testimony of the police officers, in the absence of any ill motive that can be ascribed to them to charge the appellant with violation of Section 5 of R.A. No. 9165.

The RTC, likewise, held that the prohibited drug seized was preserved and its integrity was not compromised.

Ruling of the CA

On appeal, the CA affirmed the RTC Decision. It agreed with the findings of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Padua resorted to denial and could not present any proof or justification that he was fully authorized by law to possess the same.

The CA was unconvinced with appellant's contention that the prosecution failed to prove the identity and integrity of the seized prohibited drugs. The CA held that the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the

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[10] *Id.* at 25.

chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court.

Appellant's mere denial of the accusations against him was not given any credence by the CA. The CA accorded the police officers the presumption of regularity in the performance of their official duty.

Before Us, both Padua and the People manifested that they would no longer file their Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.[11]

Essentially, appellant Padua maintains that the case records are bereft of evidence showing that the buy-bust team followed the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

Our Ruling

The appeal is meritorious. Appellant Padua should be acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt.

Appellant Padua was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution is required to prove the following elements: (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.[12]

In prosecution of drug-related cases, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. The dangerous drug itself is the very *corpus delicti* of the violation of the law.[13]

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[11] *Rollo*, pp. 34-43.

[12] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[13] *People v. Guzon*, 719 Phil. 441, 451 (2013).

Therefore, compliance with the chain of custody rule is crucial. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[14]

The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[15] Thus, **strict compliance** with the procedures laid down under **Section 21 of R.A. No. 9165** is required to ensure that rights are safeguarded.

Section 21 of R.A. No. 9165 requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her: representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.[16] The present case is not one of those.

Here, the physical inventory and photograph of the seized item were not done at the place of the arrest but only at the

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[14] *Id.*, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[15] *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

[16] *People v. Lim*, G.R. No. 231989, September 4, 2018. Also see *People v. Mola*, G.R. No. 226481, April 18, 2018.

police station. There was no showing by the prosecution that these were done due to extraordinary circumstances that would threaten the safety and security of the apprehending officers and/or the witnesses required by law or of the items seized.

Moreover, the absence of the witnesses required by law – an elected public official, representative of the DOJ and the media – to witness the physical inventory and photograph of the seized items is glaring.[17] In fact, their signatures do not appear in the Inventory Receipt.

The Court stressed in *People v. Vicente Sipin y De Castro*:[18]

> The prosecution bears the burden of proving a valid cause for noncompliance 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

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[17] Under the original provision of Section 21 (1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph 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. As amended by R.A. No. 10640, it is now mandated 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. (See *People v. Ocampo*, G.R. No. 232300, August 1, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, *supra* note 16).

[18] *Supra* note 17.

took to preserve the integrity of the seized items. Strict 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 of evidence.[19]

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:[20]

(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 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[21]

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*[22] requires:

It is well to note that the 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

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[19] See also *People v. Reyes*, *supra* note 17, and *People v. Mola*, *supra* note 16.

[20] *People v. Lim*, *supra* note 16.

[21] *People v. Vicente Sipin y De Castro, supra* note 17.

[22] G.R. No. 233744, February 28, 2018, 857 SCRA 175, 190-191. (Citations omitted).

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 noncompliance. 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-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 circumstances, their actions were reasonable.[23]

The prosecution miserably failed to explain why the police officers did not secure the presence of an elected public official, a representative from the DOJ, and the media. The testimonies of the prosecution witnesses also failed to establish that there was earnest effort to coordinate with and secure the presence of the required witnesses.

Thus, it cannot be denied that serious breaches of the mandatory procedures required by law in the conduct of buy-bust operations were committed by the police. These cast serious doubt as to the integrity of the allegedly confiscated drug specimen, hence creating reasonable doubt as to the guilt of appellant Padua.

WHEREFORE, premises considered, the April 6, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07432, which affirmed the February 26, 2015 Decision of Regional Trial Court, Branch 204, Muntinlupa City, in Criminal Case No. 09-096, finding accused-appellant Eric Alvarez Padua, *a.k.a.*

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[23] See also *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 376-377, and *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 110-111. (Emphasis and underscoring supplied)

Jerick Alvarez Padua, guilty of violating Section 5, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Eric Alvarez Padua, *a.k.a.* Jerick Alvarez Padua, is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Bureau of Corrections for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** the action he has taken to this Court within five (5) days from receipt of this Resolution.

Further, let a copy of this Resolution be furnished the Chief of the Philippine National Police and the Regional Director of the National Capital Region Police Office, Philippine National Police. The Philippine National Police is **ORDERED** to **CONDUCT AN INVESTIGATION** on the blatant violation of Section 21 of R.A. No. 9165 committed by the buy-bust team, and REPORT the action they have taken to this Court within thirty (30) days from receipt of this Resolution.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 240773. February 5, 2020]

ANSELMO D. MALONZO, TERESITA MALONZO-LAO and NATIVIDAD MALONZO-GASPAR, HEIRS OF THE DECEASED RONALDO T. PALOMO, namely: TERESA VICTORIA R. PALOMO,[*] CARLO MAGNO EUGENIO R. PALOMO, RAPHAEL PAOLO R. PALOMO and LEO MARCO GREGORIO R. PALOMO, SPOUSES REYNALDO C. ABELARDO and FLORINA T. PALOMO-ABELARDO, DANILO R. TANTOCO and MANUEL R. TANTOCO represented by DANILO R. TANTOCO, and TERESITA E. DEABANICO[**] represented by ANSELMO D. MALONZO, JOSE E. CAYSIP, JHOANA C. LANDAYAN, DAVID R. CAYSIP and EPHRAIM R. CAYSIP, *petitioners*, *vs.* **SUCERE FOODS CORPORATION,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; DISPOSITIONS PENDING ACTION; MAY BE OBTAINED WITHOUT LEAVE OF COURT AFTER AN ANSWER HAS BEEN SERVED; RULE DOES NOT REQUIRE THE PARTY REQUESTING FOR AN ORAL DEPOSITION TO STATE THE PURPOSE OR PURPOSES OF THE DEPOSITION.** — Depositions pending action may be obtained without leave of court after an answer has been served in accordance with Section 1, Rule 23 of the Rules. x x x Petitioners argue that it is necessary to state the specific purpose or purposes of the deposition to ensure that the matters to be asked are relevant and not privileged in accordance with Rule 23 of the Rules. The Court does not agree. There is no provision in Rule 23 that requires the party requesting for an oral deposition to state

[*] Referred to as Teresita Victoria R. Palomo in some parts of the *rollo*.

[**] Referred to as Teresita E. Debanico in some parts of the *rollo*.

the purpose or purposes of the deposition. x x x The only matters that have to be stated in the notice under Section 15 of Rule 23 are the time and place for taking the deposition, the name and address of each person to be examined, if known, or if unknown, a general description sufficient to identify the person to be examined or the class or group to which he belongs. The trial court cannot expand the requirements under Rule 23.

2. **ID.; ID.; ID.; DEPOSITIONS MAY BE TAKEN BEFORE ANY JUDGE, NOTARY PUBLIC, OR ANY PERSON AUTHORIZED TO ADMINISTER OATHS IF THE PARTIES SO STIPULATE IN WRITING; CASE AT BAR.** — The RTC observed that Section 3 of Rule 23 on examination and cross-examination and Section l7 on record, oath, and objections will be best complied with if the deposition is taken before the court instead of a notary public or any person authorized to administer oath. To require that these matters be taken before the RTC because they require the examination and cross-examination of the deponent would render useless the entire rules on discovery which were crafted by the Court to help expedite the disposition of cases. Section 10, Rule 23 of the Rules provides that depositions may be taken before any judge, notary public, or the person referred to in Section 14 of Rule 23, *i.e.*, any person authorized to administer oaths if the parties so stipulate in writing. Until the Court revises its rules and removes the authority to take depositions from the notary public or any person authorized to administer oaths if the parties so stipulate, these persons retain their authorities to take depositions. The trial courts cannot arrogate these duties exclusively upon themselves. Hence, the CA did not commit any reversible error in setting aside the RTC's Order.

APPEARANCES OF COUNSEL

Manuel P. Punzalan for petitioners.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

DECISION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated October 30, 2017 and the Resolution[3] dated July 16, 2018 of the Special Fifth Division and Former Special Fifth Division, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 150371. The CA granted the petition for *certiorari* of Sucere Foods Corporation (respondent) and ordered Branch 7, Regional Trial Court (RTC), Malolos City, Bulacan, to take the deposition upon oral examination of Anselmo D. Malonzo (Anselmo), Atty. Ramon C. Sampana[4] (Atty. Sampana), and Undersecretary Jose Z. Grageda (Usec. Grageda) in connection with Civil Case No. 529-M-2014.

The Antecedents

The Complaint[5] docketed as Civil Case No. 529-M-2014 is an action for Quieting of Title, Recovery of Possession and Damages filed by Anselmo, Teresita Malonzo-Lao, Natividad Malonzo-Gaspar; the heirs of Ronaldo T. Palomo, namely: Teresa Victoria R. Palomo, Carlo Magno Eugenio R. Palomo, Raphael Paolo R. Palomo, and Leo Marco Gregorio R. Palomo; Spouses Reynaldo C. Abelardo and Florina T. Palomo-Abelardo; Danilo R. Tantoco and Manuel R. Tantoco; and Teresita E. Deabanico (Malonzo, *et al.*) against respondent and the Register of Deeds, Guiguinto, Bulacan. Malonzo, *et al.*, were joined before the Court by Jose E. Caysip, Jhoana C. Landayan, David R. Caysip and Ephraim R. Caysip (collectively, petitioners).

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[1] *Rollo*, pp. 24-41.

[2] *Id.* at 261-273; penned by Associate Justice Magdangal M. De Leon with Associate Justices Manuel M. Barrios and Zenaida T. Galapate-Laguilles, concurring.

[3] *Id.* at 21-22.

[4] Referred to as Atty. Ramon C. Sapana in some parts of the *rollo*.

[5] *Rollo*, pp. 45-61.

Malonzo, *et al.*, alleged in their Complaint that spouses Jose P. Cruz (Jose) and Felicidad Bejar were the owners of Lot No. 3069 with an area of 22,261 square meters (sq.m.) and covered by Transfer Certificate of Title (TCT) No. 17377; and Lot No. 3070 with an area of 6,320 sq.m. and covered by TCT No. 29244. In 1960, Lot Nos. 3069 and 3070 were consolidated and subdivided into several lots under Plan (LRC) PCS-1260 (consolidated-subdivision plan),[6] which resulted in the cancellation of TCT Nos. 17377 and 29244, and the issuance of various TCTs covering the subdivided lots. The subdivided lots were purchased by different persons. Among the purchasers are the following parties to this case:

(1) Ronaldo T. Palomo (Ronaldo) acquired Lots 3 and 10, Block 2 of the consolidated-subdivision plan, each with an area of 300 sq.m. Two certificates of title were issued in his name: TCT No. T-164528, reconstituted under TCT No. RT-53749 (T-164528)[7] and TCT No. T-164529, reconstituted under TCT No. RT-53750 (TCT No. T-164529).[8] Upon Ronaldo's death, he was survived by his widow, Teresa Victoria R. Palomo, and their children;

(2) Anselmo and his wife, Socorro V. Malonzo (Socorro) acquired Lot No. 5, Block 2 from Leo D. Cloma, Allen D. Cloma and Editha D. Cloma who, in turn, acquired it from spouses Jose de Mesa and Alejandra M. de Mesa. TCT No. T-32935[9] was issued in the names of Anselmo and Socorro. Upon Socorro's death, Anselmo and their children Teresita Lao and Natividad Gaspar inherited the one-half share left by Socorro. The lot is covered by TCT No. T-204179[10] in the names of Socorro's heirs.

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[6] *Id.* at 65.

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

[8] *Id.* 69-70.

[9] *Id.* at 75-76.

[10] *Id.* at 77-79.

(3) Danilo R. Tantoco and Manuel R. Tantoco purchased their lots covered by TCT No. RT-53012 (T-118900)[11] and TCT No. RT-32837 (T-118899),[12] respectively;

(4) The spouses Reynaldo Abelardo and Florina T. Palomo-Abelardo acquired Lots 9 and 4 of Block 3, respectively covered by TCT Nos. RT-53746 (T-164520)[13] and RT-53749 (T-164531);[14]

(5) Teresita E. Deabanico acquired Lot 1 covered by TCT No. RT-2031 (T-266485) from spouses Marquito Carlos Reyes and Minerva-Ramos Reyes, and Lot 2 covered by TCT No. T-266479[15] from the spouses Rene P. Ramos and Bessie Poblete-Ramos.

Malonzo, *et al.*, claimed that prior to the consolidation and subdivision of Lot Nos. 3069 and 3070, the Provincial Government of Bulacan already purchased from Jose a portion of Lot No. 3069 with an area of 4,192 sq.m. and a portion of Lot No. 3070 with an area of 1,190 sq.m. The lots were identified in consolidated-subdivision plan. Malonzo, *et al.*, stated that after the consolidation and subdivision of Lot Nos. 3069 and 3070 and the sale of the subdivided portions to different individuals, Florencio Cruz (Florencio) filed a petition for the issuance of a Certificate of Land Transfer of Lot No. 3069 in his favor. Subsequently, CLT No. 0-0733936 and EP No. A-32893 covering an area of 16,011 sq.m. were issued in the name of Florencio, while EP No. A-032892 covering an area of 6,250 sq.m. was issued in the name of Virginia *Vda. de* Dela Cruz (Virginia).[16]

Malonzo, *et al.*, alleged that after the issuance of the emancipation patents and titles to Lot No. 3069, Florencio filed

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

[12] *Id.* at 82-83.

[13] *Id.* at 84-85.

[14] *Id.* at 86-87.

[15] *Id.* at 93-94.

[16] *Id.* at 48.

a petition for reconstitution and issuance of second owner's copy of TCT No. 17377. Florencio purportedly presented a Special Power of Attorney from Jose dated February 12, 1982, but notarized only on October 21, 1992 or almost a year after Jose died on December 4, 1991. Florencio also submitted an Affidavit of Loss of the owner's duplicate copy of TCT No. 17377 allegedly executed by Jose on October 21, 1992. The petition for reconstitution was granted and a second owner's copy of TCT No. 17377 was issued without annotations at the memorandum of encumbrances. Thereafter, Florencio caused the registration of the emancipation patents. The reconstituted TCT No. 17377 was cancelled and TCT No. T-023-EP covering an area of 6,250 sq.m. was issued in the name of Virginia while TCT No. T-024-EP with an area of 16,066 sq.m. was issued in the name of Florencio, both under Plan Psd-03-000158 (OLT). According to Malonzo, *et al.*, the new titles in favor of Virginia and Florencio included the portion previously sold by Jose to the Provincial Government of Bulacan.[17]

On November 7, 1994, Florencio, together with respondent represented by its President Eduardo Yu, applied with the Department of Agrarian Reform (DAR) for the conversion of the lot covered by TCT No. T-024-EP from agricultural to commercial/industrial. On February 20, 1995, the DAR approved the application. Malonzo, *et al.*, also alleged that Florencio already sold the lot covered by TCT No. T-024-EP to respondent on December 19, 1994, a year before the DAR approved the conversion. After the DAR approved the conversion, TCT No. T-024-EP was cancelled and TCT No. T-62591 was issued in the name of respondent.

Meanwhile, on November 10, 1994, Virginia allegedly sold the lot covered by TCT No. 023-EP to spouses Dominador and Teresita Balaga in whose names TCT No. T-64747 was issued. Upon Dominador's death, Teresita became the sole owner of the lot. She was issued the following TCTs: (1) TCT No. T-74758 with an area of 4,966 sq.m.; (2) TCT No. T-74759

[17] *Id.* al 49-50.

with an area of 666 sq.m.; and (3) TCT No. T-74760 with an area of 618 sq.m. Teresita sold the area covered by TCT No. T-74758 to respondent, which resulted in the issuance of TCT No. T-74871 in the name of respondent.

Thereafter, respondent entered into a deed of exchange with Centro Escolar University involving a portion of the lot it acquired from Florencio covered by TCT No. T-62591[18] and a portion of the lot it acquired from Teresita covered by TCT No. T-74871.[19] The two lots were then consolidated under TCT No. T-87161 with an area of 20,977 sq.m., which included the portion owned by the Provincial Government of Bulacan. Respondent then subdivided the lot into three: (1) TCT No. T-90521[20] with an area of 18,060 sq.m.; (2) TCT No. 90522[21] with an area of 1,581 sq.m.; and (3) TCT No. 90523[22] with an area of 1,336 sq.m. All the three lots are in the name of respondent. The last two lots are the portions previously sold to the Provincial Government of Bulacan.

Respondent countered in its Comment that Florencio and Roman dela Cruz (Virginia's husband) were tenant-farmers of Jose in the parcel of land covered by TCT No. 17377 since 1945 and 1956, respectively. They executed a *Kasunduan sa Pamumuwisan* which recognized the long-standing tenancy relationship and confirmed that the land is covered by Operation Land Transfer Program under Presidential Decree No. 27.[23] However, Jose subdivided the land without the knowledge of the farmer beneficiaries and sold the subdivided portions to different individuals. Respondent alleged that it purchased the land in good faith and for value.

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

[19] *Id.* at 121-122.

[20] *Id.* at 130-131.

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

[22] *Id.* at 134-135.

[23] "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor."

The Order of the RTC

Petitioners mentioned other cases previously filed by both petitioners and respondents before the RTC and the Department of Agrarian Reform Adjudication Board or DARAB. The Court will not go into the merits of the cases and will limit its discussion to the matter relevant to the instant case.

To recapitulate, Malonzo, *et al.*, filed a Complaint for Quieting of Title, Recovery of Possession, and Damages against respondent. On May 22, 2015, respondent filed with the RTC a notice to take deposition with a request for the issuance of *subpoena ad testificandum* for the deposition through oral examination of Anselmo, and Atty. Sampana or his representative, in his capacity as Registrar of Deeds, Guiguinto, Bulacan. On May 25, 2015, respondent filed an additional notice to take deposition with a request for the issuance of *subpoena ad testificandum* for the deposition through oral examination of DAR Usec. Grageda or his representative.

In an Order[24] dated May 28, 2015, the RTC in Civil Case No. 529-M-2014, denied respondent's notices for having been filed without leave of court pursuant to Section 1, Rule 23 of the Rules of Court (Rules).

Respondent filed a motion for reconsideration alleging that under Section 1, Rule 23 of the Rules, no leave of court is required when an answer has already been served. Pending the resolution of respondent's motion for reconsideration, Malonzo, *et al.*, filed a Motion to Admit Amended Complaint to implead the Provincial Government of Bulacan as an indispensable party to the case.

In an Order[25] dated July 16, 2015, the RTC ruled that indeed, no leave of court is required, as alleged by respondent, because an answer has already been served. However, since the RTC admitted the motion to implead the Provincial Government of

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[24] *Rollo*, pp. 228-229; penned by Presiding Judge Isidra A. Argañosa-Maniego.

[25] *Id.* at 239-242.

Bulacan, it deferred ruling on the motion for reconsideration to allow respondent to answer the Amended Complaint and decide later whether it will still file the notice to take deposition.

Respondent filed another Notice to Take Deposition dated November 26, 2015 for Anselmo, and Atty. Sampana or his representative. Malonzo, *et al.*, opposed the notice on the grounds that it lacked the specific purpose or purposes for the deposition, it was a fishing expedition because the case will still undergo pre-trial proceedings, and respondent could still avail itself of other modes of discovery.

In an Order[26] dated January 11, 2017, the RTC denied respondent's notice to take deposition for lack of merit. The RTC ruled that while Section 1, Rule 23 of the Rules is a mode of discovery, Sections 3 and 17 of the same Rules are best complied with if the deposition is taken before the court and not before a notary public or any person authorized to administer an oath. The RTC ruled that the scope of, and reasons for, the depositions are not clear. The RTC stated that if the deponents are to be utilized as hostile witnesses, respondent can do this when it is their turn to present their evidence.

Respondent filed a petition for *certiorari* before the CA to set aside the Orders dated July 16, 2015 and January 11, 2017 of the RTC. The case was docketed as CA-G.R. SP No. 150371.

The Decision of the CA

In its Decision dated October 30, 2017, the CA granted respondent's petition for *certiorari*, and ordered the RTC to allow the taking of the deposition upon oral examination of Anselmo, Atty. Sampana, and Usec. Grageda.

The CA ruled that depositions are allowed to promote the just, speedy, and inexpensive disposition of every action and proceeding provided they are taken in accordance with the provisions of the Rules, *i.e.*, with leave of court if summons have been served and without leave of court if an answer has

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[26] *Id.* at 258-260.

been submitted, and provided further that a circumstance for their admissibility exists. In this case, an answer has already been served. As such, leave of court is not required for the filing of the notice of deposition.

The CA further ruled that the RTC has the discretion whether to allow the deposition to be taken under specified circumstances which may even differ from the intention of the proponents. However, the discretion must be exercised in a reasonable manner and in consonance with the spirit of the law and not arbitrarily, capriciously or oppressively. The deposition may not be allowed if it does not conform with the essential legal requirements of the law or if it will reasonably cause material injury to the adverse party. The CA found that respondent has complied with the requirements under the Rules. The CA held that there is no rule requiring the proponent to state the purpose for taking the deposition. In addition, the CA ruled that under Section 10, Rule 23 of the Rules, depositions may be taken before a notary public. Since respondent has complied with all the legal requirements, the CA ruled that the RTC has no reason to deny the deposition.

The CA further ruled that the Rules has safeguards to ensure the reliability of deposition. The parties retained their right to object to the deposition in the same manner that they can exclude evidence if the witness was present and had testified in court.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, the instant petition is GRANTED. The Regional Trial Court of Malolos City, Bulacan, Branch 7 is hereby ORDERED to allow petitioner to take the deposition upon oral examination of Anselmo D. Malonzo, Atty. Ramon C. Sa[m]pana and Usec. Jose Z. Grageda in connection with Civil Case No. 529-M-2014.
>
> SO ORDERED.[27]

Malonzo, *et al.*, filed a motion for reconsideration. In the Resolution dated July 16, 2018, the CA denied the motion.

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

Thus, the petition before the Court.

The Issues

Petitioners raised the following issues before the Court:

Whether the CA committed a reversible error when it ruled that there is no requirement to state the purpose for taking deposition in the notice to take deposition under Rule 23 of the Rules; and

Whether the CA committed a reversible error in setting aside the Order of Branch 7, RTC, Malolos, Bulacan in Civil Case No. 529-M-2014 denying respondent's notice to take deposition.

The Ruling of the Court

The petition has no merit.

Depositions pending action may be obtained without leave of court after an answer has been served in accordance with Section 1, Rule 23 of the Rules. It states:

> Section 1. *Depositions pending action, when may be taken*. — By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Petitioners argue that it is necessary to state the specific purpose or purposes of the deposition to ensure that the matters to be asked are relevant and not privileged in accordance with Rule 23 of the Rules.

The Court does not agree.

There is no provision in Rule 23 that requires the party requesting for an oral deposition to state the purpose or purposes of the deposition. Section 15, Rule 23 of the Rules provides:

Section 15. *Deposition upon oral examination; notice; time and place*. — A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

The only matters that have to be stated in the notice under Section 15 of Rule 23 are the time and place for taking the deposition, the name and address of each person to be examined, if known, or if unknown, a general description sufficient to identify the person to be examined or the class or group to which he belongs. The trial court cannot expand the requirements under Rule 23.

In *Fortune Corporation v. Court of Appeals*,[28] the Court stated:

The seeming unreceptive and negative attitude of lawyers and the courts towards discovery procedures has heretofore been observed and discommended by the Court in this wise:

> x x x Now, it appears to the Court that among far too many lawyers (and not a few judges), there is, if not a regrettable unfamiliarity and even outright ignorance about the nature, purposes and operations of the modes of discovery, at least a strong yet unreasoned and unreasonable disinclination to resort to them — which is a great pity for the intelligent and adequate use of the deposition-discovery mechanism, coupled with pre-trial procedure, could, as the experience of other jurisdictions convincingly demonstrates, effectively shorten the period of litigation and speed up adjudication. x x x.

It would do well, therefore, to point out the finer attributes of these rules of discovery, the availment of which, we are convinced, would contribute immensely to the attainment of the judiciary's primordial goal of expediting the disposition of cases.

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[28] 299 Phil. 356 (1994).

The rules providing for pre-trial discovery of testimony, pre-trial inspection of documentary evidence and other tangible things, and the examination of property and person, were an important innovation in the rules of procedure. The promulgation of this group of rules satisfied the long-felt need for a legal machinery in the courts to supplement the pleadings, for the purpose of disclosing the real points of dispute between the parties and of affording an adequate factual basis in preparation for trial. The rules are not grounded on the supposition that the pleadings are only or chief basis of preparation for trial. On the contrary, the limitations of the pleadings in this respect are recognized. In most cases under the rules the function of the pleadings extends hardly beyond notification to the opposing parties of the general nature of a party's claim or defense. It is recognized that pleadings have not been successful as fact-sifting mechanisms and that attempts to force them to serve that purpose have resulted only in making the pleadings increasingly complicated and technical, without any corresponding disclosure of the issues which it will be necessary to prove at the trial. Thus the rules provide for simplicity and brevity in pleadings, which in most cases will terminate with the answer; and at the same time adapt the old and familiar deposition procedure to serve as a device for ascertaining before trial what facts are really in dispute and need to be tried. Experience had shown that the most effective legal machinery for reducing and clarifying the issues were a preliminary examination, as broad in scope as the trial itself, of the evidence of both parties.

x x x x x x x x x

As just intimated, the deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation and fact revelation theretofore performed primarily by the pleadings.

The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.

To this end, the field of inquiry that may be covered by depositions or interrogatories is as broad as when the interrogated party is called

a witness to testify orally at trial. The inquiry extends to all facts which are relevant, whether they be ultimate or evidentiary, expecting only those matters which are privileged. The objective is as much to give every party the fullest possible information of all the relevant facts before the trial as to obtain evidence for use upon said trial. x x x.[29]

The use of deposition, like all other modes of discovery, remains largely unutilized by most lawyers. The courts should encourage the use of the modes of discovery rather than burden the parties with requirements that are not stated in the rules. The statement of the specific purpose or purposes of the deposition is not required by the rules. The Court reiterates that "[u]tmost freedom governs the taking of depositions to allow the widest scope in the gathering of information by and for all the parties in relation to their pending case."[30] The Court recognizes that under the rules and jurisprudence, the parties and their witnesses are given greater leeway to be deposed in the interest of collecting information for the speedy and complete disposition of cases.[31]

The RTC observed that Section 3 of Rule 23 on examination and cross-examination and Section 17 on record, oath, and objections will be best complied with if the deposition is taken before the court instead of a notary public or any person authorized to administer oath. To require that these matters be taken before the RTC because they require the examination and cross-examination of the deponent would render useless the entire rules on discovery which were crafted by the Court to help expedite the disposition of cases.

Section 10, Rule 23 of the Rules provides that depositions may be taken before any judge, notary public, or the person referred to in Section 14 of Rule 23, *i.e.*, any person authorized to administer oaths if the parties so stipulate in writing. Until

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[29] *Id.* at 373-376. Citations omitted.

[30] *Santamaria, et al. v. Cleary*, 787 Phil. 305, 317 (2016), citing *supra* note 28 at 388.

[31] *Id.* at 319.

the Court revises its rules and removes the authority to take depositions from the notary public or any person authorized to administer oaths if the parties so stipulate, these persons retain their authorities to take depositions. The trial courts cannot arrogate these duties exclusively upon themselves.

Hence, the CA did not commit any reversible error in setting aside the RTC's Order.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Decision dated October 30, 2017 and the Resolution dated July 16, 2018 of the Special Fifth Division and Former Special Fifth Division, respectively, of the Court of Appeals in CA-G.R. SP No. 150371.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

THIRD DIVISION

[G.R. No. 242159. February 5, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANTE CASILANG *y* RINO and SILVERIO VERGARA *y* CORTEZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES IS ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL; AN EXCEPTION IS WHEN THERE IS A SHOWING THAT THE TRIAL JUDGE OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED SOME FACT OR

CIRCUMSTANCE OF WEIGHT AND SUBSTANCE THAT WOULD HAVE AFFECTED THE CASE. — The trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. The Court has reviewed the trial court's factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case. Such is the case here, where circumstances exist that raise serious doubts on accused-appellants' culpability of the crime charged.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In actions involving the illegal sale of dangerous drugs, the prosecution must establish the following elements: (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. It is equally essential for a conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over it. The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

3. **ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; SECTION 21 THEREOF; WHEN NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 MAY BE EXCUSED; CASE AT BAR. —** [A]s it is a fact that field conditions vary and strict compliance with the rule may not always be possible, Section 21 of the IRR of R.A. No. 9165 provides a saving clause. It states that noncompliance with the requirements of Section 21 will not automatically render void and invalid the seizure and custody over the seized items, so long as: 1) there are justifiable grounds therefor, and 2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized illegal drugs. Here, the inventory and taking of photographs of the seized illegal drug were witnessed by accused-appellants and *Barangay Kagawad* Ayson. However, there were no representatives from the media and

the DOJ present at the time. Since this is a deviation from the requirements of Section 21, it is incumbent upon the prosecution to provide justifiable reasons in order for the saving clause to apply. Unfortunately, the prosecution failed to recognize its procedural lapse and provided no such explanation whatsoever other than that the police officers "cannot avail" of the presence of the required witnesses. x x x We held that the justifiable grounds for noncompliance with Section 21 must be proven as a fact because the Court cannot presume what these grounds are or that they even exist. x x x 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. x x x Unfortunately, not only did the prosecution fail to provide justifiable reasons for the absence of the required witnesses during the inventory and taking of photographs of the evidence, it also failed to show that the integrity and evidentiary value of the seized item were properly preserved.

4. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY; LINKS THAT MUST BE ESTABLISHED. —** [L]inks that the prosecution must prove to establish chain of custody: *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. x x x As a method of authenticating evidence, the chain of custody rule requires that the admission of the 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 thus 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 same would admit 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 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. 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. The prosecution's failure to present evidence showing the manner in which the illegal drug subject of this case was handled, stored and safeguarded x x x pending its presentation in court is fatal to its case.

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

GESMUNDO, *J.*:

In all criminal prosecutions, the accused is presumed innocent until proven guilty by proof beyond reasonable doubt.[1] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[2]

On appeal is the Decision[3] dated April 30, 2018 issued by the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 07852, which affirmed the Decision[4] dated August 18, 2015 rendered by the Regional Trial Court of Dagupan City, Branch 42 *(RTC)* in Criminal Case No. 2012-0003-D finding Dante Casilang *y* Rino *(Casilang)* and Silverio Vergara *y* Cortez *(Vergara; collectively, accused-appellants)* guilty of violation of Section 5, Article II

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[1] See *People v. Wagas*, 717 Phil. 224, 227 (2013).

[2] *People v. Obmiranis*, 594 Phil. 561, 579 (2008).

[3] *Rollo,* pp. 2-17; penned by Associate Justice Maria Filomena D. Singh with Associate Justices Sesinando E. Villon and Edwin D. Sorongon, concurring.

[4] CA *rollo*, pp. 14-22; penned by Presiding Judge A. Florentino R. Dumlao, Jr.

of Republic Act *(R.A.)* No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

In the Information[5] dated January 6, 2012, accused-appellants were charged with violation of Article II, Section 5 of R.A. No. 9165, allegedly committed as follows:

> That on or about the 5th day of January 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **DANTE CASILANG *Y* RINO AND SILVERIO VERGARA *Y* CORTEZ**, confederating together, acting jointly and helping each other, did then and there, wilfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride *(Shabu)* contained in one (1) heat sealed plastic sachet, weighing more or less 0.1 gram in exchange for ₱500.00, without authority to do so.
>
> Contrary to Article II, Section 5, R.A. 9165.[6]

Accused-appellants were arraigned on May 23, 2012 and pleaded not guilty to the charge.[7]

Version of Prosecution

The prosecution presented three (3) witnesses, namely: (1) Police Officer 2 Jayson M. Cadawan *(PO2 Cadawan)*, *poseur-buyer*; (2) Senior Police Officer 1 Julius Coroña *(SPO1 Coroña),* the backup and arresting police officer; and (3) Police Senior Inspector Myrna Malojo-Todeño *(PSI Malojo-Todeño),* the Forensic Chemist of the Pangasinan Provincial Crime Laboratory Office *(crime laboratory)* who examined the seized illegal drugs. Through their combined testimonies, the prosecution sought to establish the following facts:

On January 5, 2012, Police Chief Superintendent Froiland Valdez instructed some police officers assigned at the Provincial

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[5] *Id.* at 12.

[6] Records, p. 1.

[7] *Id.* at 49.

Intelligence Branch *(PIB)*, Lingayen, Pangasinan Police Provincial Office, to conduct a buy-bust operation targeting accused-appellants who the PIB had been monitoring since receiving information of their drug dealing from a confidential informant.[8]

A buy-bust team was formed, consisting of PO2 Cadawan, Police Inspector Romel Centeno *(PI Centeno),* and SPO1 Coroña. PO2 Cadawan prepared the ₱500-bill marked money. The team then proceeded to Police Community Precinct No. 6 *(PCP 6)* at Bonuan-Tondaligan to document the operation, before embarking on their mission near Leisure Coast, Bonuan-Binloc where accused-appellants were usually seen. At around 1:45 p.m., accused-appellants arrived and settled near a waiting shed. PO2 Cadawan approached accused-appellant Vergara and asked if he had ₱500.00 worth of *shabu*. In response, Vergara asked his companion, accused-appellant Casilang, to hand him the item which Vergara in turn handed to PO2 Cadawan. After giving the marked money as payment, PO2 Cadawan touched his head to signal the consummation of the sale. SPO1 Coroña approached the group and he and PO2 Cadawan introduced themselves as police officers. They then arrested accused-appellants for selling illegal drugs. PO2 Cadawan marked the seized item with his initials ("JMC") and the current date ("1-5-12") and placed it in an envelope. The police officers informed accused-appellants of their constitutional rights and brought them to PCP 6 to record the transaction in the blotter.[9]

At PCP 6, an inventory of the seized item was made in the presence of *Barangay Kagawad* Segundino Ayson *(Barangay Kagawad Ayson),* and the evidence was photographed together with accused-appellants. Afterwards, PO2 Cadawan returned the seized item inside the envelope and he, PI Centeno and SPO1 Coroña brought accused-appellants to the Provincial Intelligence Office. Upon arrival thereat, PI Centeno prepared the request for medico-legal and crime laboratory examinations. PO2 Cadawan brought the request and seized item to the crime

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

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

laboratory, where he personally handed the seized item to Forensic Chemist PSI Malojo-Todeño. Laboratory examination later revealed that the seized item tested positive for *shabu*.[10]

Version of the Defense

Accused-appellants both testified and interposed the defense of denial.

Casilang testified that he was a tricycle driver plying his route on January 5, 2012. Along the way, he was flagged down by Vergara, who proposed that they drive around ("have a joyride") as he had nothing to do that day. When they were near Leisure Coast, police officers flagged them down, asked them to alight and frisked them. Although if the police officers did not recover anything from them, they were nonetheless brought to the police station and led to a room where they saw a table with money, and an item they were not familiar with, on top of it. They were then photographed.[11]

For his part, Vergara testified that he was in Salay, Mangaldan on January 5, 2012 between 12:30 to 1:00 p.m., when he flagged down Casilang who was then transporting two passengers to Tondaligan Beach. He boarded the tricycle to have a joy ride. After the passengers alighted, accused-appellants decided to go home. As they neared the Leisure Coast Resort, a person flagged them down. Believing that this person and his companions were passengers, accused-appellants stopped. The persons turned out to be armed. They instructed accused-appellants to alight from the tricycle and searched them, but did not find anything. Still, they were made to board a van and brought to the police station. They were not informed of their constitutional rights.[12]

The RTC Ruling

On August 18, 2015, the RTC rendered a Decision finding accused-appellants guilty as charged. It found the prosecution

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[10] *Id.* at 5.

[11] TSN, September 9, 2014, pp. 3-6.

[12] TSN, November 26, 2014, pp. 3-6.

to have clearly established the passing of the plastic sachet with white crystalline substance from Casilang to Vergara, who in turn handed the same to PO2 Cadawan in exchange for ₱500.00. Thus, the police officers were justified in arresting accused-appellants without a warrant and in seizing the plastic sachet. Moreover, the white crystalline substance in the plastic sachet was later on confirmed to be methamphetamine hydrochloride or *shabu*, per the Chemistry Report issued by the PNP Crime Laboratory through Forensic Chemist PSI Malojo-Toñedo. SPO1 Coroña also identified in court the recovered ₱500-bill buy-bust money with serial number FJ848102.[13]

The RTC held that the defenses of denial and frame up interposed by accused-appellants are viewed with disfavor as they can easily be concocted. They should not benefit accused-appellants unless the evidence of frame up is clear and convincing. Here, aside from their self-serving allegations, accused-appellants adduced no evidence to strengthen their claim. Hence, their defenses are highly unacceptable. There is also no proof of any intent on the part of the police officers to falsely impute the commission of a crime on accused-appellants. Consequently, the presumption of regularity in the performance of official duty prevails.[14] The dispositive portion of the RTC Decision states:

> **WHEREFORE,** premises considered, the [C]ourt finds the accused **DANTE CASILANG and SILVERIO VERGARA GUILTY** beyond reasonable doubt of the crime of **Violation of Section 5 of Art. II of [R.A. No.] 9165** and are hereby sentenced to suffer the penalty **of life imprisonment and to [each pay] the fine of Five Hundred Thousand Pesos (₱500,000.00).**
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> **SO ORDERED**.[15] (emphases in the original)

The CA Ruling

The CA affirmed the RTC Decision. It held that the buy-bust operation conducted on January 5, 2012 is valid when scrutinized

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[13] CA *rollo*, p. 21.

[14] *Id.* at 21-22.

[15] *Id.* at 22.

using the "objective test," which demands that details of the purported transaction must be clearly and adequately shown. Here, PO2 Cadawan's testimony, which was corroborated by that of SPO1 Coroña, duly established the details of the buy-bust operation which resulted in the lawful arrest of accused-appellants.[16]

Moreover, the prosecution was able to prove beyond reasonable doubt the existence of all the elements of the crime of illegal sale of *shabu*, namely: the identity of the buyer and seller, object and consideration, the delivery of the thing sold, and the payment therefor. The prosecution's evidence established the identity of PO2 Cadawan as *poseur-buyer*, accused-appellants as the sellers, the object of the sale which is *shabu*, and the consideration of ₱500.00. The delivery of the illegal drug in exchange for ₱500.00 consummated the sale transaction.[17]

The CA also held that even if the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165 due to the absence of a DOJ or media representative, the prosecution was able explain that the police officers tried, but found no available media or DOJ representatives at the time. The presence of an elective official in the person of *Barangay Kagawad* Ayson during the inventory and taking of photographs of the confiscated items is deemed substantial compliance with the requirements of the law. Moreover, even if the police officers did not strictly comply with the requirements of the said provision, such fact did not affect the evidentiary weight of the illegal drugs seized from accused-appellants because the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.[18]

Finally, the CA held that accused-appellants' defense of denial or frame up must fail in the face of credible and positive testimonies of the prosecution witnesses which are duly

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[16] *Rollo*, pp. 8-9.

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

[18] *Id.* at 13-15.

supported by documentary and object evidence.[19] The CA disposed of the case as follows:

> **WHEREFORE,** the appeal is **DENIED.** The Decision dated 18 August 2015 of the Regional Trial Court, Branch 42, Dagupan City, in Criminal Case No. 2012-0003-D, finding accused-appellants Dante Casilang *y* Rino and Silverio Vergara *y* Cortez guilty of Violation of Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.
>
> **SO ORDERED.**[20] (emphases in the original)

Hence, this appeal.

In its Resolution[21] dated December 3, 2018, the Court required the parties to submit their respective Supplemental Briefs, if they so desired. Subsequently, the parties respectively manifested that they are no longer filing such briefs.[22]

The Issues

Accused-appellants maintain their innocence and seek the final resolution of the following issues:

I.

THE TRIAL COURT GRAVE[LY] ERRED IN GIVING FULL 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-APELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUG CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.[23]

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[19] *Id.* at 15.

[20] *Id.* at 16.

[21] *Id.* at 25-26.

[22] *Id.* at 27-29; 37-39.

[23] CA *rollo*, p. 65.

The Court's Ruling

Accused-appellants argue that the police officers failed to comply with the mandatory procedures in the handling and disposition of the seized illegal drug as provided under paragraph 1, Section 21, Article II of R.A. No. 9165, since no representatives from the media and the DOJ were present during the conduct of the inventory. While the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 allow a degree of latitude with respect to compliance with its requirements, the same must be based on justifiable grounds.[24] Here, the apprehending officers did not tender any explanation or justification for noncompliance with the required procedure. It was thus grave error for the RTC to rule that the *shabu* transmitted by PO2 Cadawan to the crime laboratory was the very same one allegedly sold to him by accused-appellants. The arresting officers' deliberate disregard of the legal safeguards under R.A. No. 9165 produced serious doubts on the integrity and identity of the *corpus delicti*.[25] Moreover, while the Court has held that procedural lapses in the conduct of the buy-bust operation are not *ipso facto* fatal to the prosecution's cause as long as the integrity and evidentiary value of the seized items have been preserved, still, the courts must thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. The presumption of regularity in the performance of official functions was negated by the buy-bust team's failure to comply with Section 21 of R.A. No. 9165. In view of all these, accused-appellants insist that the Court resolve the case in their favor.[26]

The appeal is meritorious.

The trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be

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[24] *Id.* at 70.

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

[26] *Id.* at 73-74.

disturbed on appeal. However, this is not a hard and fast rule. The Court has reviewed the trial court's factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[27] Such is the case here, where circumstances exist that raise serious doubts on accused-appellants' culpability of the crime charged.

In actions involving the illegal sale of dangerous drugs, the prosecution must establish the following elements: (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. It is equally essential for a conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over it. The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[28]

Reasonable doubt on the actual sale of illegal drugs exists

In this case, despite the prosecution's evidence showing that a buy-bust operation was conducted, there exists reasonable doubt that the sale of illegal drugs actually took place.

PO2 Cadawan testified that police officers conducted surveillance prior to the buy-bust operation. However, he did not describe the particular acts being committed by accused-appellants at the time which led him and the other police officers to conclude that the latter were involved in a crime. Thus:

Q. You mentioned about [two] personalities, who are these two personalities?
A. Dante Casilang and Silverio Vergara, ma'am.

Q. Where were you supposed to conduct this operation?
A. Particularly at Bonuan-Binloc, Dagupan City, ma'am.

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[27] *People v. Maraorao*, 688 Phil. 458, 464-465 (2012).

[28] *People v. Año,* G.R. No. 230070, March 14, 2018, 859 SCRA 380, 388-389.

Q. You mentioned a while ago that these two personalities have been monitored by your office, who told you this, Mr. Witness?
A. Series of information have been given by confidential informant to our office, ma'am.

Q. You said that you already monitored these two accused, how did you monitor them about their drug dealings?
A. We usually see these personalities at Bonuan-Binloc, ma'am.

Q. You said you usually see them, how often do you see them in Bonuan-Binloc?
A. Twice a week, ma'am.

Q. Why do you go at Bonuan-Binloc?
A. To perform our duties and obligations as intelligence officer in conducting and monitoring illegal activities, ma'am.[29]

Aside from the fact that there was no record of the surveillance,[30] PO2 Cadawan palpably failed to identify the activities to which the "series of information" allegedly provided by a confidential informant pertained. His testimony lacks the bare essentials to justify the conduct of a buy-bust operation. In fact, if the prosecutor did not use the term "drug dealings" in one of his questions, there would have been no indication whatsoever of the crime that accused-appellants were supposed to be committing. As part of the surveillance team, PO2 Cadawan could not have neglected to describe the illegal activities that he witnessed—if indeed he witnessed any. It is considerably uncharacteristic of a police officer who had monitored a crime to omit basic information on what he had perceived, particularly when testifying in court where such information is most crucial.

Moreover, in their Joint Affidavit of Arrest,[31] PO2 Cadawan and SPO1 Coroña described accused-appellants as "long[-]

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[29] TSN, March 20, 2013, pp. 3-4.

[30] PO2 Cadawan testified on cross examination (TSN, May 10, 2013, p. 2):

Q. Did you make a document [of] your surveillance before the buy bust operation?
A. No, madam.

[31] Records, pp. 3-5.

monitored drug personalities" who hailed from Mangaldan, but operated within the area of Bonuan-Binloc, Dagupan City in Pangasinan. The police officers narrated that on the day of the scheduled buy-bust operation, they "stationed [themselves] strategically at an area near the waiting shed where [they] usually [saw] the two drug personalities waiting for their customers." These statements convey that accused-appellants were confirmed by surveillance to have been habitually engaged in the sale of illegal drugs. However, if this were true, then it is curious why only one (1) sachet of *shabu* was recovered from accused-appellants during the buy-bust operation.

The prosecution would have the courts believe that accused-appellants travelled from their hometown in Mangaldan to sell their illegal merchandise in Bonuan, which is a good 10.7-kilometer distance or a 20-minute car ride away,[32] to sell only one (1) sachet of *shabu* worth ₱500.00 and weighing only 0.17 gram to the first customer who will approach them. While it may be asserted that this fact alone is not beyond ordinary human experience, it gains significance in light of PO2 Cadawan's palpable omission to testify on the illegal activities committed by accused-appellants and their *modus operandi,* as supposedly ascertained by undocumented surveillance operations. The facts, taken together, raise doubt on whether accused-appellants were indeed drug pushers, and whether they actually sold illegal drugs in the purported buy-bust operation.

The prosecution is not entitled to the saving mechanism of Section 21 of the IRR of R.A. No. 9165

Even granting that the buy-bust was a legitimate police operation, the Court also finds that the prosecution failed to show justifiable grounds for noncompliance with Section 21(a)

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[32] https://www.google.com/search?q=distance+from+mangaldan+to+bonuan+pangasinan&rlz=1C1GCEU_enPH874PH874&oq=distance+from+mangaldan+to+bonuan+pangasinan&aqs=chrome..69i57.9807j1j7&sourceid=chrome&ie=UTF-8.

of the IRR of R.A. No. 9165, and that there is a substantial gap in the chain of custody of the seized item that puts into question its integrity and evidentiary value.

The statutory requirements to establish chain of custody are reflected in Section 21 of R.A. No. 9165 which provides, among others, that "the apprehending team shall immediately after seizure and confiscation physically inventory and photograph the seized item in the presence of the accused or the person from whom such 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 thereof."[33] The Court had explained that the presence of the latter three witnesses serves to guard against switching, "planting" or contamination of the evidence.[34]

However, as it is a fact that field conditions vary and strict compliance with the rule may not always be possible, Section 21 of the IRR of R.A. No. 9165 provides a saving clause. It states that noncompliance with the requirements of Section 21 will not automatically render void and invalid the seizure and custody over the seized items, so long as: 1) there are justifiable grounds therefor, and 2) the integrity and evidentiary value of the seized items are properly peserved by the apprehending officer or team. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized illegal drugs.[35]

Here, the inventory and taking of photographs of the seized illegal drug were witnessed by accused-appellants and *Barangay*

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[33] It bears emphasis that R.A. No. 10640, which took effect on July 23, 2014, amended Section 21 of R.A. No. 9165 by requiring only 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; <u>and</u> (b) either a representative from the National Prosecution Service <u>or</u> the media. As the crime in this case was committed on January 5, 2012, the original version of Section 21 is applicable.

[34] *People v. Sood,* G.R. No. 227394, June 6, 2018, 865 SCRA 368, 389.

[35] *Id.* at 390.

Kagawad Ayson. However, there were no representatives from the media and the DOJ present at the time. Since this is a deviation from the requirements of Section 21, it is incumbent upon the prosecution to provide justifiable reasons in order for the saving clause to apply.[36] Unfortunately, the prosecution failed to recognize its procedural lapse and provided no such explanation whatsoever other than that the police officers "cannot avail" of the presence of the required witnesses. On this point, PO2 Cadawan testified as follows:

Q. I am showing to you a Receipt/Inventory of Seized/ Confiscated Items, what is the relation of this document with the confiscation receipt that you mentioned?
A. I was the one who personally prepared this, ma'am.

Q. At the left lower portion of this document is a signature above the printed name Segundino Ayson, Jr. the *Barangay Kagawad*, Bonuan-Gueset, whose signature is this?
A. It's *Kagawad* Ayson, *(sic)* sir.

Q. Why do you say so?
A. I was present and my fellow PO Coroña was also present at that time when he signed that document, ma'am.

Q. I do not see any representative from the Media as well as any representative of the DOJ in this Inventory Receipt, why is that so?
A. Because we cannot avail of any member of the Media and any representative from the City Prosecutor's Office, ma'am.[37]

they had reasonable time to do so from the moment they received information about the activities of accused-appellants until the time of arrest. In *People v. De Guzman,*[38] We held that the justifiable grounds for noncompliance with Section 21 must be proven as a fact because the Court cannot presume what these grounds are or that they even exist. Moreover, in *People v. Umipang*,[39] We emphasized that it is the prosecution which

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[36] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[37] TSN, March 20, 2013, p. 11.

[38] 630 Phil. 637 (2010).

[39] 686 Phil. 1024 (2012).

has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. No. 9165.[40] 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.[41] Consequently, for failure of the prosecution to provide justifiable grounds to excuse the absence of the representatives from the media and the DOJ, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from accused-appellants have been compromised.[42]

Unfortunately, not only did the prosecution fail to provide justifiable reasons for the absence of the required witnesses during the inventory and taking of photographs of the evidence, it also failed to show that the integrity and evidentiary value of the seized item were properly preserved.

In *People v. Plaza*,[43] We restated the links that the prosecution must prove to establish chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

In this case, PO2 Cadawan testified that he marked the seized item with the date and his initials at the site of the buy-bust operation.[44] Hence, the first link was adequately demonstrated.

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[40] *Id.* at 1052-1053.

[41] *People v. Crispo,* G.R. No. 230065, March 14, 2018, 859 SCRA 356, 376.

[42] *Id.* at 377.

[43] G.R. No. 235467, August 20, 2018.

[44] TSN, March 20, 2013, pp. 6-7.

With respect to the second and third links, there is no evidence of the presence of an investigator in the case. In *People v. Dahil (Dahil),*[45] We held that as regards the second link, the usual procedure is that the police officer who seizes the suspected illegal drug turns it over to a supervising officer who will then send it to the police crime laboratory for testing. This is a necessary step in the chain of custody as it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case.[46]

In this case, records bear that it was PO2 Cadawan who took charge of the seized item from the time of seizure until its delivery to the crime laboratory for examination. After accused-appellants were arrested and inventory and taking of photographs were conducted at the police community precinct, PO2 Cadawan placed the seized item in an envelope and brought it to the Provincial Intelligence Office. There, PI Centeno prepared the request for crime laboratory examination. PO2 Cadawan brought the request and the seized item to the crime laboratory and endorsed the seized item to PSI Malojo-Todeño.[47]

To be able to faithfully comply with the chain of custody rule laid down in *Dahil*, PO2 Cadawan, as apprehending officer, should have endorsed the seized item to the investigating officer, who shall then turn it over to the crime laboratory. As it happened, the police officers followed a different procedure. Nonetheless, We hold that there was substantial compliance with the chain of custody procedure with respect to the second and third links. The prosecution was able to record the movement of the seized item at each stage, from the time of seizure to its receipt by the forensic laboratory. The identities of the persons who held the seized item in custody were established, as well as the date and time when transfer of custody was made.

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[45] 750 Phil. 212 (2015).

[46] *Id.* at 235.

[47] TSN, March 20, 2013, pp. 7-9.

It is a different matter, however, with respect to the fourth link, which involves the submission of the seized illegal drug by the forensic chemist to the court.

Here, PSI Malojo-Todeño, the Forensic Chemist, testified that she personally received the seized item from PO2 Cadawan.[48] Thereafter, she conducted a qualitative examination on the specimen and indicated her findings in two reports, the Initial and the Final (or Chemistry) Report.[49] After examination, she sealed the improvised envelope containing the illegal drug, marked it with her initials and the current date, and turned it over to the evidence custodian, PO2 Manuel,[50] for safekeeping. PO2 Manuel purportedly kept the illegal drug in the evidence room until PSI Malojo-Todeño retrieved it from him on the day she was to testify in court.[51]

The prosecution would have completed its proof of compliance with the chain of custody procedure through the convincing and straightforward testimony of PSI Malojo-Todeño, were it not for the fact that her statement with regard to the safekeeping of the illegal drug by PO2 Manuel remained unsubstantiated. Other than PSI Malojo-Todeño's bare allegations, the prosecution failed to present clear and convincing proof that PO2 Manuel took responsibility over the illegal drug.

As a method of authenticating evidence, the chain of custody rule requires that the admission of the 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 thus 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 same would admit how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which

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[48] TSN, January 9, 2013, p. 8.

[49] *Id.* at 4.

[50] No first name in the *rollo,* CA *rollo* or records.

[51] TSN, January 9, 2013, pp. 6-7.

it was received and the condition in which it was delivered to the next link in the chain. The same 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. 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.[52]

The prosecution's failure to present evidence showing the manner in which the illegal drug subject of this case was handled, stored and safeguarded by PO2 Manuel pending its presentation in court is fatal to its case. In *People v. Obmiranis,*[53] We acquitted the appellant due to the failure of the key persons who handled the dangerous drug to testify on the whereabouts of the exhibit before it was offered as evidence in court. This failure casts doubt on the identity of the *corpus delicti* and negates the presumption of regularity in the performance of official functions.[54]

In sum, the prosecution is not entitled to the saving mechanism of Section 21 of the IRR of R.A. No. 9165. Not only did it fail to provide any justifiable reason for the absence of the required witnesses during the inventory and taking of photographs of the illegal drug, it also miserably failed to prove that the integrity and evidentiary value of the seized item were preserved. The fourth link required to establish the proper chain of custody was thus breached with irregularity.

Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized illegal drug that the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused-appellants.[55]

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[52] *People v. Obmiranis*, *supra* note 2, at 570-571.

[53] *Id.*

[54] *Id.* at 577.

[55] See *People v. Dela Rosa*, 822 Phil. 885, 910 (2017).

WHEREFORE, the appeal is **GRANTED**. The April 30, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07852 is **REVERSED and SET ASIDE**. Accused-appellants Dante Casilang *y* Rino and Silverio Vergara *y* Cortez are **ACQUITTED** of the crime charged against them and **ORDERED** immediately released from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and inform the Court within five (5) days from its receipt the date of the actual release from confinement of accused-appellants.

SO ORDERED.

Leonen (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

SECOND DIVISION

[G.R. No. 244721. February 5, 2020]

JOLLY D. TEODORO, *petitioner*, *vs.* **TEEKAY SHIPPING PHILIPPINES, INC.,** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SEAFARER; DISABILITY BENEFITS; THE EMPLOYER HAS THE BURDEN TO DISPROVE THE WORK-RELATEDNESS, FAILING WHICH, THE DISPUTABLE PRESUMPTION THAT THE INJURY OR ILLNESS THAT RESULTS IN THE DISABILITY IS WORK-RELATED STANDS. — Under Section 20 (A) of the 2010 POEA-SEC, the employer shall be liable for disability benefits only when the seafarer

suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." Here, while petitioner's diagnosed condition is not among the listed occupational diseases under Section 32-A of the 2010 POEA-SEC, Section 20 (A) (4) nonetheless states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Thus, the burden is on the employer to disprove the work-relatedness, failing which, the disputable presumption that a particular injury or illness that results in disability is work-related stands. Unfortunately, the said presumption was not overturned by TSPI. Moreover, the Grade 7 disability rating assessment by the company-designated physician negates any claim that the non-listed illness is not work-related.

2. ID.; ID.; ID.; ID.; IMPORTANCE OF THE COMPANY-DESIGNATED PHYSICIAN'S DEFINITIVE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR DEGREE OF DISABILITY WITHIN THE PRESCRIBED PERIODS, EXPLAINED. — [T]he 2010 POEA-SEC imposes upon the company-designated physician the responsibility to arrive at a **definite assessment** of the seafarer's fitness to work or degree of disability within a period of 120 days from repatriation. During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods, and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.

3. ID.; ID.; ID.; ID.; WHERE THE COMPANY-DESIGNATED PHYSICIAN ALREADY MADE A MEDICAL REPORT DECLARING THAT PETITIONER HAS "REACHED HIS MAXIMUM MEDICAL IMPROVEMENT" AND RENDERING HIM "UNFIT FOR FURTHER SEA DUTIES," HE COULD NOT BE CONTENDED TO HAVE ABANDONED HIS MEDICAL TREATMENT NOTWITSTANDING HIS FAILURE TO APPEAR FOR HIS SCHEDULED CHECK UP AFTER THAT REPORT WAS MADE. — [A]s correctly pointed out by the CA, there was no medical abandonment on the part of petitioner given that the company-designated physician, in the confidential medical report dated November 3, 2015, had already declared the former to have *"already reached his maximum medical improvement*[,]*"* thus, indicating his treatment through curative means to have already ended and that the subsequent check-ups were for the improvement of his physical appearance by means of fitting a scleral shell prosthesis. The said medical report also recommended a Grade 7 disability rating based on the specialist's finding that petitioner's visual prognosis and recovery were poor due to *"permanent loss of vision in one eye despite intravenous antibiotic and steroids as well as oral medications given*[,]*"* thus rendering him *"unfit for further sea duties."* Considering that: (1) in the November 3, 2015 medical report, which was issued within the 120-day treatment period, the company-designated physician already gave petitioner a partial and permanent disability rating of Grade 7, *i.e.,* loss of vision or total blindness in one eye, and declared him to have already reached his maximum medical improvement, rendering him unfit for further sea duties; and (2) during petitioner's subsequent check-ups on November 24 and 25, 2015, respectively, the company-designated physician did not find any significant improvement in his condition, it is evident that there was no need for further medical treatment and he cannot be faulted for his failure to appear on his scheduled check-up session on December 15, 2015 nor can such be construed as abandonment. Besides, his attending specialist at Medical City likewise confirmed the permanent loss of vision in petitioner's left eye.

4. ID.; ID.; ID.; ID.; CONSIDERING THAT PETITIONER WAS DECLARED TO BE UNFIT FOR FURTHER SEA DUTIES DUE TO PERMANENT LOSS OF VISION IN HIS LEFT EYE, HIS DISABILITY IS TOTAL AND PERMANENT; IT IS NOT THE INJURY WHICH IS COMPENSATED,

BUT THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY; TOTAL DISABILITY, DEFINED. — [S]ince petitioner was declared by no less than his attending specialist to be unfit for further sea service due to permanent loss of vision in his left eye, the Court finds his resulting disability to be not only partial and permanent as ruled by the CA, but rather total and permanent as correctly found by the PVA. It is well to point out that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. **Total disability** refers to an employee's **inability to perform his or her usual work.** It does not require total paralysis or complete helplessness. **Permanent disability,** on the other hand, is a worker's **inability to perform his job for more than 120 days or 240 days,** if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.

5. ID.; ID.; ID.; ID.; INSTANCES WHEN A SEAFARER MAY BE ENTITLED TO 100% DISABILITY COMPENSATION, CITED; SINCE PETITIONER IS ASSESSED BELOW 50% DISABILITY AND FURTHER CERTIFIED AS UNFIT FOR SEA DUTIES, HE IS ENTITLED TO 100% DISABILITY COMPENSATION; PETITIONER IS ALSO ENTITLED TO ATTORNEY'S FEES. — [T]here are three (3) instances when a seafarer may be entitled to 100% disability compensation, namely: (1) when the seafarer is declared to have suffered 100% disability, (2) when the seafarer is assessed with disability of at least 50%; and (3) **when the seafarer is assessed at below 50% disability, but he or she is certified as permanently unfit for sea service.** Here, since petitioner was assessed a Grade 7 disability rating by the company-designated physician, which under the CBA Degree of Disability Rate for Ratings to which he belongs is equivalent to 37.244 or below the 50% disability, and further declared to be unfit for further sea duties as found by the PVA and reflected in the confidential medical report dated November 3, 2015, the CA erred in awarding partial and permanent disability only. Accordingly, petitioner is entitled to 100% disability compensation or in the total amount of US$89,100.00 as provided under the CBA. x x x Considering that petitioner was clearly compelled to litigate to enforce what was rightfully due him under the CBA, the award of ten percent

(10%) attorney's fees by the PVA was proper, and as such, must be reinstated. Finally, in line with prevailing jurisprudence, all monetary awards due petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Capuyan & Quimpo Law Office for petitioner.
Esguerra & Blanco 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 August 24, 2018 and the Resolution[3] dated February 8, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153637 which affirmed with modifications the Decision[4] dated August 16, 2017 of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board (NCMB), Department of Labor and Employment (DOLE), granting petitioner Jolly D. Teodoro (petitioner) partial and permanent disability benefits only and deleted the award of attorney's fees.

The Facts

On February 17, 2015, petitioner was hired as Chief Cook by respondent Teekay Shipping Philippines, Inc. (TSPI), for its principal, Teekay Shipping Limited (TSL), on board the

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[1] *Rollo*, pp. 14-27.

[2] *Id.* at 29-41. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a member of this Court), concurring.

[3] *Id.* at 44-45. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Ricardo R. Rosario and Carmelita Salandanan Manahan, concurring.

[4] *Id.* at 195-205. Signed by Chairperson MVA Jesus S. Silo and Panel Member MVA Gregorio C. Biares, Jr., with Panel Member MVA Gregorio B. Sialsa, dissenting.

vessel M.T. Al Marrouna for a period of eight (8) months, with such being covered by a Contract of Employment[5] and a Collective Bargaining Agreement[6] (CBA) between TSPI, on behalf of TSL, and the Philippine Seafarers' Union (PSU)-ALU TUCP.[7] After undergoing the required pre-employment medical examination, petitioner was declared fit for duty[8] by the company-designated physician notwithstanding the former's declaration of Dyslipidemia and diabetes mellitus. For this reason, petitioner was made to sign an Affidavit of Undertaking[9] relative to his health condition before boarding the vessel on March 14, 2015.[10]

On June 30, 2015, the ship arrived at the port of Fujairah, United Arab Emirates, to get its food supplies. Petitioner claimed that aside from preparing meals for the officers and crew, he also assisted in hauling the food provisions from the upper deck of the ship to its reefer where the food items were frozen and stored at the meat and fish rooms, respectively. Because of the sudden extreme changes in temperature from the upper deck to the freezer during the hauling and storage process, petitioner experienced a fever-like symptom with body pain and blindness in his left eye the following day.[11] He was brought to a hospital in India where he was diagnosed with "Left Eye Endophthalmitis with Orbital Cellulitis;" subsequently, he was repatriated on July 10, 2015 for further medical treatment.[12]

Upon arrival in Manila, petitioner was referred to a company-designated physician at the Ship to Shore Medical Assist and

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[5] CA *rollo*, p. 96.

[6] See *id.* at 136-141.

[7] See *rollo*, p. 63.

[8] See Medical Examination Report dated January 6, 2015; CA *rollo*, pp. 97-98.

[9] See *rollo*, pp. 127-129.

[10] See *id.* at 70.

[11] See *id.* at 71-72.

[12] See CA *rollo*, p. 92.

his condition was confirmed.[13] He was admitted at Medical City where he was given intravenous antibiotics and subjected to visual acuity testing, orbital CT scan and B scan ultrasound, and other laboratory examinations to monitor his eye ailment.[14] He was found to have "Idiopathic Orbital Inflammatory Disease, Left Eye; Retinal Detachment, Left Eye; Panuveitis, Left Eye; Dacryoadenitis, Left Eye," and thereafter, referred to the Marine Medical Services for further evaluation and treatment.[15]

In a Medical Report[16] dated November 3, 2015, the company-designated physician explicated that petitioner's eye condition may have been triggered by his diabetes mellitus which, in addition to lack of sleep or inadequate rest, impaired his immune system, thus, making his body susceptible to infections. Hence, it was not work-related. Moreover, petitioner's visual prognosis and recovery were found to be poor due to the permanent loss of vision in one eye despite medications, and as such, he was declared to be unfit for further sea duties.[17] He was also advised to wear polycarbonate glasses to avoid further infection and was recommended to be fitted with scleral shell prosthesis to support his left eye, which, however was temporarily deferred. For this reason, the company-designated physician declared petitioner to have already reached his maximum medical improvement and suggested a disability rating of Grade 7 or total loss of vision in one eye.[18] Notwithstanding, petitioner returned for re-evaluation on November 24 and 25, 2015, wherein no noticeable changes in his condition have been observed.[19]

Considering that there was permanent loss of vision in his left eye resulting in his unfitness to work as declared by his

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[13] See letter dated July 14, 2015; *id.* at 99-100.

[14] See Discharge Summary/Clinical Abstract; *id.* at 102.

[15] See *id.* at 92.

[16] *Id.* at 94-95.

[17] See *id.* at 94.

[18] See *id.* at 95.

[19] See *id.* at 115-116.

attending specialist,[20] and since he was no longer advised by TSPI to return for further consultations in view of the company's alleged policy on a 130-day limit liability only,[21] petitioner demanded[22] from TSPI the payment of disability benefits pursuant to the CBA, which the latter refused. This prompted petitioner to raise his grievance before the Philippine Seafarers' Union, which likewise resulted in a deadlock.[23] Consequently, petitioner filed a complaint for disability benefits against TSPI, its President Alex N. Verchez (Verchez), and its foreign principal, TSL, with the NCMB, DOLE, docketed as MVA-028-RCMB-NCR-160-12-08-2016.[24]

In its defense, TSPI asserted that petitioner did not suffer from a work-related illness, claiming that his eye condition was highly attributed to his pre-existing diabetes mellitus and that it was also aggravated by his own failure to take his prescribed medications.[25] It denied that petitioner's illness was brought about by the working conditions on board the vessel, contending that the ship was seaworthy at all times and conducive to work, and that petitioner was well aware of the safety items installed in his work area.[26] It also argued that petitioner breached his duties under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) when he abandoned his treatment by not showing up for his scheduled re-evaluation on December 15, 2015 and effectively preventing the company-designated physician from arriving at a proper disability grading as required by law. Lastly, it denied the other monetary claims for lack of factual and legal bases.[27]

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[20] See Medical Certificate dated November 23, 2015; *id.* at 142-143.

[21] See *rollo*, p. 118.

[22] See letter dated December 16, 2015; CA *rollo*, pp. 369-370.

[23] See *id.* at 144.

[24] See Submission Agreement dated August 10, 2016; *rollo*, p. 194.

[25] See *id.* at 98-101.

[26] See *id.* at 138.

[27] *Id.* at 144-152.

The PVA Ruling

In a Decision[28] dated August 16, 2017, the PVA ruled in favor of petitioner, ordering TSPI, Verchez, and TSL to jointly and severally pay him US$89,100.00 representing total and permanent disability benefits, as well as ten percent (10%) attorney's fees.[29]

In so ruling, the PVA held that petitioner's eye condition was not caused by or associated with his diabetes mellitus, and that he did not abandon his treatment. On the contrary, the PVA held that TSPI was negligent in failing to provide a safe place to work and appropriate equipment to their workers to avoid all kinds of dangers and illnesses. On this score, it was pointed out that TSPI's personnel were exposed to extreme temperatures without the proper protective clothing, thus, creating a more dangerous work environment that resulted to petitioner's permanent blindness in the left eye and his incapacity to resume the same line of work. Consequently, even if petitioner suffered blindness in only one eye, the CBA deems his disability as total and permanent, entitling him to US$89,100.00. The PVA also awarded ten percent (10%) attorney's fees since petitioner was compelled to litigate to protect his rights and interest. All other claims were dismissed for lack of merit.[30]

Aggrieved, TSPI moved for reconsideration,[31] which the PVA denied in a Resolution[32] dated October 25, 2017. Hence, the matter was elevated to the CA *via* a petition for review[33] pursuant to Rule 43 of the Rules of Court.

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[28] *Id.* at 195-205.

[29] *Id.* at 204.

[30] See *id.* at 196-204.

[31] See motion for reconsideration dated October 6, 2017; *id.* at 228-250.

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

[33] Dated November 27, 2017. *Id.* at 253-281.

The CA Ruling

In the assailed Decision[34] dated August 24, 2018, the CA partly granted TSPI's petition declaring petitioner entitled to partial and permanent disability benefits only, or Grade 7 disability as assessed by the company-designated physician, and deleted the award of attorney's fees.[35] While the CA sustained the finding that there was no medical abandonment given that no further medical treatment can be done to save petitioner's left eye except the improvement of his physical appearance, and that TSPI failed to disprove the presumption of work-relatedness of petitioner's illness, it nonetheless held that the loss of vision in one eye is equivalent to Grade 7 disability only under the POEA-SEC. The CA also found no basis in awarding petitioner attorney's fees, holding that there was no bad faith or malice on the part of TSPI.[36]

Petitioner's motion for reconsideration[37] was denied in a Resolution[38] dated February 8, 2019; hence, the present petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in awarding petitioner partial and permanent disability benefits only and in deleting the award of attorney's fees.

The Court's Ruling

The petition is granted.

Preliminarily, petitioner argues that the CA should not have entertained TSPI's appeal before it since: (1) the PVA decision had already become final and executory considering the lapse of the ten (10)-day period from receipt of the copy of the award

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[34] *Id.* at 29-41.

[35] See *id.* at 40.

[36] See *id.* at 33-40.

[37] Dated September 20, 2018. *Id.* at 282-287.

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

or decision by the parties; and (2) in any event, the petition was not timely filed because it was not sent to his counsel of record. However, records show that petitioner never advanced these issues before the CA despite receipt of TSPI's Manifestation[39] explicating that the petition was inadvertently served to a different counsel and that the same was immediately rectified by sending a copy of the same to petitioner's counsel of record by personal service. In fact, petitioner did not submit[40] any comment to the petition notwithstanding receipt[41] of the CA's directive to do so, nor raised the issues in his motion for reconsideration.[42] Having failed to bring up the matter before the CA, the latter cannot be faulted in giving due course to the petition.

This notwithstanding, the Court nonetheless finds that the CA erred in modifying the PVA Decision when it held that petitioner is entitled only to partial and permanent disability benefits and in deleting the award of attorney's fees.

It is doctrinal that the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but by law and contract. The pertinent statutory provisions are Articles 197 to 199[43] of the Labor Code in relation to Section 2 (a), Rule X of the Rules implementing Title II, Book IV of the said Code, while the relevant contracts are the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; the parties' CBA, if any; and the employment agreement between the seafarer and his employer.

In this case, petitioner entered into a contract of employment with TSPI in accordance with the 2010 POEA-SEC which, as

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[39] Dated December 8, 2017; CA *rollo*, pp. 828-829.

[40] See Notice of Resolution in CA-G.R. SP No. 153637 dated July 20, 2018; *id.* at 512.

[41] See Notice of Resolution in CA-G.R. SP No. 153637 dated January 11, 2018; *id.* at 510.

[42] Dated September 20, 2018. *Id.* at 822-827.

[43] Formerly Articles 191 to 193 of the Labor Code.

borne from the records, was covered by an overriding IBF-PSU TCC Agreement[44] (CBA) that was effective from February 20, 2014 to February 19, 2016. During the course of his employment and while in the performance of his duties on board the vessel M.T. Al Marrouna, petitioner complained of sudden blindness in his left eye, among others. He was later diagnosed to have Left Eye Endophthalmitis with Orbital Cellulitis that caused his repatriation on July 10, 2015, or during the effectivity of the CBA, and resulted to permanent loss of vision in one eye which rendered him unfit for further sea duties.

Under Section 20 (A) of the 2010 POEA-SEC, the employer shall be liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." Here, while petitioner's diagnosed condition is not among the listed occupational diseases under Section 32-A of the 2010 POEA-SEC, Section 20 (A) (4) nonetheless states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Thus, the burden is on the employer to disprove the work-relatedness, failing which, the disputable presumption that a particular injury or illness that results in disability is work-related stands. Unfortunately, the said presumption was not overturned by TSPI. Moreover, the Grade 7 disability rating assessment by the company-designated physician negates any claim that the non-listed illness is not work-related.[45]

Accordingly, having suffered a work-related illness in the course of his last employment contract, the 2010 POEA-SEC imposes upon the company-designated physician the responsibility to arrive at a **definite assessment** of the seafarer's fitness to work or degree of disability within a period of 120 days from

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[44] CA *rollo*, pp. 136-141.

[45] See *Heirs of Licuanan v. Singa Ship Management, Inc.*, G.R. Nos. 238261 & 238567, June 26, 2019.

repatriation.[46] During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[47] Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods, and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.[48]

In the case at bar, TSPI contended that petitioner abandoned his medical treatment when he failed to return for his scheduled follow-up check-up on December 15, 2015 that effectively prevented the company-designated physician from arriving at a definite assessment, which is in breach of his obligation under the POEA-SEC. However, as correctly pointed out by the CA, there was no medical abandonment on the part of petitioner given that the company-designated physician, in the confidential medical report dated November 3, 2015, had already declared the former to have "*already reached his maximum medical improvement*[,]"[49] thus, indicating his treatment through curative means to have already ended and that the subsequent check-ups were for the improvement of his physical appearance by means of fitting a scleral shell prosthesis. The said medical

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[46] See Section 20 (A) (3) of the 2010 POEA-SEC.

[47] See *Deocariza v. Fleet Management Services Philippines, Inc.*, G.R. No. 229955, July 23, 2018.

[48] *Ampo-on v. Reiner Pacific International Shipping, Inc.*, G.R. No. 240614, June 10, 2019.

[49] CA *rollo*, p. 95.

report also recommended a Grade 7 disability rating based on the specialist's finding that petitioner's visual prognosis and recovery were poor due to "*permanent loss of vision in one eye despite intravenous antibiotic and steroids as well as oral medications given*[,]" thus rendering him "*unfit for further sea duties.*"[50]

Considering that: (1) in the November 3, 2015 medical report, which was issued within the 120-day treatment period, the company-designated physician already gave petitioner a partial and permanent disability rating of Grade 7, *i.e.*, loss of vision or total blindness in one eye, and declared him to have already reached his maximum medical improvement, rendering him unfit for further sea duties; and (2) during petitioner's subsequent check-ups on November 24 and 25, 2015, respectively, the company-designated physician did not find any significant improvement in his condition, it is evident that there was no need for further medical treatment and he cannot be faulted for his failure to appear on his scheduled check-up session on December 15, 2015 nor can such be construed as abandonment. Besides, his attending specialist at Medical City likewise confirmed the permanent loss of vision in petitioner's left eye.[51]

Notably, while the company-designated physician assessed petitioner only a partial and permanent disability rating of Grade 7 in accordance with the POEA-SEC, the latter was nonetheless also found to be unfit for further sea duties. In *Kestrel Shipping Co., Inc. v. Munar*,[52] the Court held that the POEA-SEC merely provides the minimum acceptable terms in a seafarer's employment contract, and that in the assessment of whether a seafarer's injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation, to wit:

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[50] See *id.* at 94.

[51] See Medical Certificate dated November 23, 2015; *id.* at 142-143.

[52] 702 Phil. 717 (2013).

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would **incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days**, depending on the need for further medical treatment, then he is, **under legal contemplation, totally and permanently disabled**. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. **That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled**.[53] (Emphases and underscoring supplied)

From the foregoing, since petitioner was declared by no less than his attending specialist to be unfit for further sea service due to permanent loss of vision in his left eye, the Court finds his resulting disability to be not only partial and permanent as ruled by the CA, but rather total and permanent as correctly found by the PVA. It is well to point out that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. **Total disability** refers to an employee's **inability to perform his or her usual work**. It does not require total paralysis or complete helplessness. **Permanent disability**, on the other hand, is a worker's **inability to perform his job for more than 120 days or 240 days**, if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[54]

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[53] *Id.* at 730-731.

[54] See *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

Moreover, considering that petitioner's employment contract is covered by a CBA which provides for better benefits, these terms will override the 2010 POEA-SEC provisions on disability compensation in favor of petitioner. This is so because a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer.[55]

Article 31 of the CBA on Compensation for Disability provides:

Section 1. A seafarer who suffers **permanent disability as a result of work[-]related illness** or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's [willful] act, whilst serving on board, including accidents and work[-]related illness occurring while travelling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, **be entitled to compensation according to the provisions of this Agreement**. In determining work[-]related illness, reference shall be made to the Philippine Overseas Employment Administration (POEA) Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels.

Section 2. The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Company and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties.

x x x x x x x x x

Section 4. A seafarer whose disability, in accordance with 25.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation. Furthermore, **any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation**. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.[56] (Emphases supplied)

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[55] See *Centennial Transmarine, Inc. v. Sales*, G.R. No. 196455, July 8, 2019.

[56] CA *rollo*, pp. 140-141.

Based on the above-quoted provisions of the CBA, there are three (3) instances when a seafarer may be entitled to 100% disability compensation, namely: (1) when the seafarer is declared to have suffered 100% disability, (2) when the seafarer is assessed with disability of at least 50%; and (3) **when the seafarer is assessed at below 50% disability, but he or she is certified as permanently unfit for sea service**.

Here, since petitioner was assessed a Grade 7 disability rating by the company-designated physician, which under the CBA Degree of Disability Rate for Ratings[57] to which he belongs is equivalent to 37.244[58] or below the 50% disability, and further declared to be unfit for further sea duties as found by the PVA and reflected in the confidential medical report dated November 3, 2015, the CA erred in awarding partial and permanent disability only. Accordingly, petitioner is entitled to 100% disability compensation or in the total amount of US$89,100.00 as provided under the CBA.

With respect to the issue of attorney's fees, Article 2208[59] of the New Civil Code provides that the same is granted in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the employer's act or omission has compelled the employee to incur expenses to protect his or her interest, as in this case. Case law further states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled

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[57] See Section 3 of Article 31 of the IBF-PSU-Teekay Fleet Agreement.

[58] See *rollo*, p. 64.

[59] Pertinent portions of Article 2208 of the CIVIL CODE provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

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(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws[.]

to an award of attorney's fees equivalent to [ten percent] (10%) of the award."[60] Considering that petitioner was clearly compelled to litigate to enforce what was rightfully due him under the CBA, the award of ten percent (10%) attorney's fees by the PVA was proper, and as such, must be reinstated.[61] Finally, in line with prevailing jurisprudence, all monetary awards due petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.[62]

WHEREFORE, the petition is **GRANTED**. The Decision dated August 24, 2018 and the Resolution dated February 8, 2019 of the Court of Appeals in CA-G.R. SP No. 153637 are hereby **AFFIRMED** with **MODIFICATION**, entitling petitioner Jolly D. Teodoro to full disability benefits in the amount of US$89,100.00 at the prevailing rate of exchange at the time of payment, as well as attorney's fees equivalent to ten percent (10%) of the total monetary award. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

Reyes, A. Jr., Carandang,[*] *Inting,* and *Delos Santos, JJ.*, concur.

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[60] *Deocariza v. Fleet Management Services Philippines, Inc., supra* note 47; citing *Atienza v. Orophil Shipping International Co., Inc.*, 815 Phil. 480, 508 (2017).

[61] *Horlardor v. Philippine Transmarine Carriers, Inc.*, G.R. No. 236576, September 5, 2018.

[62] See *Pelagio v. Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[*] Designated Additional Member per Raffle dated February 3, 2020.

SECOND DIVISION

[G.R. No. 245258. February 5, 2020]

METRO PSYCHIATRY, INC., *petitioner*, *vs.* **BERNIE J. LLORENTE,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT ARE NOT REVIEWABLE AND CANNOT BE PASSED UPON BY THE COURT IN THE EXERCISE OF ITS POWER TO REVIEW UNDER RULE 45 OF THE RULES OF COURT; EXCEPTIONS; THE COURT IS CONSTRAINED TO RE-EXAMINE THE FACTS AND EVIDENCE ON RECORD WHERE THE FACTUAL FINDINGS AND CONCLUSION OF THE LABOR TRIBUNALS ARE DIAMETRICALLY OPPOSED WITH THOSE OF THE COURT OF APPEALS. —** "As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45." Nevertheless, this rule admits of certain exceptions, such as: 1. when the findings are grounded entirely on speculations, surmises or conjectures; 2. When the inference made is manifestly mistaken, absurd or impossible; 3. When there is grave abuse of discretion; 4. When the judgment is based on a misapprehension of facts; 5. When the findings of fact are conflicting; 6. When in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. When the findings are conclusions without citation of specific evidence on which they are based; 9. When the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. When the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. The present case falls under one of the exceptions since the factual findings

and conclusion of the labor tribunals are diametrically opposed with those of the CA. Hence, the Court is constrained to re-examine the facts and evidence on record.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AS OPPOSED TO THE PROOF BEYOND REASONABLE DOUBT STANDARD OF EVIDENCE REQUIRED IN CRIMINAL CASES, LABOR SUITS REQUIRE ONLY SUBSTANTIAL EVIDENCE TO PROVE THE VALIDITY OF THE DISMISSAL, AND THE STANDARD OF SUBSTANTIAL EVIDENCE IS SATISFIED WHERE THE EMPLOYER HAS REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT, AND HIS PARTICIPATION THEREIN RENDERS HIM UNWORTHY OF THE TRUST AND CONFIDENCE DEMANDED BY HIS POSITION. —** It appears that the CA overlooked that "the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence," which is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." In the present case, aside from the CCTV footage where Llorente was seen copying from the records and pocketing the paper where he wrote the information, Nurses Dumalanta and Manawat submitted their written statements avowing that they recognized Llorente's voice on the speaker phone as the latter talked to Tan's mother. It was not shown that Nurses Dumalanta and Manawat were impelled by ill-motive to give their statements against Llorente. Besides, the CCTV footage where Llorente was seen acting in a suspicious manner was recorded on March 17, 2016 - the same day that Tan's mother received the message about her son. These circumstances constitute substantial evidence of Llorente's wrongdoing. x x x. While the CA entertained doubts as to the identity of the person who contacted Tan's parents, the Court reiterates that "as opposed to the 'proof beyond reasonable doubt' standard of evidence required in criminal cases, labor suits require only substantial evidence to prove the validity of the dismissal." "The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position." It would be unfair for MPI to continue to engage Llorente as a nursing attendant despite the presence of

substantial evidence of his wrongful act, which amounts to serious misconduct.

3. **ID.; ID.; ID.; MISCONDUCT AS A JUST CAUSE FOR DISMISSAL, REQUISITES; THE ACTUATIONS OF THE NURSING ATTENDANT OF ILLICITLY COPYING A PATIENT'S PERSONAL INFORMATION AND USING IT TO MALIGN AND DESTROY A MEDICAL FACILITY'S REPUTATION IN THE INDUSTRY, ARE INDICATIVE OF HIS WRONGFUL INTENT AND CONSTITUTE SERIOUS MISCONDUCT. —** "Misconduct is defined as the "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For misconduct to be a just cause for dismissal, the following requisites must concur: "(a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent." Llorente's actuations of copying a patient's personal information and using it to malign MPI by relaying a false narrative are indicative of his wrongful intent. His actions comprise serious misconduct because as a nursing attendant, he has access to private and confidential information of MPI's patients, but he did not only illicitly copy the personal information of a patient of MPI, he also used the information to fulfil a deceit purpose. The unauthorized use of a patient's personal information destroys a medical facility's reputation in the industry and in this case, could have even exposed MPI to a lawsuit. Thus, MPI is justified in terminating the employment of Llorente.

4. **ID.; ID.; ID.; DISMISSAL ON GROUND OF WILLFUL DISOBEDIENCE OR INSUBORDINATION, REQUISITES TO BE VALID; THE REFUSAL OF THE EMPLOYEE TO HEED THE DIRECTIVES OF HIS SUPERIOR, BY ITSELF, IS INSUFFICIENT TO WARRANT HIS TERMINATION FROM EMPLOYMENT. —** Concerning the charge of willful disobedience or insubordination, Llorente's refusal to heed the directives of the nursing attendant head, by itself, is insufficient to warrant his termination from employment. For dismissal to be valid under this ground, the following must be present: (a) there must be disobedience or insubordination; (b) the disobedience or insubordination must be willful or

intentional characterized by a wrongful or perverse attitude; (c) the order violated must be reasonable, lawful, and made known to the employee; and (d) the order must pertain to the duties which he has been engaged to discharge.

5. **ID.; ID.; ID.; RESPONDENT'S TERMINATION FROM EMPLOYMENT FOR SERIOUS MISCONDUCT, AFFIRMED.** — Here, it cannot be said that the penalty of dismissal is commensurate to Llorente's act of disobedience. However, viewed with the charge of serious misconduct, termination is justified under the circumstances. The records of the case are also replete with evidence of Llorente's past infractions, which the Court deemed no longer necessary to discuss, as these were not included by MPI in the Memorandum and the Notice of Termination served to Llorente. Nonetheless, these are indicative of Llorente's unbecoming behavior at work and wanton disregard of his employment with MPI.

APPEARANCES OF COUNSEL

Magsalin Magsalin & Associates for petitioner.
Rodel P. Acorda for respondent.

D E C I S I O N

REYES, A. JR., *J.*:

This is a Petition for Review on *Certiorari*[1] filed by petitioner Metro Psychiatry, Inc. (MPI) assailing the Decision[2] dated October 16, 2018 and the Resolution[3] dated February 12, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153723, which reversed the Decision[4] dated August 23, 2017 of the National

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[1] *Rollo*, pp. 3-23.

[2] Penned by Associate Justice Stephen C. Cruz with Associate Justices Zenaida T. Galapate-Laguilles and Geraldine C. Fiel-Macaraig, concurring; *id.* at 31-45.

[3] *Id.* at 47-48.

[4] Penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring; *id.* at 334-360.

Labor Relations Commission (NLRC) and Decision[5] dated April 28, 2017 of the Labor Arbiter (LA).

The Antecedent Facts

The respondent, Bernie Llorente (Llorente), was hired in November 2007 as a nursing attendant at MPI, a domestic corporation engaged in full service psychiatric care and rehabilitation services of its patients.[6]

On June 22, 2016, Llorente was served with a Memorandum[7] by MPI requiring him to explain why no disciplinary action should be taken against him for continuously refusing to perform certain tasks assigned to him by his immediate supervisor. In his Explanation Letter, (in Filipino), Llorente bewailed how he was being treated by MPI.[8]

On July 9, 2016, MPI served Llorente with another Memorandum,[9] this time, for:

a. for falsely reporting to the parents of one patient that the latter was being maltreated in the hospital; and

b. for failing to comply with the assistant nursing attendant head's instruction to clean the facility and to attend endorsement meetings.[10]

Per the Memorandum,[11] the mother of a patient named David Warren Tan (Tan) appeared at MPI's facility on March 17, 2016, demanding to see her son because earlier that day, she received a text message from someone who claimed to be a former staff of MPI, stating that Tan was being subjected to physical assault by the members of the clinic staff. However,

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[5] Penned by Labor Arbiter Reynante L. San Gaspar; *id.* at 253-273.

[6] *Id.* at 3.

[7] *Id.* at 109.

[8] *Id.* at 111-113.

[9] *Id.* at 114-115.

[10] *Id.*

[11] *Id.* at 114.

upon checking Tan, no sign of physical injury was found on him. Consequently, Tan's mother called the informant *via* speaker phone, and as she did, Nurse Garry Dumalanta and Nurse John Paul Manawat (Nurses Dumalanta and Manawat) recognized Llorente's voice on the other end. When the management reviewed the closed circuit television (CCTV) footage on the said date, Llorente was seen flipping through patients' charts and copying information, which he placed inside his pocket. MPI then issued the Memorandum requiring Llorente to explain his side. He was also placed on preventive suspension.[12]

Through an Explanation Letter (in Filipino)[13] dated July 9, 2016, Llorente denied contacting Tan's mother and alleged that he was merely copying the vital signs of patients for endorsement. Llorente also claimed that the allegations of him not attending endorsement meetings were untrue. As for his failure to comply with the instruction to clean the facility, he explained that it was not his job to do housekeeping because he is a nursing attendant.[14]

On September 5, 2016, Llorente received a Notice of Termination[15] informing him of his dismissal from employment for loss of trust and confidence and willful disobedience.[16] This prompted Llorente to file a complaint for constructive dismissal against MPI. He posited that because of a previous labor case, MPI subjected him to harassment and discriminatory acts such as: reducing his work days, assigning him to refill water and to clean the facility, and accusing him of calling Tan's parents, among others.[17]

MPI counteracted that Llorente raised immaterial matters in an attempt to absolve himself from his misdeeds.[18] They alleged

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[12] *Id.*

[13] *Id.* at 116-118.

[14] *Id.* at 117.

[15] *Id.* at 119-120.

[16] *Id.* at 119.

[17] *Id.* at 137-138.

[18] *Id.* at 128.

that on February 26, 2010, Llorente was caught sleeping on duty and went on absence without official leave on March 4, 2012.[19] He was also reported to be discourteous and disrespectful to patients. Additionally, he was given notices to explain his tardiness on September 16, 2012 and November 24, 2012.[20] Finally, MPI was compelled to terminate the employment of Llorente for maliciously relaying false information to Tan's relatives.[21]

The Ruling of the LA

On April 28, 2017, the LA rendered a Decision[22] dismissing the complaint, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of merit.

SO ORDERED.[23]

The LA clarified that Llorente did not resign but was actually terminated from employment. Hence, his dismissal was not constructive.[24] The LA found that Llorente's allegations were belied by his own evidence because several employees, other than Llorente, were also assigned to perform tasks such as refilling water and cleaning the facility. Furthermore, the work schedule was distributed among them.[25] Therefore, the LA rejected Llorente's claim of harassment and discrimination.

With regard to Llorente's actual dismissal from work, the LA ruled that there was substantial evidence proving that Llorente maliciously reported the alleged physical abuse to Tan's parents. Also, the LA concluded that Llorente had no valid excuse for

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[19] *Id.* at 80.

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

[21] *Id.* at 81.

[22] *Id.* at 253-273.

[23] *Id.* at 273.

[24] *Id.* at 270.

[25] *Id.*

his disobedience since other nursing attendants perform the duties he refused to do.[26] Thus, the LA upheld Llorente's termination from work.

The Ruling of the NLRC

On August 23, 2017, the NLRC affirmed the LA ruling with modification. In its Decision,[27] NLRC agreed with the LA as regards the validity of Llorente's dismissal. However, the NLRC awarded salary differential, service incentive leave, holiday pay, and pay for additional work days rendered by Llorente based on the evidence that the parties submitted, thus:

> WHEREFORE, premises considered, the instant Appeal is hereby PARTIALLY GRANTED and the assailed Decision by the Labor Arbiter Reynante L. San Gaspar dated 28 April 2017 is hereby MODIFIED in that the respondent METRO PSYCHIATRY, INC. is liable to pay the complainant the following:
>
> a) unpaid salary for six (6) days in the amount of Php2,886.00;
>
> b) service incentive leave in the amount of Php20,817.28;
>
> c) salary differential with double indemnity pursuant to R.A. 6727, as amended by R.A. 8188 in the amount of Php131.20; and, (sic)
>
> d) two holiday pay in the amount of Php962.00.
>
> SO ORDERED.[28]

The Ruling of the CA

The CA, in a Decision[29] dated October 16, 2018, overturned the ruling of the NLRC and the LA, holding that the evidence presented by MPI against Llorente were inadequate to cause his termination from employment. According to the CA, MPI failed to substantiate their claim that it was Llorente who falsely

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[26] *Id.* at 271.

[27] *Id.* at 334-360.

[28] *Id.* at 359-360.

[29] *Id.* at 31-45.

alerted Tan's family about his alleged physical abuse because it relied entirely on the handwritten statements of witnesses, Nurses Dumalanta and Manawat.[30] While the CA found Llorente's actions in the CCTV footage suspicious, the CA concluded that the same was not completely untoward since he is a nursing attendant.[31]

As for Llorente's refusal to obey the orders of his superior, the CA deemed the penalty of termination harsh as he should have been subjected to a simple reprimand only.[32] Accordingly, the CA disposed of the case in this wise:

> WHEREFORE, premises considered, the instant petition is PARTIALLY GRANTED. Accordingly, the assailed Decision and Resolution of the National Labor Relations Commission dated August 23, 2017 and September 29, 2017, respectively, are hereby MODIFIED to include the payment of full backwages and separation pay from the date of dismissal until the finality of the decision plus 10% attorney's fees and the requisite 6% legal interest of the entire judgment award from the finality thereof until full satisfaction.
>
> SO ORDERED.[33]

The petitioner's motion for reconsideration was denied in a Resolution[34] dated February 12, 2019 by the CA.

Issue

Whether the CA erred in holding that Llorente was illegally dismissed from employment, in effect, reversing the findings and conclusion of the LA and the NLRC.

The Ruling of the Court

The petition is meritorious.

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

[31] *Id.* at 41.

[32] *Id.* at 42.

[33] *Id.* at 44.

[34] *Id.* at 47-48.

"As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45."[35] Nevertheless, this rule admits of certain exceptions, such as:

1. when the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[36]

The present case falls under one of the exceptions since the factual findings and conclusion of the labor tribunals are diametrically opposed with those of the CA. Hence, the Court is constrained to re-examine the facts and evidence on record.

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[35] *Gumabon v. Philippine National Bank*, 791 Phil. 101, 116 (2016).

[36] *Reyes v. Global Beer Below Zero, Inc.*, 819 Phil. 483, 494 (2017).

It appears that the CA overlooked that "the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence,"[37] which is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[38]

In the present case, aside from the CCTV footage where Llorente was seen copying from the records and pocketing the paper where he wrote the information, Nurses Dumalanta and Manawat submitted their written statements avowing that they recognized Llorente's voice on the speaker phone as the latter talked to Tan's mother.[39] It was not shown that Nurses Dumalanta and Manawat were impelled by ill-motive to give their statements against Llorente. Besides, the CCTV footage where Llorente was seen acting in a suspicious manner was recorded on March 17, 2016 — the same day that Tan's mother received the message about her son. These circumstances constitute substantial evidence of Llorente's wrongdoing.

Even though Llorente refuted the accusation against him, he never alleged that *copying* information from the records for endorsement is something that is regularly done at MPI by nursing attendants as part of their functions. Worse, he hid the piece of paper where he copied the information inside his pocket. On the other hand, MPI was categorical in stating that no employee is allowed to get hold of a patient's personal information.[40] The CA justified Llorente's act as not completely untoward because as a nursing attendant, Llorente has access to a patient's records at the hospital.[41] However, the CA missed a crucial detail: *having access to a patient's information is different from copying such information and pocketing the same*. Unsurprisingly, the incident involving Tan occurred after

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[37] *PLDT Company, Inc. v. Tiamson*, 511 Phil. 384, 395 (2005).

[38] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 66.

[39] *Rollo*, pp. 105-107.

[40] *Id.* at 114.

[41] *Id.* at 41.

Llorente's questionable act. Coupled with the statements from Nurses Dumalanta and Manawat, Llorente's connection to the incident catapulted from a mere speculation to reasonable certainty.

While the CA entertained doubts as to the identity of the person who contacted Tan's parents, the Court reiterates that "as opposed to the 'proof beyond reasonable doubt' standard of evidence required in criminal cases, labor suits require only substantial evidence to prove the validity of the dismissal."[42] "The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position."[43] It would be unfair for MPI to continue to engage Llorente as a nursing attendant despite the presence of substantial evidence of his wrongful act, which amounts to serious misconduct.

"Misconduct is defined as the 'transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[44] For misconduct to be a just cause for dismissal, the following requisites must concur: "(a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent."[45]

Llorente's actuations of copying a patient's personal information and using it to malign MPI by relaying a false narrative are indicative of his wrongful intent. His actions

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[42] *Paulino v. NLRC*, 687 Phil. 220, 225-226 (2012).

[43] *Ting Trucking/Mary Violaine A. Ting v. Makilan*, 787 Phil. 651, 663 (2016).

[44] *Sy v. Neat, Inc.*, G.R. No. 213748, November 27, 2017, 846 SCRA 612, 633.

[45] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan*, 815 Phil. 425, 436 (2017).

comprise serious misconduct because as a nursing attendant, he has access to private and confidential information of MPI's patients, but he did not only illicitly copy the personal information of a patient of MPI, he also used the information to fulfill a deceitful purpose. The unauthorized use of a patient's personal information destroys a medical facility's reputation in the industry and in this case, could have even exposed MPI to a lawsuit. Thus, MPI is justified in terminating the employment of Llorente.

Concerning the charge of willful disobedience or insubordination, Llorente's refusal to heed the directives of the nursing attendant head, by itself, is insufficient to warrant his termination from employment. For dismissal to be valid under this ground, the following must be present: (a) there must be disobedience or insubordination; (b) the disobedience or insubordination must be willful or intentional characterized by a wrongful or perverse attitude; (c) the order violated must be reasonable, lawful, and made known to the employee; and (d) the order must pertain to the duties which he has been engaged to discharge.[46]

Here, it cannot be said that the penalty of dismissal is commensurate to Llorente's act of disobedience. However, viewed with the charge of serious misconduct, termination is justified under the circumstances. The records of the case are also replete with evidence of Llorente's past infractions, which the Court deemed no longer necessary to discuss, as these were not included by MPI in the Memorandum and the Notice of Termination served to Llorente. Nonetheless, these are indicative of Llorente's unbecoming behavior at work and wanton disregard of his employment with MPI.

WHEREFORE, the Petition is **GRANTED**. The Decision dated October 16, 2018 and Resolution dated February 12, 2019 of the Court of Appeals in CA-G.R. SP No. 153723 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 23,

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[46] Department of Labor and Employment, Department Order No. 147-15, Series of 2015.

2017 of the National Labor and Relations Commission is **REINSTATED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Inting, and *Delos Santos, JJ.*, concur.

Hernando, J., on official leave.

SECOND DIVISION

[A.C. No. 12609. February 10, 2020]

SPOUSES DARITO P. NOCUENCA and LUCILLE B. NOCUENCA, *complainants*, *vs.* **ATTY. ALFREDO T. BENSI**, *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF IN ADMINISTRATIVE CASES AGAINST LAWYERS; MERE ALLEGATION IS NOT EVIDENCE AND IS NOT EQUIVALENT TO PROOF. —** Every person has the right to be presumed innocent until the contrary is proved. Considering the gravity of the consequences of the disbarment or suspension of a lawyer, the Court has consistently ruled that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence. Time and again, the Court has held that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation cannot be given credence. x x x While the Court agrees with the recommendation of the IBP-BOG to dismiss the disbarment complaint, it bears stressing that the quantum of proof in administrative cases is substantial evidence and not preponderance of evidence. This issue had already been clarified

in *Reyes v. Nieva* where the Court held that: Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending these types of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. x x x"

2. **CIVIL LAW; PROPERTY; POSSESSION; ACQUISITION OF POSSESSION; NOT THROUGH FORCE OR INTIMIDATION AS LONG AS THERE IS A POSSESSOR WHO OBJECTS THERETO; AID OF THE PROPER COURT MUST BE INVOKED IF THE HOLDER REFUSES TO DELIVER THE THING; CASE AT BAR. —** The Court observes that Atty. Bensi was in possession of the disputed property when the complainants tried to enter and take it. Complainants were then equipped with a hammer and a flat bar to force their way inside a locked gate of the chapel. Complainants believed that they were the lawful owners of the property on the strength of a Partial Summary Judgment which awarded the property to Lucille's now deceased parents. Nevertheless, even if the complainants are indeed the lawful owners of the disputed property, they should not have taken the law into their own hands through force. What the complainants should have done was to invoke the aid of the proper court in lawfully taking possession of the property. Article 536 of the Civil Code provides: Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

3. **LEGAL ETHICS; ATTORNEYS; THE LEGAL PROFESSION AND THE THREAT OF DISBARMENT SHOULD NOT BE USED AS MEANS TO PROVOKE LAWYERS WHO ARE ACTING WELL WITHIN THEIR RIGHTS. —** While lawyers are mandated to act with dignity and in a manner that inspires confidence to the legal profession, their rights must still be protected just like every ordinary individual. The legal profession and the threat of disbarment should not be used as

a means to provoke lawyers who are acting well within their rights.

APPEARANCES OF COUNSEL

Ybalez Ybalez Llido & Cabanilla for complainants.

D E C I S I O N

HERNANDO, *J.*:

Spouses Darito P. Nocuenca (Darito) and Lucille B. Nocuenca (Lucille, collectively complainants) filed this complaint[1] for disbarment against respondent, Atty. Alfredo T. Bensi (Atty. Bensi), before the Integrated Bar of the Philippines (IBP). Complainants alleged that Atty. Bensi violated Rule 1.01,[2] Canon 1[3] and Rule 10.01,[4] Canon 10[5] of the Code of Professional Responsibility (CPR), as well as the Lawyer's Oath when he assaulted the complainants in an effort to prevent them from entering a disputed property. Complainants further averred that Atty. Bensi filed a criminal case against them based on false allegations.

The Complainants' Position

Complainants alleged that the present case originated from Civil Case No. 6143-L,[6] an action for Declaratory Relief, Reformation of Contract, Recovery of Possession of a Portion of a Property, Cancellation of Tax Declaration, Damages, and

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[1] *Rollo*, pp. 2-8.

[2] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[3] A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[4] A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

[5] A lawyer owes candor, fairness and good faith to the court.

[6] *Rollo*, pp. 130-140.

Attorney's Fees, filed by plaintiffs-spouses Restituto Bensi and Dominga F. Bensi (plaintiffs) against Atty. Bensi and other defendants therein. The plaintiffs are the parents of Lucille.

On January 25, 2007, the Regional Trial Court, Branch 53, Lapu-Lapu City, rendered a Partial Summary Judgment[7] declaring plaintiffs to be the lawful owners of a 428.8-square-meter portion of Lot No. 1499-C.[8] This portion of the disputed lot serves as a site for a Catholic chapel. Complainants claimed that they inherited the said portion after the death of Lucille's parents.

Complainants alleged that on June 5, 2013, in the course of exercising their right of ownership over the portion of the disputed lot, they went to the chapel to post a sign that reads, "PRIVATE PROPERTY, NO TRESPASSING"[9] but they were assaulted and clobbered by Atty. Bensi and his son. Due to the incident, complainants filed two (2) counts of Slight Physical Injuries against Atty. Bensi and his son before the Municipal Trial Court in Cities, Lapu-Lapu City.

Shortly after the incident, complainants went to the chapel to reopen it for religious purposes and for the benefit of the community. However, they were shocked when they discovered that the altar was torn down and all religious articles were thrown out. Complainants believed that these were done at the behest of Atty. Bensi.

On August 28, 2013, Atty. Bensi filed a criminal case for Trespass to Property with Physical Injuries against the complainants. According to complainants, the criminal case was anchored on false and fabricated accusations. Ultimately, the case was dismissed by the Office of the City Prosecutor in an October 8, 2013 Resolution for lack of merit.

Complainants argued that the physical injuries they suffered at the hands of Atty. Bensi clearly fell within the ambit of

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[7] *Id.* at 141-142; issued by Presiding Judge Benedicto G. Cobarde.

[8] *Id.* at 5.

[9] *Id.*

unlawful conduct proscribed by Rule 1.01, Canon 1 of the CPR. Moreover, they claimed that the criminal case contained false accusations in violation of Rule 10.01, Canon 10 of the CPR and the Lawyer's Oath thereby warranting the penalty of disbarment.[10]

Complainants pointed out that the Court, in a previous administrative case, had already reprimanded Atty. Bensi.

The Respondent's Position

On the other hand, Atty. Bensi claimed that the bigger portion of Lot No. 1499-C is owned by his late parents and that the same had not yet been partitioned by the heirs.

Atty. Bensi claimed that on June 5, 2013, complainant Darito brought a hammer and a flat bar which were used as a chisel to forcibly open the padlocked gate of the chapel. As the caretaker of the property, Atty. Bensi asked the complainants from whom did they ask permission to open the closed gate.[11] This resulted in a heated confrontation where Lucille rushed and attacked Atty. Bensi while shouting, "*P*TANG INA NINYO, WALANG HIYA KAYO!*"[12] Atty. Bensi fell down on the floor of the chapel. His son rushed inside and held the hands of Lucille. Thereafter, Atty. Bensi's son picked up a plastic handle of an umbrella and struck the head of Lucille while Darito went outside to gather rocks and threw the same at Atty. Bensi. Fortunately, he was not hit.

Because of the incident, complainants filed two (2) counts of Slight Physical Injuries against Atty. Bensi and his son. Atty. Bensi, for his part, filed a criminal case for Trespass to Property with Physical Injuries against the complainants.

On February 13, 2015, the complainants filed the present administrative case for disbarment.

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[10] *Id.* at 4.

[11] *Id.* at 40.

[12] *Id.*

On April 15, 2015, Atty. Bensi filed his Answer with Urgent and Earnest Motion to Issue a Subpoena *Duces Tecum*[13] against the complainants.

On May 25, 2015, the Investigating Commissioner issued a Notice of Mandatory Conference[14] directing the parties to appear on June 18, 2015 and to submit their Mandatory Conference Brief at least three (3) days prior to the scheduled date of conference.

On June 15, 2015, the complainants filed their Mandatory Conference Brief.[15] Only the complainants appeared during the mandatory conference on June 18, 2015.

On September 23, 2015, the next mandatory conference, only Lucille appeared. Atty. Bensi failed to appear the second time. On the same day, however, Atty. Bensi filed his Mandatory Conference Brief.[16]

On November 27, 2015, Atty. Bensi filed a Motion to Conduct Clarificatory Hearing,[17] which motion was denied by the Investigating Commissioner.

Report and Recommendation of the Integrated Bar of the Philippines

In her Report and Recommendation[18] dated June 13, 2016, Investigating Commissioner Suzette A. Mamon (Commissioner Mamon) recommended that Atty. Bensi be suspended from the practice of law for a period of thirty (30) days.

Commissioner Mamon found that:

In the instant case, there were findings of probable cause against respondent with his son for slight physical injuries which were duly

[13] *Id.* at 37-47.

[14] *Id.* at 68.

[15] *Id.* at 69-73.

[16] *Id.* at 81-92.

[17] *Id.* at 153-157.

[18] *Id*., unpaginated.

filed in Court. While it can be said that the crime of slight physical injuries is not one which can be classified as a crime involving moral turpitude, more so that there has yet no conviction on the part [of the] herein respondent, it must be emphasized that lawyers must behave within the tenets of morality and good moral character. x x x[19]

Moreover, Commissioner Mamon found that Atty. Bensi committed acts in violation of the Lawyer's Oath and Section 20 (f),[20] Rule 138 of the Rules of Court when he allegedly assaulted the complainants.

In its February 22, 2018 Resolution,[21] the IBP-Board of Governors (IBP-BOG) resolved to reverse the findings of fact and recommendation of Commissioner Mamon and instead, recommended that the case be dismissed, thus:

RESOLVED to REVERSE the findings of fact and recommendation of the Investigating Commissioner, and instead, recommend that the case against Atty. Alfredo T. Bensi be Dismissed considering that respondent was in possession of the property and that the aggressive behavior of the complainant triggered the altercation.[22]

Our Ruling

Every person has the right to be presumed innocent until the contrary is proved. Considering the gravity of the consequences of the disbarment or suspension of a lawyer, the Court has consistently ruled that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence.[23] Time and again, the Court has held that

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[19] *Id.*

[20] **Section 20.** *Duties of attorneys*. — It is the duty of an attorney:

x x x   x x x   x x x

(f) To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged[.]

[21] *Rollo*, unpaginated.

[22] *Rollo*, unpaginated.

[23] *Goopio v. Maglalang*, A.C. No. 10555, July 31, 2018.

mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation cannot be given credence.[24]

The IBP-BOG, in its Extended Resolution,[25] stated that preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar. The IBP-BOG found that the complainants failed to prove their claim by preponderance of evidence. Consequently, it upheld Atty. Bensi's presumption of innocence and dismissed the complaint against him.

While the Court agrees with the recommendation of the IBP-BOG to dismiss the disbarment complaint, it bears stressing that the quantum of proof in administrative cases is substantial evidence and not preponderance of evidence. This issue had already been clarified in *Reyes v. Nieva*[26] where the Court held that:

> Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. x x x"

In *Dela Fuente Torres v. Dalangin*,[27] the Court reiterated that the quantum of proof in administrative cases is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

After a careful review of the records, the Court adopts the recommendation of the IBP-BOG dismissing the case against Atty. Bensi.

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[24] *Dela Fuente Torres v. Dalangin*, A.C. Nos. 10758-61, December 5, 2017, 847 SCRA 472, 297.

[25] *Rollo*, unpaginated.

[26] 794 Phil. 360, 379 (2016).

[27] *Supra* note 24 at 495-496.

The main issue in this case is whether Atty. Bensi should be disciplined for his involvement in the June 5, 2013 altercation with the complainants over a disputed family property.

The Court observes that Atty. Bensi was in possession of the disputed property when the complainants tried to enter and take it. Complainants were then equipped with a hammer and a flat bar to force their way inside a locked gate of the chapel. Complainants believed that they were the lawful owners of the property on the strength of a Partial Summary Judgment which awarded the property to Lucille's now deceased parents.

Nevertheless, even if the complainants are indeed the lawful owners of the disputed property, they should not have taken the law into their own hands through force. What the complainants should have done was to invoke the aid of the proper court in lawfully taking possession of the property.

Article 536 of the Civil Code provides:

> Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

While lawyers are mandated to act with dignity and in a manner that inspires confidence to the legal profession, their rights must still be protected just like every ordinary individual. The legal profession and the threat of disbarment should not be used as a means to provoke lawyers who are acting well within their rights.

In light of the foregoing, the Court finds that the complainants failed to establish through substantial evidence a cause for disciplinary action against Atty. Bensi.

WHEREFORE, the complaint for disbarment against Atty. Alfredo T. Bensi is **DISMISSED** for lack of merit.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Inting, and *Delos Santos, JJ.*, concur.

FIRST DIVISION

[A.C. No. 12622. February 10, 2020]
(Formerly CBD Case No. 15-4651)

WILMA L. ZAMORA, *complainant, vs.* **ATTY. MAKILITO B. MAHINAY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; QUANTUM OF PROOF IN ADMINISTRATIVE CASES SUCH AS DISBARMENT PROCEEDINGS IS SUBSTANTIAL EVIDENCE; SUBSTANTIAL EVIDENCE, DEFINED; CASE AT BAR. —** It is fundamental that the quantum of proof in administrative cases such as disbarment proceedings is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as **adequate** to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. While Zamora is correct that the very pleading itself is the best piece of evidence to prove whether Atty. Mahinay had, indeed, violated Canon 11, Rule 11.03 of the CPR, the Court finds that this proffered evidence failed to reach the threshold of the quantum of proof required. The Court does not find the language used in the subject motion for reconsideration to be offensive, abusive, malicious, or intemperate in any way. It did not spill over the walls of decency or propriety.

2. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 11, RULE 11.03 THEREOF; NOT VIOLATED WHEN A LAWYER HAS BEEN CIRCUMSPECT IN CHOOSING THE LANGUAGE HE USED IN CRAFTING HIS MOTION FOR RECONSIDERATION; LAWYERS ARE DUTY-BOUND TO DEFEND THEIR CLIENT'S CAUSE WITH UTMOST ZEAL AS LONG AS HE OR SHE STAYS WITHIN THE LIMITS IMPOSED BY PROFESSIONAL RULES; CASE AT BAR. —** [T]he Court finds that Atty. Mahinay did not unfairly criticize or disrespect Judge Medina in any way. On the contrary, Atty. Mahinay had, in fact, been circumspect in choosing the language he used in crafting his motion for reconsideration. At most, he might have

been overzealous in defending his clients' cause, but this is not necessarily bad. The Court has always been mindful of the lawyer's bounden duty to defend his client's cause with utmost zeal for as long as he or she stays within the limits imposed by professional rules. Atty. Mahinay did not overstep these limits.

APPEARANCES OF COUNSEL

Monteclar Sibi & Trinidad Law Offices for complainant.

D E C I S I O N

CAGUIOA, *J.*:

This instant administrative case arose from a verified Complaint[1] for disbarment filed by complainant Wilma L. Zamora (Zamora) against respondent Atty. Makilito B. Mahinay (Atty. Mahinay) before the Integrated Bar of the Philippines (IBP).

The Case

Zamora, representing the PJH Lending Corporation, is the plaintiff in an action for forcible entry entitled *PJH Lending Corporation v. Jurisa Lariosa Tumog, et al*. It was filed before the Metropolitan Trial Court (MeTC) of Mandaluyong City, and was raffled to Branch 59.[2]

The MeTC subsequently rendered a decision in favor of the PJH Lending Corporation.[3] The Regional Trial Court (RTC) of Mandaluyong City, Branch 212 likewise affirmed the MeTC decision on appeal, and the case was eventually remanded to the MeTC for proper disposition.[4]

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[1] *Rollo*, Vol. I, pp. 1-4.

[2] *Id.* at 1.

[3] *Id.* at 10-20. Decision dated February 27, 2014 rendered by Assisting Judge Ana Marie T. Mas.

[4] *Id.* at 24-31. Decision dated September 12, 2014 rendered by Judge Rizalina T. Capco-Umali.

PJH Lending Corporation filed a motion for execution[5] which the MeTC of Mandaluyong City, through Assisting Judge John Benedict Medina, granted.[6] Atty. Mahinay, on behalf of his clients, filed a motion for reconsideration,[7] where he pertinently alleged in part:

D. THE SUBJECT ORDER OF THIS HONORABLE COURT IF NOT RECONSIDERED WOULD VIOLATE CANON 3 OF THE CODE OF JUDICIAL CONDUCT[,] MORE PARTICULARLY RULE 3.01 AND RULE 3.02.

14. Defendants honestly believe, that this Honorable Court is duty bound to consider the following facts: (a) That [the] decision in this case has been already rendered moot and academic[;] (b) That plaintiff has expressly waived the decision in this case and has authorized this Honorable Court to release the supersedeas bond to herein defendants. (The said supersedeas bond means a lot to the defendants and their respective families)[;] (c) The lack of authority of Atty. Lim to file the motion for issuance of writ of execution[;] x x x (d) The laws and jurisprudence cited by herein defendants that plaintiff[,] as a corporation, can only act through its board[;] [and] (e) By provision of law, jurisprudence and specific provision of the Code of Judicial Conduct, this Honorable Court [cannot] be partial to the party which Atty. Lim represents.

15. Under Rule 3.01 of the [Code] of Judicial Conduct, it is provided that: "A judge shall be faithful to the law and maintain professional competence." And under Rule 3.02, "In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law, x x x."

16. Defendants are furnishing a copy of this motion to the Court Administrator, as they reserve to upgrade their above perceived violation of the Code of Judicial Conduct to a formal administrative complaint.[8] (Emphasis deleted)

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[5] *Id.* at 34.

[6] *Id.* at 37-38. Order dated February 9, 2015.

[7] *Id.* at 39-44.

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

Alleging that in the above motion for reconsideration, Atty. Mahinay threatened the judge with an administrative complaint if he would not grant the motion, Zamora filed a Complaint for disbarment against Atty. Mahinay before the IBP for violation of Canon 11, Rule 11.03 of the Code of Professional Responsibility (CPR).[9]

Zamora alleged further that this was not the first time that Atty. Mahinay had threatened a judge with an administrative case if the motion he filed would not be resolved in his favor. She cited another case pending before the RTC of Cebu, Branch 23, where Atty. Mahinay also threatened Judge Generosa Labra with an administrative case if she would not resolve the motion for reconsideration in his client's favor. Zamora concluded that Atty. Mahinay has the propensity to threaten judges with administrative complaints should they rule against his clients. She advocated that a lawyer such as Atty. Mahinay does not deserve to stay any longer in the roll of attorneys and must, therefore, be disbarred immediately.[10]

In his Answer,[11] Atty. Mahinay essentially countered that the complaint of Zamora has no factual and legal basis. He pointed out that said complaint was the fifteenth administrative charge she filed against him at the instigation of her lawyer, Atty. Anthony Lim. Atty. Mahinay maintained that there was nothing disrespectful in the motion for reconsideration he filed before Judge Medina. He stood firm in what he said therein that Judge Medina was duty bound to consider the facts of the case. Atty. Mahinay believed it was his duty as an officer of the court to be forthright and candid to Judge Medina on what he perceived as deviations from the Code of Judicial Conduct.

Atty. Mahinay further argued that his act of furnishing the Court Administrator with a copy of his motion for reconsideration was not a violation of any law. It was merely preliminary to

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[9] *Id.* at 1-4.

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

[11] *Id.* at 46-52.

the subsequent filing of the formal administrative case which his client had, indeed, subsequently filed before this Court against Judge Medina.[12]

The IBP Proceedings

After the mandatory conference and the submission of the parties' position papers, the Investigating Commissioner issued a Report and Recommendation[13] to dismiss the complaint against Atty. Mahinay. The Investigating Commissioner first noted that the alleged abusive remarks made by Atty. Mahinay against Judge Medina were coursed through the pleading filed and solely intended for the court. He agreed it was well within Atty. Mahinay's duty to be forthright and candid to Judge Medina, and by doing so, Atty. Mahinay only expressed his perception of Judge Medina's deviation from the rules and the Code of Judicial Conduct.

The Investigating Commissioner also held that Zamora did not proffer any proof, such as sworn statements from vital witnesses or other documentary evidence, which would show that Atty. Mahinay really intended to threaten Judge Medina.[14]

The Board of Governors (Board) of the IBP, in Resolution No. XXII-2016-266[15] dated April 29, 2016, resolved to adopt the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint.

Zamora thereafter filed a Motion for Reconsideration.[16] She disagreed with the conclusion of the Investigating Commissioner that there was no other proof that Atty. Mahinay really intended to threaten Judge Medina. Zamora pointed out that the threat was on the face of the subject motion for reconsideration itself,

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[12] *Id.* at 48.

[13] *Id.* at 309-313. Rendered by Commissioner Erwin L. Aguilera, dated December 10, 2015.

[14] *Id.* at 312.

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

[16] *Id.* at 314-322.

which she attached in her complaint. This was proof enough that Atty. Mahinay unreasonably threatened Judge Medina.

Zamora also enumerated other cases which purportedly showed an undeniable pattern of Atty. Mahinay's propensity to attack judges for leverage. She attached copies of pleadings where Atty. Mahinay similarly used disrespectful and threatening language to the judge handling his client's cases.[17]

In his Comment,[18] Atty. Mahinay argued that Zamora's Motion for Reconsideration did not deserve further consideration by the Board for being pro-forma. He emphasized that the subject pleading was already carefully considered by the Board and was found to be non-violative of Canon 11, Rule 11.03 of the CPR.

On January 27, 2017, the Board issued Resolution No. XXII-2017-814[19] granting the Motion for Reconsideration of Zamora. The Board took note of Atty. Mahinay's previous infraction and found Atty. Mahinay to have committed brazen threats to the courts as leverage. The Board further resolved to impose against Atty. Mahinay the penalty of suspension from the practice of law for six (6) months for violation of Canon 11, Rule 11.03 of the CPR.

In the Extended Resolution[20] penned by IBP Commission on Bar Discipline Director Ramon S. Esguerra for the Board, the Board found that while Atty. Mahinay claimed to defend his client's rights over the property subject of the ejectment case, he was clearly out of bounds when he hinted that Judge Medina was partial to Zamora. Worse, he threatened Judge Medina with an administrative case for alleged violations of the Code of Judicial Conduct should his (Atty. Mahinay's) motion for reconsideration be denied. This, to the mind of the Board,

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[17] *Id.* at 316-320.

[18] *Id.* at 325-326.

[19] *Rollo*, Vol. II, pp. 330-331.

[20] *Id.* at 332-342.

cannot be countenanced as his statements promoted distrust in the administration of justice.

Atty. Mahinay, in turn, filed a Manifestation and Motion for Reconsideration of Resolution No. XXII-2017-814.[21] He insisted that the Board should not have considered Zamora's Motion for Reconsideration because it did not contain new evidence which warranted the abandonment of the earlier Resolution of the Board dismissing the Complaint. He maintained that the statements in his motion for reconsideration filed before the sala of Judge Medina were backed up by solid evidence, specific provisions of law and jurisprudence, and made without malice but only in pursuance of his duties as a lawyer.

Atty. Mahinay also asserted that the Board should not have noted his alleged previous infraction as the same was not covered in the issues stipulated by the parties. More importantly, according to Atty. Mahinay, this previous infraction cannot undo the earlier finding of the Board that his subject motion for reconsideration filed before Judge Medina complied with the exacting standards of ethics. The present charge, therefore, must have its own leg to stand on.[22]

On August 29, 2018, the Board issued a new Resolution[23] granting the Motion for Reconsideration of Atty. Mahinay and reinstating the earlier Report and Recommendation of the Investigating Commissioner to dismiss the Complaint. The Board ruled that Zamora did not present substantial evidence to prove that Atty. Mahinay had violated Canon 11, Rule 11.03 of the CPR. It held that while Atty. Mahinay may have been strong and passionate in expressing his views and legal arguments, there was nothing insulting or disrespectful in the language that he used in the subject motion for reconsideration.[24]

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[21] *Id.* at 343-377.

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

[23] *Id.* at 435-436.

[24] *Id.* at 437-440. Extended Resolution dated June 11, 2019.

Aggrieved, Zamora filed the instant petition for review on *certiorari*.[25]

The Issue Before the Court

The issues raised in the petition all boil down to the essential question of whether the IBP correctly dismissed the complaint against Atty. Mahinay.

Ruling of the Court

The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board to reinstate the earlier Resolution dismissing the Complaint against Atty. Mahinay.

It is fundamental that the quantum of proof in administrative cases such as disbarment proceedings is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as **adequate** to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[26] While Zamora is correct that the very pleading itself is the best piece of evidence to prove whether Atty. Mahinay had, indeed, violated Canon 11, Rule 11.03 of the CPR, the Court finds that this proffered evidence failed to reach the threshold of the quantum of proof required. The Court does not find the language used in the subject motion for reconsideration to be offensive, abusive, malicious, or intemperate in any way. It did not spill over the walls of decency or propriety.[27]

The pertinent portions of the subject motion for reconsideration merely enumerated the facts, which in the opinion of Atty. Mahinay and his clients, the trial court was duty bound to consider. The last of the enumeration may have contained the word "partial," to wit:

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[25] *Id.* at 461-486.

[26] *Jildo A. Gubaton v. Atty. Augustus Serafin D. Amador*, A.C. No. 8962, July 9, 2018. (Emphasis supplied)

[27] See *In the Matter of the Proceedings for Disciplinary Action Against Atty. Almacen, et al. v. Yaptinchay*, 142 Phil. 353, 371 (1970).

(e) By provision of law, jurisprudence and specific provision of the Code of Judicial Conduct, this Honorable Court [cannot] be partial to the party which Atty. Lim represents.[28]

A sober reading of the quoted portion, however, does not call to mind that Judge Medina is being labelled as partial. It neither insinuates so in any way. It would be far too a stretch to say that after enumerating all the points Judge Medina failed to consider, the above statement is a conclusion of his partiality. There is no other statement to bridge such a connection.

Furthermore, the Court finds nothing wrong with the last statement of the subject pleading, to wit:

16. Defendants are furnishing a copy of this motion to the Court Administrator, as they reserve to upgrade their above perceived violation of the Code of Judicial Conduct to a formal administrative complaint.[29]

The above statement cannot be construed as either a direct or veiled threat against Judge Medina that should he fail to rule in favor of Atty. Mahinay's clients, they would file an administrative case against him.

The situation here is dissimilar with *Tolentino v. Judge Cabral*[30] (*Tolentino*), where the Court reprimanded petitioner therein for threatening the respondent judge with an administrative charge if his (petitioner's) motions were not granted:

4. Lastly, complainant in his Final Manifestation, dated June 20, 1996, stated:

The PEOPLE OF THE PHILIPPINES, by the undersigned State Prosecutor and Acting Provincial Prosecutor on Case, to this Honorable Court respectfully manifests that should there be no favorable court action before the end of June 1996 x x x the undersigned will be constrained to file the necessary complaint before the Honorable Supreme Court[.]

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[28] *Rollo*, Vol. I, p. 42.

[29] *Id.* at 43.

[30] 385 Phil. 631 (2000).

x x x x x x x x x

x x x To be sure, the threat made against respondent judge was not a threat to do him bodily harm. Nonetheless, it was a threat. Needless to say, disrespectful, abusive and abrasive language, offensive personalities, unfounded accusations, or intemperate words tending to obstruct, embarrass, or influence the court in administering justice or to bring it into disrepute have no place in a pleading.[31] (Citation omitted)

In the fairly recent case of *Presiding Judge Aida Estrella Macapagal v. Atty. Walter T. Young*[32] (*Macapagal*), the Court reprimanded Atty. Walter Young (Atty. Young) for having personally written a letter to Judge Aida Estrella Macapagal (Judge Macapagal), who issued a writ of demolition against his clients in an expropriation case, threatening her with an administrative case should she insist on implementing the writ. The pertinent portions of the letter read:

Modesty aside, I am also the counsel for the K-Ville residents who recently figured in the so-called Torres land grab scam which affected a 24-hectare parcel of land in the heart of Quezon City and that I have[,] in coordination with my colleagues, caused the filing of an administrative complaint both against the Sheriff and the Presiding Judge for the uncanny attempts to execute a judgment against non-parties to the case.

Indeed, this expropriation case as well as the Torres land grab case, though at first blush are distinct from each other, have drawn certain parallels. The most significant parallelism is that in both cases, both magistrates, particularly Your Honor, in regard to this expropriation case, are attempting to execute a judgment against non-parties to the cases. The foregoing indeed is a very basic violation of a fundamental precept of law which strikes at the very heart of the concept of "due process." Having declared such, and with all due respect, but much to our regret, we wish to make manifest that we will be compelled to file an administrative complaint against you before the Office of the Court Administrator as well as a criminal complaint for "**knowingly rendering an unjust judgment**" if you

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[31] *Id.* at 642 and 652.

[32] A.C. No. 9298 (formerly CBD Case No. 12-3504), July 29, 2019.

should persist in your stubborn actuation of implementing the writ of possession/writ of demolition against non-parties to the expropriation case.

Apart from the concept of judicial courtesy that ought to be accorded the Honorable Court of Appeals, may we pray therefore unto Your Honor that heretofore, Your Honor must cease and desist from any action that would prove to be violative of the basic right to due process of my clients by refraining from implementing the writ of possession as well as the writ of demolition. Thank you so much and please be guided accordingly.[33] (Citation omitted; emphasis in the original)

The Court found Atty. Young's act of sending the letter to Judge Macapagal highly improper and held that the following portion of the letter unquestionably demonstrated that he did threaten to file administrative and criminal complaints against Judge Macapagal if the writ of demolition was implemented:

[W]ith all due respect, but much to our regret, we wish to make manifest that we will be compelled to file an administrative complaint against you before the Office of the Court Administrator as well as a criminal complaint for "knowingly rendering an unjust judgment" if you should persist in your stubborn actuation of implementing the writ of possession/writ of demolition against non-parties to the expropriation case.[34] (Emphasis deleted)

Here, on the other hand, the statement in the subject motion was plainly declaratory. Although unnecessary, it was not used as either a leverage against Judge Medina or a threat of a suggested or implied consequence of Judge Medina's action or inaction unlike in *Tolentino* and *Macapagal*.

Apropos rather is the case of *Sesbreño v. Judge Garcia*,[35] where two pleadings were likewise put into the fore which purportedly contained veiled threats and covert contumacious statements against the respondent judge. In his questioned Order, the respondent judge referred to these two pleadings in the following manner:

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[33] *Id.*

[34] *Id.*

[35] 261 Phil. 1 (1990).

Parenthetically, the offended party made mention to place on records his reaction to postpone the arraignment, which was not reflected in the transcript of the stenographic notes, **especially his veiled threat, which is covertly contumacious when he said in the two (2) manifestations/memoranda that the same are filed for: (1) for record purposes; and (2) for reference use in the future in the appropriate opportuned (sic) time.** The Court is not naive to understand that should this case be adversed (sic) to him, he would use this incident as a means to vindicate or retaliate against the Presiding Judge. It is already a matter of public knowledge that movant counsel is in the habit of filing cases against any government official before whom the investigation or hearing are conducted whenever the orders or decisions are adverse to him.[36] (Emphasis supplied and italics deleted)

The Court did not share the same impressions of the respondent judge with the language and tenor of the pleadings, thus:

We have read the two manifestations/memoranda (Annexes C & D) of Attorney Sesbreño and find nothing therein which can be described as "insolent, disrespectful and contemptuous" or "covertly contumacious" or resembling a "veiled threat" against respondent Judge to warrant a warning that he may be cited for contempt of court if he should repeat words of the same import.

More than once in the past, we had occasion to admonish judges not to be onion-skinned when confronted by dissatisfied lawyers or litigants. Their power to punish for contempt is not a bludgeon to be used for the purpose of exacting silent submission to their rulings and orders however questionable or unjust they may be. It should be used only to protect and vindicate the dignity and authority of the court (*Slade Perkins vs. Director of Prisons*, 58 Phil. 271). Courts should exercise their power to punish for contempt on the preservative and not on the vindictive principle, on the corrective and not on the retaliatory idea of punishment (*Villavicencio vs. Lukban*, 39 Phil. 778; *People vs. Alarcon*, 69 Phil. 265; *Gamboa vs. Teodoro*, L-4893, May 13, 1952; *People vs. Rivera*, L-364, May 26, 1952; *In re Lozano*, 54 Phil. 801).[37]

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[36] *Id.* at 11.

[37] *Id.* at 12.

All told, the Court finds that Atty. Mahinay did not unfairly criticize or disrespect Judge Medina in any way. On the contrary, Atty. Mahinay had, in fact, been circumspect in choosing the language he used in crafting his motion for reconsideration. At most, he might have been overzealous in defending his clients' cause, but this is not necessarily bad. The Court has always been mindful of the lawyer's bounden duty to defend his client's cause with utmost zeal for as long as he or she stays within the limits imposed by professional rules. Atty. Mahinay did not overstep these limits.

WHEREFORE, the Court **DISMISSES** the complaint against Atty. Makilito B. Mahinay for utter lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, and *Lopez, JJ.,* concur.

Reyes, J. Jr., J., on official leave.

SECOND DIVISION

[A.M. No. 2019-14-SC. February 10, 2020]

RE: Incident Report of the Security Division and Alleged Various Infractions Committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; RESPONDENT IS LIABLE FOR VIOLATION

OF REASONABLE OFFICE RULES AND REGULATIONS FOR VIOLATING THE PHILIPPINE JUDICIAL ACADEMY (PHILJA) TRAINING CENTER HOUSE RULES CONCERNING THE RECEPTION OF VISITORS. — By his own admission that he in fact entered the premises of Sampaga's quarters in Room 110 instead of meeting her in the lounge as required by the House Rules, Garra is deemed liable for Violation of Reasonable Office Rules and Regulations under Section 46(F)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Whether Sampaga is Garra's legal or common-law spouse is of no moment. Needless to state, the rules are clear that all quests, regardless of their relation to the occupants of the PHILJA Training Center, are only allowed to conduct visits in the lounge.

2. **ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT, DEFINED; A MAN HAVING AN ILLICIT RELATIONSHIP WITH A WOMAN NOT HIS WIFE IS WITHIN THE PURVIEW OF DISGRACEFUL AND IMMORAL CONDUCT. —** Garra is also guilty of Disgraceful and Immoral Conduct as defined under Civil Service Commission (CSC) Memorandum Circular (MC) No. 15, Series of 2010, which provides: **Section 1. Definition of Disgraceful and Immoral conduct —** Disgraceful and Immoral Conduct refers to an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community. The same Circular highlights that "[d]isgraceful and [i]mmoral conduct may be committed in a scandalous or discreet manner, within or out of the workplace." This Court has held in a number of cases that a man having an illicit relationship with a woman not his wife is within the purview of "disgraceful and immoral conduct" under Civil Service Laws. Here, Garra admitted in his June 13, 2019 and August 5, 2019 Letters that he has cohabited, and continues to cohabit with Sampaga, a woman who is not his wife, with whom he begot two children.

3. **ID.; ID.; ID.; THE GOOD OF THE SERVICE AND THE DEGREE OF MORALITY WHICH EVERY OFFICIAL AND EMPLOYEE IN THE PUBLIC SERVICE MUST OBSERVE, IF RESPECT AND CONFIDENCE ARE TO BE MAINTAINED BY THE GOVERNMENT IN THE ENFORCEMENT OF THE**

LAW, DEMAND THAT NO UNTOWARD CONDUCT ON HIS PART, AFFECTING MORALITY, INTEGRITY AND EFFICIENCY WHILE HOLDING OFFICE SHOULD BE LEFT WITHOUT PROPER AND COMMENSURATE SANCTION, ALL ATTENDANT CIRCUMSTANCES TAKEN INTO ACCOUNT. — Notably, Garra, in his Letters, admitted that he entered into a relationship with Sampaga in 2005, or two years after Osbual supposedly abandoned him for another man. This is not the place for determining Osbual's infidelity and abandonment of her family. What is material in this case is the fact that without his marriage being first dissolved, Garra lived with another woman not his wife, and with whom he found another family. It cannot be overstressed that - Time and again we have stressed adherence to the principle that public office is a public trust. All government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service. The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.

4. **ID.; ID.; ID.; THE EMPLOYEE'S MISREPRESENTATION OR OMISSION OF HIS MARITAL STATUS IN HIS STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN) CONSTITUTES SIMPLE DISHONESTY, AS THE SAME DID NOT CAUSE DAMAGE OR PREJUDICE TO THE GOVERNMENT AND HAD NO DIRECT RELATION TO OR DID NOT INVOLVE DUTIES AND RESPONSIBILITIES OF THE ERRING EMPLOYEE. —** It is undisputed even by Garra that he remains legally married to Osbual. There is no confusion here. In this connection, we agree with the OAS that Garra's deliberate omission of this fact in his SALNs for several years constitutes Dishonesty. "Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud,

cheat, deceive, or betray and an intent to violate the truth." Here, Garra's lack of honesty is evident when, on several occasions, he deliberately placed "N/A" in his SALNs from 2007 to 2011, including his SALNs beginning 2013, despite knowledge that he is still legally married to Osbual. The fact that Garra omitted such information in his SALNs on different and various occasions is a clear manifestation of his propensity to lie and to distort the truth just to suit his personal interest and purpose. This, the Court cannot countenance. x x x. Applying CSC Resolution No. 06-0538, while Garra's misrepresentation or omission of his marital status in his SALNs can be considered as a dishonest act, we agree with the OAS that such act constitutes *Simple* Dishonesty as the same did not cause damage or prejudice to the government and had no direct relation to or did not involve the duties and responsibilities of Garra as staff driver. The same is true with the misrepresentation Garra committed, where the information omitted is not related to his employment.

5. **ID.; ID.; ID.; DISHONEST ACT WHEN CONSIDERED SIMPLE DISHONESTY. —** CSC Resolution No. 06-0538 (Rules on the Administrative Offense of Dishonesty) provides for different circumstances when Dishonesty is considered Serious, Less Serious, or Simple. Section 5 of CSC Resolution No. 06-0538 provides that the presence of any of the following attendant circumstances in the commission of the dishonest act constitutes Simple Dishonesty: "(a) The dishonest act did not cause damage or prejudice to the government; (b) The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent; (c) In falsification of any official document, where the information falsified is not related to his/her employment; (d) That the dishonest act did not result in any gain or benefit to the offender; and (e) Other analogous circumstances."

6. **ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT IS A GRAVE OFFENSE, WHICH IS PUNISHABLE BY SUSPENSION FROM SERVICE FOR THE FIRST OFFENSE, AND DISMISSAL FOR THE SECOND OFFENSE; VIOLATION OF REASONABLE RULES AND REGULATIONS IS A LIGHT OFFENSE, WHICH IS PUNISHABLE BY REPRIMAND FOR THE FIRST OFFENSE, SUSPENSION FOR THE SECOND OFFENSE, AND DISMISSAL FROM THE SERVICE FOR THE THIRD**

OFFENSE; SIMPLE DISHONESTY IS PUNISHABLE BY SUSPENSION FOR THE FIRST AND SECOND OFFENSE, AND DISMISSAL FOR THE THIRD OFFENSE. — According to Section 46 B.3, Rule 10 of the RRACCS, Disgraceful and Immoral Conduct is a grave offense which is punishable by suspension from service for a period of six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Section 46 F.3, Rule 10 of the same rules classifies Violation of Reasonable Rules and Regulations as a light offense, which is punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense. Under CSC Resolution No. 06-0538, Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year suspension for the second offense; and dismissal for the third offense.

7. **ID.; ID.; ID.; RULE ON IMPOSITION OF PROPER PENALTY; WHERE THE RESPONDENT IS FOUND GUILTY OF TWO (2) OR MORE DIFFERENT OFFENSES, THE IMPOSABLE PENALTY SHOULD BE FOR THE MOST SERIOUS OFFENSE, WHILE THE REST SHALL BE CONSIDERED AGGRAVATING; PENALTY OF SUSPENSION FROM THE SERVICE FOR A PERIOD OF ONE (1) YEAR IMPOSED UPON THE RESPONDENT FOR VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS, DISGRACEFUL AND IMMORAL CONDUCT, AND DISHONESTY, TAKING INTO CONSIDERATION HIS LENGTH OF SERVICE, AND THAT HIS MARITAL STATUS IS NOT A MATERIAL COMPONENT OF THE SALN. —** In determining the proper penalty to be imposed on Garra, the OAS ruled in this wise: Under Section 55 of the 2017 Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more different offenses, the imposable penalty should be for the most serious offense, while the rest shall be considered aggravating. Since the penalty for Immorality (Disgraceful and Immoral Conduct) is suspension for six (6) months and one (1) day for the first offense, in consideration of the two (2) aggravating circumstances in the case at bar, **we submit that the respondent be suspended for one (1) year** x x x. It bears noting, however, that Garra's deliberate omissions of his marital

status in his SALNs were committed not less than three (3) times, particularly, when he intentionally made such omissions in his 2007 to 2011 SALNs, including his SALNs beginning 2013. These omissions, when so treated separately, could have merited the penalty of dismissal under the RRACCS. Considering, however, Garra's length of service, and given that his marital status is not a material component of the SALNs, we find that the penalty of suspension for a period of one (1) year is in order. Notably, his outright dismissal from service would be too harsh a penalty in this case. In view of the foregoing, the Court sustains the recommendation of the OAS that Garra should be suspended for a period of one (1) year.

D E C I S I O N

HERNANDO, *J.*:

In an Information Report[1] (Report) dated May 29, 2019, Eddie B. Macapanas and Archie J. Comilan, Shift-In-Charge and CCTV Operator, respectively, of the Philippine Judicial Academy (PHILJA) Training Center, stated that respondent Mr. Cloyd D. Garra (Garra), Judicial Staff Employee II, Mediation, Planning and Research Division, PHILJA and Staff Driver,[2] violated the PHILJA Training Center House Rules[3] (House Rules) concerning the reception of visitors, *viz.*:

For security reasons, curfew time for guests billeted at the PTC is at **11:00 p.m.** Visitors of guests shall be received only in the lounge located at the Front Office and allowed to stay until **10:00 p.m.**[4]

In particular, the Report stated that on May 28, 2019, at approximately 3:47 p.m., Household Attendant II Emilyn Janaban (Janaban) was heading to Room 107 of the Training Center to assist a guest. It was at this time that Janaban observed that a woman proceeded inside a nearby room, particularly, Room

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[1] *Rollo*, p. 38.

[2] *Id.* at 14.

[3] *Id.* at 44.

[4] *Id.*

110, and who was closely followed by Garra. The woman was later identified as Maria Edwina V. Sampaga (Sampaga), Mediation Aide of the Philippine Mediation Center (PMC), a participant of a seminar being held in the Training Center,[5] and the solo occupant of Room 110 from May 28 to 31, 2019. Janaban thus reported the incident to Watchman II Zyra Canaan,[6] Security Division personnel, and Gretchen Solis, front desk staff on duty.

CCTV footage[7] revealed that both Sampaga and Garra entered Room 110 at 3:29 p.m. and remained therein until 3:51 p.m., or for approximately 22 minutes, after which both Sampaga and Garra left Room 110 and went their separate ways.

The Report was forwarded to the Office of Administrative Services (OAS) on May 30, 2019[8] for evaluation.

In Memorandums[9] both dated June 10, 2019, Deputy Clerk of Court and Chief Administrative Officer, Atty. Maria Carina M. Cunanan directed Garra and Sampaga[10] to submit their written explanation on their alleged violation of the House Rules concerning the reception of visitors.

In his June 13, 2019 Letter,[11] Garra admitted to the incident as above narrated, but proffered the following reasons and justifications: *first*, that Sampaga is his common-law wife who has been living with him for more than 14 years; *second*, that they have a 13-year-old daughter and a 6-year-old son together;[12]

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[5] *Id.* at 31.

[6] *Id.* at 36.

[7] *Id.* at 39-43.

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

[9] *Id.* at 28-29.

[10] *Id.* at 28 and 30. Through her immediate superior, Jose T. Name, Jr., Officer-In-Charge of the Philippine Mediation Center Office.

[11] *Id.* at 13.

[12] *Id.* at 15-19. In support of his defense, Garra attached photocopies of their birth and baptismal certificates, which indicate that both Garra and Sampaga are the children's parents.

and third, being her husband, he merely used the occasion to check up on Sampaga.

Sampaga, on her part, raised in her June 17, 2019 Letter[13] the same admissions and defenses submitted by Garra and further added that she only permitted Garra to enter Room 110 "as she had a few things to request from him (*i.e., 'ibinilin'*)."[14]

Upon further investigation by the OAS, it was discovered that Garra's personal record (201 file) includes an April 17, 1998 Certificate of Marriage, which indicates that Garra is legally married to a certain Melissa M. Osbual Garra (Osbual). Garra also declared in a Home Development Mutual Fund (HDMF) or Pag-IBIG Member's Data Form, and his Statement of Assets, Liabilities and Net Worth (SALN) forms from 2006 to 2012 that Osbual is his legal spouse. The same information, however, was omitted in Garra's 2007 to 2011 SALNs, including his SALNs beginning 2013. The OAS likewise noted the absence of any record on file that Garra requested for a change of status from married to single, or that any annulment decree was submitted to the OAS.[15]

Considering the foregoing, the OAS, on July 23, 2019, issued a second Memorandum[16] to Garra, which required him to submit his written explanation on why he should not be administratively charged with immorality for maintaining a common-law relationship with Sampaga while being legally married to Osbual, and dishonesty for his failure to declare his marriage to Osbual in a number of his SALNs.

In response to the July 23, 2019 Memorandum, Garra, on August 5, 2019, submitted a Letter[17] to the OAS confirming his marriage with Osbual. Garra, however, submitted that while he and Osbual had two children together, they have not cohabited

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[13] *Id.* at 21.

[14] *Id.* See also *id.* at 20.

[15] *Id.* at 12.

[16] *Id.*

[17] *Id.* at 8-9.

with each other since 2003. As Osbual allegedly abandoned Garra for another man, Garra was constrained to carry out his responsibilities as both father and mother to their children on top of fulfilling his duties as staff driver. It was in 2005 that Garra met Sampaga who remained his common-law wife and who assisted him in the rearing and care of their children and his children with Osbual.[18]

Garra further alleged in his Letter that his relationship with Sampaga is publicly known to employees of PHILJA and a few employees of this Court. Garra also explained that he did not seek to obtain a decree of annulment of his marriage with Osbual as he opted to devote his small income for payment of living expenses, and tuition and other school fees of all of his children.[19]

By way of defense to the charge of dishonesty, Garra contended that he did not intend to provide false information in his Pag-IBIG Membership form and SALNs for years 2007 to 2011, including his SALNs beginning 2013. Considering his strained relationship with Osbual, and his current relationship with Sampaga, Garra was confounded with his marital status, and by reason of which, Garra simply placed "N/A" on the documents.

Report and Recommendation of the Office of Administrative Services

In its November 6, 2019 Memorandum,[20] the OAS made the following evaluation and recommendation, to wit:

> The first category of established facts characterizes the administrative offense of Violation of Reasonable Office Rules and Regulations. Classified as a light offense under Civil Service Rules, it bears the penalty of a reprimand for the first offense.

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[18] *Id.* at 8.

[19] *Id.* at 9.

[20] *Id.* at 1-7; issued by Deputy Clerk of Court and Chief Administrative Officer Atty. Maria Carina M. Cunanan. Since Sampaga is connected with the PMC, and not under the jurisdiction of its Office, the OAS limited its recommendation and imposition of penalty to Garra.

x x x x x x x x x

Unfortunately for the respondent, by cultivating a relationship with Ms. Sampaga and starting a family with her while still under the legal bond of marriage with Ms. Osbual, resulted [in] his breaching of the marital vows that he took when he contracted a marriage with the latter. As the law dictates that marriage is intended to be a permanent union unless judicially sundered or declared non-existent, his acts not only fell short of the exacting standards required of employees of the Judiciary, but also constitutes the administrative offense of Immorality (*i.e.*, "Disgraceful and Immoral Conduct"), which is punishable by suspension for six (6) months and one (1) day for the first offense, and dismissal from the service for the second.

As to the charge of Dishonesty for not declaring Ms. Osbual as his legal spouse in his 2007 to 2011 SALN forms as well as from 2013 onwards x x x.

x x x x x x x x x

This deliberate misrepresentation or omission of a material fact in an official document amounts to the administrative offense of Dishonesty. The same holds true even assuming that there was no deliberate intent to mislead or defraud the government, such as in the case at bar, where the respondent was aware that by doing so, it could not officially alter his legal status, since dishonesty covers a broad range of conduct. It connotes untrustworthiness and lack of integrity, disposition to lie, cheat, deceive, and betray. Moreover, a SALN is a sworn document.

x x x x x x x x x

In view of the foregoing, this Office respectfully submits that respondent PHILJA Staff Driver Cloyd D. Garra be found GUILTY of the administrative offenses of Violation of Reasonable Office Rules and Regulations, Immorality (Disgraceful and Immoral Conduct) and Dishonesty and that the latter be SUSPENDED for one (1) year, with a warning that a repetition of the same or similar infraction shall be dealt with more severely.[21] (Citations omitted)

Our Ruling

The Court agrees with the findings and recommendation of the OAS.

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

Violation of Reasonable Office Rules and Regulations

By his own admission that he in fact entered the premises of Sampaga's quarters in Room 110 instead of meeting her in the lounge as required by the House Rules, Garra is deemed liable for Violation of Reasonable Office Rules and Regulations under Section 46(F)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Whether Sampaga is Garra's legal or common-law spouse is of no moment. Needless to state, the rules are clear that all guests, regardless of their relation to the occupants of the PHILJA Training Center, are only allowed to conduct visits in the lounge.

Disgraceful and Immoral Conduct

Garra is also guilty of Disgraceful and Immoral Conduct as defined under Civil Service Commission (CSC) Memorandum Circular (MC) No. 15, Series of 2010, which provides:

> **Section 1. Definition of Disgraceful and Immoral conduct** – Disgraceful and Immoral Conduct refers to an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community.

The same Circular highlights that "[d]isgraceful and [i]mmoral conduct may be committed in a scandalous or discreet manner, within or out of the workplace."[22]

This Court has held in a number of cases that a man having an illicit relationship with a woman not his wife is within the purview of "disgraceful and immoral conduct" under Civil Service Laws.[23] Here, Garra admitted in his June 13, 2019 and August 5, 2019 Letters that he has cohabited, and continues to cohabit with Sampaga, a woman who is not his wife, with whom he begot two children.

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[22] Section 4, CSC MC No. 15, Series of 2010.

[23] *Acebedo v. Arquero*, 447 Phil. 76, 85 (2003), and *Elape v. Elape*, 574 Phil. 550, 554 (2008).

Notably, Garra, in his Letters, admitted that he entered into a relationship with Sampaga in 2005, or two years after Osbual supposedly abandoned him for another man. This is not the place for determining Osbual's infidelity and abandonment of her family. What is material in this case is the fact that without his marriage being first dissolved, Garra lived with another woman not his wife, and with whom he found another family.

It cannot be overstressed that –

> Time and again we have stressed adherence to the principle that public office is a public trust. All government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service. The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.[24] (Citations omitted)

Dishonesty

It is undisputed even by Garra that he remains legally married to Osbual. There is no confusion here. In this connection, we agree with the OAS that Garra's deliberate omission of this fact in his SALNs for several years constitutes Dishonesty. "Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth."[25]

Here, Garra's lack of honesty is evident when, on several occasions, he deliberately placed "N/A" in his SALNs from 2007 to 2011, including his SALNs beginning 2013, despite knowledge that he is still legally married to Osbual. The fact

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[24] *Arce v. Arce*, 282 Phil. 26, 38 (1992).

[25] *Alfornon v. Delos Santos*, 789 Phil. 462, 473 (2016).

that Garra omitted such information in his SALNs on different and various occasions is a clear manifestation of his propensity to lie and to distort the truth just to suit his personal interest and purpose. This, the Court cannot countenance.

CSC Resolution No. 06-0538 (Rules on the Administrative Offense of Dishonesty) provides for different circumstances when Dishonesty is considered Serious, Less Serious, or Simple.[26]

Section 5 of CSC Resolution No. 06-0538 provides that the presence of any of the following attendant circumstances in the commission of the dishonest act constitutes Simple Dishonesty: "(a) The dishonest act did not cause damage or prejudice to the government; (b) The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent; (c) In falsification of any official document, where the information falsified is not related to his/her employment; (d) That the dishonest act did not result in any gain or benefit to the offender; and (e) Other analogous circumstances."[27]

Applying CSC Resolution No. 06-0538, while Garra's misrepresentation or omission of his marital status in his SALNs can be considered as a dishonest act, we agree with the OAS that such act constitutes *Simple* Dishonesty as the same did not cause damage or prejudice to the government and had no direct relation to or did not involve the duties and responsibilities of Garra as staff driver. The same is true with the misrepresentation Garra committed, where the information omitted is not related to his employment.

The penalty to be imposed upon Garra

According to Section 46 B.3, Rule 10 of the RRACCS, Disgraceful and Immoral Conduct is a grave offense which is punishable by suspension from service for a period of six (6) months and one (1) day to one (1) year for the first offense,

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[26] CSC Resolution No. 06-0538, Section 2. Approved on April 4, 2006.

[27] *Id.* at Section 5.

and dismissal for the second offense. Section 46 F.3, Rule 10 of the same rules classifies Violation of Reasonable Rules and Regulations as a light offense, which is punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense.

Under CSC Resolution No. 06-0538, Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year suspension for the second offense; and dismissal for the third offense.[28]

In determining the proper penalty to be imposed on Garra, the OAS ruled in this wise:

> Under Section 55 of the 2017 Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more different offenses, the imposable penalty should be for the most serious offense, while the rest shall be considered aggravating. Since the penalty for Immorality (Disgraceful and Immoral Conduct) is suspension for six (6) months and one (1) day for the first offense, in consideration of the two (2) aggravating circumstances in the case at bar, **we submit that the respondent be suspended for one (1) year** x x x.[29] (Emphasis supplied)

It bears noting, however, that Garra's deliberate omissions of his marital status in his SALNs were committed not less than three (3) times, particularly, when he intentionally made such omissions in his 2007 to 2011 SALNs, including his SALNs beginning 2013. These omissions, when so treated separately, could have merited the penalty of dismissal under the RRACCS.

Considering, however, Garra's length of service, and given that his marital status is not a material component of the SALNs, we find that the penalty of suspension for a period of one (1) year is in order. Notably, his outright dismissal from service would be too harsh a penalty in this case.

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[28] *Id.* at Section 2(c). See also Section 46(E), Rule 10 of the RRACCS.

[29] *Rollo*, p. 7.

In view of the foregoing, the Court sustains the recommendation of the OAS that Garra should be suspended for a period of one (1) year.

WHEREFORE, Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Judicial Academy, and Staff Driver, is found **GUILTY** of the administrative offenses of Violation of Reasonable Office Rules and Regulations, Disgraceful and Immoral Conduct, and Dishonesty. He is hereby **SUSPENDED** for a period of one (1) year, with a **WARNING** that a repetition of the same or similar infraction shall be dealt with more severely.

This Decision takes effect immediately. Let a copy of this Decision be appended to Mr. Cloyd D. Garra's 201 File.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Reyes, A. Jr., Inting,* and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 183478. February 10, 2020]

SOCIAL SECURITY SYSTEM, *petitioner, vs.* **MANUEL F. SENO, JR., GEMMA S. SENO, and FERNANDO S. GORROSPE,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE SUPREME COURT WILL

[*] Also spelled as "Gorospe" in some parts of the records.

NOT ENTERTAIN QUESTIONS OF FACT AS IT IS BOUND BY THE FINDINGS OF THE COURT OF APPEALS WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS. — It is a settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts. Hence, it will not entertain questions of fact as it is bound by the findings of fact made by the CA when supported by substantial evidence. There are, however, exceptions to the rule wherein the Court may pass upon and review the findings of fact by the CA. These instances are enumerated in *Medina v. Asistio, Jr.*, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. The instant case falls under the exceptions since the findings of the Court of Appeals are contrary to those of the RTC, and is based on the supposed absence of evidence, *i.e.,* the Franchise Verifications, but is contracted by the evidence on record.

2. **ID.; CRIMINAL PROCEDURE; INFORMATION; ONCE A COMPLAINT OR INFORMATION IS ALREADY FILED IN COURT, ANY DISPOSITION OF THE CASE, SUCH AS ITS DISMISSAL OR ITS CONTINUATION, RESTS ON THE SOUND DISCRETION OF THE COURT. —** In *Crespo v. Mogul,* the Supreme Court held that once a complaint or information is already filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. It is the best and sole judge on what to do with the case before it. Thus, when a motion to dismiss the case is filed by the public prosecutor, it should be addressed

to the court who has the option to grant or deny the same. The court should be mindful not to infringe on the substantial rights of the accused or the right of the People to due process of law. Moreover, in *Santos v. Orda, Jr.*, this Court emphasized that the above rule likewise applies to a motion to withdraw Information or to dismiss the case filed before the court, like in the case at bar, even before or after arraignment of the accused. The grant or denial of the same is left to the trial court's exclusive judicial discretion. Hence, it should not merely rely on the findings of the public prosecutor or the Secretary of Justice that no crime was committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused. Instead, the trial court has to make its own independent assessment of the merits of the case as well as the evidence of the prosecution**.**

3. **ID.; ID.; THE COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY A PARTY TO A CASE; RATIONALE. —** [T]he records do not show that respondents prayed for the conduct of a reinvestigation in their motion for reconsideration. Jurisprudence dictates that the courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case. The Court explained the rationale for this rule in *Bucal v. Bucal*, citing *Development Bank of the Philippines v. Teston* as follows: It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case. The rationale for the rule was explained in *Development Bank of the Philippines v. Teston, viz.*: Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant. For the same reason, this protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard. Evidently, the trial court gravely abused its discretion when it issued the assailed September Order. In

doing so, the right of SSS to due process was violated when the trial court ordered the conduct of a reinvestigation that was not at the start prayed for by the respondents.

APPEARANCES OF COUNSEL

Henry L. Tendido for petitioner.
Anastacio Law Office for respondents.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the March 11, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 96627 which (a) granted the Amended Petition[3] for *Certiorari* filed by herein respondents Manuel F. Seno, Jr. (Manuel), Fernando S. Gorrospe (Fernando), and Gemma S. Seno (Gemma, collectively respondents); (b) annulled and set aside the May 29, 2006[4] and September 25, 2006[5] Orders of the Regional Trial Court (RTC), Branch 206, Muntinlupa City, in Criminal Case No. 05-853; and (c) granted respondents' Motion to Withdraw Information[6] filed in the said criminal case. Petitioner Social Security System (SSS) likewise assails the June 25, 2008 Resolution[7] of the CA which denied its Motion for Reconsideration.[8]

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[1] *Rollo*, pp. 8-28.

[2] *Id.* at 29-42; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] CA *rollo*, pp. 56-72.

[4] Records, Volume I, pp. 187-190; penned by Judge Patria A. Manalastas-De Leon.

[5] *Id.* at 224-225.

[6] *Id.* at 155-156.

[7] CA *rollo*, pp. 228-229.

[8] *Id.* at 217-219.

Factual Antecedents

Respondents are members of the Board of Directors of JMA Transport Services Corporation (JMA Transport), a domestic corporation and a duly covered member of SSS with Identification No. 03-9077846-6.[9]

Sometime in 2000, SSS filed an Affidavit-Complaint[10] against respondents together with Ruth De Leon (De Leon), Celso Librando (Librando), and Edgar Froyalde (Froyalde), in their capacities as JMA Transport's Board of Directors before the Prosecutor's Office of Muntinlupa City for failure to remit the social security (SS) contributions of their employees in violation of Section 22(a)[11] in relation to Sections 22(d)[12] and

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[9] Records, Volume I, p. 17.

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

[11] SEC. 22. Remittance of Contributions. – (a) The contribution imposed in the preceding Section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided*, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

[12] SEC. 22. Remittance of Contributions. – x x x

x x x x x x x x x

(d) The last complete record of monthly contributions paid by the employer or the average of the monthly contributions paid during the past three (3) years as of the date of filing of the action for collection shall be presumed to be the monthly contributions payable by and due from the employer to the SSS for each of the unpaid month, unless contradicted and overcome by other evidence: *Provided*, That the SSS shall not be barred from determining and collecting the true and correct contributions due the SSS even after full payment pursuant to this paragraph, nor shall the employer be relieved of his liability under Section Twenty-eight of this Act.

28(e)[13] and (f)[14] of Republic Act (R.A.) No. 1161, as amended by R.A. No. 8282, otherwise known as the "*Social Security Act of 1997*."

In its complaint, SSS averred that after inspecting the account of JMA Transport, it discovered that the company was delinquent in its payment of contributions for the period September 1997 to July 1999. As of August 31, 1999, the amount due was ₱838,488.13 inclusive of the 3% penalty per month.[15]

As a result thereof, a Letter of Introduction[16] dated December 16, 1998 was served to JMA Transport to monitor its compliance with the Social Security Act of 1997 and to inspect its SSS records. This was followed by a Billing Letter[17] dated August

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[13] SEC. 28. Penal Clause. – x x x

x x x x x x x x x

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years or both, at the discretion of the court: *Provided*, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

[14] SEC. 28. Penal Clause. – x x x

x x x x x x x x x

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties Provided in this Act for the offense.

[15] Records, Volume I, p. 17; The Affidavit-Complaint stated that JMA Transport failed to remit SS contributions in the amount of ₱641,478.20 while the penalty due was ₱197,009.93.

[16] *Id.* at 21.

[17] *Id.* at 22.

25, 1999 and a Demand Letter[18] dated September 16, 1999 informing the company of its outstanding obligation and demanding to pay it within 10 days from receipt of the demand. However, JMA Transport failed to settle its obligations which prompted SSS to file the said Complaint before the Office of the City Prosecutor (OCP) of Muntinlupa City.

During the preliminary investigation, respondents proposed to pay in installment JMA Transport's outstanding obligation. Manuel issued 24 postdated checks in the total amount of ₱609,370.50 as payment of JMA Transport's obligation inclusive of the penalty charges. SSS, in turn, accepted the postdated checks. Thus, the Complaint was provisionally withdrawn in view of the settlement between the parties.

However, when two of the postdated checks were dishonored by the drawee-bank, SSS notified JMA Transport to replace the said checks and to pay its obligation. However, the company did not heed the demand.

Consequently, SSS filed another Complaint-Affidavit[19] against respondents for violation of Section 22(a) in relation to Sections 22(d) and 28(e) of R.A. No. 1161, as amended by R.A. No. 8282. SSS alleged that JMA Transport had unpaid obligations in the aggregate amount of ₱4,903,267.52 which included the obligations subject of the first complaint plus delinquent SS contributions from August 1999 to June 2004 in the amount of ₱2,200,470.26 and penalty thereon in the amount of ₱2,702,797.26.

Manuel refuted SSS' claims and alleged that JMA Transport had already ceased operations in July 1999. Therefore, he and the other respondents should not be held liable for the SS contributions after July 1999. He further averred that the delinquent contributions as of July 1999 had been settled by the two postdated checks he issued to SSS and that the remaining obligation of the company pertained only to the penalty charges

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[18] *Id.* at 23.

[19] *Id.* at 30-31.

in the amount of ₱50,780.82. Furthermore, Manuel asserted that he should not have been held responsible for the dishonor of the checks as this was brought about by the drawee-bank's merger with another bank.

Fernando and Gemma, on the other hand, denied any participation in the alleged violation of the Social Security Act of 1997. They asserted that as directors of JMA Transport, they never handled matters relating to the SS contributions of the employees. They also corroborated the contentions of respondent Manuel with respect to the cessation of business operations of JMA Transport effective July 1999 as well as the payments of the delinquent contributions and penalty charges that were the subjects of the previous complaint.

SSS thereafter submitted its Reply[20] maintaining that it assessed JMA Transport the additional SS contributions on the presumption that the company was still in operation since the records of the SSS did not show that it has ceased business operations.

After the preliminary investigation, the OCP, through Assistant City Prosecutor (ACP) Elisa Sarmiento-Flores, found probable cause against respondents, Librando and Froyalde, for the complained violations.[21] As a result thereof, the corresponding Information[22] was filed against them before the trial court and the case was docketed as Criminal Case No. 05-853.

On the other hand, the complaint against De Leon was dismissed because she was no longer in the employ of JMA Transport when it failed to remit the SS contributions.

Meantime, aggrieved with the OCP's findings, respondents promptly filed a Petition for Review[23] before the Department of Justice (DOJ).

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[20] Records, Volume II, pp. 300-301.

[21] Records, Volume I, pp. 7-10.

[22] *Id.* at 1.

[23] *Id.* at 133-143.

Ruling of the Department of Justice

In its January 31, 2006 Resolution,[24] the DOJ reversed the findings of the investigating prosecutor and ordered the withdrawal of the Information. It held that JMA Transport could not be held liable for the SS contributions after July 1999 because it already had ceased its business operations as of said month. Furthermore, the company's unpaid delinquent SS contributions plus penalty charges in the amount of ₱609,370.50 had already been settled by Manuel who had issued postdated checks. The DOJ ruled that the dishonor by the drawee-bank of the checks due to its merger with another bank did not constitute breach of the agreement on the part of Manuel so as to warrant the revival of the complaint. The *fallo* of the DOJ Resolution reads:

> WHEREFORE, the assailed resolution is REVERSED AND SET ASIDE. The City Prosecutor of Muntinlupa City is hereby directed to cause the withdrawal of the information for violation of the Social Security Law earlier filed against Manuel Seno, Jr., Celso Librando, Edgar Froyalde, Fernando Gorrospe, and Gemma Seno and to report the action taken thereon within ten (10) days from receipt hereof.
>
> SO ORDERED.[25]

The SSS moved for reconsideration[26] but it was denied by the DOJ in a Resolution[27] promulgated on March 20, 2006.

Ruling of the Regional Trial Court

Meanwhile, on February 17, 2006, the prosecution filed a Motion to Withdraw Information[28] with the trial court in accordance with the DOJ Resolution. During the hearing of the said motion, private prosecutor Atty. Henry L. Tendido

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[24] *Id.* at 157-160.

[25] *Id.* at 159.

[26] *Id.* at 164-170.

[27] *Id.* at 185.

[28] *Id.* at 155-156.

manifested that SSS had a pending Motion for Reconsideration[29] with the DOJ.

In its May 29, 2006 Order[30] (May Order), the trial court denied the motion. It held that based on the three Franchise Verifications issued by the Land Transportation Franchising and Regulatory Board (LTFRB) that were attached to SSS' Reply-Affidavit[31] dated December 8, 2004, JMA Transport was in active status either from August 13, 2003 or June 4, 2004 until March 31, 2006. It therefore showed that from July 1999 onwards, it was still in continuous business operation contrary to respondents' claim.

Respondents then filed a Motion for Reconsideration[32] before the trial court. They argued that they did not refute the Franchise Verifications purportedly issued by the LTFRB as these were not attached to SSS' Reply-Affidavit. The Reply-Affidavit likewise made no mention of the same evidence or, at the very least, as to whether JMA Transport remained in active status.

Furthermore, respondents averred that assuming JMA Transport violated the Social Security Act of 1997, it should be the corporate officers and not the members of the Board of Directors who should be indicted for the offenses charged. Also, the SS contributions had already been duly paid pursuant to the previous amicable settlement between SSS and JMA Transport. The only remaining unpaid obligation was the penalty charges based on the unpaid contributions.

In its September 25, 2006 Order[33] (September Order), and by way of action on the motion for reconsideration, the trial court did not order the grant or denial thereof; rather, it directed

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[29] *Id.* at 164-170.

[30] *Id.* at 187-190.

[31] Records, Volume II, pp. 300-301.

[32] Records, Volume I, pp. 192-198.

[33] *Id.* at 224-225.

the public prosecutor to conduct a reinvestigation for the purpose of receiving respondents' controverting evidence with respect to the Franchise Verifications, in this wise:

> It would appear that the issue here is not simply whether or not there is probable cause against the accused, but whether or not the accused were able to avail of the full opportunity to defend themselves during the preliminary investigation.
>
> The Court is inclined to give the accused the benefit of the doubt. Considering the circumstance that prevented the accused from fully controverting the complaint against them, the Court believes that it would serve the greater interest of justice if the case would be reinvestigated to give the accused the chance to present evidence in avoidance of prosecution.
>
> WHEREFORE, by way of action on the accused's Motion for Reconsideration, the Court deems it appropriate to direct the Public Prosecutor to conduct reinvestigation for the purpose of receiving the accused's controverting evidence on the matter of the Franchise Verifications, and to conclude the reinvestigation with dispatch.
>
> SO ORDERED.[34]

Ruling of the Court of Appeals

Respondents filed an Amended Petition[35] for *Certiorari* with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction before the CA. They asserted that the trial court gravely abused its discretion when it issued the assailed May and September Orders denying the withdrawal of the Information filed against them and directing the conduct of reinvestigation, respectively.

Meantime, in its March 29, 2007 Resolution,[36] the CA merely noted respondents' prayer for issuance of a TRO and/or preliminary injunction but directed the trial court to observe judicial courtesy.

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[34] *Id.* at 225.

[35] CA *rollo*, pp. 56-72.

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

On March 11, 2008, the CA rendered its Decision[37] granting respondents' petition on the basis that the trial court gravely abused its discretion in issuing the assailed May and September Orders. It held that the trial court went beyond the records of the case when it based its May Order on Franchise Verifications that were not attached to or even mentioned in SSS' Reply-Affidavit. Anent the September Order, the CA ruled that the act of directing the public prosecution to conduct a reinvestigation brushed aside respondents' arguments in their motion for reconsideration and infringed on their constitutional rights.

SSS moved for reconsideration.[38] The CA, however, denied it in its Resolution[39] dated June 25, 2008.

Hence, the instant Petition for Review on *Certiorari*.

Issue

The sole issue to be resolved in this petition is whether the CA committed a reversible error when it ruled that the RTC gravely abused its discretion in the issuance of the assailed May and September Orders.

Our Ruling

SSS maintains that the CA committed grave error in the apprehension of facts when it held that the RTC gravely abused its discretion in issuing the assailed May and September Orders. It points out that, contrary to the findings of the CA, the trial court did not go beyond the records of the case when it issued the May Order. The Franchise Verifications which would prove that JMA Transport was still in operation after the year 1999 were actually attached to its Reply-Affidavit and numbered accordingly. Anent the September Order, SSS posits the view that the RTC's order to conduct reinvestigation will not prejudice the rights of respondents.

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

[38] *Id.* at 217-219.

[39] CA *rollo*, pp. 228-229.

On the other hand, respondents insist that the Franchise Verifications were not appended to SSS' Reply-Affidavit. In fact, their copy of the Reply-Affidavit contained no attachment of the Franchise Verifications. Thus, the trial court gravely abused its discretion when it issued the assailed May Order because it based its ruling on purported documents which were not presented as evidence. Respondents likewise aver that the RTC similarly acted in grave abuse of discretion in issuing the assailed September Order. Respondents claim that instead of resolving their motion for reconsideration, the trial court directed the conduct of reinvestigation which they did not pray for.

The Court finds the petition partly meritorious.

It is a settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts. Hence, it will not entertain questions of facts as it is bound by the findings of fact made by the CA when supported by substantial evidence.[40]

There are, however, exceptions to the rule wherein the Court may pass upon and review the findings of fact by the CA. These instances are enumerated in *Medina v. Asistio, Jr.*,[41] to wit:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[42] (Citations omitted)

[40] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

[41] *Medina v. Asistio*, 269 Phil. 225 (1990).

[42] *Id.* at 232.

The instant case falls under the exceptions since the findings of the Court of Appeals are contrary to those of the RTC, and is based on the supposed absence of evidence, *i.e.,* the Franchise Verifications, but is contracted by the evidence on record. True, the issues of whether the Franchise Verifications were indeed attached to the Reply-Affidavit filed by SSS so as to prove that JMA Transport was still in operation after 1999, and whether the RTC gravely abused its discretion in directing the prosecution to conduct reinvestigation for the purpose of admitting respondents' controverting evidence against the same are both factual in nature. The Court observes that the findings of the CA were premised mainly on the Franchise Verifications which were allegedly not found in the records. However, upon our review of the records, We find that the said Franchise Verifications were actually appended to the Reply of SSS contrary to the observation of the appellate court.[43] Hence, it is only proper to give due course to the instant petition.

After a thorough examination of the records of the case, We find that the trial court did not abuse its discretion in issuing the May Order. There was no gross misapprehension of facts on the part of the trial court with respect to the assailed May Order.

In *Crespo v. Mogul*,[44] the Supreme Court held that once a complaint or information is already filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. It is the best and sole judge on what to do with the case before it. Thus, when a motion to dismiss the case is filed by the public prosecutor, it should be addressed to the court who has the option to grant or deny the same.[45] The court should be mindful not to infringe on the substantial rights of the accused or the right of the People to due process of law.[46]

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[43] Records, Volume II, pp. 303-305.

[44] 235 Phil. 465, 476 (1987).

[45] *Santos v. Orda, Jr.*, 481 Phil. 93, 105-106 (2004), citing *Crespo v. Mogul*, *id.*

[46] *Santos v. Orda, Jr.*, *id.* at 106, citing *Odin Security Agency, Inc. v. Sandiganbayan*, 417 Phil. 673, 680 (2001).

Moreover, in *Santos. v. Orda, Jr.*,[47] this Court emphasized that the above rule likewise applies to a motion to withdraw Information or to dismiss the case filed before the court, like in the case at bar, even before or after arraignment of the accused. The grant or denial of the same is left to the trial court's exclusive judicial discretion. Hence, it should not merely rely on the findings of the public prosecutor or the Secretary of Justice that no crime was committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused. Instead, the trial court has to make its own independent assessment of the merits of the case as well as the evidence of the prosecution**. Its independent assessment must be based on the affidavits and counter-affidavits, documents, or evidence appended to the Information, the records of the public prosecutor which the court may order the latter to produce before the court, or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.**

In issuing the assailed May Order, the trial court correctly found that there was factual basis in the allegation that JMA Transport was in fact in continuous business operations. In denying the motion to withdraw Information filed by the city prosecutor, the trial court relevantly ruled that:

> A review of the record shows that the accused in this case are all directors of JMA Transport Corporation (JMA), a covered member of SSS with Identification Number 03-9077846 and is reportedly delinquent in the remittance of SS contributions for the period September 1997 to July 1999. During the preliminary investigation, JMA proposed to pay their delinquencies by installment with postdated checks which was accepted by SSS. Nevertheless, it was discovered in 2004 that JMA had failed to complete the installment payment and the company even remained in active status, but despite written and oral demands to pay their delinquencies or to replace the checks, JMA failed to do so.
>
> Concerning the continued business operation of JMA, SSS submitted three (3) Franchise Verifications issued by the Land Transportation

[47] *Id.* at 105-108.

Franchising and Regulatory Board (LTFRB) for JMA Transport Service Corporation. These documents, which were attached to complainant's reply-affidavit dated December 8, 2004, clearly show that JMA remained inactive status either from August 13, 2003 or June 4, 2004 until March 31, 2006, despite the accused's claim that the business was retired in July 1999. Notably, accused [Seno] did not refute these Franchise Verifications in his rejoinder-affidavit dated December 21, 2004, while the other accused opted not to file any rejoinder-affidavits.

After careful consideration of the evidence submitted in this case, the Court believes that there exists probable cause against the accused for the offense charged. Hence, the case should be maintained.[48]

We find that, contrary to the conclusion reached by the CA, the three Franchise Verifications[49] were actually appended to SSS' Reply-Affidavit. These verifications were even mentioned in the April 8, 2005 Resolution[50] of ACP Elisa Sarmiento-Flores who initially recommended the filing of the Information against respondents.[51] Interestingly, all that respondents have advanced was a mere bare and unsubstantiated assertion that they were not furnished copies of the same. Hence, their negative self-serving assertion carries no weight at all especially since it was not supported by any evidence to prove the same. Verily, the trial court did not gravely abuse its discretion in issuing the May Order. Its independent assessment with respect to the issue whether JMA Transport

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[48] Records, Volume I, pp. 189-190.

[49] Records, Volume II, pp. 303-305.

[50] *Id.* at 231-234.

[51] The Memorandum states:

In the REPLY-AFFIDAVIT of complainant, the SSS stated that sometime in 2004, it discovered that respondents failed to complete the installment payments and that the company remained in an active status. In fact, the SSS was able to secure a copy of a Franchise Verification from the Land Transportation Franchising and Regulatory Board attached in the records. Hence, a billing statement was sent to respondents, but despite receipt of the same, they failed to settle their obligation with the SSS. Complainant further argued that R.A. 8282 does not distinguish what criminal action for violation of SSS Law should be filed. x x x (*Id.* at 233.)

was still in operation after the year 1999 was duly based on the evidence adduced before the court.

However, with respect to the assailed September Order, We are one with the findings of the appellate court. To recall, the trial court did not deny or grant the motion for reconsideration; instead, it merely directed the public prosecutor to conduct a reinvestigation and to receive respondents' evidence that would controvert the Franchise Verifications, and to conclude the same thereafter. The trial court's directive was erroneous.

It was already unnecessary for the trial court to direct the prosecution to conduct the reinvestigation. What it should have done was to order the parties to submit additional evidence and to admit the same if so warranted during the hearing conducted for the purpose. Notably, the Information was already filed before the trial court. Therefore, it is the best and sole judge to determine the proper disposition of the case, which includes whether to grant or to deny the motion to withdraw the Information filed by the prosecution.

Verily, to direct the prosecution to reinvestigate the case for the purpose of admitting additional evidence would clearly undermine the power of the trial court to adjudicate the case before it. Its directive gave the impression that the trial court might rely on the findings of the prosecution on whether respondents' motion for reconsideration of the assailed May Order denying the withdrawal of Information should be granted or not. This should not be the case, for to do so would amount to an implied circumvention of a trial court judge's role to independently assess the cases already filed before him/her based on the evidence submitted by the parties concerned.

At any rate, the records do not show that respondents prayed for the conduct of a reinvestigation in their motion for reconsideration. Jurisprudence dictates that the courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.[52] The Court explained

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[52] *Diona v. Balangue*, 701 Phil. 19, 31 (2013).

the rationale for this rule in *Bucal v. Bucal*,[53] citing *Development Bank of the Philippines v. Teston*[54] as follows:

> It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case. The rationale for the rule was explained in *Development Bank of the Philippines v. Teston, viz.*:
>
> > Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.
>
> For the same reason, this protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard. (Citations omitted)

Evidently, the trial court gravely abused its discretion when it issued the assailed September Order. In doing so, SSS' right to due process was violated when it ordered the conduct of a reinvestigation that was not at the start prayed for by the respondents.

WHEREFORE, the petition is **PARTLY GRANTED**. The March 11, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 96627 is **AFFIRMED** only insofar as it declared the September 25, 2006 Order of the Regional Trial Court, Branch 206 of Muntinlupa City, in Criminal Case No. 05-853 **NULL and VOID**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Inting, and *Delos Santos, JJ.*, concur.

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[53] 760 Phil. 912, 921-922 (2015).

[54] 569 Phil. 137, 144 (2008).

THIRD DIVISION

[G.R. No. 203806. February 10, 2020]

MUNICIPALITY OF FAMY, LAGUNA, *petitioner*, *vs.* **MUNICIPALITY OF SINILOAN, LAGUNA,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; A WRIT OF PRELIMINARY INJUNCTION IS AN ANCILLARY AND INTERLOCUTORY ORDER ISSUED AS A RESULT OF AN IMPARTIAL DETERMINATION OF THE CONTEXT OF BOTH PARTIES, WHICH MAY EITHER BE PROHIBITORY, WHEN IT BARS AN ACT, OR MANDATORY, WHEN IT REQUIRES THE PERFORMANCE OF A PARTICULAR ACT; THE TRIAL COURT'S ORDER ISSUING THE INJUNCTION IS NEITHER A JUDGMENT ON THE MERITS NOR A FINAL DISPOSITION OF THE CASE, BUT IS SUBJECT TO THE FINAL DISPOSITION OF THE PRINCIPAL ACTION. —** Rule 58, Section 1 of the Rules of Court defines preliminary injunction: x x x. Otherwise stated, a writ of preliminary injunction is:... an *ancillary* and *interlocutory* order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits. Preliminary injunction may either be prohibitory, when it bars an act, or mandatory, when it requires the performance of a particular act. As an interlocutory order, it is a provisional remedy, temporary in nature. It is ancillary, an incident adjunct to a main action. Contrary to petitioner's claim, preliminary injunction is "subject to the final disposition of the principal action." The trial court's order issuing the injunction is neither a judgment on the merits nor a final disposition of the case.

2. **ID.; ID.; ID.; REQUISITES FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION. —** Rule 58, Section 3

of the Rules of Court enumerates the grounds when a writ of preliminary injunction is proper: x x x. Jurisprudence provides that the following must be proven for a writ of preliminary injunction to be issued: (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

3. **ID.; ID.; ID.; THE COURTS' WIDE DISCRETION IN GRANTING A WRIT OF PRELIMINARY INJUNCTION MUST BE EXERCISED WITH GREAT CAUTION; IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION, THE SUPREME COURT SHALL NOT INTERVENE IN THEIR EXERCISE OF DISCRETION IN INJUNCTIVE MATTERS. —** Courts are given wide discretion in granting a writ of preliminary injunction. However, this discretion is with limit and must be exercised with great caution. In the absence of grave abuse of discretion, this Court shall not intervene in their exercise of discretion in injunctive matters. In *Ong Lay Hin v. Court of Appeals*, this Court defined grave abuse of discretion as:... the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."

4. **ID.; ID.; ID.; THE PARTIES SEEKING INJUNCTION ARE NOT REQUIRED TO CONCLUSIVELY SHOW THAT THERE WAS A VIOLATION OF THEIR RIGHTS, AS THIS ISSUE WILL STILL BE FULLY LITIGATED IN THE MAIN CASE; APPLICANTS NEED ONLY TO SHOW THAT THEY HAVE AN OSTENSIBLE RIGHT TO THE FINAL RELIEF PRAYED FOR IN THEIR COMPLAINT; INJUNCTION SHOULD NOT BE ISSUED IF THERE IS NO CLEAR LEGAL RIGHT MATERIALLY AND SUBSTANTIALLY BREACHED FROM A *PRIMA FACIE* EVALUATION OF THE EVIDENCE OF THE COMPLAINANT. —** Injunction should not be issued "if there is *no clear legal right* materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant." Parties seeking

injunction must present evidence to demonstrate their justification for the relief pending final judgment. The evidence need not be complete and conclusive proof; *prima facie* evidence suffices: It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, *mere prima facie evidence is needed* to establish the applicant's rights or interests in the subject matter of the main action. It is not required that the applicant should conclusively show that there was a violation of his rights as this issue will still be fully litigated in the main case. Thus, an applicant for a writ is required *only to show that he has an ostensible right to the final relief prayed for* in his complaint.

5. **ID.; ID.; ID.; LITIGANTS APPLYING FOR INJUNCTIVE RELIEF MUST EXHIBIT THEIR PRESENT AND UNMISTAKABLE RIGHT TO BE PROTECTED; THAT THE FACTS AGAINST WHICH INJUNCTION IS DIRECTED VIOLATE SUCH RIGHT; AND THERE IS A SPECIAL AND PARAMOUNT NECESSITY FOR THE WRIT TO PREVENT SERIOUS DAMAGES; ESTABLISHED IN CASE AT BAR. —** *Spouses Nisce v. Equitable PCI Bank*, this Court explained that litigants applying for injunctive relief must exhibit their "present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages." Here, as an incident to its Petition for *Certiorari* and Prohibition, respondent prayed for injunctive relief to curtail the implementation of the Sangguniang Panlalawigan Resolutions, which had declared Barangays Kapatalan and Liyang to be under petitioner's jurisdiction. Evidently, this was unfavorable to respondent. x x x. A perusal of the records reveals that respondent sufficiently alleged and substantiated its clear legal right sought to be protected through the writ of preliminary injunction. Respondent, who had in its favor a March 26, 1962 Decision declaring its jurisdiction over the barangays, stood to suffer irreparable injury through the Sangguniang Panlalawigan Resolutions. It exhibited that since the ruling was issued, it had exercised jurisdiction over Barangays Kapatalan and Liyang on adjudication of criminal cases, payment of real property taxes, and construction of infrastructure projects. Further, it posited that it was bound to lose a portion of its internal revenue allotment, pending the disposition of its case.

6. ID.; ID.; ID.; PRELIMINARY INJUNCTIONS ARE ISSUED TO PRESERVE THE *STATUS QUO*, "THE LAST ACTUAL, PEACEFUL, AND UNCONTESTED STATUS THAT PRECEDES THE ACTUAL CONTROVERSY, THAT WHICH IS EXISTING AT THE TIME OF THE FILING OF THE CASE"; APPLICANT MUST SATISFACTORILY SHOW THAT ITS CIRCUMSTANCES MERITED THE TEMPORARY INJUNCTIVE RELIEF, LEST THE RELIEFS IT PRAYED FOR IN ITS MAIN PETITION BE RENDERED MOOT WHEN THE CASE HAS BEEN HEARD ON THE MERITS. — Preliminary injunctions are issued to preserve the *status quo*, "the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case." In this case, the injunctive relief was sought to bar the implementation of the Sangguniang Panlalawigan Resolutions, which would have significantly affected the exercise of power of the municipalities in conflict. Contrary to petitioner's actuations, there need not be a determination of whether the March 26, 1962 Decision had attained finality. The trial court did not pass upon its finality when it determined that the writ of preliminary injunction should be issued. Respondent satisfactorily showed that its circumstances merited the temporary injunctive relief, lest the reliefs it prayed for in its main Petition be rendered moot when the case has been heard on the merits.

APPEARANCES OF COUNSEL

Lameyra Law Office for petitioner.
Federico A. Bellosillo, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

In the absence of grave abuse of discretion, this Court shall not intervene in the trial court's exercise of discretion in injunctive matters.[1]

[1] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458 (2005) [Per *J.* Carpio Morales, Third Division].

For this Court's resolution is the Petition for Review on *Certiorari*[2] challenging the Decision[3] and Resolution[4] of the Court of Appeals. The Court of Appeals affirmed the Regional Trial Court's Orders[5] granting the Municipality of Siniloan, Laguna's application for a writ of preliminary injunction and subsequently denying the Motion for Reconsideration of the Municipality of Famy, Laguna.[6]

Both municipalities of Famy and Siniloan are public corporations existing under Philippine law.[7]

Over a century ago, Famy was incorporated into Siniloan through Act No. 939, series of 1903. However, through Executive Order No. 72, series of 1909, Famy was separated and became another entity. This eventually led to a boundary dispute between the now different municipalities over two (2) barangays, Kapatalan and Liyang. To resolve the dispute, the Provincial Board of Laguna (Provincial Board) rendered its March 26, 1962 Decision ruling that Siniloan had jurisdiction over the barangays.[8]

Much later, in 2001, when an elementary school in Famy was transferred to Barangay Kapatalan, it was considered under

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[2] *Rollo*, pp. 7-36.

[3] *Id.* at 37-51. The August 22, 2011 Decision in CA-G.R. SP No. 105671 was penned by Associate Justice Noel G. Tijam (now a retired member of this Court) and concurred in by Associate Justices Marlene Gonzales-Sison and Jane Aurora C. Lantion of the Special Eleventh Division of the Court of Appeals, Manila.

[4] *Id.* at 52-57. The October 11, 2012 Resolution in CA-G.R. SP No. 105671 was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Jane Aurora C. Lantion of the Former Special Eleventh Division, Court of Appeals, Manila.

[5] *Id.* at 97-105. The February 20, 2008 and August 1, 2008 Orders in Civil Case No. S-1013 were penned by Acting Presiding Judge Agripino G. Morga of Branch 33, Regional Trial Court of Siniloan, Laguna.

[6] *Id.* at 38.

[7] *Id.*

[8] *Id.*

Famy's jurisdiction. Its barangay officials were also elected and declared under Famy's authority.[9]

These prompted then Siniloan Vice Mayor Roberto J. Acoba to write to Provincial Legal Officer Antonio Relova (Relova), seeking the implementation of the Provincial Board's March 26, 1962 Decision. Eventually, and upon Relova's advice, Siniloan filed a Petition to Revive Judgment before the Sangguniang Panlalawigan of Laguna (Sangguniang Panlalawigan).[10]

Opposing Siniloan's Petition, Famy submitted a copy of an earlier July 4, 1942 Decision rendered by the Provincial Board, where it had granted Famy jurisdiction over the disputed barangays.[11]

The Sangguniang Panlalawigan sustained Famy's position. In its Resolution No. 498, series of 2005, it found that the March 26, 1962 Decision could not be executed because it did not specify the metes and bounds of the municipalities' territories. It noted that placing the barangays under Siniloan's jurisdiction significantly reduced Famy's population and land area to a point that went below the law's requirements. Additionally, Siniloan was found to have abandoned its claim over Barangay Kapatalan when it ceased its internal revenue allotment to the barangay.[12]

Siniloan moved for reconsideration, but its Motion was denied in the Sangguniang Panlalawigan's Resolution No. 88, series of 2006.[13]

Thus, Siniloan filed before the Regional Trial Court a Petition for *Certiorari* and Prohibition, with a prayer that a temporary restraining order and a writ of preliminary injunction be issued. Accordingly, the trial court issued a temporary restraining order

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[9] *Id.*

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

[11] *Id.* at 40.

[12] *Id.*

[13] *Id.*

prohibiting both parties from exercising authority over the barangays.[14]

On February 20, 2008, the Regional Trial Court issued a writ of preliminary injunction to restrain the Sangguniang Panlalawigan from implementing its Resolutions No. 498 and 88.[15]

The dispositive portion of the Order read:

> WHEREFORE, premises considered, the application for the issuance of a Writ of Preliminary Injunction of petitioner is GRANTED.
>
> Let a Writ of Preliminary Injunction issue to restrain the Sangguniang Panlalawigan of Laguna and Governor Teresita S. Lazaro and all persons acting for and in their behalf, from implementing Resolution No. 498, S-2005 and Resolution No. 88, S-2006 pending resolution of this petition, or until further orders from this Court. Likewise, respondent Municipality of Famy, Laguna and all persons acting for and its *(sic)* behalf are enjoined from further intruding into the territorial jurisdiction of petitioner Municipality of Siniloan, Laguna, particularly in Barangays Kapatalan and Liyang, and from further introducing whatever improvements thereon, while this petition is pending and until further orders from this Court.
>
> Petitioner is hereby directed to post a bond amounting to One Hundred Thousand (Php100,000.00) Pesos, to answer for whatever damages which the Respondent Municipality of Famy, Laguna, may suffer or sustain by reason of the injunction. The Writ of Preliminary Injunction shall not be issued without payment of the bond herein fixed.
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> SO ORDERED.[16]

In its August 1, 2008 Order,[17] the Regional Trial Court denied Famy's subsequent Motion for Reconsideration.

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

[15] *Id.* at 97-103.

[16] *Id.* at 103.

[17] *Id.* at 104-105.

Famy then filed a Petition for *Certiorari*[18] before the Court of Appeals, seeking to annul the Regional Trial Court's Orders. Among others, it claimed that the trial court gravely erred in issuing the injunctive relief, as the writ cannot be issued incidental to a petition for prohibition.[19] Moreover, even if the writ could be issued, Famy contended that the conditions for issuing it were not fulfilled. It also insists that by issuing the writ, the trial court effectively resolved the case on the merits.[20]

Siniloan countered that the writ was properly issued and was solely within the trial court's discretion.[21] It also manifested that criminal cases involving the two (2) barangays were being heard before its courts, the barangay's residents were registered voters in Siniloan, and their realty taxes were being paid to its municipal treasurer.[22]

In its August 22, 2011 Decision,[23] the Court of Appeals upheld the Regional Trial Court's Orders, ruling that the writ of preliminary injunction was correctly issued. It found that the Sangguniang Panlalawigan Resolutions would cause disorder to Siniloan's governance over the two (2) barangays and reduce its internal revenue allotment — effectively invading its clear and unmistakable right.[24] The Court of Appeals also dismissed Famy's assertion that the case had already been disposed of; on the contrary, the writ was a temporary remedy pending the Petition's resolution.[25]

The dispositive portion of the Court of Appeals Decision read:

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[18] *Id.* at 58-96.

[19] *Id.* at 42.

[20] *Id.* at 43 and 68.

[21] *Id.* at 43-44.

[22] *Id.* at 48.

[23] *Id.* at 37-51.

[24] *Id.* at 48-49.

[25] *Id.* at 50.

WHEREFORE, the instant petition is **DENIED**. The assailed Orders, dated February 20, 2008 and August 1, 2008, of the Public Respondent Regional Trial Court of Siniloan, Laguna, Branch 33, in Civil Case No. S-1013, are hereby **AFFIRMED**.

SO ORDERED.[26] (Emphasis in the original)

Famy's Motion for Reconsideration was also denied in the Court of Appeals' October 11, 2012 Resolution.[27]

Thus, on November 29, 2012, Famy filed this Petition for Review for *Certiorari*[28] against Siniloan.

In its December 10, 2012 Resolution,[29] this Court required respondent to comment on the Petition.

On April 15, 2013, respondent filed its Comment,[30] as noted in this Court's July 10, 2013 Resolution,[31] where it also directed petitioner to reply.

Petitioner later filed its Reply[32] on September 10, 2013.

On October 9, 2013, this Court issued a Resolution[33] giving due course to the Petition and ordering the parties to submit their memoranda. Petitioner[34] and respondent[35] filed their

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[26] *Id.* at 51.

[27] *Id.* at 52-57.

[28] *Id.* at 7-36. Petitioner initially moved to extend time to file its Petition, (*rollo*, pp. 3-5) which was granted in this Court's December 10, 2012 Resolution.

[29] *Id.* at 355.

[30] *Id.* at 376-398. On March 22, 2013, respondent filed a Notice of Entry of Appearance with Motion for Extension of Time to File Comment (*rollo*, pp. 362-365) and on April 3, 2013, a Second Motion for Extension of Time (*rollo*, pp. 372-375). These were granted in this Court's July 10, 2013 Resolution.

[31] *Id.* at 413-414.

[32] *Id.* at 415-431.

[33] *Id.* at 432-432-A.

[34] *Id.* at 433-480.

[35] *Id.* at 493-516.

respective Memoranda, as noted in this Court's February 17, 2014[36] and June 23, 2014 Resolutions.[37]

For its part, petitioner contends that the Court of Appeals erred in upholding the trial court's issuance of the writ of preliminary injunction incidental to the Petition for *Certiorari* and Prohibition. It avers that since the writ of prohibition itself "is unavailing to prevent an erroneous decision or an enforcement of an erroneous judgment,"[38] the injunctive relief should have been denied, it being a mere incident to the Petition for Prohibition.[39] As with prohibition, petitioner asserts that *certiorari* is not the proper remedy either, since it cannot substitute respondent's lost right to appeal.[40]

Petitioner also maintains that the implementation of the Sangguniang Panlalawigan Resolutions would not cause serious or irreparable damage since respondent failed to show its clear, unmistakable right that was violated.[41] It claims that respondent failed to substantiate its main contention that the March 26, 1962 Decision was final and executory,[42] as it was never shown that petitioner had received a copy of this 1962 Decision, which would have been the day from which finality of judgment is reckoned.[43]

Moreover, petitioner claims that even if the 1962 Decision had been final, it had prescribed in 1972, thereby extinguishing respondent's right long before the resolutions were issued.[44]

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[36] *Id.* at 486. In the same Resolution, this Court granted respondent's Motion for Extension to file its Memorandum.

[37] *Id.* at 518. This Court also granted respondent's second Motion for Extension.

[38] *Id.* at 440.

[39] *Id.* at 441.

[40] *Id.* at 443.

[41] *Id.* at 450.

[42] *Id.* at 454.

[43] *Id.* at 452.

[44] *Id.* at 456.

In any case, petitioner maintains that government recognition of the 1962 Decision does not suffice to show its finality, since other government agencies have also acknowledged petitioner's right to govern over the two (2) contested barangays.[45]

Respondent, on the other hand, counters that petitioner could have appealed an unfavorable decision in due course, instead of filing a petition for *certiorari* or prohibition.[46]

Respondent also reiterates that taxes for real estate properties in Barangays Kapatalan and Liyang were being paid to the Municipal Treasurer of Siniloan. Were the injunctive relief not granted, it posits that its internal revenue allotment would have been considerably reduced.[47]

Moreover, respondent asserts that petitioner's resort to this Court is based on a falsified document. It claims that the Sangguniang Panlalawigan gave undue credence to a purported photocopy of a 1942 unsigned decision, despite overwhelming evidence in respondent's favor. Moreover, it posits that the Sangguniang Panlalawigan had no jurisdiction to overturn the March 26, 1962 Decision, which had long attained finality.[48]

For this Court's resolution is the lone issue of whether or not the Court of Appeals erred in affirming the Regional Trial Court's issuance of a writ of preliminary injunction in favor of respondent Municipality of Siniloan.

This Court denies the Petition for lack of merit.

Rule 58, Section 1 of the Rules of Court defines preliminary injunction:

SECTION 1. *Preliminary Injunction Defined; Classes*. — A preliminary injunction is an order granted at any stage of an action or proceeding *prior to the judgment or final order*, requiring a party

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[45] *Id.* at 459.

[46] *Id.* at 501.

[47] *Id.* at 502-503.

[48] *Id.* at 508-511.

or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. (Emphasis supplied)

Otherwise stated, a writ of preliminary injunction is:

. . . an *ancillary* and *interlocutory* order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits.[49] (Emphasis supplied)

Preliminary injunction may either be prohibitory, when it bars an act, or mandatory, when it requires the performance of a particular act. As an interlocutory order, it is a provisional remedy,[50] temporary in nature.[51] It is ancillary, an incident adjunct to a main action.[52]

Contrary to petitioner's claim, preliminary injunction is "subject to the final disposition of the principal action."[53] The trial court's order issuing the injunction is neither a judgment on the merits nor a final disposition of the case.

Rule 58, Section 3 of the Rules of Court enumerates the grounds when a writ of preliminary injunction is proper:

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[49] *Bicol Medical Center v. Botor*, 819 Phil. 447, 457 (2017) [Per *J.* Leonen, Third Division] citing *Department of Public Works and Highways v. City Advertising Ventures Corp.*, 799 Phil. 47, 66 (2016) [Per *J.* Leonen, Second Division].

[50] *Raymundo v. Court of Appeals*, 288 Phil. 344, 349 (1992) [Per *J.* Nocon, Second Division].

[51] *Dungog v. Court of Appeals*, 455 Phil. 675, 685 (2003) [Per *J.* Carpio, First Division].

[52] *Raymundo v. Court of Appeals*, 288 Phil. 344, 349 (1992) [Per *J.* Nocon, Second Division].

[53] *Dungog v. Court of Appeals*, 455 Phil. 675, 685 (2003) [Per *J.* Carpio, First Division].

SECTION 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence provides that the following must be proven for a writ of preliminary injunction to be issued:

(1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[54]

Courts are given wide discretion in granting a writ of preliminary injunction. However, this discretion is with limit and must be exercised with great caution.[55] In the absence of

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[54] *Bicol Medical Center v. Botor*, 819 Phil. 447, 458 (2017) [Per *J.* Leonen, Third Division] citing *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 466 (2010) [Per *J.* Velasco, Jr., First Division]. See also *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703-704 (2002) [Per *J.* Corona, Third Division] and *Hutchison Ports Philippines, Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000) [Per *J.* Ynares-Santiago, First Division].

[55] *Spouses Nisce v. Equitable PCI Bank*, 545 Phil. 138, 160 (2007) [Per *J.* Callejo, Sr., Third Division].

grave abuse of discretion, this Court shall not intervene in their exercise of discretion in injunctive matters.[56] In *Ong Lay Hin v. Court of Appeals*,[57] this Court defined grave abuse of discretion as:

> . . . the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[58]

Injunction should not be issued "if there is *no clear legal right* materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant."[59]

Parties seeking injunction must present evidence to demonstrate their justification for the relief pending final judgment.[60] The evidence need not be complete and conclusive proof; *prima facie* evidence suffices:

> It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, *mere prima facie evidence is needed* to establish the applicant's rights or interests in the subject matter of the main action. It is not required that the applicant should conclusively show that there was a violation of his rights as this issue will still be fully litigated in the main case. Thus, an applicant for a writ is required *only to show that he has an ostensible right to the final relief prayed for* in his complaint.[61] (Emphasis in the original)

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[56] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458 (2005) [Per *J.* Carpio Morales, Third Division].

[57] 752 Phil. 15 (2015) [Per *J.* Leonen, Second Division].

[58] *Id.* at 24 citing *Lagua v. The Hon. Court of Appeals*, 689 Phil. 452 (2012) [Per *J.* Sereno, Second Division].

[59] *Bicol Medical Center v. Botor*, 819 Phil. 447, 457 (2017) [Per *J.* Leonen, Third Division].

[60] *Id.*

[61] *Department of Public Works and Highways v. City Advertising Ventures Corporation*, 799 Phil. 47, 64 (2016) [Per *J.* Leonen, Second Division] citing *Republic v. Evangelista*, 504 Phil. 115, 123 (2005) [Per *J.* Puno, Second Division].

Spouses Nisce v. Equitable PCI Bank,[62] this Court explained that litigants applying for injunctive relief must exhibit their "present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages."[63]

Here, as an incident to its Petition for *Certiorari* and Prohibition, respondent prayed for injunctive relief to curtail the implementation of the Sangguniang Panlalawigan Resolutions, which had declared Barangays Kapatalan and Liyang to be under petitioner's jurisdiction. Evidently, this was unfavorable to respondent. The parties respectively presented proof, and the Regional Trial Court found the following:

> First. It is not disputed that petitioner, before and after the Decision of March 26, 1962 was rendered by the Provincial Board of Laguna, has continuously exercised its dominion over Barangays Kapatalan and Liyang. In fact, based on the said 1962 Decision, criminal cases involving residents of the two barangays were heard and tried before the Justice of the Peace of Siniloan. Then, real properties in said barangays were tax declared in Siniloan (Exhibits S to X, including their submarkings). The residents of the two barangays are registered voters of Siniloan and that all government infrastructure projects such as school buildings ([Exhibit] Q), barangay halls, health or puericulture centers and barangay roads were constructed with Siniloan as the recognized territorial jurisdiction.
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> Second. It has been also shown that taxes for certain real properties located in Barangay Kapatalan and Liyang were and are being paid to the Municipal Treasurer of Siniloan. While it is true that there are other properties in Kapatalan and Liyang registered in respondent Famy and taxes therefor being paid thereat (Exhibits "2" to "3-P"), the same shall not be adversely affected should the writ be issued simply because the writ shall respect the status quo. The same applies to the present set up of the barangay officials in both the petitioner and respondent Famy.

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[62] 545 Phil. 138 (2007) [Per *J.* Callejo, Sr., Third Division].

[63] *Id.* at 160.

Third. The Decision of the Sangguniang Panlalawigan contained in the assailed Resolution No. 498, S-2005, and Resolution No. 88, S-2006, shall have a bearing in the computation of the Internal Revenue Allotment of both petitioner and respondent Famy. There will obviously be a considerable reduction of the IRA of petitioner should the questioned Resolutions be [implemented].[64]

A perusal of the records reveals that respondent sufficiently alleged and substantiated its clear legal right sought to be protected through the writ of preliminary injunction. Respondent, who had in its favor a March 26, 1962 Decision declaring its jurisdiction over the barangays, stood to suffer irreparable injury through the Sangguniang Panlalawigan Resolutions. It exhibited that since the ruling was issued, it had exercised jurisdiction over Barangays Kapatalan and Liyang on adjudication of criminal cases, payment of real property taxes, and construction of infrastructure projects. Further, it posited that it was bound to lose a portion of its internal revenue allotment, pending the disposition of its case.

Preliminary injunctions are issued to preserve the status quo,[65] "the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case."[66] In this case, the injunctive relief was sought to bar the implementation of the Sangguniang Panlalawigan Resolutions, which would have significantly affected the exercise of power of the municipalities in conflict.

Contrary to petitioner's actuations, there need not be a determination of whether the March 26, 1962 Decision had attained finality. The trial court did not pass upon its finality when it determined that the writ of preliminary injunction should be issued. Respondent satisfactorily showed that its circumstances

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[64] *Rollo*, p. 102.

[65] *Dungog v. Court of Appeals*, 455 Phil. 675, 685 (2003) [Per *J.* Carpio, First Division].

[66] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458, 472 (2005) [Per *J.* Carpio Morales, Third Division] citing *PEZA v. Vianzon*, 319 Phil. 186 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

merited the temporary injunctive relief, lest the reliefs it prayed for in its main Petition be rendered moot when the case have been heard on the merits.

The Regional Trial Court did not commit grave abuse of discretion in issuing the writ of preliminary injunction. Thus, it is directed to proceed with trial and resolve respondent's Petition for *Certiorari* and Prohibition.

WHEREFORE, the Court of Appeals' August 22, 2011 Decision and October 11, 2012 Resolution in CA-G.R. SP No. 105671 are **AFFIRMED**. The Regional Trial Court is directed to proceed with trial and resolve the Petition in Civil Case No. S-1013.

SO ORDERED.

Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

Carandang, J., on special leave.

THIRD DIVISION

[G.R. No. 205218. February 10, 2020]

REPUBLIC OF THE PHILIPPINES, represented by the SPECIAL COMMITTEE ON NATURALIZATION (SCN), *petitioners, vs.* **WINSTON BRIAN CHIA LAO and CHRISTOPHER TROY CHIA LAO,** *respondents.*

[G.R. No. 207075. February 10, 2020]

REPUBLIC OF THE PHILIPPINES, represented by the SPECIAL COMMITTEE ON NATURALIZATION (SCN), *petitioners, vs.* **JON NICHOLAS CHIA LAO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; PERSONS; CIVIL REGISTER; EVEN ACTS OR EVENTS THAT OCCURRED AFTER BIRTH MAY BE RECORDED IN THE CERTIFICATE OF LIVE BIRTH; TO PROHIBIT THE ANNOTATION OF EVENTS SUBSEQUENT TO BIRTH IN THE CERTIFICATE OF LIVE BIRTH IS TO DENY A PERSON THE RIGHT TO FORM HIS OR HER OWN IDENTITY. —** Generally, the entries recorded in the birth certificate: (1) the date and hour of birth; (2) the sex and nationality of the infant; (3) the names, citizens, and religion of parents; (4) the civil status of parents; and (5) the place where the infant was born, all correspond to facts existing at the time of birth as argued by the Republic. However, reading Article 407 of the Civil Code in conjunction with Article 412 of the Civil Code, even acts or events that occurred *after* birth may be recorded in the certificate of live birth. The reason is that Article 412 of the Civil Code uses the word "changed," which implies the occurrence of an event subsequent to birth may be recorded in the civil register. x x x That an event occurring after birth may be recorded in the civil register was pronounced in *Co v. The Civil Register*, a case cited by Winston Brian, Christopher Troy, and Jon Nicholas in support of their Petition before the trial court. x x x To prohibit the annotation of events subsequent to birth in the certificate of live birth is to deny a person the right to form his or her own identity. More than a "historical record of the facts as they existed at the time of birth," the birth certificate is an instrument of individuation. It contains entries that separates a person from others. We cannot fault Winston Brian, Christopher Troy, and Jon Nicholas for wanting to change the nationality of their parents as entered in their certificates of live birth. They only want a vital marker of their identity to align with a legal truth.

2. **POLITICAL LAW; NATURALIZATION; MAY EITHER BE ADMINISTRATIVE, JUDICIAL OR LEGISLATIVE; CASE AT BAR. —** Naturalization may be either administrative, judicial, or legislative. As the name implies, administrative naturalization is the grant of Filipino citizenship to aliens via administrative proceedings and is currently governed by Republic Act No. 9139. Judicial naturalization grants Filipino citizenship through a judicial decree and is governed by Commonwealth Act No. 423 or the Revised Naturalization Law, as amended.

Lastly, legislative naturalization bestows Filipino citizenship through a statute enacted by Congress. It is undisputed that Winston Brian, Christopher Troy, and Jon Nicholas' father, Lao Kian Ben, applied for naturalization under Letter of Instructions No. 270, and his application was granted under Presidential Decree No. 923. Presidential Decree No. 923 provided for the same rights, privileges, duties, and obligations as well as conditions and effects of naturalization as those provided in Presidential Decree No. 836.

3. **ID.; ID.; EXTENDS TO THE ALIEN WIFE AND MINOR CHILDREN OF THE PERSON NATURALIZED UPON THE WIFE'S SHOWING THAT SHE DOES NOT SUFFER FROM ANY OF THE DISQUALIFICATIONS UNDER LETTER OF INSTRUCTIONS NO. 270, AND THAT SHE AND HER MINOR CHILDREN RESIDE PERMANENTLY IN THE PHILIPPINES AT THE TIME OF HER HUSBAND'S NATURALIZATION. —** Clear from Presidential Decree Nos. 836 and 923 is that the naturalization extends to the alien wife and minor children of the person naturalized upon *the wife's showing* that she does not suffer from any of the disqualifications under Letter of Instructions No. 270, and that she and her minor children reside permanently in the Philippines at the time of her husband's naturalization. In other words, the only persons to undergo the proceeding before the Special Committee on Naturalization will only be the person naturalized and his wife. The minor children, in the words of Letter of Presidential Decree No. 836 "follow the acquired Filipino citizenship of their mother." Besides, the entries sought to be changed are the nationalities of Lao Kian Ben and Chia Kong Liong as appearing in the certificates of live birth of Winston Brian, Christopher Troy, and Jon Nicholas. Therefore, the only relevant issue, at least for the present proceedings, is whether or not Lao Kian Ben and Chia Kong Liong have been issued their Certificates of Naturalization and have taken their Oaths of Allegiance as Filipinos, an issue that has been resolved in the affirmative.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Raul John Y. Tañedo for respondents in both cases.

DECISION

LEONEN, *J.*:

The birth certificate, more than a historical record of one's birth, is a vital marker of identity. Therefore, acts and events, though occurring after birth, may be annotated on the birth certificate so long as they are consistent with a legal truth and a special law provides for its effects.

This resolves two (2) consolidated Petitions for Review on *Certiorari*[1] directly filed before this Court by the Republic of the Philippines, represented by the Special Committee on Naturalization (SCN), raising pure questions of law. In G.R. No. 205218, the Republic questions the Decision[2] of the Regional Trial Court, Branch 30, Manila that allowed the change in the nationality of Winston Brian Chia Lao (Winston Brian) and Christopher Troy Chia Lao's (Christopher Troy) parents as entered in their respective Certificates of Live Birth. In G.R. No. 207075, the Republic questions the Decision[3] of the Regional Trial Court, Branch 105, Quezon City that allowed the same change in the nationality of the parents of Jon Nicholas Chia Lao (Jon Nicholas) as entered in his Certificate of Live Birth.

On October 14, 1962, Lao Kian Ben and Chia Kong Liong married at the Our Lady of Lourdes Sta. Teresita Parish, Quezon City.[4] They are the parents of Jon Nicholas, born on November 22, 1966,[5] Winston Brian, born on December 3, 1968,[6] and

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[1] *Rollo* (G.R. No. 207075), pp. 10-28; *rollo* (G .R. No. 205218), pp. 9-22.

[2] *Rollo* (G.R. No. 205218), pp. 23-29. The Decision in Sp. Proc No. 10-124052 was penned by Judge Lucia P. Purugganan.

[3] *Rollo* (G.R. No. 207075), pp. 32-38. The Decision in Sp. Proc No. Q-10-68256 was penned by Judge Rosa M. Samson.

[4] *Rollo* (G.R. No. 205218), p. 65, Marriage Contract.

[5] *Rollo* (G.R. No. 207075), p. 45, Certificate of Live Birth of Jon Nicholas Chia Lao.

[6] *Rollo* (G.R. No. 205218), p. 63, Certificate of Live Birth of Winston Brian Chia Lao.

Christopher Troy, born on March 19, 1973.[7] In the respective Certificates of Live Birth of Jon Nicholas, Winston Brian, and Christopher Troy issued by the now defunct National Statistics Office, the indicated nationality of both Lao Kian Ben, as father, and Chia Kong Liong, as mother, is "Chinese."

Thereafter, Lao Kian Ben applied for naturalization as a Filipino citizen before the Special Committee on Naturalization, pursuant to Letter of Instructions No. 270. The application was granted and Lao Kian Ben was conferred with Philippine citizenship under Presidential Decree No. 923.[8] He took his Oath of Allegiance[9] to the Republic of the Philippines on June 15, 1976 and was issued his Certificate of Naturalization[10] on the same day.

Chia Kong Liong, being the wife of Lao Kian Ben, was likewise conferred with Philippine citizenship pursuant to Presidential Decree No. 923.[11] She was issued a Certificate of Naturalization[12] on January 24, 1979 and, on the same day, took the Oath of Allegiance[13] to the Republic of the Philippines.

Meanwhile, Jon Nicholas, Winston Brian, and Christopher Troy—all born and raised in the Philippines—studied in Philippine schools. Jon Nicholas went to Xavier School for his elementary and high school education, and attended the University of Santo Tomas for college.[14] Similarly, both Winston Brian and Christopher Troy attended Xavier School[15], as well

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[7] *Id.* at 64, Certificate of Live Birth of Christopher Troy Chia Lao.

[8] *Rollo* (G.R. No. 205218), p. 66 and *rollo* (G.R. No. 207075), p. 46, Certificate of Naturalization of Lao Kian Ben.

[9] *Rollo* (G.R. No. 205218), p. 67 and *rollo* (G.R. No. 207075), p. 47.

[10] *Rollo* (G.R. No. 205218), p. 66 and *rollo* (G.R. No. 207075), p. 46.

[11] *Rollo* (G.R. No. 205218), p. 68 and *rollo* (G.R. No. 207075), p. 48, Certificate of Naturalization of Chia Kong Liong.

[12] *Id.*

[13] *Rollo* (G.R. No. 205218), p. 69 and *rollo* (G.R. No. 207075), p. 49.

[14] *Rollo* (G.R. No. 207075), pp. 35-36.

[15] *Rollo* (G.R. No. 205218), p. 70, Elementary Pupil's Permanent Record

as the Jubilee Christian Academy[16] for their grade school education, and attended the Philippine Institute of Quezon City for secondary school.[17]

For college, Winston Brian studied at the Philippine School of Business Administration,[18] while Christopher Troy studied at the University of Santo Tomas.[19] Jon Nicholas, Winston Brian, and Christopher Troy all married Filipino citizens[20] and raised their children here in the Philippines.[21]

Winston Brian and Christopher Troy then filed a Petition; later, an Amended Petition,[22] for correction of entry in their respective Certificates of Live Birth before the Regional Trial Court of Manila (Manila trial court). They contended that the nationality of their parents, Lao Kian Ben and Chia Kong Liong, should be changed from "Chinese" to "Filipino," considering that they had already been naturalized as Filipino citizens pursuant to Philippine laws.

In an Order dated October 29, 2010, the Manila trial court set the Amended Petition for hearing and ordered the publication of the October 29, 2010 Order in a newspaper of general circulation once a week for three (3) consecutive weeks. The Local Civil Registrar of Manila, through the Office of the

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of Winston Brian Chia Lao and p. 85, Elementary Pupil's Record of Christopher Troy Chia Lao.

[16] *Id.* at 71, Elementary Transcript of Records of Winston Brian Chia Lao and p. 86, Elementary Transcript of Records of Christopher Troy Chia Lao.

[17] *Id.* at 72-74, Certifications and p. 87, Secondary Student's Permanent Record of Christopher Troy Chia Lao.

[18] *Id.* at 75-78.

[19] *Id.* at 25.

[20] *Rollo* (G.R. No. 205218), p. 25; *rollo* (G.R. No. 207075), p. 99, Certificate of Marriage between Jon Nicholas Chia Lao and Wendy Lim Chua.

[21] *Rollo* (G.R. No. 205218), p. 25.

[22] *Id.* at 32-37.

Solicitor General, and all other persons having or claiming interest under the entry sought to be corrected were ordered to file their opposition within fifteen (15) days from notice of the Amended Petition or from the last date of publication of the October 29, 2010 Order. Lastly, the Manila trial court directed that the Office of the Solicitor General and the Office of the Local Civil Registrar of Manila be furnished a copy of the Amended Petition and its annexes.[23]

In a Notice of Appearance dated November 30, 2010, the Solicitor General authorized the Office of the City Prosecutor of Manila to appear on his behalf.[24] Petitioners Winston Brian, Christopher Troy, and Public Prosecutor Anabel D. Magabilin attended the initial hearing, with petitioners presenting proof of compliance with the jurisdictional requirements under Rule 108 of the Rules of Court.[25] Specifically, the October 29, 2010 Order was published once a week for three (3) consecutive weeks in "METRO FOCUS WEEKLY JOURNAL," a weekly newspaper of general circulation.[26] Copies of the Amended Petition and of the October 29, 2010 Order were furnished and actually received by the Office of the Local Civil Registrar and the Office of the Solicitor General.[27]

After petitioners had substantially complied with the jurisdictional requirements, and there being no opposition to the Amended Petition, petitioners presented their evidence.[28] Prosecutor Magabilin actively participated in the proceedings, cross-examining petitioners and their witness, Associate Solicitor Ma. Felina Constancia Buenviaje Yu.[29]

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[23] *Id.* at 23.

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

[25] *Id.* at 24.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

In the Decision[30] dated January 2, 2013, the Manila trial court granted the Petition to correct the entry in Winston Brian and Christopher Troy's Certificate of Live Birth relating to the nationality of their parents. According to the Manila trial court, Winston Brian and Christopher Troy's resort to Rule 108 was "appropriate"[31] considering that the rule not only allows the change of clerical but also of substantial errors such as nationality as entered in the civil register.[32] Since Winston Brian and Christopher Troy complied with the jurisdictional requirements under Rule 108 and have proven that they are the legitimate children of Lao Kian Ben and Chia Kong Liong—former Chinese nationals who became naturalized Filipinos while Winston Brian and Christopher Troy were still minors—the change in their parents' nationality as entered in their Certificate of Live Birth was, therefore, in order. The dispositive portion of the January 2, 2013 Decision read:

> WHEREFORE, the amended petition is hereby GRANTED. The Local Civil Registrar of Manila is hereby directed to correct/change the entries in the Certificate[s] of Live Birth of Winston Brian Chia Lao and Christopher Troy Chia Lao relating to the nationality of their parents, Ben Kian Lao (Kian Ben Lim Lao) and Chia Kong Liong (Kong Liong Ang Chia) from "Chinese" to "Filipino".
>
> The Local Civil Registrar of Manila is further directed to annotate this Decision in said certificates of live birth and to transmit and make known to the National Statistics Office the corrected birth records of Winston Brian Chia Lao and Christopher Troy Chia Lao.
>
> The Decision shall form part of the records of birth of Winston Brian Chia Lao and Christopher Troy Chia Lao.
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> SO ORDERED.[33]

For his part, Jon Nicholas filed his Petition, which was later amended,[34] to correct the entry in his Certificate of Live Birth

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[30] *Id.* at 23-30.

[31] *Id.* at 26.

[32] *Id.* at 27.

[33] *Id.* at 29.

[34] *Rollo* (G.R. No. 207075), pp. 39-44.

relating to his parents' nationality before the Regional Trial Court of Quezon City (Quezon City trial court). Like his brothers, Winston Brian and Christopher Troy, Jon Nicholas argued that the grant of Philippine citizenship to his parents should result in a change in their nationality as entered in his Certificate of Live Birth.

In the Order dated May 30, 2011, the Quezon City trial court set the case for hearing on September 23, 2011 to establish jurisdictional facts. The May 30, 2011 Order was published in a newspaper of general circulation once a week for three (3) consecutive weeks. Copies of the Petition were also served on the Office of the Solicitor General, Local Civil Registrar of Quezon City, the Quezon City Prosecutor's Office, and the National Statistics Office.[35]

During the initial hearing on September 23, 2011, Jon Nicholas presented documentary evidence to prove compliance with jurisdictional facts. In particular, he established the publication of the May 30, 2011 Order in Newsline Newspaper, a newspaper of general circulation, in its June 30 to July 6, 2011, July 7 to July 13, 2011, and July 14 to July 20, 2011 issues.[36] Copies of the Amended Petition were likewise served to the Quezon City Prosecutor's Office, the National Statistics Office, the Office of the Solicitor General, and the Local Civil Registrar of Quezon City.[37]

Finding that Jon Nicholas complied with the jurisdictional requirements under Rule 108 of the Rules of Court and after his presentation of evidence, the Quezon City trial court granted his Petition. It first discussed Rule 108 and said that it "provides the procedure for cancellation or correction of entries in the civil registry."[38] The proceedings may be either summary or adversarial, depending on whether the entry sought to be

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[35] *Id.* at 34.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 36.

corrected or changed is clerical or substantial.[39] Considering that the entry Jon Nicholas sought to correct was his parents' nationality—not a mere clerical error but a change in a substantial entry—the appropriate proceeding to change the entry should be adversarial as what had been done with Jon Nicholas' Petition.[40]

On the merits, the Quezon City trial court held that Jon Nicholas established that his parents' nationality as entered in his Certificate of Live Birth is no longer true considering that they had already been naturalized. Consequently, the entry relating to his parents' nationality should be changed from "Chinese" to "Filipino."[41]

The dispositive portion of the March 13, 2013 Decision[42] read:

> Accordingly, judgment is hereby rendered GRANTING the petition and ordering the Civil Registrar of Quezon City, upon finality of this Order to reflect in petitioner's (Jon Nicholas Chia Lao) Certificate of Live Birth, the change of his parent's citizenship from "Chinese" to "Filipino", to form part of the civil register in the Office of the Quezon City Local Civil Registrar, and to record this decision in the Civil Registry in accordance with Registry Regulations.
>
> Send Copies of this Order to the Solicitor General, the Quezon City Local Civil Registrar, Quezon City Prosecutor's Office and the National Statistics Office.
>
> SO ORDERED.[43]

The Republic of the Philippines, through the Special Committee on Naturalization, directly filed before this Court Petitions[44] for Review on *Certiorari* to assail the Manila and

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[39] *Id.*

[40] *Id.* at 36-37.

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

[42] *Id.* at 32-38.

[43] *Id.* at 38.

[44] *Rollo* (G.R. No. 205218), pp. 9-22 and *rollo* (G.R. No. 207075), pp. 10-31.

Quezon City trial court Decisions. The Petition for Review on *Certiorari* against Winston Brian and Christopher Troy was filed on March 4, 2013 and was docketed as G.R. No. 205218. On the other hand, the Petition for Review on *Certiorari* against Jon Nicholas was filed on June 25, 2013 and was docketed as G.R. No. 207075.

On motion[45] by the Republic, the cases were consolidated through the Resolution[46] dated September 30, 2013. Comments[47] and Replies[48] were subsequently filed.

The common issue put forth in the Petitions is whether or not the correction of entries in respondents' respective certificates of live birth, pertaining to the citizenship of their parents from "Chinese" to "Filipino," is proper in the absence of an appropriate proceeding to determine whether they are qualified to acquire Filipino citizenship. In the mind of this Court, this can be further divided into two distinct issues:

First, whether or not the nationality of the parents of Winston Brian, Christopher Troy, and Jon Nicholas Chia Lao, as entered in their respective Certificates of Live Birth, may be changed to "Filipino" considering that, at the time of their birth, their parents were still Chinese nationals.

Second, whether or not an appropriate proceeding before the Special Committee on Naturalization to determine whether an individual is qualified to acquire Filipino citizenship is required before the nationality of a person's parents, as entered in the birth certificate, may be changed.

Petitioner Republic maintains that there was no error to correct in respondents' Certificate of Live Birth. Citizenship, according

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[45] *Rollo* (G.R. No. 207075), pp. 59-63.

[46] *Id.* at 68-69.

[47] *Rollo* (G.R. No. 205218), pp. 51-62 and *rollo* (G.R. No. 207075), pp. 74-86.

[48] *Rollo* (G.R. No. 205218), pp. 100-113 and *rollo* (G.R. No. 207075), pp. 118-131.

to the Republic, is determined at the time of one's birth; on the day respondents Winston Brian, Christopher Troy, and Jon Nicholas were born, their parents were still Chinese nationals. Since respondents were born to natural-born Chinese citizens, respondents are necessarily natural-born Chinese, and the nationality of their parents was correctly entered as "Chinese" in their respective Certificates of Live Birth.[49]

Even assuming that the nationality of respondents' parents as entered respondents' Certificates of Live Birth may be changed and, therefore, extending Filipino citizenship to respondents, the change in the entry can be done only after an appropriate proceeding under the Implementing Rules and Regulations of Presidential Decree No. 836, in relation to Presidential Decree No. 923. This proceeding should be conducted before the Special Committee on Naturalization to determine if, indeed, respondents are qualified to become naturalized Filipinos.[50]

As for respondents, Winston Brian, Christopher Troy, and Jon Nicholas all contend that the Manila and Quezon City trial courts committed no reversible error since the trial courts had jurisdiction to change a substantial entry in their respective Certificates of Live Birth—their parents' nationality—pursuant to Rule 108 of the Rules of Court.[51] They argue that *Co v. The Civil Register of Manila*,[52] where this Court allowed the change in the nationality of the parents as entered in the certificate of live birth, is applicable in this case.

On the issue of whether children whose parents were naturalized as Filipinos during their minority, under Letter of Instructions No. 270, automatically qualify them to change their parents' nationality as originally entered in their certificates

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[49] *Rollo* (G.R. No. 205218), pp. 101-102; *rollo* (G.R. No. 207075), pp. 119-120.

[50] *Rollo* (G.R. No. 205218), p. 16 and pp. 106-107; *rollo* (G.R. No. 207075), pp. 19-24 and pp. 124-125.

[51] *Rollo* (G.R. No. 205218), pp. 53-61; *rollo* (G.R. No. 207075), pp. 76-83.

[52] 467 Phil. 904 (2004) [Per *J.* Callejo, Sr., *En Banc*].

of live birth—that is, without any proceeding conducted before the Special Committee on Naturalization—Winston Brian, Christopher Troy, and Jon Nicholas contend that *Co* long resolved the issue in the affirmative. The father in *Co* was naturalized under Letter of Instructions No. 270, the same presidential decree under which Winston Brian, Christopher Troy, and Jon Nicholas' father applied for naturalization. Letter of Instructions No. 270, according to the Court in *Co*, is in *pari materia* with Section 15[53] of Commonwealth Act No. 473 or the Revised Naturalization Law, which automatically granted Philippine citizenship to the minor children of the naturalized Filipino under certain conditions. In their case, Winston Brian, Christopher Troy, and Jon Nicholas argue that that they have established these essential facts: (1) that their father was naturalized under Letter of Instruction No. 270; (2) that they were born in the Philippines; and (3) that they were minors at the time their father was granted Philippine citizenship. Thus, pursuant to Letter of Instructions No. 270 in relation to Section 15 of Commonwealth Act No. 473, they should likewise be deemed Filipinos.[54]

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[53] Com. Act No. 473, Sec. 15 provides:

Section 15. *Effect of the Naturalization on Wife and Children.* — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.

Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.

A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance.

[54] *Rollo* (G.R. No. 205218), p. 58 and *rollo* (G.R. No. 207075), pp. 79-81.

As to whether a proceeding should first be conducted by the Special Committee on Naturalization to determine whether Winston Brian, Christopher Troy, and Jon Nicholas indeed satisfied the requirements for naturalization under Section 15 of Commonwealth Act No. 473, Winston Brian, Christopher Troy, and Jon Nicholas argue that they never disputed the Special Committee on Naturalization's jurisdiction over administrative proceedings for acquiring Philippine citizenship.[55] However, they maintain that the issue of whether a proceeding should first be conducted is irrelevant in this case. Specifically for respondent Jon Nicolas, he effectively maintains that the Special Committee on Naturalization is already estopped from claiming that a proceeding should first be conducted since it actively participated as a witness for Winston Brian, Christopher Troy, and Jon Nicholas before the trial court.[56]

The consolidated Petitions for Review on *Certiorari* are denied. The Manila and Quezon City trial courts correctly granted the Petitions for Correction filed by Winston Brian, Christopher Troy, and Jon Nicholas.

I

Births are among those events required to be entered in the civil register.[57] The certificate of live birth or birth certificate,

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[55] *Rollo* (G.R. No. 205218), p. 57 and *rollo* (G.R. No. 207075), p. 83.

[56] *Rollo* (G.R. No. 207075), p. 83.

[57] CIVIL CODE, Art. 408 provides:

Article 408. The following shall be entered in the civil register:

(1) Births;
(2) marriages;
(3) deaths;
(4) legal separations;
(5) annulments of marriage;
(6) judgments declaring marriages void from the beginning;
(7) legitimations;
(8) adoptions;
(9) acknowledgments of natural children;
(10) naturalization;
(11) loss, or
(12) recovery of citizenship;

a vital record contained in the birth and death register, establishes the fact of birth. The required entries in the certificate of live birth are provided in Section 5 of Act No. 3753, thus:

> SECTION 5. *Registration and Certification of Births*. — The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.
>
> In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.
>
> In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.
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> In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.
>
> Any foetus having human features which dies after twenty four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died. (Underscoring provided)

Generally, the entries recorded in the birth certificate: (1) the date and hour of birth; (2) the sex and nationality of the infant; (3) the names, citizens, and religion of parents; (4) the

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(13) civil interdiction;
(14) judicial determination of filiation;
(15) voluntary emancipation of a minor; and
(16) changes of name.

civil status of parents; and (5) the place where the infant was born, all correspond to facts existing at the time of birth as argued by the Republic. However, reading Article 407 of the Civil Code in conjunction with Article 412 of the Civil Code, even acts or events that occurred *after* birth may be recorded in the certificate of live birth. The reason is that Article 412 of the Civil Code uses the word "changed," which implies the occurrence of an event subsequent to birth may be recorded in the civil register. Articles 407 and 412 provide:

ARTICLE 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

ARTICLE 412. No entry in a civil register shall be changed or corrected, without a judicial order.

That an event occurring after birth may be recorded in the civil register was pronounced in *Co v. The Civil Register*,[58] a case cited by Winston Brian, Christopher Troy, and Jon Nicholas in support of their Petition before the trial court. In *Co*, Hubert Tan Co was born on March 23, 1974 and his sister, Arlene Tan Co, was born on May 19, 1975. In their birth certificates, the nationality of their parents as entered in their birth certificates was "Chinese." Subsequently, Hubert and Arlene's father, Co Boon Peng, applied for naturalization under Letter of Instruction No. 270. The application was granted, and Co Boon Peng was issued a Certificate of Naturalization on February 15, 1977.[59]

Arguing that "the naturalization of [their] father in 1977 was an act or event affecting and concerning their civil status that must be recorded in the Civil Register,"[60] Hubert and Arlene filed a Petition to correct the citizenship of their father as entered in their birth certificates.

The trial court dismissed the Petition outright, because Co Boon Peng applied for naturalization under Letter of Instruction

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[58] 467 Phil. 904 (2004) [Per *J.* Callejo, Sr., *En Banc*].

[59] *Id.* at 908-909.

[60] *Id.* at 909.

No. 270 which, unlike Commonwealth Act No. 473 or the Revised Naturalization Law, did not expressly provide that the father's naturalization automatically extended to his wife and children.[61] This Court, however, reversed the trial court, ruling that Letter of Instruction No. 270 and Commonwealth Act No. 473 are statutes in *pari materia*, both governing the naturalization of qualified aliens residing in Philippines. Thus:

> Absent any express repeal of Section 15 of [Commonwealth Act] No. 473 [on the effect of the naturalization on wife and children] in [Letter of Instruction] No. 270, the said provision should be read in to the latter law as an integral part thereof, not being inconsistent with its purpose. Thus, Section 15 of [Commonwealth Act] No. 473, which extends the grant of Philippine citizenship to the minor children of those naturalized thereunder, should be similarly applied to the minor children of those naturalized under [Letter of Instruction] No. 270[.][62]

On Hubert and Arlene's recourse to Rule 108 of the Rules of Court to change the nationality of their father as entered in their birth certificates, this Court said that the recourse was "appropriate."[63] The entry sought to be corrected was one of those allowed under Rule 108, the Court-approved procedure to correct entries in the civil registry such as those made in the birth certificate. Hubert and Arlene were found to have sufficiently alleged the ultimate facts required to effect the change: (1) that they are the legitimate children of Co Boon Peng; (2) that their father was a naturalized Filipino citizen; and (3) that their birth certificates still indicate that their father is Chinese. Taking that into consideration, this Court said that it "behooved the trial court to do its duty under Section 4, Rule 108 of the Rules of Court,"[64] that is, to issue a notice of the hearing on the Petition for Correction of Entry and cause its publication. The change will be in the form of a marginal

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[61] *Id.* at 910-911.

[62] *Id.* at 914.

[63] *Id.* at 915.

[64] *Id.* at 917.

annotation on the certificate of live birth. In the words of the Court:

The petitioners' recourse to Rule 108 of the Rules of Court, as amended, is appropriate. Under Article 412 of the New Civil Code, no entry in a civil register shall be changed or corrected without a judicial order. The law does not provide for a specific procedure of law to be followed. But the Court approved Rule 108 of the Rules of Court to provide for a procedure to implement the law. The entries envisaged in Article 412 of the New Civil Code are those provided in Articles 407 and 408 of the New Civil Code which reads:

> Art. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.
>
> Art. 408. The following shall be entered in the civil register:
>
> (1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

Specific matters covered by the said provision include not only status but also nationality. The acts, events or factual errors envisaged in Article 407 of the New Civil Code include even those that occur after the birth of the petitioner. However, in such cases, the entries in the certificates of live birth will not be corrected or changed. The decision of the court granting the petition shall be annotated in the certificates of birth and shall form part of the civil register in the Office of the Local Civil Registrar.[65] (Underscoring provided)

The facts here are similar to those in *Co*. Since the entry sought to be changed—*citizenship*—was substantial, the Manila and Quezon City trial courts correctly conducted an adversarial proceeding, notifying the local civil registrar and all parties interested under the entry sought to be corrected are impleaded. After having complied with the jurisdictional requirements for a petition under Rule 108 of the Rules of Court, Winston Brian,

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[65] *Id.* at 914-915.

Christopher Troy, and Jon Nicholas alleged and proved the ultimate facts required to reflect the naturalization of their parents in their respective certificates of live birth. They established that: (1) they are the legitimate children of Lao Kian Ben and Chia Kong Liong, former Chinese nationals; (2) their parents are naturalized Filipino citizens; and (3) the nationality of their parents entered in their respective certificates of live birth remains "Chinese." The trial courts correctly granted the Petitions of Winston Brian, Christopher Troy, and Jon Nicolas, ordering that their decisions be annotated in their certificates of live birth.

To prohibit the annotation of events subsequent to birth in the certificate of live birth is to deny a person the right to form his or her own identity. More than a "historical record of the facts as they existed at the time of birth,"[66] the birth certificate is an instrument of individuation. It contains entries that separates a person from others.[67] We cannot fault Winston Brian, Christopher Troy, and Jon Nicholas for wanting to change the nationality of their parents as entered in their certificates of live birth. They only want a vital marker of their identity to align with a legal truth.

II

The Republic nevertheless contends that, before the change prayed for by Winston Brian, Christopher Troy, and Jon Nicholas may be effected, they should first show that they had undergone the appropriate proceeding under the Implementing Rules and Regulations of Presidential Decree No. 836 in relation to Presidential Decree No. 923 before the Special Committee on Naturalization. The same way that their mother, Chia Kong Liong, underwent the similar procedure. Since changing the nationality of their parents from "Chinese" to "Filipino" would

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[66] *Silverio v. Republic*, 562 Phil. 953, 970 (2007) [Per *J.* Corona, First Division].

[67] *J.* Leonen's Concurring Opinion in *Republic v. Unabia*, G.R. No. 213346. February 11, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64959> [Per *J.* Del Castillo, First Division].

be to make it appear that Winston Brian, Christopher Troy, and Jon Nicholas are children of Filipinos and, therefore, are Filipino citizens themselves, they should likewise prove that they are qualified to become naturalized Filipinos.

We disagree.

Naturalization may be either administrative, judicial, or legislative. As the name implies, administrative naturalization is the grant of Filipino citizenship to aliens via administrative proceedings and is currently governed by Republic Act No. 9139.[68] Judicial naturalization grants Filipino citizenship through a judicial decree and is governed by Commonwealth Act No. 423 or the Revised Naturalization Law, as amended.[69] Lastly, legislative naturalization bestows Filipino citizenship through a statute enacted by Congress.[70]

It is undisputed that Winston Brian, Christopher Troy, and Jon Nicholas' father, Lao Kian Ben, applied for naturalization under Letter of Instructions No. 270, and his application was granted under Presidential Decree No. 923. Presidential Decree No. 923 provided for the same rights, privileges, duties, and obligations as well as conditions and effects of naturalization as those provided in Presidential Decree No. 836. The pertinent provisions of Letter of Instructions No. 270 and Presidential Decree No. 836 are as follows:

LETTER OF INSTRUCTIONS NO. 270

TO : Solicitor General
Undersecretary of Foreign Affairs
Director General NISA

SUBJECT : Naturalization of Deserving
Aliens by Decree

[68] The Administrative Naturalization Law of 2000. See *So v. Republic*, 542 Phil. 259, 271 (2007) [Per *J.* Callejo, Sr., Third Division].

[69] *So v. Republic*, 542 Phil. 259, 271 (2007) [Per *J.* Callejo, Sr., Third Division].

[70] *Id.*

In order that aliens permanently residing in this country who, having developed and demonstrated love for and loyalty to the Philippines and affinity to the customs, traditions and ideals of the Filipino people, as well as contributed to the economic, social and cultural development of our country, may be integrated into the national fabric by the grant of Philippine citizenship, you are hereby directed as follows:

1. That you shall constitute yourself as a Committee, with the Solicitor General as Chairman, to receive, and consider and submit recommendations on, applications for naturalization by decree from aliens with the following qualifications and none of the following disqualifications:

Qualifications:

a. He must not be less than 21 years of age on the date of the filing of his petition;

b. If born in a foreign country, he must have been legally admitted into the Philippines either as an immigrant or a non-immigrant;

c. He must have had a continuous residence in the Philippines of ten years, which period shall be reduced to five years for applicants with any of the following special qualifications:

1) Having honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities or political subdivision thereof;

2) Having established a new industry or introduced a useful invention in the Philippines;

3) Being married to a Filipino;

4) Having been engaged as a teacher in the Philippines in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race, in any of the branches of education or industry for a period of not less than two years;

5) Having been born in the Philippines.

d. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines

in his relation with the constituted government as well as with the community in which he is living;

e. He must have a known trade, business, profession, or lawful occupation, from which he derives income sufficient for his support and, if he is married or has dependents, also that of his family;

f. He must be able to speak and write Filipino; or English or Spanish, and any of the principal Philippine languages;

g. He must have enrolled his minor children of school age in any of the public or private schools recognized by the Department of Education and Culture, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the period of residence in the Philippines required of him prior to the filing of his petition hereunder; and

h. He must have, during the period of his residence in the Philippines, mingled socially with the Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipino people.

Disqualifications:

a. He must not be opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;

b. He must not defend or teach the necessity or propriety of violence, personal assault, or assassination for the success and predominance of his ideas;

c. He must not be a polygamist or a believer in the practice of polygamy;

d. He must not have been convicted of any crime involving moral turpitude;

e. He is not suffering from mental alienation or any incurable contagious disease.

Cases of aliens born of Filipino mothers: If, however, the applicant was born of a Filipino mother before the effectivity of the new Constitution and has resided continuously in the Philippines since birth, he shall be considered qualified hereunder without need of

any further qualification, provided he does not suffer from the disqualifications above enumerated.

PRESIDENTIAL DECREE NO. 836

GRANTING CITIZENSHIP TO DESERVING ALIENS AND FOR OTHER PURPOSES

WHEREAS, in order that aliens residing in this country and deserving of Philippine citizenship may, through a less expensive and more expeditious procedure, become Philippine citizens, Letter of Instructions No. 270 constituted a Special Committee on Naturalization to receive and process applications for naturalization by decree from aliens with the qualifications and none of the disqualifications specified therein and submit recommendations thereon to the President of the Philippines; and

WHEREAS, pursuant to said Letter of Instructions, the aforesaid Special Committee has recommended to the President of the Philippines the grant of Philippine citizenship by decree to certain applicants;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby grant Philippine citizenship to the individuals of foreign nationality whose names appear in Annex "A" of this Decree, with all the rights, privileges, duties, and obligations appurtenant to such grant, and with the following effects and subject to the following conditions:

1. The grant of Philippine citizenship to the aforesaid aliens under this Decree shall be effective upon their taking the oath of allegiance as Philippine citizens and the issuance to them of certificate of naturalization by the Special Committee. The Commission on Immigration and Deportation shall thereupon cancel their certificate of registration as aliens and issue to them the corresponding identification certificates as citizens;

2. If the naturalized alien should die before taking the oath of allegiance as Filipino citizens and the issuance to him of the certificate of naturalization, his widow, if residing in the Philippines and found by the Special Committee to have none of the disqualifications specified in said LOI 270, may take the oath of allegiance as Filipino citizen, after which the minor children of said deceased alien and his wife, subject to the provisions of the next succeeding

section, shall follow the acquired Filipino citizenship of their mother;

3. Alien wives and minor children of persons naturalized under this Decree shall be deemed Philippine citizens provided that:

(a) The alien wife shall, in all cases, not suffer from any of the disqualifications for naturalization under Letter of Instructions No. 270;

(b) The alien wife and minor children of persons naturalized under this Decree reside permanently in the Philippines at the time of his naturalization;

(c) If the alien wife does not reside in the Philippines at the time of the naturalization of her husband, she shall come to the Philippines and reside in this country in good faith within one year from the naturalization of her husband;

(d) If minor children do not reside in the Philippines at the time of the naturalization of their father they shall, within one (1) year from the naturalization of their father, in good faith reside in this country and, if of school age, enroll in Philippine schools. The fact that any such minor child of school age fails to graduate from a Philippine school, except for valid reasons shown, shall be considered *prima facie* evidence of failure to *bona fide* enroll in Philippine schools.

. . . .

5. The Special Committee may cancel certificates of naturalization issued under this decree in the following cases:

   (a) If it finds that the naturalized person or his duly authorized representative made any false statement or misrepresentation or committed any violation of law, rules and regulations in connection with the petition for naturalization, or if he otherwise obtains Philippine citizenship fraudulently or illegally, the certificate of naturalization shall be cancelled;

   (b) If the naturalized person or his wife, or any of his minor children who acquire Filipino citizenship by

virtue of his naturalization shall, within five (5) years next following the grant of Philippine citizenship, establish permanent residence in a foreign country, that individual's certificate of naturalization or acquired citizenship shall be cancelled or revoked; provided that the fact of such person's remaining for more than one year in his country of origin, or two years in any other foreign country, shall be considered *prima facie* evidence of intent to permanently reside therein;

(c) If the naturalized person or his wife or child with acquired citizenship allows himself or herself to be used as a dummy in violation of any constitutional or legal provision requiring Philippine citizenship as a condition for the exercise, use, or enjoyment of a right, franchise, or privilege, the certificate of naturalization or acquired citizenship shall be cancelled or revoked;

(d) If the naturalized person or his wife or child with acquired citizenship commits any act inimical to national security, the certificate of naturalization or acquired citizenship shall be cancelled or revoked.

On the other hand, Presidential Decree No. 923 partly provides:

PRESIDENTIAL DECREE NO. 923

GRANTING CITIZENSHIP TO DESERVING ALIENS AND FOR OTHER PURPOSES

WHEREAS, Presidential Decree No. 836 dated December 3, 1975 granted Philippine citizenship to deserving aliens who were earlier screened and recommended for citizenship by the Special Committee on Naturalization pursuant to Letter of Instruction No. 270;

WHEREAS, the Special Committee on Naturalization has completed the processing of a second group of applicants and recommended to the President of the Philippines the grant of Philippine citizenship by decree to these applicants;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the

Constitution, do hereby grant Philippine citizenship to the individuals of foreign nationality whose names appear in Annex A of this Decree, with all the rights, privileges, duties and obligations appurtenant to such grant and with the same effects and subject to the same conditions provided under Presidential Decree No. 836 dated December 3, 1975; *Provided, however*, That Presidential Decree No. 836 is amended inserting the following additional paragraph:

> "3-A. Copies of the oaths of allegiance of the wives and the certificates of naturalization of the wives and minor children of persons who acquire Philippine citizenship under this Decree shall be furnished the Commission on Immigration and Deportation, which shall thereupon cancel their certificates of registration as aliens and issue to them the corresponding identification certificates as citizens."

This Decree shall take effect immediately.

DONE in the City of Manila, this 20th day of April, in the year of Our Lord, Nineteen Hundred and Seventy-Six.

. . . .

1117. Lao Kian Ben. (Underscoring provided)

Clear from Presidential Decree Nos. 836 and 923 is that the naturalization extends to the alien wife and minor children of the person naturalized upon *the wife's showing* that she does not suffer from any of the disqualifications under Letter of Instructions No. 270, and that she and her minor children reside permanently in the Philippines at the time of her husband's naturalization. In other words, the only persons to undergo the proceeding before the Special Committee on Naturalization will only be the person naturalized and his wife. The minor children, in the words of Letter of Presidential Decree No. 836 "follow the acquired Filipino citizenship of their mother."

Besides, the entries sought to be changed are the nationalities of Lao Kian Ben and Chia Kong Liong as appearing in the certificates of live birth of Winston Brian, Christopher Troy, and Jon Nicholas. Therefore, the only relevant issue, at least for the present proceedings, is whether or not Lao Kian Ben and Chia Kong Liong have been issued their Certificates of

Naturalization and have taken their Oaths of Allegiance as Filipinos, an issue that has been resolved in the affirmative.

WHEREFORE, the consolidated Petitions for Review on *Certiorari* are **DENIED**. The Decisions of the Regional Trial Court, Branch 30, Manila in SP Proc. No. 10-124052 and of the Regional Trial Court, Branch 105, Quezon City in Sp. Proc. No. Q-10-68256 are both **AFFIRMED**.

In G.R. No. 205218, the Local Civil Registrar of Manila is **DIRECTED** to:

1) make a **MARGINAL ANNOTATION** on the respective Certificates of Live Birth of Winston Brian Chia Lao and Christopher Troy Chia Lao, reflecting the change in the nationality of their parents, Lao Kian Ben and Chia Kong Liong, from "Chinese" to "Filipino"; and

2) **ATTACH** the Decision of the Regional Trial Court, Branch 30, Manila in Sp Proc. No. 10-124052 in Winston Brian Chia Lao and Christopher Troy Chia Lao's respective Certificates of Live Birth.

In G.R. No. 207075, the Local Civil Registrar of Quezon City is **DIRECTED** to:

1) make a **MARGINAL ANNOTATION** on the Certificate of Live Birth of Jon Nicholas Chia Lao, reflecting the change in the nationality of his parents, Lao Kian Ben and Chia Kong Liong, from "Chinese" to "Filipino"; and

2) **ATTACH** the Decision of the Regional Trial Court, Branch 105, Quezon City in Sp Proc. No. Q-10-68256 in Jon Nicholas Chia Lao's Certificates of Live Birth.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ*., concur.

SECOND DIVISION

[G.R. Nos. 217530-31. February 10, 2020]

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC., *petitioner*, *vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. Nos. 217536-37. February 10, 2020]

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC., *petitioner*, *vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 217802. February 10, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; RULES OF PROCEDURE; DESIGNED TO FACILITATE THE ADJUDICATION OF CASES, THUS STRICT COMPLIANCE IS ENJOINED; RELAXATION OF THE RULES MAY BE ALLOWED IN ORDER TO PROMOTE JUSTICE; REQUISITES. — Verily, it is settled that "procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules." However, it is not novel for courts to brush aside technicalities in the interest of substantial justice. Notably, in *Malixi v. Baltazar*, the Court recounted the long line of jurisprudence consistently supporting the relaxation of procedural rules if strict adherence thereto would only frustrate rather than promote justice. While the Court has entertained petitions in the past despite the presence of procedural lapses, the Court has restricted its liberality only to exceptional circumstances. To warrant relaxation of the rules, the erring party must: (a) show reasonable cause justifying its noncompliance with the rules, (b) convince the Court that the outright dismissal of the

petition would defeat the administration of substantive justice, and (c) offer proof of at least a reasonable attempt at compliance therewith. "The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse."

APPEARANCES OF COUNSEL

Butuyan & Rayel Law Offices for Kabalikat Para Sa Maunlad na Buhay, Inc.

Office of the Solicitor General for Commissioner of Internal Revenue.

R E S O L U T I O N

INTING, *J.*:

Before the Court are consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court:

1. G.R. Nos. 217530-31[1] and 217536-37[2] filed by Kabalikat Para Sa Maunlad Na Buhay, Inc. (Kabalikat); and

2. G.R. No. 217802[3] filed by the Commissioner of Internal Revenue (CIR), through the Office of the Solicitor General (OSG).

These petitions assail the Court of Tax Appeals (CTA) *En Banc*'s Resolutions dated January 13, 2015[4] and March 25, 2015[5] in CTA EB Nos. 1238 and 1239.

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[1] *Rollo* (G.R. Nos. 217530-31), pp. 3-21.

[2] *Rollo* (G.R. Nos. 217536-37), pp. 3-13.

[3] *Rollo* (G.R. No. 217802), pp. 12-34.

[4] *Rollo* (G.R. Nos. 217530-31), pp. 25-30; penned by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring.

[5] *Id.* at 31-34.

The Facts

Kabalikat is a non-stock, non-profit civic organization.[6] The Bureau of Internal Revenue (BIR) confirmed Kabalikat's status as a civic organization, as well as its exemption from the payment of income tax, through BIR Ruling No. S-30-071-2001[7] dated October 8, 2001.

In 2006, pursuant to Republic Act No. 8425 or the "Social Reform and Poverty Alleviation Act," Kabalikat amended its Articles of Incorporation[8] to expressly provide micro-financing services to "small, cottage-scale, micro-entrepreneurial poor and the disadvantaged such as farmers, fishermen, women, tribal minorities, urban poor and other similar sectors."[9]

BIR, through Regional Director Jaime B. Santiago, issued Preliminary Assessment Notices (PAN) against Kabalikat in relation to unpaid taxes for the taxable year 2006 amounting to ₱78,380,415.03, computed as follows:

Tax Type	Amount
Income tax[10]	₱ 33,813,201.05
Expanded withholding tax (EWT)[11]	177,320.13
Value-added tax (VAT)[12]	44,389,893.85
Total amount due	₱ 78,380,415.03

In reply, Kabalikat filed a Position Letter[13] dated November 9, 2009 for the cancellation and withdrawal of the assessed amounts.

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[6] *Id.* at 147.

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

[8] *Id.* at 78-84.

[9] *Id.* at 80.

[10] *Id.* at 85.

[11] *Id.* at 86.

[12] *Id.* at 87.

[13] *Id.* at 90-99.

On December 28, 2009, Kabalikat executed a Waiver of the Defense of Prescription Under the Statute of Limitations[14] (Waiver) to extend the assessment period for its 2006 unpaid taxes until December 31, 2010.

The CIR, through Regional Director Arnel SD. Guballa, issued Final Assessment Notices[15] and a Formal Letter of Demand[16] (FAN/FLD) against Kabalikat for unpaid taxes amounting to ₱91,234,747.55, inclusive of interest, surcharge, and compromise penalty, computed as follows:

Tax Type	Amount
Income tax	₱ 39,798,934.55
EWT	197,192.98
VAT	51,238,620.02
Total amount due	₱ 91,234,747.55

Kabalikat filed a Protest Letter[17] dated December 22, 2010 to oppose the FAN/FLD (Administrative Protest). However, the CIR failed to act on this protest. Thus, on September 15, 2011, Kabalikat filed a Petition for Review (Judicial Protest) before the CTA, docketed as CTA Case No. 8336 and assigned to the CTA Second Division (CTA Division).

The CTA Division Ruling

In the Decision[18] dated June 20, 2014, the CTA Division cancelled and set aside the assessments issued against Kabalikat. It found that the Waiver was infirm; thus, null and void. Consequently, the tax authorities' right to assess has already prescribed. The CTA Division also denied the parties' subsequent motions for reconsideration.

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[14] *Id.* at 100.

[15] *Id.* at 101-103.

[16] *Id.* at 104-105.

[17] *Id.* at 107-119.

[18] *Id.* at 146-166; penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.

Both parties appealed to the CTA *En Banc via* their respective petitions for review.

The CTA En Banc Ruling

In its assailed Resolutions, the CTA *En Banc* relied on Section 7, Rule 43[19] of the Rules of Court and dismissed both petitions outright for being procedurally defective.

The court *a quo* noted the following formal defects in their petitions: Kabalikat failed to aver in their petition a "concise and direct statement of complete facts" and attach "either clearly legible duplicate originals or certified true copies" of the issuances assailed.[20] On the other hand, the CIR failed to attach a Verification and Certification against Forum Shopping (Verification). Even their belatedly submitted verification (executed by Mr. Gerardo R. Florendo) did not cure the deficiency because the CIR did not show proof of Florendo's authority to execute and sign the verification. Furthermore, the CIR also failed to properly serve a copy of the petition upon Kabalikat.

After the CTA *En Banc* denied their respective motions for reconsideration, the parties separately filed the present petitions wherein they commonly raised one issue: Did the CTA *En Banc* err when it denied outright the parties' respective petitions due solely to formal and procedural infirmities?

Our Ruling

The petitions are meritorious.

Verily, it is settled that "procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike

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[19] Section 7, Rule 43, RULES OF COURT.

SEC. 7. *Effect of failure to comply with requirements*. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[20] *Rollo* (G.R. Nos. 217530-31), p. 26.

are enjoined to abide strictly by the rules."[21] However, it is not novel for courts to brush aside technicalities in the interest of substantial justice. Notably, in *Malixi v. Baltazar*,[22] the Court recounted the long line of jurisprudence[23] consistently supporting the relaxation of procedural rules if strict adherence thereto would only frustrate rather than promote justice.

While the Court has entertained petitions in the past despite the presence of procedural lapses, the Court has restricted its liberality only to exceptional circumstances. To warrant relaxation of the rules, the erring party must: (a) show reasonable cause justifying its noncompliance with the rules,[24] (b) convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice,[25] and (c) offer proof of at least a reasonable attempt at compliance therewith.[26] "The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse."[27]

In the present case, both parties offer reasons justifying their respective procedural flaws.

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[21] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 962 (2015), citing *Anderson v. Ho*, 701 Phil. 6 (2013).

[22] G.R. No. 208224, November 22, 2017, 846 SCRA 244.

[23] *Acaylar, Jr. v. Harayo*, 582 Phil. 600 (2008); *Barroga v. Data Center College of the Phils., et al.*, 667 Phil. 808 (2011); *Paras v. Judge Baldado*, 406 Phil. 589 (2001); *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187 (2005); *Manila Electric Company v. Gala*, 683 Phil. 356 (2012); *Doble v. ABB, Inc./Nitin Desai*, 810 Phil. 210 (2017); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639 (2014); *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264 (2014).

[24] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 465, citing *Daikoku Electronics Phils., Inc. v. Raza*, 606 Phil. 786, 803-804 (2009).

[25] *Id.*

[26] *Anderson v. Ho*, 701 Phil. 6, 18 (2013), citing *Mediserv, Inc. v. CA (Special Former 13th Division), et al.*, 631 Phil. 282, 295 (2010).

[27] *Supra* note 24.

To recall, the outright dismissal of Kabalikat's petition was due to its failure to aver a "concise and direct statement of complete facts" and attach "either clearly legible duplicate originals or certified true copies" of the issuances assailed. Thus, they rectified these deficiencies through their subsequent motion for reconsideration. On the other hand, the CIR's petition was dismissed because it failed to attach the requisite verification. The CIR has since submitted a verification to supplant the previous deficiency.

In these lights, the Court finds that the CTA *En Banc* erred when it refused to consider these as sufficient rectification of the parties' respective mistakes. The circumstances in the present case warrant the relaxation of procedural rules.

The present case involves taxes amounting to ₱91,234,747.55. The parties face significant financial loss from the assessment's final adjudication. If cancelled, the government stands to lose revenues from taxation, its lifeblood. On the other hand, if upheld, the immensely onerous obligation of settling the assessment shall loom over Kabalikat, a non-stock, non-profit civic organization generally exempt therefrom. Certainly, an appeal is the proper forum to fully ventilate their cases. To abruptly put an end to litigation solely based on technicalities amounts to serious injustice to the parties.

Moreover, their appeals do not appear to be merely frivolous and dilatory. Both parties show willingness to continue litigation. Certainly, a liberal application of the rules will not unjustly prejudice either of them.

To be sure, the formal and procedural lapses in the present case should not have rendered the parties' respective appeals fatally defective. The court *a quo*'s insistence on a strict implementation of these technicalities is unjust, especially when "the more prudent course of action would have been to afford petitioners time" to remedy their oversight—which they already have—instead of using these mistakes to justify "dispossessing petitioners of relief."[28]

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[28] *Cortal, et al. v. Inaki A. Larrazabal Enterprises, et al.*, 817 Phil. 464, 493 (2017).

At this juncture, the Court shall no longer go over the parties' arguments on the present case's substantial issues. Based on the discussion above, it is proper to remand this case to the CTA *En Banc* to proceed in hearing the parties' appeals on the merits.

WHEREFORE, the consolidated petitions are **GRANTED**. The Resolutions dated January 13, 2015 and March 25, 2015 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1238 and 1239 are **REVERSED** and **SET ASIDE**. The case is hereby **REMANDED** to the Court of Tax Appeals *En Banc* for a resolution on the merits of the case.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Delos Santos, JJ.*, concur.

EN BANC

[A.M. No. 19-02-03-CA. February 11, 2020]

RE: EXPENSES OF RETIREMENT OF COURT OF APPEALS JUSTICES.

SYLLABUS

1. **REMEDIAL LAW; COURTS; COURT OF TAX APPEALS AND THE SANDIGANBAYAN WERE ELEVATED TO THE SAME LEVEL AS THE COURT OF APPEALS. —** With the enactment of R.A. No. 9282 on March 30, 2004, the CTA was elevated to a collegiate court with special jurisdiction and of the same level as the Court of Appeals. x x x In the same way, when it was first created by virtue of Presidential Decree (P.D.) No. 1486 on June 11, 1978, the Sandiganbayan was a special court of equal rank as the CFIs. P.D. No. 1606 was issued shortly thereafter on December 10, 1978 which

declared the Sandiganbayan as a special court of the same level as the Court of Appeals. x x x Notably, the aforequoted statutory provisions expressly state that the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan shall have the same rank, salary, privileges, and emoluments; be subject to the same inhibitions and disqualifications; and enjoy the same retirement and other benefits provided **under existing laws** as the Presiding Justice and Associate Justices of the Court of Appeals. They additionally prescribe that any increase in the salaries of the Presiding Justice and Associate Justices of the Court of Appeals shall be extended to and enjoyed by the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan.

2. **POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT'S POWER OF ADMINISTRATIVE SUPERVISION; RETIREMENT PROGRAM BUDGETS OF COLLEGIATE COURTS ARE SUBJECT TO THE DISCRETION AND APPROVAL OF THE SUPREME COURT, AS PART OF ITS CONSTITUTIONAL POWER OF ADMINISTRATIVE SUPERVISION OVER ALL COURTS AND PERSONNEL THEREOF. —** Nevertheless, it bears to point out that the retirement program budgets of retiring Justices of collegiate courts are not expressly provided under any law. They are not part of the "retirement and other benefits" to which the statutes pertain, *viz.*, pensions, lump sums, and survivorship. Such retirement program budgets are more in the nature of administrative expenses which are allotted by the collegiate courts, with the approval of this Court *En Banc*, to their respective retiring members in order to recognize and celebrate the latter's service and contribution to the Judiciary, in particular, and the public, in general. There being no explicit statutory mandate that the Justices of the collegiate courts are entitled to retirement program budgets, then, there is also no basis for them to legally demand that such budgets be equal across collegiate courts of the same rank or level. The retirement program budgets of Justices of collegiate courts are subject to the discretion and approval of this Court, as part of its constitutional power of administrative supervision over all courts and personnel thereof. In the exercise of such discretion, the Court takes into consideration several factors, such as, but not limited to, the established or actual costs of the items and activities which are part of the retirement program,

the number of employees of the collegiate court, the period of time since the last increase in the retirement program budget, and the availability of funds.

R E S O L U T I O N

HERNANDO, *J.*:

In its June 25, 2019 Resolution in the present Administrative Matter, the Court approved the increase in the allocated retirement program budget of the Court of Appeals, thus:

> **WHEREFORE**, the Court resolves to **GRANT**, **effective on July 1, 2019,** the request of the Court of Appeals,
>
> a) For a retiring Presiding Justice – not to exceed **ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00)**; and
>
> b) For a retiring Associate Justice – not to exceed **ONE MILLION TWO HUNDRED THOUSAND PESOS (₱1,200,000.00)**.

Thereafter, during a meeting held on September 3, 2019, the Court of Tax Appeals (CTA) *En Banc* approved *En Banc* Resolution No. 4-2019, pertinent parts of which read:

> **WHEREAS**, Section 1 of Republic Act No. 1125, as amended, provides that the Court of Tax Appeals shall be of the same level as the Court of Appeals and its Presiding Justice and Associate Justices shall have the same salary, emoluments and other privileges, and enjoy the same retirement and other benefits as those provided for under existing laws for the Presiding Justice and Associate Justices of the Court of Appeals;
>
> **WHEREAS**, after considering the Court's retirement program budget vis-a-vis the Resolution promulgated on June 25, 2019 in A.M. No. 19-02-03-CA, (Re: Expenses of Retirement of Court of Appeals Justices), the Court *En Banc* found it reasonable to seek the application of the afore-quoted policy on retirement program budget to the Court of Tax Appeals, being of the same level as the Court of Appeals;

NOW, THEREFORE, the Court *En Banc* **RESOLVES**, as it is hereby **RESOLVED**, to **REQUEST** the Honorable Supreme Court to apply the policy on retirement program budget laid down in the Resolution promulgated on June 25, 2019 in A.M. No. 19-02-03-CA (Re: Expenses of Retirement of Court of Appeals Justices) to the Court of Tax Appeals consistent with the aforementioned Section 1 of Republic Act No. 1125, as amended.[1]

Through a letter dated September 4, 2019, CTA Presiding Justice Roman G. Del Rosario (Del Rosario) transmitted a copy of CTA *En Banc* Resolution No. 4-2019, to this Court and expressed his and the CTA Associate Justices' hope that their request will merit the kind consideration and approval of this Court *En Banc*.

The Court, in its September 24, 2019 Resolution, referred CTA Presiding Justice Del Rosario's aforementioned letter, together with CTA *En Banc* Resolution No. 4-2019, to the Fiscal Management and Budget Office (FMBO) for comment.

In another letter dated January 8, 2020 to this Court, thru Chief Justice Diosdado M. Peralta, CTA Presiding Justice Del Rosario reiterated the CTA's request for the application to the tax court of the policy on retirement program budget laid down in this Court's June 25, 2019 Resolution. He also stressed in the same letter that CTA Associate Justices Cielito N. Mindaro-Grulla and Esperanza R. Fabon-Victorino will be retiring in June and August of this year, respectively; and to ensure timely procurement, the CTA needs to finalize their retirement programs based on the corresponding budgets therefor.

In the meantime, Atty. Corazon G. Ferrer-Flores (Ferrer-Flores), Deputy Clerk of Court and Chief, FMBO, submitted to the Court her Comment dated December 16, 2019 on CTA Presiding Justice Del Rosario's letter dated September 4, 2019 and CTA *En Banc* Resolution No. 4-2019. Essentially, she reasoned that the CTA and the Sandiganbayan are now of the same level as the Court of Appeals, and for consistency and uniformity, it would be appropriate to apply the approved

[1] Temporary *rollo*.

retirement program budget of the Court of Appeals to the CTA and the Sandiganbayan. Consequently, she made the following recommendations:

> **IN VIEW OF THE FOREGOING**, we respectfully recommend that the budget allocated for the retirement program of the Presiding Justice and Associate Justice of the Court of Appeals be applied to the *Sandiganbayan* and the Court of Tax Appeals, chargeable against their respective savings from their regular appropriations and subject further to availability of funds, as follows:
>
> 1) For a retiring Presiding Justice, or in case of vacancy, a retiring Acting Presiding Justice – not to exceed **ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00)**; and
>
> 2) For a retiring Associate Justice – not to exceed **ONE MILLION TWO HUNDRED THOUSAND PESOS (₱1,200,000.00)**.[2]

After a judicious review of CTA *En Banc* Resolution No. 4-2019, together with Atty. Ferrer-Flores' Comment, the Court finds no sufficient basis and merit to grant the increase in the retirement program budget of the CTA as well as of the Sandiganbayan.

It is conceded that the CTA and the Sandiganbayan are of the same rank and level as the Court of Appeals.

Initially, upon the creation of the CTA on June 16, 1954 by virtue of Republic Act (R.A.) No. 1125,[3] it was a specialized court of limited jurisdiction with the same rank as the Court of Industrial Relations (CIR), which, in turn, was of equal rank as the then Courts of First Instance[4] (CFIs). As this Court had previously recounted:

> The CTA was created by R.A. No. 1125 in 1954. The CTA's standing in the hierarchy of courts in our jurisdiction, before its

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[2] Temporary *rollo*, Atty. Ferrer-Flores' Comment dated December 16, 2019.

[3] An Act Creating the Court of Tax Appeals.

[4] Now the Regional Trial Courts.

elevation to a collegiate tribunal by virtue of R.A. No. 9282, was that of a specialized court of limited jurisdiction. It was not at the same level as the [Court of Appeals], since its decisions may be appealed thereto, and it was not also a trial court. Under Section 1 of R.A. No. 1125, the Presiding Judge of the CTA had the same qualifications, rank, category and privileges as the Presiding Judge of the Court of Industrial Relations (CIR) while the Associate Judge of the CTA had the same qualifications, rank, category and privileges of a member of the CIR. In *Kaisahan ng mga Manggagawa sa La Campana v. Hon. Caluag*, the CIR was equal in rank with the Courts of First Instance. x x x[5]

With the enactment of R.A. No. 9282[6] on March 30, 2004, the CTA was elevated to a collegiate court with special jurisdiction and of the same level as the Court of Appeals. Section 1 of R.A. No. 1125, as amended by R.A. No. 9282, now provides:

SECTION 1. *Court; Justices; Qualifications; Salary; Tenure.* — There is hereby created a Court of Tax Appeals (CTA) which shall be of the **same level as the Court of Appeals**, possessing all the inherent powers of a Court of Justice, and shall consist of a Presiding Justice and five (5) Associate Justices. The incumbent Presiding Judge and Associate Judges shall continue in office and bear the new titles of Presiding Justice and Associate Justices. The Presiding Justice and the most Senior Associate Justice shall serve as chairmen of the two (2) Divisions. The additional three (3) Justices and succeeding members of the Court shall be appointed by the President upon nomination by the Judicial and Bar Council. The Presiding Justice shall be so designated in his appointment, and the Associate Justices

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[5] *Re: (a) Request of Assistant Court Administrators for Upgrading of Their Rank, Salary and Privileges Upon Effectivity of Republic Act No. 9282 Elevating the Court of Tax Appeals and (b) Grant of Special Distortion Allowance to Positions in the Judiciary with Rank of Judges of Metropolitan Trial Courts, Assistant Clerk of Court of the Court of Appeals and Division Clerks of Court of the Court of Appeals*, 528 Phil. 13, 25 (2006).

[6] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

shall have precedence according to the date of their respective appointments, or when the appointments of two (2) or more of them shall bear the same date, according to the order in which their appointments were issued by the President. **They shall have the same qualifications, rank, category, salary, emoluments and other privileges, be subject to the same inhibitions and disqualifications, and enjoy the same retirement and other benefits as those provided for under existing laws for the Presiding Justice and Associate Justices of the Court of Appeals.**

Whenever the salaries of the Presiding Justice and the Associate Justices of the Court of Appeals are increased, such increases in salaries shall be deemed correspondingly extended to and enjoyed by the Presiding Justice and Associate Justices of the CTA.

The Presiding Justice and Associate Justices shall hold office during good behavior, until they reach the age of seventy (70), or become incapacitated to discharge the duties of their office, unless sooner removed for the same causes and in the same manner provided by law for members of the judiciary of equivalent rank.[7] (Emphases supplied.)

In the same way, when it was first created by virtue of Presidential Decree (P.D.) No. 1486[8] on June 11, 1978, the Sandiganbayan was a special court of equal rank as the CFIs. P.D. No. 1606[9] was issued shortly thereafter on December 10, 1978 which declared the Sandiganbayan as a special court of the same level as the Court of Appeals. For reference, Section 1 of said presidential issuance is reproduced in full hereunder:

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[7] R.A. No. 9503 (An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes), subsequently enacted on June 12, 2008, increased the composition of the CTA to one Presiding Justice and eight Associate Justices to sit *En Banc* or in three Divisions with three Justices each.

[8] Creating a Special Court to Be Known as "Sandiganbayan" and for Other Purposes.

[9] Revising Presidential Decree No. 1486 Creating a Special Court to Be Known as "Sandiganbayan" and for Other Purposes.

SECTION 1. *Sandiganbayan, Composition; Qualifications; Tenure; Removal and Composition.* — **A special court, of the same level as the Court of Appeals** and possessing all the inherent powers of a court of justice, to be known as the Sandiganbayan is hereby created composed of a Presiding Justice and eight Associate Justices who shall be appointed by the President.

The Presiding Justice and the Associate Justices shall not be removed from office except on impeachment upon the grounds and in the manner provided for in Sections 2, 3 and 4 of Article XIII of the 1973 Constitution.

The Presiding Justice shall receive an annual compensation of ₱60,000.00 and each Associate Justice ₱55,000.00 which shall not be diminished during their continuance in office. **They shall have the same rank, privileges and other emoluments, be subject to the same inhibitions and disqualifications, and enjoy the same retirement and other benefits as those provided for under existing laws of the Presiding Justice and Associate Justices of the Court of Appeals.**

Whenever the salaries of the Presiding Justice and the Associate Justices of the Court of Appeals are increased, such increases in salaries shall be correspondingly extended to and enjoyed by the Presiding Justice and the Associate Justices of the Sandiganbayan.

They shall hold office until they reach the age of 65 years or become incapacitated to discharge the duties of their office. (Emphases supplied.)

While the composition and organization of the Sandiganbayan had been amended by legislation through the years,[10] it remains to be of the same level as the Court of Appeals.

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[10] By virtue of R.A. No. 7975 (An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended) dated March 30, 1995 and R.A. No. 8249 (An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606 as Amended, Providing Funds Therefor, and for Other Purposes) dated February 5, 1997, the composition of the anti-graft court was increased to one Presiding Justice and 14 Associate Justices who would sit in five Divisions of three Justices each. R.A. No. 7975 though provided that the first three Divisions would be stationed in Manila, the fourth Division would be in Cebu City for cases coming from Visayas, and the fifth Division would be in Cagayan De Oro

Notably, the aforequoted statutory provisions expressly state that the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan shall have the same rank, salary, privileges, and emoluments; be subject to the same inhibitions and disqualifications; and enjoy the same retirement and other benefits provided **under existing laws** as the Presiding Justice and Associate Justices of the Court of Appeals. They additionally prescribe that any increase in the salaries of the Presiding Justice and Associate Justices of the Court of Appeals shall be extended to and enjoyed by the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan.

Nevertheless, it bears to point out that the retirement program budgets of retiring Justices of collegiate courts are not expressly provided under any law. They are not part of the "retirement and other benefits" to which the statutes pertain, *viz*., pensions, lump sums, and survivorship.[11] Such retirement program budgets are more in the nature of administrative expenses which are

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City for cases coming from Mindanao. Eventually, R.A. No. 10660 (An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as Amended, and Appropriating Funds Therefor), enacted on April 16, 2015, indirectly increased the composition of the Sandiganbayan to one Presiding Justice and 20 Associate Justices by providing that it shall sit in seven Divisions of three Members each.

[11] See R.A. No. 910 (An Act to Provide for the Retirement of Justices of the Supreme Court and the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six); R.A. No. 2614 (An Act to Amend Sections One, Two, Three, Four, Five and Six of Republic Act Numbered Nine Hundred and Ten as Amended by Republic Act Numbered One Thousand Fifty Seven, Entitled "An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six," to Make Its Provisions Applicable to Judges of the Courts of Agrarian Relations, Industrial Relations, Tax Appeals, First Instance, and Juvenile and Domestic Relations Courts, and for Other Purposes); R.A. No. 9227 (An Act Granting Additional Compensation in the Form of Special Allowances for Justices, Judges and All Other Positions in the Judiciary with the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court, and for Other Purposes); and R.A. No. 9946

allotted by the collegiate courts, with the approval of this Court *En Banc*, to their respective retiring members in order to recognize and celebrate the latter's service and contribution to the Judiciary, in particular, and the public, in general. There being no explicit statutory mandate that the Justices of the collegiate courts are entitled to retirement program budgets, then, there is also no basis for them to legally demand that such budgets be equal across collegiate courts of the same rank or level.

The retirement program budgets of Justices of collegiate courts are subject to the discretion and approval of this Court, as part of its constitutional power of administrative supervision over all courts and personnel thereof.[12] In the exercise of such discretion, the Court takes into consideration several factors, such as, but not limited to, the established or actual costs of the items and activities which are part of the retirement program, the number of employees of the collegiate court, the period of time since the last increase in the retirement program budget, and the availability of funds.

Based on Atty. Ferrer-Flores' Comment, the current retirement program budgets of the various collegiate courts are as follows:

SUPREME COURT (Increased per September 25, 2019 Resolution in A.M. No. 18-09-13-SC)	**COURT OF APPEALS** (Increased per June 25, 2019 Resolution in A.M. No. 19-02-03-CA)	**CTA**	**SANDIGANBAYAN**
Chief Justice	Presiding Justice	Presiding Justice	Presiding Justice
₱2,200,000.00 (+ 10% yearly increase)	₱1,500,000.00	₱650,000.00	₱450,000.00
Associate Justices	Associate Justices	Associate Justices	Associate Justices
₱2,000,000.00 (+ 10% yearly increase)	₱1,200,000.00	₱650,000.00	₱450,000.00

(An Act Granting Additional Retirement, Survivorship, and other Benefits to Members of the Judiciary, Amending for the Purpose Republic Act No. 910, as Amended, Providing Funds Therefor and for Other Purposes).

[12] Article VIII, Section 6 of the 1987 Constitution.

Atty. Ferrer-Flores further observed in her Comment that the retirement program budgets of the CTA and the Sandiganbayan are presently much lower than that of the Court of Appeals, following the significant increase in the latter granted by this Court in the June 25, 2019 Resolution.

Relevant herein is the following rationalization of the Court in the said June 25, 2019 Resolution granting the increase in the retirement program budgets of the retiring Presiding Justice and Associate Justices of the Court of Appeals:

> Per the Chief of the Fiscal Management and Budget Division of the Court of Appeals, the increased retirement program budget for the retiring Presiding or Associate Justice will cover his/her (a) luncheon/dinner reception; (b) judicial tokens; (c) miscellaneous expenses of the *En Banc* Special Session; (d) souvenir for guests; and (e) food stubs for employees. Given that the Sandiganbayan, with 421 employees, has a retirement program budget of Four Hundred Fifty Thousand Pesos (PhP450,000.00) for each of its retiring Presiding or Associate Justice; and the CTA, with 271 employees, has a retirement program budget of Six Hundred Fifty Thousand Pesos (PhP650,000.00) for each of its retiring Presiding or Associate Justice, it is justifiable that the Court of Appeals, with 1,660 employees (four and six times more than those in the Sandiganbayan and the CTA, respectively) will need a higher retirement program budget for its retiring Presiding or Associate Justice compared to the two other courts.

It is apparent from the foregoing that the major reason as to why the Court granted the increase in the retirement program budgets of the retiring Presiding Justice and Associate Justices of the Court of Appeals is the number of employees of the said appellate court, which necessarily affects the total cost of the retirement program that includes "food stubs for employees." Previous to the Court's June 25, 2019 Resolution, the Justices of the CTA and the Sandiganbayan had significantly higher retirement program budgets than those of the Court of Appeals even though they had less number of employees than the latter. In fact, even with the increase in the retirement program budgets of the retiring Presiding Justice and Associate Justices of the Court of Appeals, these are still lower when computed on a per-employee basis when compared to those of the retiring

Justices of the CTA and the Sandiganbayan, as the table below demonstrates:

COLLEGIATE COURT	RETIREMENT PROGRAM BUDGET	NO. OF EMPLOYEES	BUDGET PER EMPLOYEE
Court of Appeals (Presiding Justice)	₱1,500,000.00	1,660	₱903.61
Court of Appeals (Associate Justices)	₱1,200,000.00	1,660	₱722.89
CTA (Presiding and Associate Justices)	₱650,000.00	271	₱2,398.52
Sandiganbayan (Presiding and Associate Justices)	₱450,000.00	421	₱1,068.88

It is also worthy to stress that the Sandiganbayan, which has a lower retirement program budget for its retiring Justices than the CTA despite having more employees than the tax court, has not actually requested for an increase of its said budget.

Moreover, other than invoking in its *En Banc* Resolution No. 4-2019 its equal level with the Court of Appeals, the CTA failed to present proof of any need for the increase in the retirement program budgets of its retiring Justices, as well as a certification from its appropriate fiscal officers on the availability of funds to cover the requested increase.

According to Atty. Ferrer-Flores, the retirement program budget of the CTA covers the retirement activities and expenses of its retiring Justices, which may include, but are not necessarily limited to the following:

1) Tokens like the Philippine flag, CTA flag, CTA ring, judicial robe, brass shingle, Book of Decisions, photobook, and portrait;
2) Catering services at the retirement ceremony;

3) Photo/video documentation for the retirement ceremony;
4) Light and sound system rental for the retirement ceremony;
5) Entertainers for the retirement ceremony;
6) Souvenirs; and
7) Testimonial breakfast/recognition.[13]

Granted that the costs for the aforementioned retirement items and activities had risen through the years due to inflation, there is no showing that these are substantial enough to warrant a corresponding 54% and 43% increases in the retirement program budgets of the CTA Presiding Justice and Associate Justices, respectively.

WHEREFORE, the Court resolves as follows:

(a) To **NOTE** Atty. Ferrer-Flores' Comment dated December 16, 2019 on CTA Presiding Justice Del Rosario's letter dated September 4, 2019 and CTA *En Banc* Resolution No. 4-2019;

(b) To **NOTE** CTA Presiding Justice Del Rosario's letter dated January 8, 2020 reiterating the request of the CTA in its *En Banc* Resolution No. 4-2019; and

(c) To **DENY** for lack of merit the request of the CTA in its *En Banc* Resolution No. 4-2019 to extend and apply to the tax court the increased allocated retirement budget of the Court of Appeals in this Court's June 25, 2019 Resolution.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos and *Gaerlan, JJ.,* concur.

Reyes, J. Jr., J., on leave.

Carandang, J., on special leave.

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[13] *Supra* note 2.

EN BANC

[B.M. No. 2796. February 11, 2020]

ENRIQUE JAVIER DE ZUZUARREGUI, *complainant, vs.* **ANTHONY DE ZUZUARREGUI,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; THE PRACTICE OF LAW IS NOT A RIGHT BUT A PRIVILEGE, BUT THE COURT WILL NOT UNJUSTIFIABLY WITHHOLD THIS PRIVILEGE FROM ONE WHO HAS CLEARLY SHOWN THAT HE IS BOTH INTELLECTUALLY AND MORALLY QUALIFIED TO JOIN THE LEGAL PROFESSION. — In this case, respondent's admission to the Philippine Bar has long been held in abeyance due to the criminal cases pending against him before the Office of the City Prosecutor of Quezon City. Per the *rollo*, it appears that all criminal charges against him has been dismissed *except* for the most recent one filed in 2019. The timing of the filing of this case, however, is highly suspect as it came just as the other criminal charges against respondent were dismissed on June 28, 2018, January 4, 2019, and October 15, 2019. Thus, it can no longer be denied that the manifest intention of complainant in successively filing these criminal cases against respondent is to prevent him from taking the Lawyer's Oath and signing the Roll of Attorneys—the last two steps needed to be undertaken by respondent to become a full-fledged lawyer. The dismissal of all the other criminal charges against respondent, coupled with the various certifications of good moral character in his favor, is sufficient for the Court to conclude that respondent possesses the moral qualifications required of lawyers. Though it is true that the practice of law is not a right but a privilege, the Court will not unjustifiably withhold this privilege from respondent, who has clearly shown that he is both intellectually and morally qualified to join the legal profession. And so, after almost six years of waiting, the Court finally grants respondent's prayer for admission to the Philippine Bar.

APPEARANCES OF COUNSEL

Argel, Aquino, Arquillo, Acosta, Estrada, Jacob & Go Law Offices for complainant.

R E S O L U T I O N

INTING, *J.*:

This bar matter refers to the complaint filed by Enrique Javier de Zuzuarregui (complainant) before the Office of the Bar Confidant (OBC) against Anthony de Zuzuarregui (respondent), his nephew and one of the bar applicants for the 2013 Bar Examinations.

The Antecedents

On October 2, 2013, the OBC received a Letter[1] dated September 15, 2013 from complainant, thru his counsel, Atty. Nicholas A. Aquino, informing the Court that he was filing a complaint against respondent, then an applicant for the 2013 Bar Examinations for being a person of questionable moral character given the four criminal charges that the latter was facing before the Office of the City Prosecutor of Quezon City, namely:

(1) Criminal Case No. XV-03-INV-13D-03569 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for *Estafa* under Article 315 of the Revised Penal Code (RPC);

(2) Criminal Case No. XV-03-INV-13F-05581 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for *Estafa* thru Falsification of Public Documents under Article 315 of the RPC;

(3) Criminal Case No. XV-INV-13G-06821 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for Falsification of Public Documents and Use of Falsified Documents under Article 172 of the RPC; and

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[1] *Rollo*, pp. 2-3.

(4) Criminal Case No. XV-03-INV-13F-06052 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for Falsification of Public Documents under Article 172 of the RPC.

It appears that respondent himself had disclosed in his Petition to Take the 2013 Bar Examinations[2] that there were four pending criminal cases against him at the time:

(1) Criminal Case No. XV-03-INV-13D-03569 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for *Estafa*;

(2) Criminal Case No. XV-03-INV-13E-04905 – *Azucena Locsin Garcia v. Anthony de Zuzuarregui, et al.*, for violation of Article 312 (Occupation of Real Property or Usurpation of Real Rights in Property) and Article 313 (Altering Boundaries or Landmarks) of the RPC;

(3) Criminal Case No. XV-03-INV-13F-06052 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for Falsification of Public Documents; and

(4) Criminal Case No. XV-03-INV-13F-05581 – *Enrique de Zuzuarregui v. Anthony de Zuzuarregui, et al.*, for *Estafa* thru Falsification of Public Documents.

In view of the pending criminal cases against respondent, the Court provisionally allowed him to take the 2013 Bar Examinations, subject to the condition that, should he pass, he shall not be allowed to take the Lawyer's Oath and sign the Roll of Attorneys until he is cleared of the charges against him.[3]

Respondent thereafter passed the 2013 Bar Examinations. Consequently, he filed a Verified Petition to Take the Lawyer's Oath[4] dated April 24, 2014 before the OBC. In his petition, he claimed that the pending criminal cases against him had already been dismissed by the Office of the City Prosecutor of

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[2] *Id.* at 48.

[3] *Id.* at 6.

[4] *Id.* at 6-8.

Quezon City as evidenced by the Orders of Dismissal[5] attached thereto. To prove that he was morally fit to become a lawyer, respondent also submitted the following certifications of good moral character from:

(a) Atty. Ma Venarisse V. Verga of Lee Venturanza Verga Law Office;[6]

(b) Atty. Viviana Martin-Paguirigan, then Associate Dean of the Far Eastern University - Institute of Law;[7]

(c) Rev. Fr. Noel B. Magtaas, OSJ, then Provincial Superior of the Oblates of St. Joseph - Philippine Province;[8] and

(d) Attys. Gregorio S. Daproza and Voltaire P. Agas.[9]

In its Resolution[10] dated July 1, 2014, the Court required respondent to explain why he failed to disclose the pendency of Criminal Case No. XV-INV-13G-06821 in his application to take the 2013 Bar Examinations and to submit a certification of the status of the case, if still pending, or order of dismissal, if already dismissed.

On August 14, 2014, respondent submitted his Verified Compliance[11] wherein he explained that he was not able to declare Criminal Case No. XV-INV-13G-06821 in his application because, at the time of filing of his Petition to Take the 2013 Bar Examinations on July 12, 2013, he was not yet aware of the existence of the case. He further averred that he only received a copy of the *subpoena*[12] in relation to the case on August 15,

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[5] *Id.* at 9-11, 12-13, 14-15 and 16-19.

[6] *Id.* at 20.

[7] *Id.* at 21.

[8] *Id.* at 22.

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

[10] *Id.* at 31-32.

[11] *Id.* at 34-37.

[12] *Id.* at 49.

2013, or more than a month after he filed his application to take the bar examinations.[13]

Thus, in its Resolution[14] dated September 23, 2014, the Court required respondent to submit a copy of the order of dismissal in Criminal Case No. XV-INV-13G-06821 as well as Prosecutor's and Court's clearances, and additional certifications of good moral character.

On November 14, 2014, the Court received respondent's Second Verified Compliance[15] dated November 7, 2014 wherein respondent submitted the following documents:

(a) Order of Dismissal in Criminal Case No. XV-INV-13G-06821;[16]

(b) Clearance from the Quezon City Regional Trial Court dated October 22, 2014;[17]

(c) Clearance from the Quezon City Metropolitan Trial Court dated October 27, 2014;[18]

(d) Prosecutor's Certifications[19] dated October 20, 2014 showing the dismissal of:

(1) XV-03-INV-13K-12145 to 46;
(2) XV-03-INV-13D-03569;
(3) XV-03-INV-13F-6059;[*]
(4) XV-03-INV-13F-05581;
(5) XV-03-INV-13E-04905;

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[13] *Id.* at 34-35.

[14] *Id.* at 58.

[15] *Id.* at 65-67.

[16] *Id.* at 68.

[17] *Id.* at 69.

[18] *Id.* at 70.

[19] *Id.* at 71-73.

[*] It should be XV-03-INV-13F-06052, not 6059, per the Resolution dated November 25, 2013 issued by Assistant State Prosecutor Rolando G. Ramirez. *Id.* at 14-15.

(e) Certification of Good Moral Character dated November 13, 2014 issued by Pasig City Councilor Hon. Richard C. Eusebio;[20]

(f) Certification of Good Moral Character dated November 12, 2014 signed by Atty. Carlos G. Buendia;[21]

(g) Certification of Good Moral Character dated November 13, 2014 signed by Atty. Paul Nicomedes L. Roldan;[22]

(h) Certification of Good Moral Character dated April 25, 2014 signed by Atty. Ma. Venarisse V. Verga;[23]

(i) Certification of Good Moral Character dated April 25, 2014 signed by Associate Dean Viviana Martin-Paguirigan;[24]

(j) Certification of Good Moral Character dated April 26, 2014 signed by Rev. Fr. Noel B. Magtaas, OSJ;[25]

(k) Testimonial of Good Character dated April 29, 2014 signed by Atty. Gregorio S. Daproza, Jr.;[26] and

(l) Certification of Good Moral Character signed by Atty. Voltaire P. Agas.[27]

Per the Resolution[28] dated March 10, 2015, the Court referred respondent's Second Verified Compliance to the OBC for evaluation, report, and recommendation. The OBC, however, recommended that respondent's Petition to Take the Lawyer's

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[20] *Id.* at 74.

[21] *Id.* at 75.

[22] *Id.* at 76.

[23] *Id.* at 77.

[24] *Id.* at 78.

[25] *Id.* at 79.

[26] *Id.* at 80.

[27] *Id.* at 81.

[28] *Id.* at 85.

Oath be held in abeyance in view of the other criminal charges still pending against him before the Office of the City Prosecutor of Quezon City.[29] The Court adopted the OBC's recommendation in its Resolution[30] dated November 16, 2015.

Three years later, respondent filed his Verified Second Motion most respectfully praying that [respondent] be allowed to take his Lawyer's Oath and sign the Roll of [Attorneys][31] dated October 3, 2018 before the OBC wherein he notified the Court of the dismissal of *all* the criminal charges filed against him.[32] In his motion, he averred that while he was able to completely wipe out all the cases filed against him by complainant, he feared that a new round of fabricated criminal complaints will be forthcoming to further prevent him from becoming a full-fledged lawyer.[33]

Report and Recommendation of the OBC

In its Report[34] dated October 28, 2019, the OBC recommended that:

> Hence, in view of the dismissal of the cases filed against him and finding the attestations made in his favor to be credible and sincere, we are inclined to recommend the granting of respondent's prayer for admission to the Philippine Bar as we see no other cogent reason or ground to rule otherwise. In allowing respondent to take the lawyer's oath, we recognize that respondent is not intrinsically of bad moral fiber. On a final note, we are also giving respondent the benefit of the doubt that he is morally fit to become a member of the Philippine Bar and that the certifications made in his favor truly reflect his good moral character. With that, we are convinced that he possesses the same as a pre-requisite for admission to our noble profession.

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

[30] *Id.* at 134.

[31] *Id.* at. 152-156.

[32] *Id.* at 152-153.

[33] *Id.* at 153.

[34] *Id.* at 194-200.

WHEREFORE, premises considered, it is respectfully recommended that ANTHONY R. DE ZUZUA[R]REGUI be ALLOWED to take the Lawyer's Oath and Sign the Roll of Attorneys on a date set by the Court upon payment of the appropriate legal fees.[35]

Thus, the Court, in its Resolution[36] dated November 19, 2019, resolved, upon the OBC's recommendation, to allow respondent to take the Lawyer's Oath and sign the Roll of Attorneys.

Upon his payment of the required fees,[37] respondent's oath-taking was scheduled on January 20, 2020, at 4:30 p.m., before Associate Justice Andres B. Reyes, Jr.[38] However, before respondent could take the Lawyer's Oath, the Court received a Letter[39] dated January 8, 2020 from complainant stating his strong objection to allow respondent to take the oath "due to questionable moral integrity, honesty and uprightness,"[40] given the 10 criminal cases still pending against him before the Office of the City Prosecutor of Quezon City, *viz.*:

(a) Criminal Case No. XV-03-INV-14F-05666 for Falsification of Public Documents;

(b) Criminal Case No. XV-03-INV-14F-05667 for Falsification of Public Documents;

(c) Criminal Case No. XV-03-INV-15D-04249 for *Estafa* thru Falsification of Public Documents;

(d) Criminal Case No. XV-03-INV-16B-62233 for 59 counts of *Estafa*;

(e) Criminal Case No. XV-05-INV-16S-10647 for *Estafa* thru Falsification of Public Documents;

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[35] *Id.* at 199-200.

[36] *Id.* at 201-202.

[37] *Id.* at 204-205.

[38] *Id.* at 211.

[39] *Id.* at 212-214.

[40] *Id.* at 212.

(f) Criminal Case No. XV-03-INV-16J-10252 for *Estafa*;

(g) Criminal Case No. XV-03-INV-16J-10509 for Falsification of Public Documents;

(h) Criminal Case No. XV-03-INV-17J-08273 for violation of Presidential Decree No. 1096, or the National Building Code of the Philippines;

(i) Criminal Case No. XV-03-INV-17G-06688 for *Estafa*; and

(j) Criminal Case No. XV-03-INV-19F-05312 for *Estafa*.

Consequently, the Court, thru Chief Justice Diosdado M. Peralta, *suspended* respondent's scheduled oath-taking until the Court *En Banc* has decided on the matter.[41]

In his Letter[42] dated January 19, 2020 addressed to the Chief Justice, respondent explained that nine out of the 10 criminal cases mentioned in complainant's Letter had already been dismissed for lack of probable cause, but the 10th case is still pending as it was just recently filed in 2019.[43] He averred that the new case had been purposely instituted by complainant to further delay his oath-taking. He prays that he finally be allowed to take the Lawyer's Oath and sign the Roll of Attorneys as the numerous criminal complaints filed by his uncle against him are mere harassment suits specifically designed to prevent him from becoming a full-fledged lawyer.[44]

The Court's Ruling

Section 2 of Rule 138 of the Rules of Court provides:

SEC. 2. *Requirements for all applicants for admission to the bar*. — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good

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[41] *Id.* at 218.

[42] *Id.* at 221-224.

[43] *Id.* at 222.

[44] *Id.* at 222-223.

moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

In this case, respondent's admission to the Philippine Bar has long been held in abeyance due to the criminal cases pending against him before the Office of the City Prosecutor of Quezon City. Per the *rollo*, it appears that all criminal charges against him has been dismissed *except* for the most recent one filed in 2019. The timing of the filing of this case, however, is highly suspect as it came just as the other criminal charges against respondent were dismissed on June 28, 2018,[45] January 4, 2019,[46] and October 15, 2019.[47] Thus, it can no longer be denied that the manifest intention of complainant in successively filing these criminal cases against respondent is to prevent him from taking the Lawyer's Oath and signing the Roll of Attorneys—the last two steps needed to be undertaken by respondent to become a full-fledged lawyer.

The dismissal of all the other criminal charges against respondent, coupled with the various certifications of good moral character in his favor, is sufficient for the Court to conclude that respondent possesses the moral qualifications required of lawyers. Though it is true that the practice of law is not a right but a privilege, the Court will not unjustifiably withhold this privilege from respondent, who has clearly shown that he is both intellectually and morally qualified to join the legal profession.[48] And so, after almost six years of waiting, the Court finally grants respondent's prayer for admission to the Philippine Bar.

WHEREFORE, the Court resolves to:

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[45] *Id.* at 225-236, 242-246, 254-259 and 260-265.

[46] *Id.* at 266-269.

[47] *Id.* at 248-253, 270-274, and 275-279.

[48] See *In Re: Petition to Sign in the Roll of Attorneys, Michael A. Medado*, 718 Phil. 286, 291 (2013).

(a) **NOTE** the Letter dated January 19, 2020 and the Report dated January 21, 2020 of the Office of the Bar Confidant; and

(b) **ALLOW** Anthony de Zuzuarregui to take the Lawyer's Oath and sign the Roll of Attorneys on a date set by the Court and upon payment of the appropriate legal fees, if any.

Complainant Enrique Javier de Zuzuarregui and his counsel, Atty. Nicholas A. Aquino, are severely **WARNED** not to file any more frivolous criminal complaints against respondent under pain of contempt.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Hernando, Lazaro-Javier, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Reyes, J. Jr., J., on leave.

Carandang, J., on special leave.

FIRST DIVISION

[A.C. No. 9197. February 12, 2020]

DAMASO STA. MARIA, JUANITO TAPANG and LIBERATO OMANIA, *complainants, vs.* **ATTY. RICARDO ATAYDE, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; FAILURE TO FILE THE APPEAL BRIEF CONSTITUTES A VIOLATION OF CANON 18 AND RULE 18.02 OF THE CODE OF PROFESSIONAL

RESPONSIBILITY; PENALTY OF SIX (6) MONTHS SUSPENSION, IMPOSED. — The relationship between a lawyer and a client is *"imbued with utmost trust and confidence."* Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court. When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor. Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation. The requirement and repercussions of non-submission of an appellant's brief are provided for under Rules 44 and 50 of the Revised Rules of Court[.] x x x As a lawyer, respondent is presumed to know the procedural rules in appellate practice. This includes the rule that when the appellant fails to file the appeal brief within the prescribed period, the appeal shall be dismissed. Here, respondent admitted to have intentionally not filed the appeal brief, albeit he gives two inconsistent reasons *i.e.* one, he was informed that the cases had been amicably settled and two, his supposed effort to contact his clients which proved futile aside from the fact that his clients failed to follow up with him. Respondent's admission and his inconsistent stories relative to the reason why he totally failed to file the appeal brief speaks for itself. He was grossly negligent in his duty to file the required appeal brief, causing the appeal to be dismissed and his clients' to perpetually lose the chance to have the case reviewed and possibly to reverse the judgment against them. x x x By unjustifiably failing to protect his client's cause, respondent is guilty of violation of Canon 18 and Rule 18.02 of the CPR. x x x [T]he fact that complainants' claim over the 2,507 square meter land is deemed lost forever due to respondent's failure to forthrightly perform his duty as complainants' counsel and for lack of any showing of empathy or remorse for the unfortunate incident that he, himself, had caused, the Court deems it proper to impose on respondent the penalty of suspension from the practice of law for six (6) months.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

By *Sinumpaang Salaysay sa Paghahain ng Reklamo*[1] dated July 1, 2011, complainants Damaso Sta. Maria, Juanito Tapang and Liberato Omania charged respondent Atty. Ricardo Atayde, Jr. with violation of Canon 18 of the Code of Professional Responsibility (CPR). Complainants essentially averred:

Respondent acted as their counsel in the consolidated Civil Case Nos. 5208 and 5391, then pending before Regional Trial Court (RTC) Branch 30, Cabanatuan City. Civil Case No. 5208 was a petition for cancellation of TCT Nos. T-34410, T-1124747, T-112781, and 112782 with prayer for issuance of Temporary Restraining Order or Injunction entitled *"Damaso Sta. Maria, et al. v. Sps. Eufrocena Antonio and Gregorio Antonio, Register of Deed of Cabanatuan City."* Civil Case No. 5391 on the other hand was an *accion publiciana* entitled *"Eufrocena Antonio joined by her husband Gregorio Antonio v. Damaso Sta. Maria, et al."* After due proceedings, the trial court ruled against them.[2]

On appeal, the Court of Appeals under Notice dated May 24, 2010, directed them to file the appeal brief in accordance with Section 7, Rule 44 of the Rules of Court. Upon receipt thereof, they informed respondent of the directive and gave him the amount of Two Thousand Pesos (₱2,000.00) for the filing of the appeal brief. Respondent assured them that the same will be filed on or before the July 15, 2010 deadline.

Respondent, however, failed to file the appeal brief. Through Resolution dated October 26, 2010, the Court of Appeals dismissed the appeal for failure to file the appeal brief. Respondent did not move for reconsideration, thus, causing the trial court's decision final and executory.[3]

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

[2] *Id.* at 2.

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

In his Comment[4] dated December 29, 2011, respondent riposted in the main:

He intentionally did not file the appeal brief because he was informed by one of the complainants, Severino Pascual that the parties had already settled their differences and that complainant Damaso Sta. Maria also peacefully vacated the property. From the time he filed a notice of appeal until the Court of Appeals dismissed the appeal, he was trying to contact complainants regarding the status of the case but failed to reach them. Neither did they follow up with him. Thus, he assumed complainants had indeed amicably settled the case with the prevailing party. He did not accept the amount of ₱2,000.00 from complainants. On the contrary, it was complainant Damaso who tried to extort money from him as consideration for not filing an administrative case against him.[5]

Report and Recommendation of the Integrated Bar of the Philippines (IBP) Investigating Commissioner

In his Report[6] dated May 7, 2016, Investigating Commissioner Romualdo A. Din, Jr. found respondent guilty of violating Canon 18 and Rule 18.03 of the Code of Professional Responsibility (CPR) and recommended that his suspension from the practice of law for three (3) months, *viz*:

> In this regard, it behooves this Commission to find that respondent ATTY. RICARDO ATAYDE, JR. should be suspended from the practice of law for a period of three (3) months.
>
> WHEREFORE, in view of the foregoing, it is respectfully recommended respondent ATTY. RICARDO ATAYDE, JR. be suspended from the practice of law for a period of three (3) months.

According to Investigating Commissioner Din, Jr., respondent's failure to file appeal brief constitutes inexcusable negligence. He cannot sustain respondent's theory that since

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[4] *Id*. at 64-71.

[5] *Id*. at 64-69.

[6] IBP Records, pp. 2-13.

one of his clients in the subject civil cases Severino Pascual informed him that the parties had already amicably settled, he found it no longer necessary to file the appeal brief. Respondent was representing eight (8) individuals in the civil cases, not just Pascual. As such, he was duty bound to safeguard the interest of not only one (1) but all eight (8) individuals. This, he failed to do. He could have exercised due diligence by seeking confirmation from his other clients, complainants here included, if the information given by Pascual was indeed accurate; making sure that the terms of the settlement were fair to his clients; and that the settlement was properly documented for the purpose of apprising the Court of Appeals thereof.[7]

IBP Board of Governors' Resolution

By Resolution No. XXII-2017-1206 dated June 17, 2017, the IBP Board of Governors resolved to adopt the Report and Recommendation of the Investigating Commissioner.[8]

Issue

Is respondent liable for violation of Canon 18 and Rule 18.03 of the Code of Professional Responsibility (CPR)?

Ruling

Canon 18 and Rule 18.03 of the CPR ordain:

> **CANON 18** - A lawyer shall serve his client with competence and diligence.
>
> x x x x x x x x x
>
> **Rule 18.03** - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

The relationship between a lawyer and a client is *"imbued with utmost trust and confidence."* Lawyers are expected to exercise the necessary diligence and competence in managing

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

[8] *Id.* at p. 1.

cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court.[9]

When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor.[10]

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.[11]

The requirement and repercussions of non-submission of an appellant's brief are provided for under Rules 44 and 50 of the Revised Rules of Court, to wit:

RULE 44

ORDINARY APPEALED CASES

Section 7. Appellants brief

It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50

DISMISSAL OF APPEAL

Section 1. Grounds for dismissal of appeal.

An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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[9] *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480-481 (2015).

[10] *Sps. Gimena v. Atty. Vijiga,* A.C. No. 11828, November 22, 2017.

[11] *Id*.

x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

As a lawyer, respondent is presumed to know the procedural rules in appellate practice. This includes the rule that when the appellant fails to file the appeal brief within the prescribed period, the appeal shall be dismissed.

Here, respondent admitted to have intentionally not filed the appeal brief, albeit he gives two inconsistent reasons *i.e.* one, he was informed that the cases had been amicably settled and two, his supposed effort to contact his clients which proved futile aside from the fact that his clients failed to follow up with him.

Respondent's admission and his inconsistent stories relative to the reason why he totally failed to file the appeal brief speaks for itself. He was grossly negligent in his duty to file the required appeal brief, causing the appeal to be dismissed and his clients' to perpetually lose the chance to have the case reviewed and possibly to reverse the judgment against them.

Besides, respondent's varying stories about the supposed amicable settlement of the case and his failed effort to contact his clients as well as the latter's purported omission to follow up their cases with him all speak of a mind that lacks candor, honesty and moral uprightness.

In ***Spouses Aranda v. Atty. Elayda,***[12] the Court emphasized that a counsel owes fealty not only to his clients, but also to the Court, to wit:

It is undisputed that Atty. Elayda did not act upon the RTC order submitting the spouses Aranda's case for decision. Thus, a judgment was rendered against the spouses Aranda for a sum of money. Notice of said judgment was received by Atty. Elayda who again did not file any notice of appeal or motion for reconsideration and thus, the judgment became final and executory. Atty. Elayda did not also inform the spouses Aranda of the outcome of the case. The spouses Aranda

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[12] 653 Phil. 1, 10 (2010).

came to know of the adverse RTC judgment, which by then had already become final and executory, only when a writ of execution was issued and subsequently implemented by the sheriff.

Evidently, Atty. Elayda was remiss in his duties and responsibilities as a member of the legal profession. His conduct shows that he not only failed to exercise due diligence in handling his clients' case but in fact abandoned his clients' cause. He proved himself unworthy of the trust reposed on him by his helpless clients. Moreover, Atty. Elayda owes fealty, not only to his clients, but also to the Court of which he is an officer.

By unjustifiably failing to protect his client's cause, respondent is guilty of violation of Canon 18 and Rule 18.02 of the CPR.

Penalty

Both the IBP Investigating Commissioner and the IBP Board of Governors recommended respondents' suspension from the practice of law for three (3) months. The Court, however, holds that a stiffer penalty should be imposed.

In ***Figueras v. Atty. Jimenez,***[13] the Court suspended respondent from the practice of law for one (1) month for his failure to file the appellant's brief.

In ***Layos v. Atty. Villanueva,***[14] the Court suspended the negligent lawyer who also failed to file an appellant's brief for three (3) months.

In ***Mendoza vda. de Robosa v. Atty. Mendoza, et al.,***[15] the Court suspended respondent from the practice of law for six (6) months for his failure to file the appeal brief which caused the appeal to be dismissed and his client's properties levied and sold at public auction.

In ***Bergonia v. Atty. Merrera,***[16] the Court suspended respondent from the practice of law for six (6) months for his

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[13] 729 Phil. 101, 108 (2014).

[14] 749 Phil. 1, 8-9 (2014).

[15] 769 Phil. 359, 377-378 (2015).

[16] 446 Phil. 1, 10 (2003).

failure to file the appeal brief despite obtaining several extensions of time to submit the same which resulted to his clients to lose possession of a real property.

Here, the fact that complainants' claim over the 2,507 square meter land is deemed lost forever due to respondent's failure to forthrightly perform his duty as complainants' counsel and for lack of any showing of empathy or remorse for the unfortunate incident that he, himself, had caused, the Court deems it proper to impose on respondent the penalty of suspension from the practice of law for six (6) months.

ACCORDINGLY, ATTY. RICARDO ATAYDE, JR. is found guilty of violation of Canon 18 and Rule 18.03 of the CPR. He is **SUSPENDED FOR SIX (6) MONTHS** from the practice of law with warning that a repetition of the same or similar acts shall be dealt with more severely.

This Decision takes effect immediately. Atty. Atayde, Jr. is ordered to inform the Court and the Office of the Bar Confidant in writing of the date he is notified hereof.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Atayde, Jr.'s personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Lopez, JJ.,* concur.

Reyes, J. Jr., J., on leave.

FIRST DIVISION

[A.M. No. RTJ-11-2286. February 12, 2020]
(Formerly OCA IPI No. 09-3291-RTJ)

PROVINCIAL PROSECUTOR JORGE D. BACULI, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN,*** **Regional Trial Court, Branch 36, Calamba City, Laguna,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; SHOULD CONDUCT THEMSELVES IN SUCH A MANNER AS TO BE BEYOND REPROACH AND SUSPICION, AND FREE FROM ANY APPEARANCE OF IMPROPRIETY IN THEIR PERSONAL BEHAVIOR, NOT ONLY IN THE DISCHARGE OF THEIR OFFICIAL DUTIES BUT ALSO IN THEIR EVERYDAY LIFE. — We have repeatedly held that although every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Members of the judiciary should conduct themselves in such a manner as to be beyond reproach and suspicion, and free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday life. They are strictly mandated to maintain good moral character at all times and to observe irreproachable behavior so as not to outrage public decency.

2. ID.; ID.; DISHONESTY; DEFINED; ESTABLISHED IN CASE AT BAR. — Here, respondent judge is indeed guilty of dishonest conduct. Jurisprudence defines dishonesty as "a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." In receiving his monthly allowances despite notice of his suspension by the Court, respondent judge knowingly received money not due to him and in effect defrauded the LGUs concerned of public funds that could have been used

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* Sometimes referred to as "Judge Arnaldo Medel B. Belen" in some parts of the *Rollo*.

for a worthy governmental purpose. Under civil service rules, a government employee is not entitled to all monetary benefits including leave credits during the period of suspension. The seriousness of respondent's offense lies in the fact that as a judge, he was "expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith." Worse, his act of receiving allowances was in clear contravention of this Court's decision suspending him for six (6) months without salary or benefits. The amount (Php16,000.00) that respondent received may seem insubstantial but that is precisely why he should have foregone it or immediately refunded the same instead of risking disobeying a lawful order of this Court or tarnishing the dignity of his public position for so paltry a sum. We approve the penalty recommended by the OCA since it is settled that "dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service."

D E C I S I O N

LAZARO-JAVIER, *J.*:

Provincial Prosecutor of Zambales Jorge D. Baculi (Prosecutor Baculi) filed complaints against Judge Medel Arnaldo B. Belen (Judge Belen) of the Regional Trial Court, Branch 36, Calamba City, Laguna for (a) violation of Section 3(e) of Repubic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act; (b) grave misconduct, and disrespect and disobedience to this Court's Decision dated April 20, 2009 in A.M. No. RTJ-09-2176 (also captioned "*Prosecutor Jorge D. Baculi vs. Judge Medel Arnaldo B. Belen*"); (c) disbarment; (d) contempt of court; and (e) conduct grossly prejudicial to the interest of the government service.

The Complaints

In a verified complaint dated October 22, 2009, Prosecutor Baculi alleged that the Supreme Court suspended Judge Belen for six (6) months without salary or benefits for gross ignorance

of the law in the aforementioned decision in A.M. No. RTJ-09-2176. Judge Belen was supposedly served a copy of the decision on or about May 25, 2009 and he thereafter moved for reconsideration of the same. The Court denied the motion for reconsideration by Resolution dated July 15, 2009. This notwithstanding, Judge Belen in bad faith still received his monthly allowance (honorarium) from the Office of the City Treasurer of Calamba City for the months of June and July 2009, as evidenced by a certification from that office.[1]

According to Prosecutor Baculi, Judge Belen's receipt of honoraria from the local government was illegal, fraudulent and contrary to law, considering the latter's suspension was immediately executory upon his receipt of the Court's decision and on the principle of "no work, no pay."[2] More, Judge Belen should be made accountable for his refusal to follow the rule of law as well as his repeated disregard and disobedience to the rulings of this Court.[3] Hence, Prosecutor Baculi wrote the mayor of Calamba City and then Chief Justice Reynato S. Puno to inform them of Judge Belen's infractions.[4]

Subsequently, Prosecutor Baculi filed a verified "New/Additional Complaint" dated October 28, 2009 essentially re-pleading the allegations in the first complaint but including as attachments copies of the pertinent portion of the general payroll of the Office of the Provincial Governor of Laguna for the period April 1, 2009 to July 31, 2009, a special power of attorney in favor of one Eliodoro J. Logo who was authorized to receive the monthly allowance from the local government on Judge Belen's behalf, and complainant's correspondence with the Office of the Provincial Governor regarding the illegality of the payment of allowances to Judge Belen.[5]

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[1] *Rollo*, pp. 1-2; see also Annex B of the October 22, 2009 Complaint, *rollo* at p. 8.

[2] *Id.* at 3.

[3] *Id.* at 4.

[4] See Annexes C and D of the October 22, 2009 Complaint, *id.* at 9-12.

[5] *Id.* at 14-23.

The Comment

In response to the letters from the Office of the Court Administrator (OCA) to comment on the charges against him, Judge Belen wrote[6] Court Administrator Jose Midas P. Marquez to issue a general denial of any and all allegations in the complaints. He maintained that he had not committed any illegal, unlawful or invalid acts nor was he guilty of behavior that was contrary to law, orders, rules and regulations or his oath as an RTC judge.[7]

The Report and Recommendation of the OCA

By its Memorandum[8] dated April 13, 2011, the OCA found that Prosecutor Baculi sufficiently proved Judge Belen's illegal receipt of benefits from the local government units (LGUs) during the period of his suspension. When respondent received the decision suspending him, he should have refrained from accepting said allowances and if the offices concerned were not aware of his suspension without salary and benefits, he should have voluntarily refunded whatever he received. But he did not. If not for the timely letters of Prosecutor Baculi to the officials involved, Judge Belen could have defrauded the local government units of thousands of pesos of the people's money. Thus, the OCA recommended, among others, that (a) the administrative complaints be re-docketed as a regular administrative matter; and (b) Judge Belen be found guilty of dishonesty and be dismissed from service with forfeiture of his retirement and all other benefits, except accrued leave credits, with prejudice to re-employment in any government agency, including government-owned and controlled corporations.

Further Proceedings before the Court

On June 13, 2011, the Court resolved to: (a) note the verified complaint, the new/additional complaint, and the comment of Judge Belen; (b) re-docket the administrative complaint as a

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[6] Judge Belen's letter was dated April 28, 2010 but was only received by the OCA on June 17, 2010, *rollo*, p. 28.

[7] *Id.* at 28.

[8] *Id.* at 33-37.

regular administrative matter; and (c) require the parties to manifest if they are willing to submit the case for decision/ resolution on the basis of the records/pleadings filed, within ten (10) days from notice.[9]

Prosecutor Baculi manifested his willingness to submit the matter for decision or resolution on the basis of the pleadings filed.[10]

Judge Belen, in turn, filed a manifestation and omnibus motion,[11] stating that he was not willing to submit the case for decision on the basis of the records and instead moved for consolidation of the present matter with the other pending administrative complaints/cases[12] filed by Prosecutor Baculi against him. Judge Belen further claimed that these cases involved similar causes of action and defenses and arose out of the same incidents and events. Thus, there was allegedly procedural and substantive necessity for consolidation to have clarity and judicious understanding of the matters involved.

Unsurprisingly, Prosecutor Baculi opposed the motion for consolidation and belied Judge Belen's assertion that these cases/matters involved were similar or arose from the same incident. On the contrary, although the cases involved the same parties, the facts and issues here were different, distinct and independent from the other cases. Prosecutor Baculi averred that Judge Belen sought consolidation only to delay the resolution of these cases and that consolidation without good cause will prejudice complainant's right to speedy justice and due process of law.[13]

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[9] *Id.* at 38.

[10] *Id.* at 41.

[11] *Id.* at 48-49.

[12] These cases allegedly were: OCA IPI No. 06-2415 RTJ, OCA IPI No. 06-2438 RTJ, OCA IPI No. 06-2473 RTJ, OCA IPI No. 09-2872 RTJ, OCA IPI No. 09-2873 RTJ, OCA IPI No. 09-2878 RTJ, OCA IPI No. 09-2879 RTJ, OCA IPI No. 09-2904 RTJ, OCA IPI No. 09-3223 RTJ, A.M. (No.) RTJ-09-2176, and MISC. Nos. 3223, 3309, 3316, 3505, 3522, 3582, 3583, 3703 and 3833.

[13] *Rollo* at 50-52.

By Resolution dated June 18, 2012, the Court denied Judge Belen's manifestation and omnibus motion for lack of merit.[14]

Issue

Is respondent judge administratively liable for receiving allowances from the local government during the period of his suspension?

Ruling

We answer in the affirmative.

We have repeatedly held that although every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Members of the judiciary should conduct themselves in such a manner as to be beyond reproach and suspicion, and free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday life. They are strictly mandated to maintain good moral character at all times and to observe irreproachable behavior so as not to outrage public decency.[15]

Here, respondent judge is indeed guilty of dishonest conduct. Jurisprudence defines dishonesty as "a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[16] In receiving his monthly allowances despite notice of his suspension by the Court, respondent judge knowingly received money not due to him and in effect defrauded the LGUs concerned of public funds that could have been used for a worthy governmental purpose.

Under civil service rules, a government employee is not entitled to all monetary benefits including leave credits during

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[14] *Id.* at 58.

[15] *Legaspi v. Judge Garrete*, 312 Phil. 783, 805 (1995).

[16] *Office of the Court Administrator v. Judge Indar*, 685 Phil. 272, 287-288 (2012).

the period of suspension.[17] The seriousness of respondent's offense lies in the fact that as a judge, he was "expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith."[18] Worse, his act of receiving allowances was in clear contravention of this Court's decision suspending him for six (6) months without salary or benefits. The amount (Php16,000.00) that respondent received may seem insubstantial but that is precisely why he should have foregone it or immediately refunded the same instead of risking disobeying a lawful order of this Court or tarnishing the dignity of his public position for so paltry a sum.

We approve the penalty recommended by the OCA since it is settled that "dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service."[19]

The Court must take into account, however, that respondent was already dismissed from the service with forfeiture of his benefits, save his accrued leave credits, and with perpetual disqualification from re-employment in the government in our June 26, 2012 Decision in ***State Prosecutor Comilang v. Judge Belen***.[20] In ***National Power Corporation v. Judge Adiong***,[21] which likewise involved a grave offense punishable by dismissal but the respondent judge had been dismissed from the service in a previous case, we noted that Section 11, Rule 140 of the

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[17] See, Section 56(d) of the old Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936, September 14, 1999) in force at the time of the complaint. The same provision is still found in the 2017 Rules on Administrative Cases in the Civil Service. *See* also *Re: John B. Benedito*, A.M. No. P-17-3740 (Resolution), September 19, 2018.

[18] *Yu, Jr. v. Mupas*, A.M. No. RTJ-17-2491, July 4, 2018.

[19] *Office of the Court Administrator v. Adalim-White*, A.M. No. RTJ-15-2440, September 4, 2018.

[20] 689 Phil. 134, 148 (2012).

[21] 670 Phil. 21, 34-35 (2011).

Rules of Court authorizes the imposition of any of the following sanctions for a serious offense:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, *however*, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000[.00] but not exceeding ₱40,000.00.

Considering, however, the Court had already dismissed Judge Adiong and the imposition of the penalties of suspension from office without salary and dismissal from the service was no longer possible, we instead imposed the maximum fine in the amount of Php40,000.00 to be deducted from Judge Adiong's accrued leave credits. This was also the penalty we imposed in other similar cases.[22]

Finally, Judge Belen should be directed to reimburse the local government units concerned the amount of Php16,000.00 which he unlawfully received during the period of his suspension.

WHEREFORE, respondent, former Judge Medel Arnaldo B. Belen, is hereby found **GUILTY** of dishonesty. He is ordered to pay a **FINE** in the amount of Forty Thousand Pesos (Php40,000.00), which shall be deducted from his accrued leave credits. He is further directed to **REIMBURSE** the local government units concerned the amount of Sixteen Thousand Pesos (Php16,000.00) which he received as allowance during the period of his suspension.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Lopez, JJ.*, concur.

Reyes, J. Jr., J., on leave.

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[22] See, for example, *Cañada v. Judge Suerte*, (Resolution), 570 Phil. 25, 36 & 38 (2008) and *Office of the Court Administrator v. Judge Indar*, 725 Phil. 164, 179-180 (2014).

SECOND DIVISION

[G.R. No. 184452. February 12, 2020]

LUFTHANSA TECHNIK PHILIPPINES, INC., ANTONIO LOQUELLANO and ARTURO BERNAL, *petitioners, vs.* **ROBERTO CUIZON,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE SUPREME COURT WILL NOT ENTERTAIN QUESTIONS OF FACT AS IT IS BOUND BY THE FINDINGS OF THE COURT OF APPEALS WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.** — The Court may review factual issues in a labor case when the factual findings are in conflict. x x x [A]lthough as a rule this Court may only review questions of law, however, in exceptional cases, it may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory, which is the case herein.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; REQUISITES.** — Article 297 (formerly 282) of the Labor Code provides that an employer may terminate its employee for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." "The requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence; (2) there must be an act that would justify the loss of trust and confidence; [and (3)] such loss of trust relates to the employee's performance of duties."

3. **ID.; ID.; ID.; ID.; ID.; TWO POSITIONS OF TRUST; DEFINED.** — *Cadavas v. Court of Appeals*, (*Cadavas*) citing *Bristol Myers Squibb (Phils.), Inc. v. Baban*, explained the two classes of positions of trust, thus: There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or

effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, *etc*. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. "Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff."

4. **ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, EXPLAINED. —** *Casco* explains the concept of loss of trust and confidence as a valid ground for termination of employment: Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management. Such employee bears a greater burden of trustworthiness than ordinary workers, and *the betrayal of the trust reposed is the essence of the loss of trust and confidence* that becomes the basis for the employee's dismissal.

5. **ID.; ID.; ID.; ID.; ID.; MANAGERIAL EMPLOYEES DISTINGUISHED FROM RANK AND FILE PERSONNEL. —** In *Casco*, which cited *Lima Land, Inc. v. Cuevas*, We distinguished between managerial employees, on the one hand, and rank and file personnel on the other hand, insofar as terminating them on the basis of loss of trust and confidence, thus: As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized. It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere

uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.**

6. **ID.; ID.; ID.; ID.; NEGLECT OF DUTY; MUST BE BOTH GROSS AND HABITUAL. —** "Neglect of duty, as a ground for dismissal, must be both gross and habitual." In *Casco*, We pronounced that: Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.

7. **ID.; ID.; ID.; EMPLOYER BEARS THE BURDEN OF PROVING THAT THE EMPLOYEE'S DISMISSAL WAS FOR A VALID AND AUTHORIZED CAUSE. —** In termination cases, the employer bears the burden of proving that the employee's dismissal was for a valid and authorized cause. Consequently, the failure of the employer to prove that the dismissal was valid, would mean that the dismissal was unjustified, and thus illegal. We find that petitioners failed to discharge the burden.

8. **ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AS A MATTER OF RIGHT; IF REINSTATEMENT WOULD ONLY AGGRAVATE THE TENSION AND STRAINED RELATIONS BETWEEN THE PARTIES, PAYMENT OF SEPARATION PAY INSTEAD OF REINSTATEMENT IS MORE PROPER. —** [T]he CA found, and this Court agrees, that reinstatement is no longer feasible, and thus separation pay in lieu of reinstatement is in order. This Court is not unaware that under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only aggravate the

tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement.

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera for petitioners.
Riveral Pulvera & Associates for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this appeal is the March 5, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 02998 which held that respondent Roberto Cuizon (Cuizon) had been illegally dismissed.

The Parties

Petitioner Lufthansa Technik Philippines, Inc. (LTP) is a corporation duly organized under Philippine law, and is engaged in the business of aircraft maintenance, repair and overhaul (MRO). It provides technical support and MRO services for the entire fleet of Philippine Airlines (PAL).[2] Petitioner Lorenzo Ziga is impleaded in his capacity as officer of LTP, while petitioner Antonio Loquellano (Loquellano) is impleaded in his capacity as an MA2 Division Manager of LTP, and who is the immediate supervisor of herein respondent Cuizon. On the other hand, petitioner Arturo Bernal is impleaded in his capacity as the Duty Manager of the Maintenance Control Center of LTP, and is also the Chairman of the Employee Council of LTP (collectively, petitioners).[3]

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[1] *Rollo*, Volume I, pp. 115-125; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Priscilla Baltazar-Padilla and Franchito N. Diamante.

[2] *Id.* at 16.

[3] *Id.* at 14-15.

As an MRO provider, LTP's mechanics and engineers perform routine maintenance checks of its clients' aircrafts to ensure the safety of the passengers as well as the aircrafts' scheduled commercial flights. LTP operates a branch located in the Mactan International Airport, Cebu City, known as MA2, which serves LTP's clients' aircrafts that land in said airport.[4]

Cuizon had initially worked with the Maintenance and Engineering Department of PAL for 32 years. Eventually, LTP absorbed said department and its employees, including Cuizon. He held the position of MA2 Duty Manager in LTP's Cebu Station from September 1, 2000 until his dismissal on August 16, 2005.[5]

The Antecedents

Petitioners claim that they validly terminated Cuizon's employment on August 16, 2005 for loss of trust and confidence in his ability to perform his duties as MA2 Duty Manager. They point out that such loss of trust and confidence resulted from Cuizon's numerous violations and blatant disregard of the LTP Standards in the Workplace, which violations were committed in the course of two separate incidents, specifically:

1. [Cuizon's] willful concealment of the accidental light-up of PAL Aircraft EI-BZE [on] 10 March 2005, [accidental light-up incident] and
2. [Cuizon's] failure to observe the safety guidelines and precautions of petitioner LTP with respect to aircraft towing, which caused damage to PAL Aircraft RP-C4008 [on] 15 April 2005 [towing incident].[6]

Petitioners' Version on the First Incident: Concealment of the accidental light-up incident

On March 10, 2005, Cuizon was assigned as Duty Manager and Project Manager in MA2 during the scheduled conduct of

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[4] *Id.* at 16.

[5] *Id.* at 15; See also *id.*, Volume III, p. 1220.

[6] *Id.* at 18.

an A01 Check of PAL Aircraft EI-BZE, which was assigned to Avionics Crew Chief Julio J. Valencia (Valencia) and Avionics Mechanics Joselito Y. Gargantiel (Gargantiel) and Jonas A. Cabajar (Cabajar). An A01 check includes an ignition check.[7]

Thus, Gargantiel and Cabajar performed the LH Engine Igniter Operational Check of PAL Aircraft EI-BZE. In the course thereof, they verified the actual operation of the engine igniters. Cabajar noted that the exhaust was emitting hot gas, which was followed by a flame that extended for about one and one-half meters (1.5m) in length. Cabajar immediately notified Gargantiel, Valencia and Aircraft Mechanic Rio M. Aguilar. Upon their assessment, they found that the No. 1 Engine Fan Blades could not be rotated manually by hand, and that an accidental light-up had most likely occurred.[8]

Eventually, Cuizon was called to the scene. Cuizon then instructed those on hand to cool the engine, which action still failed to remedy the situation. Consequently, Valencia suggested to Cuizon that pursuant to the Handbook of LTP, the latter should call the Maintenance Control Center (MA4) in Manila to apprise them of the situation. Despite the foregoing standard operating procedure, Cuizon opted to first tow the aircraft to the MA2 hangar and continued with the scheduled A01 check prior to informing the MA4 in Manila.[9]

Eventually, Cuizon called MA4 Duty Manager Carlos A. Ramirez (Ramirez) of MA4 in Manila. However, instead of informing Ramirez that an accidental light-up had occurred, he reported that the "No. 1 Engine Fan Blade of Aircraft EI-BZE was found hard to rotate upon arrival."[10] Cuizon likewise relayed the same information to Inspector Venustiano Suson who generated a Ground Maintenance Log of the incident.[11]

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[7] *Id.* at 19.

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

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

[10] *Id.* at 21.

[11] *Id.*

In Cuizon's March 11, 2005 Report,[12] he likewise concealed the accidental light-up incident and merely indicated that the "LH engine fan motor blades cannot be rotated freely."[13] However, Cuizon's Report contradicted the incident reports filed by Gargantiel, Cabajar, and Valencia, who indicated in their respective reports that an accidental light-up had occurred in the course of the LH Engine Igniter Operational Check of PAL Aircraft EI-BZE. As a result of the contrasting reports, Cuizon submitted a revised report which then indicated that the LH engine froze as a result of the accidental light-up. Moreover, to exonerate himself, he claimed that he made an immediate verbal report to Loquellano about the accidental light-up, which the latter denied.[14]

Petitioners' Version on the Second Incident: RP-C4008 Towing Incident on April 15, 2005

On April 15, 2005, or a month after the accidental light-up incident, Cuizon was involved in a towing incident that resulted in substantial losses to LTP.[15]

On said date, Cuizon was the Duty Manager and Project Manager for an A12 Check of a PAL Boeing Aircraft RP-C4008. For this particular A12 Check, Loquellano designated certain individuals as members of the Phase Check Crew, headed by Cuizon, in his capacity as Duty Manager and Project Manager. Thus, a certain Mr. G. Sarmiento, Jr. (Sarmiento), an Airframe and Powerplant Mechanic, was assigned as a Headset Man for the towing crew in view of having been duly trained and licensed as such.[16]

Petitioners claim that in the course of the A12 Check of Aircraft RP-C4008, Cuizon took the headset from Sarmiento and performed the tasks of the latter, without authority to do so

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[12] *Id.*, Volume II, p. 756.

[13] *Id.*

[14] *Id.*, Volume I, pp. 24-26.

[15] *Id.* at 29.

[16] *Id.* at 29-30.

and despite having no expertise on such matters. Cuizon then assigned Cabajar as a Headset Man, who was inexperienced and unqualified as such.[17] Cuizon then left his team in the hands of Cabajar, while he returned to the hangar in order to initiate housekeeping thereof. He also allowed the wing walkers and tail guides to leave their positions before the towing of the aircraft to Bay 31 was completed.[18]

Among the diagnostics to be performed in an A12 Check is an RH Engine Ignition Operational Check. Since the aircraft was located within LTP's hangar in Mactan International Airport, Cuizon instructed the members of the Phase Check Crew to tow the aircraft to the run-up area at Bay 31.[19]

Petitioner LTP points out that based on the Boeing Maintenance Manual, the following safety precautions should be performed prior to the towing of the aircraft: (i) the hydraulic system should be pressurized; (ii) the brake hydraulic pressure is approximately 3,000 per square inch (psi); and (iii) the wing flaps are up. However, Cuizon disregarded the foregoing precautions and continued to tow the aircraft to Bay 31.[20]

In addition, Cuizon failed to await the prior clearance from the Mactan International Tower, which, at the time the aircraft was being towed, had not yet been informed of the aircraft movement.[21]

As a consequence of the foregoing, RP-C4008 was grounded for repair due to the damage sustained by the aircraft's LH Wing Inboard Trailing Edge Flaps upon its collision with a four-foot high utility post, which was located on a grassy field near the edge of the cemented portion of the ramp between Bays 32 and 33. As a result, LTP spent US$21,000.00 for the

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[17] *Id.* at 30.

[18] *Id.* at 38.

[19] *Id.* at 33.

[20] *Id.* at 36-37.

[21] *Id.* at 37.

repair of the damaged wing flaps plus US$14,470.00 as lease charge for the entire period the aircraft was grounded.[22]

In view of the foregoing infractions, and the damage sustained by RP-C4008 as a result thereof, Cuizon, together with Tow Tractor Operator Reynaldo Dulce and Cabajar, were served with show cause memorandum by Loquellano for having committed a violation on safety, as provided in Article 6.2.3.2 of LTP's Standards at the Workplace,[23] which states:

> 6.2.3.2. **Violation of Safety.** - Violating safety rules and regulations issued by competent government authority or by company or otherwise endangering, jeopardizing, or compromising in any manner, by way of action, the safety of any company operation, deliberately or through negligence.[24]

Respondent Cuizon's Version

In his defense, Cuizon asserts that petitioners have no basis in terminating him; hence, the termination was illegal. Cuizon avers that he was being singled-out due to events prior to the accidental light-up and towing incidents. He explains that prior to the foregoing incidents, an anonymous letter was circulated, which was addressed to LTP's President and CEO, Andreas Heizner, and to some of the LTP's officers. The letter was allegedly criticizing Loquellano's handling of the company in Cebu and his other alleged culpabilities, which are inimical to LTP's interest. In the same letter, Cuizon was being praised for his work ethic and named as the better person to hold the position of MA-2 Manager than Loquellano. Loquellano suspected Cuizon as the sender of the anonymous letter. As a result, Cuizon received a cold treatment from his direct superior, Loquellano.[25]

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[22] *Id.* at 38.

[23] *Id.* at 352-387.

[24] *Id.* at 371.

[25] *Id.* at 117.

Cuizon further points out that he was the only one terminated despite the involvement and admissions of the other personnel.[26] In addition, he claims that petitioners railroaded his efforts to procure documents necessary to defend himself, such as transcripts of the investigation.[27] He asserts that petitioners had no basis in terminating him, thus his termination was illegal.[28]

With regard to the accidental light-up incident, Cuizon claims that he immediately informed Loquellano through a phone call about his findings.[29] He also asserts that he timely submitted/furnished a copy of his incident report[30] to Loquellano. Moreover, he argues that he did not conceal any information, rather, he could not immediately conclude the finding that there was an accidental light-up because the same had to be confirmed using a *boroscope*.[31]

With regard to the towing incident, Cuizon claims that he did not abandon the towing crew but only proceeded to do other tasks to support the leak check that was meant to be conducted on the aircraft's engine.[32]

On May 25, 2005, Cuizon received a Request for Explanation[33] from Loquellano regarding the towing incident on April 15, 2005, charging him with violation of safety rules based on LTP's rules and guidelines. On June 1, 2005, Cuizon submitted his response[34] to the request for explanation. On June 9, 2005, he

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[26] *Id.*, Volume III, p. 1391.

[27] *Id.* at 1397.

[28] *Id.* at 1407-B.

[29] *Id.* at 1412; *See* also paragraph 8 of the Incident Report dated April 21, 2005, *id.* at 747; *See also* testimony of Mr. Julio Valencia in the Transcript of the investigation on the light-up incident conducted on July 7, 2005, *id.* at 782; and testimony of Mr. Loquellano in the Transcript of the investigation on the light-up incident conducted on July 7, 2005, *id.* at 793.

[30] *Id.*, Volume II, p. 756; See also *Rollo*, Volume III, p. 1416.

[31] *Id.*, Volume III, p. 1418.

[32] *Id.*, Volume I, p. 122.

[33] *Id.*, Volume III, p. 1407-B.

[34] *Id.* at 1410.

received another Request for Explanation[35] for an accidental aircraft engine light-up which occurred on March 10, 2005, wherein he was charged with negligence on the job, false information, insubordination or willful disobedience, and fraud against the company.[36] Cuizon submitted his response[37] to said request for explanation on June 13, 2005.

After conducting a hearing on the matter, LTP issued on August 9, 2005 a Memorandum[38] finding Cuizon to have violated LTP's safety rules and guidelines, negligence on the job, false information, and was dismissed from the service.[39]

On November 7, 2005, Cuizon filed a complaint for illegal dismissal against petitioners, docketed as NLRC RAB-VII Case No. 11-2384-2005. The complaint was then scheduled for mandatory conference, however, no amicable settlement was reached between the parties.[40]

On May 4, 2006, the Labor Arbiter rendered a Decision[41] dismissing Cuizon's complaint for illegal dismissal. The dispositive portion of said Decision reads:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered declaring respondents NOT GUILTY of illegally dismissing complainant from his employment. However, respondents LUFTHANSA TECHNIK PHILIPPINES, ANDREAS HEIZNER, THOMAS RUECKERT, LORENZO ZIGA, ANTONIO LOQUELLANO and ARTURO BERNAL are hereby ordered to pay, jointly and severally, complainant ROBERTO CUIZON the total amount of SEVENTY-NINE THOUSAND SIX HUNDRED NINETY-ONE PESOS and 42/100 (₱79,691.42), Philippine currency, representing

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[35] *Id.* at 1408.

[36] *Id.*, Volume I, p. 117.

[37] *Id.*, Volume III, p. 1412.

[38] *Id.*, Volume I, p. 294.

[39] *Id.* at 117.

[40] *Id.* at 116.

[41] *Id.*, Volume III, pp. 1220B-1238; penned by Labor Arbiter Julie C. Rendoque.

the 13th and 14th month pay including the commutation of complainant's earned leave credits, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Other claims are DISMISSED for lack of merit.

SO ORDERED.[42]

Aggrieved, Cuizon appealed to the National Labor Relations Commission (NLRC).

In its Decision[43] dated March 6, 2007, the NLRC likewise held that there was no illegal dismissal in respect to Cuizon. The dispositive portion of the NLRC's Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated 4 May 2006 is hereby **AFFIRMED**.

SO ORDERED.[44]

Cuizon filed a Motion for Reconsideration, which was denied in the NLRC's Resolution dated June 27, 2007.[45]

Cuizon thereafter filed a Petition for *Certiorari*[46] under Rule 65 of the Rules of Court with the CA, claiming that the NLRC's March 6, 2007 Decision and June 27, 2007 Resolution should be annulled and set aside for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.[47]

In its Decision[48] dated March 5, 2008, the CA in CA-G.R. SP No. 02998 found the petition meritorious. Thus, the CA reversed the findings of the Labor Arbiter and the NLRC and held that Cuizon was indeed illegally dismissed.

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[42] *Id.* at 1237.

[43] *Id.* at 1357-1374; penned by Commissioner Oscar S. Uy and concurred in by Commissioner Aurelio D. Menzon.

[44] *Id.* at 1373.

[45] *Id.*, Volume I, p. 119.

[46] *Id.*, Volume III, pp. 1386-1442.

[47] *Id.* at 1387.

[48] *Id.*, Volume I, pp. 115-125.

The CA pointed out that: (i) petitioners herein failed to establish that Cuizon had intentionally, willfully, knowingly and purposely breached his duty as would warrant his dismissal on the ground of loss of trust and confidence. Moreover, the appellate court noted that Cuizon was the only one sanctioned/terminated despite the clear participation of other personnel involved in the two incidents; (ii) Cuizon could not be guilty of deliberately giving false, inaccurate, misleading, incomplete or delayed information to LTP regarding the accidental aircraft engine light-up incident since: *firstly*, he indeed submitted a copy of the incident report to Loquellano and *secondly*, the report was based on his personal findings and appreciation of the facts of the accidental aircraft engine light-up incident, which were corroborated by the reports of his fellow employees; and (iii) the towing precautions that he allegedly did not follow and which were made as the basis for his alleged negligence, were for the tow tractor operator, brake rider and radio operator to comply with. Thus, Cuizon could not be faulted if in the course of the towing operation, some members of the crew left. Granting that Cuizon should be responsible as the supervisor of the crew, petitioners failed to prove that Cuizon consented or had full knowledge that said crew members left their posts. Moreover, the CA gave credence to Cuizon's argument that he did not abandon the towing job but only proceeded to do other tasks to support the leak check that was meant to be conducted on the aircraft's engine.[49] Thus, the dispositive portion of the CA's Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **SETTING ASIDE** the assailed decision of the respondent NLRC and:

1. Declaring the dismissal of [Cuizon] as **ILLEGAL**;
2. Ordering the [petitioners] to pay [Cuizon] **SEPARATION PAY** computed from his date of employment up to the time of the finality of this decision; and
3. Ordering the [petitioners] to pay [Cuizon] his **FULL BACKWAGES** inclusive of allowances and other benefits

[49] *Id.* at 121-122.

computed from the time [he] was illegally dismissed up to the x x x finality of this decision[.]

The foregoing awards are **IN ADDITION** to the amount awarded to [Cuizon] by the [L]abor [A]rbiter in the latter's decision dated May 4, 2006 representing [Cuizon's] 13th and 14th month pay and earned leave credits.

SO ORDERED.[50]

Aggrieved, petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its September 5, 2008 Resolution.[51]

Dissatisfied, petitioners filed the instant Petition for Review on *Certiorari*[52] under Rule 45 of the Rules of Court, which raises the following assignment of errors:

A. The complete and inexplicable reversal of the CA of the factual findings of both the Labor Arbiter and the [NLRC], which were supported by substantial evidence, violated the Rules of Court and established jurisprudence.

B. In failing to determine how the labor tribunals *a quo* acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and in substituting its own factual findings to that of the labor tribunals *a quo* without offering any valid explanation for such substitution, the CA violated and went beyond the scope of Section 1, Rule 65 of the Rules of Court.

C. The CA erred in not finding that respondent Cuizon was validly dismissed for loss of trust and confidence in his ability and competence to perform his duties as MA2 Duty Manager after he blatantly disregarded the "LTP Standards in the Workplace" by concealing the accidental light up of PAL aircraft EI-BZE [on] March 10, 2005 and failing to observe the safety guidelines and precautions of petitioner LTP with respect to aircraft towing, which caused damage to petitioner LTP in the total amount of US$35,470.00.

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[50] *Id.* at 124-125.

[51] *Id.* at 128-129.

[52] *Id.* at 12-102.

D. The CA erred when it completely ignored the findings of the NLRC that respondent Cuizon was validly dismissed for gross negligence when as a result of his actions, petitioner LTP lost US$35,470.00.[53]

In essence, the main issue in the instant case is whether or not Cuizon was validly terminated on the ground of loss of trust and confidence and gross negligence.

The Court's Ruling

We find petitioners' instant appeal unmeritorious. Thus, we uphold the findings of the CA that Cuizon was illegally terminated.

As a general rule, the Supreme Court may only entertain questions of law. As an exception, the Court may review factual issues when the factual findings are in conflict.

The Court may review factual issues in a labor case when the factual findings are in conflict.[54] Thus, in *Casco v. National Labor Relations Commission*,[55] (*Casco*) citing *Montoya v. Transmed Manila Corporation*,[56] We held that:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case**

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[53] *Id.* at 63-64.

[54] *Casco v. National Labor Relations Commission*, G.R. No. 200571, February 19, 2018, 856 SCRA 12, 23-24.

[55] *Id.*

[56] 613 Phil. 696, 707 (2009).

was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: **Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?** (Citations omitted)

Therefore, although as a rule this Court may only review questions of law, however, in exceptional cases, it may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory, which is the case herein.[57]

Cuizon was not validly dismissed for loss of trust and confidence.

We find that petitioners did not validly dismiss Cuizon on the ground of loss of trust and confidence.

Article 297 (formerly 282) of the Labor Code provides that an employer may terminate its employee for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."

"The requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence; (2) there must be an act that would justify the loss of trust and confidence; [and (3)] such loss of trust relates to the employee's performance of duties."[58]

Cadavas v. Court of Appeals,[59] (*Cadavas*) citing *Bristol Myers Squibb (Phils.), Inc. v. Baban*,[60] explained the two classes of positions of trust, thus:

There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire,

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[57] *Casco v. National Labor Relations Commission, supra* note 54 at 24.

[58] *Cadavas v. Court of Appeals*, G.R. No. 228765, March 20, 2019.

[59] *Id.*

[60] 594 Phil. 620, 628 (2008).

transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, *etc*. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. (Citations omitted)

"Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff."[61]

Casco explains the concept of loss of trust and confidence as a valid ground for termination of employment:

Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management. Such employee bears a greater burden of trustworthiness than ordinary workers, and *the betrayal of the trust reposed is the essence of the loss of trust and confidence* that becomes the basis for the employee's dismissal.[62]

In *Casco*, which cited *Lima Land, Inc. v. Cuevas*,[63] We distinguished between managerial employees, on the one hand, and rank and file personnel on the other hand, insofar as terminating them on the basis of loss of trust and confidence, thus:

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

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[61] *Cadavas v. Court of Appeals, supra* note 58.

[62] *Casco v. National Labor Relations Commission, supra* note 54 at 28.

[63] 635 Phil. 36, 48-49 (2010).

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.**

On the other hand, **loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.** Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[64] (Citations omitted)

In the instant case, We find that petitioners failed to substantially prove the second requisite (*i.e.*, there must be an act that would justify the loss of trust and confidence). In *Cadavas*, We have emphasized that "[l]oss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently."[65]

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[64] *Casco v. National Labor Relations Commission*, *supra* note 54 at 30-31.

[65] *Cadavas v. Court of Appeals*, *supra* note 58.

However, in this case, We are of the firm view that petitioners failed to prove that Cuizon willfully, intentionally, knowingly, purposely and without justifiable excuse disregarded LTP's rules and regulations in the workplace. On the contrary, this Court finds that Cuizon has substantially refuted petitioners' claim on the alleged concealment of the accidental lightup and the towing incident.

The CA found, and this Court agrees, that Cuizon could not be held guilty of deliberately giving false, inaccurate, misleading, incomplete or delayed information to LTP regarding the accidental aircraft engine light-up incident.[66] We note the following circumstances: (i) Cuizon had indeed immediately called Loquellano to inform him about the accidental light-up[67] and likewise timely submitted/furnished him a copy of his incident report;[68] (ii) the report submitted by Cuizon was based on his personal findings and appreciation of facts of the accidental aircraft engine light-up incident. The facts that he transmitted were the most precise information that he could gather at that time. We give credence to his justification that he could not immediately conclude that there was an accidental light-up because the same had to be eventually confirmed using a *boroscope*;[69] and (iii) Cuizon's claim had been substantially corroborated and confirmed by the reports[70] of his fellow employees involved in the incident.

The foregoing efforts of Cuizon showed that he followed the rules of procedure of LTP and that there was no act of deliberately giving false, inaccurate, and misleading information to petitioners.

Similarly, We are of the firm view that Cuizon did not willfully, purposely, and without justifiable excuse disregard

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[66] *Rollo*, Volume I, p. 122.

[67] *Id.*, Volume II, p. 747; *See* also *id.*, Volume II, pp. 782 and 793.

[68] *Id.*, Volume II, p. 756; *See* also *id.*, Volume III, p. 1416.

[69] *Id.*, Volume III, p. 1418; *See* also *id.*, Volume II, p. 804.

[70] *Id.* at 1416; *See* also *id.* at 813; *Rollo*, Volume I, p. 161; *Rollo*, Volume I, p. 393.

the towing precautions during the towing incident. As aptly held by the CA, towing is a shared responsibility of the towing crew. Thus, the entire towing crew was supposed to observe the safety precautions, such as not leaving their posts during the towing operation. Indeed, Cuizon could not be faulted if unknown to him, some members of the towing crew, specifically the tail and wing guides, decided to leave their posts without permission or authority to do so. As properly held by the CA, petitioners failed to prove that Cuizon consciously allowed some members of the towing crew to leave their posts. Furthermore, We find that the CA aptly gave credence to Cuizon's claim that he did not abandon the towing crew but that he only proceeded to do other tasks to support the leak check that was meant to be conducted on the aircraft's engine.[71]

Cuizon is not liable for Gross Negligence.

"Neglect of duty, as a ground for dismissal, must be both gross and habitual."[72] In *Casco*, We pronounced that:

> Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[73]

In termination cases, the employer bears the burden of proving that the employee's dismissal was for a valid and authorized cause. Consequently, the failure of the employer to prove that the dismissal was valid, would mean that the dismissal was unjustified, and thus illegal.[74]

We find that petitioners failed to discharge the burden.

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[71] *Id.*, Volume I, p. 122.

[72] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011); *See* also *Casco v. National Labor Relations Commission, supra* note 54 at 24.

[73] *Casco v. National Labor Relations Commission*, *id.* at 24-25.

[74] *Id.*

Firstly, petitioners miserably failed to show that Cuizon did not exercise even a slight care or diligence which caused the grounding of and damage to the aircraft during the towing operation. Moreover, petitioners failed to prove that it was Cuizon's act that directly or solely caused the grounding of and damage to the aircraft during the towing incident.

This Court gives credence to the following allegations of Cuizon: (i) Sarmiento, whom petitioners claim as the licensed Headset Man, could not perform his task since at the time of the towing incident, he needed to perform a leak check on the aircraft's engine since he was also an Airframe and Powerplant Mechanic. On the other hand, Cuizon assigned Cabajar as the Headset Man. Based on Cuizon's assessment, Cabajar was qualified to perform said task considering his several prior experience in towing an aircraft. As a Radioman, Cabajar had been assisting mechanics who had been acting as Headset Man. In view of his work experience, Cuizon found him fit to perform the task as Headset Man, since he was the only mechanic in the area;[75] (ii) the aircraft was towed with the flaps fully extended because the same could not be retracted as there was a problem with the hydraulic system. Because of this problem, the aircraft had to be repositioned to the run-up at bay 31 (for safety purposes) to pressurize the hydraulic system;[76] and (iii) the aircraft was actually towed with brakes. Despite the absence of working brakes due to the problem with the hydraulic system, the aircraft was towed with a precautionary measure in place in the form of the brake accumulator. In the absence of a brake hydraulic pressure, the brake accumulators can be used. Hence, the aircraft was not towed without brakes.[77]

As We have pointed out, a towing operation is a shared responsibility. Thus, We note the involvement and admissions of the other personnel who were part of the towing crew. For instance, radioman and mechanic Abelar Pilaza had testified

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[75] *Rollo*, Volume IV, p. 1926; *See* also *Rollo*, Volume II, p. 878.

[76] *Id.* at 1930.

[77] *Id.* at 1933, *citing* Boeing Maintenance Manual; *See* also *id.*, Volume II, pp. 956 and 962; *id.*, Volume II, p. 992.

and admitted that through his own volition, he decided not to ask clearance from the tower when the aircraft was being towed.[78] Thus, Cuizon could not be faulted if without his knowledge and authorization, members of the towing crew decided to deviate from the standard operating procedure, including not leaving their designated posts.

Secondly, We find that petitioners failed to prove that Cuizon was negligent in his job when he allegedly concealed the accidental light-up incident or allegedly provided false information thereon. On the contrary, We find that he performed his task in accordance with the rules and procedures of LTP. We note that Cuizon immediately informed his supervisor, Loquellano, through a phone call, about his findings.[79] In addition, We note the fact that Cuizon had indeed timely submitted/ furnished a copy of his incident report[80] to Loquellano. Moreover, Cuizon did not rely on hearsay information on what happened with the aircraft but he acted based on his personal findings and appreciation of facts of the accidental aircraft engine light-up incident.[81]

Considering Cuizon's untainted 32 years of service, this Court finds that it is incongruous for him to deliberately act recklessly on his job, especially since his employer's line of business involves the lives and safety of airline passengers.

Furthermore, the CA found, and this Court agrees, that reinstatement is no longer feasible, and thus separation pay in lieu of reinstatement is in order. This Court is not unaware that under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right.[82] However, if reinstatement would only aggravate the tension and strained relations between the parties, or where the

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[78] *Id.*, Volume III, p. 1395; *See* also *id.*, Volume II, p. 992.

[79] *Id.* at 412; *See* also *id.*, Volume II, pp. 747, 782 and 793.

[80] *Id.*, Volume II, p. 756; *See* also *id.*, Volume III, p. 1416.

[81] *Id.*, Volume III, p. 1413; *See* also *id.*, Volume II, pp. 800-801.

[82] Article 279, Labor Code of the Philippines; *See* also *Cabigting v. San Miguel Foods, Inc.*, 620 Phil. 14, 24 (2009).

relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement.[83]

In the present case, this Court holds that reinstatement is no longer feasible since the relationship between petitioners and Cuizon, as employer and employee, respectively, has been indeed strained due to the events that transpired and as a necessary consequence of the present judicial controversy. Thus, if Cuizon is reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect his efficiency and productivity as an employee.[84] Thus, in lieu of reinstatement, it is but proper to award Cuizon his separation pay computed at one month salary for every year of service, a fraction of at least six months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included.[85]

Finally, all monetary awards granted shall earn legal interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until full satisfaction.[86]

WHEREFORE, the instant Petition is **DENIED**. The assailed March 5, 2008 Decision and the September 5, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 02998 are hereby **AFFIRMED with MODIFICATION** that interest at the rate of six percent (6%) *per annum* is imposed on all monetary awards from date of finality of this Decision until full satisfaction. No pronouncement as to costs.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Reyes, A. Jr.*, *Inting*, and *Delos Santos, JJ.*, concur.

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[83] *Cabigting v. San Miguel Foods, Inc.*, *id.* at 24.

[84] *Id.*; *See* also *Aliling v. Feliciano*, 686 Phil. 889, 918 (2012).

[85] *Id.* quoting *Sagales v. Rustan's Commercial Corporation*, 592 Phil. 468 (2008).

[86] See *Genuino Agro-lndustrial Development Corporation v. Romano*, G.R. No. 204782, September 18, 2019.

SECOND DIVISION

[G.R. No. 205194. February 12, 2020]

ATTY. FELINO M. GANAL, MANUEL G. ABAN and AIDA ABAN, MILAGROS ABAN-JALOP, the heirs of ANDRES G. ABAN, JR., namely: CONSUELO B. ABAN, CHERRY B. ABAN, BRENDA B. ABAN, YURI B. ABAN, ANDRES B. ABAN III, JOSEPH KEN B. ABAN and JOSETTE G. ABAN, and the heirs of ANITA ABAN-ALMAZORA, namely: DANE A. ALMAZORA, YOLANDA A. JAMISOLA, JOSELITO A. ALMAZORA and GERARDO A. ALMAZORA, all represented by their Attorney-in-fact MANUEL G. ABAN, *petitioners*, *vs.* **ANDRES ALPUERTO, RICO ROQUITTE, ROSALINDA GABALLO and LEONILA PALALA, as officers of Bayanihan Homeowners Association who filed Civil Case No. 3747 as a class suit on their behalf and on behalf of all their co-occupants of the subject land who are all members of the association,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; PROCEDURAL DUE PROCESS; ESSENCE THEREOF IS EMBODIED IN THE BASIC REQUIREMENT OF NOTICE AND A REAL OPPORTUNITY TO BE HEARD; A PARTY FILING ANY PLEADING OR MOTION MUST SERVE A COPY THEREOF TO THE ADVERSE PARTY. —** It is an elementary rule that when a party files any pleading or motion, a copy thereof must be served on the adverse party. For the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. An adverse party must be given an opportunity to be heard through his/her comment, before the case can be presented for adjudication.

2. **ID.; CIVIL PROCEDURE; PROCEDURE IN THE SUPREME COURT IN APPEALED CASES; PETITIONERS ARE REQUIRED TO SUPPLY THE COURT WITH CORRECT ADDRESS OF RESPONDENTS AS PROOF OF SERVICE OF THE APPEAL AND TO COMPLY WITH ALL THE**

COURT'S DIRECTIVES OR ORDERS WITHIN A REASONABLE PERIOD; CASE AT BAR. — Pursuant to Section 5, Rule 56 of the Rules of Court, aside from petitioners' duty to supply this Court with the correct address of respondents as proof of service of the appeal, it is beholden upon them to comply with all directives or orders from the Court within a reasonable period. For petitioners' failure to comply with the Court's directives without justifiable cause, the present petition should be dismissed *motu proprio*. Petitioners' inaction had already caused the arbitrary dragging of this petition for review on *certiorari* which had been pending since February 23, 2013 and to await for the parties' compliance would again put in jeopardy the timely resolution of this appeal.

3. **ID.; ID.; JUDGMENTS; A JUDGMENT SOUGHT TO BE REVIVED IS ONE THAT IS ALREADY FINAL AND EXECUTORY AND IS THEREFORE, CONCLUSIVE AS TO THE CONTROVERSY BETWEEN THE PARTIES UP TO THE TIME OF ITS RENDITION. —** 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. Otherwise stated, the new action is an action the purpose of which is not to reexamine and retry 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.

4. **ID.; ID.; DISMISSAL OF ACTIONS; A DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE OPERATES AS A JUDGMENT ON THE MERITS; DISMISSAL WITH PREJUDICE, DEFINED. —** It is important to note that a dismissal of an action for failure to prosecute operates as a judgment on the merits. This is expressly provided under Section 3, Rule 17 of the Rules of Court, as amended. x x x While the Court agrees with petitioners that the dismissal order had the effect of adjudication on the merits, our acquiescence ends there. Dismissal with prejudice means that there is an adjudication on the merits as well as a final disposition, barring the right to bring or maintain an action on the same claim or cause. An "adjudication on the merits" for *non prosequitor* cases imposes as a sanction "prejudice to the refiling of the same claim." An involuntary dismissal generally acts as a judgment on the merits for the purposes of *res judicata*.

APPEARANCES OF COUNSEL

Felino M. Ganal for petitioners.

R E S O L U T I O N

INTING, *J.*:

The Court resolves the instant Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Atty. Felino M. Ganal (Atty. Ganal), Manuel G. Aban and Aida Aban, Milagros Aban-Jalop, the heirs of Andres G. Aban, Jr., namely: Consuelo B. Aban, Cherry B. Aban, Brenda B. Aban, Yuri B. Aban, Andres B. Aban III, Joseph Ken B. Aban and Josette G. Aban, and the heirs of Anita Aban-Almazora, namely: Dane A. Almazora, Yolanda A. Jamisola, Joselito A. Almazora and Gerardo A. Almazora, all represented by their Attorney-in-fact Manuel Aban (collectively, petitioners) assailing the Order dated September 26, 2012 of Branch 2, Regional Trial Court (RTC), Butuan City dismissing their complaint, and the Order dated December 5, 2012 denying the motion for reconsideration thereof.

Antecedents

A Complaint[2] for the Annulment and/or Declare Void the Deed of Sale and Transfer Certificate of Title (TCT) No. RT-22372, Damages, with Restraining Order and/or Preliminary Injunction was filed by Andres Alpuerto (Alpuerto), Rico Roquitte (Roquitte), Rosalinda Gaballo (Gaballo), and Leonila Palala (Palala), as officers of Bayanihan Homeowners Association, (collectively, respondents) against petitioners, the City of Butuan and the Register of Deeds. It was raffled to Branch 5, RTC, Butuan City and was docketed as Civil Case No. 3749.[3] It was alleged therein by respondents that its members are purchasers for value and in good faith of several portions of Lot 427 registered in the name of Eleuterio Cuenca (Cuenca)

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[1] *Rollo*, pp. 7-17.

[2] *Id.* at 30-49.

[3] *Id.* at 30.

under Original Certificate of Title (OCT) No. RO-156 (360). Lot 427 has an approximate area of 215,001 square meters (sq.m.) located in Libertad, Butuan, Agusan (now Langihan, Butuan City).[4] They continued that after the sale, the buyers immediately obtained physical possession over their purchased properties and, with the necessary government permits, constructed therein houses of durable materials, and paid the corresponding realty taxes due thereon.[5] Thus, they argued that the Deed of Sale executed by Cuenca in favor of Andres Aban (Aban) on May 17, 1941 which conveyed a 40 sq.m. portion of Lot 427, thereafter subdivided as Lot 427-C-1 (disputed property), for a measly sum of ₱180.00 as null and void.[6] Aside from Cuenca's alleged illiteracy, respondents raised that Aban, nor his heirs, including Atty. Ganal, were never in possession of the disputed property.[7] Consequently, respondents sought for the cancellation of TCT No. RT-22372 issued in the name of petitioners for allegedly being fraudulent and illegal.[8]

In response thereto, petitioners, in their Answer,[9] narrated the circumstances surrounding the issuance of TCT No. RT-22372 in their favor. According to petitioners, OCT No. 360, reconstituted as TCT No. RO-156, was cancelled and the following titles were issued in its stead:

a. TCT No. RT-1584 for 6.5 hectares consisting of Lots 427-A and 427-B in favor of the heirs of Eleuterio Cuenca; and

b. TCT No. RT-1585 for the remainder of 15 hectares consisting of Lot 427-C, in the names of Severo Malvar for 8 hectares, Eleuterio Cuenca for 3 hectares (apparently because no deed of sale for Udarbe had yet been registered) and 4 hectares for Andres Aban as per Entry No. 4384 annotated at the back thereof.[10]

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[4] *Id.* at 33.

[5] *Id.* at 34.

[6] *Id.* at 36-37.

[7] *Id.* at 37.

[8] *Id.* at 40.

[9] *Id.* at 50-76.

[10] *Id.* at 63.

Subsequently, TCT No. RT-1585 registered under the name of Cuenca was subdivided into TCT No. RT-1693 in the name of Aban, TCT No. RT-1694 and TCT No. RT-1695, respectively. However, the RTC, in an Order dated July 29, 1968 in Civil Case No. 1005, nullified Aban's title over the disputed property for being issued despite the absence of any registered document of sale or conformity. The RTC thus ordered for the revival of TCT No. RT-1585. This case attained finality with the Court's denial of the petition assailing the Order dated July 29, 1968.[11]

However, contrary to the Order dated July 29, 1968, the Register of Deeds of Butuan City cancelled TCT No. RT-1693 and issued TCT No. RT-17664, without reviving TCT No. RT-1585. By reason thereof, petitioners caused the annotation of their adverse claim as well as a notice of *lis pendens* over TCT No. RT-17664. Several other claims were allegedly registered and likewise annotated at the back of TCT No. RT-17664, TCT No. RT-1585 and TCT No. RT-1693, which, according to petitioners did not include that of any of the respondents herein nor their members.[12]

On December 18, 1985, the RTC directed the proper execution of the Order dated July 29, 1968. The Register of Deeds was thereby ordered to cancel TCT No. RT-17664 and to revive TCT No. RT-1585 in the name of Cuenca, carrying the annotations therein, which included Aban's purchase of the disputed property. An entry of judgment appeared to be issued upon the finality of the Court's Decision on this matter.[13]

During the pendency of the foregoing incidents, petitioners contended that they filed a case for quieting of title and issuance of a new certificate of title over the disputed property which was docketed as Civil Case No. 2966. This complaint was then granted by the RTC and was affirmed by the Court, which consequently brought about the issuance of TCT No. RT-22372 in favor of petitioners.

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[11] *Id.* at 64.

[12] *Id.* at 65-66.

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

Under the foregoing circumstances, petitioners posited that all actions to annul the deed of sale, including the Torrens title issued as a result thereof are now barred by prescription, laches and *res judicata*. They likewise questioned the validity of respondents' cause of action to annul the sale executed in their favor and to enforce respondents' alleged unregistered deeds of sale.[14]

On September 12, 2002, the RTC dismissed the respondents' complaint for annulment and declaration of nullity of deed of sale and TCT for failure of respondents to prosecute their action for an unreasonable length of time.

The Complaint before the RTC

Several years later, particularly on August 23, 2012, petitioners filed a Complaint for Revival of Judgment[15] with Branch 2, RTC, Butuan City, wherein they alleged that, in the absence of an appeal, the Order[16] dated September 12, 2002 of the RTC already attained finality thereby making the questioned ownership, title and possession of petitioners and their successors-in-interest indefeasible to the exclusion of respondents and their successors. Thus, they sought for the full implementation of the dismissal order, specifically insofar as possession over the property is concerned.

Ruling of Branch 2, RTC, Butuan City

On September 26, 2012, the RTC issued the assailed Order[17] the pertinent portions of which are cited herein:

Succinctly, the plaintiffs in this case claims that the judgment of the court dated September 12, 2002 in Civil Case No. 3749 which dismissed the complaint of herein defendants (then plaintiffs) on the ground of failure to prosecute has adjudged them as rightful owners and possessors of the property involved in this case.

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[14] *Id.* at 74.

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

[16] *Id.* at 77.

[17] *Id.* at 78.

The court disagrees.

It is a basic legal principle that a judgment dismissing a civil case on the ground of failure to prosecute on the part of the plaintiff is not a judgment on the merits that warrants execution or implementation by the prevailing party. There was no adjudication on the merits in Civil Case No. 3749 therefore, no rights whatsoever was acquired by either of the parties in the said case. The court obviously cannot execute a judgment of dismissal, so legally speaking there would be nothing to revive.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the instant case is hereby ordered DISMISSED for lack of cause of action.

SO ORDERED.[18]

Aggrieved, petitioners filed a Motion for Reconsideration[19] which was denied by the RTC in an Order[20] dated December 5, 2012.

On February 28, 2013, petitioners immediately elevated the case to the Court through the instant petition. Subsequently, on April 1, 2013, respondents were required to file their Comment.[21] Because some of the notices to respondents were returned unserved,[22] petitioners were required to furnish the Court with the concerned respondents' present addresses.[23] Despite compliance,[24] some of the notices remained unserved with notations, "Moved left no address; Unclaimed; Moved."[25] The Court further noted that notices to Atty. Ganal were returned unserved with notation "RTS, Deceased;" hence, his co-petitioners were required to furnish the Court with the name

[18] *Id.*

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

[20] *Id.* at 81.

[21] *Id.* at 82-83.

[22] *Id.* at 90-92.

[23] *Id.* at 106.

[24] *Id.* at 112-113.

[25] *Id.* at 123-133; 138-152.

and address of their new counsel as well as the present addresses of Palala and Roquitte.[26]

Thereafter, for his noncompliance, Manuel G. Aban as petitioner and attorney-in-fact of his co-petitioners, was required to show cause as to why petitioners should not be held in contempt.[27] However, this show cause order was likewise returned unserved to Manuel G. Aban with notation: "Unknown."[28]

The Issue

The core of the controversy herein is the full implementation of the September 12, 2002 dismissal order of the trial court, which, for petitioners, was a recognition of their ownership and possession over the disputed property.

The Ruling of the Court

On the procedural aspect, petitioners continuously failed to provide the Court with the correct address of respondent Roquitte, and while some of the notices appeared to have been received by Alpuerto, Gaballo and Palala, there were notices which kept returning with postal notations of "Moved left no address; Unclaimed; Moved." Nonetheless, this Court's Minute Resolution dated April 1, 2013 which required respondents to submit their comment remained unserved only with respect to Roquitte. But with regard to the other respondents, the records reveal that Alpuerto, Gaballo and Palala received this Court's Resolution which resolved to await their comment to the petition.[29]

It is an elementary rule that when a party files any pleading or motion, a copy thereof must be served on the adverse party.[30] For the essence of procedural due process is embodied in the

[26] *Id.* at 302-304.

[27] *Id.* at 309-314.

[28] *Id.* at 335.

[29] *Id.* at 88 (dorsal portion).

[30] *Metropolitan Bank and Trust Co. v. Spouses Villena*, G.R. No. 206668 (Notice), March 11, 2015.

basic requirement of notice and a real opportunity to be heard.[31] An adverse party must be given an opportunity to be heard through his/her comment, before the case can be presented for adjudication.[32]

It must not be overlooked that respondents herein were impleaded as officers representing the Bayanihan Homeowners' Association, and that Alpuerto, Gaballo and Palala were duly notified of the Court's directive requiring the filing of their Comment. Under the foregoing circumstances, due receipt of the notice by his co-respondents Alpuerto, Gaballo, and Palala could be considered as due notice to Roquitte since each of them were impleaded as representatives of the Bayanihan Homeowners' Association and are represented by the same counsel. Hence, the Court deems it proper to consider their non-compliance as a waiver of the filing of their comment to the petition.

With respect to petitioners, records reveal that Manuel G. Aban is in due receipt of this Court's Resolution[33] dated October 10, 2016 which required them to avail of the services of a new counsel in view of Atty. Ganal's demise and a directive as well to inform the Court thereafter of the new counsel's name and address.[34] Despite the lapse of more than three years, no compliance was forthcoming from petitioners.

Pursuant to Section 5, Rule 56 of the Rules of Court, aside from petitioners' duty to supply this Court with the correct address of respondents as proof of service of the appeal, it is beholden upon them to comply with all directives or orders from the Court within a reasonable period. For petitioners' failure to comply with the Court's directives without justifiable cause, the present petition should be dismissed *motu proprio*. Petitioners' inaction had already caused the arbitrary dragging

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[31] *Id.*

[32] *Id.*

[33] *Rollo*, pp. 281-282.

[34] *Id.* at 281 (dorsal portion).

of this petition for review on *certiorari* which had been pending since February 23, 2013 and to await for the parties' compliance would again put in jeopardy the timely resolution of this appeal.

Technicalities aside, the petition still lacks merit on substantive grounds.

To recall, respondents first filed a complaint for annulment and declaration of nullity of the deed of sale and TCT over the disputed property which was dismissed by the RTC on September 12, 2002 for *non prosequitor*. Subsequent thereto, petitioners filed a complaint against respondents for quieting of title and issuance of a new TCT in their favor which was docketed as Civil Case No. 2966. This was favorably granted by the trial court and attained finality thereafter which consequently brought about the issuance of TCT No. RT-22372 in favor of petitioners. Notwithstanding the issuance of TCT No. RT-22372 under the name of petitioners, possession over the disputed property remained with herein respondents. As a consequence thereof, herein petitioners seek to revive the judgment of dismissal of the trial court dated September 12, 2002 which dismissed the action for *non prosequitor*.

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.[35] Otherwise stated, the new action is an action the purpose of which is not to reexamine and retry issues already decided but to revive the judgment.[36] 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.[37]

In the instant case, petitioners are seeking to revive the judgment rendered by the court below which dismissed respondents' action arguing that the dismissal was a judgment

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[35] *Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank*, G.R. Nos. 178696 & 192607, July 30, 2018.

[36] *Id.*

[37] *Id.*

on the merits; hence, the question on the validity of the deed of sale and the Torrens title issued in favor of Aban had already been settled in their favor making them as rightful owners and possessors of the disputed property.

It is important to note that a dismissal of an action for failure to prosecute operates as a judgment on the merits.[38] This is expressly provided under Section 3, Rule 17 of the Rules of Court, as amended, which provides:

SEC. 3. *Dismissal Due to Fault of Plaintiff*. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The Order dated September 12, 2002 does not state that the dismissal of the complaint is without prejudice. Thus, the dismissal shall have the effect of an adjudication upon the merits. However, the dismissal operates only as a bar to the filing of another action alleging the same cause of action. Unequivocally, the RTC's conclusion that the dismissal was not an adjudication on the merits was only with respect to the effect being sought by herein petitioners, which is the execution or implementation of a dismissal order.

While the Court agrees with petitioners that the dismissal order had the effect of adjudication on the merits, our acquiescence ends there. Dismissal with prejudice means that there is an adjudication on the merits as well as a final disposition, barring the right to bring or maintain an action on the same claim or cause.[39] An "adjudication on the merits" for *non*

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[38] *Heirs of the late Flor Tungpalan v. Court of Appeals*, 499 Phil. 384, 390 (2005).

[39] *Colonial Auto Ctr. v. Tomlin*, 184 B.R. 720, 724 (1995).

prosequitor cases imposes as a sanction "prejudice to the refiling of the same claim."[40] An involuntary dismissal generally acts as a judgment on the merits for the purposes of *res judicata*.[41]

It must be recalled that the complaint filed by respondents against petitioners was for annulment of the deed of sale and the Torrens title issued as a consequence thereof. Hence, its dismissal only operates as a bar to the filing of another action alleging the same cause of action. Corollarily, all the claims of respondents against petitioners with respect to the latter's rights of ownership over the disputed property on the strength of the deed of sale and the Torrens title are barred by *res judicata*.

As it stands, the *status quo* between the parties should be observed. The dismissal order did not and could not enforce any rights of ownership or possession whatsoever in favor of petitioners because it merely barred the refiling of the same claim by respondents against petitioners. In effect, adjudication on the merits apply to respondents only insofar as to bar any action by the latter against petitioners arising from the same questioned deed of sale and Torrens title. Thus, concomitant to the foregoing established principles, petitioners' argument that possession was awarded in their favor as a consequence of the dismissal order is misplaced.

Veritably, the Court upholds the dismissal of the action for revival of judgment for lack of cause of action because there is nothing for this Court to enforce or execute in the trial court's dismissal order dated September 12, 2002. It is evident from the allegations in the complaint and the supporting documents attached therein that the complaint deserves scant consideration. There is nothing in the subject dismissal order which imposed upon respondents any correlative obligation or liability in favor of petitioners. There was neither a grant of any legal right or rights in favor of any of the parties therein. More importantly, there is no act or omission alleged to have been committed by

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[40] *Ching, et al. v. Cheng, et al.*, 745 Phil. 93, 107 (2014).

[41] *Kisaka v. Univ. of S. California*, 2018 Cal. App Unpub. LEXIS 8687, 2018 WL 67165308.

respondents which could be in violation of petitioners' legal right or rights. In the same vein neither of the cases cited by petitioners squarely apply in this case because there was no writ of possession nor any adjudication on any of the parties' possessory rights over the disputed property which could be executed or implemented.

WHEREFORE, the petition is **DENIED**. The Orders dated September 26, 2012 and December 5, 2012 issued by Branch 2 of the Regional Trial Court of Butuan City are both **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Reyes, A. Jr., Hernando,* and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 217095. February 12, 2020]

HH & CO. AGRICULTURAL CORPORATION, *petitioner, vs.* **ADRIANO PERLAS***, respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENT, EXPLAINED; EXCEPTIONS, ENUMERATED; NONE OF THE EXCEPTIONS IS APPLICABLE IN THIS CASE. —** [T]he Court stresses that as a rule, a final judgment is immutable and unalterable. It cannot be disturbed or modified by any court even if the purpose of the alteration is to rectify perceived errors of fact or law. The doctrine of immutability of judgment is for the purpose of avoiding delay in the administration of justice and of putting an end to judicial controversies which cannot drag perpetually. Pursuant to this doctrine, courts have the

ministerial duty to enforce judgment that already attained finality. Notably, there are established exceptions to the foregoing rule, namely: (i) the correction of clerical errors; (ii) presence of *nunc pro tunc* entries, which cause no prejudice to any party; (iii) void judgment; and, (iv) whenever circumstances transpire after the finality of the judgment which renders the execution unjust and inequitable. In this case, none of the foregoing exceptions is applicable. It must be noted that the assailed RTC Order dated March 16, 2009 which granted petitioner's application for writ of possession had already become final and executory. The RTC had in fact already issued the corresponding entry of judgment on April 27, 2009.

2. **MERCANTILE LAW; REAL ESTATE MORTGAGE LAW (ACT NO. 3135); EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; THE BUYER IN A FORECLOSURE SALE BECOMES THE ABSOLUTE OWNER OF THE PROPERTY IF NO REDEMPTION IS MADE IN ACCORDANCE WITH LAW; HENCE, IT BECOMES MINISTERIAL DUTY OF THE COURT TO ISSUE A WRIT OF POSSESSION EXCEPT WHEN A THIRD PARTY IS ACTUALLY HOLDING THE PROPERTY BY ADVERSE TITLE OR RIGHT; RESPONDENT IS NOT A THIRD PARTY CONTEMPLATED UNDER THE EXCEPTION. —** It is already a settled rule that a buyer in a foreclosure sale becomes the absolute owner of the property purchased if no redemption is made within one year from the registration of the sale. Being the absolute owner, he is entitled to all the rights of ownership over the property including the right of possession. Indeed, the buyer can demand possession of the land even during the redemption period except that he has to post a bond pursuant to Section 7 of Act No. 3135, as amended. The bond is no longer required after the redemption period if the property is not redeemed. To explain, a writ of possession is a writ of execution used to enforce a judgment for the recovery of possession of a land. It instructs the sheriff to enter the subject land and gives its possession to the one entitled to under the judgment. Further, a writ of possession may be issued in favor of the successful buyer in a foreclosure sale of REM either (1) within the one-year redemption period, upon the filing of a bond by the buyer; or (2) after the redemption period, with no bond required. The duty of the court to issue a writ of possession is ministerial and may not be stayed by a

pending action for annulment of the mortgage or the foreclosure itself. The only exception is when a third party is actually holding the property by adverse title or right. To be considered in adverse possession, the third party possessor must have done so in his own right and not as a mere successor or transferee of the debtor or mortgagor. In this case, respondent, as heir of the mortgagor, is not a third party as contemplated under the exception.

APPEARANCES OF COUNSEL

Romeo B. Natino for petitioner.
Filomeno B. Tan, Jr. for respondent.

R E S O L U T I O N

INTING, *J.*:

This resolves the Petition[1] for *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated July 3, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 05568 which dismissed the petition for *certiorari*;[3] and the Resolution[4] dated January 30, 2015 which denied petitioner's motion for reconsideration.[5]

The Antecedents

On April 22, 1994, HH & Co. Agricultural Corporation (petitioner) instituted an extrajudicial foreclosure on the real estate mortgage (REM) covering Lot No. 3 located in Cadiz City and registered under Transfer Certificate of Title (TCT) No. T-11964. Subsequently, petitioner emerged as the highest

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[1] *Rollo*, pp. 9-21.

[2] *Id.* at 25-36; penned by Associate Justice Gabriel T. Ingles with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco, concurring.

[3] CA *rollo*, pp. 4-15.

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

[5] CA *rollo*, pp. 65-74.

bidder in the public auction sale and a certificate of sale dated April 22, 1994 was eventually issued in its favor.[6]

On December 15, 2000, petitioner caused the annotation of the certificate of sale and asserted that the redemption period of the property was until December 15, 2001. It, nonetheless, admitted that the formalities for consolidation of title, *i.e.*, affidavit of consolidation was not executed and registered with the Register of Deeds of Cadiz City because of the preliminary injunction issued by Branch 60, Regional Trial Court (RTC), Cadiz City in a separate case for declaration of nullity of mortgage, foreclosure sale, interest, penalties, and other damages (nullity of mortgage) also involving the subject property and docketed as Civil Case No. 655-C.[7]

Later, petitioner filed an Application for Writ of Possession[8] dated December 5, 2008 docketed as LRC Case No. 679-C. In the Order[9] dated March 16, 2009, the RTC granted the application. Accordingly, a Writ of Possession was thereby issued.[10] Thereafter the corresponding Entry of Final Judgment[11] was issued on April 27, 2009.

On June 3, 2009, Adriano Perlas (respondent) filed a Motion to Quash Writ of Possession.[12]

According to respondent, he and his siblings, namely: Lourdes, Azuncion, Monserrat and Manuel, all surnamed Perlas, had filed a case for annulment of sale, recovery of possession, and cancellation of title over the subject property and docketed as Civil Case No. 255-C which, at that time, was still pending appeal with the CA. Moreover, he confirmed that he and his

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[6] *Rollo*, p. 26.

[7] *Id.* at 27.

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

[9] *Id.* at 43-44; penned by Executive Judge Renato D. Muñez.

[10] *Id.* at 46.

[11] *Id.* at 45.

[12] *Id.* at 47-53.

siblings also filed Civil Case No. 655-C, which is a complaint for nullity of mortgage.[13]

Respondent added that the subject property was theirs as it formed part of their mother's estate. He also insisted that he had the legal interest in the matter in litigation and must be allowed to intervene. Consequently, he prayed for the RTC to reconsider the Order dated March 16, 2009 in LRC Case No. 679-C that granted the application for the issuance of a Writ of Possession and direct the quashal of the issued writ of possession dated May 6, 2009.

Ruling of the RTC

In the Order[14] dated January 8, 2010, the RTC recalled and set aside the writ of possession. The dispositive portion of its order reads:

> WHEREFORE, the Order of this Court dated March 16, 2009 and the consequent order dated May 6, 2009 are hereby RECALLED and SET ASIDE and the Motion to Quash Writ of Possession is hereby GRANTED. Let this case therefore be consolidated with Civil Case No. 655-C considering that these actions involve the same issues and parties and in order to avoid unnecessary delay in the hearing of this case and for better understanding.
>
> Furnish copies of this Order to all counsels.
>
> SO ORDERED.[15]

The RTC noted that petitioner's application for writ of possession pertained to the same property subject of Civil Case Nos. 255-C and 655-C. In the latter case, the RTC had issued a writ of injunction enjoining the Sheriff, Clerk of Court, and petitioner from consolidating title or ownership over the subject property. According to the RTC, by virtue of the preliminary injunction, there was a legal impediment which prevented petitioner from exercising its right to possess the property. It

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[13] *Id.* at 47-48.

[14] *Id.* at 56-61; penned by Executive Judge Renato D. Muñez.

[15] *Id.* at 61.

added that to allow the writ of possession would run counter to the writ of preliminary injunction it already issued in Civil Case No. 655-C.

With the denial of its motion for reconsideration, petitioner filed a petition for *certiorari* with the CA.

Ruling of the CA

On July 3, 2014, the CA denied the petition.[16]

The CA ruled that petitioner failed to meet the necessary requirements to make the issuance of a writ of possession a ministerial duty of the court. It held that petitioner sought for a writ of possession after the period of redemption had lapsed. For which reason, petitioner should have consolidated its ownership and caused the issuance of a new certificate of title. However, according to the CA, petitioner was enjoined from doing so by reason of the writ of preliminary injunction in Civil Case No. 655-C. The CA stressed that petitioner was well aware of the injunction as the latter even mentioned it when it filed its application for writ of possession.[17]

The CA further decreed that proof of title is a condition *sine qua non* for the writ of possession to be ministerial. It noted that there being no proof of title here, then the writ of possession had not become an absolute right of petitioner or that it had not yet earned any vested right to be entitled to a writ of possession to be issued as a matter of course.[18]

In sum, the CA ruled that the RTC committed no grave abuse of discretion in recalling its order granting petitioner's application for issuance of writ of possession because a writ of preliminary injunction was issued in Civil Case No. 255-C against petitioner and this injunction was issued prior to the issuance of writ of possession in the case.[19]

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[16] *Id.* at 36.

[17] *Id.* at 32.

[18] *Id.* at 33.

[19] *Id.* at 35.

On January 30, 2015, the CA denied petitioner's Motion for Reconsideration.[20]

Hence, this petition.

Issue

Whether the CA properly ruled that the RTC did not commit grave abuse of discretion in setting aside its Order granting petitioner's application for issuance of writ of possession.

Petitioner's Arguments

Petitioner contends that respondent's filing of a motion to quash writ of possession was improper since the RTC Order granting the issuance of writ of possession had already become final and executory.[21] It insists that the issuance of the writ was a ministerial function of the court and the consolidation of its ownership takes effect by operation of law upon the expiration of the period to redeem the property. Given that the redemption period had already lapsed, it already acquired vested right of ownership over the subject property.[22]

Respondent's Arguments

Respondent, on his end, argues that the RTC properly recalled the writ of possession because of the prior preliminary injunction issued in another case. He asseverates that there was nothing capricious or whimsical in the exercise of judgment by the RTC because the recall of its order will promote efficient administration of justice.[23] At the same time, he asserts that considering that no new certificate of title was issued in the name of petitioner, then there is no basis for the writ of possession. In fine, according to respondent, in the absence of consolidation and proof of title, petitioner is not entitled to the ministerial issuance of writ of possession over the subject property.[24]

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[20] CA *rollo*, pp. 65-74.

[21] *Rollo*, p. 12.

[22] *Id.* at 14.

[23] *Id.* at 85.

[24] *Id.* at 88.

Our Ruling

The petition is meritorious.

At the outset, let it be underscored that this Petition centers on the issue of the propriety or impropriety of the recall of the writ of possession issued to the petitioner, and not on any matter relating to either the consolidation of the application of the writ of possession with the civil case for nullity of mortgage or on the propriety or impropriety of the restraining order issued against petitioner enjoining it to consolidate its title on the subject property.

On this note, the Court stresses that as a rule, a final judgment is immutable and unalterable. It cannot be disturbed or modified by any court even if the purpose of the alteration is to rectify perceived errors of fact or law. The doctrine of immutability of judgment is for the purpose of avoiding delay in the administration of justice and of putting an end to judicial controversies which cannot drag perpetually. Pursuant to this doctrine, courts have the ministerial duty to enforce judgment that already attained finality. Notably, there are established exceptions to the foregoing rule, namely: (i) the correction of clerical errors; (ii) presence of *nunc pro tunc* entries, which cause no prejudice to any party; (iii) void judgment; and, (iv) whenever circumstances transpire after the finality of the judgment which renders the execution unjust and inequitable.[25] In this case, none of the foregoing exceptions is applicable. It must be noted that the assailed RTC Order[26] dated March 16, 2009 which granted petitioner's application for writ of possession had already become final and executory. The RTC had in fact already issued the corresponding entry of judgment on April 27, 2009.

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[25] *Mercury Drug Corp., et al. v. Spouses Huang, et al.*, 817 Phil. 434, 445-446 (2017), citing *Social Security System v. Isip*, 549 Phil. 112, 116 (2007) and *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66*, 559 Phil. 117, 123 (2011).

[26] *Rollo*, pp. 43-44.

It is already a settled rule that a buyer in a foreclosure sale becomes the absolute owner of the property purchased if no redemption is made within one year from the registration of the sale.[27] Being the absolute owner, he is entitled to all the rights of ownership over the property including the right of possession.[28] Indeed, the buyer can demand possession of the land even during the redemption period except that he has to post a bond pursuant to Section 7 of Act No. 3135,[29] as amended.[30] The bond is no longer required after the redemption period if the property is not redeemed.[31] To explain, a writ of possession is a writ of execution used to enforce a judgment for the recovery of possession of a land. It instructs the sheriff to enter the subject land and gives its possession to the one entitled to under the judgment. Further, a writ of possession may be issued in favor of the successful buyer in a foreclosure sale of REM either (1) within the one-year redemption period, upon the filing of a bond by the buyer; or (2) after the redemption period, with no bond required.[32]

The duty of the court to issue a writ of possession is ministerial and may not be stayed by a pending action for annulment of the mortgage or the foreclosure itself.[33] The only exception is when a third party is actually holding the property by adverse title or right.[34] To be considered in adverse possession, the third

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[27] *Teves v. Integrated Credit & Corporate Services, Co. (now Carol Aqui)*, G.R. No. 216714, April 4, 2018, 860 SCRA 493, 508 and *Bascara v. Sheriff Javier, et al.*, 760 Phil. 766, 775 (2015), both citing *China Banking Corporation v. Spouses Lozada*, 579 Phil. 454, 472-473 (2008).

[28] *Sps. Reyes v. Sps. Chang*, 818 Phil. 225, 236 (2017).

[29] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages.

[30] *Sps. Marquez v. Sps. Alindog*, 725 Phil. 237, 246-247 (2014).

[31] *Id.*

[32] *Gopiao v. Metropolitan Bank & Trust Co.*, 739 Phil. 731, 736 (2014), citing *Sps. Tolosa v. United Coconut Planters Bank*, 708 Phil. 134, 141 (2013).

[33] *LZK Holdings & Dev't. Corp. v. Planters Dev't. Bank*, 725 Phil. 83, 88 (2014).

[34] *Supra* note 30 at 250.

party possessor must have done so in his own right and not as a mere successor or transferee of the debtor or mortgagor.[35] In this case, respondent, as heir of the mortgagor, is not a third party as contemplated under the exception.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 3, 2014 and Resolution dated January 30, 2015 of the Court of Appeals in CA-G.R. SP No. 05568 are **SET ASIDE**. The Order dated March 16, 2009 and the Writ of Possession dated May 6, 2009 of Branch 60, Regional Trial Court, Cadiz City are **REINSTATED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Delos Santos, JJ.*, concur.

THIRD DIVISION

[G.R. No. 217101. February 12, 2020]

LBC EXPRESS-VIS, INC., *petitioner, vs.* **MONICA C. PALCO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT. — Constructive dismissal occurs when an employer makes an employee's continued employment impossible, unreasonable or unlikely, or has made an employee's working conditions or environment harsh, hostile and unfavorable, such that the employee feels obliged to resign from his or her employment. Common examples are when the employee is demoted, or when his or her pay or benefits are

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[35] *Sps. Gallent v. Velasquez*, 784 Phil. 44, 63 (2016).

reduced. However, constructive dismissal is not limited to these instances. The gauge to determine whether there is constructive dismissal, is whether a reasonable person would feel constrained to resign from his or her employment because of the circumstances, conditions, and environment created by the employer for the employee.

2. **ID.; ID.; ID.; ID.; DISTINGUISHED FROM VOLUNTARY RESIGNATION. —** In *Saudi Arabian Airlines (Saudia) v. Rebesencio,* this Court differentiated between voluntary resignation and constructive dismissal: In *Bilbao v. Saudi Arabian Airlines*, this court defined voluntary resignation as "the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment." Thus, essential to the act of resignation is voluntariness. It must be the result of an employee's exercise of his or her own will. x x x On the other hand, constructive dismissal has been defined as "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."

3. **ID.; ID.; REPUBLIC ACT NO. 7877 (ANTI-SEXUAL HARASSMENT ACT); SEXUAL HARASSMENT; GRAVAMEN OF THE OFFENSE IS NOT THE VIOLATION OF THE EMPLOYEE'S SEXUALITY BUT THE ABUSE OF POWER BY THE EMPLOYER. —** Workplace sexual harassment occurs when a supervisor, or agent of an employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates in an intimidating, hostile, or offensive environment for the latter. x x x This Court has held that "[t]he gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer."

4. **ID.; ID.; MANAGERIAL EMPLOYEES; DEFINED; CASE AT BAR. —** The determination of whether an employee is part of the managerial staff depends on the employee's duties and responsibilities: Managerial employees are defined as those vested with the powers or prerogatives to lay down management

policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or *effectively recommend such managerial actions*. They refer to those whose primary duty consists of the *management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff*. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment. At the very least, Batucan held a supervisory position, which made him part of the managerial staff. Batucan was petitioner's team leader and officer-in-charge in LBC Danao.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; CANNOT BE ASSUMED IF AN OFFICER OF THE COMPANY WRONGED AN EMPLOYEE, BUT THE EMPLOYER DID NOT AUTHORIZE THE ACT. — Nonetheless, although Batucan holds a supervisory position, he cannot be deemed to have acted on petitioner's behalf in committing the acts of sexual harassment. It cannot be assumed that all the illegal acts of managerial staff are authorized or sanctioned by the company, especially when it is committed in the manager's personal capacity. In *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, this Court ruled that constructive dismissal cannot be assumed if an officer of the company wronged an employee, but the employer did not authorize the act: It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee. Unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal.

6. ID.; ID.; REPUBLIC ACT NO. 7877 (ANTI-SEXUAL HARASSMENT ACT); SECTION 5 THEREOF; EMPLOYER IS ONLY SOLIDARILY LIABLE FOR DAMAGES WITH THE PERPETRATOR IN CASE AN ACT OF SEXUAL HARASSMENT WAS REPORTED AND IT DID NOT TAKE IMMEDIATE ACTION ON THE MATTER; CASE AT BAR. — The distinction between the employer and an erring managerial officer is likewise present in sexual harassment cases. Under Section 5 of the Anti-Sexual Harassment Act, the employer is only solidarily liable for damages with the perpetrator in case an act of sexual harassment was reported and *it did not take immediate action on the matter*. x x x This provision thus

illustrates that the employer must first be informed of the acts of the erring managerial officer before it can be held liable for the latter's acts. Conversely, if the employer has been informed of the acts of its managerial staff, and does not contest or question it, it is deemed to have authorized or be complicit to the acts of its erring employee. In this case, Batucan cannot be considered to have been acting on petitioner's behalf when he sexually harassed respondent. Thus, respondent cannot base her illegal dismissal complaint against petitioner *solely* on Batucan's acts. However, even if petitioner had no participation in the sexual harassment, it had been informed of the incident. Despite this, it failed to take immediate action on respondent's complaint. Its lack of prompt action reinforced the hostile work environment created by Batucan.

7. **ID.; ID.; REPUBLIC ACT NO. 11313 (SAFE SPACES ACT); EXPANDED THE DEFINITION OF GENDER-BASED SEXUAL HARASSMENT IN THE WORKPLACE AND HAS ADDED TO THE DUTIES OF AN EMPLOYER AS TO ITS PREVENTION, DETERRENCE, AND PUNISHMENT. —** In recognizing the need to address these concerns, the State's policy against sexual harassment has been strengthened through Republic Act No. 11313, otherwise known as the Safe Spaces Act. This law has expanded the definition of gender-based sexual harassment in the workplace and has added to the duties of an employer as to its prevention, deterrence, and punishment. It explicitly requires that complaints be investigated and resolved *within 10 days or less* upon its reporting. It likewise expressly provides for the liability of employers and duties of co-workers as to sexual harassment. The law likewise specifies the confidentiality of proceedings, and the issuance of a restraining order for the offended person. Moreover, it allows local government units to impose heavier penalties on perpetrators. While this law does not apply to this case as it was enacted after the commission of Batucan's acts, its principles emphasize the need to accord more importance to complaints of sexual harassment and recognize the severity of the offense.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
J.C. Palma & Partners Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

An employee is considered constructively dismissed if he or she was sexually harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity.

This Court resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the National Labor Relations Commission's finding that the employer company, LBC Express-Vis, Inc., is liable for constructive dismissal.

On January 16, 2009, Monica C. Palco (Palco) started working for LBC Express-Vis Inc. (LBC) as a customer associate in its Gaisano Danao Branch (LBC Danao). The Branch's Team Leader and Officer-in-Charge, Arturo A. Batucan (Batucan), endorsed her application for the post and acted as her immediate superior.[4]

While employed at LBC, Palco had initially noticed that Batucan would often flirt with her, which made her uncomfortable. Later, Batucan started sexually harassing her. Batucan's undisputed acts are detailed as follows:

1. As weeks passed, she noticed something in the way respondent-Arturo A. Batucan stared and smiled at her. She also sensed some meaning in the way he talked to her, though she initially ignored these and just tried to focus on her job.

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[1] *Rollo,* pp. 13-62.

[2] *Id.* at 66-88. The May 13, 2014 Decision was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino of the Special Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 91-92. The February 10, 2015 Resolution was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino of the Former Special Nineteenth Division, Court of Appeals, Cebu City.

[4] *Id.* at 67.

2. At one time he offered to lend her money, which she refused, not wanting to be indebted to him.

3. There was likewise an instance when he secretly gave her chocolate, which she felt uncomfortable about, there being no special occasion then.

4. Respondent-Arturo A. Batucan's actions grew bolder everyday[sic]. Whenever he approached her while working, he found ways to hold her hand or put his hand on her lap, if not, on her shoulder.

5. Then, the time came when he started to kiss her on the cheek in a joking manner.

6. On certain occasions, he pulled the strap of her bra, which made her feel really uncomfortable. When she tried to rebuke him on such, he would just tell her that it was a joke.

7. There was also a time when he joked about making a baby with her. He told her that if she will get married someday, he wants to join with her husband in making the baby. She just laughed it off, but she knew there was something wrong with the joke.[5]

The final straw happened at around 8:00 a.m. on May 1, 2010. That morning, Batucan sneaked in on Palco while she was in a corner counting money. Palco was caught by surprise and exclaimed, "*Kuyawa nako nimo sir, oy!*" (You scared me, sir!). Batucan then held her on her hips and attempted to kiss her lips. However, Palco was able to shield herself.

Batucan then tried a second time and was able to kiss Palco's lips before she could react. Batucan told Palco that he was just happy that day and then proceeded to wipe her lips. Palco, however, could not stop him. Thereafter, Batucan asked her if it was okay for him to go to the LBC Camotes Branch on Monday, as though asking for her permission and treating her like a girlfriend. She told him not to repeat what he had done and threatened to tell his wife about it. Palco felt angry and afraid.[6]

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

[6] *Id.* at 68.

On the evening of the following day, a Sunday, Batucan texted Palco asking her to report early for work the next day to prepare for the arrival of a certain Ms. Ponce. Afraid of what Batucan might do next, Palco excused herself and suggested that her co-employee take her place, explaining that she might not come in for work.[7]

The next day, despite being repulsed by Batucan, Palco still forced herself to go to work. She was relieved when Batucan left with Ms. Ponce at 11:00 a.m. to visit the LBC Camotes Branch. However, on May 4, 2010, she did not come in for work because she was sick, and was still bothered by the incident.[8]

On May 5, 2010, she reported the incident to the LBC Head Office in Lapu Lapu City. She had a resignation letter prepared in case management would not act on her complaint. Acting on her complaint, management advised her to request for a transfer to another team while they investigated the matter.[9]

On May 8, 2010, Palco returned to the LBC Head Office with her mother and submitted her formal complaint against Batucan. Later, they proceeded to the police station to report the incident.[10]

On May 14, 2010, sensing that management did not immediately act on her complaint, Palco resigned. She asserted that she was forced to quit since she no longer felt safe at work.[11]

On June 15, 2010, Batucan was served a copy of a Notice to Explain.[12]

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[7] *Id.* at 69.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 84.

On July 20, 2010, LBC held the administrative hearing for the incident.[13] On the same day, Palco filed a Complaint for Illegal Dismissal against the company.

On September 27, 2010, the area head of LBC Cebu sent a letter addressed to Batucan containing a suspension with last warning:

> This administrative action is taken on the account of the complaint on immoral act with you [sic] teammate, Ms. Monica Palco of which you were required to submit a valid explanation why sanction should not be imposed against you. This aggravated the company by facing a case charged with illegal dismissal at NLRC Cebu.
>
> After thorough consideration and evaluation of the case, the company finds it adequate cause to render you answerable for the aforementioned conduct. This Office hereby sites you for the following infraction categorized under our Code of Conduct as Major Offense to wit:
>
> Against Persons:
>
> a. Immoral act or any form of indecency within company premises or work assignment.
>
> b. Any form of sexual harassment.
>
> Accordingly, your attention is hereby called to this instance; you are directed to serve a SUSPENSION for a period of sixty (60) days without pay with LAST WARNING effective immediately.
>
> You are further admonished against a repetition of this omission.
>
> For your information and strict compliance.
>
> **LEONARDO V. LIBRADILLA** (signed)[14]

On October 18, 2010, Palco filed a Complaint for sexual harassment before the Danao City Prosecutor's Office.[15]

The Labor Arbiter, in its Decision dated June 29, 2011, ruled in favor of Palco:

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[13] *Id.*

[14] *Id.* at 242.

[15] *Id.* at 69.

WHEREFORE, co-respondents LBC Express-VIS, Inc. and Arturo Batucan are hereby ORDERED solidarily to immediately pay complainant Monica C. Palco the following:

Backwages..............................	Php 91,000.00
Separation pay.........................	14,000.00
Moral Damages........................	200,000.00
Exemplary Damages.................	50,000.00
Total......................................	Php 355,000.00
Attorney's fees (10%)	35,000.00
Grand Total............................	390,500.00

SO ORDERED.[16]

The National Labor Relations Commission, in its May 31, 2012 Decision[17] affirmed with modification the Labor Arbiter's decision but reduced the amount of moral damages to ₱50,000.00.[18]

The Court of Appeals, in its March 13, 2014 Decision[19] affirmed the National Labor Relations Commission. It denied LBC's Motion for Reconsideration.[20]

LBC thus filed this Petition[21] maintaining that: (1) "the findings are grounded entirely on speculation [;]" (2) "the inference made is manifestly mistaken [;]" (3) "the judgment is based on misapprehension of facts [;]" and (4) "the Court of Appeals manifestly overlooked certain relevant facts not disputed but the parties, which... would justify a different conclusion."[22] Furthermore, it raised that "a period of four (4) months does

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[16] *Id.* at 322-323.

[17] *Id.* at 166-177.

[18] *Id.* at 176-177.

[19] *Id.* at 66-88.

[20] *Id.* at 91-92.

[21] *Id.* at 13-53.

[22] *Id.* at 13.

not even constitute an unreasonable period to resolve a case of such nature and gravity as one for sexual harassment."[23]

Subsequently, Palco filed a Comment,[24] and LBC filed its Reply.[25]

Petitioner mainly argues that it should not be held liable for constructive dismissal. It insists that it did not commit any act of discrimination, insensibility, or disdain towards respondent. Neither did it establish a harsh, hostile or unfavorable work environment for her.[26]

Citing *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*,[27] petitioner argues that it cannot be held liable for the hostile work environment that respondent experienced because it was Batucan, who committed the acts subject of her complaint. It points out that Batucan was a mere team leader, a co-employee, who had no power to dismiss, suspend, or discipline respondent.[28] Petitioner did not know of, participate, or consent to Batucan's acts and only learned of his acts after respondent reported it.[29]

Petitioner also insists that it acted with sensitivity and consideration for respondent's welfare and made efforts to address her concerns while it was investigating the incident. It points out that when respondent expressed her intention to resign, it suggested respondent's transfer to another team and did not require her to report back to the LBC Danao where Batucan was stationed. When respondent accepted the offer, LBC granted her vacation leave requests while awaiting her reassignment.[30]

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[23] *Id.* at 43.

[24] *Id.* at 673-691.

[25] *Id.* at 756-778.

[26] *Id.* at 33.

[27] 693 Phil. 646 (2012) [Per *J.* Mendoza, Third Division].

[28] *Rollo,* p. 33.

[29] *Id.* at 36.

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

Petitioner maintains that it immediately acted on the incident but still had to accord Batucan due process given the seriousness of the charge. It argues that the delay in the investigation was caused by respondent's sudden resignation. In any case, they proceeded with the investigation and suspended Batucan for 60 days with a final warning.[31] It asserts that four (4) months is not an unreasonable period to resolve a sexual harassment complaint.[32]

Petitioner contends that respondent's resignation was deliberate and voluntary, and was by way of reprisal for petitioner's failure to heed her ultimatum that Batucan be immediately removed from his post.[33]

As such, petitioner contests the awards granted to respondent, arguing those who voluntarily resigned are not entitled to backwages, and reinstatement or separation pay. It also argues that respondent is not entitled to damages since petitioner acted in good faith in all its dealings and that respondent should bear the litigation expenses for filing an unfounded and baseless case. It further asserts that there is no basis for the award of attorney's fees because there was no unlawful withholding of wages.[34]

In her Comment,[35] respondent, maintains that she was constructively dismissed.[36] She argues that Batucan's acts towards her "created a hostile, intimidating and offensive environment, rendering her continued employment in the company impossible, unreasonable or unlikely."[37] She points out that Batucan's acts constitute sexual harassment under

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

[32] *Id.* at 43.

[33] *Id.*

[34] *Id.* at 45-46 and 52.

[35] *Id.* at 673-690.

[36] *Id.* at 678.

[37] *Id.* at 679.

Section 3(a)(3) of Republic Act No. 7877. The hostile work environment could be clearly seen from her intense fear and anger and her subsequent acts after the incident: (1) she did not want to report to work; (2) she travelled four (4) hours away from her home to personally file a letter-complaint to the LBC Head Office; and (3) she reported the incident to the Danao City Police and filed a criminal case before the City Prosecutor's Office.[38]

Respondent further points out that in the administrative hearing, Batucan did not deny the kissing incident. She claims that his version did not vary much from her allegations[39] as he simply argued that his acts did not constitute sexual harassment.[40]

Respondent maintains that petitioner failed to protect its employees from sexual harassment as required under Republic Act No. 7877.[41] It did not have the required rules and regulations to investigate sexual harassment reports, any administrative sanctions for sexual harassment acts, or any committee on decorum and investigation for these cases.[42]

She contends that petitioner was insensible and acted in bad faith in failing to immediately act on her complaint.[43] She points out the following: (1) the investigation only started 78 days after she reported the incident; (2) it took 43 days for petitioner to serve Batucan a Notice to Explain; and (3) it took petitioner 78 days to call him for an administrative hearing, and only after she had already been dismissed.[44] It took management four (4) months and three (3) weeks to resolve the matter, when a constructive dismissal case had already been filed.[45]

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[38] *Id.* at 680.

[39] *Id.* at 680-681.

[40] *Id.* at 682.

[41] *Id.* at 682-683.

[42] *Id.* at 683.

[43] *Id.* at 684.

[44] *Id.* at 685.

[45] *Id.* at 684.

She likewise alleges that management pointed that there were no witnesses or any showing of bruises. It even suggested that perhaps Batucan's kiss was merely a "*beso*."[46]

Respondent also posits that her resignation was not voluntary[47] but was borne out of the hostile work environment brought about by Batucan's sexual harassment, and the failure of management to accord her redress, protection, and sensitivity.[48] She thus insists she is entitled to backwages, separation pay, reinstatement, moral and exemplary damages, and attorney's fees, with petitioner solidarily liable for damages with Batucan.[49]

The issue for this Court's resolution is whether or not LBC should be held liable for constructive dismissal.

This Court rules that LBC is liable for constructive dismissal.

Constructive dismissal occurs when an employer makes an employee's continued employment impossible, unreasonable or unlikely, or has made an employee's working conditions or environment harsh, hostile and unfavorable, such that the employee feels obliged to resign from his or her employment. Common examples are when the employee is demoted, or when his or her pay or benefits are reduced. However, constructive dismissal is not limited to these instances. The gauge to determine whether there is constructive dismissal, is whether a reasonable person would feel constrained to resign from his or her employment because of the circumstances, conditions, and environment created by the employer for the employee:[50]

[C]onstructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges. There may be constructive dismissal if an act of clear discrimination,

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[46] *Id.* at 685.

[47] *Id.* at 686.

[48] *Id.* at 687.

[49] *Id.* at 688-689.

[50] *Saudi Arabian Airlines (Saudia) v. Rebesencio,* 750 Phil. 791, 839 (2015) [Per *J.* Leonen, Second Division].

insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[51]

In *Saudi Arabian Airlines (Saudia) v. Rebesencio,*[52] this Court differentiated between voluntary resignation and constructive dismissal:

> In *Bilbao v. Saudi Arabian Airlines*, this court defined voluntary resignation as "the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment." Thus, essential to the act of resignation is voluntariness. It must be the result of an employee's exercise of his or her own will.
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> In the same case of *Bilbao*, this court advanced a means for determining whether an employee resigned voluntarily:
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>> As the intent to relinquish must concur with the overt act of relinquishment, *the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment*. (Emphasis supplied)
>
> On the other hand, constructive dismissal has been defined as "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."
>
> In *Penaflor v. Outdoor Clothing Manufacturing Corporation*, constructive dismissal has been described as tantamount to "involuntarily *[sic]* resignation due to the harsh, hostile, and unfavorable conditions set by the employer." In the same case, it was noted that "[t]he gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances."[53]

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[51] *Hyatt Taxi Services, Inc. v. Catinoy,* 412 Phil. 295, 306 (2001) [Per *J.* Gonzaga-Reyes, Third Division].

[52] 750 Phil. 791 (2015) [Per *J.* Leonen, Second Division].

[53] *Id.* at 838-839.

One of the ways by which a hostile or offensive work environment is created is through the sexual harassment of an employee.

Workplace sexual harassment occurs when a supervisor, or agent of an employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates in an intimidating, hostile, or offensive environment for the latter. Section 3 of Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act, states:

> SECTION 3. *Work, Education or Training-related Sexual Harassment Defined*. — *Work,* education or training-related sexual harassment is committed by an employer, employee, manager, *supervisor,* agent of the employer, teacher, instructor, professor, coach, trainor, or *any other person who, having authority, influence or moral ascendancy over another in a work* or training or education *environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act*.
>
> (a) In a work-related or employment environment, sexual harassment is committed when:
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> (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
>
> (2) The above acts would impair the employee's rights or privileges under existing labor laws; or
>
> *(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.* (Emphasis supplied)

This Court has held that "[t]he gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer."[54]

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[54] *Phil. Aeolus Auto-Motive United Corp. v. National Labor Relations Commission,* 387 Phil. 250, 264 (2000) [Per *J.* Bellosillo, Second Division].

In this case, Batucan's acts are undisputed. He filed no pleading in the labor tribunals to deny respondent's allegations.[55] During the administrative hearing, he simply explained that his acts were misinterpreted and did not constitute sexual harassment.[56]

However, it is clear that Batucan's acts were sexually suggestive. He held respondent's hand, put his hand on her lap and shoulder, pulled her bra strap, joked about making a baby with her, attempted to kiss her, and eventually scored one.[57] These acts are not only inappropriate, but are offensive and invasive enough to result in an unsafe work environment for respondent.

Petitioner emphasizes that it was not the company, but Batucan, that created the hostile work environment. It argues that Batucan is a mere co-employee, not part of its management who may dismiss other employees.[58]

This argument, however, fails to persuade. Batucan cannot be deemed a mere co-employee of respondent. The determination of whether an employee is part of the managerial staff depends on the employee's duties and responsibilities:[59]

> Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or *effectively recommend such managerial actions*. They refer to those whose primary duty consists of the *management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff*. Officers and members of the managerial staff perform work directly related to management policies of their employer and

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[55] *Rollo*, pp. 70, 692, 696.

[56] *Id.* at 239-240.

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

[58] *Id.* at 33, 35, 759, 764.

[59] *Peñaranda v. Baganga Plywood Corp.,* 522 Phil. 640, 650-652 (2006) [Per *C.J.* Panganiban, First Division].

customarily and regularly exercise discretion and independent judgment.[60]

At the very least, Batucan held a supervisory position, which made him part of the managerial staff. Batucan was petitioner's team leader and officer-in-charge in LBC Danao.[61] He was tasked to: (1) "manage and oversee the day to day operation[s] of the branch[;]" (2) keep in custody LBC Danao's daily cash sales; and (3) to deposit it in the company account.[62] Furthermore, respondent was hired under Batucan's endorsement of.[63] He acted as her immediate superior.[64] Respondent had also referred to him as "Sir."[65] There is also no showing that Batucan answered to anyone in LBC Danao. Respondent had to travel to the LBC Head Office to submit her complaint as she had no other superior within LBC Danao to whom she could report Batucan's acts. Thus, Batucan cannot be deemed to be respondent's mere co-employee.

Nonetheless, although Batucan holds a supervisory position, he cannot be deemed to have acted on petitioner's behalf in committing the acts of sexual harassment. It cannot be assumed that all the illegal acts of managerial staff are authorized or sanctioned by the company, especially when it is committed in the manager's personal capacity.

In *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*,[66] this Court ruled that constructive dismissal cannot be assumed if an officer of the company wronged an employee, but the employer did not authorize the act:

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[60] *M+W Zander Philippines, Inc. v. Enriquez,* 606 Phil. 591, 607 (2009) [Per *C.J.* Puno, First Division].

[61] *Rollo*, pp. 237, 239.

[62] *Id.* at 184.

[63] *Id.* at 67.

[64] *Id.*

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

[66] 693 Phil. 646 (2012) [Per *J.* Mendoza, Third Division].

It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee. Unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal.

Assuming *arguendo* that, Gimenez did commit the alleged unlawful acts, still, this fact will not suffice to conclude that constructive dismissal was proper. Contrary to the arguments of Verdadero, Gimenez is not the employer. He may be the "disciplinary officer," but his functions as such, as can be gleaned from the BALGCO Rules and Regulations, do not involve the power or authority to dismiss or even suspend an employee. Such power is exclusively lodged in the BALGCO management. Gimenez remains to be a mere employee of BALGCO and, thus, cannot cause the dismissal or even the constructive dismissal of Verdadero. The employers are BALGCO and its owners, Barney and Rosela. As correctly put by the CA:

> Petitioner BALGCO, however, cannot be blamed for the existing hostile conditions that beset private respondent. *The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon petitioner BALGCO in the absence of any evidence that it promotes such ill-treatment of its lowly employees or has itself committed an overt act of illegality*. . . If private respondent had felt that his continued employment with petitioner BALGCO had been rendered "*impossible, unreasonable or unlikely*" this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney Chito and Rosela Chito.[67] (Citations omitted, emphasis supplied)

This is consistent with the established rule in labor law that the complainant must first establish the employer-employee relationship to be able to claim that he or she was illegally dismissed.[68]

The distinction between the employer and an erring managerial officer is likewise present in sexual harassment cases. Under Section 5 of the Anti-Sexual Harassment Act, the employer is

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[67] *Id.* at 657.

[68] *Marsman & Co., Inc. v. Sta. Rita,* G.R. No. 194765, April 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64161> [Per *J.* Leonardo-De Castro, First Division].

only solidarily liable for damages with the perpetrator in case an act of sexual harassment was reported and *it did not take immediate action on the matter*:

> SECTION 5. *Liability of the Employer, Head of Office, Educational or Training Institution.* — The employer or head of office, educational or training institution shall be *solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon*. (Emphasis supplied)

This provision thus illustrates that the employer must first be informed of the acts of the erring managerial officer before it can be held liable for the latter's acts. Conversely, if the employer has been informed of the acts of its managerial staff, and does not contest or question it, it is deemed to have authorized or be complicit to the acts of its erring employee.

In this case, Batucan cannot be considered to have been acting on petitioner's behalf when he sexually harassed respondent. Thus, respondent cannot base her illegal dismissal complaint against petitioner *solely* on Batucan's acts. However, even if petitioner had no participation in the sexual harassment, it had been informed of the incident. Despite this, it failed to take immediate action on respondent's complaint. Its lack of prompt action reinforced the hostile work environment created by Batucan.

The delay on petitioner's part is clear. The following are the undisputed sequence of events:

(1) On May 1, 2010, the kissing incident occurred.[69]

(2) On May 5, 2010, respondent reported the incident to management in the LBC Head Office.[70] Management suggested that instead of resigning, perhaps she could transfer to another branch. Respondent conceded.

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[69] *Rollo*, p. 69.

[70] *Id.*

(3) On May 8, 2010, she went back to the LBC Head Office with her mother, Araceli Palco, to submit her formal complaint. She also reported the incident to the police.[71]

(4) While respondent was waiting to be transferred to another branch, Araceli Palco noted that Batucan resumed his duties as usual.[72]

(5) On May 14, 2010, Palco tendered her resignation after sensing that management did not act on her complaint.[73] In her resignation letter, she stated that she wanted to look for a more secure workplace.[74] In her exit interview, she ranked the following factors as having caused a strong influence for her to leave: (1) relations with co-workers; (2) job security; (3) how her supervisor relates to her; and (4) her overall perception of the company's ability to deal fairly with its associates.[75]

(6) On June 18, 2010,[76] Batucan received a Notice to Explain—41 days after respondent reported the incident, and one (1) month after she felt constrained to leave her employment.

(7) On June 19, 2010, Batucan submitted his written explanation.[77] It took another month before the administrative hearing for the complaint was conducted.[78] They heard Batucan only on July 20, 2010, the same date respondent filed her illegal dismissal complaint.[79]

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[71] *Id.* See also *Rollo*, pp. 231, 500-501.

[72] *Id.* See also *Rollo*, pp. 495-496, 498.

[73] *Id.*

[74] *Id.* at 232.

[75] *Id.* at 233.

[76] *Id.* at 236.

[77] *Id.* at 239.

[78] *Id.* at 237.

[79] *Id.*

(8) On September 27, 2010, Batucan was suspended for 60 days with last warning—two (2) months after his administrative hearing, and over four (4) months from the time the complaint was filed.[80] During the span of the investigation, there was no showing that Batucan was preventively suspended.

Clearly, there was unreasonable delay on petitioner's part in acting on respondent's complaint. Despite its allegations, there is no showing that petitioner acted on respondent's report before they issued Batucan a Notice to Explain. Thus, the formal investigation is deemed to have commenced only 41 days after the incident was reported. Petitioner likewise offered no explanation as to why it took another month before it held an administrative hearing for the case.

Worse, it took petitioner another two (2) months to resolve the matter, even if Batucan's answers in his administrative hearing did not substantially differ from respondent's allegations. In his administrative hearing, Batucan had reasoned that he was simply trying to give respondent a "*beso*[,]" yet he likewise admitted that he does not usually do that with his team or in the office:

Q: Sabi mo sa inyong written explanation noong June 19, 2010, na kayo po ay masaya lamang kaya mo siya *hinawakan ang kanyang pisngi* [sic] *at sabay halik,* tama po ba ito?
A: Tama po, kasi sa unang pagkakataon nakapunta ako ng opisina ng maaga.

Q: Bakit mo naman hinawakan ang kanyang pisngi at halikan mo sana [sic] iyon noong May 01, 2010?
A: Gusto ko lang sana batiin si Ms. Monica sa pamamagitan ng biso biso.

Q: *Kagawian na ba sa team ninyo or sa office na mag biso biso?*
A: *Hindi, pero sa bahay namin, kaming mag asawa at mga anak ko kahit malaki na sila, mag biso biso pa rin sa pag-alis at pag dating.*

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[80] *Id.* at 242.

Q: *Ibig sabihin nito hindi rin kagawian ninyo ni Ms. Monica Palco na magbiso biso?*
A: *Hindi talaga, pero malambing ako sa kanila, sa lahat ng mga associates.*

Q: Ganun ka ba talaga pag masaya ka, hahalikan mo ang inyong mga kasamahan sa trabaho kahit walang pahintulot sa kanila, lalo na ang mga babae?
A: Hindi naman, isa lang akong masayahing tao at malambing.

Q: Hindi mo ba naisip na ang inyong ginawa ay isang uri ng sexual harassment?
A: Hindi kasi wala akong intention na halikan ang kanyang labi, at alam ko naman na hindi kami magkasintahan at may tao din. (Emphasis supplied)[81]

Given these circumstances, the delay in acting on respondent's case showed petitioner's insensibility, indifference, and disregard for its employees' security and welfare. In failing to act on respondent's complaint with prompt and in choosing to let the resolution of the complaint hang in the air for a long period of time, it had shown that it did not accord her claims the necessary degree of importance, and at best considered it a minor infraction that could wait. Petitioner, it appears, belittled her allegations.

Furthermore, during the investigation, Batucan resumed his duties as usual. In the meantime, respondent consumed her vacation leaves just trying to avoid him while waiting for her transfer to another branch. Petitioner's acts showed that it was respondent who had to change and adjust, and even transfer from her place of work, instead of Batucan. Petitioner thus cannot claim that it did not create a hostile, unfavorable, unreasonable work atmosphere for respondent.

This Court also notes respondent's assertion that petitioner had stated how difficult her allegations were to prove because there *were no witnesses or evidence of bruises*. Respondent's mother, Araceli, stated in her August 5, 2010 Affidavit:[82]

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[81] *Id.* at 239-240.

[82] *Id.* at 275.

12. So again, I accompanied her to the main office to submit her resignation letter. At first I told the HR and the legal staff that we arrived to this decision because we have not found any development in our complaint against Mr. Batucan. I told them why I said so, because after the scheduled day of investigation of Mr. Batucan, still he reported for work. "Isnt it that if somebody is under investigation, he or she will no longer report for work?" That if there is a complaint on that employee, there should be preventive suspension? I said to the legal staff and he nod his head, which means yes. And I added, "Did you know how much money we spend for our transportation every time we come here? We will spend ₱400.00 for two persons and if only one will come, ₱300.00." At least the HR and the legal staff know the reasons why Monica file a resignation;

13. Then I proceeded to the office of the Area Head and listen to his opinion about the resignation of Monica. At first, I told him the things I said to the HR and Legal staff. *He said to me that it's not easy to decide about the case of Monica and Mr. Batucan because there is no evidence such as bruises*. So I answered, "Ngano man diay, kon gakson ka ug hagkan, manlagom diay ka? Ngano man gikulata diay ka? (*Translation:* "Why would that matter, if you are kissed, would you have bruises?") No answer from him and he proceeded to another statement, "*We have no witness so it[']s hard to prove the case*." Again I answered him, "kon magbuhat ka ug binastos sa usa ka babaye, nagkinahanglan diay nga naay magtan-aw? Kanang mga buhata himoon na nimo sa tumang ka pribado nga kanarang kamong duha. Unya mangita ka ug witness? ["] (*Translation:* "If you are doing lascivious acts to a woman, would you need somebody to see you do it? If you are going to do those acts, you will do it where it is secluded as possible, where there are only two of you. And now, you are looking for a witness?" [)] He will not answer me. He said that even though Monica resigned, he will pursue the case but it will take time. He will investigate the co-workers of Monica if it is true that they have beso-beso. I told him "Unsay beso-beso? (Translation: 'What [sic] beso-beso') between man and woman while they are alone? Beso-beso is only acceptable when there is an occasion, for example birthdays, Christmas and New Year, not when no one is around and not in the lips."[83]

While petitioner did not admit to making these statements, in its Reply filed with the Labor Arbiter, it stated:

[83] *Id.* at 275-276.

Complainant alleged that according to Mrs. Palco, individual respondent Libradilla told Mrs. Palco that he cannot immediately act on the case because there was no evidence such as bruises and no witnesses. Based on Mrs. Palco's affidavit however, individual respondent Libradilla never said he cannot immediately act on the case. Without admitting the truth hereof, what individual respondent Libradilla was quoted as saying was that it was not easy to decide the case because there is no evidence such as bruises and furthermore, even with the resignation of complainant, he will pursue the case, but it will take time. . .

. . . .

Moreover, complainant accused individual respondent Libradilla as dismissing respondent's act of kissing complainant on the lips as a mere beso-beso. Based on the abovequoted statement of Mrs. Palco, and without admitting the truth thereof, individual respondent Libradilla assured Mrs. Palco of an investigation. He was never quoted as concluding that respondent Batucan's acts were mere beso-beso.[84]

Petitioner was explicit enough in denying the statement that it would not immediately act on the case. Yet it did not expressly deny stating that the case was difficult to decide because there are no bruises or witnesses.

This Court emphasizes that statements suggesting that a case is weak because there are no witnesses or bruises are highly insensitive to victims of sexual harassment. In stating that a sexual harassment case is hard to prove without witnesses or physical manifestations of force, employers discourage their employees from coming forward with sexual harassment incidents. They foster an environment in which employees feel that their word cannot be taken against the word of the perpetrator. In making these statements, the employer lends more credence to the perpetrator, even without the latter having been questioned or having submitted a written explanation. It allows the employee to feel that the sexual harassment complaint's resolution had already been pre-determined against him or her.

Indifference to complaints of sexual harassment victims may no longer be tolerated. Recent social movements have raised

[84] *Id.* at 301-302.

awareness on the continued prevalence of sexual harassment, especially in the workplace, and has revealed that one of the causes of its pervasiveness is the lack of concern, empathy, and responsiveness to the situation. Many times, victims are blamed, hushed, and compelled to accept that it is just the way things are, and that they should either just leave or move on.

In recognizing the need to address these concerns, the State's policy against sexual harassment has been strengthened through Republic Act No. 11313, otherwise known as the Safe Spaces Act. This law has expanded the definition of gender-based sexual harassment in the workplace[85] and has added to the duties of an employer as to its prevention, deterrence, and punishment. It explicitly requires that complaints be investigated and resolved *within 10 days or less* upon its reporting.[86] It likewise expressly

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[85] Republic Act No. 11313, Sec. 16 provides:

SECTION 16. *Gender-Based Sexual Harassment in the Workplace*. — The crime of gender-based sexual harassment in the workplace includes the following:

(a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;

(b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems;

(c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: *Provided*, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee; and

(d) Information and communication system refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data messages or electronic documents.

[86] Republic Act No. 11313, Sec. 17 provides:

SECTION 17. *Duties of Employers*. — Employers or other persons of

provides for the liability of employers[87] and duties of co-workers as to sexual harassment.[88] The law likewise specifies the

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authority, influence or moral ascendancy in a workplace shall have the duty to prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace. Towards this end, the employer or person of authority, influence or moral ascendancy shall:

(a) Disseminate or post in a conspicuous place a copy of this Act to all persons in the workplace;

(b) Provide measures to prevent gender-based sexual harassment in the workplace, such as the conduct of anti-sexual harassment seminars;

(c) Create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment which shall:

(1) Adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;

(2) Designate a woman as its head and not less than half of its members should be women;

(3) Be composed of members who should be impartial and not connected or related to the alleged perpetrator;

(4) Investigate and decide on the complaints within ten (10) days or less upon receipt thereof;

(5) Observe due process;

(6) Protect the complainant from retaliation; and

(7) Guarantee confidentiality to the greatest extent possible.

(d) Provide and disseminate, in consultation with all persons in the workplace, a code of conduct or workplace policy which shall:

(1) Expressly reiterate the prohibition on gender-based sexual harassment;

(2) Describe the procedures of the internal mechanism created under Section 17 (c) of this Act; and

(3) Set administrative penalties.

[87] Republic Act No. 11313, Sec. 19 provides:

SECTION 19. *Liability of Employers*. — In addition to liabilities for committing acts of gender-based sexual harassment, employers may also be held responsible for:

(a) Non-implementation of their duties under Section 17 of this Act, as provided in the penal provisions; or

(b) Not taking action on reported acts of gender-based sexual harassment committed in the workplace.

Any person who violates subsection (a) of this section, shall upon conviction, be penalized with a fine of not less than Five thousand pesos (₱5,000.00) nor more than Ten thousand pesos (₱10,000.00).

Any person who violates subsection (b) of this section, shall upon conviction, be penalized with a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Fifteen thousand pesos (₱15,000.00).

[88] Republic Act No. 11313, Sec. 18 provides:

confidentiality of proceedings,[89] and the issuance of a restraining order for the offended person.[90] Moreover, it allows local government units to impose heavier penalties on perpetrators.[91]

While this law does not apply to this case as it was enacted after the commission of Batucan's acts, its principles emphasize the need to accord more importance to complaints of sexual harassment and recognize the severity of the offense.[92]

In any case, this Court will not hesitate in granting the affirmative relief that is due respondent under the law. Under

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SECTION 18. *Duties of Employees and Co-Workers*. — Employees and co-workers shall have the duty to:

(a) Refrain from committing acts of gender-based sexual harassment;

(b) Discourage the conduct of gender-based sexual harassment in the workplace;

(c) Provide emotional or social support to fellow employees, co-workers, colleagues or peers who are victims of gender-based sexual harassment; and

(d) Report acts of gender-based sexual harassment witnessed in the workplace.

[89] Republic Act No. 11313, Sec. 26 provides:

SECTION 26. *Confidentiality*. — At any stage of the investigation, prosecution and trial of an offense under this Act, the rights of the victim and the accused who is a minor shall be recognized.

[90] Republic Act No. 11313, Sec. 27 provides:

SECTION 27. *Restraining Order*. — Where appropriate, the court, even before rendering a final decision, may issue an order directing the perpetrator to stay away from the offended person at a distance specified by the court, or to stay away from the residence, school, place of employment, or any specified place frequented by the offended person.

[91] Republic Act No. 11313, Sec. 30 provides:

SECTION 30. *Imposition of Heavier Penalties*. — Nothing in this Act shall prevent LGUs from coming up with ordinances that impose heavier penalties for the acts specified herein.

[92] Republic Act No. 11313, Sec. 2 provides:

SECTION 2. *Declaration of Policies*. — It is the policy of the State to value the dignity of every human person and guarantee full respect for human rights. It is likewise the policy of the State to recognize the role of women in nation-building and ensure the fundamental equality before the law of women and men. The State also recognizes that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.

the Anti-Sexual Harassment Act, she may file a separate action for any affirmative relief for sexual harassment:

> SECTION 6. *Independent Action for Damages*. — Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

Petitioner's insensibility to respondent's sexual harassment case is a ground for constructive dismissal. In this instance, it cannot be denied that respondent was compelled to leave her employment because of the hostile and offensive work environment created and reinforced by Batucan and petitioner. She was thus clearly constructively dismissed.

WHEREFORE, in view of the foregoing, the Petition is **DENIED.** This Court of Appeals May 13, 2014 Decision and February 10, 2015 Resolution are **AFFIRMED.** Respondent Monica C. Palco is found to have been constructively dismissed. LBC Express-Vis, Inc., is hereby adjudged liable to Monica C. Palco for separation pay, backwages, moral damages, exemplary damages, and attorney's fees, as awarded by the National Labor Relations Commission in its Decision dated May 31, 2012. It is likewise held solidarily liable with Arturo A. Batucan for any other damages the latter is held liable for on account of his acts of sexual harassment against respondent.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Delos Santos,*[*] *JJ.,* concur.

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[*] Additional Member per S.O. No. 2753.

SECOND DIVISION

[G.R. No. 217151. February 12, 2020]

DRS. REYNALDO ANG and SUSAN CUCIO-ANG, *petitioners, vs.* **ROSITA DE VENECIA, ANGEL MARGARITO D. CARAMAT, JR., EMMA TRINIDAD CARAMAT, JOSE MARI B. SOTO, JEN LEE G. VILVAR,**[1] **and THE CITY ENGINEER'S OFFICE OF THE CITY OF MAKATI,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; OFFICE OF THE COURT ADMINISTRATOR (OCA) CIRCULAR NO. 11-2014; DOES NOT OPERATE TO *IPSO FACTO* DISMISS ALL CONSTRUCTION DISPUTES PENDING BEFORE THE REGIONAL TRIAL COURTS BUT INSTEAD DIRECTS ALL PRESIDING JUDGES TO ISSUE ORDERS DISMISSING SUCH SUITS. —** OCA Circular No. 111-2014 reiterates an earlier circular which directs all courts to dismiss all construction disputes pending with their *salas*. x x x It is clear x x x that OCA Circular No. 111-2014 does not operate to *ipso facto* dismiss all construction disputes pending before the regional trial courts; but instead *directs* all presiding judges to issue orders dismissing such suits.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AUTHORIZES DIRECT RESORT FROM THE REGIONAL TRIAL COURTS TO THE SUPREME COURT ON PURE QUESTIONS OF LAW; CASE AT BAR. —** Rule 45, Section 1 of the Rules of Court authorizes direct resort from the Regional Trial Courts to this Court on pure questions of law. In *Uy v. Chua*, this Court gave due course to a Petition for Review against a Resolution of the RTC on the issue of *res judicata*. x x x The present petition does not raise any factual question. The petition poses a sole question: Which tribunal has jurisdiction over the suit for

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[1] Also referred to as "Ven Lee G. Vilvar" in some parts of the record.

damages filed by the spouses Ang? This question does not involve any determination or finding of truth or falsehood of the factual allegations raised by the spouses Ang; but instead concerns the applicability of the construction arbitration laws to the suit filed by the spouses. Direct resort to this Court is therefore justified.

3. **ID.; ID.; JURISDICTION; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); THREE REQUISITES FOR ACQUISITION OF JURISDICTION BY THE CIAC; CASE AT BAR. —** The jurisdiction of the CIAC is provided in Section 4 of Executive Order No. 1008, or the Construction Industry Arbitration Law. x x x This provision lays down three requisites for acquisition of jurisdiction by the CIAC, first: a dispute arising from or connected with a construction contract; second, such contract must have been entered into by parties involved in construction in the Philippines; and third, an agreement by the parties to submit their dispute to arbitration. Given the allegations in the spouses Ang's complaint and the issues raised in their petition before this Court, the foregoing requisites obviously do not apply to the case at bar for the simple reason that there is no construction contract between the spouses Ang and the respondents. The spouses Ang's cause of action does not proceed from any construction contract or any accessory contract thereto but from the alleged damage inflicted upon their property by virtue of respondents' construction activities.

4. **ID.; ID.; ID.; ID.; PROVISIONS OF LAW WHICH DEFINE THE JURISDICTION OF A QUASI-JUDICIAL AGENCY MUST BE VIEWED IN THE LIGHT OF THE NATURE AND FUNCTION OF THE PARTICULAR AGENCY WHOSE JURISDICTION IS SOUGHT TO BE INVOKED; CASE AT BAR. —** Provisions of law which define the jurisdiction of a quasi-judicial agency *"must be viewed in the light of the nature and function"* of the particular agency whose jurisdiction is sought to be invoked. x x x Thus, the jurisdiction of the CIAC must also be viewed in the light of the legislative rationale behind the tribunal's creation. x x x It is glaringly apparent from the [whereas clauses of E.O. No. 1008, and Section 2 thereof] that the CIAC was established to serve as a tribunal which will expeditiously resolve disputes *within* the construction industry. The CIAC was formed to resolve disputes involving

transactions and business relationships *within* the construction industry; and it is for this reason that Section 4 prescribes that the CIAC shall only have jurisdiction over "disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines." The foregoing phrase limits the jurisdiction of the CIAC not only as to subject matter jurisdiction but also as to jurisdiction over the parties. Thus, the CIAC can acquire jurisdiction if the dispute arises from or is connected with the construction industry, both parties to such dispute are involved in construction in the Philippines, and they agree to submit their dispute to arbitration.

5. ID.; ID.; ID.; ID.; WHILE CIAC MAY HAVE JURISDICTION OVER NON-CONTRACTUAL DISPUTES, SUCH DISPUTES MUST STILL ARISE FROM OR BE CONNECTED WITH A CONSTRUCTION CONTRACT ENTERED INTO BY THE PARTIES IN THE PHILIPPINES WHO AGREE TO SUBMIT SUCH DISPUTES TO ARBITRATION; CASE AT BAR. — Meanwhile, respondent Vilvar, citing Sections 35 and 21 of the Republic Act No. 9285 asserts that CIAC jurisdiction is not limited to contractual relations. However, it has already been demonstrated that the presence of a construction contract is an essential requisite for the CIAC to acquire jurisdiction. While it is indeed true that Sections 35 and 21 of the ADR Law confirm CIAC jurisdiction over construction disputes regardless of whether or not they arise from a contract, it must be noted that Section 21 only contemplates ***"matters arising from all relationships of a commercial nature."*** Therefore, while CIAC may have jurisdiction over non-contractual disputes (for instance, a tortious breach of contract), these disputes must still arise from or be connected with a construction contract entered into by parties in the Philippines who agree to submit such disputes to arbitration, which is not the case here. Furthermore, the relationship between the parties in this case can hardly be considered commercial in nature. Commercial acts have been defined as those acts "*which tend to the satisfaction of necessities by means of exchange or of the rendition of services, effected with a purpose of gain.*" Here, the only relation between the spouses Ang and respondent Caramats is that they are adjoining lot owners; and the spouses do not even have any relation at all to respondents Soto and Vilvar, other than that involving the alleged damage to the Ang residence. The only nexus between the spouses Ang and the

respondents in this case is spatial in nature, and this relation is not enough to vest jurisdiction in the CIAC.

6. **ID.; ID.; ID.; REGIONAL TRIAL COURTS; HAVE THE POWER TO RECEIVE AND EVALUATE EVIDENCE FIRST-HAND; DISPUTES INVOLVING TECHNICAL MATTERS DO NOT DIVEST THE TRIAL COURT OF ITS JURISDICTION; CASE AT BAR. —** Both the trial court and the respondents further justify CIAC jurisdiction over the case at bar by citing the construction tribunal's expertise in handling factual circumstances involving construction matters. Such justification loses sight of the fact that a trial court's main function is passing upon questions of fact. Time and again, this Court has held that factual matters are best ventilated before the trial court, as it has the power to receive and evaluate evidence first-hand. That the dispute at bar involves technical matters does not automatically divest the trial court of its jurisdiction. We remind the court *a quo* that it has ample means of handling such technical matters, as it may utilize expert testimony or appoint commissioners to handle the technical matters involved in the suit. The core issue of this suit is whether or not the construction activities of respondents caused the damage to the spouses Ang's house; and the resolution of this mixed question of fact and law is well within the jurisdiction of the court *a quo* to decide.

APPEARANCES OF COUNSEL

Mendoza Navarro-Mendoza Partners for petitioners.
Nicolas & De Vega Law Offices for respondents Sps. Caramat.
Lapuz and Associates Law Office for respondent Soto, *et al.*
Dapula Law Office for respondent Ven Lee G. Vilvar.
Amando A. Fabio, Jr. for respondent City Engineer's Office of Makati City.

D E C I S I O N

REYES, A. JR., *J.*:

Does the Construction Industry Arbitration Commission (CIAC) have jurisdiction over a suit filed by a homeowner whose

house was damaged by a construction project undertaken by her neighbor?

This is the question posed by the present Petition for Review[2] on *certiorari* under Rule 45 of the Revised Rules of Court. It assails the November 12, 2014[3] and February 20, 2015[4] Orders of the Regional Trial Court (RTC) of Makati City, Branch 134, in Civil Case No. 09-510, which denied the Motion to Retain Jurisdiction and to Proceed with Trial and the Motion for Reconsideration filed by Reynaldo Ang and Susan Cucio-Ang.

The Complaint states that petitioners Reynaldo Ang and Susan Cucio-Ang (spouses Ang) own a two-storey residential house and lot located at 216 Sunrise St., *Barangay* Singkamas, Makati City. In 2008, their neighbor, respondent Angel Margarito D. Caramat, Jr. (Angel) started construction on a five-storey commercial building on the adjoining lot.[5] In 2009, the spouses Ang noticed cracks in their walls and misalignment of their gate and several doors in their house. Suspecting that these were due to the construction works by Angel in the adjacent lot, the spouses Ang hired an architect to survey their house. The architect reported that the foundation of their house was exposed and moved, as the foundation of the five-storey building being constructed by Angel required much deeper excavation compared to their house.[6]

The spouses Ang referred the matter to the *barangay* officials of Singkamas, which ordered the parties to appear for a mediation hearing on April 2, 2009. Angel agreed to make all necessary repairs in the spouses Ang's property and to provide preventive measures against further damage to their house.[7] However, the

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[2] *Rollo*, pp. 41-56.

[3] *Id.* at 16; rendered by Judge Perpetua T. Atal-Paño (now Associate Justice of the Court of Appeals).

[4] *Id.* at 83-86.

[5] *Id.* at 91.

[6] *Id.* at 97.

[7] *Id.*

actual work done was limited to repair of the spouses Ang's misaligned garage door and installation of braces at their glass door. Unsatisfied with said measures, the spouses Ang sought *barangay* mediation again, but Angel and respondent Jose Mari B. Soto (Soto), who works for Angel's contractor, MC Soto Construction, refused to conduct additional repairs on the Ang residence, asserting that the damage thereto was caused by weaknesses in the house's foundation.[8] Another attempt at *barangay* mediation failed, prompting the spouses Ang to refer their complaint to the respondent City Engineer of Makati.[9] The City Engineer issued a formal demand letter ordering Angel and Soto to comply with the requirements of the National Building Code, to no avail. Without any action from Angel and Soto, the spouses Ang sought and obtained a certification to file action from the *barangay*.[10]

After their final demand went unheeded, the spouses Ang filed the instant Complaint on June 15, 2009, against Angel, Soto, and respondents Jen Lee Vilvar (another architect of MC Soto Construction), Rosita de Venecia, Emma Trinidad Caramat (the alleged owners of the lot where Angel's building was being constructed), and the City Engineer of Makati. The complaint was docketed as Civil Case No. 09-510 and eventually raffled to Branch 134 of the Makati City RTC.[11] On September 29, 2009, the Caramats sought leave to file a third-party complaint against Soto and MC Soto Construction. Pre-trial was conducted and the spouses Ang began presentation of their evidence on August 27, 2014.[12]

However, during the pendency of the case, OCA Circular No. 111-2014 was promulgated, which reiterated an earlier directive for all trial courts to dismiss all pending cases involving construction disputes for referral to the CIAC. The court *a quo*,

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[8] *Id.* at 98-99.

[9] *Id.* at 99-100.

[10] *Id.* at 101.

[11] *Id.* at 87-115.

[12] *Id.* at 125.

after admitting that it was not aware of the full scope of the CIAC's jurisdiction, suspended the proceedings and instructed the parties to await further orders. In response, the spouses Ang filed on November 17, 2014 a Manifestation with Motion to Retain Jurisdiction and to Proceed with Trial.[13] However, the trial court had already issued an Order dated November 12, 2014,[14] which dismissed the case and referred it to the CIAC, prompting the spouses Ang to file a Manifestation and/or Motion for Reconsideration with Consolidated Reply dated December 17, 2014.[15]

On February 20, 2015, the trial court issued the assailed Order[16] denying both motions and affirming the dismissal of the case, *viz.*:

> **WHEREFORE**, premises considered, the Manifestation with Motion to Retain Jurisdiction and to proceed with Trial as well as the Motion for Reconsideration filed by plaintiffs Drs. Reynaldo Ang and Susan Cucio-Ang are hereby **DENIED**. The Order dated 12 November 2014 issued by this Court stands and the instant case is hereby **DISMISSED and REFERRED** to the Construction Industry Arbitration Commission for proper adjudication.
>
> **SO ORDERED.**[17]

The spouses Ang thus filed the present Petition for Review on April 27, 2015, within the extended period granted by this Court.[18] The petition raises two issues: first, whether the CIAC has jurisdiction over an ordinary civil case for damages filed by a non-party to a construction contract; and second, whether the trial court erred in dismissing the spouses Ang's suit and referring the same to the CIAC.

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[13] *Id.* at 11-15.

[14] *Id.* at 16.

[15] *Id.* at 17-32.

[16] *Id.* at 230-233.

[17] *Id.* at 233.

[18] *Id.* at 39.

I

In their Comment,[19] respondents Angel and Emma Caramat argue that the spouses Ang have lost their right to question the dismissal of their case, since they were unable to timely file a Motion for Reconsideration from the November 12, 2014 order. The Caramats argue that the dismissal was made in open court; and therefore, the period to file a Motion for Reconsideration therefrom lapsed on November 27, 2014, without any Motion for Reconsideration filed by the spouses Ang.

In their Reply[20] to the Caramats' Comment, the spouses Ang argued that the case was not dismissed during the November 12, 2014 hearing. Instead, the presiding judge merely informed the parties of the court's receipt of OCA Circular No. 111-2014, which mandated all trial courts to dismiss all pending cases involving construction disputes. No final ruling on the dismissal of the case was made in open court on that date, and it was for those reasons that the spouses Ang filed their Manifestation with Motion to Retain Jurisdiction the very next day, anticipating that the presiding judge will soon issue a formal order of dismissal. The spouses Ang further argue that they only received a copy of November 12, 2014 order on December 12, 2014; hence their Manifestation and/or Motion for Reconsideration filed on December 17, 2014 was timely filed.[21]

OCA Circular No. 111-2014 reiterates an earlier circular which directs all courts to dismiss all construction disputes pending with their *salas*. Specifically, it provides the following:

x x x x x x x x x

In view of the foregoing, all concerned are hereby DIRECTED to (1) DISMISS, effective immediately, all pending construction disputes with arbitration clauses of the contending parties not later than the pre-trial conference, and thereafter REFER the same to the *Construction Industry Arbitration Commission (CIAC)* for their proper arbitration

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[19] *Id.* at 182-208.

[20] *Id.* at 209-222.

[21] *Id.* at 211.

thereon, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute; and (2) SUBMIT also within fifteen (15) days from notice, an inventory of such construction disputes filed in their respective courts, to the Court Management Office, Office of the Court Administrator, using the attached Form No. 1.

Strict compliance is hereby enjoined.

It is clear from the foregoing that OCA Circular No. 111-2014 does not operate to *ipso facto* dismiss all construction disputes pending before the regional trial courts; but instead *directs* all presiding judges to issue orders dismissing such suits. This Court is more inclined to agree with the spouses Ang's version of the story, which is corroborated by an Order[22] of the court *a quo* dated November 21, 2014 stating that:

Plaintiffs through counsel filed a "Manifestation with Motion to Retain Jurisdiction and to Proceed with Trial" and the latter's counsel Atty. Ocampo appeared. The counsels for defendants Soto and also for Makati City Engineers [sic] Office including the defendant Caramats are hereby directed to file their comment/opposition to the said motion within a period of ten (10) days from today, after which, the matter would be submitted for resolution.

SO ORDERED.[23]

The trial court's issuance of the aforequoted order reveals two facts: 1) the trial court's receipt of the spouses Ang's Manifestation and Motion; and 2) its intention to rule upon the merits thereof. It likewise evinces the trial court's continued exercise of jurisdiction over the case and its intent to hear the parties on the issue of whether or not the case should be dismissed. That this was the intention of the trial court is further made evident in the assailed February 20, 2015 Order.[24] Said Order states that it was meant to resolve the spouses Ang's

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[22] *Id.* at 229.

[23] *Id.*

[24] *Id.* at 230-233.

Manifestation and Motion and the comments filed thereupon by the defendants. It discusses the arguments advanced by the parties in support of their respective positions on the dismissal of the case; and states that "*the Court resolves to deny the Motion to Retain Jurisdiction and Proceed with Trial*."[25] Given these circumstances, this Court cannot agree with the Caramats' assertion that the dismissal of the case was formalized during the November 12, 2014 hearing.[26]

At any rate, even assuming *arguendo* that the dismissal was indeed formalized in open court during the November 12, 2014 hearing, the Manifestation with Motion to Retain Jurisdiction and to Proceed with Trial[27] filed by the spouses Ang on November 17, 2014 should be considered a Motion for Reconsideration. The November 12, 2014 Order of the court *a quo* curtly states the following:

> When this case was called for the continuation of cross and re-direct examination of the plaintiff's witness Rufino Malonjao, the Court informed the parties that it has received a directive from the Supreme Court that all cases involving construction disputes have to be referred to CIAC.
>
> In view thereof, this case is hereby ordered Dismissed and let the records of the same be referred to the Construction Industry Arbitration Commission (CIAC) for proper disposition.
>
> SO ORDERED.[28]

Said Manifestation with Motion directly addresses the statements made in the aforequoted Order and sets forth arguments against the dismissal of the case for referral to the CIAC. Copies thereof were likewise served upon the adverse parties.[29] As such, the Manifestation and Motion satisfies the

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[25] *Id.* at 232.

[26] *Id.* at 191-192.

[27] *Id.* at 11-15.

[28] *Id.* at 16.

[29] *Id.* at 15.

requirements of Rule 37, Section 2[30] for a valid Motion for Reconsideration, and must be considered as such.

II

Rule 45, Section 1 of the Rules of Court authorizes direct resort from the Regional Trial Courts to this Court on pure questions of law. In *Uy v. Chua*,[31] this Court gave due course to a Petition for Review against a Resolution of the RTC on the issue of *res judicata*. Similarly, in *Philippine Veterans Bank v. Monillas*,[32] this Court allowed a direct recourse from an RTC Decision on the question of "whether the prior registered mortgage and the already concluded foreclosure proceedings should prevail over the subsequent annotation of the notices of *lis pendens* on the lot titles," *viz.*:

> [W]e declare that the instant petition [for review], contrary to respondent's contention, is the correct remedy to question the challenged issuances. Under the Rules of Court, a party may directly appeal to this Court from a decision of the trial court only on pure questions of law. A question of law lies, on one hand, when the doubt or difference arises as to what the law is on a certain set of facts; on the other hand, a question of fact exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Here, the facts are not disputed; the controversy merely relates to the correct application of the law or jurisprudence to the undisputed facts.[33]

The present petition does not raise any factual question. The petition poses a sole question: Which tribunal has jurisdiction

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[30] Rule 37, Section 2 states pertinently that, "The motion [for reconsideration] shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. x x x A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

[31] 616 Phil. 768 (2009).

[32] 573 Phil. 384 (2008).

[33] *Id.* at 389-390.

over the suit for damages filed by the spouses Ang? This question does not involve any determination or finding of truth or falsehood of the factual allegations raised by the spouses Ang; but instead concerns the applicability of the construction arbitration laws to the suit filed by the spouses. Direct resort to this Court is therefore justified.

III

In dismissing the case for referral to the CIAC, the trial court cited Section 2.1.1 of the CIAC Rules and ratiocinated that the case at bar involves "defects in the construction and excavation of the building";[34] hence the CIAC has jurisdiction over the case. The trial court further justified its ruling by citing the need to declog its dockets and emphasizing the CIAC's expertise in construction matters; which, to the trial court's mind, would be most advantageous to all parties concerned in the resolution of the case.

In their respective Comments,[35] respondents Angel and Emma Caramat, Soto, and Vilvar assert that the dispute is within the jurisdiction of the CIAC because the factual matters involved in the suit pertain to building and engineering matters that require the technical expertise of the CIAC to resolve; while the City Engineer of Makati concurred in the position of the spouses Ang.[36]

The jurisdiction of the CIAC is provided in Section 4 of Executive Order No. 1008, or the Construction Industry Arbitration Law, *viz.*:

SECTION 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over **disputes arising from, or connected with, contracts entered into by <u>parties involved in construction</u> in the Philippines**, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board**

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[34] *Rollo*, p. 86.

[35] *Id.* at 182-208; 236-251; 309-316.

[36] *Id.* at 341-348.

to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

This provision lays down three requisites for acquisition of jurisdiction by the CIAC, first: a dispute arising from or connected with a construction contract; second, such contract must have been entered into by parties involved in construction in the Philippines; and third, an agreement by the parties to submit their dispute to arbitration.[37] Given the allegations in the spouses Ang's complaint and the issues raised in their petition before this Court, the foregoing requisites obviously do not apply to the case at bar for the simple reason that there is no construction contract between the spouses Ang and the respondents. The spouses Ang's cause of action does not proceed from any construction contract or any accessory contract thereto but from the alleged damage inflicted upon their property by virtue of respondents' construction activities. In fact, respondent Soto admitted in his Comment that "[a] scrupulous examination of the allegations [in the complaint] unveils the fact that [the spouses Ang's] cause of action springs **not from a violation of the provisions of the Construction Agreement between the Sotos and the Caramats, but from the private respondents' allegedly 'destructive construction' and 'erroneous practices' in constructing the Caramats' 5-storey building**."[38] Moreover, the spouses did not agree, and even rejected the referral of the dispute to the CIAC.

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[37] See *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*, 644 Phil. 634, 642 (2010); Arthur P. Autea, *Notes and Cases on Commercial Arbitration under Philippine Law 273* (2013).

[38] *Rollo*, p. 238.

Provisions of law which define the jurisdiction of a quasi-judicial agency "*must be viewed in the light of the nature and function*" of the particular agency whose jurisdiction is sought to be invoked.[39] In *Engr. Lim, et al. v. Hon. Gamosa, et al.*,[40] this Court, in delimiting the bounds of the jurisdiction [of] the National Commission on Indigenous Peoples, held that:

x x x the expertise and competence of the NCIP cover only the implementation and the enforcement of the IPRA and customs and customary law of specific ICCs/IPs; the NCIP does not have competence to determine rights, duties and obligations of non-ICCs/IPs under other laws although such may also involve rights of ICCs/IPs. Consistently, the wording of Section 66 [of the IPRA] that "the NCIP shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs" plus the proviso [in Section 66 of the IPRA] necessarily contemplate a limited jurisdiction over cases and disputes between IPs/ICCs.[41]

Likewise, in *Union Glass & Container Corp., et al. v. SEC, et al.*,[42] this Court laid down the proper paradigm for the delineation of the SEC's jurisdiction, thus:

This grant of jurisdiction must be viewed in the light of the nature and function of the SEC under the law. Section 3 of PD No. 902-A confers upon the latter "absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines . . ." The principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.

It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its

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[39] *Union Glass & Container Corp., et al. v. SEC, et al.*, 211 Phil. 222 (1983).

[40] 774 Phil. 31 (2015).

[41] *Id.* at 65.

[42] *Supra* note 39.

jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.[43]

Thus, the jurisdiction of the CIAC must also be viewed in the light of the legislative rationale behind the tribunal's creation. The whereas clauses of E.O. No. 1008, and Section 2 thereof, state the following:

WHEREAS, the **construction industry** provides employment to a large segment of the national labor force and is a leading contributor to the gross national product;

WHEREAS, it is of vital necessity that continued growth towards national goals shall not be hindered by **problems arising from, or connected with**, the **construction industry**;

WHEREAS, there is a need to establish an **arbitral machinery to settle to such disputes** expeditiously in order to maintain and promote a healthy partnership between the government and the private sector in the furtherance of national development goals;

WHEREAS, Presidential Decree No. 1746 created the Construction Industry Authority of the Philippine (CIAP) to exercise centralized authority for the optimum development of the **construction industry** and to enhance the growth of the **local construction industry**;

WHEREAS, among the implementing agencies of the CIAP is the Philippine Domestic Construction Board (PDCB) which is specifically authorized by Presidential Decree No. 1746 to "**adjudicate and settle claims and disputes in the implementation of public and private construction contracts** and for this purpose, formulate and adopt the necessary rules and regulations subject to the approval of the President";

x x x x x x x x x

SECTION 2. Declaration of Policy. — It is hereby declared to be the policy of the State to encourage the early and expeditious settlement of disputes in the Philippine **construction industry**. (Emphases and underscoring supplied.)

It is glaringly apparent from the foregoing that the CIAC was established to serve as a tribunal which will expeditiously

[43] *Id.* at 230.

resolve disputes *within* the construction industry. The CIAC was formed to resolve disputes involving transactions and business relationships *within* the construction industry; and it is for this reason that Section 4 prescribes that the CIAC shall only have jurisdiction over "disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines." The foregoing phrase limits the jurisdiction of the CIAC not only as to subject matter jurisdiction but also as to jurisdiction over the parties. Thus, the CIAC can acquire jurisdiction if the dispute arises from or is connected with the construction industry, both parties to such dispute are involved in construction in the Philippines, and they agree to submit their dispute to arbitration.

Thus, it is erroneous to consider a suit for damages caused by construction activities on an adjoining parcel of land as a "dispute arising from or connected with a construction contract," simply because an adjoining owner is not a party to a construction contract. Furthermore, such a construction of Executive Order (E.O.) No. 1008 would unduly and excessively expand the scope of CIAC jurisdiction to include cases that are essentially quasi-delictual or tortious in nature: cases that are within the exclusive jurisdiction of the trial courts.

Both the court *a quo* and the respondents rely on Rule 2.1.1 of the CIAC Rules, which states that:

> 2.1.1 The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Read together with the other parts of Rule 2, it becomes apparent that Rule 2.1.1 is merely an enumeration of the situations in which disputes cognizable by the CIAC may arise. It merely supplements the preceding paragraph (Rule 2.1) by illustrating specific instances of disputes cognizable by the CIAC.[44] Rule

[44] *Fort Bonifacio Development Corp. v. Domingo*, 599 Phil. 554 (2009).

2.1.1 is not meant, and should not be construed, to supplant the constitutive elements of the CIAC's jurisdiction as laid down in Rule 2.1 and the first paragraph of Section 4 of E.O. No. 1008. It follows therefore, that not all disputes which may be categorized as falling under Rule 2.1.1 are cognizable by the CIAC. Stated differently, mere allegation of construction-related factual matters does not serve to automatically vest jurisdiction in the CIAC.

III. A.

Soto and the Caramats, in their respective Comments, argue that Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from or connected with construction contracts. To support this assertion, they cite the cases of *The Manila Insurance Co., Inc. v. Sps. Amurao*,[45] *Excellent Quality Apparel, Inc. v. Win Multi Rich Builders, Inc.*,[46] *Fort Bonifacio Development Corp. v. Domingo*,[47] and *Gammon Philippines, Inc. v. Metro Rail Transit Dev't. Corp.*[48] Respondents' reliance on these cases to support the jurisdiction of the CIAC over the case at bar is misplaced.

In *Manila Insurance*, the Court did state that "*Section 4 of Executive Order (E.O.) No. 1008, otherwise known as the Construction Industry Arbitration Law, is broad enough to cover any dispute arising from, or connected with construction contracts, whether these involve mere contractual money claims or execution of the works*."[49] However, this pronouncement must be read within the context of the factual circumstances in the case. *Manila Insurance* involved a collection suit filed by a party to a construction agreement against the surety companies who put up the performance bonds for the project, after the

[45] 701 Phil. 557 (2013).

[46] 598 Phil. 94 (2009).

[47] *Supra* note 44.

[48] 516 Phil. 561 (2006).

[49] *The Manila Insurance Co., Inc. v. Sps. Amurao, supra* note 45, at 558-559.

contractor failed to complete the project.[50] It was likewise established that the construction agreement therein included an arbitration clause.[51] Therefore, the three requisite elements of CIAC jurisdiction were present; and the Court correctly held that "*[t]he fact that petitioner is not a party to the CCA cannot remove the dispute from the jurisdiction of the CIAC because the issue of whether respondent-spouses are entitled to collect on the performance bond, as we have said, is a dispute arising from or connected to the CCA.*"[52] The fact that the surety companies were not direct parties to the construction contract is of no moment, because their obligations as sureties are inseparable from the obligation of the contractor. The claim of the client against the contractor's performance bond is obviously a dispute which arises from and is connected with the construction contract which it is meant to secure. These factual matters distinguish the case from the present one, which involves no contract whatsoever between respondents and the spouses Ang.

Likewise, while this Court in *Gammon Philippines* did state that "*the jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof,*"[53] this statement must again be appreciated within the factual milieu of the case. The case involved a dispute between a client and the contractor, Gammon, who was unable to complete the works after the client changed the specifications thereof. The appellate court held that the CIAC had no jurisdiction over the case since the original contract between Gammon and its client had been extinguished by novation when the client changed the project specifications. Thus, the Court said:

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[50] *Id.* at 559-560.

[51] *Id.* at 566-567.

[52] *Id.* at 567-568.

[53] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp., supra* note 48, at 573.

At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. The jurisdiction of the CIAC is *not* over the contract but the *disputes* which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.[54]

A close reading of the facts in *Gammon Philippines* shows that it does not support the proposition advanced by the Caramats: that the CIAC has jurisdiction over *any dispute connected with a construction contract*. In fact, the dispute in *Gammon Philippines* directly arose from a construction contract, albeit one that was later novated. Likewise, the contract therein was entered into by the disputing parties themselves; and such contract contains an arbitration clause.

Meanwhile, *Excellent Quality Apparel* revolved around the implications of the contractor's shift from a sole proprietorship to a corporation. It was indisputably proven that there was a construction contract with an arbitration clause which was entered into by the parties in dispute.[55] Lastly, in *Fort Bonifacio Development*, the suit was filed by an assignee of the contractor's receivables, against the client with whom the contractor entered the construction contract.[56] This Court held that the CIAC had *no jurisdiction*, as the assignee's cause of action arose not from the construction contract but from the non-payment of the contractor's debts to the assignee.

A thorough reading of the foregoing cases cited by the respondents only bolsters the principle that for the CIAC to acquire jurisdiction, three things must concur: there must be a construction contract; there must be a dispute arising from or

[54] *Id.*

[55] *Supra* note 46, at 97-100.

[56] *Supra* note 44, at 556-560; 562.

connected therewith between the parties, and said parties must agree to submit their dispute to arbitration. Furthermore, the cited cases *even* refute the proposition that the CIAC has jurisdiction over the case filed by the spouses Ang against the respondents, because in *Manila Insurance*, *Excellent Quality Apparel*, and *Gammon Philippines*, all the requisite elements for the acquisition of jurisdiction by the CIAC are present. The case at bar has more similarities with *Fort Bonifacio Development*, as they both involve obligations that are somewhat related to a construction activity but not directly related to a construction contract. This disquisition from said case is illuminating:

> Respondent's claim is not even construction-related at all. *Construction* is defined as referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment. **Petitioner's insistence on the application of the arbitration clause of the Trade Contract to respondent is clearly anchored on an erroneous premise that respondent is seeking to enforce a right under the same.** Again, the right to the receivables of LMM Construction from petitioner under the Trade Contract is not being impugned herein. In fact, petitioner readily conceded that LMM Construction still had receivables due from petitioner, and respondent did not even have to refer to a single provision in the Trade Contract to assert his claim. What respondent is demanding is that a portion of such receivables amounting to P804,068.21 should have been paid to him first before the other creditors of LMM Construction, which, clearly, does not require the CIAC's expertise and technical knowledge of construction.
>
> The adjudication of Civil Case No. 06-0200-CFM necessarily involves the application of pertinent statutes and jurisprudence to matters such as obligations, contracts of assignment, and, if appropriate, even preference of credits, a task more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.[57]

Like the respondent in *Fort Bonifacio Development*, the spouses Ang do not seek to enforce a right under the construction

[57] *Id.* at 564.

contract between the Caramats and respondents Soto and Vilvar. Rather, the spouses are enforcing their right to be compensated from the alleged damage inflicted upon their property by the construction activities of the Caramats. This right, while directly related to the construction activities of respondents, is not a right under the construction contract entered into among the respondents. Hence, the enforcement of such right lies not with the CIAC but with the trial courts.

Meanwhile, respondent Vilvar, citing Sections 35 and 21 of the Republic Act No. 9285[58] asserts that CIAC jurisdiction is not limited to contractual relations. However, it has already been demonstrated that the presence of a construction contract is an essential requisite for the CIAC to acquire jurisdiction. While it is indeed true that Sections 35 and 21 of the ADR Law confirm CIAC jurisdiction over construction disputes regardless of whether or not they arise from a contract, it must be noted that Section 21 only contemplates "***matters arising from all relationships of a commercial nature***." Therefore, while CIAC may have jurisdiction over non-contractual disputes (for instance, a tortious breach of contract), these disputes must still arise from or be connected with a construction contract entered into by parties in the Philippines who agree to submit such disputes to arbitration, which is not the case here. Furthermore, the relationship between the parties in this case can hardly be considered commercial in nature. Commercial acts have been defined as those acts "*which tend to the satisfaction of necessities by means of exchange or of the rendition of services, effected with a purpose of gain*."[59] Here, the only relation between the spouses Ang and respondent Caramats is that they are adjoining lot owners; and the spouses do not even have any relation at all to respondents Soto and Vilvar, other than that involving the alleged damage to the Ang residence. The only nexus between the spouses Ang and

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[58.] Also known as the "Alternative Dispute Resolution Act of 2004" or the ADR Law.

[59] 1 Tolentino, *Comments and Jurisprudence on the Commercial Laws of the Philippines 1* (1958), citing 2 Estasen, Derecho Mercantil 9.

the respondents in this case is spatial in nature, and this relation is not enough to vest jurisdiction in the CIAC.

III. B.

Both the trial court and the respondents further justify CIAC jurisdiction over the case at bar by citing the construction tribunal's expertise in handling factual circumstances involving construction matters. Such justification loses sight of the fact that a trial court's main function is passing upon questions of fact. Time and again, this Court has held that factual matters are best ventilated before the trial court, as it has the power to receive and evaluate evidence first-hand.[60] That the dispute at bar involves technical matters does not automatically divest the trial court of its jurisdiction. We remind the court *a quo* that it has ample means of handling such technical matters, as it may utilize expert testimony[61] or appoint commissioners[62] to handle the technical matters involved in the suit. The core issue of this suit is whether or not the construction activities of respondents caused the damage to the spouses Ang's house; and the resolution of this mixed question of fact and law is well within the jurisdiction of the court *a quo* to decide.

This Court remains cognizant of the State policy to promote and encourage arbitration and alternative dispute resolution; and its importance in achieving speedy justice and decongestion of court dockets. This policy is essentially a bias in favor of arbitration. However, such bias is not applicable when the dispute is clearly outside the jurisdiction of the arbitral tribunal and the parties object to arbitration. It must be reiterated that arbitration is essentially a contract to settle a dispute privately;[63] and as such, an arbitral tribunal cannot acquire jurisdiction if one of the parties do not agree to submit their dispute to the arbitral process.

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[60] *UST, et al. v. Sanchez*, 640 Phil. 189 (2010); *Pineda v. Heirs of Eliseo Guevara*, 544 Phil. 554 (2007).

[61] Rule 130, Sec. 49.

[62] REVISED RULES OF COURT, Rule 32.

[63] See CIVIL CODE, Articles 2042-2046.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The November 12, 2014 and February 20, 2015 Orders of the Regional Trial Court of Makati City, Branch 134 in Civil Case No. 09-510 are hereby **ANNULLED** and **SET ASIDE**. Civil Case No. 09-510 is hereby **REINSTATED**. The Regional Trial Court of Makati City, Branch 134 is hereby **ORDERED** to resume the proceedings therein and try the case with utmost dispatch.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Hernando, Inting,* and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 219059. February 12, 2020]

GAUDIOSO ISO, JR. and JOEL TOLENTINO, *petitioners*, *vs.* **SALCON POWER CORPORATION (now SPC POWER CORPORATION) and DENNIS VILLAREAL,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE ACCORDED RESPECT AND EVEN FINALITY BY THE SUPREME COURT WHEN THEY COINCIDE WITH THOSE OF THE LABOR ARBITER AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. — It is well settled in labor cases that the factual findings of the NLRC are accorded respect and even finality by the Court when they coincide with those of the LA and are supported by substantial evidence. In this case, the CA affirmed the findings of fact of the LA and the NLRC with respect to

the dismissal from service of petitioners for just causes. The CA noted that both the LA and the NLRC found petitioners to have uttered libelous statements against respondent SPC and held that such act constitutes serious misconduct, which is a ground for the termination of their employment.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; MISCONDUCT; DEFINED AS AN IMPROPER OR WRONG CONDUCT; ELEMENTS. — Misconduct has been defined as an improper or wrong conduct. "It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For misconduct or improper behavior to be a just cause for dismissal, there must be a concurrence of the following elements: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY NOT SUBJECT TO THE COURT'S REVIEW THEREIN, WHERE ONLY QUESTIONS OF LAW ARE PROPER. — The rule is that the factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise they have gained from handling matters falling under their specialized jurisdiction. Similarly, factual findings of the CA are generally not subject to the Court's review in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts, and this rule applies with greater force in labor cases. x x x The Court is not swayed by petitioners' claim that their statements were done with good intention and justifiable motives. Neither is the Court moved by petitioners' assertion that the CA erred in not giving weight to the sworn statement of their witness, Roxanne Duran, to the effect that they did not utter the alleged libelous statements being attributed to them. Let it be noted that these matters are outside this Court's authority to act. Only questions of law are entertained in a Rule 45 petition. As held in *Madridejos v. NYK-FIL Ship Management, Inc.*, the Court

does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Further, the Court does not replace its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONS; POWER TO DISMISS EMPLOYEES IS A RECOGNIZED PREROGATIVE THAT IS INHERENT IN THE EMPLOYER'S RIGHT TO FREELY MANAGE AND REGULATE ITS BUSINESS; CASE AT BAR. —** Undeniably, the NLRC was correct in holding that petitioners performed functions that pertain to those of supervisory classification. Indeed, the positions that petitioners held involved trust and confidence requiring them to discharge their functions with utmost professionalism and uprightness. As held in *Supra Multi-Services, Inc., et al. v. Labitigan*, a company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel who occupy positions of responsibility. An employer cannot be compelled to retain employees who are guilty of acts inimical to its interests. Besides, the power to dismiss employees is a recognized prerogative that is inherent in the employer's right to freely manage and regulate its business.

5. **ID.; ID.; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING; CASE AT BAR. —** The Court notes the fact that respondent SPC was shown to have afforded petitioners their right to due process. In termination proceedings or employees, procedural due process consists of the twin requirements of notice and hearing. The employer is required to furnish the employees with two written notices before the termination of employment can be effected: (1) the first apprises the employees of the particular acts or omissions for which their dismissal is sought; and (2) the second informs the employees of the employer's decision to dismiss them. There is compliance with the requirement of a hearing as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. In this case, petitioners were issued show cause notices and were made to explain. They were then subjected to investigation wherein they were given the

opportunity to defend themselves. Thereafter, respondent SPC found them guilty of the charges and issued notices of dismissal on April 5, 2000. Accordingly, considering respondent SPC's compliance with procedural due process, there is no other logical conclusion than that petitioners' dismissal was valid.

APPEARANCES OF COUNSEL

Pro-Labor Legal Assistance Center for petitioners.
Sycip Salazar Hernandez & Gatmaitan for private respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking to set aside the Decision[2] dated October 9, 2013 and the Resolution[3] dated May 13, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP Nos. 02781 and 06429.

The Antecedents

As briefly summarized by the CA, the antecedents of the two consolidated cases are as follows:

In **CA-G.R. CEB-SP No. 02781**, Gaudioso Iso, Jr., together with his fellow petitioners,[4] challenge the October 11, 2006 Decision of

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[1] *Rollo*, Vol. 1, pp. 12-34.

[2] *Id.* at 38-49; penned by Associate Justice Ramon Paul L. Hernando (now a member of the Court) with Associate Justices Pampio A. Abarintos and Edgardo L. Delos Santos (now a member of the Court), concurring.

[3] *Id.* at 51-53; penned by Associate Justice Gabriel T. Ingles with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Germano Francisco D. Legaspi, concurring.

[4] William J. Yap, Ronilo N. Alferez, Allan A. Balugo, Federico M. Villanueva, Roberto T. Teleron, Raul C. Gonzaga, Jaime D. Saavedra, Samuel P. Arreglo, Mario Clint Longakit, Ray Manacat, Glenn E. Comendador, Arturo T. Tamarra, Jr., Mario S. Amaya, Pablito N. Cañete, Rufino B. Gasok, Mario R. Mendez, Aida Basilon, Silvestre C. Ceniza, Josefino U. Cucharo,

the National Labor Relations Commission (NLRC), Cebu City, in NLRC Case No. V-000562-2006, RAB Case No. VII-01-0132-2006 and its March 6, 2007 Resolution denying their Motion for Reconsideration. However, on June 10, 2009, William J. Yap, Allan A. Balugo, Glenn E. Comendador, Mario S. Amaya, Josefino U. Cucharo, Wilson M. Pogoy, Felix C. Cabigon, Zosimo A. Abao, Efrenilo N. Garcia, Oscar G. Cañete, Eduardo T. Roble and Mariano Y. Blanco, Jr. entered into a Compromise Agreement with [respondent] SPC Power Corporation (formerly Salcon Power Corporation). Thereafter, on June 11, 2010, the rest of the petitioners also executed a Compromise Agreement with [respondent]. Thus, on April 25, 2012, this Court rendered a Decision approving said Compromise Agreements and dismissing the instant Petition. On May 30, 2012, petitioner Iso filed his Motion for Reconsideration arguing that the dismissal of the case should not affect him as he was not a signatory to any of the Compromise Agreements. In response, the [respondent] stressed, in its Comment dated August 28, 2012, that the Compromise Agreements do not concern the validly dismissed petitioner as his monetary claims are directly connected or intertwined with his continued employment with the company. On July 24, 2013, petitioner Iso filed his Reply asserting that since his case for illegal dismissal [*i.e.*, CA-G.R. CEB-SP No. 06429] is still pending with this Court, it is premature to render his claims moot as there is a possibility that his dismissal would be declared illegal, thus entitling him to the benefits he claims.

In **CA-G.R. CEB-SP No. 06429**, petitioner Gaudioso Iso, Jr. and Joel Tolentino allege that they are the union officers of Salcon Power Independent Union (SPIU). They assert that since [respondent] refused to recognize their union, they filed a petition for certification election. On March 2007, a certification election was conducted wherein SPIU

Benjamin L. Rosellosa, Leviticus Barazon, Felixberto E. Labra, Mariano P. Carreon, Gil G. Orillo, Wilson M. Pogoy, Gilbert T. Aligato, Tranquilino C. Fiel, Jr., Dosomaru Ragaza, Roger Booc, Medardo V. Gacho, Eugenio A. Dela Corte, Amador R. Matin-Ao, Patricio Canoy, Edison M. Barinque, Zosimo A. Abao, Raymundo G. Villasencio, Isagani J. Canque, Edwin De Guma, Renato M. Oporto, Felix C. Cabigon, Benjamin Q. Susan, Jaime E. Villareal, Victor C. Calvo, Efrenilo N. Garcia, Eduardo E. Cobol, Crisostomo D. Panimdim, Wendel P. Castro, Rolando L. Maratas, Edgar M. Rivera, Oscar G. Cañete, Eduardo T. Roble, Celso A. Adlawan, Renato B. Abella, Catalino Cantalejo, Emmanuel F. Catingub, Nicolas Q. Bayabos, Jr., Salvador T. Besabella, Eduardo A. Repollo, Urbano Abelo, Mariano Y. Blanco, Jr., Edgar T. Ylanan and Noel P. Tura.

won as the employees' collective bargaining agent. On September 2007, the SPIU submitted a Collective Bargaining Agreement (CBA) proposal to [respondent]. However, [respondent] refused to submit a counterproposal. It also refused to bargain with SPIU pending its appeal with the Bureau of Labor Relations (BLR) concerning the cancellation of SPIU's union registration. On March 24, 2008, the BLR dismissed [respondent's] appeal. Thereafter, SPIU filed a notice of strike on the ground of [respondent's] refusal to bargain. On March 2, 2008, respondent gave in and agreed to bargain collectively with SPIU.

Petitioners aver that [respondent's] petition for cancellation of SPIU's union registration was a plot to remove them from the union. Likewise, petitioners assert that [respondent's] petition to purge and automatically remove supervisory employees from SPIU was filed for the same sinister purpose. Hence, SPIU decided to call a press conference on May 27, 2009. [Respondent] alleges that during the press conference, petitioners and Dr. Giovanni Tapang uttered false and malicious accusations against it. Worse, their statements were published in a newspaper of general circulation in the Visayas. Consequently, on July 27, 2009, [respondent] filed a criminal complaint for libel against petitioners and Dr. Tapang. Moreover, [respondent] filed a civil case for damages against them. On February 3, 2010, [respondent] issued show-cause notices to the petitioners, informing them that they are charged with serious misconduct, dishonesty, breach of trust and serious disobedience. Thereafter, hearings were conducted. On April 5, 2010, the petitioners were found guilty of the charges against them, which then prompted their dismissal from service. Aggrieved, the petitioners filed a complaint for illegal dismissal.[5]

No amicable settlement was reached before the Labor Arbiter (LA). Hence, the parties were ordered to submit their position papers. Thereafter, the LA rendered a Decision[6] dated December 28, 2010 finding that Gaudioso B. Iso, Jr. (Iso) and Joel Tolentino (Tolentino) (collectively, petitioners) were not illegally dismissed and that there was substantial evidence to support their dismissal. The LA found that petitioners committed serious misconduct when they made malicious imputations against Salcon Power

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[5] *Rollo*, Vol. 1, pp. 39-40.

[6] *Id.* at 520-535; penned by Labor Arbiter Emiliano C. Tiongco, Jr.

Corporation, now SPC Power Corporation (respondent SPC), which are totally unrelated to their collective bargaining negotiation efforts.[7] The alleged malicious statements are contained in the news item authored by Elias O. Baquero (Baquero) of Sun Star Cebu entitled *"Group calls for audit on Salcon for 'refund'"*[8] dated May 29, 2009, *viz.*:

A CAUSE-ORIENTED group urged the government to audit SPC Power Corp. in Naga, Cebu to validate its claim that the power firm must refund consumers ₱738 million in excess payments that it received from the National Power Corp. (NPC).

Dr. Giovanni Tapang, chairman of Samahan ng Nagtataguyod ng Agham at Teknolohiya para sa Sambayanan (Agham) said Cebuano power consumers have been overcharged.

Tapang and Gaudioso Iso Jr., president of Salcon Power Independent Union (SPIU), called a press conference to announce that the SPC Power Corp. has profited roughly ₱738 million in the past 15 years. The NPC got the amount from increased rates, they said.

Tapang and Iso said this is the reason they are supporting the call of Fr. Francisco "Paking" Silva for the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) to jointly conduct an external audit on SPC Power, formerly Salcon Power.

Forum

Silva, in a DOE forum early this month, said an external audit will inform the government and the public about the situation of the Naga Power Plant Complex, which has two thermal plants, two gas turbines and six diesel plants.

Silva urged the DOE and ERC to review the contract between the SPC Power and NPC to protect the interest of the public.

In explaining how they came up with the figure, Iso and SPIU Secretary Joel Tolentino said NPC has paid SPC Power an amount equivalent to the salaries of 354 employees for 15 years already. But there are only 190 employees hired by SPC Power, or a difference of 164 employees.

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[7] *Id.* at 535.

[8] *Id.* at 252.

At an average of ₱25,000 a month in salary per employee, the amount would reach ₱4.1 million a month. For 15 years, that means a total of ₱738 million which should be returned to the power consumers.

They said the ₱738 million is on the labor side only. If there is an external audit, it will be known that the SPC Power's "silent profit" could reach billions of pesos in terms of purchases of coal and other fuel products needed by the plant.

Profits

The SPIU leaders alleged that SPC Power raked in profits at the expense of the government because they only manage the plant without spending money for its operations.

"They (SPC Power) are paid by the NPC for the 354 employees, of which they only absorbed and hired 190. The NPC supplied the fuel and still paid SPC Power the capacity and energy fees," Iso said.

Iso and Tolentino said this may be the reason SPC Power was able to buy NPC diesel plants in Bohol and Panay for US$5.9 million.[9]

To the LA, petitioners were validly terminated for uttering libelous statements against respondent SPC and not because of their union activities.

Unsatisfied with the LA's Decision, petitioners appealed to the National Labor Relations Commission (NLRC). However, the NLRC, in its Decision[10] dated June 24, 2011, affirmed *in toto* the Decision of the LA. The NLRC found petitioners guilty of serious misconduct and breach of trust under items (a) and (c) of Article 282 (now Article 297)[11] of the Labor Code.

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[9] *Id.*

[10] *Id.* at 81-98; penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioners Aurelio D. Menzon and Julie C. Rendoque, concurring.

[11] Art. 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

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Petitioners moved for reconsideration,[12] but the motion was denied in the NLRC's Resolution[13] dated August 31, 2011.

Aggrieved, petitioners filed a Petition for *Certiorari*[14] with the CA.

The CA's Ruling

Before the CA, the issue raised in CA-G.R. CEB-SP No. 06429 was whether or not the NLRC, in affirming the Decision of the LA that petitioners were validly dismissed, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The determination of such issue was crucial in resolving the issue in CA-G.R. CEB-SP No. 02781 which concerned the monetary claims of petitioner Iso that were directly connected with his continued employment with the company.

On October 9, 2013, the CA rendered the herein assailed Decision,[15] the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court renders the following judgment in the Petitions at bar:
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> 1) In CA-G.R. CEB-SP No. 02781, the Court DENIES petitioner Gaudioso Iso, Jr.'s Motion for Reconsideration of Our April 25, 2012 Decision.
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> 2) In CA-G.R. CEB-SP No. 06429, the Court DENIES the Petition for *Certiorari* of Gaudioso Iso, Jr. and Joel Tolentino for lack of merit. It AFFIRMS the assailed June 24, 2011 Decision of the public respondent NLRC and its August 31, 2011 Resolution. Costs on petitioners.
>
> SO ORDERED.[16]

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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[12] *Rollo*, Vol. 1, pp. 102-113.

[13] *Id.* at 100-101.

[14] *Id.* at 54-79.

[15] *Id.* at 38-49.

[16] *Id.* at 48.

The CA found that the findings of fact of the LA and the NLRC, with respect to the dismissal of petitioners for just causes, are fully supported by the evidence on record.[17] It ruled that petitioners' evidence utterly failed to repudiate the fact that they uttered libelous statements against respondent SPC during the press conference that they called.[18] It also noted that even the assistant city prosecutor found probable cause to indict petitioners for the crime of libel,[19] and such finding was affirmed by Judge Elmo M. Alameda of Branch 150, Regional Trial Court, Makati City, as evidenced by the Order[20] dated January 28, 2010 for the issuance of a warrant of arrest against petitioners.[21] Hence, the CA found proper the NLRC's affirmance of the validity of petitioners' dismissal.[22]

The CA rejected petitioners' contention that their dismissal was not commensurate to the infraction they committed.[23] Citing *Torreda v. Toshiba Information Equipment (Phils.), Inc., et al.*,[24] the CA held that libel is an act constituting serious misconduct which warrants dismissal from employment.[25] The CA thus considered the dismissal of petitioners as a valid exercise of respondent SPC's management prerogative.[26]

Consequently, the CA declared that the NLRC did not commit grave abuse of discretion in rendering its Decision which was based on factual and legal grounds and was not borne out of a

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[17] *Id.* at 45.

[18] *Id.*

[19] See Resolution dated December 28, 2009 penned by Assistant City Prosecutor Ma. Lorelai Andrea C. Dulig (*id.* at 270-275) and Information dated December 15, 2009 (*id.* at 276-277).

[20] *Id.* at 278.

[21] *Id.*

[22] *Id.* at 45.

[23] *Id.*

[24] 544 Phil. 71 (2007).

[25] *Rollo*, Vol. 1, p. 45.

[26] *Id.*

whimsical exercise of judgment.[27] As regards Iso's claims under CA-G.R. CEB-SP No. 02781, the CA ruled that these have become moot. Since Iso's monetary claims are contingent upon his continued employment with respondent SPC, the CA held that the valid termination of his employment has barred him from demanding the benefits purportedly due him.[28]

Petitioners moved for reconsideration, but the CA denied the motion for lack of merit in its assailed Resolution[29] dated May 13, 2015.

Hence, this petition.

Petitioners contend that on account of the length of service that they have devoted to the company plus the fact that respondent SPC failed to cite any specific damage it suffered for their alleged derogatory acts, the CA should have ruled that they are entitled to a penalty lesser than the supreme penalty of dismissal from service.[30] They insist that they are rank-and-file employees to whom the rule on proportionate penalty should be applied.[31]

Petitioners also point out that the instant case arose at the height of the heated collective bargaining negotiations between SPIU and respondent SPC.[32] In the course of the negotiations, respondent SPC claimed that the demand for equal pay made by SPIU is baseless and SPIU was confusing and misleading the public with dishonest statements. As this claim of respondent SPC appeared in local papers, Iso and Tolentino, as president and secretary of SPIU, respectively, felt that it was their duty to shed clarification on the matter and to clarify to the public that their demand was reasonable and within the capacity of

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

[28] *Id.* at 46.

[29] *Id.* at 51-53.

[30] *Id.* at 23.

[31] *Id.* at 22.

[32] *Id.* at 24.

the company. Hence, they called a press conference. However, in the present petition, they deny having uttered libelous statements during the scheduled press conference; and granting that they did, they claim that these were done with good intention and justifiable motives.[33]

Petitioners further claim that the contents of the alleged libelous statements were matters already of public knowledge, and aver that these had been openly described in the Senate.[34] Hence, they argue that the CA should have upheld their freedom of expression.[35] They also aver that the supposed defamatory statements were a fair comment on matters of public interest and made in response to the query of Baquero, the reporter of Sun Star Cebu; hence, the CA should have ruled that the remarks are covered by the rule on privileged communication.[36]

Lastly, petitioners argue that the CA committed an error of law in not giving weight to the sworn statement of their witness, Roxanne Duran, to the effect that they did not utter the libelous statements being attributed to them.[37]

For their part, respondents in their Comment[38] argue the following: that the petition is fatally defective, having raised questions of fact and not questions of law;[39] that the factual findings of the LA and the NLRC, as affirmed by the CA, should be accorded great weight and respect;[40] that the petition is totally baseless;[41] that the CA did not err in affirming the decision of the NLRC, much less act with grave abuse of discretion in

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[33] *Id.*

[34] *Id.* at 25.

[35] *Id.*

[36] *Id.* at 28-29.

[37] *Id.* at 30.

[38] *Id.* at 670-800.

[39] *Id.* at 746.

[40] *Id.* at 747.

[41] *Id.* at 749.

dismissing the petition for *certiorari* before it;[42] that petitioners' valid termination is but an exercise of the company's management prerogative, which is not tainted with bad faith and therefore should not be disturbed;[43] and that both law and equity demand that no affirmative relief be accorded to petitioners.[44]

The Issue

The core issue for the Court's resolution is whether the CA erred in affirming that petitioners were not illegally dismissed.

The Court's Ruling

The petition has no merit.

It is well settled in labor cases that the factual findings of the NLRC are accorded respect and even finality by the Court when they coincide with those of the LA and are supported by substantial evidence.[45] In this case, the CA affirmed the findings of fact of the LA and the NLRC with respect to the dismissal from service of petitioners for just causes. The CA noted that both the LA and the NLRC found petitioners to have uttered libelous statements against respondent SPC and held that such act constitutes serious misconduct, which is a ground for the termination of their employment.

Misconduct has been defined as an improper or wrong conduct. "It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[46] For misconduct or improper behavior to be a just cause for dismissal, there must be a concurrence of the following elements: (a) the misconduct must be serious; (b) it must relate to the

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[42] *Id.* at 770.

[43] *Id.* at 786.

[44] *Id.* at 790.

[45] *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 612 (2017).

[46] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan, et al.*, 815 Phil. 425, 435 (2017).

performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[47]

That petitioners are guilty of serious misconduct is duly substantiated by the records of the case.

In ruling that petitioners were guilty of serious misconduct, the LA elucidated:

From the evidence presented, this Arbitration Branch finds substantial evidence to sustain the validity of [petitioners'] employment termination. It has to be clarified that [petitioners] were not terminated because of union activities. What triggered the termination of [petitioners] were their utterances of libelous statements against respondent company.

After the Makati City Prosecution Office resolved on December 28, 2009 x x x that [petitioners'] utterances constitute libelous statements thereby recommending the filing of the corresponding criminal case for libel, and that Hon. Elmo M. Alameda, Presiding Judge of the Regional Trial Court Branch 150, Makati City issued an Order dated January 28, 2010 x x x for the issuance of a warrant of arrest against [petitioners] and Giovanni Tapang, respondent company issued [petitioners] separate Show-Cause Notices dated February 02, 2010 x x x charging them with serious misconduct, dishonesty (for purportedly uttering, assisting in the and/or causing the publication of false and malicious statements, charges and rumors against the company and management) breach of trust and willful disobedience arising from supposed violation of the Company's Uniform Code of Conduct.

x x x x x x x x x

Evidently, despite [petitioners'] insistence that they did not make libelous statements during the press con on May 28, 2009, the response of Sun Star Cebu writer Elias Baquero destroyed whatever smokescreen that [petitioners] created. Writer Elias Baquero with certainty responded that he interviewed [petitioners] along with Dr. Tapang. They were the ones who supplied the figures and the details of the alleged "anomalies" at respondent company.

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[47] *Id.* at 436.

To this Arbitration Branch, the very evidence against [petitioners] is the news item written by Sun Star Cebu writer Elias Baquero which outlined the purported anomalies at respondent company at the expense of the government through the National Power Corporation. While [petitioners] denied by asserting that "these statements were not made by us" and that "(W)e did not tackle the profiting of SPC and we didn't have control over the content of said article" x x x, there is the response of writer Elias Baquero pointing to [petitioners] as the source of his news item. (Emphasis omitted.)

For obvious reason, the writer was in no position to personally come-up with the figures which appeared on his news item. The writer had no knowledge on the intricacies of the alleged anomalies. In fact, the writer identified [petitioners] as his source of information. It is off-tangent for [petitioners] to contend that respondent company should have charged writer Elias Baquero of libel because the latter merely wrote the information fed to him by [petitioners].

x x x x x x x x x

Suffice it to say, [petitioners] who are officers of the union have the freedom to do acts in the furtherance of their right to self-organization. However, [petitioners] do not have the freedom to malign and make statements that would destroy the business reputation of respondent company. The malicious imputations of [petitioners] against respondent company constitute serious misconduct.[48]

The NLRC agreed with the LA that petitioners were guilty of serious misconduct and further found them to be guilty of breach of trust. It ratiocinated:

Article 282 of the Labor Code provides that serious misconduct is a valid cause for the employer to terminate an employee. x x x

x x x x x x x x x

We take note of [petitioners'] conscious and willful act of publishing derogatory statements against respondent Salcon Power Corporation. There can be no doubt that [petitioners'] statements undermine the authority and credibility of the management of respondent company. [Petitioners'] actions likewise displayed the propensity to act against management's will. [Petitioners'] feat is inimical to the interest of

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[48] *Rollo*, Vol. 1, pp. 527-534.

their employers as it vilified their reputation. It must be noted that [petitioners] publicly hurled imputations upon respondent company during a press conference which was aired on television and for which a news report was published. Obviously, [petitioners] have committed an act which, by no stretch of the imagination, is considered serious misconduct. It bears stressing likewise that [petitioners] were ready with their statements during the press conference called by them and intended the publication and airing of the same as evidenced by the invitation of media outfits.

By their acts [petitioners] have also committed a breach of the trust reposed in them by respondent.

x x x x x x x x x

x x x As employees upon whom trust and confidence were reposed by respondent, [petitioners] were expected to discharge of their functions with utmost professionalism and uprightness. However, [petitioners] betrayed this expectation.[49]

The rule is that the factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise they have gained from handling matters falling under their specialized jurisdiction.[50] Similarly, factual findings of the CA are generally not subject to the Court's review in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[51] The Court is not a trier of facts, and this rule applies with greater force in labor cases.[52]

Accordingly, respect must be accorded to the factual findings of the LA, the NLRC and the CA, all of which unanimously declared that petitioners were guilty of uttering libelous statements against respondent SPC during the press conference

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[49] *Id.* at 93-96.

[50] *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017, 844 SCRA 416, 435, citing *General Milling Corporation v. Viajor*, 702 Phil. 532, 540 (2013).

[51] *Grande v. Philippine Nautical Training Colleges*, *supra* note 45.

[52] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 65.

that they called. It is well settled that "accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination,"[53] more so in this case where petitioners' utterance of accusatory statements came out in the news item dated May 29, 2009 authored by Baquero of Sun Star Cebu.

The Court is not swayed by petitioners' claim that their statements were done with good intention and justifiable motives. Neither is the Court moved by petitioners' assertion that the CA erred in not giving weight to the sworn statement of their witness, Roxanne Duran, to the effect that they did not utter the alleged libelous statements being attributed to them. Let it be noted that these matters are outside this Court's authority to act. Only questions of law are entertained in a Rule 45 petition.[54] As held in *Madridejos v. NYK-FIL Ship Management, Inc.*,[55] the Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field.[56] Further, the Court does not replace its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[57]

Petitioners also fail to convince the Court that the penalty of dismissal from service is too harsh a penalty and disproportionate to the infraction they committed. Likewise, their arguments that their freedom of expression should have

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[53] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan, et al.*, *supra* note 46 at 437, citing *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011). See also *De La Cruz v. National Labor Relations Commission*, 258 Phil. 432 (1989); *Autobus Workers' Union v. NLRC*, 353 Phil. 419 (1998); *Asian Design and Mfg. Corp. v. Hon. Deputy Minister of Labor*, 226 Phil. 20 (1986); and *Reynolds Phil. Corp. v. Eslava*, 221 Phil. 614 (1985).

[54] *Symex Security Services, Inc. v. Rivera, Jr.*, *supra* note 50.

[55] 810 Phil. 704, 723 (2017).

[56] *Id.* at 723, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012).

[57] *Id.* at 724.

been upheld and that the supposed defamatory statements they uttered are covered by the rule on privileged communication deserve scant consideration.

In this case, it must be emphasized that petitioners are supervisory employees. Their respective contracts of permanent employment reveal that they were hired to supervisory and managerial positions.[58] As found by the NLRC, Iso, as the Head of the Maintenance-Electrical Section, "wielded actual direction and control over his subordinates as well as assigned electricians and ensured that the assigned tasks of these electricians were properly implemented on time." Moreover, he had access to vital company equipment and tools.[59]

On the other hand, Tolentino, as the Engineering Contract Administrator, "was entrusted with and had access to vital and confidential company documents, data and information." He was also a member of the due diligence teams which were tasked to conduct due diligence investigations of power plants; thus, he was exposed to highly confidential and classified documents of the plants.[60]

Undeniably, the NLRC was correct in holding that petitioners performed functions that pertain to those of supervisory classification. Indeed, the positions that petitioners held involved trust and confidence requiring them to discharge their functions with utmost professionalism and uprightness.

As held in *Supra Multi-Services, Inc., et al. v. Labitigan*,[61] a company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel who occupy positions of responsibility.[62] An employer cannot be compelled to retain employees who are guilty of acts inimical

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[58] *Rollo*, Vol. 1, p. 97.

[59] *Id.* at 95.

[60] *Id.*

[61] 792 Phil. 336 (2016).

[62] *Id.* at 364, citing *Santos v. San Miguel Corporation*, 447 Phil. 264, 276-277 (2003).

to its interests.[63] Besides, the power to dismiss employees is a recognized prerogative that is inherent in the employer's right to freely manage and regulate its business.[64]

Additionally, the fact that petitioners served the company for a considerable period of time will not help their cause.[65] It bears stressing that the longer the employees stay in the service of the company, the greater is their responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company.[66] Also, the fact that respondent SPC did not suffer pecuniary or other forms of damages will not obliterate petitioners' betrayal of the trust and confidence reposed on them by respondent SPC.[67]

The Court notes the fact that respondent SPC was shown to have afforded petitioners their right to due process. In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[68] The employer is required to furnish the employees with two written notices before the termination of employment can be effected: (1) the first apprises the employees of the particular acts or omissions for which their dismissal is sought; and (2) the second informs the employees of the employer's decision to dismiss them.[69] There is compliance with the requirement of a hearing as long as there was an opportunity to be heard, and not necessarily that an

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[63] *Id.*

[64] *The Orchard Golf and Country Club v. Francisco*, 706 Phil. 479, 500 (2013), citing *Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission*, 343 Phil. 284, 290-293 (1997).

[65] *Visayan Electric Co. Employees Union-ALU-TUCP, et al. v. Visayan Electric Company, Inc.*, 764 Phil. 608, 626 (2015).

[66] *Id.*

[67] See *PJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 430 (2017).

[68] *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 436 (2017), citing *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

[69] *Id.*

actual hearing was conducted.[70] In this case, petitioners were issued show-cause notices and were made to explain.[71] They were then subjected to investigation wherein they were given the opportunity to defend themselves.[72] Thereafter, respondent SPC found them guilty of the charges and issued notices of dismissal on April 5, 2000.[73] Accordingly, considering respondent SPC's compliance with procedural due process, there is no other logical conclusion than that petitioners' dismissal was valid.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated October 9, 2013 and the Resolution dated May 13, 2015 of the Court of Appeals in CA-G.R. CEB-SP Nos. 02781 and 06429 are **AFFIRMED** *in toto*.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Leonen,*[*] *Reyes, A. Jr.,* and *Gaerlan,*[**] *JJ.*, concur.

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[70] *Id.*

[71] *Rollo*, Vol. 1, p. 533.

[72] *Id.*

[73] *Id.* at 91.

[*] Designated as additional member per Raffle dated February 3, 2020 in lieu of Associate Justice Ramon Paul L. Hernando (now a Member of the Court) who penned the CA Decision.

[**] Designated as additional member per Raffle dated February 3, 2020 in lieu of Associate Justice Edgardo L. Delos Santos (now a member of the Court) who recused from the case due to prior participation in the Court of Appeals.

THIRD DIVISION

[G.R. No. 224679. February 12, 2020]

JONAH MALLARI *y* SAMAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; QUESTIONS OF FACT MAY NO LONGER BE RAISED; THIS COURT WILL NO LONGER DISTURB THE UNIFORM FINDINGS OF THE LOWER COURTS. —** We affirm that the prosecution's evidence is sufficient to uphold the findings of fact against petitioner. Questions of fact may no longer be raised in Rule 45 petitions. x x x In this case, the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals all consistently found that petitioner slapped and kicked PO2 Navarro while he was on official duty as a police officer. The lower courts arrived at this conclusion after thoroughly examining both parties' evidence. This Court will no longer disturb their uniform findings.

2. **CRIMINAL LAW; DIRECT ASSAULT; ELEMENTS; THE FIRST ELEMENT OF THE OFFENSE IS NOT PRESENT IN THIS CASE. —** In this case, petitioner is charged with the second mode of [direct] assault [under Art. 148 of the RPC]. Its elements are the following: 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance. 2. That the person assaulted is a person in authority or his agent. 3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or [b] that he is assaulted by reason of the past performance of official duties. 4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties. 5. That there is no public uprising. A police officer is an agent of a person in authority. An agent of a person in authority is one who, "by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader,

and any person who comes to the aid of persons in authority[.]" Being a police officer, PO2 Navarro is an agent of a person in authority. Petitioner was also aware that PO2 Navarro was a police officer. He introduced himself as one and was in his police uniform. He was performing his official duties as a police officer when he was pacifying the melee, and right when petitioner attacked him. Thus, the second, third, fourth, and fifth elements of direct assault are present in this case. However, the first element of the offense is not present. To be considered as direct assault, the laying of hands or the use of physical force against the agent of a person in authority must be *serious*.

3. ID.; RESISTANCE OR DISOBEDIENCE TO A PERSON IN AUTHORITY OR HIS AGENT; ELEMENTS; WHEN A PERSON BEING APPREHENDED BY A POLICE OFFICER RESISTS OR USES FORCE THAT IS NOT DANGEROUS, GRAVE, OR SEVERE, THE OFFENSE IS NOT DIRECT ASSAULT BUT RESISTANCE OR DISOBEDIENCE TO A PERSON IN AUTHORITY OR HIS AGENT UNDER ARTICLE 151 OF THE RPC; ALTHOUGH THE CHARGE IS DIRECT ASSAULT, THE PROSECUTION WAS ABLE TO PROVE RESISTANCE OR DISOBEDIENCE WHICH IS NECESSARILY IS INCLUDED IN THE CRIME CHARGED; PENALTY. — Resistance or disobedience is punished under Article 151 of the Revised Penal Code[.] x x x For this crime to be proven, the two (2) key elements must be shown: "(1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and (2) That the offender resists or seriously disobeys such person or his agent." x x x In this case, it was established that petitioner grabbed the shirt of PO2 Navarro, then slapped and kicked him several times. x x x Based on the circumstances, petitioner's resistance and use of force are not so serious to be deemed as direct assault. While she exerted force, it is not dangerous, grave, or severe enough to warrant the penalties attached to the crime. x x x Thus, instead of direct assault, this Court convicts petitioner of resistance or disobedience. x x x In this case, although the charge is direct assault, the prosecution was able to prove resistance or disobedience. These offenses have similar elements, varying only as to the degree of seriousness of the offender's resistance. Direct assault necessarily includes resistance or disobedience. x x x Petitioner Jonah Mallari *y* Samar is found **GUILTY** beyond reasonable doubt of the

crime of resistance or disobedience under Article 151 of the Revised Penal Code. She is sentenced to suffer the penalty of imprisonment of *arresto mayor*, which covers one (1) month and one (1) day, as minimum, to six (6) months, as maximum, and a fine not exceeding ₱500.00.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

When a person being apprehended by a police officer resists or uses force that is not dangerous, grave, or severe, the offense is not direct assault under Article 148 of the Revised Penal Code. Instead, the proper offense is resistance and disobedience to an agent of a person in authority, penalized under Article 151 of the Revised Penal Code.

This Court resolves a Petition for Review on *Certiorari*[1] questioning the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed with modification the Municipal Trial Court[4] and the Regional Trial Court's[5] conviction of Jonah

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[1] *Rollo*, pp. 12-27. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 29-40. The October 27, 2015 Decision was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Franchito N. Diamante and Samuel H. Gaerlan (now a member of this Court) of the Special Thirteenth Division of the Court of Appeals, Manila.

[3] *Id.* at 42-44. The May 12, 2016 Resolution was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Franchito N. Diamante and Samuel H. Gaerlan of the Former Special Thirteenth Division of the Court of Appeals, Manila.

[4] *Id.* at 74-79. The September 5, 2013 Decision was penned by Judge Merinnisa O. Ligaya of Branch 1, Municipal Trial Court of Olongapo City.

[5] *Id.* at 66-73. The July 30, 2014 Decision was penned by Judge Roline M. Ginez-Jabalde of Branch 74, Regional Trial Court of Olongapo City.

Mallari *y* Samar (Mallari) for the crime of direct assault upon an agent of a person in authority.

An Information was filed against Mallari on May 31, 2007.[6] It read:

> That on or about the Twelfth (12th) day of January 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while being pacified by PO2 Richard F. Navarro who was a duly qualified and appointed police officer of Olongapo City and while the latter was in the actual performance of his official duties, that is, maintaining peace and order in the said locality, and the said accused well knowing before and during the assault that PO2 Richard F. Navarro who was a duly appointed police officer, as such, an agent of a person in authority, did then and there willfully, unlawfully and feloniously assault, attack, kick and slap said police officer.
>
> CONTRARY TO LAW.[7]

Mallari pleaded not guilty to the charge during her arraignment. Trial then ensued.[8]

The prosecution presented the victim, Police Officer 2 Richard Navarro (PO2 Navarro), along with Senior Police Officer 3 Melanio Merza (SPO3 Merza) and Dr. Rolando Mafel Ortiz (Dr. Ortiz), as its witnesses.[9]

The incident transpired on the early morning of January 12, 2007. According to the prosecution, at around 6:45 a.m., the Olongapo Police Station 3 received a report of an altercation on the ground floor of GenX Billiard Hall on Gordon Avenue. At this, PO2 Navarro and SPO3 Merza, who were both in uniform, went to the scene. There, they found two (2) groups of women fighting and pulling each other's hair out, among them a visibly drunk Mallari. The officers rushed to stop the fight.[10]

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[6] *Id.* at 29.

[7] *Id.* at 30.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 30-31 and 74.

Once the squabble was over, the officers asked the women to go to the police station to file proper complaints. However, the intoxicated Mallari shouted at them, "*Wala kayo pakialam sa akin, hindi ako sasama sa inyo.*"[11] She then grabbed PO2 Navarro by the collar, slapped his cheek, and kicked his legs several times. To restrain her, PO2 Navarro held her by the shoulders and brought her to the back of the patrol car. SPO3 Merza was about to pacify the other women, but they eventually agreed to go to the police station. The incident was entered in the blotter and Mallari was detained for direct assault.[12]

PO2 Navarro was treated at the James Gordon Memorial Hospital for the minor injuries he got from Mallari.[13] Dr. Ortiz issued him a medical certificate stating that he had sustained swelling on the zygomatic area, or the cheekbone.[14]

The defense presented the sole testimony of Mallari.[15]

Mallari testified that at around 6:00 a.m. that day, she and her co-workers were singing at a karaoke bar in GenX Billiard Hall when they got into a heated argument with another group of women, which then escalated to a physical fight. The ruckus prompted the bar owner to send the women downstairs, but their fighting only continued.[16]

Later, Mallari added, the police arrived and ordered them to board the patrol car. Mallari initially obeyed, but after noticing that her companions did not, she alighted from the vehicle. PO2 Navarro pushed her back in by holding her stomach and the collar of her blouse. When she still attempted to alight, PO2 Navarro grabbed her by the ankles, spreading her legs open in the process. When he pulled her down, she

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[11] *Id.*

[12] *Id.* at 31.

[13] *Id.*

[14] *Id.* at 70.

[15] *Id.* at 30.

[16] *Id.* at 31 and 70.

hit her head and neck on the vehicle's floor, her buttocks hitting the ground.[17]

After composing herself from the embarrassment, Mallari boarded the car and went with the officers to the police station. There, she was surprised that PO2 Navarro claimed that she had slapped him several times. She then called her mother and went to the hospital for a medical examination.[18] She was found to have sustained the following injuries:

Contusion 2x2 cm medical aspect M/3 left forearm
Contusion 2x2 cm medical aspect P/3 left forearm
Contusion 2x2 cm post aspect D/3 left forearm
Contusion 0.5x0.5 cm antero-medical aspect M/3 right forearm
Abrasion 2 cm interscapular area
Swelling left thenar eminence.[19]

Mallari later filed a Complaint against PO2 Navarro and SPO3 Merza for unlawful arrest, illegal detention, maltreatment of prisoners, and physical injuries. This was eventually dismissed by the Office of the Prosecutor.[20]

In its September 5, 2013 Decision,[21] the Municipal Trial Court found Mallari guilty beyond reasonable doubt of direct assault upon an agent of a person in authority. It noted that Mallari admitted to kicking PO2 Navarro and grabbing his shirt while he was performing his official duties. It likewise gave premium to the prosecution's positive testimony against Mallari's defense of denial.[22] The dispositive portion of the Decision read:

WHEREFORE, foregoing considered, judgment is hereby rendered finding accused **JONAH MALLARI y SAMAR,** ***GUILTY*** beyond reasonable doubt of the crime of Direct Assault upon an Agent of a

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[17] *Id.*

[18] *Id.* at 31, 70, and 77.

[19] *Id.* at 32.

[20] *Id.* at 31-32 and 88-90.

[21] *Id.* at 74-79.

[22] *Id.* at 77-78.

Person in Authority and hereby sentences her to suffer an **imprisonment of** *prision correccional* ***in its medium period of 3 yrs, 6 mos and 21 days to 4 years, 9 mos and 10 days and to pay the fine of PHp1,000.00. With costs against the accused.***

SO DECIDED.[23] (Emphasis in the original)

The Regional Trial Court affirmed Mallari's conviction in its July 30, 2014 Decision.[24] It found that all the elements of the offense were present: PO2 Navarro was an agent of a person in authority, and Mallari kicked, slapped, and injured him while he was engaged in the performance of his official duty. It found that no improper motive could be traced to the prosecution's witnesses who clearly testified on the matter. It also noted that Mallari's defenses and denials were weak and uncorroborated.[25]

The Court of Appeals, in its October 27, 2015 Decision,[26] affirmed with modification the Regional Trial Court's Decision, thus:

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit. The *Decision* dated July 30, 2014 of the RTC, Branch 74, Olongapo City, in Criminal Case No. 44-14 is hereby **AFFIRMED with MODIFICATION** as to the imposable penalty.

Petitioner Jonah Mallari *y* Samar is hereby sentenced to suffer an indeterminate penalty of two (2) months of *arresto mayor* as minimum, to two (2) years and four (4) months of *prision correccional* as maximum. He is likewise ordered to pay a fine of Five Hundred (Php500.00) Pesos.

SO ORDERED.[27] (Emphasis in the original)

In ruling so, the Court of Appeals found that PO2 Navarro's testimony was credible and clear on how the incident occurred, while Mallari was unable to substantiate her claims. It held

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[23] *Id.* at 79.

[24] *Id.* at 73.

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

[26] *Id.* at 29-40.

[27] *Id.* at 39.

that Mallari was the aggressor and PO2 Navarro was only compelled to restrain her as she was kicking him.[28]

The Court of Appeals denied Mallari's Motion for Reconsideration in a May 12, 2016 Resolution.[29]

Thus, Mallari filed before this Court a Petition for Review on *Certiorari*,[30] claiming that the Court of Appeals erred in sustaining her conviction.

Petitioner argues that PO2 Navarro's testimony that she repeatedly kicked and slapped him was inconsistent with his injury of a slightly swollen cheekbone.[31] She points out that it was she who suffered several injuries, consistent with her allegation that PO2 Navarro "held her feet, pulled her to the ground and caused her to hit her head, neck and buttocks,"[32] despite no aggression coming from her. Thus, she says that her testimony should have been given more credence.[33]

Assuming that she did kick PO2 Navarro, petitioner asserts that she was fully justified in doing so as the officer unnecessarily held her feet, which constitutes unlawful aggression on her honor and dignity.[34]

The Office of the Solicitor General, on behalf of respondent People of the Philippines, argued back that the Petition must be denied as it raises a question of fact, which is not proper in a petition for review on *certiorari*.[35]

In any case, the Office of the Solicitor General insists that petitioner's assault on PO2 Navarro was sufficiently established.

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[28] *Id.* at 35-36.

[29] *Id.* at 42-44.

[30] *Id.* at 12-27.

[31] *Id.* at 19.

[32] *Id.* at 20.

[33] *Id.*

[34] *Id.* at 21.

[35] *Id.* at 204-205.

It points out that the medical certificate stating that PO2 Navarro had a slightly swollen cheekbone does not negate his testimony that he was repeatedly kicked by petitioner, as she herself admitted attacking the officer. It also raises the other officers' testimonies affirming what had happened. From the totality of evidence, the Office of the Solicitor General argues that Mallari is the aggressor and her denials are weak defenses.[36] That PO2 Navarro was a police officer on official duty when petitioner assaulted him completes the elements of the offense charged.[37]

For this Court's resolution is the sole issue of whether or not petitioner Jonah Mallari y Samar is guilty beyond reasonable doubt of direct assault upon an agent of a person in authority.

This Court modifies the ruling of the Court of Appeals.

We affirm that the prosecution's evidence is sufficient to uphold the findings of fact against petitioner. Questions of fact may no longer be raised in Rule 45 petitions. In *Spouses Miano v. Manila Electric Company*:[38]

The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

Bases Conversion Development Authority v. Reyes distinguished a question of law from a question of fact:

> Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it

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[36] *Id.* at 205.

[37] *Id.* at 206.

[38] 800 Phil. 118 (2016) [Per *J.* Leonen, Second Division].

is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.

. . . .

Prevailing jurisprudence uniformly, holds that findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to analyze or weigh such evidence all over again. It is only in exceptional cases where this Court may review findings of fact of the Court of Appeals.[39] (Citations omitted)

In this case, the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals all consistently found that petitioner slapped and kicked PO2 Navarro while he was on official duty as a police officer.[40] The lower courts arrived at this conclusion after thoroughly examining both parties' evidence. This Court will no longer disturb their uniform findings.

However, petitioner should not be held guilty of direct assault, but rather, of the crime of resistance or disobedience under Article 151 of the Revised Penal Code.

Article 148 of the Revised Penal Code defines and penalizes direct assault:

ARTICLE 148. *Direct assaults.* — Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its

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[39] *Id.* at 122-125.

[40] *Rollo*, pp. 35, 72, and 77-78.

medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding 500 pesos shall be imposed.

Direct assault may be committed in two (2) ways:

[F]irst, by any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and second, by any person or persons who, without a public uprising, shall *attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance*.[41] (Emphasis supplied, citation omitted)

In this case, petitioner is charged with the second mode of assault. Its elements are the following:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.

2. That the person assaulted is a person in authority or his agent.

3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or [b] that he is assaulted by reason of the past performance of official duties.

4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.

5. That there is no public uprising.[42]

A police officer is an agent of a person in authority.[43] An agent of a person in authority is one who, "by direct provision

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[41] *Gelig v. People*, 640 Phil. 109, 116 (2010) [Per *J.* Del Castillo, First Division].

[42] *Id.* at 116-117 citing LUIS REYES, *THE REVISED PENAL CODE, Book II, 15th ed.* (2001), p. 122.

[43] *US v. Taylor*, 6 Phil. 162, 163 (1906) [Per *J.* Carson, First Division].

of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority[.]"[44] Being a police officer, PO2 Navarro is an agent of a person in authority.

Petitioner was also aware that PO2 Navarro was a police officer. He introduced himself as one and was in his police uniform. He was performing his official duties as a police officer when he was pacifying the melee, and right when petitioner attacked him. Thus, the second, third, fourth, and fifth elements of direct assault are present in this case.

However, the first element of the offense is not present.

To be considered as direct assault, the laying of hands or the use of physical force against the agent of a person in authority must be *serious*.

In *United States v. Gumban*,[45] this Court held that the amount of force employed against agents of persons in authority spells the difference between direct assault and resistance of disobedience:

> In reaching this conclusion, we took into account the decision rendered by this court in the case against Gelacio Tabiana and Canillas, in which it is said that the distinction between an assault and a resistance to agents of authority lies largely in the *amount of the force employed in each case, and that a sudden blow given to a policeman while engaged in effecting an arrest does not constitute that employment of force which is punishable as assault*. We have also considered the decision rendered by this court in the case against Cipriano Agustin . . . in which it was also held that a blow upon a policeman was not an aggression amounting to an assault. It must be remembered, however, that in these two cases the crime involved was that of assault upon agents of authority, in which the essential element is substantially the force employed. It is said in these two cases *that any force is not*

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[44] REV. PEN. CODE, Art. 152 as amended by Batas Pambansa Blg. 873 (1985).

[45] 39 Phil. 76 (1918) [Per *J.* Avanceña, *En Banc*].

sufficient to constitute an assault[,] but that it is necessary to consider the circumstances of each case to decide whether the force used is, or is not, sufficient to constitute assault upon an agent of authority.[46] (Emphasis supplied, citations omitted)

Previous convictions for direct assault against an agent of a person in authority involve force that is more severe than slapping and punching. In *United States v. Cox*,[47] the accused "seized [the police officer] by the throat, threw him to the ground, and struck him several blows with the club which he succeeded in wresting from the policeman[.]"[48]

In *Rivera v. People*,[49] the accused repeatedly hurled menacing threats against the police officer, challenged him to a fight, and scored a punch on the lip as they grappled. The officer sustained an injury that would take several days to heal, while the accused was only subdued with the help of other police officers. Thus:

... the accused pointed a finger on the policeman and uttered words like "*Babalian kita ng buto*" (I'll break your bones). "*Ilalampaso kita*" (I'll scrub you). "*Pulis lang kayo*" (you are only policemen) and other unsavory and insulting words. Inspector Leygo who was a little bit angry warned the accused to stop uttering further insulting words and cautioned him to take it easy and then informed him that he was being arrested for violation of the chicken dung ordinance. The accused removed his jacket, placed it inside the vehicle, assumed a fighting stance and challenged the policeman. Inspector Leygo then approached the accused and warned him anew that he was being arrested. The accused responded by punching Inspector Leygo on his face, particularly on his lip. The two then grappled as Inspector Leygo tried to hold the accused. Finally, with the help of Policemen Dayap and Bongcado, the accused was subdued. The accused was then pushed into one of the police cars but he resisted until Alfredo Castro, one of the chicken dung dealers in the area, boarded the police car to accompany him.

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

[47] 3 Phil. 140 (1904) [Per *J.* Torres, *En Banc*].

[48] *Id.* at 141.

[49] 501 Phil. 37 (2005) [Per *J.* Garcia, Third Division].

. . . In the medico-legal certificate (Exhibit "A") of Inspector Leygo, his injury described as "contusion with 0.5 laceration, upper lip, left side" with healing period from 5 to 7 days. Subsequently, this present case was filed against the accused.[50]

As clarified in *People v. Breis*,[51] if the use of physical force against agents of persons in authority is not serious, the offense is not direct assault, but resistance or disobedience:

The laying of hands or using physical force against agents of persons in authority when not serious in nature constitutes resistance or disobedience under Article 151, and not direct assault under Article 148 of the RPC. This is because the gravity of the disobedience to an order of a person in authority or his agent is measured by the circumstances surrounding the act, the motives prompting it and the real importance of the transgression, rather than the source of the order disobeyed. The pushing of IO1 Mangili is not of such serious defiance to be considered direct assault, but is resistance nonetheless.[52] (Citations omitted)

Resistance or disobedience is punished under Article 151 of the Revised Penal Code, which provides:

ARTICLE 151. *Resistance and disobedience to a person in authority or the agents of such person. — The penalty of arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.

When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of *arresto menor* or a fine ranging from 10 to 100 pesos shall be imposed upon the offender.

For this crime to be proven, the two (2) key elements must be shown: "(1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to

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

[51] 766 Phil. 785 (2015) [Per *J.* Carpio, Second Division].

[52] *Id.* at 811.

the offender; and (2) That the offender resists or seriously disobeys such person or his agent."[53]

In *United States v. Tabiana*,[54] where the accused hit the police officer with his fist, this Court explained the rationale behind the distinction in the force used:

> Upon the whole we find the defendant Tabiana guilty of resistance and serious disobedience to public authority under article 252, Penal Code, and not of the more serious offense indicated in subsection 2 of article 249, Penal Code, which was applied by the Court of First Instance. The question whether an offense consists of simple resistance or to grave resistance is to be determined with a view to the gravity of the act proved and the particular conditions under which committed. In considering this question reference should also be had to the nature and extend of the penalties attached by the authors of the Code to the different offenses. Thus, when it is observed that the offense indicated in article 249 carries with it a penalty ranging from *prision correccional* to *prision mayor* in its minimum degree, with corresponding fines, it is obvious that the lawmaker here had in mind serious offenses, characterized in part at least by the spirit of aggression directed against the authorities or their agents. . . .
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> The greatest hesitancy which we have felt in applying article 252 instead of article 249 to this case arises from the words "shall employ force against them" (*emplearen fuerza contra ellos*) contained in article 249. These words, taken without reference to the context, would seem to make absolutely necessary the application of article 249 in every case where any degree of force is exerted. We believe, however, that the words quoted are to be understood as applying to *force of a more serious character* than that employed in the present instance. We are led to this conclusion not only because of the grave penalty attached, as indicated above, but for the further reason that the Code mentions grave resistance further on in the same paragraph and also makes special provision for the offense of simple resistance in article 252. Now practically and rationally considered in connection with the subject of arrest, resistance is impossible without the

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[53] *Sydeco v. People*, 746 Phil. 916, 932-933 (2014) [Per *J.* Velasco, Third Division] citing LUIS REYES, *THE REVISED PENAL CODE, Book 11*, *18th ed.* (2008), p. 154.

[54] 37 Phil. 515 (1918) [Per *J.* Street, First Division].

employment of some force. A man may abscond or evade or elude arrest, or may disobey the commands of an officer without using force but he cannot resist without using force of some kind or in some degree. If at the ultimate moment no force is employed to resist, there is not resistance but submission; and if it had been intended that every manifestation of force, however slight, against the authorities and their agents should bring the case under article 249, it was an idle waste of words to make other provisions to cover grave resistance and simple resistance. It therefore seems reasonable to hold that the words in article 249 relating to the employment of force are in some degree limited by the connection in which they are used and are less peremptory than they at first seem. Reasonably interpreted they appear to have reference to something more dangerous to civil society than a simple blow with the hands at the moment a party is taken into custody by a policeman.[55] (Emphasis supplied)

In this case, it was established that petitioner grabbed the shirt of PO2 Navarro, then slapped and kicked him several times. PO2 Navarro testified:

Q: When you [saw] these (*sic*) commotion, what did you and Police officer Merza do?
A: We tried to stop them and introduced ourselves as police officers, sir.

Q: Who directed them to stop, and did they stop?
A; Yes, sir.

Q: What did you do next?
A We invited them at the police station, so that they will file their complaint if there is any.

Q: Did they abide on (*sic*) you?
A: No, sir.

Q: And what did they do?
A: After telling them to go to the police station, there was one (1) woman who shouted: 'WALA KAYO PAKIALAM SA AKIN. HINDI AKO SASAMA SA INYO."

Q: Was the woman who shouted part of the group?
A: Yes, sir.

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[55] *Id.* at 519-521.

Q: What did you do then after you heard those words?
A: We continued telling them to board on the vehicle, but this woman slapped me and kicked me, sir.

. . . .

Q: You said that this woman held your collar, and slapped and kicked you. How many times [were] you slapped?
A: I could not remember, sir.

Q: Where were [you] slapped?
A: On my right cheek, sir.

Q: And where were you kicked?
A: On both legs, sir.

Q: How many times were you kicked?
A: Many times, sir.[56]

In the January 12, 2007 Joint Affidavit of PO3 Merza and PO2 Navarro, they stated:

That upon arrival thereat we saw a two group of female persons fighting each other in front of gen-ex Billiard hall, located along Gordon Avenue, New Asinan Olongapo City, That we immediately pacified them, introduced ourselves as a Police officers (*sic*) despite we wearing our official Police uniform and invited both parties involved to our station for proper disposition, but one of the person (*sic*) involved later identified as Jona (*sic*) Mallari Y Samar who reeking with the smell of alcoholic beverages resisted and shows disrespect and disobedience upon us, and uttered the following remarks on top of her voice "WALA KAYO PAKIALAM SA AKIN HINDI AKO SASAMA SA INYO!" then she grabbed PO2 Navarro (*sic*) uniform and repeatedly kicked him and slapped him on his face that cause (*sic*) an injury to his person, and placed us to an embarrassing situation;

That we compelled to used (*sic*) a necessary and sufficient forced (*sic*) to arrest him and brought (*sic*) to our Station for proper disposition[.][57]

Mallari also admitted to this. Her testimony reveals:

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[56] *Rollo*, pp. 35-36.

[57] CA *rollo*, p. 45.

Q: Ms. Witness, in your complaint affidavit [and] ear[l]ier you mentioned that PO2 Navarro was in uniform, and he was inviting you to go to the police station, and in 2.4 paragraph of your complaint affidavit Ms. Witness, on the last portion of the paragraph you mentioned "I was afraid he might again harm me, so I grabbed his shirt to push him away and kick him away." Now, you admit having grabbed the shirt of police officer Navarro?
A: Yes, Ma'[a]m.

Q: You admit having kicked him?
A: Yes, ma'am.

. . . .

Q: I will let you read the part, "when I get up, PO2 Navarro approached me." So he was not doing anything but approaching you, correct?
A: Yes, Ma'[a]m.

Q: And upon getting near you Ms. Witness you grabbed his shirt and kicked him?
A: Yes, Ma'[a]m.[58]

Based on the circumstances, petitioner's resistance and use of force are not so serious to be deemed as direct assault. While she exerted force, it is not dangerous, grave, or severe enough to warrant the penalties attached to the crime.

Moreover, PO2 Navarro himself stated that he was not kicked hard:

Q: Were you kicked hard by the accused?
A: Not really hard, sir.

Court: Did you resent being kicked in the presence of other ladies?
A: Yes, Your Honor.[59]

Thus, instead of direct assault, this Court convicts petitioner of resistance or disobedience.

When the crime proved is different from the offense alleged, the accused may be convicted of the offense proved when the

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[58] *Rollo*, p. 78.

[59] CA *rollo*, p. 79.

offense charged necessarily includes the offense proven.[60] Rule 120, Sections 4 and 5 of the Rules of Court provide:

> SECTION 4. *Judgment in case of variance between allegation and proof*. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.
>
> SECTION 5. *When an offense includes or is included in another*. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

In this case, although the charge is direct assault, the prosecution was able to prove resistance or disobedience. These offenses have similar elements, varying only as to the degree of seriousness of the offender's resistance. Direct assault necessarily includes resistance or disobedience.

WHEREFORE, this Court **MODIFIES** the October 27, 2015 Decision and May 12, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36835. Petitioner Jonah Mallari *y* Samar is found **GUILTY** beyond reasonable doubt of the crime of resistance or disobedience under Article 151 of the Revised Penal Code. She is sentenced to suffer the penalty of imprisonment of *arresto mayor*, which covers one (1) month and one (1) day, as minimum, to six (6) months, as maximum, and a fine not exceeding ₱500.00.

SO ORDERED.

Gesmundo, Zalameda, and *Delos Santos,*[*] *JJ*., concur.

Carandang, J., on special leave.

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[60] *Sevilla v. People*, 741 Phil. 198 (2014) [Per *J.* Reyes, First Division].

[*] Designated additional Member per Raffle dated February 5, 2020.

SECOND DIVISION

[G.R. No. 227217. February 12, 2020]

JESSIE TOLENTINO *y* SAMIA, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In order to sustain a conviction for Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURAL SAFEGUARDS EMBODIED UNDER SECTION 21 OF RA 9165 AS AMENDED, EXPLAINED; NON-COMPLIANCE THEREWITH HAS SERIOUS EFFECTS AND IS FATAL TO THE PROSECUTION'S CASE. —** In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material, as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. x x x It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly, (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section

21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items. The Court reiterates though that a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects and is fatal to the prosecution's case.

3. ID.; ID.; ID.; REQUIREMENTS OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE ITEMS AS WELL AS THE PRESENCE OF THE REQUIRED WITNESSES, REITERATED. — Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must likewise be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; AND (3) a representative from the media. These individuals shall then be required to sign the copies of the inventory and be given a copy thereof.

4. ID.; ID.; ID.; FAILURE OF THE POLICE OFFICERS TO PROVIDE JUSTIFICATION FOR THE ABSENCE OF THE REQUIRED WITNESSES CLEARLY MAGNIFIED THE LACK OF CONCRETE EFFORT ON THEIR PART TO COMPLY; SUCH ABSENCE CONSTITUTES A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY AND RAISES DOUBTS ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS; HENCE, ACQUITTAL BECOMES THE PROPER RECOURSE. — [A]s culled from the records and highlighted by the testimonies of the prosecution witnesses themselves, only one of the required witnesses was present during the inventory stage — the barangay captain of Ungot. Neither

was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of these witnesses. x x x The failure of the police officers to provide a reasonable excuse or justification for the absence of the other witnesses clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21. The absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the petitioner. It militates against a finding of guilt beyond reasonable doubt. The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused. x x x All told, the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the petitioner. Absent faithful compliance with Section 21, Article II of R.A. No. 9165 which is primarily intended to, *first*, preserve the integrity and the evidentiary value of the seized items in drugs cases, and *second*, to safeguard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse.

APPEARANCES OF COUNSEL

David P. Briones for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, A. JR., *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated

[1] *Rollo*, pp. 10-31.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring; *Id.* at 32-47.

April 14, 2016 and Resolution[3] dated September 9, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06902, which affirmed the Decision dated April 30, 2014 of the Regional Trial Court (RTC) of Tarlac City, Branch 64, in Criminal Case No. 16068, finding Jessie Tolentino *y* Samia (petitioner) guilty beyond reasonable doubt of violating Section 5,[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information dated February 16, 2009, the petitioner was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165.[5] The accusatory portion of the Information reads:

> That on or about February 13, 2009 at around 1:30 o'clock in the afternoon, in the City of Tarlac, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and criminally sell, trade and deliver three (3) heat-sealed transparent plastic sachet containing dried Marijuana fruiting tops, a dangerous drugs (sic)[,] to a poseur buyer, weighing 2.700 grams more or less.
>
> CONTRARY TO LAW.[6]

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[3] *Id.* at 48-49.

[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.

x x x x x x x x x

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

[6] *Id.* at 34.

On April 15, 2009, the petitioner was arraigned and entered a plea of not guilty. Pre-trial was held on June 2, 2009. Thereafter, trial on the merits ensued.[7]

Version of the Prosecution

On February 13, 2009, at around 1:30 p.m., members of the Task Force *Bantay Droga*, including Senior Police Officer 2 Jorge G. Andasan, Jr. (SPO2 Andasan) and SPO1 Eduardo T. Navarro (SPO1 Navarro), with the participation of Romeo Dela Pena (Dela Pena) as the poseur-buyer, conducted a buy-bust operation in Barangay Ungot, Tarlac City against one *alias* "Kabasi," who was later identified as the petitioner. Three (3) marked one hundred peso bills, with serial numbers GQ000707, LN468151 and FW278110, were prepared for use in the operation.[8] Prior to their arrival in Barangay Ungot, Dela Pena informed the petitioner that he wanted to buy ₱300.00-worth of *marijuana*. Upon arrival, Dela Pena was only able to purchase ₱100.00-worth of *marijuana* due to stock shortage.[9] After the successful drug trade, Dela Pena grabbed the petitioner which was the pre-arranged signal to effect an arrest. The petitioner was then informed of his rights and the buy-bust team proceeded to confiscate the marked money and the three (3) transparent plastic sachets containing *marijuana*. Petitioner was then brought to the house of the barangay captain of Ungot and SPO1 Navarro conducted an inventory of the said items thereat. During the inventory, photographs were taken and the confiscated items were marked as "ETN", "ETN-1", and "ETN-2", respectively. Subsequently, SPO1 Navarro brought the suspected drugs to the crime laboratory where they were received by Senior Inspector Jebie Timario. According to SPO1 Navarro, from the time the inventory was conducted until the subject items were brought to the laboratory for analysis, he had exclusive possession of the same.[10]

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[7] *Id.*

[8] *Id.* at 33.

[9] *Id.* at 36.

[10] *Id.* at 35-36.

On cross examination, SPO1 Navarro admitted that although he did not actually witness the drug deal, he was positioned approximately 50 meters away from them and that he saw Dela Pena grab the petitioner which was the pre-arranged signal that an exchange took place.[11]

SPO2 Andasan, one of the arresting officers involved in the buy-bust operation, corroborated the testimony of SPO1 Navarro as to the circumstances pertaining to the arrest of the petitioner. According to SPO2 Andasan, when the illicit drug deal occurred, he was positioned only about 15 meters away. When the petitioner was arrested, SPO1 Navarro read him his rights and then Dela Pena handed over the confiscated items to SPO1 Navarro. Thereafter, the arresting team proceeded to the house of the barangay captain to conduct inventory.[12]

Dela Pena, the designated poseur-buyer in the buy-bust operation, testified that he knew the petitioner because he had previous dealings with the latter at the market. On the day of the operation, he went to the house of the petitioner located in Barangay Ungot and transacted with the latter. When the exchange was consummated, he grabbed the petitioner and thereafter, SPO1 Navarro and SPO2 Andasan arrested the latter.[13]

Version of the Defense

Petitioner testified that at around 1:30 p.m. on February 13, 2009, he was away from home as he was working with a certain Roberto Dela Rosa and making door jambs. When his son informed him that there were visitors at their house, he immediately went home. When he arrived at his house in Barangay Ungot, a certain Bong Vargas (Vargas) alighted from a tricycle and asked him for some *marijuana* but the petitioner replied that he was not familiar with the item. Vargas fled and Dela Pena appeared, pointed a gun at the petitioner and his son, fired the gun twice and handcuffed the petitioner. While

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[11] *Id.* at 36.

[12] *Id.*

[13] *Id.*

handcuffed, the petitioner saw SPO2 Andasan and SPO1 Navarro with *marijuana* in their possession. He was then brought to the house of the barangay captain of Ungot where he was made to sign a document. Subsequently, the petitioner was taken to a nipa house where a certain Eduardo General hit him on the head and was made to sign more documents. Thereafter, he was placed under detention.[14]

Petitioner filed a case against SPO2 Andasan and SPO1 Navarro because he believed that he was wrongfully accused and detained. He also affirmed that he executed a *Sinumpaang Salaysay* dated January 27, 2010 wherein he denied having sold illegal drugs.[15]

Jaycee Tolentino (Jaycee), another witness for the defense and the son of the petitioner, corroborated his father's testimony that the latter did not sell illegal drugs. According to Jaycee, the petitioner refused to accept the ₱100.00-bill Dela Pena attempted to give his father. When his father was handcuffed, the latter was frisked by Dela Pena but no illegal items were found in his possession. After the arrest, he went with his father and the arresting officers to the house of the barangay captain of Ungot and thereat, SPO1 Navarro produced three plastic sachets and a ₱100.00-bill. Photographs were taken thereafter. Jaycee also affirmed that he executed a *Sinumpaang Salaysay* stating what he witnessed when his father was arrested.[16]

Julie Tolentino, another witness for the defense, likewise corroborated the allegation that the petitioner filed an administrative case against SPO2 Andasan and SPO1 Navarro.[17]

Jimmy Estrada (Estrada), the final witness for the defense, testified that at around 1:30 p.m. on February 13, 2009, he was outside the house of his friend who also lives in Barangay Ungot. The said house was approximately 20 meters away from the

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[14] *Id.* at 37.

[15] *Id.*

[16] *Id.* at 38.

[17] *Id.*

house of the petitioner. According to Estrada, he saw Jaycee and the petitioner talking and when the latter left, a tricycle appeared and one of the passengers thereof approached the petitioner and pointed a gun at the latter and then fired it in the air. Later, a motorcycle with two passengers arrived and one of the passengers raised his hand holding a small plastic sachet and said "positive."[18]

On April 30, 2014, the RTC rendered a Judgment finding the petitioner guilty beyond reasonable doubt of the crime charged. The trial court opined that the essential elements of the crime charged were established by the evidence of the prosecution.[19] The decretal portion of the decision reads:

> WHEREFORE, in view of the foregoing, this Court finds the [petitioner] guilty beyond reasonable doubt of the crime charged (Illegal Sale of Dangerous Drugs) and hereby sentences him to suffer the penalty of life imprisonment. Likewise, he is ordered to pay a fine of ₱500,000.00.
>
> The Branch Clerk of Court is hereby directed to immediately transmit to the PDEA the subject item for proper disposal.[20]

On appeal, the CA affirmed the findings of the RTC and held that on the basis of the evidence presented by the prosecution, there is no iota of doubt that the identity and integrity of the seized dangerous drugs or the *corpus delicti* have been safeguarded and preserved.[21] The appellate court further ratiocinated that it is of no moment that representatives from the Department of Justice (DOJ) and the media were not present to witness the seizure and inventory of these items because the Implementing Rules and Regulations (IRR) of R.A. No. 9165 offers flexibility with regard to compliance with the "Chain of Custody" rule, as long as the integrity and evidentiary value of

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[18] *Id.*

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

[20] *Id.* at 33.

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

the seized items are properly preserved.[22] The decretal portion of the Decision[23] dated April 14, 2016 reads:

> **WHEREFORE,** premises considered, the instant Appeal is **DENIED** for lack of merit. The challenged Decision dated 30 April 2014 of the [RTC], Branch 64 of Tarlac City in Criminal Case No. 16068 is **AFFIRMED**.
>
> **SO ORDERED.**[24]

Hence, the present petition.

The issue for the Court's resolution is whether or not the petitioner's conviction for Illegal Sale of Dangerous Drugs should be upheld.

Ruling of the Court

There is merit to the petition.

In order to sustain a conviction for Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[25]

Petitioner maintains that he should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended

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[22] *Id.* at 45.

[23] *Id.* at 32-47.

[24] *Id.* at 46.

[25] *People v. Ismael*, 806 Phil. 21, 29 (2017).

by R.A. No. 10640,[26] are material, as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. Specifically, Section 21 as amended provides the following rules:

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 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 non-compliance 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 (Emphases ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items in the presence of the accused

[26] Took effect on July 23, 2014.

or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, plus two other witnesses, particularly, (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21[27] of R.A. No. 9165 could be impracticable for the law enforcers' compliance,[28] and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items.

The Court reiterates though that a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has

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[27] 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 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[.]

[28] See *People of the Philippines v. Ramoncito Cornel*, G.R. No. 229047, April 16, 2018.

serious effects and is fatal to the prosecution's case. As the Court declared in *People v. Que*:[29]

> *People v. Morales* explained that "failure to comply with paragraph 1, Section 21, Article II of [R.A. No.] 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*. It "produce[s] doubts as to the origins of the [seized paraphernalia]."
>
> Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Noncompliance with them [tarnishes] the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. x x x.[30] (Citations omitted)

In the same vein, the Court, in *People v. Mendoza*,[31] explained that the presence of these witnesses would not only preserve an unbroken chain of custody but also prevent the possibility of tampering with, or "planting" of, evidence, *viz.*:

> Without 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 [R.A.] 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. x x x.[32]

Since the offense subject of this petition was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply, to wit:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

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[29] G.R. No. 212994, January 31, 2018, 853 SCRA 487.

[30] *Id.* at 503-504.

[31] 736 Phil. 749 (2014).

[32] *Id.* at 764.

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 he 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[.]

Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must likewise be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; AND (3) a representative from the media. These individuals shall then be required to sign the copies of the inventory and be given a copy thereof.

Here, as culled from the records and highlighted by the testimonies of the prosecution witnesses themselves, only one of the required witnesses was present during the inventory stage — the barangay captain of Ungot. Neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of these witnesses. To recapitulate, the buy-bust operation commenced around 1:30 p.m. of February 13, 2009. Given the time of the surveillance and arrest, the police officers had more than enough time to secure the attendance of the witnesses had they really wanted to.

In *People v. Reyes*,[33] the Court enumerated certain instances when absence of the required witnesses may be justified, *viz.*:

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[33] G.R. No. 219953, April 23, 2018.

It must be emphasized that the prosecution must be 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 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. [No.] 9165.[34] (Citation omitted)

The above-ruling was again reiterated by the Court in *People v. Sipin*[35] where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz.*:

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 an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[36] (Citation omitted and emphasis deleted)

The failure of the police officers to provide a reasonable excuse or justification for the absence of the other witnesses

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[34] *Id.*

[35] G.R. No. 224290, June 11, 2018.

[36] *Id.*

clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21. The absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the petitioner. It militates against a finding of guilt beyond reasonable doubt.

The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused.

In *People v. Relato*,[37] the Court explained that in a prosecution of the sale and possession of dangerous drugs prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[38]

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

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[37] 679 Phil. 268 (2012).

[38] *Id.* at 277-278.

In the recent case of *People v. Lim*,[39] the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the decision reads:

> To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody [IRR] directs:
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> > A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.
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> While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should henceforth be enforced as a mandatory policy:
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> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
> 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

[39] G.R. No. 231989, September 4, 2018.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[40] (Citations omitted)

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[41] is instructive on the matter:

Minor deviations from the procedures under R.A. [No.] 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (RA. [No.] 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully

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[40] *Id.*

[41] 686 Phil. 1024 (2012).

establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. [No.] 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution — especially when the pieces of evidence were derived from a buy-bust operation — "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."[42] (Citations omitted)

The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case.

It is mandated by no less than the Constitution[43] that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People v. Hilario*,[44] the Court ruled that the

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[42] *Id.* at 1053-1054.

[43.] Article III (Bill of Rights), Section 14 (2) of the Constitution mandates:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[44] G.R. No. 210610, January 11, 2018, 851 SCRA 1.

prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.[45]

All told, the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the petitioner. Absent faithful compliance with Section 21, Article II of R.A. No. 9165 which is primarily intended to, *first*, preserve the integrity and the evidentiary value of the seized items in drugs cases, and *second*, to safeguard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated April 14, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06902, which affirmed the Judgment dated April 30, 2014 of the Regional Trial Court of Tarlac City, Branch 64 in Criminal Case No. 16068, finding petitioner Jessie Tolentino *y* Samia guilty of violating Section 5, Article II of Republic Act No. 9165, is hereby **REVERSED** and **SET ASIDE**. Petitioner Jessie Tolentino *y* Samia is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** the petitioner from detention, unless he is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Hernando, Inting,* and *Delos Santos, JJ.*, concur.

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[45] *Id.* at 30.

THIRD DIVISION

[G.R. No. 229209. February 12, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **ZZZ,** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S DETERMINATION THEREOF WILL NOT BE DISTURBED ON APPEAL, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, UNLESS SIGNIFICANT MATTERS HAVE BEEN OVERLOOKED; CASE AT BAR. —** While accused-appellant attempts to cast doubt on the credibility of the prosecution's witnesses, the settled rule is that the trial court's determination of witness credibility will not be disturbed on appeal unless significant matters have been overlooked. Such determination is treated with respect, as the trial court has the opportunity to observe the witnesses' demeanor during trial. Its findings assume even greater weight when they are affirmed by the Court of Appeals. Here, the Regional Trial Court found AAA's testimony credible and sufficiently corroborated. Her straightforward and positive testimony that her grandfather raped her, Barangay Captain Lotec's testimony stating that she was "pale and trembling," the medical certificate indicating lacerations to her hymen, and accused-appellant's own admission of the paternal relationship between him and the victim were collectively deemed sufficient for conviction. For its part, the defense did not even cross-examine AAA to test her credibility. These findings were then affirmed by the Court of Appeals, which found AAA to be unwavering in "the material points of her testimony." Therefore, the lower courts' findings on AAA's credibility should be upheld, more so in view of accused-appellant's failure to raise any cogent reason for reversal.

2. **ID.; ID.; ID.; AN INCONSISTENCY WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF THE CRIME, IS NOT A GROUND TO REVERSE A CONVICTION; CASE AT BAR. —** Accused-appellant also assails AAA's credibility on her testimony that he attempted to kill her. He claims that it

was dubious how AAA sustained no physical injuries if he really did attack her with a bladed weapon. These matters, however, are irrelevant to the crime charged and do not deserve consideration. *People v. Nelmida* teaches that "[a]n inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction." In any event, the Court of Appeals correctly upheld the Office of the Solicitor General's argument that it was not impossible to escape such an attack unscathed if AAA had successfully parried the bladed weapon.

3. ID.; ID.; ID.; TESTIMONY OF THE PRIVATE COMPLAINANT IN RAPE CAN BE EVALUATED WITHOUT GENDER BIAS OR CULTURAL MISCONCEPTION; AN ACCUSED MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE VICTIM, THAT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS; CASE AT BAR. — Nonetheless, at this juncture, this Court takes the opportunity to reify contemporary standards in rape cases. In assessing AAA's credibility, the Court of Appeals held that "it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame" — effectively reiterating an outdated standard for assessing witness credibility. Rather, this Court's discussion in *People v. Amarela* is more timely and appropriate for this case: More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing so, *we have hinged on the impression that no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor. However, this misconception, particularly in this day and age, not only puts the accused at un unfair disadvantage, but created a travesty of justice. ... This opinion borders on the fallacy of non sequitur.* And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; *today, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.*

In this way, we can *evaluate the testimony of a private complainant of rape without gender bias or cultural misconception.* It is important to weed out these unnecessary notions because *an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.* Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim. Thus, in *Amarela*, the accused was acquitted because the victim's account was improbable and marred by inconsistencies, regardless of the existing preconception that a Filipino woman's honor would prevent her from lying about her ordeal.

4. **ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; IN RAPE CASES, IMPOTENCY AS A DEFENSE MUST BE PROVEN WITH CERTAINTY TO OVERCOME THE PRESUMPTION IN FAVOR OF POTENCY; CASE AT BAR**. — [A]ccused-appellant attempts to cast doubt on his conviction by arguing that his advanced age made erection — and thus, sex —impossible. This argument is unmeritorious. The lower courts correctly held that impotence must be proven with certainty in order to overcome the presumption of potency. As this Court has held: Clearly, the presumption had always been in favor of potency. Stated differently, impotency —the physical inability to have sexual intercourse—is considered an abnormal condition and should not be presumed… … In rape cases, impotency as a defense must be proven with certainty to overcome the presumption in favor of potency. Under the present circumstances, the evidence proferred by the defense failed to discharge such burden, inasmuch as the very testimony of Dr. Wilma Flores-Peralta repudiates the claim that accused-appellant could not have performed the sexual act.

5. **CIVIL LAW; DAMAGES; MODIFICATION OF THE IMPOSITION OF MONETARY LIABILITY, WARRANTED IN CASE AT BAR. —** [T]he Court of Appeals' imposition of monetary liability on accused-appellant must be modified. *People v. Jugueta* provides: When the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary

damages, regardless of the number of qualifying aggravating circumstances present. Since accused-appellant was meted the penalty of *reclusion perpetua* for raping AAA, accused-appellant must be held liable to the modified amounts of ₱75,000.00 each as civil indemnity, moral damages, and exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

The lower court's determination of witness credibility will seldom be disturbed on appeal, unless significant matters have been overlooked. Reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals.[1]

In determining a victim's credibility in rape cases, however, courts should be wary of adopting outdated notions of a victim's behavior based on gender stereotypes. Regardless of such preconceptions, conviction may be warranted based "solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things."[2]

For this Court's resolution is an appeal filed by ZZZ. He questions the Decision[3] of the Court of Appeals, which affirmed the Regional Trial Court's finding[4] that he was guilty beyond

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[1] *People v. Diu*, 708 Phil. 218, 232 (2013) [Per *J.* Leonardo-De Castro, First Division].

[2] *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54, 68 [Per *J.* Martires, Third Division].

[3] CA *rollo*, pp. 76-85. The Decision was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam (now a retired member of this Court) and Francisco P. Acosta of the Fourth Division, Court of Appeals, Manila.

[4] *Id.* at 18-23. The March 8, 2013 Decision was penned by Executive

reasonable doubt of raping his granddaughter AAA. The Information charging him with the crime read:

That during the month of December 2010, at Sitio Anahaw, Barangay Otod, Municipality of San Fernando, Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, through force, threat and intimidation and by taking advantage of the minority and lack of education of [AAA], did then and there willfully, unlawfully and feloniously had *(sic)* carnal knowledge of [AAA], a minor, 15 years of age, without her consent and against her will and that the commission of this crime of rape demeans, debases and degrades the intrinsic worth and dignity of said [AAA] as a human being.

That the accused is the grandfather of the victim [AAA].

CONTRARY TO LAW.[5]

ZZZ pleaded not guilty during his arraignment,[6] initiating trial. The prosecution offered the testimonies of the victim AAA, Dr. Lolinie Celestial B. Montojo (Dr. Montojo), Rosa Ravalo (Ravalo), and Barangay Captain Manuel Lotec (Barangay Captain Lotec).

AAA testified that she lived together with ZZZ, who was her grandfather, while her mother and other siblings lived separately. As she could neither read nor write, she had to be assisted by an officer from the Department of Social Welfare and Development in executing her sworn statement with the interviewing police officer.[7]

The incident, according to AAA, happened sometime in December 2010, before Christmas. She had been weeding grass near their house prior; it was when she went home, she recalled, that her grandfather raped her. ZZZ placed himself on top of her and kissed her lips and genitals. Then, when he had already

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Judge Ramiro R. Geronimo of Branch 18, Regional Trial Court of Romblon, Romblon.

[5] *Id.* at 18.

[6] *Id.*

[7] *Id.* at 20.

undressed her, he turned her sideways and inserted his penis into her vagina. Finally, when the ordeal was over, AAA left the house, went to the forest, and there slept.[8]

When AAA tried to come home the following day, ZZZ allegedly attacked her with a bolo.[9] She was allegedly able to parry ZZZ's attacks, allowing her to run and seek help from Lotec, the barangay captain.[10]

Although she could only recall the December 2010 incident, AAA testified that such incidents where ZZZ raped her would often happen. She was not cross-examined by the defense.[11]

Barangay Captain Lotec testified that on January 9, 2011, he received a report from the barangay record keeper that a child was seeking help because she "was being chased and raped by a certain ZZZ."[12] He asked the record keeper to bring him the child, who turned out to be AAA. When the girl told him that ZZZ had raped her, Barangay Captain Lotec brought her to the police station where a police officer and a local social worker attended to her. Upon cross-examination, Barangay Captain Lotec described AAA during their conversation as "pale and trembling."[13]

Rosa Ravalo (Ravalo) testified that she was the social worker who acted as AAA's guardian when the case was filed at the police station. She assisted AAA in executing her affidavit by translating the Tagalog statement, which AAA did not understand, to Visayan. She also interviewed AAA about the rape and accompanied her to her medical exam. On cross-examination, Ravalo admitted that when she reached the station, AAA was already being interviewed by a police officer. On

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[8] *Id.*

[9] *Id.* at 33.

[10] *Id.* at 20 and 64.

[11] *Id.* at 20.

[12] *Id.*

[13] *Id.*

re-direct examination, she identified her signature on AAA's affidavit.[14]

Dr. Montojo, AAA's examining physician, testified that she interviewed and examined the girl regarding the incident in December 2010. Dr. Montojo was not cross-examined, as the parties stipulated on the existence and due execution of AAA's medical certificate.[15]

For the defense, only ZZZ was presented as witness. He denied the accusation that he raped his granddaughter, claiming that his advanced age has long made him incapable of having an erection.[16]

After trial, the Regional Trial Court rendered a March 8, 2013 Decision[17] finding ZZZ guilty beyond reasonable doubt of raping AAA. It disposed as follows:

> WHEREFORE, judgment is rendered finding accused [ZZZ] GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A, par. 1(a) of the Revised Penal Code and hereby sentence *(sic)* to suffer the penalty of *reclusion perpetua* pursuant to Art. 266-B of the Revised Penal Code and to pay the complainant [AAA] the sums of ₱75,000.00 as indemnity and ₱50,000.00 as moral damages.
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> SO ORDERED.[18]

The trial court found AAA's testimony credible and sufficiently corroborated by the medico-legal certificate and the other witnesses' testimonies. It likewise appreciated Barangay Captain Lotec's testimony of having seen AAA pale and trembling as corroborative proof that AAA was telling the truth about her rape. It also noted that AAA's sworn statement was

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[14] *Id.* at 19.

[15] *Id.*

[16] *Id.* at 21 and 34.

[17] *Id.* at 18-23.

[18] *Id.* at 22.

uncontroverted by the defense. To the trial court, her positive testimony prevailed over ZZZ's defense of denial.[19]

However, the trial court did not appreciate AAA's alleged minority as the prosecution failed to present proof of her age at the time of her rape.[20]

ZZZ appealed to the Court of Appeals.[21] He questioned AAA's credibility, particularly because her account of having parried his alleged hacking at her with a bolo, without sustaining any injury, was supposedly unbelievable.[22]

ZZZ also discredited the other prosecution witnesses. He asserted that Barangay Captain Lotec's testimony was hearsay because it was based only on what was told by their record keeper, who was not even presented as witness.[23] As for Ravalo, ZZZ claimed that her participation was limited only to translating AAA's affidavit to a language that AAA could understand. Moreover, ZZZ insisted that the medical certificate was "equivocal and inconclusive"[24] as it only indicated old, healed lacerations of AAA's hymen, without indication of whether it was caused by penile penetration, let alone that it was done by ZZZ.[25]

Finally, ZZZ objected to the trial court's treatment of his denial and alibi as inherently weak in the face of AAA's positive identification. Citing jurisprudence, he countered that "[a] lying witness can make as positive an identification as a truthful witness can."[26]

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[19] *Id.* at 21-22.

[20] *Id.* at 22.

[21] *Id.* at 29-41.

[22] *Id.* at 35.

[23] *Id.*

[24] *Id.* at 36.

[25] *Id.* at 36-37.

[26] *Id.* at 38.

On the other hand, the Office of the Solicitor General argued in its Brief that the prosecution was able to establish all the elements of rape. It detailed how AAA's testimony identified ZZZ as the person who had carnal knowledge of her while holding moral ascendancy over her as her grandfather and father figure.[27]

The Office of the Solicitor General further argued that the testimonies of the prosecution's witnesses were credible. According to it, the victim's statement "says in effect all that is necessary to show that rape has been committed,"[28] which, if credible, warrants conviction. It pointed out that AAA escaped from ZZZ's attack unscathed because she successfully parried his bladed weapon, and that during the interview, she appeared pale and trembling — only normal behavior for one who escaped such an attack. It also posited that Barangay Captain Lotec's testimony corroborated AAA's statement, as he was able to personally interview her.[29]

Further, the Office of the Solicitor General argued that the medical certificate did not need to conclude that AAA's injuries were caused by sexual abuse to corroborate her testimony of rape. It maintains that a finding of old and healed lacerations has been deemed in jurisprudence as "compelling physical proof of defloration."[30]

As to the impotency claim, the Office of the Solicitor General asserted that such defense was in vain. It argued that impotency should be proven with certainty to overcome the presumption of potency — one that ZZZ failed to do, with only bare allegations as his proof.[31]

Finally, the Office of the Solicitor General reiterated the rule that denial and alibi cannot stand against the positive and

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[27] *Id.* at 62-63.

[28] *Id.* at 63.

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

[30] *Id.* at 66.

[31] *Id.* at 66-67.

credible witness testimony identifying the accused as the perpetrator. It asserted that the prosecution witnesses' testimonies clearly established ZZZ's criminal liability.[32]

In any event, the Office of the Solicitor General maintained that, absent matters that were overlooked, the trial court's appreciation of the witnesses' comportment was entitled to the highest respect, it having had the opportunity to observe the witnesses' demeanor during trial.[33]

In its November 3, 2015 Decision,[34] the Court of Appeals affirmed the trial court's findings and declared ZZZ guilty beyond reasonable doubt of rape. However, it modified the damages imposed:

> WHEREFORE, in the light of the foregoing premises, the instant APPEAL is hereby DENIED and the Decision dated March 8, 2013 of the Regional Trial Court of Romblon in Criminal Case No. 2919 on the guilt of accused-appellant [ZZZ] guilty beyond reasonable doubt of the crime of rape is hereby AFFIRMED with MODIFICATION insofar as the award of ₱75,000.00 as civil indemnity which is reduced to ₱50,000.00. In addition to the award of ₱50,000.00 as moral damages, the appellant is ordered to pay exemplary damages in the amount of ₱30,000.00, with legal rate of interest of six (6) percent per annum on all monetary awards from the date of finality of this Judgment.
>
> SO ORDERED.[35]

The Court of Appeals found AAA's testimony credible and sufficiently corroborated by the other prosecution witnesses' testimonies. According to it, AAA "positively identified [ZZZ] as her abuser [and] did not waver on the material points of her testimony."[36] Even if ZZZ's contentions on the absence of

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[32] *Id.* at 67.

[33] *Id.* at 64.

[34] *Id.* at 76-85.

[35] *Id.* at 84-85.

[36] *Id.* at 81.

corroboration were to be believed, the Court of Appeals held that "corroboration is not indispensable for condemnation[.]"[37]

The Court of Appeals also found no merit in ZZZ's argument that sexual intercourse was impossible as his advanced age allegedly rendered him impotent. Not only did it find no proof of his supposed impotence, but it also held that "age is not a criterion taken alone in determining sexual interest and capability of middle-aged and older people."[38] On the contrary, the Court of Appeals cited the medical report finding lacerations in AAA's hymen, which it took together with AAA's positive identification of ZZZ as assailant as proof of the rape.[39]

On November 13, 2015, ZZZ filed a Notice of Appeal, which the Court of Appeals gave due course to, later elevating the case records to this Court.[40] Upon noting receipt of the case records, this Court ordered the parties to submit supplemental briefs.[41] Both parties manifested that their Briefs before the Court of Appeals sufficiently discussed their arguments.[42]

The case presents the sole issue of whether or not the prosecution was able to prove beyond reasonable doubt the guilt of accused-appellant ZZZ for the crime of rape.

The appeal is dismissed.

The Court of Appeals correctly affirmed the Regional Trial Court's Decision holding accused-appellant guilty beyond reasonable doubt of rape. Article 266-A of the Revised Penal Code prescribes rape, as follows:

Article 266-A. *Rape: When and How Committed*. — Rape is committed —

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[37] *Id.*

[38] *Id.* at 82.

[39] *Id.*

[40] *Rollo*, pp. 1 and 12-15.

[41] *Id.* at 17.

[42] *Id.* at 18-21, accused-appellant's Manifestation, and 22-25, plaintiff-appellee's Manifestation.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Here, as the lower courts found, accused-appellant had carnal knowledge of AAA without her consent and by using his moral ascendancy over her as her grandfather and father figure.

While accused-appellant attempts to cast doubt on the credibility of the prosecution's witnesses, the settled rule is that the trial court's determination of witness credibility will not be disturbed on appeal unless significant matters have been overlooked. Such determination is treated with respect, as the trial court has the opportunity to observe the witnesses' demeanor during trial. Its findings assume even greater weight when they are affirmed by the Court of Appeals.[43]

Here, the Regional Trial Court found AAA's testimony credible and sufficiently corroborated.[44] Her straightforward and positive testimony that her grandfather raped her, Barangay Captain Lotec's testimony stating that she was "pale and trembling," the medical certificate indicating lacerations to her hymen, and accused-appellant's own admission of the paternal relationship between him and the victim were collectively deemed sufficient for conviction. For its part, the defense did not even cross-examine AAA to test her credibility.[45]

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[43] *People v. Diu*, 708 Phil. 218, 232 (2013) [Per *J.* Leonardo-De Castro, First Division].

[44] CA *rollo*, pp. 21-22.

[45] *Id.* at 20.

These findings were then affirmed by the Court of Appeals, which found AAA to be unwavering in "the material points of her testimony."[46] Therefore, the lower courts' findings on AAA's credibility should be upheld, more so in view of accused-appellant's failure to raise any cogent reason for reversal.

Accused-appellant also assails AAA's credibility on her testimony that he attempted to kill her. He claims that it was dubious how AAA sustained no physical injuries if he really did attack her with a bladed weapon. These matters, however, are irrelevant to the crime charged and do not deserve consideration. *People v. Nelmida*[47] teaches that "[a]n inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction."[48] In any event, the Court of Appeals correctly upheld the Office of the Solicitor General's argument that it was not impossible to escape such an attack unscathed if AAA had successfully parried the bladed weapon.[49]

Nonetheless, at this juncture, this Court takes the opportunity to reify contemporary standards in rape cases. In assessing AAA's credibility, the Court of Appeals held that "it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame"[50] — effectively reiterating an outdated standard for assessing witness credibility. Rather, this Court's discussion in *People v. Amarela*[51] is more timely and appropriate for this case:

> More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing

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[46] *Id.* at 81.

[47] 694 Phil. 529 (2012) [Per *J.* Perez, *En Banc*].

[48] *Id.* at 559.

[49] CA *rollo*, pp. 80-81.

[50] *Id.* at 82.

[51] G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54 [Per *J.* Martires, Third Division].

so, *we have hinged on the impression that no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor. However this misconception, particularly in this day and age, not only puts the accused at un unfair disadvantage, but created a travesty of justice*.

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This opinion borders on the fallacy of non sequitur. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; *today, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today: she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights*.

In this way, we can *evaluate the testimony of a private complainant of rape without gender bias or cultural misconception*. It is important to weed out these unnecessary notions because *an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things*. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.[52] (Emphasis supplied, citations omitted)

Thus, in *Amarela*, the accused was acquitted because the victim's account was improbable and marred by inconsistencies, regardless of the existing preconception that a Filipino woman's honor would prevent her from lying about her ordeal.

Likewise, in *People v. Perez*,[53] the victim had openly expressed infatuation for her assailant prior to being abused, contrary to the fictional *Maria Clara* stereotype. However, the victim's digression from this stereotype neither diminished the

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

[53] G.R. No. 201414, April 18, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64141> [Per *J.* Leonen, Third Division].

heinousness of what was done to her. Nor did it detract from her credibility, as her testimony was independently believable and sufficiently corroborated by other evidence adduced by the prosecution. This Court stated:

> *This Court in Amarela, however, did not go as far as denying the existence of patriarchal dominance in many social relationships. Courts must continue to be sensitive to the power relations that come clothed in gender roles*. In many instances, it does take courage for girls or women to come forward and testify against the boys or men in their lives who, perhaps due to cultural roles, dominate them. *Courts must continue to acknowledge that the dastardly illicit and lustful acts of men are often veiled in either the power of coercive threat or the inconvenience inherent in patriarchy as a culture*.
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> Even if it were true that AAA was infatuated with the accused, it did not justify the indignity done to her. At the tender age of 12, adolescents will normally be misled by their hormones and mistake regard or adoration for love. The aggressive expression of infatuation from a 12-year-old girl is never an invitation for sexual indignities. Certainly, it does not deserve the accused's mashing of her breasts or the insertion of his finger into her vagina.
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> *Consistent with our pronouncement in Amarela, AAA was no Maria Clara. Not being the fictitious and generalized demure girl, it does not make her testimony less credible especially when supported by the other pieces of evidence presented in this case*.[54] (Emphasis supplied, citations omitted)

Here, AAA's account of having been attacked by accused-appellant was sufficiently corroborated by Barangay Captain Lotec's testimony that he saw AAA "pale and trembling." Such description is based on his personal knowledge, having actually observed and spoken to AAA regarding her ordeal. This, taken with the prosecution's other corroborating evidence and AAA's straightforward identification of accused-appellant as the perpetrator, makes AAA's testimony sufficiently credible — independent of her perceived propensity for truthfulness based on gender stereotypes.

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[54] *Id.*

Finally, accused-appellant attempts to cast doubt on his conviction by arguing that his advanced age made erection — and thus, sex — impossible. This argument is unmeritorious. The lower courts correctly held that impotence must be proven with certainty in order to overcome the presumption of potency.[55] As this Court has held:

> Clearly, the presumption had always been in favor of potency. Stated differently, impotency — the physical inability to have sexual intercourse — is considered an abnormal condition and should not be presumed . . .
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> x x x x x x x x x
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> In rape cases, impotency as a defense must be proven with certainty to overcome the presumption in favor of potency. Under the present circumstances, the evidence proffered by the defense failed to discharge such burden, inasmuch as the very testimony of Dr. Wilma Flores-Peralta repudiates the claim that accused-appellant could not have performed the sexual act.[56]

The Court of Appeals did not find any reason to overturn the trial court's findings, and neither do we. This Court finds that AAA positively identified accused-appellant as the assailant. The elements of simple rape — that he had carnal knowledge of AAA without her consent and by using his moral ascendancy over her given their paternal relationship — were duly established by AAA's testimony, admissions by accused-appellant, and the prosecution's other corroborating evidence. Again, unless important matters have been overlooked, the trial court's determination of witness credibility will seldom be disturbed on appeal — especially when they are affirmed by the Court of Appeals.[57]

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[55] *People v. Cruz*, 612 Phil. 726, 735 (2009) [Per *J.* Velasco, Jr., Third Division].

[56] *People v. Austria*, 389 Phil. 737, 753-754 (2000) [Per *J.* Buena, Second Division].

[57] *People v. Diu*, 708 Phil. 218, 232 (2013) [Per *J.* Leonardo-De Castro, First Division].

However, the Court of Appeals' imposition of monetary liability on accused-appellant must be modified. *People v. Jugueta*[58] provides:

> When the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present.[59]

Since accused-appellant was meted the penalty of *reclusion perpetua* for raping AAA, accused-appellant must be held liable to the modified amounts of ₱75,000.00 each as civil indemnity, moral damages, and exemplary damages.

WHEREFORE, this Court **AFFIRMS with MODIFICATIONS** the Court of Appeals' November 3, 2015 Decision in CA-G.R. CR-HC No. 06088. Accused-appellant ZZZ is found **GUILTY** beyond reasonable doubt of rape under Article 266-A of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the private complainant, AAA, as civil indemnity, moral damages, and exemplary damages worth ₱75,000.00 each.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.[60]

SO ORDERED.

Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

Carandang, J., on special leave.

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[58] 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

[59] *Id.* at 840.

[60] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 238120. February 12, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **RICO DELA PEÑA,*** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS SUSTAINED BY THE COURT OF APPEALS (CA), ACCORDED RESPECT. —** [I]t has been held that when the issue involves matters like credibility of witnesses, the calibration of their testimonies as well as the assessment of the probative weight thereof, findings of the trial court and its conclusions anchored on said findings are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to closely monitor the demeanor of witnesses during the trial and is in the best position to discern whether they are telling the truth. There being no showing that the RTC misconstrued or misapprehended any relevant fact in this case, the Court gives full respect to its findings and conclusion, which were sustained on appeal by the CA, supporting accused-appellant's conviction for Murder.

2. **ID.; ID.; ID.; CREDENCE IS ACCORDED TO THE TESTIMONY OF A WITNESS WHO POSITIVELY IDENTIFIED ACCUSED-APPELLANT AS THE ONE WHO STABBED THE VICTIM. —** [C]redence is accorded to the testimony of Ernie, who positively identified accused-appellant as the one who stabbed his father. The alleged inconsistency between Ernie's affidavit and his testimony in open court does not affect his credibility as it does not detract from the fact that he saw and identified accused-appellant as the assailant of his father. Verily, a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.

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* Referred to as De La Peña in some parts of the *rollo*.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS OF; BY INVOKING SELF-DEFENSE, ACCUSED ADMITS COMMITTING THE ACTS CONSTITUTING THE CRIME OF MURDER AND THE BURDEN OF PROOF IS ON HIM TO ESTABLISH THE ELEMENTS OF SELF-DEFENSE. — [B]y invoking the justifying circumstance of self-defense, accused-appellant thus admits committing the acts constituting the crime for which he was charged and the burden of proof is on him to establish, by clear and convincing proof, that (1) there was unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel it; and (3) the lack of sufficient provocation on the part of the person defending himself.

4. ID.; ID.; ID.; CIRCUMSTANCES IN THIS CASE BELIE ACCUSED-APPELLANT'S CLAIM OF SELF-DEFENSE; APPEARANCES OF THE VICTIM'S WOUNDS NEGATE THAT THERE WAS UNLAWFUL AGGRESSION AND EVEN ASSUMING THAT THERE WAS, IT IS APPARENT THAT AT THE TIME THE VICTIM WAS KILLED THE DANGER TO THE ACCUSED-APPELLANT HAD ALREADY CEASED. — The nature, character, location and extent of these wounds belie accused-appellant's claim that Olipio attacked him with a *bolo*; and it was in self-defense that after wrestling the *bolo* from the victim, accused-appellant used it against the latter. The appearances of the wounds on the victim's heart, his internal organs and large intestine contradict accused-appellant's defense that he had only hit Olipio twice in the stomach and that after the second blow, both of them fell and rolled on the ground which caused the wounds at the back. Assuming that Olipio was the aggressor, it is nevertheless apparent that at the time he was killed, the danger to accused-appellant had already ceased. Notably, even after taking full control of the *bolo*, he attacked the victim several times and stabbed him to death. Settled is the rule that when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed.

5. ID.; MURDER; THAT THE VICTIM WAS SLEEPING ON HIS STOMACH WITH HIS FACE DOWN WAS NO DOUBT A POSITION WHEREIN HE WAS NOT ABLE TO PUT UP ANY DEFENSE. — In this case, Ernie categorically

stated that his father was sleeping inside the *nipa* hut when accused-appellant stabbed him using a "*pinuti*". Olipio was lying on his stomach, with his face down, and it was in that position that he was killed by accused-appellant. Under such circumstance, there is no doubt that he was not in a position to put up any form of defense against his assailant.

6. **ID.; ID.; PENALTY; *RECLUSION PERPETUA*, CORRECTLY IMPOSED BY THE TRIAL COURT; CIVIL LIABILITY.** — As to the penalty imposed, the RTC and CA were both correct in imposing the penalty of *reclusion perpetua*, together with the accessory penalty provided by law, instead of death considering that the latter penalty has been suspended by Republic Act No. (RA) 9346. As to the award of damages, the modifications made by the CA already conform to the latest jurisprudence on the matter. x x x [W]hen the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua*, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages in view of the heinousness of the crime and to set an example. In the present case, other than treachery which was used to qualify the killing, the special aggravating circumstance of relationship was specifically alleged in the information and the accused-appellant did not deny that he is the victim's brother-in-law, a relative by affinity within the second civil degree.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; THE INFORMATION SUFFICIENTLY CONTAINS SPECIFIC ALLEGATIONS NECESSARY FOR A QUALIFYING CIRCUMSTANCE OF TREACHERY TO BE APPRECIATED.** — [U]nder Section 6, Rule 110 of the Rules on Criminal Procedure, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, as well as the place of the offense. To the Court's mind, the Information herein complied with these conditions since the qualifying circumstance of "treachery" was specifically alleged in the Information. In fact, it bears emphasis that accused-appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

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

INTING, *J.*:

Treachery attends the killing where the accused attacks the victim while the latter is asleep and unable to defend himself. Absolutely, a sleeping victim is not in a position to defend himself, take flight or otherwise avoid the assault, thus ensuring that the crime is successfully executed without any risk to the attacker.[1]

The Court is now asked to decide on Appeal[2] the Decision[3] dated October 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02163, which affirmed the Judgment[4] dated October 28, 2015 of Branch 45, Regional Trial Court (RTC), Bais City, in Criminal Case No. 11-94-MY, finding Rico Dela Peña (accused-appellant) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The case arose from an Information[5] charging accused-appellant with the crime of Murder committed as follows:

That on or about 5:30 o'clock in the afternoon of December 14, 2006, at Barangay Samak, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, without any just motive, with treachery, and with intent to kill his brother in law, OLIPIO GOMEZ AMAHIT, assault, attack, and stab said Olipio

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[1] *People v. Caritativo*, 451 Phil. 741, 769 (2003).

[2] *See* Notice of Appeal dated November 21, 2017, *rollo*, pp. 17-19.

[3] *Id.* at 4-16; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

[4] CA *rollo*, pp. 25-29; penned by Presiding Judge Candelario V. Gonzales.

[5] Records, p. 1.

Gomez Amahit with a *"pinuti,"* thereby inflicting upon him multiple stab wounds on his body, which directly caused the death of said Olipio Gomez Amahit, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery, and aggravated by relationship under Article 15 of the RPC, the accused being the brother in law of the victim.[6]

The antecedents as culled from the CA Decision and records of the case are summarized as follows:

Ernie D. Amahit (Ernie), son of the victim Olipio G. Amahit (Olipio), testified that in the afternoon of December 14, 2006, he went to their *nipa* hut after tending to their carabaos. When he was a few meters away, he saw accused-appellant enter the *nipa* hut where his father was sleeping. Olipio was lying face down when accused-appellant stabbed him at the back with a *bolo* locally known as *"pinuti."* He heard his father shout for help while he watched accused-appellant stab the former several times. Accused-appellant then threatened to kill Ernie prompting him to run towards home to tell his mother about the incident.[7]

For his part, accused-appellant alleged that at around 5:30 p.m. of December 14, 2006, while he was walking on the road on his way home, Olipio called and motioned him to come near him. Olipio then told accused-appellant about the banana plants that were uprooted. Accused-appellant inquired as to the reason for Olipio's action, but the latter simply told him not to get angry otherwise he would kill him. When accused-appellant answered "no," Olipio pulled out his *bolo* and thrust it towards him. They wrestled for the *bolo* and when accused-appellant got hold of it, he stabbed Olipio. He narrated that Olipio was first hit in the stomach but when they continued to grapple with each other, he continued to stab the latter. Thereafter, accused-appellant went to the house of his cousin.[8]

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[6] *Id.*

[7] *Rollo*, p. 5.

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

On October 28, 2015, the RTC rendered a Judgment[9] finding accused-appellant guilty of Murder. It decreed:

WHEREFORE, premises considered, the prosecution having ably proven the guilt of accused RICO DE LA PEÑA for the crime of MURDER beyond reasonable doubt, he is hereby sentenced to RECLUSION PERPETUA with the accessory penalties of the law, and is ordered to pay the heirs of the victim the sum of ₱20,000.00 as actual damages, and ₱50,000.00 as death indemnity.

SO PROMULGATED IN OPEN COURT this 28th day of October, 2015 at Bais City, Philippines.[10]

The RTC gave credence to the testimony of Ernie who actually saw appellant stab his father with a *pinuti* several times at his back while the latter was sleeping lying face down on the floor. According to the RTC, it is an act of treachery to the highest form when one attacks a person who was sleeping. It gives no chance to the victim to defend himself thereby ensuring the evil motive of killing the victim.[11]

On appeal, the CA affirmed the conviction by the RTC:

WHEREFORE, the 28 October 2015 Decision of the Regional Trial Court (RTC). Branch 45, Bais City in Criminal Case No. 11-94-MY finding accused-appellant RICO DE LA PEÑA, guilty of Murder is AFFIRMED. With respect to the penalty of *reclusion perpetua* imposed upon him, accused-appellant shall be ineligible for parole pursuant to RA No. 9346. The accused-appellant is ordered to pay the heirs of the victim, ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from the date of the finality of this Decision until fully paid.

With costs against accused-appellant.

SO ORDERED.[12]

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[9] CA *rollo*, pp. 25-29.

[10] *Id.* at 29.

[11] *Id.* at 28.

[12] *Rollo*, pp. 15-16.

The CA concluded that the physical evidence presented including the location of the stab wounds contradict accused-appellant's claim that Olipio was the unlawful aggressor. The depth and seriousness of the wounds suffered by the victim prove that the stabbing blows were not inflicted by accused-appellant as a matter of defense but more to be taken as acts of aggression towards Olipio.[13]

Hence, this appeal.

After a careful review of the records of the case and the issues submitted by the parties, the Court finds that the CA committed no error in concluding that accused-appellant is indeed guilty of the crime of Murder. The issues and matters before the Court are the same issues raised in the CA, there being no supplemental briefs filed. They were sufficiently addressed and correctly ruled upon by the CA.

First, it has been held that when the issue involves matters like credibility of witnesses, the calibration of their testimonies as well as the assessment of the probative weight thereof, findings of the trial court and its conclusions anchored on said findings are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to closely monitor the demeanor of witnesses during the trial and is in the best position to discern whether they are telling the truth.[14] There being no showing that the RTC misconstrued or misapprehended any relevant fact in this case, the Court gives full respect to its findings and conclusion, which were sustained on appeal by the CA, supporting accused-appellant's conviction for Murder.

Second, credence is accorded to the testimony of Ernie, who positively identified accused-appellant as the one who stabbed his father. The alleged inconsistency between Ernie's affidavit and his testimony in open court does not affect his credibility

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[13] *Id.* at 11.

[14] See *People v. Sota*, G.R. No. 203121, November 29, 2017, 847 SCRA 113, 127-128, citing *People v. Dayaday*, 803 SCRA 363, 370-371.

as it does not detract from the fact that he saw and identified accused-appellant as the assailant of his father. Verily, a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.[15]

Third, by invoking the justifying circumstance of self-defense, accused-appellant thus admits committing the acts constituting the crime for which he was charged and the burden of proof is on him to establish, by clear and convincing proof, that (1) there was unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel it; and (3) the lack of sufficient provocation on the part of the person defending himself.[16]

The prosecution's material witness, Ernie, clearly described how accused-appellant stabbed his father to death. He recalled:

PROS. YBANEZ:

x x x x x x x x x

Q: While approaching the said nipa hut was there any unusual incident that you observe or witness?
A: Yes.

Q: What is that unusual incident?
A: He stabbed my father.

Q: When you say he stabbed your father, who stabbed your father?
A: Referring to Rico.

Q: May we know the family name of this Rico?
A: Dela Peña.

Q: Is he inside this courtroom?
A: Yes.

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[15] See *Ocampo v. People*, G.R. No. 242911, March 11, 2019 citing *People vs. Yanson*, 674 Phil. 169, 180 (2011).

[16] See *People v. Vega*, G.R. No. 216018, March 27, 2019.

Q: Can you please point to him.
A: (Witness pointing to a person who when asked of his name answered Rico Dela Peña).

Q: How far were you when you see this Rico Dela Peña stabbed your father?
A: Just near.

x x x x x x x x x

Q: And, when this Rico Dela Peña stabbed your father where was your father situated and what was he doing?
A: My father was asleep during that time.

Q: Where was he sleeping?
A: Inside the nipa hut.

Q: And, what was the position of your father while he was sleeping?
A: He was lying face down.

x x x x x x x x x

Q: Can you recall how many times this Rico Dela Peña stabbed your father?
A: Many times.

x x x x x x x x x

Q: And, what weapon did Rico Dela Peña use in stabbing your father?
A: A long bolo locally known as "*pinuti*".

Q: The first time that your father was stabbed by Rico[,] what happened to your father?
A: My father shouted.

Q: And, can you remember what was the shout of your father?
A: He shouted for help.

Q: And, what did you do after seeing that your father was stabbed by Rico?
A: I was just watching.

Q: You said a while ago that your father was stabbed by Rico many times. After that what happened if any?
A: He said that he will include us.

Q: After hearing this, what did you do?
A: We ran away.[17] (Emphasis supplied.)

This narration was corroborated by the result of the Post-Mortem Examination[18] showing that Olipio sustained several wounds on his back, to wit:

Location	**Findings**
Right upper chest.	Five inches long, diagonal anterior ribs open to four inches long, heart and other internal organs can be seen through the wound.
Along anterior axillary line or three inches below the nipple.	Two inches long, vertical, deep and penetrating.
Anterior side of the right forearm.	Cutting up to subcutaneous tissue.
Below right scapula.	Five inches long with one inch abrasion tail, widely gasping, width about two inches, posterior ribs open to two inches long, deep and penetrating.
Above left iliac crest along posterior axillary line.	Four inches long, vertical, deep, large intestine partly herniated.
V-shaped wound on the posterior side of left thumb.	Cutting tissue up to muscles.
One inch below shoulder blade.	Four inches long, deep, reaching muscles.
Along right posterior axillary line.	One inch long, superficial.
Posterior side of Right forearm.	Horizontal, two inches long, reaching muscles and tendon.
Posterior side of hand.	¾ inch long diagonal, cutting up to subcutaneous tissue.

The nature, character, location and extent of these wounds belie accused-appellant's claim that Olipio attacked him with

[17] TSN, May 5, 2014, pp. 4-6.

[18.] Records, p. 8.

a *bolo*; and it was in self-defense that after wrestling the *bolo* from the victim, accused-appellant used it against the latter. The appearances of the wounds on the victim's heart, his internal organs and large intestine contradict accused-appellant's defense that he had only hit Olipio twice in the stomach and that after the second blow, both of them fell and rolled on the ground which caused the wounds at the back.[19]

Assuming that Olipio was the aggressor, it is nevertheless apparent that at the time he was killed, the danger to accused-appellant had already ceased. Notably, even after taking full control of the *bolo*, he attacked the victim several times and stabbed him to death. Settled is the rule that when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed.[20]

Both the RTC and the CA properly ruled that treachery qualified the killing to murder.

In *People v. Clariño*,[21] the Court discussed that the lower court correctly appreciated the circumstance of treachery since the victim was asleep at the time of the assault.[22] Accordingly, the essence of treachery is the sudden and unexpected attack by an aggressor of an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby insuring its commission without risk to the aggressor.[23]

Similarly, in *People v. Caritativo*,[24] accused-appellant was found guilty of the crime of murder for the death of Expidito Mariano. In affirming the conviction of accused-appellant, the Court stressed that treachery attended the killing of the victim

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[19] *Rollo*, p. 11.

[20] See *People v. Casas*, 755 Phil. 210, 220 (2015).

[21] 414 Phil. 358, 377 (2001).

[22] *Id.* citing *People v. Barquilla*, 319 Phil. 302 (1995).

[23] *Id.* at 37, citing *People v. Vermudez*, 361 Phil. 952 (1999).

[24] *People v. Caritativo, supra* note 1.

as the latter was attacked while he was asleep. A sleeping victim is not in a position to defend himself, take flight or avoid the assault, thus ensuring that the crime is successfully executed without any risk to the latter.

In this case, Ernie categorically stated that his father was sleeping inside the *nipa* hut when accused-appellant stabbed him using a "*pinuti*". Olipio was lying on his stomach, with his face down, and it was in that position that he was killed by accused-appellant. Under such circumstance, there is no doubt that he was not in a position to put up any form of defense against his assailant.[25]

Lastly, under Section 6, Rule 110 of the Rules on Criminal Procedure, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, as well as the place of the offense. To the Court's mind, the Information herein complied with these conditions since the qualifying circumstance of "treachery" was specifically alleged in the Information. In fact, it bears emphasis that accused-appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

In *People v. Galido*,[26] it was held that the failure to allege the element of force and intimidation in an information for rape is not a fatal omission that would deprive the accused of the right to be informed of the nature and cause of accusation against him. While the information failed to allege this element, the complaint stated the ultimate facts which constitute the offense. Since the complaint forms part of the records and is furnished the accused, the latter may still suitably prepare his defense and answer the criminal charges hurled against him.[27]

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[25] See *People v. Abaño*, 659 Phil. 25, 29 (2011).

[26] 470 Phil. 345 (2004).

[27] *Id.* at 356-358.

Furthermore, in *People v. Candaza* (*Candaza*),[28] the Court declared that an information which lacks the essential allegations may still sustain a conviction if the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein.[29] Section 9 of Rule 117 of the same Rules reads:

SEC. 9. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

More recently, in *People v. Solar* (*Solar*),[30] the Court found that the accused-appellant has waived his right to question the defects in the Information filed against him. It observed that the accused-appellant did not question the supposed insufficiency of the Information through either a motion to quash or motion for bill of particulars. He also voluntarily entered his plea during the arraignment and proceeded with the trial. As such, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. Simply put, the accused-appellant is deemed to have understood the acts imputed against him by the Information and the appellate court erred in modifying his conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

In accused-appellant's case, the defense not only failed to question the sufficiency of the Information at any time during the pendency of the case before the RTC, it even allowed the prosecution to present competent evidence, proving the elements of treachery in the commission of the offense. At this point, as

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[28] 524 Phil. 589 (2006).

[29] *Id.* at 599.

[30] G.R. No. 225595, August 6, 2019.

in *Candaza* and *Solar*, herein accused-appellant is deemed to have waived any objections against the sufficiency of the Information.[31]

As to the penalty imposed, the RTC and CA were both correct in imposing the penalty of *reclusion perpetua*, together with the accessory penalty provided by law, instead of death considering that the latter penalty has been suspended by Republic Act No. (RA) 9346. As to the award of damages, the modifications made by the CA already conform to the latest jurisprudence on the matter. *People v. Jugueta* holds:[32]

In summary:

I. For those crimes like Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity - ₱100,000.00
b. Moral damages - ₱100,000.00
c. Exemplary damages - ₱100,000.00

Thus, when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua*, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages in view of the heinousness of the crime and to set an example.[33] In the present case, other than treachery which was used to qualify the killing, the special aggravating circumstance of relationship was specifically alleged in the information and the accused-appellant did not deny that he is the victim's brother-in-law, a relative by affinity within the second civil degree.

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[31] See *People v. Asilan,* 685 Phil. 633, 651 (2012), citing *supra* note 28 at 689.

[32] 783 Phil. 806, 843 (2016). See also *People v. Layug*, 818 Phil. 1021 (2017).

[33] *Id.* at 843.

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision dated October 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02163 finding accused-appellant Rico Dela Peña guilty beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr., Hernando,* and *Delos Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238563. February 12, 2020]

MANSUE NERY LUKBAN, *petitioner*, *vs.* **OMBUDSMAN CONCHITA CARPIO-MORALES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; IN VIEW OF THE SUBSTANTIAL MERITS OF THE CASE, THE COURT GAVE DUE COURSE TO THE PETITION ALTHOUGH BELATEDLY FILED; INSTANCES FOR RELAXATION OF THE RULES ARE PRESENT IN THIS CASE. —** There is no dispute that Lukban belatedly filed his MR before the CA. Nevertheless, there is merit to his contention that the CA should have granted his MR. Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice. In *PNB v. Yeung*, although petitioner's MR of the CA decision therein was filed out of time, the Court still gave due course to the petition in view of the substantial merits of the case[.] x x x The relaxation of procedural rules in the interest of substantial justice even finds application in judgments that are already final and executory, as in *Barnes v. Padilla*. x x x [T]he instances

for relaxation of the rules are present in this case. x x x Thus, the Court opts for a liberal application of the procedural rules especially considering that the substantial merits of the case warrant its review by the Court.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIAL AND EMPLOYEE; DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, DEFINED AND EXPLAINED. —** Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth. For dishonesty to be considered serious, thus warranting the penalty of dismissal from service, the presence of any one of the following attendant circumstances must be present: (1) The dishonest act caused serious damage and grave prejudice to the Government; (2) The respondent gravely abused his authority in order to commit the dishonest act; (3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (4) The dishonest act exhibits moral depravity on the part of the respondent; (5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (6) The dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; (8) Other analogous circumstances. Moreover, dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. In evaluating such intention, the following are some considerations: the facts and circumstances giving rise to the act committed; his state of mind at the time the offense was committed; the time he might have had at his disposal for the purpose of meditating on the consequences of his act; and the degree of reasoning he could have had at that moment. As for what specific acts constitute conduct prejudicial to the best interest of the service, there is no concrete description of such under the Civil Service law and rules. However, jurisprudence instructs that for an act to constitute such an administrative offense, it need not be related to or connected with the public officer's official functions. What

is essential is that the questioned conduct tarnishes the image and integrity of his public office.

3. ID.; ID.; ID.; ID.; NO SUBSTANTIAL EVIDENCE TO HOLD PETITIONER ADMINISTRATIVELY LIABLE FOR THE CRIME CHARGED; PETITIONER'S RELIANCE ON THE FINDINGS OF THE PNP INSPECTION AND ACCEPTANCE COMMITTEE (IAC) AND THE PROPERTY INSPECTORS NEGATES ANY DISHONEST INTENT. — [A]fter a careful review of the records of this case, the Court finds that there is no substantial evidence to hold Lukban administratively liable for gross dishonesty and conduct prejudicial to the service. x x x Lukban was found to have committed serious dishonesty and conduct prejudicial to the best interest of the service by his having signed the "Noted by" portion of the Inspection Report Form without verifying the accuracy and truthfulness thereof, thereby facilitating the release of funds for the payment of supposedly brand-new helicopters which turned out to be secondhand units. **However, a review of the functions and duties of his office leads the Court to conclude otherwise.** At the time material to this case, Lukban was the Chief of the Management Division of the PNP Directorate for Comptrollership. x x x Based on the foregoing, which has not been disputed, Lukban's official duties revolve only around accounting and fund or resource management. To be sure, his claim that the function of verifying the LPOH specifications belonged to different departments of the PNP is, in fact, already recognized by jurisprudence. In *Field Investigation Office v. Piano,* which involved the exact same factual milieu as the instant case, the Court, through Justice Peralta, now the Chief Justice, zeroed in on the IAC as the ultimate entity in the PNP responsible for verifying the LPOH specifications[.] x x x Thus, the Court gives credence to Lukban's claim that he merely relied on the IAC Resolution as regards the compliance of the LPOHs with the NAPOLCOM specifications when he affixed his signature on the Inspection Report Form under the portion of "Noted by." Borrowing the language of the Court in *Field Investigation Office v. Piano*, it is the IAC that has the responsibility of inspecting the deliveries to make sure they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same, **and it is only after the IAC's final acceptance of the items delivered can the supplier be paid by the PNP**, so that it is

the IAC Resolution that constitutes **"the final act for the acceptance of these helicopters for the use of the PNP, and which was the basis for the PNP to pay the price of brand new helicopters for the delivered second-hand items."** Considering the foregoing, it is the considered view of the Court that Lukban cannot be held liable for serious dishonesty or conduct prejudicial to the best interest of the service. To reiterate, dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. Lukban's acts do not show any disposition to defraud, cheat, deceive, or betray, nor any intent to violate the truth. Moreover, Lukban's reliance on the findings of the IAC and the property inspectors within his division negates any dishonest intent.

4. **ID.; ID.; ID.; CONSPIRACY TO DEFRAUD THE GOVERNMENT, NOT ESTABLISHED; CONSPIRACY IS NOT PRESUMED. —** On the matter of conspiracy, x x x [t]he Court disagrees [with the CA's findings that conspiracy was sufficiently established]. In this regard, the pronouncements of the Court in *PNP-CIDG v. Villafuerte*, a case involving the same factual backdrop, find full application in the instant case, to wit: x x x [I]t bears stressing that **while the [Office of the Ombudsman]'s factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process.** For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense; **conspiracy is not the product of negligence but of intentionality on the part of cohorts. Conspiracy is never presumed.** As applied to the instant case, there is a sheer dearth of evidence on Lukban's participation in the alleged conspiracy to defraud the government.

APPEARANCES OF COUNSEL

Karla Alexis M. Afable for petitioner.
The Solicitor General for respondent.

DECISION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision dated August 20, 2015,[2] as well as the Resolutions dated January 18, 2016[3] and October 10, 2016[4] issued by Court of Appeals (CA) Fourth Division, and Resolution dated March 27, 2018[5] issued by the CA Special Fourteenth Division in CA-G.R. SP No. 127992. The CA Decision affirmed the May 30, 2012 Joint Resolution[6] of the Office of the Ombudsman (Ombudsman), which found herein petitioner P/SSupt. Mansue Nery Lukban (Lukban) administratively liable with several others for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

The Facts

This case arose from the so-called "chopper scam" that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP). During the time material to this case, petitioner Lukban was the Chief of the Management Division of the PNP Directorate for Comptrollership.[7]

The facts of the instant case were summarized in the CA Decision as follows:

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[1] *Rollo*, pp. 11-31.

[2] *Id.* at 32-46, penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Noel G. Tijam, and Francisco P. Acosta concurring.

[3] *Id.* at 47-48.

[4] *Id.* at 50-51.

[5] *Id.* at 53-54, penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Ricardo R. Rosario and Germano Francisco D. Legaspi concurring.

[6] *Id.* at 215-362.

[7] *Id.* at 14.

Pursuant to the modernization program of the [PNP], procurement of three (3) [LPOHs] were included in its Annual Procurement Plan (APP) for Calendar Year 2008. Relative thereto, the National Police Commission (NAPOLCOM) thereafter issued Resolution No. 2008-260 dated May 5, 2008 which prescribed the following minimum standard specifications for the purchase of the LPOHs:

SPECIFICATIONS	
Power Plant	Piston
Power Rating	200 HP
Speed	100 knots
Range	300 miles
Endurance	3 hours
Service Ceiling (Min. Height Capability)	14,000 feet (max.)
T/O Gross Weight	2,600 lbs (max.)
Seating Capacity	1 pilot + 3 pax (max.)
Ventilating System	Air-conditioned

Following two failed biddings and unsuccessful negotiated procurement based on prescribed standard specifications, Police Director Luizo Cristobal Ticman issued a Request for Quotation (RFQ). It was intended for the PNP's procurement, through its Negotiation Committee, of the supply and delivery of one (1) fully-equipped and two (2) standard LPOHs with an [Approved Budget for the Contract or] ABC of ₱105,000,00[0].00, through negotiated procurement, pursuant to Section 53 (b) of the IRR-A of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, from legally, technically, and financially competent and PhilGEPS-registered suppliers and manufacturers.

A negotiation conference was subsequently conducted which were attended by BEELINE and Manila Aerospace Products and Trading (MAPTRA) Sole Proprietorship. Eventually, the Negotiation Committee's Resolution No. 2009-04 awarded the contract to MAPTRA for the purchase and delivery of one fully equipped and two standard LPOHs, all brand new, amounting to One Hundred Four Million Nine Hundred Eighty-Five Thousand Pesos (₱104,985,000.00) which was also confirmed by the National Headquarters-Bids and Awards Committee (NHQ-BAC) per Resolution No. 2009-36.

After the concluded Supply Contract, a Notice to Proceed was issued to MAPTRA on July 24, 2009 and the LPOHs were delivered

on September 24, 2009. Thereafter, the members of the PNP's Directorate for Research and Development and a team of inspectors from its Logic Support Services, Special Action Force — Air Unit and Directorate for Logistics prepared a Weapons, Tactics and Communications Division (WTCD) Report which contained these findings:

PNP SPECIFICATIONS FOR LIGHT POLICE OPERATIONAL HELICOPTERS	SPECIFICATIONS OF ROBINSON R44 RAVEN 1 HELICOPTER	REMARKS
Power Plant: Piston	Piston-type	Conforming
Power Rating: 200 hp (minimum)	225	Conforming
Speed: 100 knots (minimum)	113 knots	Conforming
Range: 300 miles	400 miles	Conforming
Endurance: 3 hours (minimum)	No available data	
Service Ceiling (Height Capability): 14,000 feet (maximum)	14,000 feet	Conforming
T/O Gross Weight: 2,600 lbs (maximum)	2,400 lbs	Conforming
Seating Capacity: 1 pilot + 3 pax (maximum)	1 pilot + 3 passengers	Conforming
Ventilating System: Air-Conditioned	Not air-conditioned	Standard Helicopter
Aircraft Instruments: Standard to include directional gyro above horizon with slip skid indicator and vertical compass	Equipped with directional gyro above horizon with slip skid indicator and vertical compass	Conforming
Color and Markings: White with appropriate markings specified in NAPOLCOM Res. No. 99-002 dated January 6, 1999 (approving the Standard Color and Markings for PNP Motor Vehicles, Seacraft and Aircraft)	White with appropriate marking specified in NAPOLCOM Res. No. 99-002	Conforming

Warranty: The supplier warrants any defect in material and workmanship within the most advantageous terms and conditions in favor of the government.	The supplier will warrant any defect in material and workmanship within the most advantageous terms and conditions in favor of the government for two (2) years.	Indicated in the contract (To include time-change parts as suggested by DRD Test and Evaluation Board)
Requirements: Maintenance Manual Operation Manual	 Provided Provided	 Conforming Conforming

It was the PNP Inspection and Acceptance Committee, per Resolution No. IAC-09-045, which vouched for the LPOHs' conformity to the NAPOLCOM specifications and that these LPOHs had passed the acceptance criteria per WTCD Report No. T-2009-04-A and the Committee further recommended the acceptance of the two standard LPOHs.

The subject Inspection Report Form was thereafter prepared which declared that the LPOHs were in good condition and conformed with NAPOLCOM specifications.

Yet, an investigation of the subject transactions later revealed that the LPOHs did not meet specifications provided in Resolution No. 2008-260 by the NAPOLCOM. Further, during the course of the inquisition, it was discovered that the LPOHs were hardly brand new and the choppers were actually pre-owned by then First Gentleman Mike Arroyo.[8]

As a result of the investigation, the Ombudsman — Field Investigation Office (FIO) filed a Complaint[9] dated November 25, 2011 charging several public and private respondents,[10] including

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[8] *Id.* at 33-36.

[9] *Id.* at 155-187.

[10] Ronaldo V. Puno, Former Secretary, Department of Interior and Local Government (DILG); Oscar F. Valenzuela, Former Assistant Secretary, DILG; Conrado L. Sumanga, Jr., NAPOLCOM Director, Installations & Logistic

petitioner Lukban, with various criminal and administrative offenses, which included the following: 1) violation of paragraphs (e) and (g), Section 3,[11] Republic Act (R.A.) No. 3019,[12] in relation to R.A. No. 9184;[13] and 2) Dishonesty, Gross Neglect

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Services; Miguel G. Coronel, NAPOLCOM Commissioner; Avelino L. Razon, Jr., Former PNP Chief and NAPOLCOM Commissioner; Celia Sanidad-Leones, NAPOLCOM Commissioner; Jesus Ame Verzosa, Former Director General, PNP; P/Dir. Luizo Cristobal Ticman, P/Dir. Ronald Dulay Roderos, P/Dir. Leocadio Salva Cruz Santiago, Jr., Members, PNP Negotiation Committee (NC) and PNP NHQ-BAC; P/Dir. Romeo Capacillo Hilomen, Member, PNP NC; P/Ddg. Jefferson Pattaui Soriano, P/CSupt. Herold G. Ubalde, Members, PNP NHQ-BAC; P/Supt. Ermilando Villafuerte, P/Supt. Roman E. Loreto, Legal Officers, PNP NHQ-BAC; P/CSupt. Luis Luarca Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/CInsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS. Gaspar, Jr., P/SSupt. Larry Balmaceda, SPO3 Jorge B. Gabiana, SPO3 Ma. Linda A. Padojinog, PO3 Dionisio Jimenez, PO3 Avensuel G. Dy, NUP Ruben S. Gongona, NUP Erwin O. Chavarria, NUP Emila A. Aliling, NUP Erwin Paul Maranan, Members, Inspecting Team and the Inspection and Acceptance Committee, PNP; P/SSupt. Joel Crisostomo DL Garcia, Recommending Authority on WTCD Report No. T-2009-04, PNP, P/SSupt. Lurimer B. Detran, Secretariat Head, PNP NHQ-BAC; Atty. Jose Miguel "Mike" Arroyo, Hilario "Larry" B. De Vera, in their private capacities; and Rep. Ignacio "Iggy" Arroyo.

[11] 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.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[12] Anti-Graft and Corrupt Practices Act, August 17, 1960.

[13] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, "Government Procurement Reform Act," January 10, 2003.

of Duty, and Conduct Prejudicial to the Best Interest of the Service under paragraphs 1, 2 and 20, Section 52 (A), Uniform Rules on Administrative Cases in the Civil Service (URACCS).[14]

In his Counter-Affidavit[15] dated January 16, 2012, Lukban maintained that he was not a member of the Bids and Awards Committee (BAC), the Negotiation Committee, the Technical Inspection Team, the Inspection and Acceptance Committee (IAC), or any other committee created in connection with the procurement of the subject helicopters. He claimed that his inclusion in the case was based on the fact that in the Inspection Report Form, he affixed his signature on the "NOTED" portion thereof. According to him, the form was prepared by his co-respondent PO3 Avensuel G. Dy (Dy), the designated Property Inspector of the Management Division, and was further initialed by his immediate superior, PSupt. Marlon Madrid (Madrid), who verified the completeness, correctness, and authenticity of the report and that of the documentary requirements attached to it, before it was forwarded to Lukban for his notation. Thus, he claimed that he validated the truthfulness of the report of his personnel based on the attached supporting documents prior to affixing his signature thereon.[16]

Further, Lukban explained that the function of the Management Division of the Directorate for Comptrollership, relative to the procurement process, was limited to ensuring that there was an available fund for said procurement and that the allocated fund was properly released to the winning bidder after the delivery of the procured item and upon the approval of the procuring head. Once the documentary requirements were complied with, he claimed that it became the ministerial function of the Directorate for Comptrollership to issue a clearance for the release of the fund for the payment of the procured items.[17]

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[14] Civil Service Commission Resolution No. 991936.

[15] *Rollo*, pp. 188-195.

[16] *Id.* at 189-190.

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

Ruling of the Ombudsman

In a Joint Resolution[18] dated May 30, 2012, the Ombudsman found the respondents therein administratively liable and likewise ordered the filing of Informations against them for crimes relative to the procurement process. The dispositive portion of the Joint Resolution is hereby quoted in part:

WHEREFORE, it is hereby resolved as follows:

OMB-C-C-11-0758-L (CRIMINAL CASE)

1) Respondents x x x, P/SSupt. Mansue Nery Lukban, x x x **BE CHARGED** before the Sandiganbayan with one (1) count of violation of **Section 3(e), R.A. 3019**, as amended;

x x x   x x x   x x x

4) Respondents P/SSupt. Mansue Nery Lukban and PO3 Avensuel G. Dy **BE CHARGED** before the Sandiganbayan with **Falsification of Public Documents** under Article 171, par (4), Revised Penal Code relative to *Inspection Report Form dated November 13, 2009*;

x x x   x x x   x x x

OMB-C-A-11-0758-L (ADMINISTRATIVE CASE)

1) Respondents x x x, P/SSupt. Mansue Nery Lukban, x x x are hereby found **GUILTY** of ***Serious Dishonesty*** and ***Conduct Prejudicial to the Best Interest of the Service***, and are thus meted the penalty of **DISMISSAL FROM THE SERVICE**, including the accessory penalties of forfeiture of retirement benefits and perpetual disqualification to hold public office, pursuant to the *Uniform Rules on Administrative Cases in the Civil Service* (CSC Resolution No. 991936, as amended).

If the penalty of dismissal from the service can no longer be served by reason of resignation or retirement, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary is imposed, in addition to the same accessory penalties of forfeiture of retirement benefits and perpetual disqualification to hold public office.[19]

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[18] *Id.* at 215-362.

[19] *Id.* at 353-356.

As regards the administrative liability of Lukban, which is the subject of the instant case, the pertinent discussion in the Joint Resolution is reproduced below:

> Applying now the foregoing criteria to the present case, there exist *substantial* evidence to show that respondents Santiago, Jr., Ubalde, Villafuerte, Loreto, Saligumba, Antonio, Piano, Gongona, Paatan, **Lukban**, Recometa, Gaspar, Padojinog, and Dy, while in the exercise of their respective public duties and functions as participants to the questioned PNP procurement, conspired with each other to falsify documents, skirt procedures, circumvent rules, and defraud the government of millions of pesos in order to ultimately ensure the unwarranted benefit and pecuniary gain in favor of private respondents de Vera, MAPTRA, and FG [Arroyo]. These unlawful acts, as exhaustively discussed earlier, certainly constitute *serious* dishonesty and conduct prejudicial to the best interest of the service in that it caused severe pecuniary damage and prejudice to the government. Its immense debilitating effect on the government service certainly deserves the curtailment of respondents' privilege to continue holding public office.[20] (Emphasis supplied).

Lukban's Motion for Reconsideration (MR) was denied by the Ombudsman in a Joint Resolution dated November 5, 2012 in OMB-C-A-11-0758-L.[21] Thus, he went to the CA questioning the finding of administrative liability against him.

Ruling of the CA

In a Decision[22] dated August 20, 2015 (CA Decision), the CA dismissed Lukban's petition for review, and sustained his administrative liability, ruling as follows:

> As Chief of the Management Division of the PNP Directorate for Comptrollership, he is presumed to know all existing policies, guidelines and procedures in carrying out the agency's mandate in the area, such as Resolution Nos. 2009-04 and 2009-36 from the Negotiation Committee, respectively. By practically expressing petitioner's acquiescence to the Inspection Report Form, without

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[20] *Id.* at 350-351.

[21] *Id.* at 17.

[22] *Supra* note 2.

verifying the accuracy and truthfulness thereof, he committed a serious lapse of judgment sufficient to pin him for dishonesty and conduct prejudicial to the best interest of the service, especially so when his participation thereon was vital to, and it facilitated the release of funds for, the full payment of two "brand new" helicopters which turned out to be second-hand units. What negated the defense of good faith and ministerial duty was the fact that the LPOHs failed to surpass the minimum NAPOLCOM specifications, and yes, the transactions could not have materialized without the indispensable cooperation and participation of petitioner and other officials of the PNP.[23]

Lukban filed his MR *via* private courier, which was denied in a Resolution[24] dated January 18, 2016 for being filed out of time.

Lukban filed a Manifestation and Motion premised on an apparent oversight in the computation of the reglementary period. Still, the CA denied the same in a Resolution[25] dated October 10, 2016. It appears that Lukban had until September 25, 2015 to file the MR. However, the MR was filed only on September 28, 2015 thru private courier and the CA received the same only on October 2, 2015. Thus, the CA ruled:

Indeed, it is an established rule that transmission of pleadings and other paper through a private carrier or letter forwarder — instead of the Philippine Post Office — is not a recognized mode of filing pleading. The date of delivery of pleadings to a letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to private carrier is deemed the date of filing of that pleading.[26]

As a result, the CA ruled that the August 20, 2015 CA Decision had already become final and executory on September 29, 2015. Hence, an Entry of Judgment[27] was issued on October 13, 2016.

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

[24] *Id.* at 47-48.

[25] *Id.* at 50-51.

[26] *Id.* at 51.

[27] *Id.* at 52.

Lukban filed a Motion for Leave to File Attached Second Motion for Reconsideration and a Motion to Set Aside Entry of Judgment, which were denied by the CA in a Resolution[28] dated March 27, 2018. Aggrieved, Lukban went to the Court through the instant petition.

Petition Before the Court

In his Petition for Review on *Certiorari*,[29] Lukban claims that the CA erred in denying his MR not on the merits but on sheer technicality. His counsel admitted that he had made an honest mistake in the filing of the MR. Hence, he pleads for compassion and liberality in the interest of substantial justice.[30]

Likewise, he avers that the CA erred in upholding the Ombudsman's findings on the administrative charge against him. He maintains that he never conspired with anyone to commit any wrongdoing. According to him, he truly and faithfully saw to it that all supporting documents and approvals specified in the prescribed checklist of requirements had been submitted to the Management Division of the Directorate for Comptrollership. After he was able to verify that the needed supporting documents and approval were indeed submitted, he noted the same. He claims that it was not his duty to verify, check, and countercheck the correctness of the entries in each of the numerous signed reports of the officers in other divisions and their signatures in support of the procurement process. Also, he argues that the cases cited by the Ombudsman and the CA in finding him administratively liable are not applicable to the instant case.[31]

In its Comment,[32] the Office of the Solicitor General (OSG) maintains that the CA correctly denied Lukban's MR for being filed out of time and that Lukban failed to proffer any justification

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[28] *Id.* at 53-54.

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

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

[31] *Id.* at 21-22.

[32] *Id.* at 387-405.

for a relaxation of the rules.[33] On the merits, the OSG claims that the findings of fact by the Ombudsman, as affirmed by the CA, are already final and conclusive on the Court.[34]

The OSG claims that the CA correctly affirmed the Ombudsman's ruling finding Lukban guilty of serious dishonesty and conduct prejudicial to the best interest of the service. The Ombudsman states that as Chief of the Management Division of the Directorate for Comptrollership, it was Lukban's responsibility when he signed the Inspection Report to verify the accuracy and truthfulness not only of the Inspection Report itself but also of the supporting documents presented to him. Further, his act of signing the Inspection Report was not ministerial but involved the propriety of said Inspection Report together with the corresponding attachments. Furthermore, his argument that he merely relied in good faith on the acts of his subordinates, namely Dy and Madrid, is untenable. Lastly, the OSG maintains that conspiracy was present among Lukban and other PNP officers in this case.[35]

In his Reply,[36] Lukban maintains that there are sufficient and compelling reasons for the relaxation of the rules on timeliness.[37] As regards the factual findings, he claims that the CA erroneously appreciated his official functions as Chief of the Management Division of the PNP Directorate for Comptrollership, as well as his purported involvement in the subject transaction. According to him, significant and material facts pertaining to the nature of his functions and the import of his signature on the Inspection Report Form have been grievously misinterpreted by the CA "to such extent that functions not appurtenant to [his] office have been mistakenly attributed to him and have been used as basis for administrative liability."[38]

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[33] *Id.* at 395-398.

[34] *Id.* at 398-399.

[35] *Id.* at 399-403.

[36] *Id.* at 429-460.

[37] *Id.* at 431.

[38] *Id.* at 430.

He also cited several other decisions of the CA wherein it exonerated the other PNP officials involved in the same transaction as in this case but were nonetheless exonerated on the basis of the same documents and evidence that he had presented.[39]

Issues

Whether the CA erred in (1) denying Lukban's MR based on technicality; and (2) upholding the Ombudsman's finding of administrative liability against Lukban.

Ruling of the Court

The petition is meritorious.

I. On Lukban's Motion for Reconsideration filed before the CA

At the outset, it should be emphasized that compliance with procedural rules is necessary for an orderly administration of justice. These are set in place in order to obviate arbitrariness, caprice, or whimsicality.[40] Nonetheless, these rules are not to be rigidly applied so as to frustrate the greater interest of substantial justice. Even the Rules of Court provides that the rules "shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."[41]

Based on the records, it appears that Lukban received a copy of the CA Decision on September 10, 2015.[42] Thus, he only had 15 days from receipt of the CA Decision or until September 25, 2015 to file his MR. However, his MR was filed by his previous counsel *via* private courier only on September 28,

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[39] *Id.* at 446.

[40] *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, 574 Phil. 20, 38 (2008).

[41] RULES OF COURT, Rule 1, Sec. 6.

[42] *Rollo*, p. 431.

2015 and was received by the CA on October 2, 2015.[43] As a result of the CA's denial of his MR, the CA Decision was deemed final and executory on September 29, 2015 and an Entry of Judgment[44] was issued on October 13, 2016.

There is no dispute that Lukban belatedly filed his MR before the CA. Nevertheless, there is merit to his contention that the CA should have granted his MR. Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice.

In *PNB v. Yeung*,[45] although petitioner's MR of the CA decision therein was filed out of time, the Court still gave due course to the petition in view of the substantial merits of the case:

> In the present case, we find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts.
>
> Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical grounds and without due consideration of its merits, the registered owner of the property shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of

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[43] *Id.*

[44] *Id.* at 52.

[45] 722 Phil. 710 (2013).

this recourse — that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership — we give due course to this petition despite the late filing of the petitioner's MR before the CA.[46] (Underscoring supplied)

Similarly, in *Mitra v. Sablan-Guevarra*,[47] the petitioner therein also belatedly filed the MR of the CA decision. Nevertheless, the Court still decided the same on its merits:

x x x "Litigations should, as much as possible, be decided on the merits and not on technicalities."

x x x x x x x x x

In the present case, the petitioner's motion for reconsideration of the CA decision was indeed filed a day late. However, taking into account the substantive merit of the case, and also, the conflicting rulings of the RTC and CA, a relaxation of the rules becomes imperative to prevent the commission of a grave injustice. Verily, a rigid application of the rules would inevitably lead to the automatic defeasance of Legaspi's last will and testament — an unjust result that is not commensurate with the petitioner's failure to comply with the required procedure.[48] (Underscoring supplied)

The relaxation of procedural rules in the interest of substantial justice even finds application in judgments that are already final and executory. The following pronouncements in *Barnes v. Padilla*[49] are instructive:

x x x Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by

[46] *Id.* at 722.

[47] G.R. No. 213994, April 18, 2018, 862 SCRA 32.

[48] *Id.* at 38.

[49] 482 Phil. 903 (2004).

the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.

Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. **The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final**.[50] (Emphasis and underscoring supplied)

Considering the foregoing, the instances for relaxation of the rules are present in this case. Here, Lukban avers:

14. It bears stressing that while Petitioner admits the belated filing, he has been able to give sufficient explanation as to why timeliness requirements have not been complied with — his previous counsel miscalculated the period of filing and misunderstood the rules therefor as he equated the effects of filing *via* private courier with filing through registered mail. In fact, and as noted in the Comment, this mistake had readily been acknowledged by his previous counsel when the handling lawyer filed a manifestation to this effect before the CA, specifically imploring the Honorable Court to exercise indulgence on account of his inadvertence.

x x x x x x x x x

17. The injurious effect of the counsel's blunder was made more palpable by the fact that the Assailed Decision immediately caused Petitioner's dismissal from service. That after thirty-three (33) years of being a public servant — one with an unblemished service record at that — Petitioner was immediately terminated with all his benefits reduced to nil. This immediate deprivation of hard-earned benefits should have equally compelled the CA to reconsider.

18. Furthermore, it bears stressing that the belated filing was not motivated by any malicious intent, as it was apparent that the late filing was merely due to the previous counsel's gross and inexcusable neglect of his client's cause. There was no ill will on the part of Petitioner and the belated filing was not a ploy to unduly prolong

[50] *Id.* at 915.

and delay the proceedings. There being no deliberate intent to delay the proceedings, the Petitioner's plea for the relaxation of the rules merits consideration.[51] (Underscoring supplied)

Lukban's contentions are well-taken. Thus, the Court opts for a liberal application of the procedural rules especially considering that the substantial merits of the case warrant its review by the Court.

II. On Lukban's Administrative Liability

In administrative proceedings, the complainant carries the burden of proving the allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently."[52]

Here, the Ombudsman and the CA found substantial evidence to hold Lukban administratively liable for serious dishonesty and conduct prejudicial to the best interest of the service. However, **after a careful review of the records of this case**, the Court finds that there is no substantial evidence to hold Lukban administratively liable for gross dishonesty and conduct prejudicial to the service. Consequently, his dismissal was improper.

A. Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth.[53] For dishonesty to be considered serious, thus warranting the penalty of dismissal from service, the presence of any one of the following attendant circumstances must be present:

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[51] *Rollo*, pp. 432-433.

[52] *Fajardo v. Corral*, 813 Phil. 149, 156 (2017).

[53] *Alfornon v. Delos Santos*, 789 Phil. 462, 473 (2016).

(1) The dishonest act caused serious damage and grave prejudice to the Government;

(2) The respondent gravely abused his authority in order to commit the dishonest act;

(3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;

(4) The dishonest act exhibits moral depravity on the part of the respondent;

(5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

(6) The dishonest act was committed several times or in various occasions;

(7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;

(8) Other analogous circumstances.[54]

Moreover, dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. In evaluating such intention, the following are some considerations: the facts and circumstances giving rise to the act committed; his state of mind at the time the offense was committed; the time he might have had at his disposal for the purpose of meditating on the consequences of his act; and the degree of reasoning he could have had at that moment.[55]

As for what specific acts constitute conduct prejudicial to the best interest of the service, there is no concrete description of such under the Civil Service law and rules. However, jurisprudence instructs that for an act to constitute such an

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[54] *Id.* at 474, citing CSC Resolution No. 06-0538 (2006), Sec. 2.

[55] *Sabio v. Field Investigation Office*, G.R. No. 229882, February 13, 2018, 855 SCRA 293, 305.

administrative offense, it need not be related to or connected with the public officer's official functions. What is essential is that the questioned conduct tarnishes the image and integrity of his public office.[56]

Here, Lukban was found to have committed serious dishonesty and conduct prejudicial to the best interest of the service by his having signed the "Noted by" portion of the Inspection Report Form without verifying the accuracy and truthfulness thereof, thereby facilitating the release of funds for the payment of supposedly brand-new helicopters which turned out to be secondhand units.[57] **However, a review of the functions and duties of his office leads the Court to conclude otherwise**.

At the time material to this case, Lukban was the Chief of the Management Division of the PNP Directorate for Comptrollership. Lukban explained the functions of his office in this wise:

> At the outset, it must be emphasized that Petitioner is the Chief of the Management Division — a division under the umbrella of the Directorate for Comptrollership of the PNP, the office principally concerned with the management of the financial resources of the agency. The Management Division assists the latter in the formulation of policies on resource management of the PNP, internal auditing and control, and liquidation of funds and property accountability of PNP personnel. This is in line with the mandates of its parent department, the Directorate for Comptrollership, whose main function — as the term 'comptrollership' denotes — relates to budgetary matters, accounting, financial reporting, internal auditing and management improvement.
>
> 30. Accordingly, as Chief of the Management Division, Petitioner's responsibilities were therefore geared towards fund/resource management — and not the technicalities involved in the inspection and verifying compliance with the standards set by the NAPOLCOM.
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> 31. Indeed, as indicated in the PNP's Comptrollership handbook, the Management Division's competence relates to resource

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[56] *Villanueva v. Reodique*, G.R. No. 221647, November 27, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64772>.

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

management such that its functions are streamlined as follows: (1) developing plans and policies to improve resource management of the PNP, (2) initiating means for simplification and standardization of operations of offices/units, (3) formulating plans, policies and procedure for internal auditing and control, (4) conducting management audit of PNP resources, (5) issuing appropriate guidance in the liquidation of fund and property accountability of PNP personnel, (6) conduct of inspection of deliveries, and (7) conduct of pre-audit of purchase/work/job orders and disbursement vouchers. Petitioner, as Chief of the Management Division, could only be held responsible for these areas, and he could not be charged with the functions that fall outside the ambit of the Management Division's assigned mandate.[58] (Underscoring supplied; emphasis in the original omitted)

Based on the foregoing, which has not been disputed, Lukban's official duties revolve only around accounting and fund or resource management. To be sure, his claim that the function of verifying the LPOH specifications belonged to different departments of the PNP is, in fact, already recognized by jurisprudence. In *Field Investigation Office v. Piano*,[59] which involved the exact same factual milieu as the instant case, the Court, through Justice Peralta, now the Chief Justice, zeroed in on the IAC as the ultimate entity in the PNP responsible for verifying the LPOH specifications, to wit:

Respondent is the Chairman of the PNP Inspection and Acceptance Committee *(IAC)*. **The IAC plays a very important role in the procurement process of the agency, since it has the responsibility of inspecting the deliveries to make sure they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same.** ***Notably, only after the IAC's final acceptance of the items delivered can the supplier be paid by the PNP***.

x x x x x x x x x

The IAC Resolution was the final act for the acceptance of these helicopters for the use of the PNP, and which was the basis for the PNP to pay the price of brand new helicopters for the

[58] *Id.* at p. 438.

[59] G.R. No. 215042, November 20, 2017, 845 SCRA 167.

delivered second-hand items to MAPTRA, which caused serious damage and grave prejudice to the government. In issuing the said Resolution which contained untruthful statements, respondent is indeed guilty of act of serious dishonesty in the exercise of his public functions. Indeed, the affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity.[60] (Emphasis and underscoring supplied)

Even the CA acknowledged this in its recital of facts, to wit:

It was the PNP Inspection and Acceptance Committee, per Resolution No. IAC-09-045, **which vouched for the LPOHs' conformity to the NAPOLCOM specifications** and that **these LPOHs had passed the acceptance criteria per WTCD Report No. T-2009-04-A** and the Committee **further recommended the acceptance of the two standard LPOHs**.[61] (Emphasis supplied)

Without doubt, and as already judicially found and confirmed by no less than this Court itself, it was the IAC, through its Resolution, which vouched that the LPOHs conformed to the NAPOLCOM specifications and passed the acceptance criteria by the WTCD and further recommended the acceptance of the units. Thus, even granting that the Inspection Report Form, which was "noted by" Lukban, declared that the LPOHs were in good condition and conformed with NAPOLCOM specifications, this was issued on the basis of the IAC Resolution, along with the WTCD Report, which confirmed the findings of the technical inspection conducted on the LPOHs. The IAC Resolution states in part:

WHEREAS, in accordance with paragraphs 3-10, Chapter 3 of the NAPOLCOM-approved PNP Procurement Manual entitled Inspection and Acceptance Committee, it is stated that the Committee must properly inspect all deliveries of the PNP and must be consistent with [the] interest of the government.

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[60] *Id.* at 181-185.

[61] *Rollo*, p. 35.

WHEREAS, **after inspection and evaluation was conducted, the Committee found the said items to be conforming to the approved NAPOLCOM specifications and passed the acceptance criteria** as submitted by DRD on WTCD Report No. T-2009-04-A.

NOW, THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that the **above-mentioned items be accepted for use** of the PNP.[62] (Emphasis and underscoring supplied)

Thus, the Court gives credence to Lukban's claim that he merely relied on the IAC Resolution as regards the compliance of the LPOHs with the NAPOLCOM specifications when he affixed his signature on the Inspection Report Form under the portion of "Noted by." Borrowing the language of the Court in *Field Investigation Office v. Piano*, it is the IAC that has the responsibility of inspecting the deliveries to make sure they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same, **and it is only after the IAC's final acceptance of the items delivered can the supplier be paid by the PNP**, so that it is the IAC Resolution that constitutes **"the final act for the acceptance of these helicopters for the use of the PNP, and which was the basis for the PNP to pay the price of brand new helicopters for the delivered second-hand items."**[63]

Considering the foregoing, it is the considered view of the Court that Lukban cannot be held liable for serious dishonesty or conduct prejudicial to the best interest of the service. To reiterate, dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. Lukban's acts do not show any disposition to defraud, cheat, deceive, or betray, nor any intent to violate the truth. Moreover, Lukban's reliance on the findings of the IAC and the property inspectors within his division negates any dishonest intent.

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[62] *Id.* at 440.

[63] *Field Investigation Office v. Piano*, *supra* note 59 at 184-185. (Emphasis and underscoring supplied)

B. Conspiracy to Defraud the Government

On the matter of conspiracy, the CA made the following pronouncements:

Contrary to petitioner's belief, conspiracy was sufficiently established by the Ombudsman x x x. To reiterate, the mere fact that petitioner signed the Inspection Report Form, without thoroughly examining the documents attached thereto, which actually did not conform to the NAPOLCOM specifications, eventually resulted to the disbursement of government funds. As aptly observed by the OSG, and to which We agree:

x x x x x x x x x

> Petitioner's role in the committed irregularities shows his concurrence with the other PNP official's objective to defraud the Government. The irregularities will not see their fruition if petitioner and the other PNP officials involved in the fraud did not consent to its implementation by making it appear that the two standard LPOHs conformed to the NAPOLCOM specifications. These acts pointed to one criminal intent — with one participant performing a part of the transaction to complete the whole scheme, with a view of attaining the object which they were pursuing.[64]

The Court disagrees. In this regard, the pronouncements of the Court in *PNP-CIDG v. Villafuerte*,[65] a case involving the same factual backdrop, find full application in the instant case, to wit:

In the first place, conspiracy as a means of incurring liability is strictly confined to criminal cases; even assuming that the records indicate the existence of a felonious scheme, the administrative liability of a person allegedly involved in such scheme cannot be established through conspiracy, considering that one's administrative liability is separate and distinct from penal liability. Thus, in administrative cases, the only inquiry in determining liability is simply whether the

[64] *Rollo*, pp. 42-43.

[65] G.R. Nos. 219771 & 219773, September 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64554>.

respondent, through his individual actions, committed the charges against him that render him administratively liable.

In any case, it bears stressing that **while the [Office of the Ombudsman]'s factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process**. For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense; **conspiracy is not the product of negligence but of intentionality on the part of cohorts. Conspiracy is never presumed**.[66]

As applied to the instant case, there is a sheer dearth of evidence on Lukban's participation in the alleged conspiracy to defraud the government.

A Final Note

Indeed, a public office is a public trust, and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.[67] In order to protect this Constitutional mandate, the Ombudsman is empowered to investigate and prosecute, for and in behalf of the people, criminal and administrative offenses committed by government officers and employees, as well as private persons in conspiracy with the former.[68] Specifically for administrative cases, it is empowered to impose penalties in the exercise of its administrative disciplinary authority.[69]

Nevertheless, the duty of the Ombudsman as the "protector of the people"[70] should not be marred by overzealousness at the expense of public officers. This is especially true in instances where the supreme penalty of dismissal from service may be

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[66] *Id.* Emphasis and underscoring in the original.

[67] CONSTITUTION, Art.XI, Sec. 1.

[68] *Ampil v. Ombudsman*, 715 Phil. 733, 738 (2013).

[69] *Office of the Ombudsman v. Apolonio*, 683 Phil. 553, 563 (2012).

[70] CONSTITUTION, Art.XI, Sec. 12.

imposed. Here, records show that Lukban has been a public servant for 33 years with an **unblemished** service record.[71] In his more than three decades of service, he has never been charged or accused of any misconduct nor has he been found guilty of any administrative or criminal offense.[72] That the penalty of dismissal would not only mean his separation from service but would also entail the forfeiture of his retirement benefits and perpetual disqualification from holding public office should have impelled the Ombudsman to be more judicious in imputing liability. In this regard, the Court finds it proper to reiterate the following pronouncements in *PNP-CIDG v. Villafuerte*:

> x x x The Ombudsman is as much the protector of the innocent as it is the sentinel of the integrity of the public service; the zeal of prosecution must, at all times, be tempered with evidence. In this case, the cavalier attitude of the Ombudsman in distilling the facts and meting out the most severe penalty of dismissal cannot go unnoticed; the dismissal of an officer based on nothing but conjecture and a talismanic invocation of conspiracy is, aside from being manifestly unjust, a gross disservice to its mandate. To be sure, the cleansing of our ranks cannot be done at the expense of a fair and just proceeding.[73]

This case is one of those instances where the Ombudsman was called upon to be more circumspect in assessing the liability of public officers and more prudent in exercising its administrative disciplinary authority. The Ombudsman failed in this regard by simply doing a "shot-gun" approach — at the expense of Lukban. This the Court is now called upon to rectify as a matter of justice.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated August 20, 2015, as well as the Resolutions dated January 18, 2016 and October 10, 2016 issued by the Court of Appeals Fourth Division, and Resolution dated March 27, 2018 issued by the Court of Appeals Special

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[71] *Rollo*, p. 433.

[72] *Id.* at 452.

[73] *PNP-CIDG v. Villafuerte*, *supra* note 65.

Fourteenth Division in CA-G.R. SP No. 127992 are **REVERSED AND SET ASIDE**.

Petitioner Mansue Nery Lukban is hereby **REINSTATED** to his former rank as Police Senior Superintendent without loss of seniority rights and with payment of back salaries and all benefits which would have accrued as if he had not been illegally dismissed.

Let a copy of this Decision be reflected in the permanent employment record of petitioner.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

Reyes, J. Jr., J., on leave.

THIRD DIVISION

[G.R. No. 217972. February 17, 2020]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **P/INSP. CLARENCE DONGAIL, SPO4 JIMMY FORTALEZA, and SPO2 FREDDIE NATIVIDAD,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; COMPLEX CRIMES; COMPLEX CRIME NOT PRESENT; WHEN THE SINGLE ACT OF THE OFFENDERS DID NOT CONSTITUTE TWO OR MORE GRAVE OR LESS GRAVE FELONIES OR WHEN ONE OFFENSE WAS NOT USED AS A NECESSARY MEANS TO COMMIT THE OTHER. — The final amendment to the Informations charged accused-appellants of the complex crime of arbitrary detention with murder. However, evidence failed to show that the incidents made out a case of complex crime under Article 48 of the RPC. First, the single act of accused-

appellants did not constitute two or more grave or less grave felonies. Second, arbitrary detention was not used as a necessary means to commit murder. In various cases such as *People of the Philippines v. Li Wai Cheung* and *People of the Philippines v. Araneta*, the Court convicted the accused for the separate crimes even if they were indicted of a complex crime in the Information because it was improper for the prosecutor to have charged them of a complex crime as the offenses were separate and distinct from each other and cannot be complexed. x x x In examining the events that transpired prior to the killing of the three, it was not proved that their arbitrary detention was used as a means of killing them x x x. Rather, what accused-appellants did was to forcibly abduct the three, brought them to various motels and interrogated them before finishing off Suganob and Lomoljo. Salabas on the other hand, was even brought to a different province in a pump boat and stayed with accused-appellants for fifteen days before getting killed. Hence, when the three were abducted and placed in the custody of accused-appellants, the felony of arbitrary detention had already been consummated. Thereafter, when they were boxed, kicked, pistol-whipped and ultimately shot at a close range while being handcuffed and without means to defend themselves, another separate crime of murder was committed.

2. ID.; MURDER; ELEMENTS. — Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide.

3. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES.— Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstances; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Circumstantial evidence may support a conviction if they afford as basis for a reasonable inference of the existence of the fact thereby sought to be proved. To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain, which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial

evidence must exclude the possibility that some other person has committed the crime.

4. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED WHEN THE VICTIMS HAD NO OPPORTUNITY TO DEFEND THEMSELVES AND SUCH MEANS WAS DELIBERATELY ADOPTED BY THE OFFENDERS. —** The qualifying aggravating circumstance of treachery was correctly appreciated in the killings of Suganob and Lomoljo because when they were shot while being hogtied and with plastic bags covering their hands, they had no opportunity to defend themselves and such means was deliberately adopted.

5. **ID.; ID.; ABUSE OF SUPERIOR STRENGTH; THERE IS ABUSE OF SUPERIOR STRENGTH WHEN IN THE COMMISSION OF THE OFFENSE THERE IS A NOTORIOUS INEQUALITY OF FORCES BETWEEN THE OFFENDERS AND THE VICTIMS. —** Abuse of superior strength was also present in the case for the killing of the three victims as there was a notorious inequality of forces between the accused-appellants as police officers and the three who were already weak from the beatings they had endured.

6. **ID.; ID.; CRUELTY; THERE IS CRUELTY WHEN ACTS CONSTITUTING DELIBERATE AUGMENTATION OF A WRONG BY CAUSING ANOTHER WRONG NOT NECESSARY FOR THE COMMISSION OF THE OFFENSE IS PRESENT. —** [C]ruelty was correctly appreciated for the three killings as it was established that they were kicked, boxed, and pistol-whipped before having been killed. Such acts constitute deliberate augmentation of a wrong by causing another wrong not necessary for its commission.

7. **ID.; ARBITRARY DETENTION; ELEMENTS. —** Arbitrary Detention is committed by any public officer or employee who, without legal grounds, detains a person. The elements of the crime are: (1) the offender is a public officer or employee; (2) he detains a person; and (3) the detention is without legal grounds.

8. **REMEDIAL LAW; EVIDENCE; WITNESSES; STATE WITNESS; REQUISITES. —** As to the discharge of an accused as state witness, the Rules of Criminal Procedure provides that: (1) there is absolute necessity for the testimony of the accused whose discharge is requested; (2) there is no other direct evidence

available for the proper prosecution of the offense committed, except the testimony of said accused; (3) the testimony of said accused can be substantially corroborated in its material points; (4) said accused does not appear to be the most guilty; and (5) said accused has not at any time been convicted of any offense involving moral turpitude.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Elmer G. Train and *Mendoza Antero & Associates* for accused-appellant Dongail.
Julito M. Briola for accused-appellant Fortaleza.

D E C I S I O N

CARANDANG, *J.*:

This appeal assails the Decision[1] dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05411, which affirmed the conviction of P/Insp. Clarence Dongail (Dongail), SPO4 Jimmy Fortaleza (Fortaleza), and SPO2 Freddie Natividad (Natividad; collectively accused-appellants), who were found guilty beyond reasonable doubt of three counts of Arbitrary Detention and three counts of Murder.

Facts of the Case

On November 3, 2004, an Information for kidnapping with murder was filed with the Regional Trial Court (RTC), of Guihulngan, Negros Occidental, Branch 64, against Ramonito Estanislao (Estanislao) and 15 John Does for the killing of Eleuterio Salabas (Salabas).[2]

On October 18, 2006, an amended Information for kidnapping with murder was filed this time against accused-appellants,

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[1] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion, concurring; *rollo*, pp. 2-54.

[2] CA *rollo* at p. 530.

Estanislao, Manolo Escalante, Ronnie Herrera (Herrera), July Flores (Flores), Carlo Delos Santos, POl Bernardo Cimatu (Cimatu), PO2 Allen Hulleza (Hulleza), Insp. Jonathan Laurella, Lorraine Abay, Mamerto Canete, Elma Canete, Jude Montilla (Montilla), and 15 John Does. Two more amendments were filed but only to change the names of the accused. Finally, on June 20, 2008, the prosecution filed a fourth amended Information for arbitrary detention with murder against those mentioned above and in addition, P/Insp. Dennis Belandres (Belandres), Ruel Villacanas, P/Insp. Bonifer Gotas (Gotas), SPO1 Nelson Grijaldo, Richard Salazar, P/Supt. Vicente Ponteras, P/Supt. George Bajelot, Jr. (Bajelot) state witnesses Cecil Brillantes (Brillantes) and Flores and seven John Does.[3]

The fourth amended Information reads:

Criminal Case No. 08-260524

That on or about the 31st day of August, 2003, the above-named accused who are policemen, a public officer, conspiring and confederating and mutually helping one another, some of which are private individuals, did then and there willfully, unlawfully and feloniously, and without legal grounds kidnap, and thereafter transport and detain or in any manner deprived of liberty, in various places, including but not limited to the Municipality of Guihulngan, a place which is within the jurisdiction of this Honorable Court, for more than fifteen (15) days, one Eleuterio Salabas and on occasion of said detention, on or about the 15th day of September 2003 in Ajuy, Iloilo, all said accused, conspiring, confederating and mutually helping one another, with intent to kill, qualified by treachery, use of a motor vehicle, taking advantage of superior strength, with the aid of armed men, with evident premeditation and with cruelty, by deliberately and inhumanly augmenting the suffering, one Eleuterio Salabas, did then and there willfully attack, assault and employ violence on the person of said Eleuterio Salabas by then and there beating, kicking and mauling him on different parts of his body and thereafter, shooting him with a gun on the head and different parts of his body, thereby inflicting upon him serious physical injuries, which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Eleuterio Salabas.

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[3] *Id.* at 531; *rollo*, p. 4.

The commission of said complex crimes was likewise attended by the aggravating circumstances of nighttime, committed by a band and that accused police officers took advantage of their public positions.

Contrary to law.[4]

Meanwhile, the said case was transferred to the RTC of Manila, Branch 27 upon a request for change of venue by the widow of Salabas which was favorably acted upon by this Court.[5]

On May 4, 2004, the prosecution also filed two Informations for murder against Dongail and eight John Does for the killing of Ricardo Suganob (Suganob) and Maximo Lomoljo, Jr. (Lomoljo). The two cases were also transferred to the RTC of Manila and were consolidated with the first Information for arbitrary detention with murder for the killing of Salabas for having the same parties, facts and incidents.[6]

The two other Informations are as follows:

Criminal Case No. 09-269362

That on or about the 31st day of August 2003, in Bacolod City, a place within the jurisdiction of this Honorable Court, the above-named accused who are policemen, a public officer, conspiring and confederating and mutually helping one another, some of which are private individuals, did then and there willfully, unlawfully and feloniously, and without legal grounds, kidnap and thereafter, transport and detain or in any manner deprived of liberty, in various places, in Bacolod City, one Ricardo Suganob and on the occasion of said detention, on or about the 1st day of September 2003 in Bacolod City, all said accused, conspiring, confederating and mutually helping one another, with intent to kill, qualified by treachery, use of a motor vehicle, taking advantage of superior strength, with the aid of armed men, with evident premeditation, and with cruelty, by deliberately and inhumanly augmenting the suffering, one Ricardo Suganob did then and there willfully attack, assault, and employ violence on the person of said Ricardo Suganob by then and there beating, kicking and mauling him on different parts of his body and thereafter, shooting

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[4] *Id.* at 285-286.

[5] *Id.* at 284.

[6] *Id.* at 532-533.

him with a gun on the head and different parts of his body, thereby inflicting upon him serious physical injuries, which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Ricardo Suganob.

The commission of said complex crimes was likewise attended by the aggravating circumstances of nighttime, committed by a band and that the accused police officers took advantage of their public positions.

Contrary to law.[7]

Criminal Case No. 09-269363

That on or about the 31st day of August 2003, in Bacolod City, a place within the jurisdiction of this Honorable Court, the above-named accused who are policemen, a public officer, conspiring and confederating and mutually helping one another, some of which are private individuals, did then and there willfully, unlawfully and feloniously, and without legal grounds, kidnap and thereafter, transport and detain or in any manner deprived of liberty, in various places, in Bacolod City, one Maximo Lomoljo, Jr. and on occasion of said detention, on or about the 1st day of September 2003 in Bacolod City, all said accused, conspiring, confederating and mutually helping one another, with intent to kill, qualified by treachery, use of a motor vehicle, taking advantage of superior strength, with the aid of armed men, with evident premeditation, and with cruelty, by deliberately and inhumanly augmenting the suffering, one Maximo Lomoljo, Jr., did then and there willfully attack, assault and employ violence on the person of said Maximo Lomoljo, Jr. by then and there beating, kicking and mauling him on different parts of his body and thereafter, shooting him with a gun on the head and different parts of his body, thereby immediate cause of his untimely death, to the damage and prejudice of the heirs of said Maximo Lomoljo, Jr.

The commission of said complex crimes was likewise attended by the aggravating circumstances of nighttime, committed by a band and that the accused police officers took advantage of their public positions.

Contrary to law.[8]

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[7] *Id.* at 287.

[8] *Id.* at 287-288.

During the arraignment of the consolidated cases, only Dongail, Fortaleza, Natividad, Brillantes, Abay, and Flores pleaded not guilty while the others remained at large.[9] Later, Brillantes and Flores were discharged as state witnesses.[10] The prosecution presented 18 witnesses while the defense only presented two.[11]

The prosecution's version of the incident, as culled from the records, are as follows:

On August 31, 2003, at about 6:00 p.m., Remedios Salabas (Remedios) was with her father when the latter told her that he was going out to treat Suganob who had just arrived from Cagayan de Oro City. Salabas, Suganob, and Lomoljo left onboard a Nissan Frontier. Later at about 10:00 p.m., Salabas went back home and told Remedios that the Nissan Frontier they rode in had been sideswiped and asked for ₱2,000.00 for grease money which he planned to bring to Police Station 9 so that they will entertain his complaint. The next day, she found out that his father did not come home.[12]

Between 9:30 p.m. and 10:00 p.m. of the same night, PO3 Rogelio Estevanez (Estevanez) testified that while he and a fellow policeman were patrolling, a Nissan Frontier driven by Salabas stopped and told them that his car had been sideswiped. Estevanez told him that they should report the concern to the Traffic Division. Salabas replied that he reported it to Police Station 8 but they did not entertain his concern. Another policeman advised that Salabas file a police blotter but he did not heed the same and proceeded to the kiosk in front of Chicken Alley. At about 11:00 p.m., Fortaleza boarded Estevanez's car and asked about the person he was talking to. He also instructed Estevanez to tell Salabas to report the matter to the police, otherwise it would appear as though they did not do anything about it. The latter refused. Fortaleza then went back to his

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[9] *Id.* at 535.

[10] *Id.* at 536.

[11] *Id.*

[12] *Rollo*, p. 9.

pick-up truck. On September 3, 2003, Estevanez saw on television the two salvaged victims who he realized were the two companions of Salabas. On January 24, 2009, Fortaleza called him to say that he will be called to testify on these cases and instructed him to deny that there was an operation on the evening of August 31, 2003.[13]

Brillantes testified that he was a police asset and that in the first or second week of August, a meeting was held at the Bacolod City Police Headquarters regarding the conduct of surveillance operations against Salabas because he was suspected to have been engaged in the illegal drugs trade. In the evening of August 31, 2003, Brillantes was at the Police Station 2 when Natividad, Fortaleza, and Gotas arrived on board a red Revo van. Dongail and Lorilla also arrived. When Brillantes opened the Revo intending to board it, he was surprised to see Salabas, Suganob, and Lomoljo inside. They were blindfolded, gagged, and handcuffed.[14]

Later, the group left the precinct to go to Moonlight Lodge. On board the Revo van were Cimatu, Fortaleza, Lorilla, Gotas, Natividad, Brillantes and the three victims. On board the Feroza were Hulleza, Dongail, and Jackson Manalastas. Inside the VIP room of Moonlight Lodge, accused-appellants and the others began interrogating the three victims about their alleged involvement in the illegal drugs trade and drug money. However, the three denied the same. They were then kicked, boxed, and pistol-whipped.[15]

Fortaleza decided to move the three to the Taculing Court apartelle. By then, the three were complaining of pain, and had difficulty boarding the vehicle. At the Taculing Court, Brillantes overheard Dongail speak on the phone with someone whose voice he identified as that of Bajelot's. He heard Bajelot say "Congratulations." Dongail answered with, "*Nandito na*, sir," "Thank you, sir," and "Okay, sir."[16]

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

[14] *Id.* at 11.

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

[16] *Id.* at 12.

Dongail and Fortaleza again decided to move to Hacienda Motel. As they entered the motel, Suganob fainted. Brillantes tried to revive him but to no avail. Brillantes heard Fortaleza and Dongail's conversation and decided to finish off the victims. Dongail ordered Cimatu and Natividad to put a transparent plastic bag on the head of Suganob and Lomoljo. The two stopped moving.[17] Dongail ordered Lorilla to finish off Suganob and Lomoljo and gave him a gun. Lorilla took the gun, placed it inside the plastic bag on the head of Suganob and fired. Gotas was ordered by Fortaleza and Dongail to shoot Lomoljo and he did.[18]

Dongail also ordered Montilla to shoot Suganob again as baptism of fire.[19] Salabas was still alive at that time. Dongail ordered Salabas to be transferred to another place. The group left the Hacienda Motel but along the way, Brillantes asked to be dropped off at Police Station 2. Thus, they dropped him off, rested and stayed until sunrise then he went home.[20]

Less than two weeks after the said night, Brillantes was at the residence of Dongail where a big party was held. During the party, Dongail and Fortaleza called him, Montilla, Salazar and Herrera and warned them not to tell anybody about the apprehension of Salabas, Suganob and Lomoljo.[21] Dongail and Fortaleza helped Brillantes in hiding when the warrant of arrest was issued against him.[22]

A witness from Palao Beach Resort testified that on September 7, 2003, he saw a man (later identified as Salabas) buying coffee at the canteen of Palao Beach Resort. Two men (later identified as Dongail and Natividad) stood behind Salabas. Later, he saw Salabas proceed to one of the cottages near the beach. Dongail

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[17] *Id.* at 12-13.

[18] *Id.* at 13.

[19] *Id.* at 14.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 15.

and Natividad followed suit. On September 10, 2003, he saw the group leave the resort.[23]

A boatman testified that on September 15, 2003, he received instructions from the owner of the pump boat to fetch passengers in Cadiz Viejo, Negros Occidental. They arrived at about 3:30 p.m. where two vehicles were waiting. Later, Dongail, Fortaleza, Elma, Belandres, and Salabas boarded the pump boat. At that time, Salabas was wearing cargo shorts with six pockets. They arrived at Pili, Ajuy, Iloilo City at 4:30 p.m. When the witness was at the house of his father, he saw Salabas on board a *trisikad* while Dongail, Fortaleza, Belandres and Elma were walking behind him.[24]

At about 9:00 a.m. of September 19, 2003, a cadaver was recovered from the waters of Punta Buri, Ajuy, Iloilo City. The cadaver was wearing cargo shorts with six pockets and one of the thumbs of the cadaver had a deformed fingernail. The Barangay Chairman of such place reported the recovery of the cadaver but the police did not come. Hence, they covered it with a *trapal* and dug a grave. On the next day, members of the police, media, and a funeral parlor exhumed the cadaver and brought it to Ajuy, Iloilo City.[25]

Dr. Nicasio Botin (Dr. Botin), a medico-legal officer of the National Bureau of Investigation testified that he received a request for autopsy for the cadaver found floating on the waters of Barangay Punta Buri. He found that the cadaver had a gunshot wound on the right cheek, that part of his left ribs were fractured, and that the cause of death was the gunshot wound on the head.[26] Lastly, the wife, nephew, son and brother-in-law of Salabas identified the cadaver as his because of the body built, the fingers and the deformed thumb.[27]

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[23] *Id.* at 16-17.

[24] *Id.* at 17.

[25] *Id.* at 18.

[26] *Id.*

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

As to the cadaver of Suganob, Dr. Botin found two gunshot wounds which were fatal, and fractures in the ribs caused by hard blunt object. As to Lomoljo, he found injuries in the eyes caused by a blunt object and four gunshot wounds.[28]

The wife of Salabas testified that he was 52 years old at the time of his death with a basic salary of ₱30,000.00 and ₱10,000.00 honorarium monthly. They also spent ₱4,007,666.02 for the funeral and other miscellaneous expenses. Other expenses were also computed at ₱135,895.00.[29]

Lomoljo's sister testified that his brother worked in the Salabas household earning ₱2,000.00 per month and that they spent ₱45,000.00 for funeral expenses.[30] Suganob's sister testified that they spent a total of ₱607,080.00 and that Suganob was a professor and the Dean of Discipline of Capitol University and Commander of the Coast Guard earning ₱22,423.13 a month.[31]

The defense merely presented two witnesses. Dr. Ernesto Gimenez, an expert in forensic medicine who testified that the only conclusive evidence that can prove the identity of a cadaver is a fingerprint which was not done in the case of Salabas. He also said that the autopsy conducted in the cadaver was not proper. The last witness was a police officer who merely testified on the true rank of Fortaleza.[32]

RTC Ruling

On April 13, 2011, the RTC convicted accused-appellants for three counts of murder for the killing of Salabas, Suganob, and Lomoljo. They were also ordered to pay ₱50,000.00 for each victim as indemnity for death, ₱50,000.00 each as moral damages, ₱30,000.00 each as exemplary damages; ₱4,480,080.00 for the loss of earning capacity of Salabas, ₱2,780,512.96 for

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[28] CA *rollo*, pp. 53-55.

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

[30] *Id.* at 62.

[31] *Id.* at 63-64.

[32] *Rollo*, p. 22.

Suganob and ₱400,000.00 for Lomoljo; ₱3,599,031.82 for actual damages of Salabas, and ₱1,523,010.70 for Suganob. Moreover, accused-appellants were sentenced to suffer two indeterminate prison term of 6 months as minimum to 2 years and 4 months as maximum for the Arbitrary Detention of Suganob and Lomoljo and to an indeterminate prison term of 2 years and 4 months as minimum to 6 years as maximum for the Arbitrary Detention of Salabas.[33]

The RTC held that as to the charge of three counts of complex crimes of arbitrary detention with murder, said charges do not fall under Article 48 of the Revised Penal Code (RPC). Hence, the RTC convicted them of the separate crimes of arbitrary detention and murder as the elements of the two crimes were established beyond reasonable doubt.[34]

With respect to the charge of murder, the RTC held that the fact of death of Salabas, Suganob, and Lomoljo was established by the prosecution through the testimony of Dr. Botin. The killing of Suganob and Lomoljo and the perpetrators thereof were clearly identified by the state witness, Brillantes. On the other hand, the killing of Salabas was established by circumstantial evidence beginning from the testimony of Brillantes, to Salabas' presence in Palao Beach Resort to his transport to Pili, Ajuy, Iloilo. The requisites of circumstantial evidence are: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce conviction beyond reasonable doubt, were all present here. In this case, it was found that the fact that accused-appellants were the last persons seen with the victim, coupled by the combined testimonies of the witnesses as well as the motive to kill as proven by the fact of surveillance, all point to the inevitable conclusion that accused-appellants killed Salabas.[35]

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[33] CA *rollo*, pp. 87-88.

[34] *Id.* at 70.

[35] *Id.* at 74-76.

The RTC also found that treachery attended the killing of Suganob and Lomoljo because they were hogtied, gagged, and blindfolded when they were shot to death. The use of motor vehicle was also appreciated as an aggravating circumstance as the red Revo and pump boat facilitated the commission of the crime. Taking advantage of superior strength in the killing of Suganob and Lomoljo was likewise determined to be present but was absorbed in treachery. Lastly, the aggravating circumstance of cruelty was appreciated in the killing of the three victims as evidenced by the unnecessary force used upon them before ultimately killing them as shown by the fact that they had ruptured ribs, Suganob with a missing eyeball and Lomoljo having sustained four gunshot wounds.[36]

The elements of arbitrary detention were also proven beyond reasonable doubt as the three were detained without legal ground by police officers.[37]

CA Ruling

Aggrieved, accused-appellants filed an appeal to the CA, which affirmed their conviction. The CA reiterated that the RTC correctly convicted the three to two separate crimes of murder and arbitrary detention.[38]

The elements of arbitrary detention are present in this case because at the time of the incident, the accused-appellants were all police officers, they detained the three victims, and that the detention was without legal grounds.[39]

As to the charge of murder, the fact of death of Suganob and Lomoljo was straightforwardly established by the testimony of Brillantes. That of Salabas was established by the testimony of Dr. Botin and corroborated by his wife, son, nephew, and brother-in-law. The cadaver of Salabas, while already in a state

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[36] *Id.* at 76-78.

[37] *Id.* at 79.

[38] *Rollo*, at 34.

[39] *Id.* at 35-37.

of decomposition, can still be identified because of distinct identification marks and characteristics such as the deformed thumb.[40]

The identification of the perpetrators of the crime was established by the testimony of Brillantes as to Suganob and Lomoljo while circumstantial evidence proved that accused-appellants killed Salabas. The narration of a handful of witnesses as to how they saw Salabas from the three motels to his transfer to the Palao Beach Resort and eventually the pump boat ride to Ajuy, Iloilo amounted to the chain of evidence essential for conviction.[41]

As to the aggravating circumstances, the CA agreed with the RTC that treachery attended the killing of Suganob and Lomoljo by the way they were killed. The CA also found that abuse of superior strength also accompanied the killing of the three victims as there was notorious inequality of forces between the victim and the aggressor considering that there were a handful of police officers who injured and shot the victims. The last aggravating circumstance appreciated by the CA was cruelty as Brillantes testified that they were boxed, kicked, and pistol-whipped prior to getting shot.[42]

Still aggrieved, accused-appellants elevated the case to this Court. In his Supplemental Brief,[43] Dongail assailed his conviction for two separate crimes of murder and arbitrary detention when the charge was only the complex crime of arbitrary detention with murder. He also asserted that Brillantes was improperly discharged as state witness and that circumstantial evidence failed to prove the death of Salabas.[44] Fortaleza also submitted substantially the same allegation as that of Dongail.[45]

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[40] *Id.* at 39.

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

[42] *Id.* at 45-48.

[43] *Id.* at 122-152.

[44] *Id.* at 128-129.

[45] *Id.* at 179-293.

A Manifestation[46] was filed by Dongail stating that Natividad has died in prison. The Office of the Solicitor General on the other hand, adopted their brief filed to the CA and no longer filed a supplemental brief.[47]

The Court's Ruling

After a perusal of the records of the case, this Court resolves to deny the appeal.

As correctly concluded by the RTC and the CA, accused-appellants were properly convicted of separate crimes of arbitrary detention and murder. The final amendment to the Informations charged accused-appellants of the complex crime of arbitrary detention with murder. However, evidence failed to show that the incidents made out a case of complex crime under Article 48 of the RPC. First, the single act of accused-appellants did not constitute two or more grave or less grave felonies. Second, arbitrary detention was not used as a necessary means to commit murder.[48] In various cases such as *People of the Philippines v. Li Wai Cheung*[49] and *People of the Philippines v. Araneta*,[50] the Court convicted the accused for the separate crimes even if they were indicted of a complex crime in the Information because it was improper for the prosecutor to have charged them of a complex crime as the offenses were separate and distinct from each other and cannot be complexed.

In this case, Salabas, Suganob, and Lomoljo, were taken by accused-appellants because they were the subject of surveillance for Salabas' alleged involvement in the illegal drug trade. In examining the events that transpired prior to the killing of the three, it was not proved that their arbitrary detention was used as a means of killing them because they could have been killed even without abducting them considering that accused-appellants

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[46] *Id.* at 702-703.

[47] *Id.* at 92-93.

[48] REVISED PENAL CODE, Art. 48.

[49] 289 Phil. 105 (1992).

[50] 48 Phil. 650 (1926).

were all police officers and have the means to instantly kill Salabas, Suganob, and Lomoljo. Rather, what accused-appellants did was to forcibly abduct the three, brought them to various motels and interrogated them before finishing off Suganob and Lomoljo. Salabas on the other hand, was even brought to a different province in a pump boat and stayed with accused-appellants for fifteen days before getting killed. Hence, when the three were abducted and placed in the custody of accused-appellants, the felony of arbitrary detention had already been consummated. Thereafter, when they were boxed, kicked, pistol-whipped and ultimately shot at a close range while being handcuffed and without means to defend themselves, another separate crime of murder was committed. Therefore, a conviction for the separate crimes of arbitrary detention and murder was in order.

Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide.[51]

As to the killing of Suganob and Lomoljo, the above-mentioned elements were clearly proven through the direct testimony of state witness Brillantes. The testimony was found to be credible as Brillantes was with accused-appellants the whole time—from the detention of the three victims to the order to shoot Suganob and Lomoljo which caused their deaths. As to the killing of Salabas, the RTC and CA resorted to circumstantial evidence to prove his murder beyond reasonable doubt:

> Circumstantial evidence is sufficient for conviction if:
> (a) There is more than one circumstances;
> (b) The facts from which the inferences are derived are proven; and
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[52]

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[51] *People v. Sapigao, Jr.,* 614 Phil. 589 (2009).

[52] RULES ON EVIDENCE, Rule 133, Sec. 4.

Circumstantial evidence may support a conviction if they afford as basis for a reasonable inference of the existence of the fact thereby sought to be proved.[53] To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain, which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime.[54]

In this case, the following circumstances were proved: (1) in August 2003, Salabas was a subject of surveillance operations being conducted by accused-appellants who were members of the Bacolod City Police; (2) On August 31, 2003, Salabas, Suganob, and Lomoljo were all blindfolded, hogtied, and gagged inside a red Revo van with accused-appellants; (3) accused-appellants moved the three victims from Moonlight Lodge, to Taculing Court and finally to Hacienda Motel where they decided to order the killing of Suganob and Lomoljo; (4) accused-appellants left Hacienda Motel with Salabas; (5) On September 1, 2003 at the party in the house of Dongail, Salabas was seen in the red Revo van gagged and hogtied; (5) accused-appellants warned Brillantes and other witnesses not to disclose to anyone about the operation against Salabas; (6) eye witnesses saw accused-appellants with Salabas at the Palao Beach Resort; (7) eye witnesses saw accused-appellants with Salabas, who was then very weak, boarding the pump boat to Pili, Ajuy, Iloilo; and (8) a cadaver was found floating in the waters of Ajuy, Iloilo.

These circumstances constitute a chain, which leads one to a fair and reasonable conclusion that accused-appellants were guilty for the murder of Salabas. The qualifying aggravating circumstance of treachery was correctly appreciated in the killings of Suganob and Lomoljo because when they were shot while being hogtied and with plastic bags covering their heads, they

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[53] *Zabala v. People*, 752 Phil. 59.

[54] *Lozano v. People*, 638 Phil. 582 (2010).

had no opportunity to defend themselves and such means was deliberately adopted. Abuse of superior strength was also present in the case for the killing of the three victims as there was a notorious inequality of forces between the accused-appellants as police officers and the three who were already weak from the beatings they had endured. Finally, cruelty was correctly appreciated for the three killings as it was established that they were kicked, boxed, and pistol-whipped before having been killed. Such acts constitute deliberate augmentation of a wrong by causing another wrong not necessary for its commission.

All three aggravating circumstances were designated as qualifying aggravating circumstances in the Informations which categorized the killing as murder.

Arbitrary Detention is committed by any public officer or employee who, without legal grounds, detains a person. The elements of the crime are: (1) the offender is a public officer or employee; (2) he detains a person; and (3) the detention is without legal grounds.[55]

In this case, the elements of arbitrary detention were present because accused-appellants were police officers who deprived the three victims of liberty on a mere surveillance and without legal grounds.

As to the discharge of an accused as state witness, the Rules of Criminal Procedure provides that: (1) there is absolute necessity for the testimony of the accused whose discharge is requested; (2) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (3) the testimony of said accused can be substantially corroborated in its material points; (4) said accused does not appear to be the most guilty; and (5) said accused has not at any time been convicted of any offense involving moral turpitude.[56] In this case, the abovementioned requisites were complied with as evidenced by the order of the

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[55] *Astorga v. People*, 459 Phil. 140 (2003).

[56] RULES OF CRIMINAL PROCEDURE, Rule 119, Sec. 17.

RTC to discharge Brillantes as a state witness. There was no impropriety on the part of the RTC in discharging Brillantes as state witness as it was convinced that the latter's testimony complied with the requirements of the Rules.

Going into the penalties and award of damages, as to the charge of murder for the killing of the three victims, the Court affirms the penalty of murder meted out by the CA. The award of civil damages, moral damages and exemplary damages shall be increased to ₱100,000.00 each to conform with latest jurisprudence.[57] The Court likewise affirms the award of the CA for ₱4,480,080.00 for the loss of earning capacity of Salabas; ₱2,780,512.96 for the loss of earning capacity of Suganob; and ₱400,000.00 for the loss of earning capacity of Lomoljo. The award of actual damages amounting to ₱3,599,031.82 for Salabas and ₱1,523,010.70 for Suganob were likewise affirmed. The award of temperate damages in the amount of ₱50,000.00 for the killing of Lomoljo is in order for failure to present documentary evidence of burial or funeral expenses.

As to the charges of arbitrary detention of Suganob and Lomoljo whose detention did not exceed three days, the CA correctly imposed two prison terms of 4 months as minimum to 1 year and 8 months as maximum. As to the detention of Salabas which did not exceed 15 days, the prison term of 2 years and 4 months as minimum to 4 years and 9 months as maximum, is, likewise, in order.

In view of the death of Natividad, the case as to him is dismissed.

WHEREFORE, the appeal is **DENIED**. We **ADOPT** the findings of the trial court as affirmed by the Court of Appeals. The assailed Decision dated July 31, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05411 finding accused-appellants P/Insp. Clarence Dongail and SPO4 Jimmy Fortaleza **GUILTY** beyond reasonable doubt of three (3) counts of Murder penalized under Article 248 of the Revised Penal Code, as

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[57] *People v. Jugueta*, 783 Phil. 806 (2016).

amended, and three (3) counts of Arbitrary Detention penalized under Article 124 of the Revised Penal Code is hereby **AFFIRMED with MODIFICATIONS** in that accused-appellants are sentenced to suffer the penalty of *reclusion perpetua* for each count and two (2) prison terms of four (4) months as minimum to one (1) year and eight (8) months as maximum and one (1) prison term of two (2) years and four (4) months as minimum to four (4) years and nine (9) months as maximum. They are also ordered to pay jointly and severally the amount of ₱100,000.00 as civil indemnity; the award of moral damages amounting to ₱100,000.00; and the award of exemplary damages amounting to ₱100,000.00 for each victim. Moreover, accused-appellants are **ORDERED** to pay ₱4,480,080.00 for the loss of earning capacity of Eleuterio Salabas; ₱2,780,512.96 for the loss of earning capacity of Ricardo Suganob; and ₱400,000.00 for the loss of earning capacity of Maximo Lomoljo. As well as actual damages amounting to ₱3,599,031.82 for Eleuterio Salabas and ₱1,523,010.70 for Ricardo Suganob. Temperate damages amounting to ₱50,000.00 for Maximo Lomoljo shall also be paid. Lastly, an interest of six percent (6%) *per annum* is imposed on all the damages awarded from the finality of this Decision until fully paid.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Zalameda*, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 220902. February 17, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SAN LORENZO DEVELOPMENT CORPORATION (SLDC),** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; CLASSIFICATION OF LANDS OF PUBLIC DOMAIN. —** Section 3, Article XII of the 1987 Constitution classifies the lands of public domain as follows: (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks. Of these four, only agricultural lands may be alienated and disposed of by the State.

2. **ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); TO ESTABLISH THAT THE LAND FOR REGISTRATION IS ALIENABLE AND DISPOSABLE, AN APPLICANT MUST PRESENT A COPY OF THE ORIGINAL CLASSIFICATION APPROVED BY THE DENR SECRETARY AND CERTIFIED AS A TRUE COPY OF THE ORIGINAL LAND CLASSIFICATION APPROVED BY THE LEGAL CUSTODIAN OF SUCH OFFICIAL RECORDS; NOT COMPLIED WITH. —** In *Republic of the Philippines v. T.A.N Properties, Inc.,* the Court ruled that it is not enough for the CENRO or the Provincial Environment and Natural Resources (PENRO) to certify that the land applied for is alienable and disposable. The Court has consistently ruled that the applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy of the original land classification approved by the legal custodian of such official records to establish that the land for registration is alienable and disposable. In ruling in this wise, the Court explained that the CENRO or the PENRO are not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. As such, the certifications they issue relating to the character of the land cannot be considered *prima facie* evidence of the facts stated therein. In this case, the required copy of original land classification of the subject lands was

not presented. Both the RTC and the CA merely relied on the Certifications issued by the CENRO and the Regional Technical Director of the Lands Management Services of the DENR in ruling that the alienable and disposable nature of the subject lands was established. Clearly, this is not sufficient to prove the alienability and disposability of the subject lands.

3. **ID.; ID.; ID.; THE ALIENABILITY AND DISPOSABILITY OF LAND ARE NOT AMONG THE MATTERS THAT CAN BE ESTABLISHED BY MERE ADMISSIONS OR EVEN BY MERE AGREEMENT OF THE PARTIES. —** [T]he fact that the alienable and disposable nature of the subject lands was not contested by the Republic in its appeal before the [Court], does not have the effect of impliedly admitting, much less proving, that the subject lands are alienable and disposable. The alienability and disposability of land are not among the matters that can be established by mere admissions or even by mere agreement of the parties. The law and jurisprudence provide stringent requirements to prove such fact. This is so because no less than the Constitution, provides for the doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. As such, the courts are not only empowered, but in fact duty-bound, to ensure that such ownership of the State is duly protected by the proper observance of the rules and requirements on land registration. x x x [T]he alienable and disposable character of the land must be proven by clear and incontrovertible evidence to overcome the presumption of State ownership of the lands of public domain under the Regalian doctrine. x x x [T]he burden of proof in overcoming such presumption is upon the person applying for registration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Mangubat Law Office for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

This is a Petition for *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated July 31, 2014 and Resolution[3] dated September 17, 2015 of the Court of Appeals (CA) - Cebu in CA-G.R. CV No. 01023, which affirmed the Decision[4] dated June 14, 2005 of the Regional Trial Court (RTC) of Mandaue, Cebu, Branch 55, in LRC Case No. N-577, LRA Record No. N-70522, granting respondent San Lorenzo Development Corporation's (SLDC) application for land registration.

The Facts

SLDC is a corporation duly organized and existing under Philippine laws and qualified to acquire and own lands in the Philippines. On September 25, 1998, it filed an Application[5] for registration of two parcels of land - Lot No. 1 (identical to Lot No. 11324, Pls-982) with an area of 74,488 square meters; and Lot No. 2 (identical to Lot No. 11325, Pls-982) with an area of 529 square meters - situated in *Barangay* Buluang, Compostela, Cebu, under Presidential Decree (P.D.) No. 1529 or the Property Registration Decree.[6]

In its application, SLDC alleged, among others, that it is the owner of the subject parcels of land, having acquired the same by purchase sometime in 1994 and 1995; that it, together with the previous owners thereof, has been in open, continuous, exclusive, and notorious possession and occupation of the said parcels of land in the concept of an owner for over 30 years;

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[1] *Rollo*, pp. 11-35.

[2] Penned by Justice Pamela Ann Abella Maxino, with Justices Gabriel T. Ingles and Renato C. Francisco concurring; *id.* at 43-55.

[3] *Id.* at 56-61.

[4] Penned by Ulric R. Cañete; *id.* at 94-103.

[5] *Id.* at 69-71.

[6] *Id.* at 94.

and that said parcels of land are part of the area generally declared as alienable and disposable block per Land Classification Project No. 21-A, per Map-2545 of Compostela, Cebu, certified under Forestry Administrative Order No. 4-1063 approved on September 1, 1965.[7]

Nine witnesses were presented to support SLDC's claim that through its predecessors-in-interest, it has been in open, continuous, exclusive, and notorious possession and occupation of the subject parcels of land for more than 30 years.[8] Aside from these testimonies, SLDC likewise presented pieces of documentary evidence to support its claims, *viz.*: (1) copy of the approved tracing cloth plan of the subject lots; (2) blue print copies of said plan; (3) approved technical description of the subject lots; (4) Certification as to the non-availability of the Surveyor's Certificate; (5) Certification from the Community Environment and Natural Resources Office (CENRO) that the subject parcels of land are within the alienable and disposable block; (6) Certification from the Lands Management Services of the Department of Environment and Natural Resources (DENR) that the subject lots are outside the resurveyed boundaries of the Cotcot-Lusaran Watershed Forest dated September 2, 1997; (7) copies of the Deeds of Absolute Sale for the purchase of the subject lots; and (8) copies of some of the tax declarations covering the subject lots.[9]

The RTC Ruling

The RTC granted the application, finding that SLDC was able to clearly and convincingly establish its open, continuous, exclusive, and notorious possession and occupation of the subject lots under a *bona fide* claim of ownership within the time prescribed under Section 14(1), Chapter III of P.D. No. 1529. The RTC also found the lots to be classified as alienable and disposable land and registrable, not being a forest land, nor found on navigable rivers, waters, streams, and creeks nor within

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[7] *Id.* at 44.

[8] *Id.* at 95.

[9] *Id.* at 47.

the municipal streets or public highways and government reservations. It disposed, thus:

WHEREFORE, premises considered, a Decision is hereby rendered, to wit:

1. Admitting Exhibits "A" to "JJ" and all its sub-markings formally offered by applicant San Lorenzo Development Corporation, as part of the testimony of applicant and its witnesses, and for the purpose/s for which they are offered;

2. Ordering the issuance of titles to applicant San Lorenzo Development Corporation to the following parcels of land more particularly described as follows, to wit:

   A parcel of land (Lot 1 of the consolidation subdivision plan, CCS-07-000666, being a portion of Lot 1427, 1431, 1433, 1434, 1435, 1436, 1488, pls-982) situated in the Barangay of Buluang, Compostela, Cebu, containing an area of SEVENTY-FOUR THOUSAND FOUR HUNDRED EIGHTY-EIGHT (74,488) square meters, more or less and;

   A parcel of land (Lot 2 of the consolidation subdivision plan, CCS-07-000666, being a portion (of) Lot 1427, 1431, 1433, 1434, 1435, 1436, 1488, Pls-982) situated in the Barangay of Buluang, Compostela, Cebu, containing an area of FIVE HUNDRED TWENTY-NINE (529) square meters, more or less;

and that their titles thereto be REGISTERED and CONFIRMED.

Upon finality of this decision, the Land Registration Authority is directed to issue the corresponding decree of registration and certificate of title pursuant to Sec. 39, Chapter IV, Presidential Decree 1529.

Furnish all parties concerned with a copy of this Decision.

SO ORDERED.[10]

The Republic, through the Office of the Solicitor General (OSG), then filed its Notice of Appeal[11] dated June 30, 2005. On appeal, the Republic argued that SLDC failed to prove by

[10] *Id.* at 102-103.

[11] *Id.* at 104.

well-nigh incontrovertible evidence that it has been in open, continuous, exclusive, and notorious occupation of the subject parcels of land since June 12, 1945 or earlier to establish its registrable title under Section 14(1) of P.D. No. 1529.[12]

The CA Ruling

In its assailed Decision, the CA affirmed the grant of SLDC's application for registration, albeit for a different ground. The CA held that the pieces of evidence presented by SLDC are insufficient to establish its claim of possession and occupation of the subject parcels of land since June 12, 1945 or earlier to make said lands eligible for registration under Section 14(1) of P.D. No. 1529. However, a perusal of SLDC's application reveals that its claim of ownership over the subject lots comes within the purview of Section 14(2) of said law. Hence, the CA ruled that SLDC may still register the subject lands as the possessor may still register an alienable public land under Section 14(2) of P.D. No. 1529 despite its failure to prove possession thereof from June 12, 1945 or earlier as required by Section 14(1) thereof.[13]

Premised thereupon, the CA ruled that SLDC was able to establish its registrable title under Section 14(2) considering that it was able to prove possession for more than 30 years through its predecessors-in-interest, and that it was undisputed that the subject lots are alienable and disposable lands. The CA, disposed, thus:

> WHEREFORE, premises considered, the instant appeal is DENIED on the ground that the application for confirmation and registration of title over Lots Nos. 1 and 2 of the Consolidated Plan Ccs-07-000666 filed by [petitioner] San Lorenzo Development Corporation may be granted under Section 14(2) of Presidential Decree No. 1529 or the Property Registration Decree. The Decision dated June 14, 2005 of the Regional Trial Court, Branch 55, Mandaue City, in LRC Case No. N-577, LRA Record no. N-70522, is AFFIRMED.
>
> SO ORDERED.

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[12] *Id.* at 120.

[13] *Id.* at 49.

The Republic moved for the reconsideration of said Decision, arguing, among others, that even under Section 14(2), SLDC's application must still be denied on the ground that it failed to prove that the subject parcels of land have been converted from alienable lands of public domain to private lands. The Republic also argued that SLDC likewise failed to prove possession and occupation of the subject lands in the manner required by law.

In its Resolution dated September 17, 2015, the CA denied the Republic's motion for reconsideration, reiterating its ruling that the subject parcels of land were already converted into private properties through the continuous and exclusive possession of SLDC and its predecessors-in-interest for more than 30 years, thereby making said lots susceptible to prescription. The CA ruled:

WHEREFORE, the motion for reconsideration filed by the Republic of the Philippines is DENIED for lack of merit.

SO ORDERED.[14]

Hence, this petition, wherein the Republic argues that the CA erred in treating SLDC's application as one pursued under Section 14(2) of P.D. No. 1529 when the RTC's grant thereof was based on Section 14(1). Under Section 14(1), the Republic posits that SLDC failed to prove that it and its predecessors-in-interest have been in open, continuous, exclusive, and notorious possession of the subject lots since June 12, 1945 or earlier in the concept of an owner. Hence, the courts *a quo* erred in granting the application. Further, the Republic argues that even if Section 14(2) is the basis of the application, the same should still fail as the period for acquisitive prescription could not have begun as SLDC failed to prove that there has been an express declaration by the State that the subject lots have been converted into a patrimonial property.

In its Comment,[15] SLDC emphatically points out that its application for registration is based on Section 14(2) of P.D.

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[14] *Id.* at 61.

[15] *Id.* at 177-183.

No. 1529, *not* Section 14(1); and that it was only the RTC which cited Section 14(1) as the applicable provision. SLDC also maintains that it has established its claim of continuous and adverse possession and occupation of the subject lots for more than 30 years as required under Section 14(2), in relation to the Civil Code. SLDC also argues that it was sufficiently established that the subject lots are alienable and disposable lands. In fact, the Republic did not dispute such fact. For SLDC, the CA did not err in ruling that the open, continuous, exclusive, and notorious possession of at least 30 years *ipso jure* converted an alienable public land into private property.

The Issue

Did the CA err in granting SLDC's application under Section 14(2) of P.O. No. 1529?

The Court's Ruling

Preliminarily, by virtue of the SLDC's emphatic assertion that its application was based on Section 14(2) of P.D. No. 1529 and *not* Section 14(1) thereof, the reasonable conclusion is that its claim of having acquired an imperfect title over the subject properties is premised on its supposed compliance with the requirements of Section 14(2), which states:

> SEC. 14. *Who may apply.* – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> x x x x x x x x x
>
> (2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

At any rate, as in any manner of acquisition for land registration, the applicant must primarily prove that the land sought to be registered is alienable and disposable land of the public domain. This is because, by virtue of the Regalian Doctrine, lands which do not clearly appear to be within private ownership are presumed to belong to the State. To overcome such presumption, the applicant must prove by clear and

incontrovertible evidence that the land has been classified as alienable and disposable land of the public domain.[16]

Section 3, Article XII of the 1987 Constitution classifies the lands of public domain as follows: (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks. Of these four, only agricultural lands may be alienated and disposed of by the State.[17] In *Republic of the Philippines v. T.A.N. Properties, Inc.*,[18] the Court ruled that it is not enough for the CENRO or the Provincial Environment and Natural Resources (PENRO) to certify that the land applied for is alienable and disposable. The Court has consistently ruled that the applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy of the original land classification approved by the legal custodian of such official records to establish that the land for registration is alienable and disposable. In ruling in this wise, the Court explained that the CENRO or the PENRO are not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. As such, the certifications they issue relating to the character of the land cannot be considered *prima facie* evidence of the facts stated therein.[19]

In this case, the required copy of original land classification of the subject lands was not presented. Both the RTC and the CA merely relied on the Certifications issued by the CENRO and the Regional Technical Director of the Lands Management Services of the DENR in ruling that the alienable and disposable nature of the subject lands was established. Clearly, this is not sufficient to prove the alienability and disposability of the subject lands.

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[16] *In Re: Application for Land Registration, Dumo v. Republic of the Philippines*, G.R. No. 218269, June 6, 2018.

[17] *Id.*

[18] 578 Phil. 441 (2008).

[19] *Republic of the Philippines v. Bautista*, G.R. No. 211664, November 12, 2018.

Further, contrary to SLDC's contention, the fact that the alienable and disposable nature of the subject lands was not contested by the Republic in its appeal before the CA, does not have the effect of impliedly admitting, much less proving, that the subject lands are alienable and disposable. The alienability and disposability of land are not among the matters that can be established by mere admissions or even by mere agreement of the parties. The law and jurisprudence provide stringent requirements to prove such fact. This is so because no less than the Constitution,[20] provides for the doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. As such, the courts are not only empowered, but in fact duty-bound, to ensure that such ownership of the State is duly protected by the proper observance of the rules and requirements on land registration.[21]

It bears stressing, thus, that the alienable and disposable character of the land must be proven by clear and incontrovertible evidence to overcome the presumption of State ownership of the lands of public domain under the Regalian doctrine. Again, the burden of proof in overcoming such presumption is upon the person applying for registration.[22]

As SLDC, in this case, evidently failed to discharge such burden and thus failed to comply with the primary requisite of proving the alienability and disposability of the subject lands, this Court finds no necessity to belabor on the other requirements for registration under Article 14(2) of P.D. No. 1529.

WHEREFORE, the instant Petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals - Cebu dated July 31, 2014 and September 17, 2015 in CA-G.R. CV No. 01023 are hereby **REVERSED and SET ASIDE**. Accordingly,

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[20] THE 1987 CONSTITUTION, Article XII, Section 2.

[21] *Republic of the Philippines v. Medida*, G.R. No. 195097, 692 Phil. 454, 468 (2012).

[22] *In Re: Application for Land Registration, Dumo v. Republic of the Philippines*, *supra* note 16.

the San Lorenzo Development Corporation's application for land registration is hereby **DENIED** for lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 224521. February 17, 2020]

BISHOP SHINJI AMARI of ABIKO BAPTIST CHURCH, represented by SHINJI AMARI and MISSIONARY BAPTIST INSTITUTE AND SEMINARY, represented by its DIRECTOR JOEL P. NEPOMUCENO, *petitioners*, *vs.* **RICARDO R. VILLAFLOR, JR.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT, NOT A CASE OF; ECCLESIASTICAL AFFAIRS AND SECULAR MATTERS, DEFINED AND DISTINGUISHED. —** [T]he Court finds the need to distinguish a purely ecclesiastical affair from a secular matter. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters. An ecclesiastical affair is "'one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership.' Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate[s] to matters of faith, religious doctrines, worship and governance of the

congregation. To be concrete, examples of these so-called ecclesiastical affairs in which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance." Secular matters, on the other hand, have no relation whatsoever with the practice of faith, worship or doctrines of the church.

2. **ID.; ID.; ID.; ID.; EXCLUSION OF MEMBERSHIP FROM A CHURCH AND CANCELLATION OF RECOMMENDATION AS A MISSIONARY ARE ECCLESIASTICAL MATTERS WHICH THIS JURISDICTION WILL NOT TOUCH UPON; IT IS DISCRETIONARY UPON THE CHURCH TO MAKE SUCH RECOMMENDATION SINCE IT IS A MATTER OF GOVERNANCE OF CONGREGATION. —** [T]here were three (3) acts which were decided upon by the Abiko Baptist Church against respondent in its November 24, 2011 Letter, to wit: (1) removal as a missionary of Abiko Baptist Church; (2) cancellation of the ABA recommendation as a national missionary; and (3) exclusion of membership from Abiko Baptist Church in Japan. To the mind of the Court, the exclusion of membership from Abiko Baptist Church in Japan and the cancellation of ABA recommendation as a national missionary are ecclesiastical matters which this jurisdiction will not touch upon. These matters are exclusively determined by the church in accordance with the standards they have set. The Court cannot meddle in these affairs since the church has the discretion to choose members who live up to their religious standards. The ABA recommendation as a national missionary is likewise discretionary upon the church since it is a matter of governance of congregation.

3. **ID.; ID.; ID.; THE MATTER OF TERMINATING AN EMPLOYEE IS A PURELY SECULAR MATTER WHILE EXPELLING A MEMBER FROM THE RELIGIOUS CONGREGATION IS AN ECCLESIASTICAL ACT, HENCE, IT IS IMPERATIVE TO DETERMINE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP. —** [T]he matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation. Petitioners insist that this case is an ecclesiastical affair as there is no employer-employee relationship between

BSAABC/MBIS and respondent. In order to settle the issue, it is imperative to determine the existence of an employer-employee relationship. x x x Thus, in filing a complaint before the LA for illegal dismissal, based on the premise that he was an employee of [petitioners], it is incumbent upon [respondent] to prove the employer-employee relationship by substantial evidence.

4. ID.; ID.; ID.; ID.; "FOUR-FOLD" TEST IN DETERMINING EMPLOYER-EMPLOYEE RELATIONSHIP, ENUMERATED; RESPONDENT WAS REMOVED AS A MISSIONARY OF ABIKO BAPTIST CHURCH, NOT AS AN INSTRUCTOR OF MBIS; WHILE HIS REMOVAL AS A MISSIONARY MAY HAVE AFFECTED HIS STATUS AS AN INSTRUCTOR OF MBIS, THE COURT IS NOT CONVINCED THAT THERE WAS AN ILLEGAL DISMISSAL; PETITIONERS' UNREBUTTED CLAIM THAT RESPONDENT VOLUNTARILY EXCUSED HIMSELF FROM TEACHING RAISES DOUBT ON THE ALLEGATION OF ILLEGAL DISMISSAL. — [B]ased on the Rule 45 parameters, the Court cannot generally touch factual matters, We allow certain exceptions in the exercise of our discretionary appellate jurisdiction, all in the interest of giving substance and meaning to the justice We are sworn to uphold and give primacy to. The lower tribunals used the "four-fold test" in determining the existence of an employer-employee relationship, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct. x x x [T]he LA and the CA anchored their findings of employer-employee relationship on the Appointment Paper presented by respondent. This evidence, however, refers to his appointment as an instructor, as well as his duties and responsibilities as such; but, to emphasize, respondent was removed as a missionary of Abiko Baptist Church, not as an instructor of MBIS. There is no evidence or allegation to show that respondent's status as a missionary is the same or dependent on his appointment as an instructor of MBIS. True, the removal as a missionary may have affected respondent's status as instructor of MBIS, but the Court is not convinced that there was an illegal dismissal. x x x [P]etitioners' unrebutted claim that respondent voluntarily excused himself sometime in 2007 from teaching in MBIS, due to the distance of the school from his missionary work in San Carlos City, raises doubt on the allegation of illegal dismissal.

5. **ID.; ID.; ID.; ID.; RECEIPT OF "LOVE GIFTS" DOES NOT MEAN PAYMENT OF WAGES; THE DESIGNATION AS "SALARIED MISSIONARY" IN THE MISSION POLICY AGREEMENT IS NOT DETERMINATIVE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP. —** We do not find in the records concrete evidence of the alleged monthly compensation of respondent amounting to $550. Respondent is not even consistent in claiming the exact amount of his supposed salary as he claims he was receiving $650 in his Motion for Reconsideration with the NLRC and Petition before the CA. Although petitioners do not deny that respondent was receiving "love gifts" in the amount of $550, they aver that these came from ABA and Abiko Baptist Church in Japan. Respondent also admitted that the "main bulk of the fund [came] from donor American Baptist Association[.]" Thus, there may be merit in petitioners' claim that funds given to missionaries like respondent come from the ABA, not BSAABC or MBIS. In fact, the document from which the CA based its conclusion that there was payment of wages and the recipient thereof called a "salaried missionary" is the Mission Policy as contained in the ABA yearbook. In addition, the designation of "salaried missionary" is not determinative of the existence of an employer-employee relationship. "Salary" is a general term defined as remuneration for services given, but the term does not establish a certain kind of relationship. Absent any clear indication that the amount respondent was allegedly receiving came from BSAABC or MBIS, or at the very least that ABA, Abiko Baptist Church of Japan and BSAABC and MBIS are one and the same, We cannot concretely establish payment of wages.

6. **ID.; ID.; ID.; ID.; DISMISSAL IS INHERENT IN RELIGIOUS CONGREGATIONS AS THEY HAVE THE POWER TO DISCIPLINE THEIR MEMBERS; RESPONDENT'S REMOVAL AS A MISSIONARY CANNOT ALONE ESTABLISH AN EMPLOYER-EMPLOYEE RELATIONSHIP. —** We find that dismissal is inherent in religious congregations as they have the power to discipline their members. Admittedly, the nature of respondent's position as a missionary calls on the exercise of supervision by the church of which he is a member considering that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief. Although respondent's

removal is clear from the November 24, 2011 Letter, this alone cannot establish an employer-employee relationship.

7. **ID.; ID.; ID.; ID.; RESPONDENT'S APPOINTMENT AS INSTRUCTOR WAS BY VIRTUE OF HIS MEMBERSHIP WITH ABIKO BAPTIST CHURCH, HENCE, HIS ALLEGED EXCLUSION AS INSTRUCTOR IS BEYOND THE POWER OF REVIEW BY THE STATE CONSIDERING THAT THIS IS PURELY AN ECCLESIASTICAL AFFAIR; WHILE THE MISSION POLICY AGREEMENT MAY SHOW BADGES OF CONTROL OVER ITS MEMBERS AND MISSIONARIES, RESPONDENT AS MEMBER OF A RELIGIOUS CONGREGATION, MUST BE SUBJECTED TO A CERTAIN SENSE OF CONTROL FOR THE CHURCH TO ACHIEVE THE ENDS OF ITS BELIEF. —** [T]his Court sees that respondent's appointment as instructor of petitioners' own educational institution was by virtue of his membership with Abiko Baptist Church. It is one of his duties as a missionary/minister of the same. He himself admitted that he was teaching "bible history, philosophy, Christian doctrine, public speaking, English and other religious subjects to seminarians in [MBIS intending] to be [a] pastor/minister[.]" These subject matters and how they prepare or educate their ministers are ecclesiastical in nature which the State cannot regulate unless there is clear violation of secular laws. It follows, therefore, that even his alleged exclusion as instructor is beyond the power of review by the State considering that this is purely an ecclesiastical affair. It is up to the members of the religious congregation to determine whether their minister still lives up to the beliefs they stand for, continues to share his knowledge, and remains an exemplar of faith to the members of their church. True, the Mission Policy Agreement may show badges of control over its members and missionaries; nevertheless, respondent, as member of the religious congregation, must be subjected to a certain sense of control for the church to achieve the ends of its belief. As to the power to order respondent to areas of mission work, the Court deems it appropriate not to expound on this because aside from the fact that it is a mere allegation, it is also an ecclesiastical matter as it concerns governance of the congregation. Other than the Appointment Paper (as an instructor), no other evidence was adduced by respondent to show an employer-employee relationship. Respondent, as the

one alleging an employer-employee relationship, failed to establish with clear and convincing evidence that such relationship exists.

LEONEN, ***J., separate concurring opinion:***

1. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREE EXERCISE OF RELIGION; DETERMINING WHETHER A CONTROVERSY INVOLVES AN ECCLESIASTICAL AFFAIR OR SECULAR MATTER IS ESSENTIAL TO DETERMINE WHETHER CIVIL COURTS HAVE JURISDICTION. —** Determining whether a controversy involves an ecclesiastical affair or a secular matter is, in turn, essential in determining whether civil courts may take cognizance of it. If the controversy involves an ecclesiastical affair, civil courts must yield to the decision of the ecclesiastical tribunal, in deference to two key provisions of the Constitution. In Article II, Section 6, the Constitution declares that "[t]he separation of Church and State shall be inviolable." The Bill of Rights in Article III, Section 5 provides for the non-establishment and free exercise clauses[.] x x x Under Article III, Section 5, it is the State's duty to respect the free exercise of any religious faith. The State is likewise forbidden from establishing, endorsing, or favoring any religion, in contrast with the Spanish crown which established a national religion during the colonial period. Strictly reading Article Ill, Section 5 ensures the inviolability of the separation of Church and State, which separation is notably unqualified and should therefore be absolute.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESPONDENT'S EXCLUSION AS MEMBER OF A CHURCH AND HIS REMOVAL AS MISSIONARY/MINISTER ARE ECCLESIASTICAL MATTERS; THE STATE CANNOT COMPEL A CHURCH TO REINSTATE A MINISTER THAT IT HAS DECIDED TO REMOVE; THESE MATTERS ARE OUTSIDE OF THE JURISDICTION OF SECULAR COURTS, INCLUDING THIS COURT. —** I am of the opinion that the removal of Villaflor as missionary/minister was not purely secular; rather, it was an ecclesiastical decision. It is true that employer-employee relationships are covered by the Labor Code, and that a religious institution like Abiko Baptist

Church may form employer-employee relationships. Still, more than an employment decision, removing a missionary/minister inevitably involves the governance of a religious congregation. Being a minister is a position of leadership in the church, involving the teaching of religious doctrine to the faithful. Mission work requires evangelizing non-believers, equally involving matters of religious doctrine and worship. Necessarily, employment decisions of churches with respect to their ministers are ecclesiastical in nature. The State cannot compel a church to reinstate a minister that it has decided to remove, for not only will it inevitably and excessively entangle itself with matters of religion, it will be effectively dictating to a religious institution who its officials should be. x x x The very controversy that the religion clauses bar secular courts from resolving is whether or not a church followed its internal procedure for removing its pastors, ministers, and all those of equivalent authority. Taking cognizance of such cases will directly violate the separation of Church and State. If secular courts are to reverse the decision of the ecclesiastical tribunal, it will be infringing on a church's freedom to choose who its religious leaders should be. If the State orders a church to retain a dismissed minister, it will be interfering with ecclesiastical affairs. x x x All told, Villaflor's exclusion as a member of Abiko Baptist Church *and* his removal as minister are matters ecclesiastical in nature. These matters are outside the jurisdiction of secular courts, including this Court.

ZALAMEDA, *J., separate concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREE EXERCISE OF RELIGION, EXPLAINED; RULINGS OF THE UNITED STATES SUPREME COURT PROVIDING THE HISTORICAL BACKDROP AS WELL AS THE ADOPTION OF DEFERENCE TEST AND THE MINISTERIAL EXCEPTION TO RESOLVE THE CHURCH INTERNAL DISPUTES, ELABORATED. —** The provision on religion in Section 5, Article III of the 1987 Constitution is substantially the same as in the 1935 and 1973 Constitutions: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or

political rights." The 1934 Constitutional Convention accepted the basic provision without debate, and paved the way for the adoption of interpretations of this provision from the United States (US), its country of origin. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (Hossana-Tabor)*, the US Supreme Court provided the historical backdrop for the adoption of the First Amendment's Non-Establishment and Free Exercise clauses. *Hossana-Tabor* traced the beginnings of the Non-Establishment clause from the first clause of the Magna Carta. x x x This exclusion of government participation in church matters was subsequently challenged in court. The deference test was initially articulated by the US Supreme Court in *Watson v. Jones*. x x x The US Supreme Court formulated the deference test to resolve the dispute in *Watson*. The Court deferred to the decision of the General Assembly when it removed Watson as an elder. The General Assembly, as the highest deciding body in the church's structure, had the authority, procedure, and organization to resolve the church's internal disputes. *Watson* further underscored the lack of jurisdiction of civil courts over ecclesiastical matters[.] x x x Aside from the deference test, the US Supreme Court also articulated the ministerial exception. *Hossana-Tabor* explained that the ministerial exception removes religious organizations from the application of employment discrimination laws. Like the deference test, the ministerial exception is also anchored on the First Amendment: x x x The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter "strictly ecclesiastical,"— is the church's alone.

2. **ID.; ID.; ID.; ID.; ID.; EXISTING PHILIPPINE JURISPRUDENCE RESOLVING THE APPARENT CLASHES BETWEEN THE EXERCISE OF RELIGIOUS FREEDOM AND THE PROPERTY RIGHT TO INCOME, CITED; THE COURT WILL NOT HESITATE TO UPHOLD THE EXERCISE OF RELIGIOUS FREEDOM OVER PROPERTY RIGHT TO INCOME ONCE THE CHURCH HIERARCHY HAS MADE ITS DECISION INVOLVING ECCLESIASTICAL MATTERS. —** [T]his Court has also found the occasion to rule on the apparent clashes between the exercise of religious freedom and the property rights to income. In *Austria v. National Labor Relations Commission (Austria)*, this Court reached a

conclusion which is different from that of the *ponencia.* The difference in conclusion, however, lies in the allegations put forward by the church to justify the removal of its employee-minister. In *Austria*, the employee-minister received a letter terminating his services on the grounds of misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties, and commission of an offense against the person of employer's (the church) duly authorized representative. This Court found that the church removed the minister as its employee and not as its church official or even its church member. x x x *Austria's* distinction between secular and ecclesiastical affairs provides an enlightening discussion: The case at bar does not concern an ecclesiastical or purely religious affair as to bar the State from taking cognizance of the same. An ecclesiastical affair is "one that concerns doctrine, creed or form or worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership." Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities which attached religious significance. The case at bar does not even remotely concern any of the abovecited examples. While the matter at hand relates to the church and its religious minister it does not *ipso facto* give the case a religious significance. Simply stated, what is involved here is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship or doctrines of the church. In this case, petitioner was not excommunicated or expelled from the membership of the SDA but was terminated from employment. Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation. x x x *Long v. Basa*, on the other hand, involved church members who questioned their expulsion from the church before the Securities and Exchange Commission. Their expulsion

was predicated on acts that "espous[e] doctrines inimical or injurious to the faith of the church." The church members sought the annulment of the membership list that excluded their names on the ground of lack of prior notice and hearing. In upholding the church members' expulsion, this Court made a distinction between a religious corporation and a corporation that is organized for profit, as well as underscored the importance of adherence to a common religious belief as a qualification for church membership. x x x Indeed, upon showing of sufficient proof, the Court will not hesitate to uphold the exercise of religious freedom over property rights to income and even to abode, once the church hierarchy has made its decision involving ecclesiastical matters. Accordingly, an intrusion into the church's religious freedom in disciplining and in expelling its missionaries cannot be countenanced, as in this case.

APPEARANCES OF COUNSEL

Caing Law Office for petitioners.
Manuel Lao Ong for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the October 27, 2015 Decision[1] and April 26, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 08067. The CA reversed and set aside the July 15, 2013 Decision[3] and September 30, 2013 Resolution[4] of the National Labor Relations Commission *(NLRC)* and reinstated the February 12,

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[1] *Rollo*, pp. 21-34; penned by Associate Justice Marilyn Lagura-Yap, with Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob, concurring.

[2] *Id.* at 35-36; penned by Associate Justice Marilyn Lagura-Yap, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, concurring.

[3] CA *rollo*, pp. 27-33, penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez, concurring.

[4] *Id.* at 35-36.

2013 Decision[5] of the Labor Arbiter *(LA)* with instructions to the latter to re-compute the monetary awards of backwages, separation pay, and attorney's fees based on the date of finality of the CA's Decision.

Antecedents

The controversy stemmed from the Letter dated November 24, 2011[6] where Ricardo R. Villaflor, Jr. *(respondent)* was informed of his removal as a missionary of the Abiko Baptist Church, cancellation of his American Baptist Association *(ABA)* recommendation as a national missionary, and exclusion of his membership in the Abiko Baptist Church in Japan.

Respondent believed that he was dismissed from his employment without the benefit of due process and valid cause; thus, he filed a complaint before the NLRC. He claimed that he was illegally dismissed from his work as missionary/minister because he refused to sign a resignation letter and vacate the property where he had already constructed a house and church building. Consequently, his salary was cut off.[7]

For their part, petitioners alleged that in 1999, respondent became a missionary sponsored by Bishop Shinji Amari of the Abiko Baptist Church *(BSAABC)*. Respondent was appointed as an instructor at the Shinji Amari & Missionary Baptist Institute and Seminary *(MBIS; petitioner)* effective June 1999.[8] However, a Certification issued by MBIS Director Joel Nepomuceno states that sometime during the schoolyear 2006-2007, respondent told Bishop Shinji Amari that he cannot continue teaching due to the distance between San Carlos City, where his mission work was, and MBIS, Minglanilla, Cebu. His appointment as volunteer teacher was thereafter cancelled.[9]

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[5] *Id.* at 101-115, penned by Acting Executive Labor Arbiter Romulo P. Sumalinog.

[6] *Id.* at 58.

[7] *Id.* at 39-54, Complainant's Position Paper.

[8] *Id.* at 55.

[9] *Id.* at 78.

Petitioners further claimed that since the Baptist Church was already successfully organized and established at San Carlos City, respondent's mission was already finished. Thus, BSAABC ordered him to be transferred to other areas of mission work; but in defiance to the order, respondent refused without justifiable reason. After investigation, it was discovered that respondent's refusal to leave San Carlos City was because he had built his personal house on the land owned by BSAABC without the latter's consent. On November 20, 2011, after earnest efforts of negotiating with respondent and giving him adequate opportunity to ventilate his side, the members of the BSAABC unanimously voted to remove him as missionary and cancel his ABA recommendation. He was informed of the decision in the November 24, 2011 Letter. In the same letter, BSAABC demanded respondent to vacate the property as soon as possible, and offered to buy the house erected thereon at the estimated cost of building materials.[10]

This prompted respondent to file a Complaint for Illegal Dismissal on September 10, 2012.[11]

The LA Ruling

The LA found respondent's dismissal illegal. Petitioners were ordered to pay backwages, separation pay, 13th month pay, moral and exemplary damages, and attorney's fees.[12]

The LA held that it has jurisdiction over the matter considering that respondent was appointed as instructor of MBIS. His being a member of the Abiko Baptist Church of Japan was only incidental to his main duties and responsibilities as instructor.[13] Respondent's Appointment Paper was considered sufficient evidence to establish the employer-employee relationship. It further ruled that considering respondent had attained regular status, he cannot be dismissed unless for a cause. The November

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[10] *Id.* at 61-71, Position Paper for Respondents.

[11] *Id.* at 37.

[12] *Id.* at 114-115.

[13] *Id.* at 110.

24, 2011 Letter was, in effect, a way of terminating the employment of respondent, hence, illegal.[14]

The NLRC Ruling

The NLRC reversed the LA's ruling and dismissed the complaint on the ground of lack of jurisdiction. It held simply that the expulsion of respondent from their church was an ecclesiastical affair, and as such, has no remedy in civil courts.[15]

The CA Ruling

On appeal to the CA, the NLRC's Decision and Resolution were reversed and set aside. Accordingly, the LA's ruling was reinstated.

The CA ruled that both the LA and NLRC had jurisdiction over the matter. It found that the November 24, 2011 Letter served as: (1) notice for the termination of respondent's employment, and (2) exclusion of his membership in the church. The tenor of the letter itself implicitly demonstrated that these incidents were distinct from each other. Respondent's status as a missionary on one hand, and his membership in the church on the other, were separate matters. The former was a purely secular matter, and the latter was an ecclesiastical affair; and one does not necessarily include the other.[16]

The CA recognized that there may be a scenario where a minister is removed from his employment as a consequence of his exclusion from the church. But in such situation, the church, as employer, can and should deal with the employment aspect separately and observe due process.[17]

It also held that respondent was an employee of BSAABC and MBIS because of the existence of the four (4) elements which determine an employment relationship. First, as to the

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[14] *Id.* at 110-112.

[15] *Id.* at 32-33.

[16] *Rollo*, pp. 26-28.

[17] *Id.* at 28.

selection and engagement of the employee, the CA said that the Appointment Paper was credible evidence of BSAABC and MBIS' power to select and engage him as an employee. Second, the payment of wages was shown through the "love gifts" given to respondent who was even described as a "salaried missionary." Third, the power of control was shown in the duties enumerated in the Appointment Paper, together with BSAABC's evident power to order him to areas of mission work. Finally, the November 24, 2011 Letter clearly established the power of dismissal.[18]

The CA found no just cause for the termination of respondent's employment. It dismissed the claim of BSAABC that respondent disobeyed it by building his own house, instead of a church, on its property without its consent. The Certification[19] presented by respondent disproves the claim that he was not authorized to build his own house thereon. It also appears that any misunderstanding was already settled between the parties citing the Agreement[20] between respondent and BSAABC dated February 23, 2010. Also, there was no credible proof of respondent's supposed refusal to be reassigned to another area.[21]

Issue

Petitioners raise the sole issue of whether the CA erred in ruling that respondent was illegally dismissed despite the fact

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[18] *Id.* at 29-30.

[19] CA *rollo*, p. 57, which reads:

"This is to certify that Pastor Ricardo N. Villaflor, Jr. is a Missionary Pastor under the authority of Abiko Baptist Church in Chiba, Japan. Presently, he is laboring as missionary in San Carlos City, Negros Occidental, Philippines.

Being a missionary, Pastor Ricardo Villaflor, Jr. has been commissioned to preach the Gospel and Baptize converts.

This is to certify further that he is authorized to build his own Pastoral house on the portion of acquired lot of Bishop Shinji Amari of Abiko Baptist Church, Inc., known as lot No. 2 Block 1 containing an area of 208 Sq. meters. Located at St. Vincent subdivision, San Carlos City, Philippines.

This certification was issues upon the request of Pastor Ricardo Villaflor, Jr."

[20] *Id.* at 145.

[21] *Rollo*, pp. 30-31.

that the dispute involves an ecclesiastical affair as the latter was a member of the Abiko Baptist Church.[22]

The Court's Ruling

At the outset, the Court finds the need to distinguish a purely ecclesiastical affair from a secular matter. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters.[23]

An ecclesiastical affair is "'one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership.' Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate[s] to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of these so-called ecclesiastical affairs in which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance."[24] Secular matters, on the other hand, have no relation whatsoever with the practice of faith, worship or doctrines of the church.[25]

In this case, there were three (3) acts which were decided upon by the Abiko Baptist Church against respondent in its November 24, 2011 Letter, to wit: (1) removal as a missionary of Abiko Baptist Church; (2) cancellation of the ABA recommendation as a national missionary; and (3) exclusion of membership from Abiko Baptist Church in Japan.

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

[23] *Austria v. National Labor Relations Commission*, 371 Phil. 340, 353 (1999).

[24] *Id.*

[25] *Id.*

To the mind of the Court, the exclusion of membership from Abiko Baptist Church in Japan and the cancellation of ABA recommendation as a national missionary are ecclesiastical matters which this jurisdiction will not touch upon. These matters are exclusively determined by the church in accordance with the standards they have set. The Court cannot meddle in these affairs since the church has the discretion to choose members who live up to their religious standards. The ABA recommendation as a national missionary is likewise discretionary upon the church since it is a matter of governance of congregation.

We are left to determine whether respondent's removal as a missionary of Abiko Baptist Church is an ecclesiastical affair.

Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation.[26] Petitioners insist that this case is an ecclesiastical affair as there is no employer-employee relationship between BSAABC/MBIS and respondent.

In order to settle the issue, it is imperative to determine the existence of an employer-employee relationship. We have previously ruled that "[i]n an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. Thus, in filing a complaint before the LA for illegal dismissal, based on the premise that he was an employee of [petitioners], it is incumbent upon [respondent] to prove the employer-employee relationship by substantial evidence."[27]

Although based on the Rule 45 parameters, the Court cannot generally touch factual matters, We allow certain exceptions in the exercise of our discretionary appellate jurisdiction, all

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[26] *Id.* at 353-354.

[27] See *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

in the interest of giving substance aid meaning to the justice We are sworn to uphold and give primacy to.[28] Thus, We deem it appropriate to re-examine the records and analyze the appreciation of evidence by the lower tribunals.

The lower tribunals used the "four-fold test" in determining the existence of an employer-employee relationship, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct.[29]

First, the LA and the CA anchored their findings of employer-employee relationship on the Appointment Paper presented by respondent. This evidence, however, refers to his appointment as an instructor, as well as his duties and responsibilities as such; but, to emphasize, respondent was removed as a missionary of Abiko Baptist Church, not as an instructor of MBIS. There is no evidence or allegation to show that respondent's status as a missionary is the same or dependent on his appointment as an instructor of MBIS. True, the removal as a missionary may have affected respondent's status as instructor of MBIS, but the Court is not convinced that there was an illegal dismissal.

In this relation, We find the statement of the LA, that respondent's membership with Abiko Baptist Church of Japan as merely incidental to his main duties and responsibilities as an instructor,[30] misplaced. On the contrary, it is more appropriate to say that being an instructor of MBIS was part of respondent's mission work as a missionary/minister of BSAABC.

Respondent's removal as a missionary of Abiko Baptist Church is different from his status as an instructor of MBIS. The Mission Policy Agreement[31] shows that the mission was accepted by respondent as early as September 15, 1998, while the appointment as an instructor was made on a different instrument, an

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[28] *Philman Marine Agency, Inc. v. Cabanban*, 715 Phil. 454, 471 (2013).

[29] See *Alilin v. Petron Corporation*, 735 Phil. 509, 527 (2014).

[30] CA *rollo*, p. 110.

[31] *Id.* at 137-138.

Appointment Paper made effective in June 1999.[32] These two (2) instruments establish two (2) different positions held by respondent, and means that being a missionary of BSAABC is separate from being an instructor of MBIS, though they may be completely related.

Be that as it may, petitioners' unrebutted claim that respondent voluntarily excused himself sometime in 2007 from teaching in MBIS, due to the distance of the school from his missionary work in San Carlos City,[33] raises doubt on the allegation of illegal dismissal.

Second, We do not find in the records concrete evidence of the alleged monthly compensation of respondent amounting to $550. Respondent is not even consistent in claiming the exact amount of his supposed salary as he claims he was receiving $650 in his Motion for Reconsideration[34] with the NLRC and Petition[35] before the CA. Although petitioners do not deny that respondent was receiving "love gifts" in the amount of $550, they aver that these came from ABA and Abiko Baptist Church in Japan. Respondent also admitted that the "main bulk of the fund [came] from donor American Baptist Association[.]"[36] Thus, there may be merit in petitioners' claim that funds given to missionaries like respondent come from the ABA, not BSAABC or MBIS. In fact, the document from which the CA based its conclusion that there was payment of wages and the recipient thereof called a "salaried missionary" is the Mission Policy as contained in the ABA yearbook. In addition, the designation of "salaried missionary" is not determinative of the existence of an employer-employee relationship. "Salary" is a general term defined as remuneration for services given,[37] but the term does not establish a certain kind of relationship.

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[32] *Supra* note 8.

[33] *Supra* note 9.

[34] CA *rollo*, p. 152.

[35] *Id.* at 8.

[36] *Id.* at 40, Complainant's Position Paper.

[37] *Reyes v. Glaucoma Research Foundation, supra* note 27 at 792.

Absent any clear indication that the amount respondent was allegedly receiving came from BSAABC or MBIS, or at the very least that ABA, Abiko Baptist Church of Japan and BSAABC and MBIS are one and the same, We cannot concretely establish payment of wages.

As to the third element, We find that dismissal is inherent in religious congregations as they have the power to discipline their members. Admittedly, the nature of respondent's position as a missionary calls on the exercise of supervision by the church of which he is a member considering that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief.[38] Although respondent's removal is clear from the November 24, 2011 Letter, this alone cannot establish an employer-employee relationship.

Lastly, as to the power of control, the CA ruled that the duties enumerated in the Appointment Paper, together with BSAABC's power to order respondent to areas of mission work, as well as the Mission Policy Agreement, all indicated the exercise of control.

We do not agree. The use of the LA and CA of the Appointment Paper, as basis of the employer-employee relationship in this case, is misplaced considering that respondent failed to establish that such duties enumerated therein are the duties only of a missionary. Again, the said document refers to respondent's status as an instructor of MBIS.

Even then, this Court sees that respondent's appointment as instructor of petitioners' own educational institution was by virtue of his membership with Abiko Baptist Church. It is one of his duties as a missionary/minister of the same. He himself admitted that he was teaching "bible history, philosophy, Christian doctrine, public speaking, English and other religious subjects to seminarians in [MBIS intending] to be [a] pastor/minister[.]"[39] These subject matters and how they prepare or

[38] *Long v. Basa*, 418 Phil. 375, 397 (2001).

[39] *Supra* note 36.

educate their ministers are ecclesiastical in nature which the State cannot regulate unless there is clear violation of secular laws. It follows, therefore, that even his alleged exclusion as instructors is beyond the power of review by the State considering that this is purely an ecclesiastical affair. It is up to the members of the religious congregation to determine whether their minister still lives up to the beliefs they stand for, continues to share his knowledge, and remains an exemplar of faith to the members of their church.

True, the Mission Policy Agreement may show badges of control over its members and missionaries; nevertheless, respondent, as member of the religious congregation, must be subjected to a certain sense of control for the church to achieve the ends of its belief. As to the power to order respondent to areas of mission work, the Court deems it appropriate not to expound on this because aside from the fact that it is a mere allegation, it is also an ecclesiastical matter as it concerns governance of the congregation.

Other than the Appointment Paper (as an instructor), no other evidence was adduced by respondent to show an employer-employee relationship. Respondent, as the one alleging an employer-employee relationship, failed to establish with clear and convincing evidence that such relationship exists. With this, We do not see the need to discuss whether the dismissal as a missionary was illegal as it is clearly an ecclesiastical affair.

Respondent is trying to confuse the Court in claiming that his appointment as instructor of MBIS is basis of an employer-employee relationship while at the same time, claiming the benefits accorded him as a missionary of BSAABC, such as the privilege to live on the latter's property and the financial support he was receiving. Respondent obviously filed the instant case to protect his property rights over the house he built on the land of BSAABC, which is not within the ambit of a labor case. Then again, he was not able to sufficiently prove the existence of an employer-employee relationship which is the first requirement to claim relief in a labor case.

Admittedly, there is a thin line between secular and ecclesiastical matters with regard to respondent's status as a missionary. Respondent's claim of illegal dismissal is dependent on the existence of the employer-employee relationship. Unfortunately, respondent failed to prove his own affirmative allegation.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The October 27, 2015 Decision and April 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 08067 are **REVERSED** and **SET ASIDE**. Accordingly, the July 15, 2013 Decision of the National Labor Relations Commission dismissing the case for lack of jurisdiction is hereby **REINSTATED**.

SO ORDERED.

Carandang and *Gaerlan, JJ.*, concur.

Leonen (Chairperson) and *Zalameda, JJ.*, see separate concurring opinions.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result of the *ponencia* written by Justice Alexander G. Gesmundo. The exclusion of respondent Ricardo Villaflor (Villaflor), Jr. as a member of Abiko Baptist Church in Japan is an ecclesiastical affair and is, therefore, beyond the ambit of this Court's jurisdiction to resolve. However, I am of the view that his removal as a missionary was likewise ecclesiastical in nature, having been done in the exercise of Abiko Baptist Church's right to select and control who to minister its faithful.

As discussed in the *ponencia*, an ecclesiastical affair is "one that concerns doctrine, creed or form or worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations

those deemed unworthy of membership."[1] All that has no relation with the practice of faith, worship, or doctrine is considered secular.[2]

Determining whether a controversy involves an ecclesiastical affair or a secular matter is, in turn, essential in determining whether civil courts may take cognizance of it. If the controversy involves an ecclesiastical affair, civil courts must yield to the decision of the ecclesiastical tribunal, in deference to two key provisions of the Constitution. In Article II, Section 6, the Constitution declares that "[t]he separation of Church and State shall be inviolable." The Bill of Rights in Article III, Section 5 provides for the non-establishment and free exercise clauses, thus:

ARTICLE III
Bill of Rights

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Under Article III, Section 5, it is the State's duty to respect the free exercise of any religious faith. The State is likewise forbidden from establishing, endorsing, or favoring any religion, in contrast with the Spanish crown which established a national religion during the colonial period. Strictly reading Article III, Section 5 ensures the inviolability of the separation of Church and State, which separation is notably unqualified and should therefore be absolute.

The exclusion of Villaflor from membership in Abiko Baptist Church is clearly ecclesiastical in nature. It involves "the relationship between the church and its members and relates to matters of. . . worship and governance of the congregation."[3]

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[1] *Ponencia*, p. 5, citing *Austria v. National Labor Relations Commission*, 371 Phil. 340, 353 (1999) [Per *J.* Kapunan, First Division].

[2] *Id.*

[3] *Id.*

The free exercise clause, in as much as it guarantees the right of individuals to freely exercise any religion of their own choosing, equally guarantees the right of religious institutions to determine who may personify their doctrines and beliefs.

However, I am of the opinion that the removal of Villaflor as missionary/minister was not purely secular; rather, it was an ecclesiastical decision. It is true that employer-employee relationships are covered by the Labor Code, and that a religious institution like Abiko Baptist Church may form employer-employee relationships.

Still, more than an employment decision, removing a missionary/minister inevitably involves the governance of a religious congregation. Being a minister is a position of leadership in the church, involving the teaching of religious doctrine to the faithful. Mission work requires evangelizing non-believers, equally involving matters of religious doctrine and worship. Necessarily, employment decisions of churches with respect to their ministers are ecclesiastical in nature. The State cannot compel a church to reinstate a minister that it has decided to remove, for not only will it inevitably and excessively entangle itself with matters of religion, it will be effectively dictating to a religious institution who its officials should be.

I am aware of this Court's decision in *Austria v. National Labor Relations Commission*.[4] In that case, Dionisio V. Austria (Austria) served, first, as a literature evangelist; then, as an Assistant Publishing Director before becoming a pastor in Central Philippine Union Mission Corporation of the Seventh-Day Adventists. He served the Seventh-Day Adventists for 28 years until his services were terminated for failing to account for church tithes and offerings collected by his wife. This caused Austria to file an illegal dismissal complaint, and the Labor Arbiter ruled in his favor and ordered his reinstatement. Reversing the Labor Arbiter, the National Labor Relations Commission dismissed the complaint for lack of jurisdiction.[5]

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[4] 371 Phil. 340 (1999) [Per *J.* Kapunan, *En Banc*].

[5] *Id.* at 347-350.

Austria, who appealed before this Court, and the Office of the Solicitor General, while appearing for the National Labor Relations Commission, interestingly argued that the Commission wrongly dismissed Austria's illegal dismissal complaint. According to the Office of the Solicitor General, the validity of the termination of Austria's employment was a controversy within the National Labor Relations Commission's jurisdiction, as it was secular in nature.[6]

This Court agreed with the Office of the Solicitor General, holding that the "principle of separation of church and state finds no application in [the] case."[7] It found that "the matter of terminating an employee"[8] is "purely secular in nature"[9] and does not involve "the practice of faith, worship or doctrines of the church,"[10] matters traditionally regarded as ecclesiastical affairs. The Labor Code, said the Court, is "comprehensive enough to include religious corporations"[11] such as the Central Philippine Union Mission Corporation of the Seventh-Day Adventists. The Court found that the Seventh-Day Adventists failed to prove that Austria pocketed tithes and offerings from its faithful; hence, Austria was deemed illegally dismissed. The Seventh-Day Adventists was thus ordered to reinstate Austria to his former position as pastor and to even pay him backwages, among others.[12]

In my view, *Austria* too conveniently disposed of an important constitutional issue by framing the case as a labor dispute. *Austria* involved a pastor removed by his church. He then appealed his dismissal to the secular courts, praying that his church be ordered to reinstate him. The principle of separation of Church and State was certainly applicable, if not central, in *Austria*.

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[6] *Id.* at 352.

[7] *Id.*

[8] *Id.* at 353.

[9] *Id.* at 354.

[10] *Id.* at 353.

[11] *Id.* at 354.

[12] *Id.* at 362.

The very controversy that the religion clauses bar secular courts from resolving is whether or not a church followed its internal procedure for removing its pastors, ministers, and all those of equivalent authority. Taking cognizance of such cases will directly violate the separation of Church and State. If secular courts are to reverse the decision of the ecclesiastical tribunal, it will be infringing on a church's freedom to choose who its religious leaders should be. If the State orders a church to retain a dismissed minister, it will be interfering with ecclesiastical affairs.

Distinguishing between an ecclesiastical affair and a secular matter is theoretically and conceptually understandable. In actuality, however, employment disputes between churches and their ministers will necessarily involve matters traditionally regarded as secular. As a leadership position, being a minister will involve administrative functions such as handling of church funds as well as managing personnel. The approach taken by the Court in *Austria* avoids the reality that the duties of a minister cannot be purely ecclesiastical.

While not controlling in this jurisdiction, *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*[13] is notable for introducing the concept of "ministerial exception." Under this concept, secular courts are barred from taking cognizance of employment controversies between churches and their ministers on the basis of the First Amendment.

Hosanna-Tabor Evangelical Lutheran Church and School employed Cheryl Perich (Perich) as one of its "called teachers." "Called" teachers, as opposed to "lay" ones, had to undergo a "colloquy" program at a Lutheran college or university. "Called" teachers were required to take courses in theology, in addition to the endorsement of their local Synod district and an oral examination.[14] It took six (6) years for Perich to finish the program.[15]

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[13] 132 S. Ct. 694 (2012) [Per *C.J.* Roberts, United States Supreme Court].

[14] Opinion of the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity*

Into her fifth year of teaching in Hosanna-Tabor, Perich developed narcolepsy, which required her to take a one-year disability leave. When she notified the school of her return, the school replied that it had already contracted a "lay" teacher, one who need not undergo the "colloquy" program or to even be Lutheran, to teach in her place. Perich insisted on returning and to not resign, informing the school that she had already sought legal counsel and would be asserting her rights. This led the local Synod to rescind Perich's "call," and her employment was terminated for "insubordination and disruptive behavior."[16]

Perich filed a charge before the Equal Employment Opportunity Commission, claiming that she was discriminated on the ground of disability. The Equal Employment Opportunity Commission agreed and sued Hosanna-Tabor before the district court. It prayed that Perich be reinstated to her former position.[17]

Hosanna-Tabor moved for summary judgment and argued that the First Amendment barred the suit filed by the Equal Employment Opportunity Commission. According to Hosanna-Tabor, it fired Perich for a religious reason given that her threat to sue the church was contrary to the Christian teaching of resolving disputes internally.[18]

The District Court granted summary judgment and dismissed the complaint, agreeing with Hosanna-Tabor that the suit was barred by the First Amendment. It held that allowing the suit would infringe upon the religious freedom of Hosanna-Tabor to choose those who could teach Lutheran doctrine in its school. Reversing the District Court, the Court of Appeals for the Sixth Circuit remanded the case. While recognizing that the First Amendment barred suits filed by ministers whose employment were terminated by their churches, the Court of Appeals held

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Commission, p. 2. Available at <https://www.supremecourt.gov/opinions/11pdf/10-553.pdf>. (Last accessed on February 11, 2020).

[15] *Id.* at 16.

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

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

[18] *Id.* at 5.

that the "ministerial exception" did not apply considering that Perich was not a minister.[19]

The United States Supreme Court disagreed with the Court of Appeals and held that the "ministerial exception" applied in the case. First, it discussed the history and development of the religion clauses and how they were formulated to primarily bar the Federal Government from meddling with ecclesiastical affairs, unlike the English Crown which established a national church and at times imposed its preferences as to the religious officers to be appointed. Specifically on the non-establishment clause, its purpose is to "[prevent] the Government from appointing ministers."[20] As for the free exercise clause, it "prevents [the Government] from interfering with the freedom of religious groups to select their own."[21]

It had yet to decide a case involving government interference with the employment choices of religious groups, so the United States Supreme Court, instead, discussed cases involving disputes over church properties and found that it usually declined jurisdiction by virtue of the First Amendment. *Hosanna-Tabor*, decided in 2012, was the first case where it had to squarely resolve the issue of whether or not secular courts may resolve employment discrimination suits filed by ministers against the religious institutions that employed them. On this issue, the United States Supreme Court said that secular courts have no such jurisdiction, citing the "ministerial exception" anchored on the First Amendment. Essentially, the ministerial exception bars suits involving "the employment relationship between a religious institution and its ministers," because taking cognizance of such cases infringes on the right of religious organizations to choose who to personify and teach their beliefs. In *Hosanna-Tabor*:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon

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[19] *Id.*

[20] *Id.* at 9.

[21] *Id.*

more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.[22]

The purpose of the "ministerial exception" is not to determine whether the dismissal was indeed done on religious grounds, but to ensure that the decision to dismiss the minister exclusively belongs to the religious institution. It is "not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone."[23]

The United States Supreme Court conceded that Perich was not a minister. Nevertheless, Hosanna-Tabor held her out as one, especially since being a "called" teacher required a significant amount of religious training and even a formal process of commissioning. Even Perich held herself out as a minister, accepting tax concessions available to employees earning compensation "in the exercise of the ministry." After she was terminated, she wrote the Synod and said that "I feel that God is leading me to serve in the teaching ministry. . . I am anxious to be in the teaching ministry again soon."[24]

Moreover, like a minister, she taught religion in Hosanna Tabor, "reflecting a role in conveying the Church's message and carrying out its mission."[25] Her duties included "lead[ing] others toward Christian maturity"[26] and "teach[ing] faithfully

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[22] *Id.* at 13-14.

[23] *Id.* at 20.

[24] *Id.* at 17.

[25] *Id.*

[26] *Id.*

the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church."[27] Ultimately, the decision of the Court of Appeals was reversed, and the summary dismissal of Perich's employment discrimination case was upheld. *Hosanna-Tabor* concludes with:

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.[28]

The right to work is imbued with public interest, so much that the Constitution affords full protection to labor.[29] Employer-employee relations between religious institutions and their ministers, however, will involve matters inherently religious in nature. Considering that the Constitution prohibits the State from entangling itself in religious disputes, resolving the issue of who to employ as ministers and who to personify their beliefs is best left to religious institutions. After all, in ministry and missionary work, the right to wage should only be incidental.

All told, Villaflor's exclusion as a member of Abiko Baptist Church *and* his removal as minister are matters ecclesiastical in nature. These matters are outside the jurisdiction of secular courts, including this Court.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Petition for Review on *Certiorari* and **REVERSE** and **SET ASIDE** the Decision and Resolution of the Court of Appeals

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[27] *Id.*

[28] *Id.* at 21-22.

[29] CONST., Art. XIII, Sec. 3 partly provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

in CA-G.R. SP No. 08067. The Decision of the National Labor Relations Commission dismissing the illegal dismissal complaint filed by respondent Ricardo Villaflor, Jr. for lack of jurisdiction must be **REINSTATED**.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

> *[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.*[1]

I agree with the *ponencia* which reinstated the ruling of the National Labor Relations Commission and declared that "being an instructor of [Missionary Baptist Institute and Seminary (MBIS)] was part of [Ricardo Villaflor, Jr.'s (Villaflor)] mission work as a missionary/minister of [Abiko Baptist Church (ABC)]." Villaflor's "removal as a missionary of [ABC] is different from his status as an instructor of MBIS." Villaflor failed to prove that he was an employee of ABC and MBIS; hence, there can be no finding of illegal dismissal. The clash between ABC's right to exercise its religious freedom in the choice of its members and Villaflor's property rights to income and abode was more apparent than real.

To be sure, the *ponencia* recognizes the distinction between ecclesiastical and secular matters, and the corresponding exercise of jurisdiction of the civil courts. This underscores the Philippine Constitution's commitment to the separation of Church and State, as well as the preferential treatment it gives to the right to exercise one's religion.

The provision on religion in Section 5, Article III of the 1987 Constitution is substantially the same as in the 1935[2] and

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[1] *Watson v. Jones*, 80 U.S. 679, 722 (1871).

[2] Section 1(7), Article III.

1973[3] Constitutions: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." The 1934 Constitutional Convention accepted the basic provision without debate,[4] and paved the way for the adoption of interpretations of this provision from the United States (US), its country of origin.

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*[5] (*Hossana-Tabor*), the US Supreme Court provided the historical backdrop for the adoption of the First Amendment's Non-Establishment and Free Exercise clauses.[6] *Hossana-Tabor* traced the beginnings of the Non-Establishment clause from the first clause of the Magna Carta.[7] In 1215, King John of England agreed with the Archbishop of Canterbury's proposal that the English Church shall be free, there will be no diminution of the English Church's rights nor impairment of its liberties, and there shall be freedom in the elections in the English Church. This freedom, however, existed only in theory. For example,

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[3] Section 8, Article IV.

[4] Joaquin G. Bernas, SJ, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 318* (2003).

[5] 565 U.S. 171 (2012).

[6] The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

[7] The First Clause of the Magna Carta reads: "First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity."

through the First Act of Supremacy in 1534,[8] King Henry VIII declared himself "the only supreme head in earth of the Church of England." Thus, the founding generation of the US institutionalized its desire to remove the government from church matters in their Constitution:

> By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.[9]

This exclusion of government participation in church matters was subsequently challenged in court. The deference test was initially articulated by the US Supreme Court in *Watson v.*

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[8] The First Act of Supremacy reads: "Albeit the king's Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognized by the clergy of this realm in their convocations, yet nevertheless, for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirpate all errors, heresies, and other enormities and abuses heretofore used in the same, be it enacted, by authority of this present Parliament, that the king, our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, called *Anglicana Ecclesia*; and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honors, dignities, preeminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of the supreme head of the same Church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, record, order, correct, restrain, and amend all such errors, heresies, abuses, offenses, contempts and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquility of this realm; any usage, foreign land, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

[9] *Hossana-Tabor* collectively refers to the Non-Establishment and Free Exercise clauses as the Religion Clauses.

Jones.[10] The property dispute in *Watson* arose from a difference in the positions of the church authorities about slavery. The General Assembly of the Presbyterian Church was against slavery. Watson, on the other hand, was a member of the Walnut Street Church Session, which was the governing body of the Walnut Street Presbyterian Church, and was for slavery. Majority of the members of the Walnut Street Presbyterian Church took the view of the General Assembly. The General Assembly removed Watson as an elder of the church and filed a case against Watson and his followers to prevent them from possessing church property.

The US Supreme Court formulated the deference test to resolve the dispute in *Watson*. The Court deferred to the decision of the General Assembly when it removed Watson as an elder. The General Assembly, as the highest deciding body in the church's structure, had the authority, procedure, and organization to resolve the church's internal disputes. *Watson* further underscored the lack of jurisdiction of Civil courts over ecclesiastical matters:

> But it is a very different thing where a subject matter of dispute, strictly and purely ecclesiastical in its character - a matter over which the civil courts exercise no jurisdiction - a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them - becomes. the subject of its action. It may be said here also that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted, and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may and must be examined into with minuteness and care, for they would become in almost every case the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these

[10] *Supra* at note 1.

bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.[11]

Serbian Orthodox Diocese v. Milivojevich[12] another case decided by the US Supreme Court, quoted *Watson's* formulation of the deference test when it ruled in favor of the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church). The Mother Church suspended and subsequently removed Milivojevich as Bishop of its American-Canadian Diocese. Milivojevich sought relief from the Illinois Circuit Court to prevent the Mother Church from interfering with the assets of his diocese, and to declare himself as the diocese's true Bishop. The Illinois Supreme Court ruled in favor of Milivojevich because it found that the proceedings for Milivojevich's removal were procedurally and substantively defective under the Mother Church's own internal regulations. The US Supreme Court reversed the Illinois Supreme Court and declared that the Illinois Supreme Court made inquiries into matters of ecclesiastical cognizance and polity. Thus, the Illinois Supreme Court's actions pursuant to its inquiry ran contrary to the US Constitution's First[13] and Fourteenth[14] Amendments. The US Supreme Court concluded:

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[11] *Id.*

[12] 426 U.S. 696 (1976).

[13] *Supra* at note 1.

[14] The Fourteenth Amendment is composed of five sections, which read as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.[15]

Aside from the deference test, the US Supreme Court also articulated the ministerial exception. *Hossana-Tabor* explained that the ministerial exception removes religious organizations from the application of employment discrimination laws. Like the deference test, the ministerial exception is also anchored on the First Amendment:

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in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[15] 426 US 696, 724-725 (1976).

The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

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The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter "strictly ecclesiastical,"—is the church's alone.

x x x x x x x x x

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

In *Hossana-Tabor*, the US Supreme Court considered the circumstances of Perich's employment and found her to be a minister as defined by the Evangelical Lutheran Church. In its application of the ministerial exception to Perich, the Court considered the formal title accorded to Perich by the Church (Minister of Religion, Commissioned), the substance reflected in the formal title (Perich had to complete extensive religious training, apply for endorsement from her local Synod, pass an oral examination, and be elected by the congregation to become a minister), Perich's use of the title (these included Perich's acceptance of the formal call to religious service, claim to special housing allowance on her taxes, and reference to herself as a

minister), and Perich's religious functions for the Church (Perich was a teacher of religion and conducted religion-related activities outside of her teaching hours). The Court dismissed the employment discrimination suit filed by Perich against Hossana-Tabor Evangelical Lutheran Church and School.

Needless to say, this Court has also found the occasion to rule on the apparent clashes between the exercise of religious freedom and the property rights to income.

In *Austria v. National Labor Relations Commission*[16] (*Austria*), this Court reached a conclusion which is different from that of the *ponencia*. The difference in conclusion, however, lies in the allegations put forward by the church to justify the removal of its employee-minister. In *Austria,* the employee-minister received a letter terminating his services on the grounds of misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties, and commission of an offense against the person of employer's (the church) duly authorized representative. This Court found that the church removed the minister as its employee and not as its church official or even its church member. Moreover, the church belatedly questioned the jurisdiction of the administrative bodies and actively participated in the hearings. *Austria's* distinction between secular and ecclesiastical affairs provides an enlightening discussion:

> The rationale of the principle of the separation of church and state is summed up in the familiar saying, "Strong fences make good neighbors." The idea advocated by this principle is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Ceasar [sic] the things that are Ceasar's [sic] and unto God the things that are God's." The Church is likewise barred from meddling in purely secular matters.
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> The case at bar does not concern an ecclesiastical or purely religious affair as to bar the State from taking cognizance of the same. An

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[16] G.R. No. 124382, 371 Phil. 340 (1999).

ecclesiastical affair is "one that concerns doctrine, creed or form or worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership." Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities which attached religious significance. The case at bar does not even remotely concern any of the abovecited examples. While the matter at hand relates to the church and its religious minister it does not *ipso facto* give the case a religious significance. Simply stated, what is involved here is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship or doctrines of the church. In this case, petitioner was not excommunicated or expelled from the membership of the SDA but was terminated from employment. Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation.

As pointed out by the OSG in its memorandum, the grounds invoked for petitioner's dismissal, namely: misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties and commission of an offense against the person of his employer's duly authorized representative, are all based on Article 282 of the Labor Code which enumerates the just causes for termination of employment. By this alone, it is palpable that the reason for petitioner's dismissal from the service is not religious in nature. Coupled with this is the act of the SDA in furnishing NLRC with a copy of petitioner's letter of termination. As aptly stated by the OSG, this again is an eloquent admission by private respondents that NLRC has jurisdiction over the case. Aside from these, SDA admitted in a certification issued by its officer, Mr. Ibesate, that petitioner has been its employee for twenty-eight (28) years. SDA even registered petitioner with the Social Security System (SSS) as its employee. As a matter of fact, the worker's records of petitioner have been submitted by private respondents as part of their exhibits. From all of these it is clear that when the SDA terminated the services of petitioner, it was merely exercising its management prerogative to

fire an employee which it believes to be unfit for the job. As such, the State, through the Labor Arbiter and the NLRC, has the right to take cognizance of the case and to determine whether the SDA, as employer, rightfully exercised its management prerogative to dismiss an employee. This is in consonance with the mandate of the Constitution to afford full protection to labor.[17]

Long v. Basa,[18] on the other hand, involved church members who questioned their expulsion from the church before the Securities and Exchange Commission. Their expulsion was predicated on acts that "espous[e] doctrines inimical or injurious to the faith of the church."[19] The church members sought the annulment of the membership list that excluded their names on the ground of lack of prior notice and hearing. In upholding the church members' expulsion, this Court made a distinction between a religious corporation and a corporation that is organized for profit, as well as underscored the importance of adherence to a common religious belief as a qualification for church membership. We declared:

The CHURCH By-law provision on expulsion, as phrased, may sound unusual and objectionable to petitioners as there is no requirement of prior notice to be given to an erring member before he can be expelled. But that is how peculiar the nature of a religious corporation is *vis-à-vis* an ordinary corporation organized for profit. It must be stressed that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief. Once this basis ceases, membership in the religious corporation must also cease. Thus, generally, there is no room for dissension in a religious corporation. And where, as here, any member of a religious corporation is expelled from the membership for espousing doctrines and teachings contrary to that of his church, the established doctrine in this jurisdiction is that such action from the church authorities is conclusive upon the civil courts. As far back in 1918, we held in United *States vs. Canete* that:

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[17] *Id.* at 352-354; citations omitted.

[18] G.R. Nos. 134963-64, 135152-53 & 137135, 418 Phil. 375 (2001).

[19] *Id.* at 389.

> ". . . in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals. A church member who is expelled from the membership by the church authorities, or a priest or minister who is by them. deprived of his sacred office, is *without remedy in the civil courts, which will not inquire into the correctness of the decisions of the ecclesiastical tribunals*." (Emphasis ours)

Obviously recognizing the peculiarity of a religious corporation, the Corporation Code leaves the matter of ecclesiastical discipline to the religious group concerned.

Section 91 of the Corporation Code, which has been made explicitly applicable to religious corporations by the second paragraph of Section 109 of the same Code, states:

> "SECTION 91. *Termination of membership.* — Membership shall be terminated *in the manner and for the causes provided in the articles of incorporation or the by-laws*: Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws." (Emphasis ours)

Moreover, the petitioners really have no reason to bewail the lack of prior notice in the By-laws. As correctly observed by the Court of Appeals, they have waived such notice by adhering to those By-laws. They became members of the CHURCH *voluntarily*. They entered into its covenant and subscribed to its rules. By doing so, they are bound by their consent.[20]

Indeed, upon showing of sufficient proof, the Court will not hesitate to uphold the exercise of religious freedom over property rights to income and even to abode, once the church hierarchy has made its decision involving ecclesiastical matters. Accordingly, an intrusion into the church's religious freedom in disciplining and in expelling its missionaries cannot be countenanced, as in this case. Hence, I concur with the *ponencia* and vote to **GRANT** the Petition.

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[20] *Id.* at 396-398; citations omitted.

FIRST DIVISION

[G.R. No. 226064. February 17, 2020]

ANNA MAE B. MATEO, *petitioner, vs.* **COCA-COLA BOTTLERS PHILS. INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; AN EMPLOYEE DISMISSED DUE THERETO IS ENTITLED, UNDER THE LAW, A SEPARATION PAY EQUIVALENT TO AT LEAST ONE MONTH PAY FOR EVERY YEAR OF HIS/HER SERVICE. —** There is no dispute that petitioner was separated from service due to redundancy pursuant to Article 283 of the Labor Code. x x x As petitioner was dismissed due to redundancy, she is entitled to receive, under the law, a separation pay equivalent to at least one month pay for every year of her service.
2. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; INCOME TAXATION; GROSS INCOME; EXCLUSIONS FROM GROSS INCOME; AMOUNTS RECEIVED BY AN EMPLOYEE AS A CONSEQUENCE OF HIS/HER SEPARATION FROM THE SERVICE FOR ANY CAUSE BEYOND THE CONTROL OF SAID EMPLOYEE ARE EXEMPT FROM INCOME TAX. —** Neither was there any showing that petitioner voluntarily opted to retire so as to treat the amount she received as her retirement pay. Not being a retirement pay, it was likewise plain error on the part of the CA to have applied the four conditions under Section 32(B)(6)(a) of the NIRC for tax exemption of retirement benefits. Since the amount received by petitioner was separation pay, such is exempt from income tax under Section 32(B)(6)(b) of the NIRC.

APPEARANCES OF COUNSEL

Go Silla & Associates Law Offices for petitioner.

DECISION

REYES, J. JR., *J.*:

Through this Petition for Review[1] under Rule 45 of the Rules of Court, petitioner challenges the Court of Appeals (CA) Decision dated November 25, 2015 and Resolution dated June 13, 2016. The assailed CA Decision and Resolution reversed the rulings of the National Labor Relations Commission (NLRC) and the Labor Arbiter by dismissing petitioner's complaint for illegal deductions, underpayment of separation pay, non-payment of salaries, and claims for damages.

Facts

Petitioner was previously employed by Philippine Beverage Partners, Inc., (PhilBev) as Sales Supervisor. In 2007, PhilBev ceased operations, and, as a result, petitioner was separated from service. Petitioner received the corresponding separation benefits from PhilBev.[2] Thereafter, petitioner was hired by respondent, also as Sales Supervisor, and was eventually promoted as District Team Leader.

In February 2012, petitioner was informed by respondent that it is enhancing its Route to Market (RTM) strategy to improve sales force effectiveness, and, that due to such RTM strategy which requires different sales force competencies and capabilities, her position was considered redundant.[3] She was also informed that her employment will be terminated effective March 31, 2012.[4] Further, she was to receive an amount tentatively computed at ₱676,657.15, as a consequence of her separation from service.[5]

On April 21, 2012, respondent released to petitioner two checks for the total amount of ₱402,571.85. Upon verification,

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[1] *Rollo*, pp. 34-59.

[2] *Id.* at 35.

[3] *Id.* at 37.

[4] *Id.*

[5] *Id.* at 39.

petitioner discovered that her outstanding loan balance and the amount of ₱134,064.95, representing withholding tax, were deducted from the originally computed amount.[6]

Petitioner sought clarification as regards said deductions and was informed that the retirement benefit she received is no longer tax exempt because she previously availed of such tax exemption upon her separation from service with PhilBev.[7]

Petitioner wrote a letter to the Bureau of Internal Revenue (BIR) as regards the propriety of the tax withheld. The Regional Director briefly quoted Section 32(B)(6)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, and referred the query to the Revenue District Officer for their appropriate action.[8] Petitioner also referred to a BIR Ruling concerning respondent's former employee who was similarly terminated due to redundancy, to the effect that separation benefits received as a result of redundancy are exempt from income tax, and consequently, from withholding tax.[9]

Despite these, petitioner's claim for reimbursement of the deducted amount representing tax withheld was denied by respondent. This prompted petitioner to lodge her complaint before the Labor Arbiter.

The Labor Arbiter ruled in petitioner's favor and held that respondent erroneously deducted withholding tax from petitioner's separation pay. Respondent was ordered to complete petitioner's separation pay plus attorney's fees in the aggregate amount of ₱147,471.44. The Labor Arbiter disposed in his Decision dated July 25, 2013:

WHEREFORE, premises considered, We render judgment finding respondent Coca-Cola Bottlers, Philippines, Incorporated liable for underpayment of separation pay to complainant, as well as attorney's

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 88-89.

[9] *Id.* at 40.

fee, in the aggregate amount of Php147,471.44, and direct said respondent to deposit the foregoing sum with the Cashier of this Branch within ten (10) days from receipt of this Decision.

All other claims are dismissed for lack of merit.

SO ORDERED.[10]

Dissatisfied, respondent appealed to the NLRC. In its Decision dated January 30, 2014, the NLRC affirmed the award of separation pay differentials but deleted the award of attorney's fees. Similar to the Labor Arbiter, the NLRC reasoned that petitioner was given separation benefits as a result of her termination from employment due to redundancy. Such separation benefits, according to the labor tribunals, are exempt from taxation pursuant to Section 32(B)(6)(b) of the NIRC.[11] In disposal, the NLRC ruled:

WHEREFORE, premises considered, respondent's appeal is partly **GRANTED**. The Labor Arbiter's Decision is AFFIRMED WITH MODIFICATION in that the award for attorney's fees is DELETED. Respondent is DIRECTED to pay the complainant the sum of PhP134,064.95, representing the amount of tax withheld by respondent out of her severance pay.

SO ORDERED.[12]

Claiming that the NLRC gravely abused its discretion in so ruling, respondent filed a *certiorari* petition before the CA.

In its presently assailed Decision, the CA reversed the rulings of the labor tribunals and dismissed petitioner's complaint. The CA reasoned that under respondent's Retirement Plan, an involuntarily separated employee, such as petitioner, is entitled to either the amount prescribed in the retirement plan or to the termination benefit as provided by law, whichever is higher. Since the retirement plan is higher than the separation pay as mandated by law, petitioner is entitled to receive only the former.

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[10] *Id.* at 66.

[11] *Id.* at 41.

[12] *Id.* at 67.

The CA also held that tax exemption of retirement benefits under the NIRC requires, among others, that the taxpayer had been in the service of the same employer for at least 10 years and had not previously availed of such benefit.[13] Since petitioner had been in respondent's employ for less than five years and that she already availed of the tax exemption benefit upon her separation from PhilBev, the retirement benefits she received from respondent are not tax exempt.[14] The CA held that since respondent correctly withheld tax from the retirement benefit received by petitioner, the former is not liable for illegal deduction.

Petitioner's motion for reconsideration met similar denial from the CA. Hence, this petition.

Issue

The pivotal issue is whether respondent is liable for illegal deduction when it withheld tax from the amount received by petitioner as a consequence of her involuntary separation from service.

Ruling of the Court

Petitioner's main contention is that the amount she received from respondent was her separation pay, and was not her retirement pay, which she received as a consequence of the termination of her employment due to redundancy. Because it was a separation pay, it should not have been subjected to income tax. We find this contention meritorious.

There is no dispute that petitioner was separated from service due to redundancy pursuant to Article 283 of the Labor Code:

Art. 283. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose

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[13] *Id.* at 73.

[14] *Id.*

of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. **In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher.** In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

As petitioner was dismissed due to redundancy, she is entitled to receive, under the law, a separation pay equivalent to at least one month pay for every year of her service.

It is likewise undisputed that petitioner was a member of respondent's Retirement Plan (Plan) duly approved by the BIR. The Plan expressly provides that a member who was involuntarily separated from service for any cause beyond the member's control shall receive "in lieu of any other retirement benefits, a separation benefit computed in accordance with the retirement formula" or the termination benefit mandated by law, whichever is higher. Pertinent are Sections 1 and 3, Article V of the Plan which provide:

ARTICLE V
PAYMENT OF BENEFITS

Section 1. Retirement Benefit. A Member who retires on the retirement dates as defined in Article IV of this Plan shall be entitled to and shall be paid a retirement benefit equivalent to 100% of Final Pay for every year of Credited Service, plus commutation of his unused Sick Leave Credits, if any.

x x x x x x x x x

Section 3. Involuntary Separation Benefit. Any Member who is involuntarily separated from service by the Company for any cause beyond his control shall be entitled to receive in lieu of any other retirement benefits, a separation benefit computed in accordance with the retirement benefit formula described in Section 1 of this Article

or the applicable termination benefit under existing laws, whichever is greater, irrespective of his length of service with the Company.[15]

The Plan also expressly provides that a member's company liabilities shall be deducted from the benefit to be received and that the member shall not be entitled to any benefit other than that payable thereunder:

x x x x x x x x x

Section 6. Obligations. Upon separation of a Member from the Company, any amount of benefit which he or his Beneficiary is entitled to receive under this Plan shall first be used to pay off all liabilities of the Member to the Company and to the Plan.

Section 7. No Other Benefits. No benefits other than what is provided in accordance with the foregoing Sections l to 5 of this Article V shall be payable under this Plan.

x x x x x x x x x[16]

The Plan clearly indicates that an employee who was involuntarily separated from service, although not having reached the compulsory or optional retirement age nor having met the tenurial requirement, like herein petitioner, is entitled to receive an "involuntary separation benefit" to be computed using the retirement benefit formula, or the separation pay under the law, whichever is higher. Plainly, petitioner has the right to demand to be paid the separation benefit as computed under the Plan or separation pay in accordance with Article 283 of the Labor Code, and shall be entitled to receive the higher amount.

Here, it is clear that petitioner received her separation pay computed under the formula used for determining retirement pay. The fact that petitioner's separation pay was computed in accordance with the formula for computing retirement pay does not thereby convert the character of the benefit received into a retirement benefit. The retirement formula was used because it was, in fact, more advantageous for the petitioner. Thus, there should be no confusion as regards the character of the benefit

[15] *Id.* at 176-177.

[16] *Id.* at 177.

which petitioner received considering that Section 3 of the Plan unequivocally characterizes the benefit to be received due to involuntary separation from service as a separation benefit.

As such, it was erroneous on the part of the CA to have treated the benefit received by petitioner as a retirement pay. As aptly held by the NLRC:

> We hold that even assuming, arguendo, that complainant's separation pay was computed in reference to respondent's retirement plan, it does not change the fact that complainant was separated on account of redundancy and not because she reached either the optional or compulsory retirement age. Thus, it is wrong to apply the provisions of the [NIRC] anent exemption of retirement benefits from income tax.[17]

Neither was there any showing that petitioner voluntarily opted to retire so as to treat the amount she received as her retirement pay. Not being a retirement pay, it was likewise plain error on the part of the CA to have applied the four conditions under Section 32(B)(6)(a) of the NIRC for tax exemption of retirement benefits. Since the amount received by petitioner was separation pay, such is exempt from income tax under Section 32(B)(6)(b) of the NIRC which provides:

> Section 32. Gross Income.- x x x
>
> (B) Exclusion from Gross Income. – The following items shall not be included in the gross income and shall be exempt from taxation under this Title:
>
> x x x x x x x x x
>
> (6) Retirement Benefits, Pensions, Gratuities, etc. –
>
> x x x x x x x x x
>
> (b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness, or other physical disability or **for any cause beyond the control of said official or employee**. x x x (Emphasis supplied)

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[17] *Id.* at 67.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 25, 2015 and the Resolution dated June 13, 2016 of the Court of Appeals are **REVERSED and SET ASIDE**. The Decision dated January 30, 2014 of the National Labor Relations Commission is hereby **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 233301. February 17, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CHEVRON HOLDINGS, INC., [Formerly CALTEX (ASIA) LIMITED],** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED; REFUNDS OR TAX CREDITS OF INPUT TAX; PRESCRIPTIVE PERIOD FOR FILING OF ADMINISTRATIVE AND JUDICIAL CLAIM FOR VALUE ADDED TAX (VAT) REFUNDS; AN APPEAL TAKEN PRIOR TO THE EXPIRATION OF THE 120-DAY PERIOD WITHOUT A DECISION OR ACTION OF THE COMMISSIONER OF INTERNAL REVENUE IS PREMATURE, WITHOUT A CAUSE OF ACTION, AND, THEREFORE, DISMISSIBLE ON THE GROUND OF LACK OF JURISDICTION; RESPONDENT'S ADMINISTRATIVE AND JUDICIAL CLAIM FOR REFUND WERE PROPERLY MADE WITHIN THE PERIOD PRESCRIBED BY LAW. — Section 112 [(A) and (C)] of the NIRC provides x x x. x x x. The above legal provision supplies the periods relative to the filing of a claim for VAT refunds. Preliminarily,

the law allows the taxpayer to file an administrative claim for refund with the BIR within two years after the close of the taxable quarter when the purchase was made (for the input tax paid on capital goods) or after the close of the taxable quarter when the zero-rated or effectively zero-rated sale was made (for input tax attributable to zero-rated sale). The CIR must then act on the claim within 120 days from the submission of complete documents in support of the application. In the event of an adverse decision, the taxpayer may elevate the matter to the CTA by way of a petition for review within 30 days from the receipt of the CIR's decision. If, on the other hand, the 120-day period lapses without any action from the CIR, the taxpayer may validly treat the inaction as denial and file a petition for review before the CTA within 30 days from the expiration of the 120-day period. An appeal taken prior to the expiration of the 120-day period without a decision or action of the CIR is premature, without a cause of action, and, therefore, dismissible on the ground of lack of jurisdiction. It is undisputed that Chevron filed an administrative claim for refund with the BIR on November 2, 2010, which was well within the two-year prescriptive period provided by law. x x x. Chevron also manifested that all voluminous documents shall be made available to revenue officers for their examination at its office's premises. Upon Chevron's submission of its supporting documents, the CIR had 120 days or until March 2, 2011 to decide whether to grant or deny the application. But the 120-day period expired without the CIR having acted on the claim. At this juncture, Chevron had 30 days from the lapse of the 120-day period or until April 1, 2011 to file its judicial claim. Thus, when Chevron filed its petition for review with the CTA on March 23, 2011, it was properly made within the period prescribed by law.

2. **ID.; ID.; ID.; THE FAILURE OF THE TAXPAYER TO SUBMIT ALL THE DOCUMENTS ENUMERATED IN REVENUE MEMORANDUM ORDER (RMO) NO. 53-98 IS NOT FATAL TO ITS JUDICIAL CLAIM FOR REFUND OR CREDIT OF INPUT VAT, AS RMO NO. 53-98 ASSUMES RELEVANCE ONLY ON MATTERS PERTINENT TO AN AUDIT OF TAX LIABILITIES, BUT NOT TO A CLAIM FOR REFUND OF INPUT TAX. —** The issue of whether the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its judicial claim for VAT refund had been squarely raised and

amply settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*. The Court clarified x x x. x x x. The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 12 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of refund or credit of input VAT. x x x. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim. Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. x x x RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. Thus, it finds no application in the present case since Chevron's claim is one for refund of its input tax.

3. **ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE SHOULD APPRISE THE TAXPAYER OF THE COMPLETENESS AND ADEQUACY OF ITS SUPPORTING DOCUMENTS, AS ONLY UPON THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF THE APPLICATION FOR TAX CREDIT/REFUND THAT THE 120-DAY PERIOD WOULD BEGIN TO RUN. —** Settled is the rule that it is only upon the submission of complete documents in support of the application for tax credit/refund that the 120-day period would begin to run. x x x. Here, Chevron submitted all documents it deemed necessary for the grant of its refund claim. It even authorized the examination of the voluminous supporting documents kept in its office and grant revenue officers access thereto. This is to ensure that it has adequate documentary evidence to substantiate its request. Interestingly, as in *Pilipinas Total* case, the CIR did not notify the Chevron of the document it failed to submit, if any. In fact, there is not a single letter or notice sent to Chevron informing it of its failure to submit complete documents and/or ordering the production of the lacking documents necessary for the allowance of the claim. The CIR should have taken a positive step in apprising Chevron of the completeness and adequacy of its supporting documents considering their particular relevance in reckoning the 120-day period under Section 112(C) of the NIRC.

4. ID.; ID.; ID.; RESPONDENT'S CLAIM FOR REFUND OR TAX CREDIT, ESTABLISHED. — [T]he Court rejects the CIR's bare claim that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons. The CIR asserts that Chevron did not imprint the word "zero-rated" on its invoices and receipts in violation of Section 113(B) of the NIRC, as amended, in relation to Revenue Regulations (RR) No. 16-05 x x x. In its original Decision, the CTA Division explicitly stated that Chevron presented various invoices, official receipts and other documents to substantiate its reported input VAT, all of which were examined by Atty. Fredieric B. Landicho (Atty. Landicho), Court-commissioned Independent Certified Public Accountant (CPA). It sustained the findings of Atty. Landicho and disallowed the ₱10,977,415.30 of Chevron's claimed input VAT for failure to comply with the substantiation and invoicing requirement as prescribed under Section 110(A) and Section 113(A) and (B) of the NIRC. It is thus clear that the invoices and receipts which were not compliant with the invoicing and accounting requirements were already excluded by the CTA Division when it rendered its Decision partially granting Chevron' refund claim. Suffice it to say that Chevron has duly established its claim for refund or tax credit in the amount of ₱4,623,001.60 in accordance with the statutory requirement for the grant of a tax credit certificate/refund.

5. ID.; COURT OF TAX APPEALS; THE COURT OF TAX APPEALS' FACTUAL DETERMINATION WILL NOT BE REVIEWED NOR DISTURBED BY THE COURT WHEN IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THERE IS NO SHOWING OF GROSS ERROR OR ABUSE ON THE PART THEREOF. — Time and again, great weight and highest respect are accorded to the factual findings of the CTA. The Court will not review nor disturb the CTA's factual determination when it is supported by substantial evidence and there is no showing of gross error or abuse on the part of the CTA, as in this case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Platon Martinez Flores San Pedro & Leaño for respondent.

DECISION

REYES, J. JR., ***J.*:**

This treats of the Petition for Review on *Certiorari* filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated March 15, 2017 and the Resolution[2] dated July 25, 2017 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 1143 and CTA EB No. 1349. The CTA EB affirmed the August 14, 2013 Decision,[3] February 27, 2014 Resolution,[4] and the August 11, 2015 Amended Decision of the CTA First Division (CTA Division) in CTA Case No. 8241 that partially granted the claim of Chevron Holdings, Inc. (Chevron), formerly Caltex (Asia) Limited, for tax refund/credit of unutilized input VAT attributable to zero-rated sales.

Chevron is a corporation duly organized and existing under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as regional operating headquarters (ROHQ) and duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer. As ROHQ, it established a shared services center in the Philippines that provides finance, information technology, human resource, procurement and customer interaction services to its affiliates, subsidiaries or branches in the Asia Pacific and North America Regions.

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[1] Penned by Associate Justice Lovell R. Bautista with Presiding Justice Roman G. Del Rosario (*see* Concurring Opinion, *id.* at 55-61) and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring; *rollo*, pp. 31-53.

[2] *Id.* at 62-68.

[3] Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla, concurring; *id.* at 69-102.

[4] *Id.* at 103-114.

On November 2, 2010, Chevron filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT credits for the four taxable quarters of 2009 in the total sum of ₱51,198,943.08.

The CIR, however, failed to act on the refund claim prompting Chevron to file a Petition for Review before the CTA (originally raffled to the Second Division) on March 23, 2011.

The CIR filed an Answer and the case was set for pre-trial conference on August 4, 2011. During the pre-trial, only counsel for the CIR, Atty. Janet L. Martinez, appeared. She then moved for the dismissal of the case for failure of Chevron's counsel to appear despite notice and to file the pre-trial brief. The case was dismissed on August 4, 2011.

Chevron filed a Motion for Reconsideration with Motion to Admit Attached Pre-Trial Brief which was subsequently granted by the CTA (Second Division) in a Resolution dated October 5, 2011. After the CTA (Second Division) approved the Joint Stipulation of Facts and Issues submitted by the parties, trial on the merits ensued.

On April 2, 2013, the case was transferred to the First Division pursuant to the reorganization of the three (3) divisions of the CTA under the CTA Administrative Circular No. 01-2013.

In its Decision dated August 14, 2013, the CTA Division partially granted Chevron's petition and ordered the CIR "to refund or to issue a tax credit certificate in the reduced amount of ₱4,623,001.60 to Chevron, representing its excess and unutilized input VAT for the four taxable quarters of 2009 attributable to its zero-rated sales for the same period," as computed below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Valid Input VAT	₱10,486,621.80	₱14,702,595.13	₱10,446,482.85	₱8,660,773.06	₱44,296,472.84
Less: Output VAT	4,902,092.41	4,677,577.02	5,293,050.03	5,003,210.44	19,875,929.90
Excess Input VAT	₱5,584,529.39	₱10,025,018.11	₱5,153,432.82	₱3,657,562.62	₱24,420,542.94

Valid Zero-Rated Sales	₱172,457,718.97	₱81,431,862.18	₱81,116,633.45	₱74,121,765.66	₱409,127,980.26
Divide by Total Declared Zero-Rated Sales	620,201,395.33	508,595,820.63	469,176,463.98	472,288,095.56	2,070,261,775.50
Multiplied by Excess Input VAT	5,584,529.39	10,025,018.11	5,153,432.82	3,657,562.62	24,420,542.94
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱1,552,874.93**	**₱1,605,117.19**	**₱890,984.85**	**₱574,024.63**	**₱4,623,001.60**

CTA Division did not treat all of Chevron's alleged zero rated sales as transactions subject to 0% VAT for failure to prove that the entities to whom it rendered services are all non-resident foreign corporations doing business outside the Philippines. It declared that only the amount of ₱409,127,980.26 can be considered as Chevron's valid zero rated sales. Moreover, it held that out of the total input VAT claim of ₱55,273,888.13, only the amount of ₱44,296,472.84 was duly substantiated and therefore allowed.

Both the CIR and Chevron filed their respective motions for partial reconsideration of the August 14, 2013 Decision. Further, Chevron filed a Motion for New Trial on the ground that its pieces of evidence could not be produced during trial despite reasonable diligence and serious attempt.

In a Resolution dated February 27, 2014, the CIR's motion for reconsideration was denied while that of Chevron was held in abeyance. Meanwhile, the CTA Division granted Chevron's Motion for New Trial.

On August 11, 2015, the CTA Division partially granted Chevron's Motion for Partial Reconsideration thereby amending its August 14, 2013 Decision. The dispositive portion of the Amended Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of [Chevron] in the reduced amount of **SIX MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND THREE HUNDRED SIXTY TWO PESOS and 73/100 (P[hp]6,785,362.73)**, representing [CHI]'s unutilized and excess input VAT attributable to its zero-rated sales of services to its affiliate companies for the four quarters of 2009.

SO ORDERED.

In said Amended Decision, the CTA Division noted that Chevron recalled to the witness stand its current Optimization Manager Hyacinth Pacifico-Carreon (Carreon) who presented and identified several documents to prove that Chevron's customers are located outside the Philippines. These documents include: (1) printed screenshots from Chevron intranet/subgovern site; (2) printed screenshots of the official online websites of the foreign government company registries; and (3) negative certifications issued by the SEC. To support Chevron's claim for VAT refund, Carreon also presented Chevron's VAT official receipts and sales invoices issued to its local affiliates customers in 2009, authority to print receipt issued by the BIR, quarterly VAT return for 2007, and certifications from the BIR and the CTA that no refund claims were filed by Chevron for the period covering 2007. The CTA Division accepted the printed screenshots of the official websites of other foreign government's registry of companies as sufficient proof, in lieu of the Certificates/Articles of Foreign Incorporation/Association and found Chevron to have an additional valid zero-rated sales amounting to ₱186,438,134.34. Accordingly, the CTA Division adjusted Chevron's valid VAT zero-rated sales from ₱409,127,980.26 to ₱595,566,114.60 with an input VAT attributable thereto amounting to ₱6,785,362.73.

The CIR and Chevron filed their respective petitions for review before the CTA EB. These cases were consolidated and on March 15, 2017; the CTA EB rendered the now assailed Decision affirming the August 14, 2013 Decision, February

27, 2014 Resolution, and the August 11, 2015 Amended Decision of the CTA Division.

The CIR moved for reconsideration but the same was denied in a Resolution dated July 25, 2017.

Hence, this petition raising the sole issue:

WHETHER OR NOT THE CTA *EN BANC* DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND EVIDENCE WHEN IT PARTIALLY GRANTED [CHEVRON'S] REQUESTED REFUND IN THE REDUCED AMOUNT OF ₱6,785,362.73, ALLEGEDLY REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR QUARTERS OF TY 2009.

The CIR maintains that Chevron's petition with the CTA Division was prematurely filed since the 120-day period (for the CIR to decide the administrative claim for refund) did not even commence to run for failure of Chevron to submit complete documents to support its claim. The CIR also avers that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons. The CIR posits that in partially granting Chevron's claim for refund, the CTA did not comply with the procedural and substantive requirements set forth in the 1997 National Internal Revenue Code (NIRC), as amended, and in existing revenue regulations.

Chevron, on the other hand, argues that the CIR did not notify it of the need to submit additional supporting documents to substantiate its claim and stresses that absent such notification, the documents it submitted are deemed complete and sufficient. It also asseverates that it has satisfied the invoicing and accounting requirements under the law as enunciated by the CTA Division in its original decision.

The petition is devoid of merit.

Section 112 of the NIRC provides:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-

rated may, **within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.

x x x x x x x x x

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals.

The above legal provision supplies the periods relative to the filing of a claim for VAT refunds. Preliminarily, the law allows the taxpayer to file an administrative claim for refund with the BIR within two years after the close of the taxable quarter when the purchase was made (for the input tax paid on capital goods) or after the close of the taxable quarter when

the zero-rated or effectively zero-rated sale was made (for input tax attributable to zero-rated sale). The CIR must then act on the claim within 120 days from the submission of complete documents in support of the application. In the event of an adverse decision, the taxpayer may elevate the matter to the CTA by way of a petition for review within 30 days from the receipt of the CIR's decision. If, on the other hand, the 120-day period lapses without any action from the CIR, the taxpayer may validly treat the inaction as denial and file a petition for review before the CTA within 30 days from the expiration of the 120-day period. An appeal taken prior to the expiration of the 120-day period without a decision or action of the CIR is premature, without a cause of action, and, therefore, dismissible on the ground of lack of jurisdiction.[5]

It is undisputed that Chevron filed an administrative claim for refund with the BIR on November 2, 2010, which was well within the two-year prescriptive period provided by law. As illustrated by the CTA Division in its original decision:

Period/Quarter Covered	Close of Taxable Quarter	Last Day for Filing of Administrative Claim for Refund	Date of Filing of Administrative Claim for Refund
1st Quarter of 2009	March 31, 2009	March 31, 2011	November 2, 2010
2nd Quarter of 2009	June 31, 2009	June 31, 2011	
3rd Quarter of 2009	September 31, 2009	September 31, 2011	
4th Quarter of 2009	December 31, 2009	December 31, 2011	

In support of its application for refund, Chevron submitted the following documents on November 2, 2010:

1. Application of Tax Credit/Refund (BIR Form No. 1914);
2. SEC Certificate of Registration;
3. BIR Certificate of Registration (BIR Form No. 2303);
4. Articles of Incorporation;
5. Annual Income Tax Return for taxable year 2009 (BIR Form No. 1702);
6. Quarterly VAT Returns for taxable year 2009 (BIR Form No. 2550Q);

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[5] *Aichi Forging Co. of Asia, Inc. v. Court of Tax Appeals (En Banc)*, 817 Phil. 403, 409 (2017).

7. Monthly VAT Returns for taxable year 2009 (BIR Form No. 2550M);
8. Audited Financial Statements for year ended December 31, 2009;
9. Service Agreements with Chevron's foreign affiliates;
10. Certificates of Inward Remittance from JP Morgan Chase Bank N.A.;
11. Summary List of Sales and Purchases (in DVD-R); and
12. Certification showing amount of zero-rated sales, taxable sales and exempt sales.[6]

Chevron also manifested that all voluminous documents shall be made available to revenue officers for their examination at its office's premises.[7] Upon Chevron's submission of its supporting documents, the CIR had 120 days or until March 2, 2011 to decide whether to grant or deny the application. But the 120-day period expired without the CIR having acted on the claim. At this juncture, Chevron had 30 days from the lapse of the 120-day period or until April 1, 2011 to file its judicial claim. Thus, when Chevron filed its petition for review with the CTA on March 23, 2011, it was properly made within the period prescribed by law.

Settled is the rule that it is only upon the submission of complete documents in support of the application for tax credit/ refund that the 120-day period would begin to run.[8] The CIR is of the belief that Chevron's judicial claim was prematurely filed because the 120-day period has not yet commenced on account of the taxpayer's submission of incomplete supporting documents. It contends that the issuance of Revenue Memorandum Order (RMO) No. 53-98 is "anchored on the premise that all documents enumerated therein must be submitted to support an application for tax refund/credit."[9]

We do not agree.

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[6] *Rollo*, pp. 83-84.

[7] *Id.* at 18.

[8] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, 774 Phil. 473, 492 (2015).

[9] *Rollo*, p. 17.

The issue of whether the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its judicial claim for VAT refund had been squarely raised and amply settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*.[10] The Court clarified:

Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.

This should also be corrected.

To quote RMO No. 53-98:

REVENUE MEMORANDUM ORDER NO. 53-98

SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

TO: All Internal Revenue Officers, Employees and Others Concerned

I. *BACKGROUND*

It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and

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[10] *Supra* note 8.

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax

— Annex A (3 pages)

Value Added Tax

— Annex B (2 pages)

— Annex B-1 (5 pages)

x x x x x x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities . . . ." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."

Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special

First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.

(Emphasis included; underscoring supplied)

As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. Thus, it finds no application in the present case since Chevron's claim is one for refund of its input tax.

Here, Chevron submitted all documents it deemed necessary for the grant of its refund claim. It even authorized the examination of the voluminous supporting documents kept in its office and grant revenue officers access thereto. This is to ensure that it has adequate documentary evidence to substantiate its request. Interestingly, as in *Pilipinas Total* case, the CIR did not notify the Chevron of the document it failed to submit, if any. In fact, there is not a single letter or notice sent to Chevron informing it of its failure to submit complete documents and/ or ordering the production of the lacking documents necessary

for the allowance of the claim. The CIR should have taken a positive step in apprising Chevron of the completeness and adequacy of its supporting documents considering their particular relevance in reckoning the 120-day period under Section 112 (C) of the NIRC.

Finally, the Court rejects the CIR's bare claim that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons. The CIR asserts that Chevron did not imprint the word "zero-rated" on its invoices and receipts in violation of Section 113 (B) of the NIRC, as amended, in relation to Revenue Regulations (RR) No. 16-05, which reads:

> Section 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax; Provided, That:
>
> x x x x x x x x x
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> x x x x x x x x x

In its original Decision, the CTA Division explicitly stated that Chevron presented various invoices, official receipts and other documents to substantiate its reported input VAT, all of which were examined by Atty. Fredieric B. Landicho (Atty. Landicho), Court-commissioned Independent Certified Public Accountant (CPA).[11] It sustained the findings of Atty. Landicho

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[11] *Rollo*, p. 98.

and disallowed the ₱10,977,415.30 of Chevron's claimed input VAT for failure to comply with the substantiation and invoicing requirement as prescribed under Section 110 (A) and Section 113 (A) and (B) of the NIRC. It is thus clear that the invoices and receipts which were not compliant with the invoicing and accounting requirements were already excluded by the CTA Division when it rendered its Decision partially granting Chevron' refund claim. Suffice it to say that Chevron has duly established its claim for refund or tax credit in the amount of ₱4,623,001.60 in accordance with the statutory requirement for the grant of a tax credit certificate/refund.

Time and again, great weight and highest respect are accorded to the factual findings of the CTA. The Court will not review nor disturb the CTA's factual determination when it is supported by substantial evidence and there is no showing of gross error or abuse on the part of the CTA, as in this case.[12]

WHEREFORE, the petition is **DENIED**. The March 15, 2017 Decision and the July 25, 2017 Resolution of Court of Tax Appeals *En Banc* in CTA EB No. 1143 and CTA EB No. 1349 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

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[12] *Commissioner of Internal Revenue v. Toledo Power, Inc.*, 725 Phil. 66, 82 (2014).

SECOND DIVISION

[G.R. Nos. 236308-09. February 17, 2020]

EFREN M. CANLAS, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES and the SANDIGANBAYAN (Third Division),** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(e); PRIVATE INDIVIDUALS MAY BE HELD LIABLE IF THEY ACT IN CONSPIRACY WITH PUBLIC OFFICERS. —** The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses *under Section 3 of RA 3019*, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto." x x x The Court, in various cases, had the occasion to affirm the indictment and/or conviction of a private individual, acting in conspiracy with public officers, for violation of Section 3 of RA 3019 particularly paragraph (e) thereof.

2. **ID.; ID.; ID.; ELEMENTS. —** In *PCGG v. Office of the Ombudsman*, the Court reiterated the well-settled elements of Section 3(e) of RA 3019 as follows: (i) 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*; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) 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.

APPEARANCES OF COUNSEL

Estelito P. Mendoza for petitioner.
Office of the Special Prosecutor for respondents.

RESOLUTION

INTING, *J.*:

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Resolutions dated September 25, 2017[2] and November 20, 2017[3] of the Sandiganbayan Third Division (Sandiganbayan). The Resolutions denied the two Motions to Quash Information,[4] and the Motion for Reconsideration[5] filed by Efren M. Canlas (petitioner), respectively.

The Antecedents

Two Informations were filed against petitioner, along with public officers named therein, before the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0080 and SB-16-CRM-0084.[6] The Informations charged him and his co-accused, former Mayor Jejomar Erwin S. Binay, Jr., among others, with violations of Section 3(e)[7] of Republic Act No. (RA) 3019 in relation to the construction of the Makati City Hall Parking Building.[8]

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[1] *Rollo*, pp. 6-33.

[2] *Id.* at 36-46, penned by Presiding Justice Amparo M. Cabotaje-Tang with Associate Justices Sarah Jane T. Fernandez and Bernelito R. Fernandez, concurring.

[3] *Id.* at 47-56.

[4] *Id.* at 93-103, 104-114.

[5] *Id.* at 128-140.

[6] *Id.* at 39.

[7] 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.

[8] *Rollo*, pp. 71, 76.

The Information[9] in Criminal Case No. SB-16-CRM-0080 alleged that the accused former Makati City Mayor Jejomar Erwin S. Binay, Jr. and the other accused public officers of Makati City mentioned therein, in the performance of their official and/or administrative functions, conspired with petitioner, a private individual and the representative of Hilmarc's Construction Corporation (Hilmarc's), in giving unwarranted benefits, advantage, and preference to Hilmarc's, and causing undue injury to the Government by awarding Hilmarc's the contract for the Phase IV construction of the Makati City Hall Parking Building amounting to ₱649,275,681.73, through simulated public bidding.[10] The relevant portions of the Information as to petitioner's participation in the offense are quoted as follows:

SB-16-CRM-0080

x x x x x x x x x

c) De Veyra, San Gabriel, Dasal, Amores, and Binay, Jr., collectively making it appear in the BAC Resolution that Hilmarc's, through *Canlas*, became the bidder with the Lowest Calculated and Responsive Bid, which BAC Resolution was approved by Binay, Jr. despite knowing the absence of public bidding;

d) Entering, through Binay, Jr., into a Contract for the Phase IV construction of the Makati City Hall Parking Building with *Canlas*, on behalf of Hilmarc's, and proceeding with the said project despite the absence of the project's accepted and approved plans and specifications, and the failure of Hilmarc's to post its performance security; and

e) Processing and releasing of the payments to Hilmarc's by De Veyra, Amores, Lim, Barlis, which payments were approved by Binay, Jr. and received by *Canlas* despite the baseless Accomplishment Report prepared by Dela Peña and Consulta, and the deficiencies in the required supporting documents.[11] (Emphasis omitted; italics supplied.)

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[9] *Id.* at 69-73.

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

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

The Information[12] in Criminal Case No. SB-16-CRM-0084 is similarly worded as to petitioner's participation, except that SB-16-CRM-0084 involved the Phase V construction of the Makati City Hall Parking Building amounting to ₱141,649,366.00.[13]

Petitioner filed a Motion to Quash Information dated July 13, 2017 in Criminal Case No. SB-16-CRM-0080, and another Motion to Quash Information dated July 19, 2017 in Criminal Case No. SB-16-CRM-0084.[14] He argued that the facts alleged in the Informations which charged him with the offense of violation of Section 3(e) of RA 3019 did not constitute the charged offense for the following reasons: (1) RA 3019 explicitly applies only to public officers; however, the Informations alleged that he is a private individual; and (2) the Informations did not allege that he induced or caused any public officer to commit a violation of Section 3(e) of RA 3019 to render him liable under Section 4[15] thereof.[16]

The prosecution then filed on August 4, 2017 its *Consolidated Opposition to Accused Canlas' Separate Motions to Quash Information*[17] dated August 3, 2017. Thereafter, petitioner filed

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[12] *Id.* at 74-78.

[13] *Id.* at 76.

[14] *Id.* at 36-37.

[15] Section 4. *Prohibition on private individuals*. — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

[16] *Rollo*, p. 37.

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

his Reply to "Consolidated Opposition to Accused Canlas' Separate Motions to Quash Information"[18] dated August 11, 2017.

In its Resolution[19] dated September 25, 2017, the Sandiganbayan denied the two motions to quash information.[20]

Petitioner filed a Motion for Reconsideration of the Resolution dated September 25, 2017, but this was denied by the Sandiganbayan in its Resolution[21] dated November 20, 2017.[22]

Hence, the petition.

Petitioner adopts his arguments in the two motions to quash information and argues that as a private individual, he can only be held liable under Section 4(b) of RA 3019.[23] Moreover, Section 3 of RA 3019 applies only to public officers.[24] Since the Informations did not allege that he committed the acts provided under Section 4, the Informations should be quashed under Section 3(a), Rule 117 of the Rules of Court.[25]

Petitioner maintains that while the prosecution alleged that the accused public officers acted in conspiracy with him, conspiracy does not make him a public officer.[26]

Petitioner further argues that there is not a single case in which a private person was held liable for violation of Section 3(e) of RA 3019 under Section 4(b) of the law.[27] Thus, he prays for a reversal, or at least a clarification, of the ruling in several

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[18] *Id.* at 121-127.

[19] *Id.* at 36-46.

[20] *Id.* at 45.

[21] *Id.* at 47-56.

[22] *Id.* at 56.

[23] *Id.* at 22.

[24] *Id.* at 24.

[25] *Id.* at 22-23.

[26] *Id.* at 25.

[27] *Id.* at 28.

cases decided by the Court to the effect that private individuals may be held liable under Section 3 of RA 3019 if they act in conspiracy with public officers. Pursuant to Section 3(h) and 3(m), Rule 2 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC), the petition falls within the responsibility of the Court *En Banc*.[28]

Lastly, he prays for the issuance of a temporary restraining order (TRO) to restrain the Sandiganbayan from holding further proceedings in the two cases,[29] and the setting aside of the Resolutions dated September 25, 2017 and November 20, 2017 of the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0080 and SB-16-CRM-0084.[30]

On the other hand, in its Comment,[31] the People argues that a private individual, when acting in conspiracy with public officers, may be indicted and held liable for the pertinent offenses under Section 3 of RA 3019.[32] Moreover, by the very nature of the transaction involved in this case, which is a government procurement and by petitioner's indispensable acts towards the consummation of the offense, he should be indicted together with the accused public officials for violation of Section 3(e) of RA 3019.[33] Lastly, the People argues that the issuance of a TRO to hold in abeyance a criminal prosecution is proscribed.[34]

The petition has no merit.

The Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motions to quash the information. Moreover, the Court does not find the need to revisit the doctrine that private individuals

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[28] *Id.* at 29.

[29] *Id.* at 29-30.

[30] *Id.* at 30-31.

[31] *Id.* at 160-174.

[32] *Id.* at 162-166.

[33] *Id.* at 168.

[34] *Id.* at 170-172.

may be held liable under Section 3(e) of RA 3019 if they act in conspiracy with public officers.

The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses *under Section 3 of RA 3019*, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto."[35]

In *PCGG v. Office of the Ombudsman*,[36] the Court reiterated the well-settled elements of Section 3(e) of RA 3019 as follows: (i) 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*; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) 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.

The Court, in various cases, had the occasion to affirm the indictment and/or conviction of a private individual, acting in conspiracy with public officers, for violation of Section 3 of RA 3019 particularly paragraph (e) thereof.

Thus, in *Go v. The Fifth Division, Sandiganbayan*,[37] while the issue therein was whether a private individual may be charged with violation of Section 3(g) of RA 3019, the Court discussed and relied on *Singian, Jr. v. Sandiganbayan (Third Division)*[38] *(Singian, Jr.)* to rule in the affirmative.[39] In *Singian,*

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[35] *Uyboco v. People*, 749 Phil. 987, 993-994 (2014), citing *People v. Go*, 730 Phil. 362, 369 (2014).

[36] G.R. No. 194619, March 20, 2019.

[37] 549 Phil. 783 (2007).

[38] 514 Phil. 536 (2005).

[39] *Supra* note 37 at 800-801 (2007).

Jr., Gregorio Singian, Jr., therein petitioner, a private individual who was then the Executive Vice President of Integrated Shoe, Inc. (ISI), was charged together with some officers of the Philippine National Bank (PNB) with violation of both paragraphs (e) and (g), Section 3 of RA 3019 in connection with the loan accommodations extended by PNB to ISI which were characterized as behest loans.[40] The Court ruled that the Ombudsman and the Sandiganbayan did not commit grave abuse of discretion when they respectively found probable cause against Singian, Jr. for violation of both paragraphs (e) and (g), Section 3 of RA 3019.[41]

Further, in *Uyboco vs. People*,[42] the Court discussed the criminal liability of Edelbert C. Uyboco (Uyboco), a private individual who acted in conspiracy with his co-accused public officer in the procurement of overpriced dump trucks.[43] The Court affirmed his conviction by the Sandiganbayan under Section 3(e) of RA 3019.[44]

Similarly, in *PCGG v. Navarro-Gutierrez, et al.*,[45] the Presidential Commission on Good Governance filed an Affidavit-Complaint against private respondents who were former officers/stockholders of National Galleon Shipping Corporation (Galleon), together with the public respondents who were former officers/directors of the Development Bank of the Philippines (DBP), for violation of Section 3(e) and (g) of RA 3019 in connection with the loans/accommodations obtained by Galleon from DBP which possessed the characteristics of behest loans.[46] Reversing the Office of the Ombudsman's ruling, the Court ruled that there was probable

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[40] *Supra* note 38 at 539-541 (2005). See also *supra* note 37 at 800 (2007).

[41] *Id.* at 546-552.

[42] 749 Phil. 987 (2014).

[43] *Id.* at 992-996.

[44] *Id.* at 998.

[45] 772 Phil. 91 (2015).

[46] *Id.* at 94-97.

cause to indict the private respondents and the public respondents for violation of Section 3(e) and (g) of RA 3019.[47]

Given the foregoing pronouncements, the petition, together with the prayer therein that the case be referred to the Court *En Banc* and that a TRO be issued, should be denied.

WHEREFORE, the petition is **DISMISSED**. The Resolutions dated September 25, 2017 and November 20, 2017 of the Sandiganbayan Third Division are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Hernando, and *Delos Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238436. February 17, 2020]

ROEL C. CASILAC, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE OPEN FOR REVIEW. — [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise

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[47] *Id.* at 106.

the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; MURDER; ELEMENTS. —** With respect to Criminal Case No. AR-4143, the crime of murder is defined under Article 248 of the Revised Penal Code *(RPC)*, as amended by Republic Act No. 7659 x x x. To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. In the instant case, the prosecution has clearly established that: (1) Ryn Loui was shot and found by the police lifeless at the crime scene in Barangay Sayao, Sibonga, Cebu; (2) it was the petitioner that shot and killed him; (3) Ryn Loui's killing was attended by the qualifying circumstance of treachery as testified by Ramil and as proven by the prosecution; and (4) the killing of Ryn Loui was neither parricide nor infanticide.

3. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS; THE ESSENCE OF TREACHERY IS THAT, THE ATTACK IS DELIBERATE AND WITHOUT WARNING, AND DONE IN A SWIFT AND UNEXPECTED WAY, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR TO ESCAPE. —** Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that, the attack is deliberate and without warning, and done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The above-mentioned elements are present in this case.

4. **ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN SELF-DEFENSE IS INVOKED, THE BURDEN OF**

EVIDENCE SHIFTS TO THE ACCUSED TO PROVE IT BY CREDIBLE, CLEAR AND CONVINCING EVIDENCE CONSIDERING THAT IT IS AN AFFIRMATIVE ALLEGATION, AND TOTALLY EXONERATES THE ACCUSED FROM ANY CRIMINAL LIABILITY. — Considering that self-defense is an affirmative allegation, and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence. The accused claiming self- defense must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself.

5. **ID.; ID.; ID.; ELEMENTS; WHILE ALL THE ELEMENTS MUST CONCUR, FIRST AND FOREMOST SELF-DEFENSE RELIES ON PROOF OF UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM. —** The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel such aggression, and (3) lack of sufficient provocation on the part of the person defending himself. To successfully invoke self-defense, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack. x x x While all three elements must concur, first and foremost self-defense relies on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Unlawful aggression is a *condition sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.

6. **ID.; ATTEMPTED FELONY; ELEMENTS. —** The essential elements of an attempted felony are as follows: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

7. **ID.; ATTEMPTED OR FRUSTRATED MURDER; THE PRINCIPAL AND ESSENTIAL ELEMENT THEREOF IS THE INTENT TO KILL WHICH IS DISCERNED BY THE COURTS ONLY THROUGH EXTERNAL MANIFESTATION, IT BEING A STATE OF MIND. —** With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter. The following factors are considered to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.

8. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES. —** [V]oluntary surrender must be considered in the instant case for the reduction of penalty. Its requisites, as a mitigating circumstance, are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.

APPEARANCES OF COUNSEL

Gonzalez & Associates Law Firm for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] of the Court of Appeals *(CA)*, dated July 18, 2017, and the Resolution[2] dated March 8, 2018 in CA-G.R. CR-HC No. 01977. The assailed Decision affirmed with modifications the Decision[3] dated July 25, 2014 of the Regional Trial Court *(RTC)* Branch 26 of Argao, Cebu, while the assailed Resolution denied petitioner's Partial Motion for Reconsideration.

The facts are as follows:

On June 23, 2009, at about 5 o'clock in the afternoon, Ramil Navarez *(Ramil)* and his younger brother Ryn Loui Navarez *(Ryn Loui)*, were about to go home to Sayao, Sibonga, Cebu, on board a motorcycle. On the curved portion of the road, Ramil saw his cousin, petitioner Roel Casilac *(Roel)* standing on the right side of the road. Meanwhile, Agripino Casilac *(Agripino)*, the father of Roel, was positioned on the left side of the road together with Tarciano Cirunay, Jr. *(Cirunay)* at the center. Each of them was carrying a firearm and began shooting at Ramil and Ryn Loui. Ramil was hit on the left arm, and the motorcycle fell to the ground. He immediately stood up and shouted to his brother, *"Run Ian."* Ryn Loui then stood up and ran, but the continuous firing of the said armed men hit him on the different parts of his body causing him to fall on the ground for the second time. On the other hand, Ramil ran towards Barangay Banlot to ask for help, but Roel, Agripino and Cirunay

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[1] Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 37-51.

[2] Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta, concurring; *id.* at 53-55.

[3] Records (Criminal Case Nos. AR-4143 and AR-4144), pp. 271-280.

continued to chase and shoot him. Fortunately, he was not hit. He was brought to the Deiparine Medical Clinic at Sibonga, Cebu, and subsequently, to the Vicente Sotto Medical Center *(VSMC)* in Cebu City where he was confined for fourteen (14) days. As the police officers responded to the shooting incident at Barangay Sayao, they saw the lifeless body of Ryn Loui with gunshot wounds.

On July 17, 2009, an Information for Murder was filed against the petitioner Roel C. Casilac, Agripino and Cirunay before the RTC of Argao, Cebu, which reads as follows:

That on the 23rd day of June 2009, at 5:00 o'clock in the afternoon, more or less, at Brgy. Sayao, Sibonga, Cebu and within the jurisdiction of this Honorable Court, the above-named accused Roel C. Casilac[,] armed with a .45 caliber pistol, Agripino D. Casilac, armed with a KG 9 assault pistol, and Tarciano Cirunay Jr.[,] armed with a .45 caliber pistol, conspiring and confederating and mutually helping with intent to kill through treachery, abuse of superior strength and evident premeditation, did then and there, willfully, unlawfully and feloniously, shoot several times RYN LOUI C. NAVAREZ, hitting the latter in different parts of his body which caused his death immediately thereafter.

CONTRARY TO LAW.[4]

Another Information for Frustrated Murder against the petitioner Roel C. Casilac, Agripino and Cirunay was filed on the same date before the RTC of Argao, Cebu, which reads as follows:

That on the 23rd day of June 2009, at 5:00 o'clock in the afternoon, more or less, at Brgy. Sayao, Sibonga, Cebu and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, a KG 9 assault pistol and a .45 caliber pistol, respectively, conspiring and confederating and mutually helping with one another, with intent to kill with the attendant aggravating circumstances of treachery, abuse of superior strength and evident premeditation, did then and there, willfully, unlawfully and feloniously, shoot several times RAMIL C. NAVAREZ hitting and seriously

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[4] Records (Criminal Case No. AR-4143), pp. 1-2.

injuring the latter's left arm, thus[,] performing all the acts of execution which would have produced the crime of Murder as a consequence[,] but which nevertheless did not produce it by reason of causes independent of their will, that is, by timely medical assistance rendered to said victim, which prevented his death.

CONTRARY TO LAW.[5]

The prosecution presented a total of four (4) witnesses, namely, PO3 Antonio S. Sanchez, Ramil Navarez, Dr. Fe Lynn R. Tampon and Dr. Alex Martin C. Mediano.

On the other hand, petitioner claimed a different version. According to him, on June 23, 2009, while he and his cousin Cirunay were gathering grass for their cows at the land belonging to his parents, he saw Ryn Loui driving a motorcyle with his elder brother Ramil riding at the back, going uphill. At the time they passed by, Ramil shot him causing him to drop to the ground, even if he was not hit. He was able to run together with Cirunay and asked the latter to give him the gun Cirunay was carrying. Cirunay gave him the gun and fled. Petitioner was left alone and continued to cut grass. Again, he saw Ryn Loui and Ramil come back, still holding their firearms and in the act of aiming it at him. Using Cirunay's gun, petitioner shot them and hit Ryn Loui, causing the latter to fall to the ground, while Ramil ran away. Thereafter, the petitioner went home to Barangay Sayao where he was advised by his father to surrender.

The defense presented a total of three (3) witnesses, namely: the petitioner, Tarciano Cirunay, Jr. and Daisy Cirunay.

Both criminal cases were consolidated. The RTC found Roel Casilac guilty beyond reasonable doubt of the crime of murder and serious physical injuries. On the other hand, Cirunay was acquitted in both charges of murder and frustrated murder for failure of the prosecution to establish proof beyond reasonable doubt. The dispositive portion of the Decision reads as follows:

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[5] Records (Criminal Case No. AR-4144), pp. 1-2.

WHEREFORE, premises considered, Judgment is hereby rendered, as follows:

1. In Criminal Case No. AR-4143, accused Roel C. Casilac is found GUILTY beyond reasonable doubt of the crime of Murder, as defined in Article 248 of the Revised Penal Code, qualified by treachery, and the said accused is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to indemnify the heirs of Ryn Loui Navarez the following: ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

2. In Criminal Case No. AR-4144, accused Roel C. Casilac is found GUILTY beyond reasonable doubt of the crime of Serious Physical Injuries in Article 263, Item No. 4 of the Revised Penal Code, in lieu of Frustrated Murder, and he is hereby sentenced to suffer a penalty of imprisonment of FOUR (4) MONTHS of *Arresto Mayor*[,] as minimum[,] to TWO (2) YEARS and FOUR (4) MONTHS of *Prision Correccional*[,] as maximum.

For failure of the prosecution to establish proof beyond reasonable doubt, Accused Tarciano Cirunay, Jr, is ACQUITTED in Criminal Case No. 4143 and in Criminal Case No. AR-4144.

Accused Roel C. Casilac, being a detention prisoner, shall be credited full time of his preventive imprisonment which shall be deducted from the penalty imposed.

The Jail Warden of the Cebu Provincial Detention and Rehabilitation Center is hereby directed to release accused Tarciano Cirunay, Jr., unless for any other cause or causes that he shall continue to be detained.

SO ORDERED.[6]

On August 20, 2014, petitioner filed a Partial Motion for Reconsideration[7] praying for his acquittal by reason of the justifying circumstance of self-defense, or a downgrade of the charge from murder to homicide, for failure of the prosecution to prove treachery and evident premeditation. On October 27, 2014, the said motion was denied for lack of merit. This prompted Casilac to file a Notice of Appeal[8] on November 21, 2014.

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[6] CA *rollo*, p. 55.

[7] Records (Criminal Case Nos. AR-4143 and AR-4144), pp. 284-304.

[8] *Id.* at 313-314.

The appeal filed before the CA raised the following issues and that the court *a quo* erred: (1) in finding that the petitioner is guilty beyond reasonable doubt of the crime of murder and serious physical injuries, taking into consideration that he has successfully proven all the elements of complete self-defense; (2) in considering the qualifying circumstance of treachery, even if the prosecution failed to prove the same with the degree required by law; and (3) in failing to consider the mitigating circumstance of voluntary surrender in imposing the sentence against him.

On July 18, 2017, the CA affirmed, with modifications, the ruling of the RTC, the dispositive portion which provides:

1. In Criminal Case No. AR-4143 for *Murder*, the award of moral and exemplary damages is increased to Php75,000.00 each. Temperate damages in the amount of Php50,000.00 are also awarded to Ryn Loui Navarez's heirs.

2. In Criminal Case No. AR-4144, accused-appellant is declared GUILTY of the crime of *Less Serious Physical Injuries* only and is, accordingly, sentenced to suffer a penalty of one (1) month and one (1) day to two (2) months of *arresto mayor*.

3. All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.[9]

On August 14, 2017, the petitioner filed a Motion for Partial Reconsideration[10] of the CA's Decision. On November 7, 2017, on the other hand, respondent filed a Comment[11] on petitioner's Appellant's Partial Motion for Reconsideration. On March 8, 2018, the CA denied the said Motion for lack of merit.

Hence, the present Petition.

The petitioner relied on the following grounds:

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[9] *Rollo*, p. 50.

[10] CA *rollo*, pp. 149-171.

[11] *Id.* at 184-189.

I. THE ASSAILED DECISION ERRED WHEN IT FOUND THE ACCUSED GUILTY [OF] THE CRIME OF MURDER AND LESS SERIOUS PHYSICAL INJURIES, DESPITE THE PRESENCE OF ALL THE ELEMENTS OF SELF[-]DEFENSE SUFFICIENTLY PROVEN BY THE ACCUSED.

II. THE ASSAILED DECISION LIKEWISE ERRED WHEN IT CONSIDERED THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THE DEATH OF RYN, DESPITE THE OVERWHELMING PRESENCE OF CONTRARY EVIDENCE.

III. GRANTING FOR ARGUMENT'S SAKE THAT PETITIONER'S CLAIM OF SELF-DEFENSE WAS NOT JUSTIFIED IN THE INSTANT CASE, THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER PETITIONER'S VOLUNTARY SURRENDER AS A MITIGATING CIRCUMSTANCE.[12]

Petitioner insists that the CA erred in finding him guilty of Murder and Less Serious Physical Injuries, despite the presence of all the elements of self-defense. Further, he argues that the CA erred in considering the qualifying circumstance of treachery in the death of Ryn Loui, contrary to the evidence. He also claims that assuming that the CA was correct in ruling that self-defense is not justified, the CA still erred in refusing to consider petitioner's voluntary surrender as a mitigating circumstance.

The Office of the Solicitor General *(OSG)*, in its Comment[13] dated October 17, 2018, argues that the CA was correct in convicting the petitioner of the crime of Murder and Less Serious Physical Injuries. It also avers that contrary to the petitioner's allegation, the CA considered his voluntary surrender as a mitigating circumstance during the review of his conviction for Serious Physical Injuries in Criminal Case No. AR-4144, in determining the imposable penalty for the crime of Less Serious Physical Injuries. However, the said mitigating circumstance is not applicable for the crime of Murder in Criminal Case No. AR-4143, a penalty punishable by *reclusion perpetua*, an indivisible penalty.

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[12] *Rollo*, p. 17.

[13] *Rollo*, pp. 66-101.

The Petition lacks merit.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.[14] 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.

Guided by this consideration, the Court affirms the petitioner's conviction in Criminal Case No. AR-4143, with modification as to the crime committed in Criminal Case No. AR-4144. The Court has carefully examined the records of this case and found that there were substantial facts that both the RTC and the CA had overlooked and which, after having been considered, has affected the outcome of the case, as will be discussed hereunder.

With respect to Criminal Case No. AR-4143, the crime of murder is defined under Article 248 of the Revised Penal Code *(RPC)*, as amended by Republic Act No. 7659, to wit:

> Article 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x x x x x x
>
> 2. With evident premeditation;
>
> x x x x x x x x x

To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed;

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[14] *Ramos, et al. v. People*, G.R. No. 218466, January 23, 2017.

(2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[15]

In the instant case, the prosecution has clearly established that: (1) Ryn Loui was shot and found by the police lifeless at the crime scene in Barangay Sayao, Sibonga, Cebu, (2) it was the petitioner that shot and killed him; (3) Ryn Loui's killing was attended by the qualifying circumstance of treachery as testified by Ramil and as proven by the prosecution; and (4) the killing of Ryn Loui was neither parricide nor infanticide.

Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that, the attack is deliberate and without warning, and done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[16]

The above-mentioned elements are present in this case. *First*, at the time of the attack Ryn Loui and Ramil were not in the position to defend themselves. On board their motorcycle, they were not aware of any kind of risk or threat to their lives until they reached the curved portion of the road when they saw the petitioner, They were rendered defenseless at the time when the petitioner surprisingly fired successive shots at them while they were driving and traversing the road. *Second*, the petitioner consciously adopted an attack that was deliberate, swift and

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[15] *People of the Philippines v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 488-489.

[16] *Id.*

sudden. To be exact, the petitioner did an *"ambush"* when he made a surprise attack upon Ryn Loui and Ramil from a concealed position, which is the curved portion of the road. Hence, the RTC and the CA were correct in determining that the crime committed was murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

Undoubtedly, the person who authored the death of Ryn Loui was the petitioner. The only matter left to determine is whether the justifying circumstance of self-defense is present to exonerate petitioner from the crime of Murder.

Considering that self-defense is an affirmative allegation, and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence. The accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself.[17]

The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel such aggression, and (3) lack of sufficient provocation on the part of the person defending himself. To successfully invoke self-defense, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[18]

The elements of self-defense are not present in the instant case.

While all three elements must concur, first and foremost self-defense relies on proof of unlawful aggression on the part of

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[17] *People of the Philippines v. Tica*, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 397.

[18] *Id.* at 398.

the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Unlawful aggression is a *condition sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[19]

In the present case, the alleged act of Ryn Loui and Ramil of shooting the petitioner while the latter was gathering grass was not proven by competent evidence. The petitioner failed to prove that the victims were armed during the incident. In addition, no empty slugs were recovered from the place where the victims allegedly shot the petitioner. With this lacking, the conclusion is, there is no unlawful aggression.

Assuming without admitting that the petitioner was fired at by Ramil, the claim of self-defense still fails. It is contrary to common experience that the petitioner continued gathering grass and remained in the area despite the shooting. He could have easily fled for his safety and report the incident to the police authorities. Undoubtedly, petitioner went beyond the call of self-preservation at the time when he chose to be aggressive and maintain his ground armed with a gun waiting for Ryn Loui and Ramil to come back, all of which took place when the alleged unlawful aggression had already ceased.

Considering that unlawful aggression was not proven by the petitioner, self-defense cannot be considered a justifying circumstance. Hence, the RTC and the CA correctly found appellant guilty of murder in Criminal Case No. AR-4143.

However, in Criminal Case No. AR-4144, the Court finds that the crime committed was attempted murder and not less serious physical injuries.

As discussed above, the elements of the crime of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

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[19] *Id.*

On the other hand, the third paragraph, Article 6 of the RPC provides that:

x x x x x x x x x

There is an attempt when the offender commences the commission of a felony directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

The essential elements of an attempted felony are as follows: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter. The following factors are considered to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.[20]

[20] *Johnny Garcia Yap @ "Charlie," etc. v. People*, G.R. No. 234217, November 14, 2018.

In the present case, the prosecution has established petitioner's intent to kill Ryn Loui. The Court also finds such intent to be present with respect to Ramil. In this regard, it is hard to reconcile that there is an intent to kill Ryn Loui while there is none when it comes to Ramil considering that petitioner commenced the commission of the felony directly through overt acts by treacherously shooting both the victims while they were on board the same motorcycle. In particular, with respect to Ramil, after he was shot by petitioner in the arm, the latter's intent to consummate the crime was shown by the fact that he continued to chase Ramil and fire at him. However, the petitioner was not able to perform all the acts of execution which should produce the crime of murder as the wound inflicted upon Ramil was not fatal and the latter was able to run away from the petitioner. From the foregoing, it is evident that petitioner also intended to kill Ramil and that all the elements of attempted murder are present.

Meanwhile, voluntary surrender must be considered in the instant case for the reduction of penalty. Its requisites, as a mitigating circumstance, are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.

Voluntary surrender is a circumstance that reduces the penalty for the offense. Its requisites as a mitigating circumstance are, that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[21]

The petitioner was able to prove all the requisites of voluntary surrender. The claim of petitioner that he voluntarily presented himself to the Sibonga Police Station, upon the persuasion of his father and the arrangement made by his sister, was not controverted by the prosecution. It is clear that there was a manifestation on the part of the petitioner to freely submit himself to the police authorities for the killing of Ryn Loui.

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[21] *People of the Philippines v. Placer*, 719 Phil. 268, 281-282 (2013).

As to the penalty, Article 248 of the RPC provides that the penalty for murder is *reclusion perpetua* to death. Article 63 (3) of the RPC provides that "[w]hen the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied." In the present case, considering that the mitigating circumstance of voluntary surrender was found to be present, and in the absence of any ordinary aggravating circumstance, the RTC correctly imposed the penalty of *reclusion perpetua*. As to attempted murder, applying Article 51,[22] in relation to the second paragraph, Article 61[23] of the same Code, the penalty is two degrees lower than *reclusion perpetua*, which is *prision mayor*.[24] Since the mitigating circumstance of voluntary surrender is present, the maximum penalty shall be taken from the minimum period of *prision mayor* which is six (6) years and one (1) day to eight (8) years. Applying the Indeterminate Sentence Law,[25] the minimum penalty shall be taken from any of the periods of the penalty next lower in degree which is *prision correccional*. Thus, the penalty of two (2) years and four (4) months of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, would be appropriate.

As to the civil liability of petitioner for the murder of Ryn Loui, since the penalty imposed is *reclusion perpetua* by reason of the presence of the ordinary mitigating circumstance of voluntary surrender, the CA correctly awarded to the heirs of Ryn Loui the additional amounts of ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. With respect to the attempted murder

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[22] A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

[23] When the penalty prescribed for the crime is composed of two indivisible penalties, or one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[24] Revised Penal Code, Art. 51 in relation to Art. 61, par. 2.

[25] Act No. 4103, as amended by Act No. 4225.

of Ramil, petitioner must pay him ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages. These awards are in consonance with this Court's ruling in the controlling case of *People v. Jugueta*.[26]

In line with jurisprudence,[27] interest of 6% *per annum* shall be charged on all the monetary awards herein, computed from the date of the finality of this decision until fully paid.

WHEREFORE, the instant petition is **DENIED**. The July 18, 2017 Decision and March 8, 2018 Resolution of the Court of Appeals in CA-G.R. CR HC No. 01977 is hereby **AFFIRMED WITH MODIFICATION**, as follows:

In Criminal Case No. AR-4143, petitioner Roel C. Casilac is found **GUILTY** beyond reasonable doubt of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to indemnify the heirs of Ryn Loui Navarez the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

In Criminal Case No. AR-4144, petitioner Casilac is found **GUILTY** of **ATTEMPTED MURDER** and is meted the indeterminate penalty of two (2) years and four (4) months of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum. He is further **ORDERED** to pay the victim Ramil Navarez the amounts of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[26] 783 Phil. 708 (2016).

[27] *People v. Joseph A. Ampo*, G.R. No. 229938, February 27, 2019, citing *People v. Tica*, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 400.

SECOND DIVISION

[G.R. No. 239979. February 17, 2020]

MRS. CONSOLACION V. TIÑA, *petitioner*, *vs*. **STA. CLARA ESTATE, INC.,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; THAT A RULING ON OWNERSHIP IN AN EJECTMENT CASE IS MERELY ANCILLARY TO RESOLVE THE ISSUE OF POSSESSION AND SHOULD NOT BIND THE TITLE OR OWNERSHIP OF THE LAND IS CLEARLY A QUESTION OF LAW. —** We note that the petitioner directly appealed to this Court via a Rule 45 petition, in relation to Rule 41 of the Rules of Court on an alleged pure question of law. It is recognized under Rule 45 that an appeal from the trial court's decision may be undertaken through a petition for review on *certiorari* directly filed with the Court where only questions of law are raised or involved. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. An examination of the present petition shows petitioner essentially challenging the dismissal of the case based solely on the premise that a ruling on ownership in an ejectment case is merely ancillary to resolve the issue of possession and should not bind the title or ownership of the land. This is clearly a question of law which calls for an examination and interpretation of the prevailing law and jurisprudence.

2. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; THE SOLE ISSUE IS PHYSICAL OR MATERIAL POSSESSION OF THE LAND; THE RULING ON OWNERSHIP THAT WAS PASSED UPON IN THE EJECTMENT CASE IS NOT AND SHOULD NOT BE BINDING ON A CIVIL CASE FOR CANCELLATION OF TITLE. — "[Tlhe sole issue in ejectment cases is physical or material possession of the subject property, independent of any claim of ownership by the parties." Section 16, Rule 70 of the Rules of Court provides the exception to the rule in that the issue of ownership shall be resolved in deciding the issue of possession if the question of possession is intertwined with the issue of ownership. In the related ejectment case, the parties were allowed to prove how they came into possession of the property. Petitioner claims open and continuous possession of the accreted portion of Creek I for over 67 years and a Miscellaneous Sales Application for said accreted portion was filed and approved by the DENR. On the other hand, respondent insists that Creek I is part of a lot owned by it. Incidentally, the issue of the ownership of Creek I, came into forth. Petitioner stresses that Creek I is classified as property under public domain, hence, respondent could not have been validly issued a title, while respondent maintains that Creek I is man-made. In the ejectment case, the issue of ownership over Creek I was resolved in favor of respondent. Time and again, this Court has consistently held that where the issue of ownership is inseparably linked to that of possession, adjudication of the issue on ownership is not final and binding, but merely for the purpose of resolving the issue of possession. The adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property. In an ejectment case, questions as to the validity of the title cannot be resolved definitively. A separate action to directly attack the validity of the title must be filed, as was in fact filed by petitioner, to fully thresh out as to who possesses a valid title over the subject property. Thus, any ruling on ownership that was passed upon in the ejectment case is not and should not be binding on Civil Case No. 00-11133.

APPEARANCES OF COUNSEL

Lyndon P. Caña for petitioner.
Roland G. Ravina for respondent.

D E C I S I O N

HERNANDO, *J.*:

Before us is a direct resort to this Court via a petition for review on *certiorari*[1] of the March 30, 2017 Resolution[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 42, which dismissed Civil Case No. 00-11133 as well as the May 11, 2018 Order[3] denying petitioner Consolacion V. Tiña's Earnest Motion for Reconsideration.[4]

Antecedent Facts

The instant controversy involves a 231-square-meter lot along Creek I, denominated as the Ogumod Creek, situated in Bacolod City. According to petitioner, she and her husband had been occupying said property for more than 55 years openly, publicly, adversely, and continuously in the concept of an owner. As proof of the length of their occupancy, petitioner presented the January 10, 1990 1st Indorsement[5] of Engr. Jose F. Falsis, Jr. stating that since 1990, they have been in their area of occupancy for 45 years; and an October 23, 1997 Certification of Arturo V. Parreño of the Office of the Barangay Council, Barangay Mandalagan, Bacolod City. Petitioner had in fact filed a Miscellaneous Sales Application last July 22, 1986 over the subject area. Said application was not opposed by the Office of the City Engineer, the Department of Public Works and Highways[6] and the Office of the City Mayor.[7] On December 10, 1997, the Miscellaneous Sales Application was approved by the Department of Environment and Natural Resources (DENR).[8]

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[1] *Rollo*, pp. 12-44.

[2] *Id.* at 138-141; penned by Judge Fernando R. Elumba.

[3] *Id.* at 152-153.

[4] *Id.* at 142-148.

[5] *Id.* at 177.

[6] *Id.* at 179.

[7] *Id.* at 178.

[8] See Complaint, *id.* at 51-53.

On the other hand, respondent Sta. Clara Estate, Inc. alleged that the contested property is covered by Transfer Certificate of Title (TCT) No. T-28629[9] of the Registry of Deeds of Bacolod City registered under its name. Respondent traced its title as far back as TCT No. T-28629 which was entered in the Registry of Deeds of Bacolod City on June 11, 1965. Said title was a transfer from TCT Nos. T-14900 to T-14902. Respondent also presented a letter[10] from the City Assessor of Bacolod addressed to petitioner that the office could not change the appraisal of the property under Patent Application No. (CENRO V-8)2 because the "property is within or is a portion of the property of Sta. Clara Estate, Inc., identified as Creek 1, (LRC) Psd-39596 and covered by [TCT] No. T-28629 issued on June 11, 1965 and containing an area of 4,419 square meters."[11] Respondent averred that petitioner is illegally occupying a portion of its property.

On March 3, 1999, respondent filed a Complaint[12] for ejectment before the Municipal Trial Court in Cities (MTCC) of Bacolod City, Branch 7. Meanwhile, on April 28, 2000, petitioner filed a Complaint[13] for cancellation of title with damages and other reliefs before the RTC of Bacolod City, docketed as Civil Case No. 00-11133, over the contested property. Petitioner asserted that Creek I, as claimed by respondent as being the absolute and registered owner thereof, is a property of public dominion, thus, could not be legally registered under its name. Respondent countered that it constructed Creek I, which used to be a marshland located within its property. Respondent elaborated that the man-made creek was intended as a drainage dam.[14]

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[9] *Id.* at 68-69.

[10] *Id.* at 70-72.

[11] *Id.* at 72.

[12] *Id.* at 78-80.

[13] *Id.* at 51-58.

[14] *Id.* at 63.

The ejectment case proceeded ahead of Civil Case No. 00-11133. On May 9, 2002, the MTCC rendered a Decision[15] in favor of the respondent. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendants, Sps. Aurelio Tiña and Consolacion Tiña, who are hereby ordered, including all persons claiming under them, to wit:

1. To remove their house and any and all structures, or portion thereof, which they have constructed within the period of one (1) month from the service to them of a copy hereof and to vacate said premises known as Creek I, equivalent to 231 square meters, more or less, as shown in the Commissioner's Report of the subdivision plan (LRC) of Psd-39596 of the Bacolod City Cadastre, or the portion thereof, covered by Transfer Certificate of Title No. 28629 registered in the name of the plaintiff corporation, Sta. Clara Estate, Inc. and surrender possession thereof to plaintiff;

2. To pay plaintiff the sum of FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency, for and as attorney's fees; and

3. To pay the costs of the suit.

With regard to defendants' counterclaim, the same is hereby dismissed for lack of proper basis.

Let copy hereof be immediately furnished by means of a personal service the Office of the Bacolod City Housing Authority for information and for whatever appropriate action that the Office may take under existing laws, taking into consideration that defendants are squatters.

SO ORDERED.[16]

The MTCC found that respondent is the registered owner of Creek I having introduced the improvement into the property, which is the man-made creek, when the said property was being developed into the Sta. Clara Subdivision. The MTCC also

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[15] *Id.* at 154-168; penned by Presiding Judge Rafael M. Guanco.

[16] *Id.* at 168.

affirmed the findings in the Commissioner's Report that the lot in question indeed belongs to respondent.

On July 23, 2003, the RTC of Bacolod City affirmed the Decision of the MTCC.[17] The Court of Appeals upheld the judgment of the RTC. The appellate court ruled that the right to possess the disputed tract of land pertained to respondent as the registered owner and as the party who had established prior possession. The appellate court held that petitioner failed to substantiate her allegation of possession for 40 years. Finally, in a Resolution dated September 21, 2015, we affirmed the ruling of the Court of Appeals and upheld the ejectment of petitioner.[18] A motion for reconsideration was filed by petitioner but it was denied by this Court with finality on April 18, 2016.[19] A corresponding Entry of Judgment was issued in due course.

During the pendency of Civil Case No. 00-11133 and while petitioner was about to present her sur-rebuttable evidence, respondent filed a Manifestation with Motion to Dismiss[20] alleging that the principal issue in the case, *i.e.*, whether Creek I is a man-made or a public creek, has been resolved in the ejectment case when the Supreme Court affirmed and declared that Creek I is man-made and belongs to respondent. Petitioner opposed[21] the Motion and stated that the issue in the ejectment case is confined only to possession and there is substantial evidence that Creek I is a natural creek.

Ruling of the Regional Trial Court

The RTC of Bacolod City issued the first assailed March 30, 2017 Resolution dismissing the case in light of the pronouncement of this Court that Ogumod Creek or Creek I belongs to respondent. Petitioner filed a Motion for

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[17] *Id.* at 169-171; *see* September 21, 2015 Resolution in G.R. No. 162119.

[18] *Id.* at 169-171.

[19] *Id.* at 173.

[20] *Id.* at 128-130.

[21] *Id.* at 131-137.

Reconsideration but it was denied by the trial court in the second assailed May 11, 2018 Order.[22]

Petitioner files a direct appeal to this Court via a Petition for Review under Rule 45 of the Rules of Court. Petitioner contends that the RTC erred in prematurely terminating the proceedings and dismissing the Complaint for cancellation of title simply because of a ruling touching on ownership in a related ejectment case. Petitioner argues that the ruling is contrary to established law and jurisprudence that the determination of ownership in an ejectment proceeding is merely ancillary to resolve the issue of possession.

Respondent prays for the denial of the petition. In its Comment[23] filed on January 23, 2019, respondent asserts that petitioner is not even claiming ownership over the lot and by insisting that Creek I belongs to the State, petitioner is not the proper party to prosecute the complaint for its reconveyance. Respondent also points out that the ruling with respect to the nature of the creek as man-made has already attained finality.

Issue

The issue of whether petitioner is the proper party to file the suit for cancellation of title should be raised in the main case. The RTC should be afforded the opportunity to rule on this issue. The only issue to be resolved, at this point, is the propriety of the dismissal by the trial court.

Our Ruling

We note that the petitioner directly appealed to this Court via a Rule 45 petition, in relation to Rule 41 of the Rules of Court on an alleged pure question of law. It is recognized under Rule 45 that an appeal from the trial court's decision may be undertaken through a petition for review on *certiorari* directly filed with the Court where only questions of law are raised or involved.

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[22] *Id.* at 152-153.

[23] Temporary *Rollo*, unpaginated.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[24]

An examination of the present petition shows petitioner essentially challenging the dismissal of the case based solely on the premise that a ruling on ownership in an ejectment case is merely ancillary to resolve the issue of possession and should not bind the title or ownership of the land. This is clearly a question of law which calls for an examination and interpretation of the prevailing law and jurisprudence.

"[T]he sole issue in ejectment cases is physical or material possession of the subject property, independent of any claim of ownership by the parties."[25] Section 16, Rule 70 of the Rules of Court provides the exception to the rule in that the issue of ownership shall be resolved in deciding the issue of possession if the question of possession is intertwined with the issue of ownership. In the related ejectment case, the parties were allowed to prove how they came into possession of the property. Petitioner claims open and continuous possession of the accreted portion of Creek I for over 67 years and a Miscellaneous Sales Application for said accreted portion was filed and approved by the DENR. On the other hand, respondent insists that Creek I is part of a lot owned by it. Incidentally, the issue of

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[24] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013).

[25] *Holy Trinity Realty Development Corporation v. Abacan*, 709 Phil. 653, 661 (2013).

the ownership of Creek I, came into forth. Petitioner stresses that Creek I is classified as property under public domain, hence, respondent could not have been validly issued a title, while respondent maintains that Creek I is man-made.

In the ejectment case, the issue of ownership over Creek I was resolved in favor of respondent. Time and again, this Court has consistently held that where the issue of ownership is inseparably linked to that of possession, adjudication of the issue on ownership is not final and binding, but merely for the purpose of resolving the issue of possession. The adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property.[26] In an ejectment case, questions as to the validity of the title cannot be resolved definitively. A separate action to directly attack the validity of the title must be filed, as was in fact filed by petitioner, to fully thresh out as to who possesses a valid title over the subject property. Thus, any ruling on ownership that was passed upon in the ejectment case is not and should not be binding on Civil Case No. 00-11133.

It is worthy to note that petitioner's application for a TRO had become moot and academic because subsequently on March 3, 2019,[27] the writ of demolition has been fully satisfied, the house erected thereon was demolished, and that possession of the subject premises was already turned over to respondent. However, this should not deter us from remanding the case to the trial court for further proceedings to determine who between the parties is the rightful owner of the disputed property as to put an end to this protracted litigation.

WHEREFORE, the Petition for Review is **GRANTED**. The March 30, 2017 Resolution and the May 11, 2018 Order of the Regional Trial Court, Branch 42, Bacolod City in Civil Case No. 00-11133 are **REVERSED**. This case is **REMANDED** to the Regional Trial Court of Bacolod City, Branch 42 which is

[26] *Santiago v. Northbay Knitting*, G.R. No. 217296, October 11, 2017, 842 SCRA 502, 511; and *Quijano v. Amante*, 745 Phil. 40 (2014).

[27] *See* letter of petitioner's daughter dated March 3, 2019; *rollo*, p. 325.

ORDERED to proceed with Civil Case No. 00-11133 with due and deliberate dispatch. The Register of Deeds of Bacolod City is **DROPPED** as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

SO ORDERED.

Perlas-Bernabe, S.A.J (Chairperson), *Reyes, A. Jr., Inting,* and *Delos Santos, JJ.*, concur.

THIRD DIVISION

[G.R. No. 243237. February 17, 2020]

HEIRS OF CATALINA P. MENDOZA, *petitioners, vs.* **ES TRUCKING AND FORWARDERS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; A CIVIL CASE FOR QUASI-DELICT MAY PROCEED INDEPENDENTLY OF THE CRIMINAL ACTION AND SHALL REQUIRE ONLY A PREPONDERANCE OF EVIDENCE. —** Under the Rules, when "a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action." However, the civil action referred to in Articles 32, 33, 34, and 2176 of the New Civil Code shall "proceed independently of the criminal action and shall require only a preponderance of evidence." Furthermore, it is explicitly stated in Article 2177 of the Civil Code that responsibility arising from quasi-delict "is entirely separate and distinct from the civil liability arising from negligence under the Penal Code." The same rule finds support

from Article 31 of the same Code which states that when "the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter." Therefore, regardless of the outcome of the criminal case for reckless imprudence resulting to homicide instituted against Timtim, a civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking, under Article 2180 of the New Civil Code.

2. **ID.; LEASE; COMMON CARRIERS; THE FAILURE TO REGISTER THE VEHICLE AS A PUBLIC VEHICLE OR A COMMON CARRIER DOES NOT NEGATE THE TRUE NATURE OF THE VEHICLE. —** Article 1732 of the Civil Code defines common carriers as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public. The Land Transportation and Traffic Code distinguished the classification of vehicles x x x. The requirement for vehicles for hire to obtain a Certificate of Public Convenience from the Land Transportation Franchising and Regulatory Board (LTFRB) was emphasized in LTFRB Memorandum Circular Number 98-027 x x x. In this case, the Heirs of Catalina established through preponderance of evidence that, at the time of the incident, the vehicle was being used as a truck for hire without securing the necessary franchise from the LTFRB. x x x ES Trucking engaged in a truck for hire business, offering their vehicles to transport the cargo of its customers. Noticeably, Edgardo Ruste admitted that they filed an application to have the vehicle included in their Certificate of Public Convenience yet their application was never granted. This is inconsistent with his own claim that ES Trucking does not need to register with the LTFRB because it is not a common carrier but a private company. The fact that they considered applying for the inclusion of the vehicle in their Certificate of Public Convenience signifies that they are aware of the franchise requirement of the LTFRB. ES Trucking cannot be excused simply because it is not registered with the LTFRB and it is a private company. ES Trucking cannot be exonerated from liability and benefit from its own violation of the laws and rules governing trucks for hire. As an entity engaged in the truck for hire business, it should have complied with the requirements of the Land Transportation and Traffic Code and

the issuances of the LTFRB. Despite being registered as a private vehicle, the actual use of the vehicle and the clientele to whom ES Trucking offers its services remain controlling. The failure to register the vehicle as a public vehicle or a common carrier does not negate the true nature of the vehicle.

3. **ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; WHEN THE EMPLOYEE CAUSES DAMAGE DUE TO HIS OWN NEGLIGENCE WHILE PERFORMING HIS OWN DUTIES, THERE ARISES A PRESUMPTION THAT THE EMPLOYER IS NEGLIGENT AND THIS MAY BE REBUTTED ONLY BY PROOF OF OBSERVANCE OF THE DILIGENCE OF A GOOD FATHER OF A FAMILY.** — The basis for the liability of an employer of an erring driver resulting to injury or damage to a stranger may be found in Articles 2176 and 2180 of the New Civil Code x x x. In this case, it has been proven by preponderant evidence that Timtim recklessly drove the prime mover truck which caused the death of Catalina. Although the employer is not the actual tortfeasor, the law makes the employer vicariously liable on the basis of the civil law principle of *paterfamilias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another. When the employee causes damage due to his own negligence while performing his own duties, there arises a presumption that the employer is negligent. This may be rebutted only by proof of observance of the diligence of a good father of a family. The "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees. In the selection of its prospective employees, the employer is required to examine them as to their qualifications, experience, and service records. ES Trucking did not require Timtim to present any document other than his professional driver's license and job application form. Edgardo Ruste's testimony confirms the apparent laxity in the procedure for hiring and selection of ES Trucking x x x. ES Trucking was not only negligent in hiring Timtim but even in supervising the latter. ES Trucking permitted Timtim to drive the subject vehicle to transport goods of its customers knowing that the vehicle is not duly registered with the LTFRB. In addition, it must be highlighted that ES Trucking is not only at fault for blatantly disregarding pertinent laws and rules governing trucks for hire but is also guilty of violating its undertaking to preserve the vehicle in its original state while the case is pending. x x x

Considering all the evidence on record, We find that ES Trucking failed to sufficiently exercise the diligence of a good father of a family in the selection and supervision of its employee, Timtim.

4. **ID.; DAMAGES; ACTUAL DAMAGES; MAY BE AWARDED WHEN AN INJURY HAS BEEN SUSTAINED BUT ONLY FOR SUCH EXPENSES PROVEN BY CREDIBLE EVIDENCE. —** Under the Civil Code, when an injury has been sustained, actual damages may be awarded x x x. [O]nly the expenses proven by credible evidence may be awarded. In this case, the funeral and burial expenses amounting to ₱362,565.60 were duly supported with official receipts when presented in the RTC.

5. **CRIMINAL LAW; CIVIL LIABILITY; CIVIL OR DEATH INDEMNITY; CONSIDERED MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME. —** Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00. Thus, ES Trucking is liable to pay the Heirs of Catalina ₱50,000.00 for her death.

6. **CIVIL LAW; DAMAGES; MORAL DAMAGES; GRANTED TO ANSWER FOR THE MENTAL ANGUISH SUFFERED BY THE HEIRS OF THE VICTIM BECAUSE OF HER DEATH. —** With regard to the award of moral damages, Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity. We find an award of ₱100,000.00 as moral damages sufficient to answer for the mental anguish suffered by the Heirs of Catalina because of her death.

7. **ID.; ID.; EXEMPLARY DAMAGES; MAY BE IMPOSED WHEN ONE ACTED IN WANTON DISREGARD OF THE LAW AND WITH EVIDENT BAD FAITH. —** We award exemplary damages upon finding that ES Trucking acted with gross negligence for failing to duly register the prime mover truck with the appropriate government agency, and for failing to impose a stringent selection procedure in hiring and supervising Timtim. The award of exemplary damages is justified further by ES Trucking's wanton disregard of the law and evident bad faith through its highly reprehensible conduct of altering the body number of the prime mover truck to avoid detection,

in violation of its undertaking to preserve the original state of the vehicle while the case is pending. To ensure that such behavior will not be repeated, ES Trucking is directed to pay ₱50,000.00 as exemplary damage[s] to the Heirs of Catalina.

APPEARANCES OF COUNSEL

Faundo Esguerra & Associates Law Firm for petitioners.
Liong Sedilla Torremonio & Diestro for respondent.

D E C I S I O N

CARANDANG, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 is the Decision[2] dated February 15, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 04394-MIN, affirming the Decision[3] dated April 21, 2016 of the Regional Trial Court (RTC) of Zamboanga City, Branch 12, in Civil Case No. 6538, dismissing the complaint for damages filed by petitioners Heirs of Catalina P. Mendoza (Heirs of Catalina). Likewise assailed is the Resolution[4] dated September 25, 2018 denying the Motion for Reconsideration of the Heirs of Catalina.[5]

The Antecedents

On June 13, 2013, at around noontime, Catalina P. Mendoza (Catalina) was walking along Sta. Maria Road after visiting a lotto outlet nearby. While she was at the center of the road and attempting to cross its second half, she was sideswiped by a 14-wheeler prime mover truck at the junction of Gov. Ramos Street and Sta. Maria Road in Zamboanga City. The prime mover truck

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[1] *Rollo*, pp. 9-20.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Perpetua T. Atal-Paño and Walter S. Ong, concurring; *id.* at 24-32.

[3] Penned by Presiding Judge Gregorio V. Dela Peña, III; *id.* at 58-66.

[4] *Id.* at 34-35.

[5] *Id.* at 35.

bore body no. 5 and green plate no. NAO 152,[6] while the trailer attached to it had yellow plate no. JZA163.[7] The vehicle is registered under the name of ES Trucking and Forwarders (ES Trucking)[8] with Sumarni Asprer Ruste as its sole proprietor.[9] At the time of the incident, the vehicle was driven by Clin Timtim (Timtim), a holder of professional driver's license no. J04-99-069007.[10]

Moments before the incident, Timtim claimed that he stopped the vehicle at the crossing lane as the tricycle in front of the prime mover truck stopped and only began to accelerate once the tricycle started moving.

The two sons of Catalina picked her up from under the fuel tank of the prime mover truck behind its front left tire and brought her to Ciudad Medical Zamboanga where she was pronounced dead.[11] Catalina suffered multiple abrasions and contusions in the clavicle area, lacerated wound on the cheek, and multiple abrasions on the abdomen.[12] She also suffered multiple rib fractures.[13] The immediate cause of death, stated in her Certificate of Death,[14] is "Cardio-Pulmonary Arrest Sec. to Vehicular Accident."[15]

At the time of the incident, the prime mover truck was on its way back to San Roque after having delivered kitchenware merchandise to its customer, Suani Enterprises.[16]

On February 19, 2013, the counsel of the Heirs of Catalina sent a demand letter to ES Trucking seeking reimbursement

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[6] Exhibit "P-1" of Plaintiff's Exhibits.

[7] Exhibit "6-F" of Defendant's Exhibits.

[8] RTC Records, p. 50. Exhibit "M" of Plaintiff's Exhibits.

[9] *Id.* at 49.

[10] Exhibit "1-F" of Defendant's Exhibits.

[11] RTC Records, p. 16.

[12] Exhibit "K" of Plaintiff's Exhibits.

[13] Exhibit "L-5" of Plaintiff's Exhibits.

[14] RTC Records, p. 16.

[15] *Id.*

[16] TSN dated March 10, 2015. p. 12.

for the actual expenses incurred in the amount of ₱470,197.05, ₱250,000.00 as moral damages, and attorney's fees equivalent to 10% of the total claim.[17] ES Trucking offered financial assistance of ₱200,000.00 and the proceeds from the third-party liability insurance in the amount of ₱100,000.00, but the Heirs of Catalina refused the offer. Instead, they insisted on the amount they were claiming.[18]

On April 24, 2013, a Certification to File Action was issued after the parties failed to reach a settlement.[19]

A criminal case for Reckless Imprudence resulting to Homicide was filed against the driver in the Municipal Trial Court in Cities (MTCC) docketed as Criminal Case No. 50864 (1-6564).[20] The complaint for quasi-delict against ES Trucking was separately filed in the RTC of Zamboanga City, Branch 12, docketed as Civil Case No. 6538.[21]

Incidentally, in Criminal Case No. 50864 (1-6564), the MTCC found Timtim guilty of Reckless Imprudence resulting to homicide and sentenced him to serve an indeterminate penalty of imprisonment ranging from four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, six (6) months and 21 days of *prision correccional*, as maximum.[22] Timtim applied for probation and has since been released. On March 10, 2016, an Entry of Judgment[23] was issued certifying that the Decision of the MTCC dated December 15, 2015 became final and executory on February 2, 2016.

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[17] RTC Records, pp. 17-19.

[18] *Rollo*, p. 24. Exhibit "6-H" of Defendant's Exhibits.

[19] RTC Records, p. 20.

[20] *Id.* at 58.

[21] *Id.* at 1-6.

[22] Penned by Presiding Judge Nancy I. Bantayanon-Cuaresma; *rollo*, pp. 42-56.

[23] CA *rollo*, p. 192.

Ruling of the Regional Trial Court

On April 21, 2016, the RTC rendered a Decision,[24] the dispositive portion of which reads:

> **WHEREFORE**, all the foregoing considered, judgment is hereby rendered **DISMISSING** the above-entitled case for insufficient evidence and want of cause of action against the Defendant herein. No cost.
>
> **SO ORDERED.**[25]

The RTC found no evidence of recklessness that can be attributed to the driver of the truck. PO3 Marlon V. Agbalos (PO3 Agbalos) testified that he cannot point to any negligent act of the driver, since the truck was coursing through the proper lane when the incident happened. The RTC concluded that Catalina was not bumped on the front side of the truck but most probably on the left side of the vehicle, as she appeared not to have been run over by its front tire. The RTC surmised that the victim may have attempted to cross the street while the truck was already in motion and traffic was already moving on both sides of the street when she was sideswiped. Since there is no finding of negligence or recklessness on the part of the driver, the RTC concluded that the action for quasi-delict based on ES Trucking's vicarious liability must fail.[26]

Ruling of the Court of Appeals

In the Decision[27] dated February 15, 2018, the CA affirmed the ruling of the RTC.[28] The CA held that it was incorrect for the Heirs of Catalina to conclude that a criminal conviction will establish ES Trucking's civil liability. For the CA, even if there is such negligence, the employer may defend itself through proof that it exercised due diligence in the selection

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[24] *Supra* note 3.

[25] *Rollo*, p. 66.

[26] *Id.* at 64-66.

[27] *Supra* note 2.

[28] *Rollo*, p. 31.

and supervision of its employees. To rule otherwise will create an absurd result, where the case for quasi-delict is already prejudged and predetermined by the guilty verdict in the Reckless Imprudence case, thus rendering the proceedings in the former without purpose at all.[29] It was ruled that judicial notice of the subsequent finality of the judgment of the MTCC in the Reckless Imprudence case is discretionary only.[30]

Based on the records, the CA found that there was no sufficient evidence of negligence because: (1) none of the petitioners' witnesses saw the moment of impact; (2) ES Trucking's witnesses saw no person walk across the street or in front of the truck; (3) there was no warning beforehand that a person could have crossed the street as there was no possible threat or obstacle in front of the truck; and (4) the police investigator confirmed that he saw no evidence of negligent driving. The CA concluded that the death of Catalina was brought about by a terrible accident, which could only be blamed on being in the wrong place at the wrong time. The CA noted that caution and exercise of due diligence must be exercised by all persons, drivers, and pedestrians alike in the use of streets.[31]

The Heirs of Catalina filed a Motion for Reconsideration, which was denied[32] in the Resolution[33] dated September 25, 2018.

In the present petition, the Heirs of Catalina maintain that ES Trucking did not exercise due diligence of a good father of a family in the selection and supervision of the driver because it hired a driver who did not have the necessary training for driving a trailer truck pursuant to Department Order No. 2011-25 issued by Department of Transportation (DOTr).[34] The Heirs of Catalina further argue that the Court should take cognizance

[29] *Id.* at 30.

[30] *Id.* at 28.

[31] *Id.* at 28-29.

[32] *Id.* at 35.

[33] *Supra* note 4.

[34] *Rollo*, p. 67.

of the existence of negligence established from the driver's conviction. As the Heirs of Catalina argue on the belief that ES Trucking is a common carrier, there is a presumption of negligence that may only be defeated if evidence of observance of the diligence required by law is presented. Due to the alleged failure of ES Trucking to present such evidence, the Heirs of Catalina insist that they are entitled to damages.[35]

On the other hand, ES Trucking insists in its Comment[36] that it cannot be held vicariously liable for damages as there is no sufficient evidence that Timtim was negligent. ES Trucking argues that it had successfully proven its diligence not only in the selection but also in the supervision of its driver.[37]

Issues

The issues to be resolved are:

(1) Whether Clin Timtim was negligent in driving the vehicle that caused the death of Catalina to hold his employer ES Trucking liable under Article 2180 of the New Civil Code;
(2) Whether the complaint for quasi-delict against ES Trucking, Timtim's employer, may proceed independently of the criminal action for Reckless Imprudence resulting to Homicide;
(3) Whether ES Trucking is a common carrier required by law to observe extraordinary diligence in the carriage of passengers and goods.
(4) Whether ES Trucking exercised due diligence in the selection and supervision of its driver, Timtim; and
(5) Whether the Heirs of Catalina are entitled to damages.

The Court's Ruling

Timtim was recklessly driving the prime mover truck that caused the death of Catalina Mendoza.

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[35] *Id.* at 9-10, 14-19.

[36] *Id.* at 75-79.

[37] *Id.* at 76.

It would be a grave injustice to simply accept the testimony of PO3 Agbalos and adopt the conclusion of the CA that the terrible incident "could only be blamed on being in the wrong place at the wrong time."[38] This incident would not have happened had Timtim been vigilant in checking his front, rear, and side mirrors for any obstruction on the road, and had he timely stepped on his brakes to avoid hitting Catalina.

Contrary to the ruling of the lower courts, the fact that the truck was traveling on the right lane when the incident happened does not automatically mean that the driver was not negligent. Catalina had already crossed half of the road when she was sideswiped by the vehicle driven by Timtim. This is the reason why her body was found under the fuel tank behind the left front wheel of the truck.[39] Had he been driving with caution, he would have seen that Catalina was already attempting to cross the second half of the road in front of him. A prudent driver would have immediately slowed down and stopped the vehicle to give way to the pedestrian crossing the road.

It is also worthy to point out that in the Appellee's Brief,[40] which ES Trucking filed with the CA, the conviction of Timtim for Reckless Imprudence resulting in Homicide in Criminal Case NO. 50864 (1-6564) was admitted.[41] The finding of negligence on the part of Timtim made by the MTCC is consistent with Our pronouncement that Timtim was negligent at the time of the incident.

A civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking.

Under the Rules, when "a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal

[38] *Id.* at 29.

[39] TSN dated March 10, 2015, pp. 20-21.

[40] CA *rollo*, pp. 96-106.

[41] *Id.* at 105.

action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action."[42] However, the civil action referred to in Articles 32, 33, 34, and 2176 of the New Civil Code shall "proceed independently of the criminal action and shall require only a preponderance of evidence."[43]

Furthermore, it is explicitly stated in Article 2177 of the Civil Code that responsibility arising from quasi-delict "is entirely separate and distinct from the civil liability arising from negligence under the Penal Code."[44] The same rule finds support from Article 31 of the same Code which states that when "the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."[45] Therefore, regardless of the outcome of the criminal case for reckless imprudence resulting to homicide instituted against Timtim, a civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking, under Article 2180 of the New Civil Code.

ES Trucking is considered a common carrier required to secure a Certificate of Public Convenience.

Article 1732 of the Civil Code defines common carriers as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

The Land Transportation and Traffic Code distinguished the classification of vehicles as follows:

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[42] RULES OF COURT, Rule 111, Sec. 1.

[43] RULES OF COURT, Rule 111, Sec. 3.

[44] CIVIL CODE, Art. 2177.

[45] CIVIL CODE, Art. 31.

x x x x x x x x x

(a) *Private*. – Motor vehicles registered under this classification shall not be used for hire under any circumstance.

(b) *For Hire*. – Motor vehicles registered under this classification are those covered by certificates of public convenience, or special permits issued by the Board of Transportation, and shall be subject to the provisions of the Public Service Act and the rules and regulations issued thereunder, as well as the provisions of this Act.

x x x x x x x x x[46]

The requirement for vehicles for hire to obtain a Certificate of Public Convenience from the Land Transportation Franchising and Regulatory Board (LTFRB) was emphasized in LTFRB Memorandum Circular Number 98-027 which explicitly states:

Subject: **FRANCHISE FOR DUMP TRUCK AND OTHER PRIVATE VEHICLES USED AS "FOR HIRE"**

Pursuant to the provisions of Section 13 of C.A. No. 146, as amended (otherwise known as the Public Service Act), in relation to Section 15, thereof, a motorized vehicle used as public land transportation shall first secure a Certificate of Public Convenience or franchise before it can be operated as "for-hire".

In view hereof, **the owners of all dump/ cargo trucks and other private vehicles rented out for a fee, are hereby required to apply for and secure franchises from this Board or from its regional offices in their respective jurisdictions, to legitimize their operation**.

Parties, customers, or clients of dump/ cargo truck or private vehicle providers are urged to require the production/ presentation by the operators of the franchise or authority from the Board to operate the services offered before hiring them.

x x x[47] (Emphasis supplied.)

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[46] Amendments to Republic Act No. 4136, otherwise known as the "Land Transportation and Traffic Code," Batas Pambansa Blg. 74, June 11, 1980.

[47] Land Transportation Franchising & Regulatory Board Memorandum Circular Number 98-027.

In this case, the Heirs of Catalina established through preponderance of evidence that, at the time of the incident, the vehicle was being used as a truck for hire without securing the necessary franchise from the LTFRB. Edgardo Ruste's testimony regarding the nature of the registration of the vehicle is crucial in concluding that it is not duly registered with the LTFRB. ES Trucking's flawed understanding of the concept of a common carrier was highlighted in the testimony of Edgardo Rustre, the relevant portion of which is reproduced below:

ATTY. FAUNDO, Bernardo Jr. C:

Q Your truck bears Plate No. NAO 152, correct? This truck?

A That's correct; if that's what appears in the document (*sic*) that's correct.

Q The trailer plate number is JZA 163, correct?

A Also correct.

Q So you registered the truck and the trailer. They have different registrations?

A yes.

Q The truck bears the plate number NAO 152 in green?

A Yes.

Q Green prints?

A Yes that's the original

Q Isn't it (*sic*) a fact that it should be a yellow print?

A No, yellow plate once we register in LTFRB

Q You mean to say Mr. Witness you did not register it with LTFRB?

A We registered it with the LTFRB but because of some differences that we were not able to have it change plate to register, but it is in the list of the LTFRB that we filed franchise. In fact, after this incident when you filed the complaint LTFRB cancelled that particular unit for registration but we did not go on with the registration with the LTFRB because once you register with the LTFRB you have to change plate with the LTO.

Q Mr. Witness, when you register this truck with the LTFRB you are supposed to be given a yellow plate, correct?

A No, LTFRB is not the one giving the yellow plate, it's the LTO.

Q In other words, when the yellow plate is issued by the LTO what does it mean?

A I cannot answer you what does it mean because there is no confirmation from LTFRB that we can transfer, change the plate from green to yellow.

x x x x x x x x x

Q **So because you were not able to get a yellow plate you were not issued a Certificate of Public Convenience insofar as this truck is concerned?**

A **Yes...**

Q **You were not issued?**

A **We were not issued certification, confirmation.**

Q And when you say you were not issued certification, what kind of certification?

A A Certification issued to us is the franchise, that covers the filing of getting a yellow print with the LTFRB. We have furnished list of units for registration into yellow plate.

Q **So this Prime Mover, this truck, was not issued a franchise by the LTFRB?**

A **There was none.**

Q So if you have no franchise you cannot operate?

A No ...

Q As a trucking service?

A **No, we can operate because we are using it with our own [sic] as a private company. That is registered**.

Q At the time of the incident, Mr. Witness, you were moving a cargo or you were able to move a cargo, correct?

A Yes.

Q Whose cargo was that? Is that your own cargo or cargo of a customer?

A That's our cargo.

Q Your very own cargo?

A No, cargo of our customer.

Q What's the name of the customer?

A That I cannot identify to you.

Q But you are very sure it was a customer?

A Yes.[48] (Emphasis and underscoring supplied.)

From the foregoing, it is clear to Us that ES Trucking engaged in a truck for hire business, offering their vehicles to transport the cargo of its customers. Noticeably, Edgardo Ruste admitted that they filed an application to have the vehicle included in their Certificate of Public Convenience yet their application was never granted.[49] This is inconsistent with his own claim

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[48] TSN dated January 19, 2015, pp. 10-12.

[49] *Id.*

that ES Trucking does not need to register with the LTFRB because it is not a common carrier but a private company.[50] The fact that they considered applying for the inclusion of the vehicle in their Certificate of Public Convenience signifies that they are aware of the franchise requirement of the LTFRB. ES Trucking cannot be excused simply because it is not registered with the LTFRB and it is a private company. ES Trucking cannot be exonerated from liability and benefit from its own violation of the laws and rules governing trucks for hire.

As an entity engaged in the truck for hire business, it should have complied with the requirements of the Land Transportation and Traffic Code and the issuances of the LTFRB. Despite being registered as a private vehicle, the actual use of the vehicle and the clientele to whom ES Trucking offers its services remain controlling. The failure to register the vehicle as a public vehicle or a common carrier does not negate the true nature of the vehicle. It is settled that:

> A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements. The business of a common carrier impinges directly and intimately upon the safety and wellbeing and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.[51]

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[50] *Id.*

[51] *De Guzman v. Court of Appeals,* 250 Phil. 613, 619-620 (1988).

Moreover, a careful scrutiny of the vehicle reveals that, while the plate number of the trailer was in the color yellow, signifying that it is a public utility vehicle, the prime mover truck's plate number was in the color green, signifying that it is registered as a private vehicle.[52] As admitted by PO3 Agbalos and Edgardo Ruste, vehicles covered by a Certificate of Public Convenience are issued yellow plates, while private vehicles are issued green or white plates.[53] In this case, the prime mover truck was issued a green plate, while the trailer attached to it at the time of the incident had a yellow plate.[54] We cannot simply ignore the vital information that the trailer attached to the prime mover truck carried a yellow plate. It would be absurd to consider the prime mover truck private when it is offered for hire to the public. It would also be contrary to logic to consider only the trailer with the yellow plate as public utility vehicle, because the trailer cannot be moved and utilized for its intended purpose without being attached to the prime mover truck. It is more sensible to conclude that ES Trucking is a common carrier and that the prime mover truck should have been covered by a Certificate of Public Convenience.

It is also important to point out that the vehicle had been registered under the name of ES Trucking as early as September 17, 2009, yet the vehicle remained unregistered with the LTFRB at the time of the incident. The Order[55] dated July 29, 2013 of the LTFRB showed that ES Trucking failed to register the subject vehicle as "FOR HIRE" within one month from the receipt of the approved franchise in accordance with the conditions of the certificate of public convenience, particularly paragraph 2 therein. Thus, the certificate of public convenience granted in favor of ES Trucking on April 27, 2011 was cancelled on February 3, 2012.

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[52] TSN dated September 8, 2014, pp. 10-11.

[53] TSN dated January 19, 2015, pp. 10-12.

[54] *Id.*

[55] Exhibit "O-1" of Plaintiff's Exhibits.

ES Trucking is required to observe due diligence in the selection and supervision of employees pursuant to Article 2180 of the Civil Code.

The basis for the liability of an employer of an erring driver resulting to injury or damage to a stranger may be found in Articles 2176 and 2180 of the New Civil Code, which state:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)

In this case, it has been proven by preponderant evidence that Timtim recklessly drove the prime mover truck which caused the death of Catalina. Although the employer is not the actual tortfeasor, the law makes the employer vicariously liable on the basis of the civil law principle of *paterfamilias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another. When the employee causes damage due to his own negligence while performing his own duties, there arises a presumption that the employer is negligent. This may be rebutted only by proof of observance of the diligence of a good father of a family. The "diligence of

a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees.[56]

In the selection of its prospective employees, the employer is required to examine them as to their qualifications, experience, and service records. ES Trucking did not require Timtim to present any document other than his professional driver's license and job application form. Edgardo Ruste's testimony confirms the apparent laxity in the procedure for hiring and selection of ES Trucking, as disclosed in the following exchange:

Q OK, you said that you looked into their license. So, he was duly licensed?
A He is a professional licensed up to the maximum qualification.
Q He suffers none of the restrictions based on the driver's license?
A No, he is a qualified driver to the maximum.
Q So, he can drive the truck, correct?
A Yes.

x x x x x x x x x

Q OK, you also said you based it on performance. What do you mean by performance?
A Performance from where he came from.
Q Ah ... okay. So where did he come from?
A He came from a company in manila which is the one also supplying a truck with us in Zamboanga City. So we called up the owner and verifying the status of this driver. He is from Zamboanga, he came from Manila, transferred to his family in this place.
Q In other words, you made a background investigation on this person because you called his previous employer.
A The background as well as his performance with the company.
Q But you don't have documents to show that he worked in that company, correct?
A He did not present to us any evidence or documents.
Q So you have none?
A **Yes but as a company we don't require documents about his history. All we ask is the driver's license and verify it from where he came from.**

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[56] *Reyes v. Doctolero*, G.R. No. 185597, August 2, 2017.

Q So that's confirmed, you just verified, no document?
A Yes. Of course there is document, the application form.
Q Ah, that's the only one, there were no attachments in the application form?
A No. That's normal SOP.
Q You made mention of experience. How did you determine his experience?
A Again it's through verification from the former employer.

x x x x x x x x x

ATTY. FAUNDO, Bernardo Jr. C:
Q OK, so based on your investigation how long did he work with Pioneer Tractor?
A He worked there for about two years.
Q So that was his only experience when you obtained his services?
A Well, with regards [sic] to experience, Your Honor, it is not that you determine that you have to go a longer length of service as a driver. It is what kind of equipment that you are dealing with what kind of equipment you are driving because an ordinary driver cannot drive a tractor ...
Q Uh-huh. And what other experience did you gather based on your background investigation??
A No more experience, Your Honor, except what the company requires in hiring a driver then we are done with it.
Q Mr. Witness, what other requirements did you ask your driver before he was hired? I'm referring to Timtim.
A Only job application and driver's license.
Q Those were the only?
A Yes.

x x x x x x x x x

Q Did you not try to determine his moral character?
A His moral character? He has a good character because of our verification in Manila.
Q In other words, you did not check whether he has records with the police or NBI?
A We did not.
Q Or in the barangay?
A We did not because it's not the policy of the company it depends. Sometimes if we look at the applicant he is doubtful then therefore we let him go through the process

of having drug test and other NBI clearance. We are private company and we are not a corporation.

Q OK, so that [sic] settled. He did not present any record of his good moral character, like the NBI, police or barangay clearance. There is none, okay?

A We don't require it.

Q OK. Now, did you not require him to attend trainings or seminars?

A **No we did not because in the first place acquiring a license he passed already the seminar with the LTO or else he will not be issued a driver's license.**

Q Are you not aware, Mr. Witness, that for public utility vehicles aside from acquiring the professional license they are also supposed to attend training and seminar on transport management road safety? Are you not aware of that?

A He did not attend seminar with the LTFRB because that unit was not registered or was not issued a confirmation by the LTFRB.

Q So while Mr. Timtim was working under your management he never attended any seminar or transport management and road safety, correct?

A None.

Q He never showed you any document that he also attended a transport management road safety while employed in another company?

A None because we did not require him.[57] (Emphasis supplied.)

Even if Timtim is a holder of a professional driver's license and is permitted to drive restriction no. 8, which refers to "ARTICULATED VEHICLE 4501 KGS & ABOVE G V W" and includes the vehicle (with gross vehicle weight capacity of 8000kg), no evidence was presented to prove that he was certified to drive a prime mover truck by Technical Education and Skills Development Authority (TESDA).[58] DOTr DO No. 2011-25 requires, as an additional requirement for the issuance of certificate of public convenience, that drivers of heavy trucks should be certified by TESDA with "Driving National Certificate

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[57] TSN dated January 19, 2015, pp. 13-17.

[58] *Id.* at 17.

(NC) III."[59] ES Trucking should not have been satisfied with the mere possession of a professional driver's license. Having failed to present proof that Timtim possesses the requisite certification from TESDA, ES Trucking cannot claim to have exercised due diligence in the selection and supervision of its employees.

ES Trucking was not only negligent in hiring Timtim but even in supervising the latter. ES Trucking permitted Timtim to drive the subject vehicle to transport goods of its customers knowing that the vehicle is not duly registered with the LTFRB.

In addition, it must be highlighted that ES Trucking is not only at fault for blatantly disregarding pertinent laws and rules governing trucks for hire but is also guilty of violating its undertaking to preserve the vehicle in its original state while the case is pending. Altering the body number of the vehicle[60] to avoid detection shows ES Trucking's wanton disregard of this undertaking and evident bad faith.

Atty. Faundo, counsel of the Heirs of Catalina, pointed out that the vehicle was released to the manager of ES Trucking, Sumarna Ruste, with an undertaking to assume custody of the truck at the company compound and to preserve its original condition pending investigation. However, at about 10:10 a.m. on July 19, 2013, the same vehicle was apprehended while trying to deliver goods. It was noticed that the original body no. 5 was altered to no. 15,[61] presumably to avoid being detected by the authorities.

Considering all the evidence on record, We find that ES Trucking failed to sufficiently exercise the diligence of a good father of a family in the selection and supervision of its employee, Timtim.

The Heirs of Catalina are entitled to damages.

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[59] DOTr DO No. 2011-25.

[60] Exhibit "P" and "P-1" of Plaintiff's Exhibits.

[61] *Id.*

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

> Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis supplied.)

Thus, only the expenses proven by credible evidence may be awarded. In this case, the funeral and burial expenses amounting to ₱362,565.60 were duly supported with official receipts when presented in the RTC.

Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00.[62] Thus, ES Trucking is liable to pay the Heirs of Catalina ₱50,000.00 for her death.

With regard to the award of moral damages, Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity. We find an award of ₱100,000.00 as moral damages sufficient to answer for the mental anguish suffered by the Heirs of Catalina because of her death.

In addition, We award exemplary damages upon finding that ES Trucking acted with gross negligence for failing to duly register the prime mover truck with the appropriate government agency, and for failing to impose a stringent selection procedure in hiring and supervising Timtim. The award of exemplary damages is justified further by ES Trucking's wanton disregard of the law and evident bad faith through its highly reprehensible conduct of altering the body number of the prime mover truck to avoid detection, in violation of its undertaking to preserve the original state of the vehicle while the case is pending. To ensure that such behavior will not be repeated, ES Trucking is directed to pay ₱50,000.00 as exemplary damages to the Heirs of Catalina.

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[62] *Torreon v. Aparra, Jr.*, G.R. No. 188493, December 13, 2017.

With respect to the award of litigation expenses and attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. Considering the protracted litigation of this dispute, an award of ₱50,000.00 as attorney's fees is awarded to the Heirs of Catalina.

Pursuant to the Court's ruling in *Nacar v. Gallery Frames*,[63] the Heirs of Catalina are entitled to interest of twelve percent (12%) *per annum* of the total monetary award, computed from the date of the filing of the complaint for quasi-delict on June 14, 2013 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.[64]

WHEREFORE, the Decision dated February 15, 2018 Resolution dated September 25, 2018 of the Court of Appeals in CA-G.R. CV No. 04394-MIN is hereby **REVERSED** and **SET ASIDE**.

Respondent ES Trucking Forwarders is **DECLARED** liable to pay petitioners Heirs of Catalina Mendoza the following:

a. ₱362,565.60 as actual damages for Catalina Mendoza's funeral expenses;
b. ₱50,000.00 as civil indemnity for the death of Catalina Mendoza;
c. ₱100,000.00 as moral damages for Catalina Mendoza's heirs;
d. ₱50,000.00 as exemplary damages;
e. ₱50,000.00 as attorney's fees; and
f. costs of suit

Interest at twelve percent (12%) *per annum* of the total monetary awards, computed from the date of the filing of the complaint for quasi-delict on June 14, 2013 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction shall also be imposed on the total judgment award.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

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[63] 716 Phil. 267 (2013).

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

FIRST DIVISION

[G.R. No. 247658. February 17, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO PIGAR *y* AMBAYANAN @ "Jerry"*** **and REYNALDO PIGAR *y* CODILLA @ "Lawlaw",** *accused-appellants,*

ROY PIGAR *y* AMBAYANAN @ "Biroy", BUENAVENTURA PIGAR *y* AMBAYANAN @ "Mokmok" (Deceased), WELFREDO PIGAR *y* CODILLA @ "Dako", VICTOR COLASITO @ "Nonoy", JORLY COLASITO, WARAY COLASITO, JOEBERT COLASITO @ "Gimong", DODO COLASITO @ "Rex", and two JOHN DOES, *accused.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; ELEMENTS. —** Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DUE DEFERENCE AND RESPECT SHALL BE GIVEN TO THE TRIAL COURT'S FACTUAL FINDINGS THEREON, ABSENT ANY SHOWING THAT IT HAD OVERLOOKED CIRCUMSTANCES THAT WOULD HAVE AFFECTED THE FINAL OUTCOME OF THE CASE. —** When the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals x x x.

* Sometimes referred to as "Gerry."

3. ID.; ID.; ID.; WITNESSES OF STARTLING OCCURRENCES REACT DIFFERENTLY DEPENDING UPON THEIR SITUATION AND STATE OF MIND, AND THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING OR FRIGHTFUL EXPERIENCE. — [O]n Marietta's supposed failure to lend succor to her father who was being attacked, suffice it to state that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE CONSISTENT AND CATEGORICAL DECLARATION OF CREDIBLE WITNESSES ON AFFIRMATIVE MATTERS. — [D]enial, if not substantiated by clear and convincing evidence, as in this case, is a negative and self-serving defense. It carries scant, if not nil, evidentiary value. It cannot prevail over the consistent and categorical declarations of credible witnesses on affirmative matters.

5. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE NOT ONLY THAT HE WAS AT SOME OTHER PLACE AT THE TIME OF THE COMMISSION OF THE CRIME BUT ALSO THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS* OR WITHIN ITS IMMEDIATE VICINITY. — [F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused-appellant's presence at the crime scene, as in this case, the alibi will not hold water. Here, "Lawlaw" claims to have been working in the bakery at the time of the incident. Aside from being an

unsubstantiated claim, it was not shown that it was physically impossible for "Lawlaw" to be at the *situs criminis*. Notably, the alleged bakery is also located at the same barangay where Feliciano, Sr.'s house is located.

6. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; PRESENT WHENEVER THERE IS A NOTORIOUS INEQUALITY OF FORCES BETWEEN THE VICTIM AND THE AGGRESSOR, ASSUMING A SITUATION OF SUPERIORITY OF STRENGTH NOTORIOUSLY ADVANTAGEOUS FOR THE AGGRESSOR SELECTED OR TAKEN ADVANTAGE OF BY HIM IN THE COMMISSION OF THE CRIME. —** Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The inequality of forces in this case is beyond doubt. Feliciano, Sr. was a thin 52-year-old man who was slow moving according to his daughter. Nonetheless, appellants attacked Feliciano, Sr. with nine (9) persons. The number alone shows the inequality of strength between the victim and the aggressors. This, coupled with the fact that Feliciano, Sr. was already a frail man, supports the finding of abuse of superior strength. This circumstance qualifies the killing of Feliciano, Sr. into murder.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; DESIGNATION OF THE OFFENSE; AN AGGRAVATING CIRCUMSTANCE CANNOT BE APPRECIATED IF NOT ALLEGED IN THE INFORMATION EVEN IF ITS PRESENCE IS DULY PROVEN BY THE PROSECUTION. —** Going now to the ordinary aggravating circumstance of dwelling. Section 8, Rule 110 of the Revised Rules of Court x x x is in consonance with the constitutional rights of the accused to be informed of the nature and cause of accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Hence, even if the prosecution has duly proven the presence of any of these circumstances, the Court cannot appreciate the same if they were not alleged in the Information, as in here x x x. Indeed, that the killing happened

in the victim's dwelling was not alleged in the Information. Hence, the trial court and the Court of Appeals cannot appreciate dwelling as an aggravating circumstance.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision[1] dated February 26, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02483, affirming the conviction of appellants Reynaldo Pigar *y* Ambayanan *alias* "Jerry" and Reynaldo Pigar *y* Codilla *alias* "Lawlaw" for murder under Article 248 of the Revised Penal Code (RPC), sentencing them to *reclusion perpetua* without eligibility for parole and requiring them each to pay ₱100,000.00 as civil indemnity, moral damages and exemplary damages, and ₱50,000.00 as temperate damages.

Antecedents

Accused-appellants Reynaldo Pigar *y* Ambayanan *alias* "Jerry" and Reynaldo Pigar *y* Codilla *alias* "Lawlaw," along with Roy Pigar *y* Ambayanan @ "Biroy," Buenaventura Pigar *y* Ambayanan @ "Mokmok" (Deceased), Welfredo Pigar *y* Codilla @ "Dako," Victor Colasito @ "Nonoy," Jorly Colasito, Waray Colasito, Joebert Colasito @ "Gimong," Dodo Colasito @ "Rex," and two John Does were charged with murder under Article 248 of the Revised Penal Code, *viz.*:

That on or about the 17th day of August 2009 in the Municipality of Capoocan, Province of Leyte, Philippines and within the jurisdiction

[1] Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by now Supreme Court Associate Justice Edgardo L. Delos Santos and Associate Justice Emily R. Aliño-Geluz, *rollo*, pp. 100-112.

of the Honorable Court, the said accused, conspiring, confederating and mutually helping each other, with intent to kill, armed with bladed weapons and bamboo poles with sharp pointed edges locally known as "Bangkaw," with treachery, evident premeditation, [abuse] (of) superior strength, employing means to weaken the defense and means to insure or afford impunity, did then and there willfully, unlawfully and feloniously attack, assault, [strike], stab and hack to death Feliciano S. Garces, Sr. inflicting upon the latter fatal wounds which caused his direct death.

CONTRARY TO LAW.[2]

Only Buenaventura "Mokmok" Pigar and appellants Reynaldo "Jerry" Pigar and Reynaldo Pigar "Lawlaw" Codilla got arrested.

When arraigned, all three (3) pleaded not guilty.[3] Pending trial, "Mokmok" passed away. Hence, the charge against him was dismissed.[4] Trial, nonetheless, proceeded as for "Jerry" and "Lawlaw."

Version of the Prosecution[5]

On August 17, 2009, around 6 o'clock in the evening, on his way home, Edgardo Garces, son of the victim, saw his co-worker Rogelio Tañala and Roy Pigar quarrelling. Edgardo tried to pacify them. Roy resented it and threw a stone at Edgardo. In retaliation, the latter delivered a fist blow but the former dodged it. This time, a certain Gagante pacified Roy and Edgardo. After the incident, Edgardo rushed home to warn his family because he was afraid that Roy (who was then drunk) would take revenge.

At that time, Edgardo's sister, Marietta Garces, was tending her kids inside their home. Edgardo and Marietta were children of Feliciano, Sr. who was then sleeping in his room. When Edgardo came in, he immediately instructed Marietta and the

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[2] CA *rollo*, p. 101.

[3] *Id.* at 55.

[4] *Id.*

[5] *Id.* at 57-60.

kids to transfer to their hut just across the street. Then, Edgardo left again to seek help from their uncle.

While Marietta was inside the hut, she saw Roy, with two (2) others, arrive on board a motorcycle. Roy stopped in front of their house and threw stones. Their father got roused from his sleep, stepped out, and shouted at Roy and his companions. One (1) of the neighbors witnessed the brewing confrontation and advised Feliciano, Sr. to let it go since Roy and his companions were drunk. Soon, ten (10) men arrived and surrounded the house, the men included appellants "Jerry" and "Lawlaw." Feliciano, Sr. then ran back inside the house, but some of the men ran after him. As they caught up with him inside the house, they hacked him with bolos and a bamboo spear, locally known as *bangkaw*. He ran out of the house only to be met by the other men who repeatedly hacked and poked him with their own bolos and *bangkaws*. At this point, Edgardo arrived. A gun shot then was heard. Thereupon, Roy signaled his companions to leave the place and everyone heeded.

Feliciano, Sr. was rushed to the hospital but was pronounced dead on arrival. At the time of the incident, Feliciano, Sr. was a thin fifty-two (52) year old man who moved slowly.

Municipal Health Officer Doctor Bibiana O. Cardente examined Feliciano, Sr.'s body. She found seventeen (17) stab wounds in his body. Five (5) were fatal, including a wound that damaged Feliciano, Sr.'s brain tissues.

Version of the Defense[6]

On August 17, 2009, Jerry and his companions passed by Feliciano, Sr.'s house, where they saw the latter standing along the road. Feliciano, Sr. suddenly hacked "Jerry" with a weapon. "Jerry" sustained wounds in his right elbow and in the right side of his head. Jerry got hold of Feliciano, Sr.'s weapon and used it on the latter. While "Jerry" was striking Feliciano, Sr., his companions helped by hitting Feliciano, Sr. with pieces of wood. "Jerry" hacked Feliciano, Sr. around seventeen (17) times and killed the latter as a result.

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[6] CA *rollo*, pp. 104-105.

On cross, "Jerry" admitted that he purposely went to Feliciano, Sr.'s house with intent of killing Edgardo who had a misunderstanding with his older brother Roy. Jerry, though, testified that "Lawlaw" and "Mokmok" did not perpetrate the incident. They were included in the complaint only because Feliciano, Sr.'s family members were angry.

"Lawlaw" corroborated Jerry's claim. He reiterated that he had no participation in the killing. At the time of the incident, he was allegedly working in the bakery.

Ruling of the Trial Court

By Judgment[7] dated February 10, 2017, the Regional Trial Court (RTC)-Branch 36, Carigara, Leyte pronounced appellants guilty of murder, *viz.*:

> **WHEREFORE,** premises considered, Judgment is hereby rendered, finding the two (2) accused **Reynaldo Pigar y Ambayanan** @ "Jerry" **and Reynaldo Pigar y Codilla** @ "Lawlaw," **GUILTY** beyond reasonable doubt of conspiring in the killing of the victim [Feliciano S. Garces, Sr.]. There being the qualifying circumstance of abuse of superior strength and one ordinary aggravating circumstance of domicile proven by the prosecution without any mitigating circumstance to counter the same, both accused afore-named are hereby sentenced to suffer ***reclusion perpetua*** without eligibility for parole.
>
> These two accused are also **ORDERED** to indemnify jointly and severally, the Heirs of Feliciano S. Garces, Sr. the amounts of **Php100,000.00** for civil indemnity ex delict(o); **Php100,000.00** for moral damages; **Php100,000.00** for exemplary damages; and **Php50,000.00** for temperate damages.
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> **SO ORDERED**.[8]

Ruling of the Court of Appeals

On appeal, the Court of Appeals affirmed through its assailed Decision dated February 26, 2019.[9] It imposed six percent (6%) annual interest on all monetary awards.

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[7] Penned by Judge Lauro A.P. Castillo, Jr., *id.* at 54-69.

[8] *Id.* at 69.

[9] *Id.* at 100-112.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for their acquittal.

Issue

Did the Court of Appeals err in affirming appellants' conviction for murder?

Ruling

Appellants faulted the Court of Appeals for affirming their conviction despite the alleged inconsistencies in the testimonies of the prosecution witnesses, specifically on: (a) the participation of "Lawlaw" in the brutal killing of Feliciano, Sr.; (b) how long the incident lasted; and (c) where exactly did the attack of Feliciano, Sr. began. It was also purportedly unclear whether Marietta had actually seen the incident from the hut where she was at that time. Too, it was allegedly contrary to human experience that Marietta, despite seeing her father being stabbed to death, did nothing to help the latter.[10]

Appellants further faulted both the trial court and the Court of Appeals for appreciating abuse of superior strength in addition to the qualifying circumstance of treachery. It is settled that when abuse of superior strength concurs with treachery, the former is simply absorbed in the latter.[11]

Lastly, appellants claim that denial and alibi are not always undeserving of credit for there are times when the accused has no other possible defense but denial.[12]

The Court affirms with modification.

Article 248 of the RPC, as amended by Republic Act No. 7659 (RA 7659)[13] provides:

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[10] See Appellants' Brief dated January 5, 2018, *id.* at 44-50.

[11] *Id.* at 50-51.

[12] *Id.* at 51.

[13] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x x x x x x

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.[14]

There is no question here regarding the presence of the first (1st) and fourth (4th) elements. The victim died of multiple stab wounds as testified to by examining Doctor Bibiana O. Cardente. There is also no evidence showing that Feliciano, Sr. and appellants are related by affinity or consanguinity. Hence, the killing is not parricide.

Appellants, nonetheless, deny the existence of the second (2nd) and third (3rd) elements. They claim that the testimonies of the prosecution witnesses are *incredible, illogical, and grossly inconsistent with human experience*, hence, should not have been given credence.

The Court disagrees.

When the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals,[15] as in this case. ***People v. Collamat, et al.***,[16] elucidates:

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[14] *People v. Flores, et al.*, G.R. No. 228886, August 08, 2018.

[15] *People v. Pulgo*, 813 Phil. 205, 212 (2017).

[16] G.R. No. 218200, August 15, 2018.

In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."

We explained in *Reyes, Jr. v. Court of Appeals* that the findings of the trial court will not be overturned absent any clear showing that it had *overlooked, misunderstood* or *misapplied* some facts or circumstances of weight or substance that could have altered the outcome of the case, *viz.*:

> Also, the issue hinges on credibility of witnesses. We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths. It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if the inconsistencies do not pertain to material points. (Emphasis supplied)
>
> x x x x x x x x x

Here, prosecution witnesses Marietta and Edgardo consistently and positively identified appellants and their companions as the ones who simultaneously stabbed their father to death. To repeat, the trial court's factual findings as to the credibility of the witnesses are to be accorded the greatest respect. More so when these factual findings carry the full concurrence of the Court of Appeals, as in this case.

Be that as it may, the alleged inconsistencies in their testimonies pertaining to how long the incident took place and where exactly the attack on the victim began all refer to minor details which do not impair or change the fact that appellants attacked their father and stabbed him to death.

In ***People v. Pulgo***,[17] the Court reiterates that inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant. Such inconsistencies reinforce rather than weaken credibility. What is vital is that the witnesses were unwavering and consistent in identifying appellants as their father's assailant.

Finally, on Marietta's supposed failure to lend succor to her father who was being attacked, suffice it to state that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility.[18]

As for the participation of "Lawlaw" in the killing of the victim, surely, Marietta and Edgardo's positive identification of "Lawlaw" as one of those who alternated in beating up and stabbing their father, again, prevails over the denial and alibi of "Lawlaw." Although "Jerry" sought to exculpate him of any participation in the killing, the strength and reliability of Marietta and Edgardo's eyewitness accounts remain in place, nay, unshaken.

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[17] *Supra* note 17, at 215.

[18] *People v. Banez, et al.*, 770 Phil. 40, 46 (2015).

Be that as it may, denial, if not substantiated by clear and convincing evidence, as in this case, is a negative and self-serving defense. It carries scant, if not nil, evidentiary value. It cannot prevail over the consistent and categorical declarations of credible witnesses on affirmative matters.[19] Too, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused-appellant's presence at the crime scene, as in this case, the alibi will not hold water.[20] Here, "Lawlaw" claims to have been working in the bakery at the time of the incident. Aside from being an unsubstantiated claim, it was not shown that it was physically impossible for "Lawlaw" to be at the *situs criminis*. Notably, the alleged bakery is also located at the same barangay where Feliciano, Sr.'s house is located.

In any case, it does not really matter whether "Lawlaw" actually caused one or more of the fatal or not so fatal wounds sustained by Feliciano, Sr. Notably, appellants and their co-accused were charged to have *conspired* with each other in killing Feliciano, Sr. In conspiracy, the act of one is the act of all. ***People v. Lababo***[21] is apropos, *viz.*:

> Here, it was established that Wenefredo and FFF were present at the scene of the crime, both wielding a bolo. However, it was also established that their alleged participation thereat did not go beyond being present and holding said weapons. As a matter of fact, both the victims only sustained gunshot wounds. The question now is this: Is Wenefredo and FFF's mere presence at the scene of the crime, while armed with bolos, sufficient to prove beyond reasonable doubt that they conspired with Benito to commit the crimes imputed against them?

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[19] *People v. Petalino*, G.R. No. 213222, September 24, 2018.

[20] *People v. Ambatang*, 808 Phil. 236, 243 (2017).

[21] G.R. No. 234651, June 06, 2018, 865 SCRA 609, 628-629.

We rule in the affirmative.

x x x x x x x x x

To Our mind, their overt act of staying in close proximity while Benito executes the crime served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof. We are sufficiently convinced that their presence thereat has no doubt, encouraged Benito and increased the odds against the victims, especially since they were all wielding lethal weapons.

Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime. Under the circumstances, there is no evidence to support a conclusion that they have nothing to do with the killing. We are, therefore, convinced that indeed, the three conspired to commit the crimes charged. (Emphasis supplied)

Attendant Circumstances

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[22]

The inequality of forces in this case is beyond doubt. Feliciano, Sr. was a thin 52-year-old man who was slow moving according to his daughter. Nonetheless, appellants attacked Feliciano, Sr. with nine (9) persons. The number alone shows the inequality of strength between the victim and the aggressors. This, coupled with the fact that Feliciano, Sr. was already a frail man, supports the finding of abuse of superior strength. This circumstance qualifies the killing of Feliciano, Sr. into murder.[23]

As for treachery, appellants are mistaken in claiming that the trial court and the Court of Appeals appreciated this

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[22] *People v. Cortez, et al.*, G.R. No. 239137, December 05, 2018.

[23] *Id.*

circumstance over and above the circumstance of abuse of superior strength. The Court of Appeals actually said it was incorrect for appellants to point that the circumstance of abuse of superior strength was deemed absorbed in treachery because, in the first place, the RTC did not even appreciate treachery as an attendant circumstance here.[24]

In any event, we find that treachery, indeed, did not attend the victim's killing. Records show that before Feliciano, Sr. got killed, Roy visited his house first and already tried to hack him but missed. Thereafter, Roy sped off on board his motorcycle. At that time, Feliciano, Sr. was already deemed to have known of Roy's intention to harm him and it was not remote at all that Roy would intend to return soon to finish his business with the victim. For this reason, Feliciano, Sr. could have already prepared to defend himself should Roy indeed return to harm him anew.

In ***People v. Moreno***,[25] the Court emphasized that the essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. As discussed, Feliciano, Sr. was no longer an unsuspecting victim when Roy came back with eight (8) companions and together fatally injured him.

Going now to the ordinary aggravating circumstance of dwelling. Section 8, Rule 110 of the Revised Rules of Court provides:

> Section 8. *Designation of the offense*. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, **and specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied)

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[24] CA *rollo*, p. 111.

[25] G.R. No. 217889, March 14, 2018, 859 SCRA 229, 248.

The provision is in consonance with the constitutional rights of the accused to be informed of the nature and cause of accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Hence, even if the prosecution has duly proven the presence of any of these circumstances, the Court cannot appreciate the same if they were not alleged in the Information,[26] as in here, *viz.*:

> That on or about the 17th day of August 2009 in the Municipality of Capoocan, Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, conspiring, confederating and mutually helping each other, with intent to kill, armed with bladed weapons and bamboo poles with sharp pointed edges locally known as "Bangkaw," with treachery, evident premeditation, [abuse] (of) superior strength, employing means to weaken the defense and means to insure or afford impunity, did then and there willfully, unlawfully and feloniously attack, assault, [strike], stab and hack to death Feliciano S. Garces, Sr. inflicting upon the latter fatal wounds which caused his direct death.
>
> CONTRARY TO LAW.[27]

Indeed, that the killing happened in the victim's dwelling was not alleged in the information. Hence, the trial court and the Court of Appeals cannot appreciate dwelling as an aggravating circumstance.

Penalty

Article 248 of the RPC provides for the penalty:

> Article 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

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[26] *People v. Sota, et al.*, G.R. No. 203121, November 29, 2017, 847 SCRA 113, 143.

[27] CA *rollo*, p. 101.

Here, without the additional aggravating circumstance of dwelling, appellants must be meted with the lower penalty of *reclusion perpetua* only, not death, in accordance with Article 63 of the RPC.[28] Per Administrative Matter No. 15-08-02-SC,[29] the term *"without eligibility for parole"* need not be specified.

On the monetary awards, ***People v. Jugueta***[30] pronounced:

I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

x x x x x x x x x

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

a. Civil indemnity — ₱75,000.00
b. Moral damages — ₱75,000.00
c. Exemplary damages — ₱75,000.00

Jugueta[31] and ***People v. Gervero***[32] ordered, as well, *"when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded."* In addition, the civil indemnity, moral damages, exemplary damages and temperate damages payable by the appellants are subject to interest at the rate of

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[28] Art. 63. *Rules for the application of indivisible penalties*. — x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

[29] Guidelines for the Proper Use of the Phrase "without eligibility for parole" in Indivisible Penalties, August 4, 2015; See also *People v. Ursua y Bernal*, 819 Phil. 467, 476 (2017).

[30] 783 Phil. 806, 847-848 (2016).

[31] *Id.* at 853.

[32] G.R. No. 206725, July 11, 2018.

six percent (6%) per annum from the finality of this decision until fully paid.

ACCORDINGLY, the appeal is **DISMISSED**. The Decision dated February 26, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02483 is **AFFIRMED** with **MODIFICATION**.

Appellants Reynaldo Pigar *y* Ambayanan *alias* "Jerry" and Reynaldo Pigar *y* Codilla *alias* "Lawlaw" are **GUILTY** of **Murder** under Article 248 of the Revised Penal Code. They are each sentenced to ***reclusion perpetua***. They are further ordered to **PAY** the heirs of Feliciano S. Garces, Sr. the following monetary awards:

(1) ₱75,000.00 as civil indemnity;
(2) ₱75,000.00 as moral damages;
(3) ₱75,000.00 as exemplary damages; and
(4) ₱50,000.00 as temperate damages.

All monetary awards shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

INDEX

INDEX

ABUSE OF RIGHTS

***Bad faith* —** While it has submitted voluminous documents to show that its actions were justified by the terms of the Distributorship Agreement, PELI has not had the opportunity to prove that the foregoing acts mentioned in the Complaint were indeed made without malice and bad faith, since it was not even able to file an answer to Tocoms' complaint; the legal concept of bad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong; it includes "a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud; it is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous x x x statements"; bad faith under the law cannot be presumed; it must be established by clear and convincing evidence; as such, the case must be reinstated so that PELI may once and for all prove its *bona fides* in its dealings with Tocoms, in connection with the expiration of their Distribution Agreement. (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

***Elements* —** Most recently in *Chevron Philippines, Inc. v. Mendoza*, this Court has held that abuse of rights under Article 19 has three elements, namely: (1) the existence of a legal right or duty, (2) an exercise of such right or discharge of such duty in bad faith, and (3) such exercise of right or discharge of duty was made with the sole intent of prejudicing or injuring another; however, the Court has also held that: There is no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked; the question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case; cases such as *University of the East v. Jader* and the *Globe Mackay* case, where the Court did not utilize the foregoing threefold test in finding a violation of Article 19, have therefore led to

the following observation, *viz.*: The principle of abuse of rights may be invoked if it is proven that a right or duty was exercised in bad faith, regardless of whether it was for the sole intent of injuring another; it is the absence of good faith which is essential for the application of this principle; the foregoing discussion highlights *bad faith* as the crucial element to a violation of Article 19; the *mala fide* exercise of a legal right in accordance with Article 19 is penalized by Article 21, under which "any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage"; Article 19 imposes upon all persons exercising their legal rights the duty to act with justice, give everyone his due, and to observe honesty and good faith; failure to discharge such duties is compensable under Article 20 if the act is "contrary to law"; and under Article 21 if the act is legal but "contrary to morals, good customs, or public policy." (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

Nature and purpose — The nature and purpose of Article 19 of the Civil Code was discussed in *Globe Mackay Radio and Cable Corp. v. CA*, *viz.*: This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties; these standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith; the law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed; a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality; when a light is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held

responsible; while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation; generally, an action for damages under either Article 20 or Article 21 would be proper. (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

ABUSE OF SUPERIOR STRENGTH

***As a qualifying circumstance* —** Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime; the inequality of forces in this case is beyond doubt; Feliciano, Sr. was a thin 52-year-old man who was slow moving according to his daughter; appellants attacked him with nine (9) persons; the number alone shows the inequality of strength between the victim and the aggressors; coupled with the fact that Feliciano, Sr. was already a frail man, supports the finding of abuse of superior strength; this circumstance qualifies the killing of Feliciano, Sr. into murder. (People *vs.* Pigar @ "Jerry", *et al.*, G.R. No. 247658, Feb. 17, 2020) p. 939

— Abuse of superior strength was also present in the case for the killing of the three victims as there was a notorious inequality of forces between the accused-appellants as police officers and the three who were already weak from the beatings they had endured. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

ACTIONS, DISMISSAL OF

***Failure to prosecute* —** A dismissal of an action for failure to prosecute operates as a judgment on the merits; expressly provided under Section 3, Rule 17 of the Rules of Court, as amended; while the Court agrees with petitioners that the dismissal order had the effect of adjudication on the merits, our acquiescence ends there; dismissal

with prejudice means that there is an adjudication on the merits as well as a final disposition, barring the right to bring or maintain an action on the same claim or cause; an "adjudication on the merits" for *non prosequitor* cases imposes as a sanction "prejudice to the refiling of the same claim"; an involuntary dismissal generally acts as a judgment on the merits for the purposes of *res judicata*. (Ganal, *et al*. *vs*. Alpuerto, *et al*., G.R. No. 205194, Feb. 12, 2020) p. 596

ALIBI

Defense of — For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity; the excuse must be so airtight that it would admit of no exception; where there is the least possibility of accused-appellant's presence at the crime scene, as in this case, the alibi will not hold water; here, "Lawlaw" claims to have been working in the bakery at the time of the incident; aside from being an unsubstantiated claim, it was not shown that it was physically impossible for "Lawlaw" to be at the *situs criminis;* the alleged bakery is also located at the same barangay where Feliciano, Sr.'s house is located. (People *vs.* Pigar @ "Jerry", *et al*., G.R. No. 247658, Feb. 17, 2020) p. 939

AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND OTHER PURPOSES (R.A. NO. 8975)

Issuance of temporary restraining orders and writs of preliminary injunction — Section 3 of R.A. No. 8975 expressly vests jurisdiction upon the Supreme Court to issue any TRO, preliminary injunction or preliminary mandatory injunction against the government, or any of

its subdivisions, officials or any person or entity, whether public or private acting under the government's direction, to restrain, prohibit or compel specified acts; in *Philco Aero, Inc. v. Secretary Tugade*, this Court recognized the remedy of resorting directly before this Court in cases covered under R.A. No. 8975; Section 3 thereof was explicit in excluding other courts in the issuance of injunctive writs; however, in *Bases Conversion and Development Authority v. Uy*, this Court clarified that the prohibition applies only to TRO and preliminary injunction, *viz.*: A perusal of these aforequoted provisions readily reveals that all courts, except this Court, are proscribed from issuing TROs and writs of preliminary injunction against the implementation or execution of specified government projects; *thus, the ambit of the* prohibition covers only temporary or preliminary restraining orders or writs but NOT decisions on the merits granting permanent injunctions; considering that these laws trench on judicial power, they should be strictly construed; therefore, while courts below this Court are prohibited by these laws from issuing temporary or preliminary restraining orders pending the adjudication of the case, said statutes however do not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits. (Spouses Soller, *et al. vs.* Hon. Singson, in his capacity as Secretary of Department of Public Works and Highways, *et al*., G.R. No. 215547, Feb. 3, 2020) p. 32

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Elements — In *PCGG v. Office of the Ombudsman*, the Court reiterated the well-settled elements of Section 3(e) of R.A. No. 3019 as follows: (i) 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*; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) 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. (Canlas *vs.* People, *et al.*, G.R. Nos. 236308-09, Feb. 17, 2020) p. 880

***Section 3(e)* —** The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses *under Section 3 of R.A. No. 3019*, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto"; the Court, in various cases, had the occasion to affirm the indictment and/or conviction of a private individual, acting in conspiracy with public officers, for violation of Section 3 of R.A. No. 3019 particularly paragraph (e) thereof. (Canlas *vs.* People, *et al.*, G.R. Nos. 236308-09, Feb. 17, 2020) p. 880

ANTI-SEXUAL HARASSMENT ACT (R.A. NO. 7877)

***Liability of employer* —** The distinction between the employer and an erring managerial officer is likewise present in sexual harassment cases; under Section 5 of the Anti-Sexual Harassment Act, the employer is only solidarity liable for damages with the perpetrator in case an act of sexual harassment was reported and *it did not take immediate action on the matter;* this provision thus illustrates that the employer must first be informed of the acts of the erring managerial officer before it can be held liable for the latter's acts; conversely, if the employer has been informed of the acts of its managerial staff, and does not contest or question it, it is deemed to have authorized or be complicit to the acts of its erring employee; Batucan cannot be considered to have been acting on petitioner's behalf when he sexually harassed respondent; thus, respondent cannot base her illegal dismissal complaint against petitioner *solely* on Batucan's acts; however, even if petitioner had no participation in the sexual harassment, it had been informed of the incident; despite this, it failed to take immediate action on respondent's complaint; its lack of prompt action reinforced

the hostile work environment created by Batucan. (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

Workplace sexual harassment — Workplace sexual harassment occurs when a supervisor, or agent of an employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates an intimidating, hostile, or offensive environment for the latter; "the gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer." (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

APPEAL IN CRIMINAL CASES

Civil liability — It is settled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom; hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the Office of the Solicitor General; the private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case; however, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned; the rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant; the interest of the private complainant or the private offended party is limited only to the civil liability; in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal

therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General; the private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case. (Yokohama Tire Philippines, Inc. *vs.* Reyes, *et al.*, G.R. No. 236686, Feb. 5, 2020) p. 292

Concept — In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; 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. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

— The Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom; if a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General; as a rule, only the Solicitor General may represent the People of the Philippines on appeal; the private offended party or complainant may not undertake such appeal; in its petition for *certiorari* filed with the RTC, petitioner seeks the annulment of the MTC decision acquitting herein respondents; in so doing, petitioner raises issues on the admissibility of evidence which it submitted to prove the guilt of the accused; these issues necessarily require a review of the criminal aspect of the case and, as such, is prohibited; only the State, and not herein petitioner, who is the private offended party, may question the criminal aspect of the case. (*Id.*)

APPEALS

Appeal in labor cases **—** "As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law; questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45"; nevertheless, this rule admits of certain exceptions, such as: 1. when the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; the present case falls under one of the exceptions. (Metro Psychiatry, Inc. *vs.* Llorente, G.R. No. 245258, Feb. 5, 2020) p. 417

— The Court may review factual issues in a labor case when the factual findings are in conflict; although as a rule this Court may only review questions of law, however, in exceptional cases, it may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory, which is the case herein. (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452. Feb. 12, 2020) p. 573

***Factual findings of administrative or quasi-judicial agencies* —** The rule is that the factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise they have gained from handling matters falling under their specialized jurisdiction; similarly, factual findings of the CA are generally not subject to the Court's review in a petition for review on *certiorari* under Rule 45 of the Rules of Court; the Court is not a trier of facts, and this rule applies with greater force in labor cases; the Court is not swayed by petitioners' claim that their statements were done with good intention and justifiable motives; neither is the Court moved by petitioners' assertion that the CA erred in not giving weight to the sworn statement of their witness, to the effect that they did not utter the alleged libelous statements being attributed to them; these matters are outside this Court's authority to act; only questions of law are entertained in a Rule 45 petition; as held in *Madridejos v. NYK-FIL Ship Management, Inc.*, the Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field; the Court does not replace its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible. (Iso, Jr., *et al. vs.* Salcon Power Corporation (now SPC Power Corporation), G.R. No. 219059, Feb. 12, 2020) p. 667

***Factual findings of the Court of Tax Appeals* —** Time and again, great weight and highest respect are accorded to the factual findings of the CTA; the Court will not review nor disturb the CTA's factual determination when it is supported by substantial evidence and there is no showing of gross error or abuse on the part of the CTA, as in this case. (Commissioner of Internal Revenue *vs.* Chevron Holdings, Inc. [Formerly Caltex (Asia) Limited], G.R. No. 233301, Feb. 17, 2020) p. 863

***Factual findings of the National Labor Relations Commission (NLRC)* —** It is well settled in labor cases that the factual findings of the NLRC are accorded respect and even finality by the Court when they coincide with those of the LA and are supported by substantial evidence; here, the CA affirmed the findings of fact of the LA and the NLRC with respect to the dismissal from service of petitioners for just causes; the CA noted that both the LA and the NLRC found petitioners to have uttered libelous statements against respondent SPC and held that such act constitutes serious misconduct, which is a ground for the termination of their employment. (Iso, Jr., *et al*. *vs.* Salcon Power Corporation (now SPC Power Corporation), G.R. No. 219059, Feb. 12, 2020) p. 667

Petition for review on certiorari to the Supreme Court under Rule 45 — It is a settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court; this Court is not a trier of facts; hence, it will not entertain questions of facts as it is bound by the findings of fact made by the CA when supported by substantial evidence; there are, however, exceptions to the rule wherein the Court may pass upon and review the findings of fact by the CA; instances enumerated in *Medina v. Asistio, Jr.*, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding

of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; the instant case falls under the exceptions. (Social Security System *vs.* Seno, Jr., *et al*., G.R. No. 183478, Feb. 10, 2020) p. 465

— Rule 45, Section 1 of the Rules of Court authorizes direct resort from the Regional Trial Courts to this Court on pure questions of law; in *Uy v. Chua*, this Court gave due course to a Petition for Review against a Resolution of the RTC on the issue of *res judicata;* the present petition does not raise any factual question; the petition poses a sole question: Which tribunal has jurisdiction over the suit for damages filed by the spouses Ang? This question does not involve any determination or finding of truth or falsehood of the factual allegations raised by the spouses Ang; but instead concerns the applicability of the construction arbitration laws to the suit filed by the spouses; direct resort to this Court is therefore justified. (Ang *vs.* De Venecia, *et al*., G.R. No. 217151, Feb. 12, 2020) p. 645

— The other issues raised by petitioner Spouses are clearly factual in nature; these issues cannot be entertained in a Rule 45 petition wherein the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the lower courts; the Petition should be denied in the absence of any *exceptional circumstance* as to merit the Court's review of factual questions that have already been settled by the tribunals below. (Spouses Garcia, doing business under the name and style of Ecolamp Multi-Resources *vs.* Northern Islands, Co., Inc., G.R. No. 226495, Feb. 5, 2020) p. 282

Petition for review under Rule 43 — In not a few instances, the Court has variably applied the 10-day period provided in Article 276 of the Labor Code and the 15-day period in Section 4, Rule 43 of the Rules of Court in determining the proper period of appeal from a decision or award rendered by a Voluntary Arbitrator or a Panel thereof to the CA; *Guagua National Colleges v. Court of Appeals,*

cited; in this case, the Court ruled that the 10-day period stated in Article 276 of the Labor Code should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrator or the Panel may file a motion for reconsideration; this is in line with the pronouncement in *Teng v. Pahagac* where the Court had clarified that the 10-day period set in Article 276 of the Labor Code gave the aggrieved parties the opportunity to file their motion for reconsideration; in *Guagua,* once the motion for reconsideration interposed had been resolved, the aggrieved party may now opt to appeal to the CA by way of a petition for review under Rule 43 of the Rules of Court; pursuant to Section 4 of the said Rule, the aggrieved party has 15 days to file the same; respondents' appeal had clearly been filed within the reglementary period provided in Rule 43. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al*., G.R. No. 224026, Feb. 3, 2020) p. 42

***Points of law, issues, theories, and arguments* —** A motion to dismiss which has been granted on the ground of lack of jurisdiction over the subject matter operates as a dismissal without prejudice; such order is not subject to an appeal under Section 1 of Rule 41 of the Rules of Court; the remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65; here, not only did petitioners avail of the wrong remedy by filing an appeal by *certiorari* under Rule 45, but they likewise violated the doctrine of hierarchy of courts in assailing the twin Resolutions of the RTC, directly before us. (Spouses Soller, *et al. vs.* Hon. Singson, in his capacity as Secretary of Department of Public Works and Highways, *et al*., G.R. No. 215547, Feb. 3, 2020) p. 32

— The Municipality of Cainta directly filed this petition; the established policy is to strictly observe the judicial hierarchy of courts; however, Section 2(c), Rule 41 of the Rules of Court allows a party to question the decision of the RTC directly to this Court on pure questions of law; a question of law exists when the doubt or controversy

concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the examination of the probative value of the evidence presented, the truth or falsity of facts being admitted; a question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence. (Municipality of Cainta, Rizal *vs.* Spouses Braña, *et al*., G.R. No. 199290, Feb. 3, 2020) p. 1

— Whether a deed of absolute sale is genuine is a question of fact not proper in a petition for review on *certiorari*, as only questions of law may be raised in a petition under Rule 45 of the Rules of Court; moreover, the trial court's factual findings, especially when affirmed by the Court of Appeals, are generally conclusive upon this Court. (Mutilan, *et al*. *vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al*., G.R. No. 216109, Feb. 5, 2020) p. 259

Questions of fact — The prosecution's evidence is sufficient to uphold the findings of fact against petitioner; questions of fact may no longer be raised in Rule 45 petitions; here, the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals all consistently found that petitioner slapped and kicked P02 Navarro while he was on official duty as a police officer; the lower courts arrived at this conclusion after thoroughly examining both parties' evidence; this Court will no longer disturb their uniform findings. (Mallari *vs.* People, G.R. No. 224679, Feb. 12, 2020) p. 687

***Questions of law* —** It is recognized under Rule 45 that an appeal from the trial court's decision may be undertaken through a petition for review on *certiorari* directly filed with the Court where only questions of law are raised or involved; a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts; for a question to be one of law, its resolution must not involve an examination of

the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts; if the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact; the test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact; an examination of the present petition shows petitioner essentially challenging the dismissal of the case based solely on the premise that a ruling on ownership in an ejectment case is merely ancillary to resolve the issue of possession and should not bind the title or ownership of the land; this is clearly a question of law which calls for an examination and interpretation of the prevailing law and jurisprudence. (Tiña *vs.* Sta. Clara Estate, Inc., G.R. No. 239979, Feb. 17, 2020) p. 906

Service of the appeal — Pursuant to Section 5, Rule 56 of the Rules of Court, aside from petitioners' duty to supply this Court with the correct address of respondents as proof of service of the appeal, it is beholden upon them to comply with all directives or orders from the Court within a reasonable period; for petitioners' failure to comply with the Court's directives without justifiable cause, the present petition should be dismissed *motu proprio;* petitioners' inaction had already caused the arbitrary dragging of this petition for review on *certiorari* which had been pending since February 23, 2013 and to await for the parties' compliance would again put in jeopardy the timely resolution of this appeal. (Ganal, *et al*. *vs.* Alpuerto, *et al.*, G.R. No. 205194, Feb. 12, 2020) p. 596

ARBITRARY DETENTION

Elements — Arbitrary Detention is committed by any public officer or employee who, without legal grounds, detains a person; the elements of the crime are: (1) the offender is a public officer or employee; (2) he detains a person; and (3) the detention is without legal grounds. (People *vs.*

P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

ATTEMPTED FELONY

Elements **—** The essential elements of an attempted felony are as follows: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

ATTEMPTED OR FRUSTRATED MURDER

Elements **—** With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked; such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor; intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo;* intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter; the following factors are considered, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

ATTEMPTED THEFT

Elements **—** Even if the seized ink cartridges were admitted in evidence, the Court agrees with the OSG that the

probative value of these pieces of evidence must still meet the various tests by which their reliability is to be determined; their tendency to convince and persuade must be considered separately because admissibility of evidence is different from its probative value; as contended by the OSG, "even granting *arguendo* that the MTC indeed committed an error in ruling that there was illegal search and seizure in this case, the prosecution still has to prove that the seized cartridges were indeed the property of petitioner"; however, the prosecution failed in this respect; this Court agrees with the OSG that since the employee of petitioner who allegedly discovered the theft of the subject cartridges, and who was supposedly the one who put identifying marks thereon was not presented in court, nobody could verify if the cartridges seized from respondents were the ones missing from the stockroom; the Court finds neither error nor grave abuse of discretion on the part of the MTC when it ruled that the prosecution failed to prove the essential element of taking in the alleged crime of theft. (Yokohama Tire Philippines, Inc. *vs.* Reyes, *et al.*, G.R. No. 236686, Feb. 5, 2020) p. 292

ATTORNEYS

Attorney-client relationship — Atty. Mahinay did not unfairly criticize or disrespect Judge Medina in any way; on the contrary, he had, in fact, been circumspect in choosing the language he used in crafting his motion for reconsideration; at most, he might have been overzealous in defending his clients' cause, but this is not necessarily bad; the Court has always been mindful of the lawyer's bounden duty to defend his client's cause with utmost zeal for as long as he or she stays within the limits imposed by professional rules; Atty. Mahinay did not overstep these limits. (Zamora *vs.* Atty. Mahinay, A.C. No. 12622, Feb. 10, 2020 [Formerly CBD Case No. 15-4651]) p. 439

— The supposed lack of authority of respondents' counsel of record was thereafter cured when respondents executed

a Special Power of Attorney and submitted the same with the CIR and before the court *a quo;* the CTA held that the said instrument clearly spells out the extent of authority granted to respondents' counsel and ratifies all prior acts done in pursuit of said authority, which includes the filing of respondents' administrative claim for refund; in *Land Bank of the Philippines v. Pamintuan Dev't. Co.*, the Court held that "ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him"; the effect is as if respondents themselves filed the administrative claim for refund on May 21, 2014, within the two-year prescriptive period provided under the NIRC of 1997, as amended; respondents' administrative claim was valid and timely filed. (*Id.*)

Disbarment **—** While lawyers are mandated to act with dignity and in a manner that inspires confidence to the legal profession, their rights must still be protected just like every ordinary individual; the legal profession and the threat of disbarment should not be used as a means to provoke lawyers who are acting well within their rights. (Spouses Nocuenca *vs.* Atty. Bensi, A.C. No. 12609, Feb. 10, 2020) p. 430

Duties to clients **—** The relationship between a lawyer and a client is *"imbued with utmost trust and confidence";* lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them; they commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court; when a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor; conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action; while such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to

perform the obligations due his client is *per se* a violation; the requirement and repercussions of non-submission of an appellant's brief are provided for under Rules 44 and 50 of the Revised Rules of Court; as a lawyer, respondent is presumed to know the procedural rules in appellate practice; this includes the rule that when the appellant fails to file the appeal brief within the prescribed period, the appeal shall be dismissed; here, respondent admitted to have intentionally not filed the appeal brief, albeit he gives two inconsistent reasons *i.e.* one, he was informed that the cases had been amicably settled and two, his supposed effort to contact his clients which proved futile aside from the fact that his clients failed to follow up with him; he was grossly negligent in his duty to file the required appeal brief, causing the appeal to be dismissed and his clients' to perpetually lose the chance to have the case reviewed and possibly to reverse the judgment against them; respondent is guilty of violation of Canon 18 and Rule 18.02 of the CPR; the fact that complainants' claim over the 2,507 square meter land is deemed lost forever due to respondent's failure to forthrightly perform his duty as complainants' counsel and for lack of any showing of empathy or remorse for the unfortunate incident that he, himself, had caused; penalty of suspension from the practice of law for six (6) months. (Sta. Maria, *et al*. *vs*. Atayde, Jr., A.C. No. 9197, Feb. 12, 2020) p. 906

Practice of law **—** Respondent's admission to the Philippine Bar has long been held in abeyance due to the criminal cases pending against him before the Office of the City Prosecutor of Quezon City; per the *rollo*, it appears that all criminal charges against him has been dismissed *except* for the most recent one filed in 2019; the timing of the filing of this case, however, is highly suspect as it came just as the other criminal charges against respondent were dismissed on June 28, 2018, January 4, 2019, and October 15, 2019; thus, it can no longer be denied that the manifest intention of complainant in successively filing these criminal cases against respondent is to prevent him from taking the Lawyer's Oath and

signing the Roll of Attorneys — the last two steps needed to be undertaken by respondent to become a full-fledged lawyer; the dismissal of all the other criminal charges against respondent, coupled with the various certifications of good moral character in his favor, is sufficient for the Court to conclude that respondent possesses the moral qualifications required of lawyers; though it is true that the practice of law is not a right but a privilege, the Court will not unjustifiably withhold this privilege from respondent, who has clearly shown that he is both intellectually and morally qualified to join the legal profession; and so, after almost six years of waiting, the Court finally grants respondent's prayer for admission to the Philippine Bar. (De Zuzuarregui *vs.* De Zuzuarregui, B.M. No. 2796, Feb. 11, 2020) p. 546

CAUSE OF ACTION

***Elements* —** "A cause of action is the act or omission by which a party violates a right of another"; it has three constitutive elements: first, a legal right accruing to the plaintiff; second, a duty on the defendant's part to respect such right; and third, an act or omission by the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff; Tocoms bases its cause of action for damages upon Articles 19, 20, and 21 of the Civil Code, and its "constitutionally vested right to property and to peaceful, uninterrupted, and fair conduct of business"; according to Tocoms, the acts committed by PELI during and after the effectivity of the agreement are tainted with bad faith and malice in view of the significant investments made by the former during the effectivity of the Distribution Agreement and in the run-up to the expiration thereof in 2012. (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

***Test in determining sufficiency* —** In determining the sufficiency of a cause of action, the test is, whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the court may validly

grant the relief prayed for in the complaint; as correctly pointed out during the deliberations of this case, if the foregoing allegations in Tocoms' complaint are hypothetically admitted, these acts constitute bad faith on the part of respondent PELI in the exercise of its rights under the Distributorship Agreement, in violation of Article 19, and as punished by Article 21; the court may validly award damages in favor of Tocoms as prayed for in its Complaint; while all the foregoing acts committed by PELI are justifiable under the terms of the Distributorship Agreement, the question of whether or not these acts were committed with malice or in bad faith – in light of the allegations in the Complaint – still remains disputed. (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

CERTIORARI

Petition for **—** The Court agrees with the ruling of the RTC that the disputed acts of the MTC in denying admissibility to the subject ink cartridges as part of the prosecution's evidence, its appreciation of the entirety of evidence presented by both parties to the case, and its subsequent finding that the prosecution failed to prove the crime charged, are assailable as errors of judgment and are not reviewable by the extraordinary remedy of *certiorari;* the Court finds no error in the ruling of the RTC that petitioner was not able to establish its allegation of grave abuse of discretion on the part of the MTC; where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction; this Court has explained that: The term "grave abuse of discretion" has a specific meaning; an act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the

abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility"; the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void"; the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross; as found by the RTC, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the MTC; if at all, the mistake committed by the MTC is only an error of judgment and not of jurisdiction, which would have amounted to a grave abuse of discretion. (Yokohama Tire Philippines, Inc. *vs.* Reyes, *et al.*, G.R. No. 236686, Feb. 5, 2020) p. 292

CIVIL OR DEATH INDEMNITY

Grant of — Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime; initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

CIVIL REGISTER

Certificate of Live Birth — Generally, the entries recorded in the birth certificate: (1) the date and hour of birth; (2) the sex and nationality of the infant; (3) the names, citizens, and religion of parents; (4) the civil status of parents; and (5) the place where the infant was born, all correspond to facts existing at the time of birth as argued by the Republic; however, reading Article 407 of the

Civil Code in conjunction with Article 412 of the Civil Code, even acts or events that occurred *after* birth may be recorded in the certificate of live birth; the reason is that Article 412 of the Civil Code uses the word "changed," which implies the occurrence of an event subsequent to birth may be recorded in the civil register; that an event occurring after birth may be recorded in the civil register was pronounced in *Co v. The Civil Register*, a case cited by Winston Brian, Christopher Troy, and Jon Nicholas in support of their Petition before the trial court; to prohibit the annotation of events subsequent to birth in the certificate of live birth is to deny a person the right to form his or her own identity; more than a "historical record of the facts as they existed at the time of birth," the birth certificate is an instrument of individuation. (Republic, Represented by the Special Committee on Naturalization (SCN) *vs.* Chia Lao, *et al.*, G.R. No. 205218, Feb. 10, 2020) p. 499

CLERKS OF COURT

Duties **—** Among all those duties entrusted to a Clerk of Court is the safekeeping of court funds; emphasized in *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*, to wit: Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises; they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof; it is the duty of the Clerks of Court to faithfully perform their duties and responsibilities; they are the chief administrative officers of their respective courts; it is also their duty to ensure that the proper procedures are followed in the collection of cash bonds; Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice; an unwarranted failure to fulfill these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability. (Office of the Court Administrator

vs. Salunoy, Court Stenographer, A.M. No. P-07-2354, Feb. 4, 2020) p. 142

— As laudably depicted in The 2002 Revised Manual for Clerks of Court, a clerk of court is indispensable in any judicial system, to wit: A Judge alone cannot make the Court function as it should; in the over-all scheme of judicial business, many non-judicial concerns, intricately and inseparably interwoven with the trial and adjudication of cases, must perforce be performed by other individuals that make up the team that complements the Court; of these individuals, the Clerk of Court eclipses the others in function, responsibilities, importance and prestige; the Clerk of Court has general administrative supervision over all the personnel of the Court; as regards the Court's funds and revenues, records, properties and premises, said officer is the custodian; the nature of the work and of the office mandates that the Clerk of Court be an individual of competence, honesty, and integrity. (*Id.*)

— Barcelona stated that she lacked the necessary training and experience in maintaining legal records and safely keeping the physical evidence in the custody of the court; her averments bare Atty. Toledo's carelessness in supervising the activities of his subordinates especially the court personnel to whom his administrative function was merely delegated; he relied entirely on Barcelona and passed to her all the responsibilities of an evidence custodian without ensuring that she possesses the skill set to effectively perform custodial duties; as the Branch Clerk of Court, he remains responsible for the shortcomings of his subordinate. (Office of the Court Administrator *vs.* Atty. Toledo, then Branch Clerk of Court [Now Clerk of Court V], *et al.*, A.M. No. P-13-3124, Feb. 4, 2020) p. 160

— The Manual for Clerks of Court and the Rules of Court define the role of a clerk of court in the administration of justice; Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads: All exhibits used as evidence and turned over to the court

and before the easels involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court; Section 7 of Rule 136 of the Rules of Court also provides: SEC. 7. Safekeeping of property. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office; primary duty of safekeeping all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office; this obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of the case as long as the same have yet to be disposed or destructed in accordance with the existing rules; it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties; Atty. Toledo miserably failed to establish a systematic and efficient documentation and record management in Branch 259 of the RTC of Parañaque City. (*Id.*)

CODE OF PROFESSIONAL RESPONSIBILITY (CPR)

Canon 8 and Canon 11 — The Court concurs with the findings of Commissioner Mamon that the language contained in Atty. Misa's counter-affidavit, making reference to the personal behavior and circumstances of Roselyn run afoul to the precepts of the Code of Professional Responsibility; in *Gimeno v. Zaide*, it was held that the prohibition on the use of intemperate, offensive, and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or any other person, is based on the following canons and rules of the Code of Professional Responsibility: Canon 8 – A lawyer *shall conduct himself with courtesy, fairness and candor toward his professional colleagues,* and shall avoid harassing tactics against opposing counsel; Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper; Canon 11 – A lawyer shall observe and maintain the respect due to

the courts and to judicial officers and should insist on similar conduct by others; Rule 11.03 – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts; Roselyn was not even a party to the subject criminal case under investigation by Asst. Prosecutor Melanio E. Cordillo, Jr.; the statements made in the counter-affidavit that Roselyn was a known drug addict, a fraud, and making insinuation that her marriage was a "fixed marriage" were pointless and uncalled for, and thus only show that the clear intention of Atty. Misa was to humiliate or insult Roselyn; Atty. Misa violated the canons and rules of the Code of Professional Responsibility for his use of derogatory and defamatory language in his affidavit; "though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession; the use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum." (Parks *vs.* Atty. Misa, Jr., A.C. No. 11639, Feb. 5, 2020) p. 235

COMMON CARRIERS

Failure to register as a public vehicle or a common carrier — Article 1732 of the Civil Code defines common carriers as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public; the Land Transportation and Traffic Code distinguished the classification of vehicles; the requirement for vehicles for hire to obtain a Certificate of Public Convenience from the Land Transportation Franchising and Regulatory Board (LTFRB) was emphasized in LTFRB Memorandum Circular Number 98-027; the Heirs of Catalina established through preponderance of evidence that, at the time of the incident, the vehicle was being used as a truck for hire without securing the necessary franchise from the LTFRB; ES Trucking engaged in a truck for hire business, offering their vehicles to transport the cargo of its customers; Ruste admitted that they filed an application

to have the vehicle included in their Certificate of Public Convenience (CPC) yet their application was never granted; this is inconsistent with his own claim that ES Trucking does not need to register with the LTFRB because it is not a common carrier but a private company; ES Trucking cannot be excused simply because it is not registered with the LTFRB and it is a private company; as an entity engaged in the truck for hire business, it should have complied with the requirements of the Land Transportation and Traffic Code and the issuances of the LTFRB; despite being registered as a private vehicle, the actual use of the vehicle and the clientele to whom ES Trucking offers its services remain controlling; the failure to register the vehicle as a public vehicle or a common carrier does not negate the true nature of the vehicle. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

COMPLAINT OR INFORMATION

Filing of — In *Crespo v. Mogul,* the Supreme Court held that once a complaint or information is already filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court; it is the best and sole judge on what to do with the case before it; thus, when a motion to dismiss the case is filed by the public prosecutor, it should be addressed to the court who has the option to grant or deny the same; the court should be mindful not to infringe on the substantial rights of the accused or the right of the People to due process of law; in *Santos v. Orda, Jr.*, this Court emphasized that the above rule likewise applies to a motion to withdraw Information or to dismiss the case filed before the court, like in the case at bar, even before or after arraignment of the accused; the grant or denial of the same is left to the trial court's exclusive judicial discretion; hence, it should not merely rely on the findings of the public prosecutor or the Secretary of Justice that no crime was committed or that the evidence in the possession of the public prosecutor is insufficient to support

a judgment of conviction of the accused; instead, the trial court has to make its own independent assessment of the merits of the case as well as the evidence of the prosecution. (Social Security System *vs.* Seno, Jr., *et al.*, G.R. No. 183478, Feb. 10, 2020) p. 465

COMPLEX CRIMES

Commission of — The final amendment to the Informations charged accused-appellants of the complex crime of arbitrary detention with murder; however, evidence failed to show that the incidents made out a case of complex crime under Article 48 of the RPC; first, the single act of accused-appellants did not constitute two or more grave or less grave felonies; second, arbitrary detention was not used as a necessary means to commit murder; in various cases such as *People of the Philippines v. Li Wai Cheung* and *People of the Philippines v. Araneta*, the Court convicted the accused for the separate crimes even if they were indicted of a complex crime in the Information because it was improper for the prosecutor to have charged them of a complex crime as the offenses were separate and distinct from each other and cannot be complexed; in examining the events that transpired prior to the killing of the three, it was not proved that their arbitrary detention was used as a means of killing them; when the three were abducted and placed in the custody of accused-appellants, the felony of arbitrary detention had already been consummated; thereafter, when they were boxed, kicked, pistol-whipped and ultimately shot at a close range while being handcuffed and without means to defend themselves, another separate crime of murder was committed. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — As culled from the records and highlighted by the testimonies of the prosecution witnesses themselves, only one of the required witnesses was present during the inventory stage - the barangay captain of

Ungot; the failure of the police officers to provide a reasonable excuse or justification for the absence of the other witnesses clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21; the absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the petitioner; it militates against a finding of guilt beyond reasonable doubt; the law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with; it is only for justifiable and unavoidable grounds that deviations from the required procedure is excused; the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the petitioner; absent faithful compliance with Section 21, Article II of R.A. No. 9165 which is primarily intended to, *first*, preserve the integrity and the evidentiary value of the seized items in drugs cases, and *second*, to safeguard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse. (Tolentino *vs.* People, G.R. No. 227217, Feb. 12, 2020) p. 706

— In prosecution of drug-related cases, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime; the dangerous drug itself is the very *corpus delicti* of the violation of the law; therefore, compliance with the chain of custody rule is crucial; chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction; the rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same

unwavering exactitude as that requisite to make a finding of guilt; thus, *strict* compliance with the procedures laid down under Section 21 of R.A. No. 9165 is required to ensure that rights are safeguarded; it requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. (People *vs.* Padua *a.k.a.* Jerick Padua, G.R. No. 239781, Feb. 5, 2020) p. 351

— In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material, as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers; the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly, (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof; proponents of the amendment recognized that the strict implementation of the original Section 21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly hamper their activities towards drug eradication; the amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items; a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds"; the primary rule that commands a satisfaction of the instructions prescribed by the statute stands; the value of the rule is significant; its non-compliance has serious effects and is fatal to the prosecution's case. (Tolentino *vs.* People, G.R. No. 227217, Feb. 12, 2020) p. 706

— Links that the prosecution must prove to establish chain of custody: *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; as a method of authenticating evidence, the chain of custody rule requires that the admission of the 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 thus 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 same would admit 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 prosecution's failure to present evidence showing the manner in which the illegal drug subject of this case was handled, stored and safeguarded pending its presentation in court is fatal to its case. (People *vs.* Casilang, *et al.*, G.R. No. 242159, Feb. 5, 2020) p. 379

— Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or

at the nearest office of the apprehending officer/team, whichever is practicable; the entire procedure must likewise be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; AND (3) a representative from the media; these individuals shall then be required to sign the copies of the inventory and be given a copy thereof. (Tolentino *vs.* People, G.R. No. 227217, Feb. 12, 2020) p. 706

Illegal sale of dangerous drugs **—** In actions involving the illegal sale of dangerous drugs, the prosecution must establish the following elements: (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; it is equally essential for a conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over it; the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. (People *vs.* Casilang, *et al*., G.R. No. 242159, Feb. 5, 2020) p. 379

— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution is required to prove the following elements: (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. (People *vs.* Padua *a.k.a.* Jerick Padua, G.R. No. 239781, Feb. 5, 2020) p. 351

— In order to sustain a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor; what is important is that the sale transaction

of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

Non-compliance with the chain of custody rule — As field conditions vary and strict compliance with the rule may not always be possible, Section 21 of the IRR of R.A. No. 9165 provides a saving clause; noncompliance with the requirements of Section 21 will not automatically render void and invalid the seizure and custody over the seized items, so long as: 1) there are justifiable grounds therefor, and 2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team; failure to show these two conditions renders void and invalid the seizure of and custody of the seized illegal drugs; here, the inventory and taking of photographs of the seized illegal drug were witnessed by accused-appellants and *Barangay Kagawad* Ayson; there were no representatives from the media and the DOJ present at the time; since this is a deviation from the requirements of Section 21, it is incumbent upon the prosecution to provide justifiable reasons in order for the saving clause to apply; the prosecution failed to recognize its procedural lapse and provided no such explanation whatsoever other than that the police officers "cannot avail" of the presence of the required witnesses; these reasons must be proven as a fact because the Court cannot presume what these grounds are or that they even exist; not only did the prosecution fail to provide justifiable reasons for the absence of the required witnesses during the inventory and taking of photographs of the evidence, it also failed to show that the integrity and evidentiary value of the seized item were properly preserved. (People *vs.* Casilang, *et al.*, G.R. No. 242159, Feb. 5, 2020) p. 379

— Here, the physical inventory and photograph of the seized item were not done at the place of the arrest but only at the police station; there was no showing by the prosecution that these were done due to extraordinary circumstances

that would threaten the safety and security of the apprehending officers and/or the witnesses required by law or of the items seized; moreover, the absence of the witnesses required by law – an elected public official, representative of the DOJ and the media — to witness the physical inventory and photograph of the seized items is glaring; their signatures do not appear in the Inventory Receipt; in *People v. Vicente Sipin*: The prosecution bears the burden of proving a valid cause for noncompliance 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; 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 miniscule. (People *vs.* Padua *a.k.a.* Jerick Padua, G.R. No. 239781, Feb. 5, 2020) p. 351

— The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact; in the recent case of *People of the Philippines v. Lim*, the Court reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made; in addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of

the Chain of Custody IRR should be enforced as a mandatory policy. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

***Procedural safeguards in Section 21* —** In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21, Article II of R.A. No. 9165, as amended by R.A. No.10640, are material as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers; the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items 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, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service (Department of Justice) or the media, who shall sign the copies of the inventory and be given a copy thereof; proponents of the amendment recognized that the strict implementation of the original Section 21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly hamper their activities towards drug eradication; the amendment then substantially included the saving clause that was actually already in the Implementing Rules and Regulations of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

— Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply; under the law, a physical inventory and photograph of the items that were purportedly seized from the accused

should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; the entire procedure must, likewise, be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; and (3) a representative from the media; these individuals shall then be required to sign the copies of the inventory and be given a copy thereof; here, as culled from the records and highlighted by the testimonies of the police officers themselves, none of the required witnesses was present during the inventory stage; neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of these witnesses. (*Id.*)

Witnesses requirement — Earnest effort to secure the attendance of the necessary witnesses must be proven; *People v. Ramos* requires: It is well to note that the 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 R.A. No. 9165 must be adduced; the prosecution miserably failed to explain why the police officers did not secure the presence of an elected public official, a representative from the DOJ, and the media; the testimonies of the prosecution witnesses also failed to establish that there was earnest effort to coordinate with and secure the presence of the required witnesses. (People *vs.* Padua *a.k.a.* Jerick Padua, G.R. No. 239781, Feb. 5, 2020) p. 351

— In *People v. Reyes,* the Court enumerated certain instances when absence of the required witnesses may be justified, *viz.*: It must be emphasized that the prosecution must be 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 the 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 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. No. 9165. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

— It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (People *vs.* Padua *a.k.a.* Jerick Padua, G.R. No. 239781, Feb. 5, 2020) p. 351

— The failure of the police officers to provide a reasonable excuse or justification for the absence of these witnesses clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21; the absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly

seized from the accused-appellant; it militates against a finding of guilt beyond reasonable doubt; the law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

COMPROMISE JUDGMENT

Concept — The Department of Agrarian Reform Adjudication Board concluded that it was petitioners, not respondents, who refused to comply with the Compromise Agreement by allegedly refusing to pay their tenurial dues — an obligation *not actually stipulated* in the Compromise Agreement; in *Viesca v. Gilinsky*: It is settled that neither the courts nor quasi-judicial bodies can impose upon the parties a judgment different from their compromise agreement or against the very terms and conditions of their agreement without contravening the universally established principle that a contract is the law between the parties; the courts can only approve the agreement of parties; they cannot make a contract for them. (Heirs of Salvador and Salvacion Lamirez, namely Martha, *et al. vs.* Spouses Ampatuan, *et al*., G.R. No. 226043, Feb. 3, 2020) pp. 97-98

CONSPIRACY

Existence of — The Court disagrees with the CA's findings that conspiracy was sufficiently established; the pronouncements of the Court in *PNP-CIDG v. Villafuerte*, a case involving the same factual backdrop, find full application in the instant case, to wit: It bears stressing that while the Office of the Ombudsman's factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, this does not ipso facto translate into a conspiracy between each and every person involved in the procurement process; for conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense;

conspiracy is not the product of negligence but of intentionality on the part of cohorts; conspiracy is never presumed; there is a sheer dearth of evidence on Lukban's participation in the alleged conspiracy to defraud the government. (Lukban *vs*. Ombudsman Carpio-Morales, G.R. No. 238563, Feb. 12, 2020) p. 756

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Jurisdiction — Provisions of law which define the jurisdiction of a quasi-judicial agency *"must be viewed in the light of the nature and function"* of the particular agency whose jurisdiction is sought to be invoked; thus, the jurisdiction of the CIAC must also be viewed in the light of the legislative rationale behind the tribunal's creation; it is glaringly apparent from the whereas clauses of E.O. No. 1008, and Section 2 thereof that the CIAC was established to serve as a tribunal which will expeditiously resolve disputes *within* the construction industry; the CIAC was formed to resolve disputes involving transactions and business relationships *within* the construction industry; it is for this reason that Section 4 prescribes that the CIAC shall only have jurisdiction over "disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines"; the foregoing phrase limits the jurisdiction of the CIAC not only as to subject matter jurisdiction but also as to jurisdiction over the parties; thus, the CIAC can acquire jurisdiction if the dispute arises from or is connected with the construction industry, both parties to such dispute are involved in construction in the Philippines, and they agree to submit their dispute to arbitration. (Ang *vs.* De Venecia, *et al*., G.R. No. 217151, Feb. 12, 2020) p. 645

— Respondent Vilvar, citing Sections 35 and 21 of the R.A. No. 9285 asserts that CIAC jurisdiction is not limited to contractual relations; however, it has already been demonstrated that the presence of a construction contract is an essential requisite for the CIAC to acquire

jurisdiction; while it is indeed true that Sections 35 and 21 of the ADR Law confirm CIAC jurisdiction over construction disputes regardless of whether or not they arise from a contract, it must be noted that Section 21 only contemplates *"matters arising from all relationships of a commercial nature";* therefore, while CIAC may have jurisdiction over non-contractual disputes (for instance, a tortious breach of contract), these disputes must still arise from or be connected with a construction contract entered into by parties in the Philippines who agree to submit such disputes to arbitration, which is not the case here; the relationship between the parties in this case can hardly be considered commercial in nature; commercial acts have been defined as those acts *"which tend to the satisfaction of necessities by means of exchange or of the rendition of services, effected with a purpose of gain";* the only relation between the spouses Ang and respondent Caramats is that they are adjoining lot owners; and the spouses do not even have any relation at all to respondents Soto and Vilvar, other than that involving the alleged damage to the Ang residence; the only nexus between the spouses Ang and the respondents in this case is spatial in nature, and this relation is not enough to vest jurisdiction in the CIAC. (*Id.*)

— The jurisdiction of the CIAC is provided in Section 4 of E.O. No. 1008, or the Construction Industry Arbitration Law; this provision lays down three requisites for acquisition of jurisdiction by the CIAC, first: a dispute arising from or connected with a construction contract; second, such contract must have been entered into by parties involved in construction in the Philippines; and third, an agreement by the parties to submit their dispute to arbitration; given the allegations in the spouses Ang's complaint and the issues raised in their petition before this Court, the foregoing requisites obviously do not apply to the case at bar; the spouses' cause of action does not proceed from any construction contract or any accessory contract thereto but from the alleged damage

inflicted upon their property by virtue of respondents' construction activities. (*Id.*)

CONTRACTS

Annulment of **—** Article 1397 of the Civil Code provides that "persons who are capable cannot allege the incapacity of those with whom they contracted"; even if they were, they still filed the wrong action; the contracting party's incapacity is a ground for annulment of contract, not rescission; petitioners pray for the rescission of the contract, but the ground they raised is one for annulment of contract; Article 1397 of the Civil Code specifies who may institute such action: ARTICLE 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily; however, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract; even if this Court were to consider petitioners' action as one for annulment of contract, they are still not the proper parties to file such action; they are not parties to the Deed of Absolute Sale, and neither are they obliged principally or subsidiarily with regard to the Deed of Absolute Sale; the trial court's dismissal of their Complaint would still be proper. (Mañas, joined by wife Lena Isabelle Y. Mañas *vs.* Roca, *et al.*, G.R. No. 208845, Feb. 3, 2020) p. 13

COURT PERSONNEL

Conduct **—** The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility; conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion; Atty. Toledo was appointed Clerk of Court of Branch 259 in 1996 while Barcelona was transferred to said court as clerk in 1994; Branch 259 was already designated as a special court for heinous crimes; in 2000,

it was designated as a special court for drug cases; they were well-aware of the degree of responsibility imposed upon them as evidence custodians and the efficiency expected of them in the reception and storage of evidence considering the nature of the cases that Branch 259 handles; *Office of the Court Administrator v. Cabe* and *Mendoza v. Mabutas*, cited. (Office of the Court Administrator *vs.* Atty. Toledo, then Branch Clerk of Court [Now Clerk of Court V], *et al.*, A.M. No. P-13-3124, Feb. 4, 2020) p. 160

***Gross neglect of duty* —** In 2008, Atty. Toledo had been administratively charged for violation of the lawyer's oath, violation of the Code of Professional Responsibility, oppression, dishonesty, harassment, and immorality in A.M. No. P-07-2403 where the OCA recommended his suspension for a period of three (3) months for conduct unbecoming a public official and a court employee; although the Court dismissed the complaint, it reminded Atty. Toledo to be more circumspect in his public and private dealings; he apparently disregarded the Court's warning and continued to show lack of diligence in his administrative function, completely unmindful of the heavy burden and responsibility he carries in the dispensation of justice; Atty. Toledo and Barcelona found liable for gross neglect of duty which merits the penalty of dismissal from the service even if the offense was committed for the first time under the Revised Rules of Administrative Cases in the Civil Service. (Office of the Court Administrator *vs.* Atty. Toledo, then Branch Clerk of Court [Now Clerk of Court V], *et al.*, A.M. No. P-13-3124, Feb. 4, 2020) p. 160

— The ocular inspection was conducted and the drug evidence were discovered missing on November 11, 2003; the RTC Decision in Criminal Case No. 01-1229 was rendered on November 10, 2003 while the decision in Criminal Case No. 03-0408 was promulgated on December 22, 2003; because of Barcelona's and Atty. Toledo's display of laxity in the custody of evidence, the *corpora delicti* in these two criminal cases vanished even before the

actions were terminated; their inexcusable lapses in the safekeeping of the drug evidence constitute flagrant and palpable breach tantamount to gross neglect of duty as they undermine the integrity of the decisions rendered in the criminal cases. (*Id.*)

***Simple neglect of duty and gross neglect of duty* —** The Court agrees with the findings of the OCA that Atty. Toledo and Barcelona have both been negligent in the performance of their duty to safely keep the physical evidence in the court's custody; we find them guilty of gross neglect of duty and not merely simple neglect of duty; Simple neglect of duty is defined as "the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference"; however, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty; there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. (Office of the Court Administrator *vs.* Atty. Toledo, then Branch Clerk of Court [Now Clerk of Court V], *et al.*, A.M. No. P-13-3124, Feb. 4, 2020) p. 160

COURTS

***Construction disputes* —** OCA Circular No. 111-2014 reiterates an earlier circular which directs all courts to dismiss all construction disputes pending with their salas; it is clear that OCA Circular No. 111-2014 does not operate to *ipso facto* dismiss all construction disputes pending before the regional trial courts; but instead *directs* all presiding judges to issue orders dismissing such suits. (Ang *vs.* De Venecia, *et al.*, G.R. No. 217151, Feb. 12, 2020) p. 645

***Hierarchy of courts* —** With the enactment of R.A. No. 9282 on March 30, 2004, the CTA was elevated to a collegiate

court with special jurisdiction and of the same level as the Court of Appeals; in the same way, when it was first created by virtue of Presidential Decree (P.D.) No. 1486 on June 11, 1978, the Sandiganbayan was a special court of equal rank as the CFIs; P.D. No. 1606 was issued shortly thereafter on December 10, 1978 which declared the Sandiganbayan as a special court of the same level as the Court of Appeals; the aforequoted statutory provisions expressly state that the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan shall have the same rank, salary, privileges, and emoluments; be subject to the same inhibitions and disqualifications; and enjoy the same retirement and other benefits provided *under existing laws* as the Presiding Justice and Associate Justices of the Court of Appeals; they additionally prescribe that any increase in the salaries of the Presiding Justice and Associate Justices of the Court of Appeals shall be extended to and enjoyed by the Presiding Justices and Associate Justices of the CTA and the Sandiganbayan. (Re: Expenses of Retirement of Court of Appeals Justices, A.M. No. 19-02-03-CA, Feb. 11, 2020) p. 533

CRUELTY

As an aggravating circumstance — Cruelty was correctly appreciated for the three killings as it was established that they were kicked, boxed, and pistol-whipped before having been killed; such acts constitute deliberate augmentation of a wrong by causing another wrong not necessary for its commission. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

DAMAGES

Actual damages — Under the Civil Code, when an injury has been sustained, actual damages may be awarded; only the expenses proven by credible evidence may be awarded; the funeral and burial expenses were duly supported with official receipts when presented in the RTC. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

***Exemplary damages* —** Awarded upon finding that ES Trucking acted with gross negligence for failing to duly register the prime mover truck with the appropriate government agency, and for failing to impose a stringent selection procedure in hiring and supervising Timtim; the award of exemplary damages is justified further by ES Trucking's wanton disregard of the law and evident bad faith through its highly reprehensible conduct of altering the body number of the prime mover truck to avoid detection, in violation of its undertaking to preserve the original state of the vehicle while the case is pending; ES Trucking is directed to pay ₱50,000.00 as exemplary damages to the Heirs of Catalina. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

***Modification of award of damages* —** The Court of Appeals' imposition of monetary liability on accused-appellant must be modified; People v. Jugueta provides: When the circumstances surrounding the crime call for the imposition of reclusion perpetua only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present; since accused-appellant was meted the penalty of *reclusion perpetua* for raping AAA, accused-appellant must be held liable to the modified amounts of ₱75,000.00 each as civil indemnity, moral damages, and exemplary damages. (People *vs.* ZZZ, G.R. No. 229209, Feb. 12, 2020) p. 725

***Moral damages* —** Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity; an award of ₱100,000.00 as moral damages, sufficient to answer for the mental anguish suffered by the Heirs of Catalina because of her death. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

DENIAL

Defense of **—** Denial, if not substantiated by clear and convincing evidence, as in this case, is a negative and self-serving defense; it carries scant, if not nil, evidentiary value; it cannot prevail over the consistent and categorical declarations of credible witnesses on affirmative matters. (People *vs.* Pigar @ "Jerry", *et al. vs.* G.R. No. 247658, Feb. 17, 2020) p. 939

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction **—** Even if the case for recovery of possession could be considered an agrarian dispute under R.A. No. 6657, the Department of Agrarian Reform Adjudication Board (DARAB) would still have no jurisdiction over it; Rule II, Section 1.11 of the 2003 Rules of Procedure provides that the Board, as with the Provincial Adjudicator, has jurisdiction over cases that involve determining agricultural land titles "for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding"; neither petitioners nor their predecessors-in-interest disputed the issuance of titles in respondents' names; in any case, determinations of titles under Section 1.11 must be made for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries; since respondents had yet to submit the property under the CARP, any determination on the preservation of the tenure of petitioners, or their predecessors-in-interest, would have been premature; thus, the DARAB had no jurisdiction over respondents' action; any decision rendered without jurisdiction over the subject matter is considered a void judgment, which has no binding legal effect; *Amoguis v. Ballado,* cited. (Heirs of Salvador and Salvacion Lamirez, namely Martha, *et al. vs.* Spouses Ampatuan, *et al.*, G.R. No. 226043, Feb. 3, 2020) pp. 97-98

— The DARAB simply presumed that petitioners' predecessors-in-interest became respondents' tenants after the titles had been issued in respondents' names; tenancy, however, cannot be presumed, but must be proven; as echoed in *Bumagat v. Arribay*, among the requisites to establish tenancy is consent between the parties: A case involving agricultural land does not immediately qualify it as an agrarian dispute; the mere fact that the land is agricultural does not *ipso facto* make the possessor an agricultural lessee or tenant; there are conditions or requisites before he can qualify as an agricultural lessee or tenant, and the subject being agricultural land constitutes just one condition; for the DARAB to acquire jurisdiction over the case, there must exist a tenancy relation between the parties; in order for a tenancy agreement to take hold over a dispute, it is essential to establish all its indispensable elements: 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee. (*Id.*)

DEPOSITIONS PENDING ACTION

Requirements **—** Depositions pending action may be obtained without leave of court after an answer has been served in accordance with Section 1, Rule 23 of the Rules; there is no provision in Rule 23 that requires the party requesting for an oral deposition to state the purpose or purposes of the deposition; the only matters that have to be stated in the notice under Section 15 of Rule 23 are the time and place for taking the deposition, the name and address of each person to be examined, if known, or if unknown, a general description sufficient to identify the person to be examined or the class or group to which he belongs; the trial court cannot expand the requirements

under Rule 23. (Malonzo, *et al. vs.* Sucere Foods Corporation, G.R. No. 240773, Feb. 5, 2020) p. 365

— The RTC observed that Section 3 of Rule 23 on examination and cross-examination and Section 17 on record, oath, and objections will be best complied with if the deposition is taken before the court instead of a notary public or any person authorized to administer oath; to require that these matters be taken before the RTC because they require the examination and cross-examination of the deponent would render useless the entire rules on discovery which were crafted by the Court to help expedite the disposition of cases; Section 10, Rule 23 of the Rules provides that depositions may be taken before any judge, notary public, or the person referred to in Section 14 of Rule 23, *i.e.*, any person authorized to administer oaths if the parties so stipulate in writing; until the Court revises its rules and removes the authority to take depositions from the notary public or any person authorized to administer oaths if the parties so stipulate, these persons retain their authorities to take depositions; the trial courts cannot arrogate these duties exclusively upon themselves; hence, the CA did not commit any reversible error in setting aside the RTC's Order. (*Id.*)

DIRECT ASSAULT

***Elements* —** Petitioner is charged with the second mode of direct assault under Art. 148 of the RPC; its elements are the following: 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance. 2. That the person assaulted is a person in authority or his agent. 3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or (b) that he is assaulted by reason of the past performance of official duties. 4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties. 5. That there is no public uprising; a police officer is an agent of a

person in authority; an agent of a person in authority is one who, "by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority"; being a police officer, P02 Navarro is an agent of a person in authority; the second, third, fourth, and fifth elements of direct assault are present in this case; however, the first element of the offense is not present. (Mallari *vs.* People, G.R. No. 224679, Feb. 12, 2020) p. 687

EJECTMENT

Physical or material possession of the land — The sole issue in ejectment cases is physical or material possession of the subject property, independent of any claim of ownership by the parties; Section 16, Rule 70 of the Rules of Court provides the exception to the rule in that the issue of ownership shall be resolved in deciding the issue of possession if the question of possession is intertwined with the issue of ownership; in the related ejectment case, the parties were allowed to prove how they came into possession of the property; in the ejectment case, the issue of ownership over Creek I was resolved in favor of respondent; this Court has consistently held that where the issue of ownership is inseparably linked to that of possession, adjudication of the issue on ownership is not final and binding, but merely for the purpose of resolving the issue of possession; in an ejectment case, questions as to the validity of the title cannot be resolved definitively; a separate action to directly attack the validity of the title must be filed, as was in fact filed by petitioner, to fully thresh out as to who possesses a valid title over the subject property; thus, any ruling on ownership that was passed upon in the ejectment case is not and should not be binding on Civil Case No. 00-11133. (Tiña *vs.* Sta. Clara Estate, Inc., G.R. No. 239979, Feb. 17, 2020) p. 906

EMPLOYEES, KINDS OF

Managerial employees **—** In *Casco*, which cited *Lima Land, Inc. v. Cuevas*, We distinguished between managerial employees, on the one hand, and rank and file personnel on the other hand, insofar as terminating them on the basis of loss of trust and confidence, thus: As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected; this includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property; the betrayal of this trust is the essence of the offense for which an employee is penalized; in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned; with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient; but as regards a managerial employee, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position. (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452. Feb. 12, 2020) p. 573

— The determination of whether an employee is part of the managerial staff depends on the employee's duties and responsibilities: Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-

off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; they refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment; at the very least, Batucan held a supervisory position, which made him part of the managerial staff; Batucan was petitioner's team leader and officer-in-charge in LBC Danao. (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

EMPLOYER-EMPLOYEE RELATIONSHIP

Four-fold test — The lower tribunals used the "four-fold test" in determining the existence of an employer-employee relationship, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct; the LA and the CA anchored their findings of employer-employee relationship on the Appointment Paper presented by respondent; this evidence, however, refers to his appointment as an instructor, as well as his duties and responsibilities as such; respondent was removed as a missionary of Abiko Baptist Church, not as an instructor of MBIS; there is no evidence or allegation to show that respondent's status as a missionary is the same or dependent on his appointment as an instructor of MBIS; the removal as a missionary may have affected respondent's status as instructor of MBIS, but the Court is not convinced that there was an illegal dismissal; the Mission Policy Agreement and Appointment Paper establish two (2) different positions held by respondent, and means that being a missionary of BSAABC is separate from being an instructor of MBIS, though they may be completely related. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Payment of wages — We do not find in the records concrete evidence of the alleged monthly compensation of respondent amounting to $550; respondent is not even consistent in claiming the exact amount of his supposed salary as he claims he was receiving $650 in his Motion for Reconsideration with the NLRC and Petition before the CA; although petitioners do not deny that respondent was receiving "love gifts" in the amount of $550, they aver that these came from ABA and Abiko Baptist Church in Japan; respondent also admitted that the "main bulk of the fund came from donor American Baptist Association"; "salary" is a general term defined as remuneration for services given, but the term does not establish a certain kind of relationship; absent any clear indication that the amount respondent was allegedly receiving came from BSAABC or MBIS, or at the very least that ABA, Abiko Baptist Church of Japan and BSAABC and MBIS are one and the same, We cannot concretely establish payment of wages. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Power to discipline or dismiss members — Dismissal is inherent in religious congregations as they have the power to discipline their members; the nature of respondent's position as a missionary calls on the exercise of supervision by the church of which he is a member considering that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief; although respondent's removal is clear from the letter, this alone cannot establish an employer-employee relationship. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Power to dismiss employees — The NLRC was correct in holding that petitioners performed functions that pertain to those of supervisory classification; the positions that petitioners held involved trust and confidence requiring

them to discharge their functions with utmost professionalism and uprightness; as held in *Supra Multi-Services, Inc., et al. v. Labitigan*, a company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel who occupy positions of responsibility; an employer cannot be compelled to retain employees who are guilty of acts inimical to its interests; besides, the power to dismiss employees is a recognized prerogative that is inherent in the employer's right to freely manage and regulate its business. (Iso, Jr., *et al. vs.* Salcon Power Corporation (now SPC Power Corporation), G.R. No. 219059, Feb. 12, 2020) p. 667

***Proof of* —** The respondent's appointment as instructor of petitioners' own educational institution was by virtue of his membership with Abiko Baptist Church; it is one of his duties as a missionary/minister of the same; he was teaching "bible history, philosophy, Christian doctrine, public speaking, English and other religious subjects to seminarians in MBIS intending to be a pastor/minister"; these subject matters and how they prepare or educate their ministers are ecclesiastical in nature which the State cannot regulate unless there is clear violation of secular laws; even his alleged exclusion as instructor is beyond the power of review by the State considering that this is purely an ecclesiastical affair; as to the power to order respondent to areas of mission work, the Court deems it appropriate not to expound on this because aside from being a mere allegation, it is also an ecclesiastical matter as it concerns governance of the congregation; other than the Appointment Paper (as an instructor), no other evidence was adduced by respondent to show an employer-employee relationship. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

EMPLOYMENT, TERMINATION OF

Burden of proof — In termination cases, the employer bears the burden of proving that the employee's dismissal was for a valid and authorized cause; consequently, the failure of the employer to prove that the dismissal was valid, would mean that the dismissal was unjustified, and thus illegal; petitioners failed to discharge the burden. (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452, Feb. 12, 2020) p. 573

Constructive dismissal — Although Batucan holds a supervisory position, he cannot be deemed to have acted on petitioner's behalf in committing the acts of sexual harassment; it cannot be assumed that all the illegal acts of managerial staff are authorized or sanctioned by the company, especially when it is committed in the manager's personal capacity; in *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, this Court ruled that constructive dismissal cannot be assumed if an officer of the company wronged an employee, but the employer did not authorize the act: It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee; unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal. (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

— Constructive dismissal occurs when an employer makes an employee's continued employment impossible, unreasonable or unlikely, or has made an employee's working conditions or environment harsh, hostile and unfavorable, such that the employee feels obliged to resign from his or her employment; common examples are when the employee is demoted, or when his or her pay or benefits are reduced; however, constructive dismissal is not limited to these instances; the gauge to determine whether there is constructive dismissal, is whether a reasonable person would feel constrained to resign from his or her employment because of the circumstances, conditions, and environment created by the employer

for the employee. (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

Ecclesiastical affairs and secular matters **—** While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters; an ecclesiastical affair is "one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership"; based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relates to matters of faith, religious doctrines, worship and governance of the congregation; examples of these so-called ecclesiastical affairs in which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance"; secular matters, on the other hand, have no relation whatsoever with the practice of faith, worship or doctrines of the church. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Ecclesiastical matters **—** There were three (3) acts which were decided upon by the Abiko Baptist Church against respondent in its letter, to wit: (1) removal as a missionary of Abiko Baptist Church; (2) cancellation of the ABA recommendation as a national missionary; and (3) exclusion of membership from Abiko Baptist Church in Japan; to the mind of the Court, the exclusion of membership from Abiko Baptist Church in Japan and the cancellation of ABA recommendation as a national missionary are ecclesiastical matters which this jurisdiction will not touch upon; these matters are exclusively determined by the church in accordance with the standards they have set; the Court cannot meddle in these affairs since the church has the discretion to choose members

who live up to their religious standards; the ABA recommendation as a national missionary is likewise discretionary upon the church since it is a matter of governance of congregation. (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Loss of trust and confidence — Article 297 (formerly 282) of the Labor Code provides that an employer may terminate its employee for "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative"; "the requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence; (2) there must be an act that would justify the loss of trust and confidence; and (3) such loss of trust relates to the employee's performance of duties." (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452, Feb. 12, 2020) p. 573

— *Cadavas v. Court of Appeals*, citing *Bristol Myers Squibb (Phils.), Inc. v. Baban*, explained the two classes of positions of trust, thus: There are two (2) classes of positions of trust; the first class consists of managerial employees; they are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, *etc*.; they are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property; "managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff." (*Id.*)

— *Casco* explains the concept of loss of trust and confidence as a valid ground for termination of employment: Loss of trust and confidence as a valid ground for dismissal

is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management; such employee bears a greater burden of trustworthiness than ordinary workers, and *the betrayal of the trust reposed is the essence of the loss of trust and confidence* that becomes the basis for the employee's dismissal. (*Id.*)

Misconduct — Misconduct has been defined as an improper or wrong conduct; "it is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment"; for misconduct or improper behavior to be a just cause for dismissal, there must be a concurrence of the following elements: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent. (Iso, Jr., *et al. vs.* Salcon Power Corporation (now SPC Power Corporation), G.R. No. 219059, Feb. 12, 2020) p. 667

Neglect of duty — "Neglect of duty, as a ground for dismissal, must be both gross and habitual"; in *Casco*, We pronounced that: Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care; it evinces a thoughtless disregard of consequences without exerting any effort to avoid them; habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452, Feb. 12, 2020) p. 573

Procedural due process — The respondent SPC was shown to have afforded petitioners their right to due process; in termination proceedings or employees, procedural due process consists of the twin requirements of notice and hearing; the employer is required to furnish the employees

with two written notices before the termination of employment can be effected: (1) the first apprises the employees of the particular acts or omissions for which their dismissal is sought; and (2) the second informs the employees of the employer's decision to dismiss them; there is compliance with the requirement of a hearing as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted; here, petitioners were issued show cause notices and were made to explain; they were then subjected to investigation wherein they were given the opportunity to defend themselves; thereafter, respondent SPC found them guilty of the charges and issued notices of dismissal; considering respondent SPC's compliance with procedural due process, there is no other logical conclusion than that petitioners' dismissal was valid. (Iso, Jr., *et al. vs.* Salcon Power Corporation (now SPC Power Corporation), G.R. No. 219059, Feb. 12, 2020) p. 573

***Redundancy* —**There is no dispute that petitioner was separated from service due to redundancy pursuant to Article 283 of the Labor Code; as she was dismissed due to redundancy, she is entitled to receive, under the law, a separation pay equivalent to at least one month pay for every year of her service. (Mateo *vs.* Coca-Cola Bottlers Phils. Inc., G.R. No. 226064, Feb. 17, 2020) p. 855

***Secular matters* —** The matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation; petitioners insist that this case is an ecclesiastical affair as there is no employer-employee relationship between BSAABC/MBIS and respondent; in order to settle the issue, it is imperative to determine the existence of an employer-employee relationship; it was previously ruled that "in an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause; however, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established; thus, in filing a complaint before the LA for illegal dismissal,

based on the premise that he was an employee of petitioners, it is incumbent upon respondent to prove the employer-employee relationship by substantial evidence." (Bishop Shinji Amari of Abiko Baptist Church, represented by Shinji Amari, *et al. vs.* Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020) p. 815

Separation pay — The CA found, and this Court agrees, that reinstatement is no longer feasible, and thus separation pay in lieu of reinstatement is in order; this Court is not unaware that under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right; however, if reinstatement would only aggravate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement. (Lufthansa Technik Philippines, Inc., *et al. vs.* Cuizon, G.R. No. 184452, Feb. 12, 2020) p. 573

Serious misconduct **—** It cannot be said that the penalty of dismissal is commensurate to Llorente's act of disobedience; however, viewed with the charge of serious misconduct, termination is justified under the circumstances; the records of the case are also replete with evidence of Llorente's past infractions, which the Court deemed no longer necessary to discuss, as these were not included by MPI in the Memorandum and the Notice of Termination served to Llorente; these are indicative of Llorente's unbecoming behavior at work and wanton disregard of his employment with MPI. (Metro Psychiatry, Inc. *vs.* Llorente, G.R. No. 245258, Feb. 5, 2020) p. 417

— Llorente's actuations of copying a patient's personal information and using it to malign MPI by relaying a false narrative are indicative of his wrongful intent; his actions comprise serious misconduct because as a nursing attendant, he has access to private and confidential information of MPI's patients, but he did not only illicitly

copy the personal information of a patient of MPI, he also used the information to fulfill a deceit purpose; thus, MPI is justified in terminating the employment of Llorente. (*Id.*)

***Voluntary resignation and constructive dismissal* —** In *Saudi Arabian Airlines v. Rebesencio,* this Court differentiated between voluntary resignation and constructive dismissal: In *Bilbao v. Saudi Arabian Airlines*, this court defined voluntary resignation as "the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment; it is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment"; essential to the act of resignation is voluntariness; it must be the result of an employee's exercise of his or her own will; on the other hand, constructive dismissal has been defined as "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits." (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

***Willful disobedience or insubordination* —** Llorente's refusal to heed the directives of the nursing attendant head, by itself, is insufficient to warrant his termination from employment; for dismissal to be valid under this ground, the following must be present: (a) there must be disobedience or insubordination; (b) the disobedience or insubordination must be willful or intentional characterized by a wrongful or perverse attitude; (c) the order violated must be reasonable, lawful, and made known to the employee; and (d) the order must pertain to the duties which he has been engaged to discharged. (Metro Psychiatry, Inc. *vs.* Llorente, G.R. No. 245258, Feb. 5, 2020) p. 417

EVIDENCE

***Admissibility of* —** This Court sustains the RTC ruling that even if the subject ink cartridges are admitted as evidence, it does not necessarily follow that they are given probative weight; this Court held in *Mancol, Jr. v. Development Bank of the Philippines* that: admissibility of evidence should not be confused with its probative value; the admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade; the admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth; the weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case; "admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue"; "thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence." (Yokohama Tire Philippines, Inc. *vs.* Reyes, *et al.*, G.R. No. 236686, Feb. 5, 2020) p. 292

***Circumstantial evidence* —** Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt; circumstantial evidence may support a conviction if they afford as basis for a reasonable inference of the existence of the fact thereby sought to be proved; to sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain, which leads one to a fair and reasonable conclusion pointing to the accused,

to the exclusion of the others, as the guilty person; the circumstantial evidence must exclude the possibility that some other person has committed the crime. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

***Preponderance of evidence* —** In civil cases, like in a complaint for a sum of money, the burden of proof lies on the party who asserts the affirmative of the issue; in such a case, the party, whether plaintiff or defendant, must establish his case by preponderance of evidence; preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence"; preponderance of evidence is a phrase, which, in the last analysis, means probability of truth; it is that evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto; further, preponderance of evidence is determined by considering all the facts and circumstances of the case, culled from the evidence, regardless of who actually presented it. (Spouses Garcia, doing business under the name and style of Ecolamp Multi-Resources *vs.* Northern Islands, Co., Inc., G.R. No. 226495, Feb. 5, 2020) p. 282

— The Court finds that respondent Northern proved its cause of action by preponderance of evidence; as aptly found by the CA, the goods delivered and received in April to July 2004 created an obligation on the part of Ecolamp to pay respondent Northern as it fell due; here, however, petitioner Spouses Garcia failed to present evidence to prove payment thereof; deliveries to Ecolamp having been established by preponderance of evidence, the CA did not err in ordering petitioner Spouses to pay respondent Northern the value of the 3D appliances in the amount of ₱6,478,700.00 as shown by the various delivery cargo receipts the details of which correspond to the details found in the bills of lading; the Court finds the CA's imposition of 12% interest *per annum* from date of last extrajudicial demand on May 4, 2005

until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision in place; thereafter, the principal amount due as adjusted by interest shall likewise earn an interest at 6% *per annum* until its full satisfaction. (*Id.*)

Substantial evidence — Every person has the right to be presumed innocent until the contrary is proved; considering the gravity of the consequences of the disbarment or suspension of a lawyer, the Court has consistently ruled that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence; time and again, the Court has held that mere allegation is not evidence and is not equivalent to proof; while the Court agrees with the recommendation of the IBP-BOG to dismiss the disbarment complaint; the quantum of proof in administrative cases is substantial evidence and not preponderance of evidence; this issue had already been clarified in *Reyes v. Nieva* where the Court held that: Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases; as case law elucidates, "disciplinary proceedings against lawyers are *sui generis;* neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers." (Spouses Nocuenca *vs.* Atty. Bensi, A.C. No. 12609, Feb. 10, 2020) p. 430

— It appears that the CA overlooked that "the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence," which is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"; aside from the CCTV footage where Llorente was seen copying from the records and pocketing the paper where he wrote the information, Nurses Dumalanta and Manawat submitted their written statements avowing that they

recognized Llorente's voice on the speaker phone as the latter talked to Tan's mother; these circumstances constitute substantial evidence of Llorente's wrongdoing; the Court reiterates that "as opposed to the 'proof beyond reasonable doubt' standard of evidence required in criminal cases, labor suits require only substantial evidence to prove the validity of the dismissal"; "the standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position." (Metro Psychiatry, Inc. *vs.* Llorente, G.R. No. 245258, Feb. 5, 2020) p. 417

— It is fundamental that the quantum of proof in administrative cases such as disbarment proceedings is substantial evidence; substantial evidence is that amount of relevant evidence as a reasonable mind might accept as *adequate* to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise; while Zamora is correct that the very pleading itself is the best piece of evidence to prove whether Atty. Mahinay had, indeed, violated Canon 11, Rule 11.03 of the CPR, this proffered evidence failed to reach the threshold of the quantum of proof required; the Court does not find the language used in the subject motion for reconsideration to be offensive, abusive, malicious, or intemperate in any way; it did not spill over the walls of decency or propriety. (Zamora *vs.* Atty. Mahinay, A.C. No. 12622, Feb. 10, 2020 [Formerly CBD Case No. 15-4651]) p. 439

— Suicide had been indubitably established; technical rules of procedure are not binding in labor cases, and the quantum of proof required here is only substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"; while it may be true that the documentary evidence adduced by respondents were photocopies, the Court cannot discount the fact that the statements of the crew members of the vessel as well as the autopsy report issued by the Sri Lankan authority

coincide with the NBI autopsy report which concluded that the cause of death to be *"consistent with asphyxia by ligature"*; the NBI autopsy report lends credence to and bolsters the account of the respondents that Manuel took his own life. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.,* G.R. No. 224026, Feb. 3, 2020) p. 42

EVIDENCE CUSTODIAN

Duties — Equally accountable with Atty. Toledo was Barcelona who also failed to exercise reasonable care and diligence in performing her duties as evidence custodian; Barcelona did not observe such diligence required under the circumstances when she ordered Esguerra to simply place the *shabu* evidence under her computer table, in total disregard of its legal value as the very *corpus delicti* of the offense; all that is needed in the safekeeping of court evidence or property is the exercise of ordinary prudence and common sense, which Barcelona obviously failed to do; even without a specific instruction from anyone, common sense should have impelled Barcelona to list down the physical evidence received by the court for its safekeeping inclusive of the vital details pertaining thereto such as the date and time of reception and the identity of the person who handed the evidence to her. (Office of the Court Administrator *vs.* Atty. Toledo, then Branch Clerk of Court [Now Clerk of Court V], *et al*., A.M. No. P-13-3124, Feb. 4, 2020) p. 160

FORUM SHOPPING

Commission of — Section 5, Rule 7 of the Rules of Court, cited; by filing with the Panel a second motion for reconsideration in the guise of a *Manifestation with Opposition*, and without awaiting the result thereof, appealing before the CA, and thereafter filing once again with the Panel a *Reiterative Motion*, petition avers that respondents committed forum shopping; while the Court agrees with the petitioner that respondents' *Manifestation with Opposition* is in reality a second motion for reconsideration and its *Reiterative Motion* is another

motion for reconsideration, there are good reasons which militate against the finding of forum shopping in this case; the *Manifestation with Opposition*, being a second motion for reconsideration, and the *Reiterative Motion*, being technically a third motion for reconsideration, their filing thereof is prohibited under Section 2, Rule 52 of the Rules of Civil Procedure; regarded as mere scrap of paper that do not deserve any consideration and do not have any legal effect; in addition, the *Reiterative Motion* is no longer within the Panel's competence to decide; thus, no forum shopping in this case. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

INFORMATION

Designation of the offense **—** Going now to the ordinary aggravating circumstance of dwelling; Section 8, Rule 110 of the Revised Rules of Court is in consonance with the constitutional rights of the accused to be informed of the nature and cause of accusation against him; the purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial; even if the prosecution has duly proven the presence of any of these circumstances, the Court cannot appreciate the same if they were not alleged in the Information, as in here; that the killing happened in the victim's dwelling was not alleged in the Information; hence, the trial court and the Court of Appeals cannot appreciate dwelling as an aggravating circumstance. (People *vs.* Pigar @ "Jerry", *et al.*, G.R. No. 247658, Feb. 17, 2020) p. 939

Sufficiency of allegations **—** Under Section 6, Rule 110 of the Rules on Criminal Procedure, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, as well as the place of the offense; the Information herein complied with these conditions since the qualifying circumstance

of "treachery" was specifically alleged in the Information; accused-appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 472

JUDGES

Conduct of **—** Members of the judiciary should conduct themselves in such a manner as to be beyond reproach and suspicion, and free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday life; they are strictly mandated to maintain good moral character at all times and to observe irreproachable behavior so as not to outrage public decency. (Baculi *vs.* Judge Belen, Regional Trial Court, Branch 36, Calamba City, Laguna, A.M. No. RTJ-11-2286 [Formerly OCA IPI No. 09-3291-RTJ], Feb. 12, 2020) p. 565

Delay in disposition of cases **—** Because of Judge Santos' overbearing persistence to make the parties settle amicably, he has unduly hampered the proceedings in Special Proceedings No. 1870; in *Re: Report on the Judicial Audit conducted in the RTC, Branch 9, Silay City,* the Court found Judge Arinday, Jr. guilty of gross inefficiency because of the delay he incurred in disposing of the cases assigned to him and which were already submitted for decision; in two of the cases where he incurred delay, the Court ruled that Judge Arinday was too liberal in granting the parties more than one year to amicably settle their dispute; while the *Judge Arinday* case involved a delay in the disposition of the cases which were already submitted for decision, the Court finds the pronouncement in the same applicable in determining the reasonableness of the delay in Special Proceedings No. 1870; as correctly pointed out by the OCA, the case went on from January 7, 2010 to December 11, 2012 when the petition was finally withdrawn without it proceeding beyond the pre-trial stage; while a few delays were attributable to the

parties due to the absence of counsel, the filing of motion for postponement, and change of counsel, the Court finds that based on Judge Santos' actuations spanning around almost three years, it was mainly his overbearing desire to convince the parties to arrive at an amicable settlement that led to the unreasonable delay; while the Court does not find any bad faith or ill motive on the part of Judge Santos in pushing for an amicable settlement, this should not get in the way of arriving at a just and speedy disposition of the litigants' conflicting claims. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur., A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

***Dishonesty* —** Respondent judge is indeed guilty of dishonest conduct; jurisprudence defines dishonesty as "a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray"; in receiving his monthly allowances despite notice of his suspension by the Court, respondent judge knowingly received money not due to him and in effect defrauded the LGUs concerned of public funds that could have been used for a worthy governmental purpose; under civil service rules, a government employee is not entitled to all monetary benefits including leave credits during the period of suspension; the seriousness of respondent's offense lies in the fact that as a judge, he was "expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith"; worse, his act of receiving allowances was in clear contravention of this Court's decision suspending him for six (6) months without salary or benefits; We approve the penalty recommended by the OCA since it is settled that "dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service." (Baculi *vs.*

Judge Belen, Regional Trial Court, Branch 36, Calamba City, Laguna, A.M. No. RTJ-11-2286 [Formerly OCA IPI No. 09-3291-RTJ], Feb. 12, 2020) p. 565

Dismissal of — All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is a mission; judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression; those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary; the investigating Justice deems it appropriate to recommend the imposition of an administrative penalty of dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits against the respondent judge; it becomes this Tribunal's bounden duty to decree respondent's dismissal from the service. (Neri, *et al. vs.* Judge Macabaya, Branch 20, Regional Trial Court, Cagayan de Oro City, Misamis Oriental, A.M. No. RTJ-16-2475, Feb. 4, 2020 [Formerly A.M. No. 16-07-261-RTC]) p. 216

Gross ignorance of the law and procedure — In *Department of Justice v. Judge Mislang,* the Court explained what constitutes gross ignorance of the law in this wise: Gross ignorance of the law is the disregard of basic rules and settled jurisprudence; a Judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence; though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment; where the law is straightforward and the facts so evident, failure

to know it or to act as if one does not know it constitutes gross ignorance of the law; a judge is presumed to have acted with regularity and good faith in the performance of judicial functions; but a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions; for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive; when the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority; in both cases, the judge's dismissal will be in order. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur., A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

— The Court finds Judge Santos guilty of gross ignorance of the law; Judge Santos' gross ignorance of the law lies not so much in the issuance of the Order dated August 7, 2012, which appeared to incorporate a pre-trial order; the Court finds that what appeared as a pre-trial order incorporated in the said Order is not final; in fact, after the pre-trial hearing, Judge Santos issued a Pre-trial Order dated September 4, 2012; however, Judge Santos committed a blatant error when in his Order dated August 7, 2012, he gave the oppositor the privilege of submitting at his option a pre-trial brief; this contravenes the expressed rule under Section 6, Rule 18 of the Rules of Court that the filing of the respective pre-trial briefs by the parties at least three days before the date of pre-trial is mandatory; worse, during the pre-trial hearing, Judge Santos expressed

that in the absence of oppositor's pre-trial brief, he was treating oppositor's previous submissions to the court, *i.e., Opposition, Supplement to the Opposition in lieu of Position Paper,* and *Compliance,* as containing the elements of a pre-trial brief; Judge Santos' act of considering oppositor's submissions as his pre-trial brief is clearly not sanctioned by Section 6, Rule 18 of the Rules of Court which mandates the parties to file a pre-trial brief; Section 5 of the same Rule even provides that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial, which in turn will result to allowing the plaintiff to present his evidence *ex parte* and for the court to render judgment on the basis thereof; thus, when he issued the Pre-Trial Order dated September 4, 2012, Judge Santos disregarded the mandatory nature of the submission of pre-trial briefs considering that the oppositor did not submit his pre-trial brief; Judge Santos' lack of understanding of the rules on pre-trial, constitutes gross ignorance of the law and procedure. (*Id.*)

— The Court agrees with OCA that the following acts alone do not make Judge Santos' administratively liable: (1) advising the complainant to bring her co-heirs who were residing abroad before the court; (2) not limiting the case to the validity of the Deed of Donation *Mortis Causa*; and (3) requiring information on the lots which were not subject matter of the petition; these acts are judicial in nature and involved Judge Santos' appreciation of the probate case; in *Salvador v. Judge Limsiaco, Jr.*, as cited in *Magdadaro v. Judge Saniel, Jr.*, the Court ruled: It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable; only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned; to hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment;

complainant failed to show that Judge Santos' acts were motivated by bias or bad faith; the Court is also not convinced that such acts constitute gross ignorance of the law; assuming that Judge Santos erred in his appreciation of the case, the remedy of complainant should have been to assail them in an appropriate judicial proceeding where he could have corrected himself or could have been corrected by a higher court. (*Id.*)

***Gross misconduct* —** Respondent Judge is found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from litigants in cases pending before his court) which is also a gross misconduct constituting violation of the Code of Judicial Conduct; under Section 8 of Rule 140 of the Rules of Court, it is a serious charge to borrow money or property from lawyers and litigants in a case pending before the court; under Section 11(A) of the same rule, an act that violates the Code of Judicial Conduct constitutes gross misconduct, which is also a serious charge; in either instance, a serious charge is punishable by (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. (Neri, *et al*. *vs.* Judge Macabaya, Branch 20, Regional Trial Court, Cagayan de Oro City, Misamis Oriental, A.M. No. RTJ-16-2475, Feb. 4, 2020 [Formerly A.M. No. 16-07-261-RTC]) p. 216

***Guidelines in the imposition of penalties in administrative matters involving members of the Bench* —** In *Boston Finance and Investment Corporation v. Judge Gonzalez*, the Court set the following guidelines in the imposition of penalties in administrative matters involving members of the Bench and court personnel, thus: (a) Rule 140 of

the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts; *if the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violations;* and (b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules; if the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances; Rule 140, as amended by A.M. No. 01-8-10-SC of the Rules of Court, classifies the administrative charges against members of the Bench as serious, less serious and light; the corresponding penalties for a finding of guilt on any of these charges are provided in Section 11, Rule 140, as amended by A.M. No. 01-8-10-SC. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

Propriety — As regards Judge Santos' issuance of the Extended Order, he again exceeded the bounds of propriety when he unduly castigated complainant's counsel; Judge Santos should have refrained from using his position to browbeat complainant's counsel just because he did not agree with the latter's position; further, he should have refrained from rendering the Extended Order considering that he already granted the withdrawal of the petition in Special Proceedings No. 1870; thus, there was no longer any occasion to issue the Extended Order. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

— OCA Circular No. 70-2003 cautions judges "to avoid in chamber sessions without the other party and his counsel present, and to observe prudence at all times in their

conduct to the end that they not only act impartially and with propriety but are also perceived to be impartial and improper"; A.M. No. 03-01-09 SC, which was adverted to by Judge Santos to justify his actions, mandates judges to persuade the parties to arrive at a settlement of the dispute; however, it does not give the judge an unbridled license to do this outside the confines of the official proceedings at the risk of putting into question the integrity of the judiciary; while he may have been impelled by good motives in encouraging the parties to arrive at an amicable settlement, his aforementioned acts particularly texting complainant's counsel and convincing the oppositor to amicably settle during their accidental meeting in Naga City, are not part of the court's official proceedings and thus, cast doubt on the integrity and impartiality of the courts; further, his *ex parte* meeting with complainant and her counsel done inside his chambers is specifically prohibited by OCA Circular No. 70-2003. (*Id.*)

Violation of Supreme Court rules, directives and circulars — In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province,* the Court explained that to decongest court dockets and enhance access to justice, the Court, through A.M. No. 01-10-5-SC-PHILJA, approved the institutionalization of mediation in the Philippines through court-annexed mediation; under this set of rules, mediatable cases where amicable settlement is possible must be referred by the trial courts to the Philippine Mediation Center (PMC); here, the case involved a petition for the allowance of the Deed of Donation *Mortis Causa*, which is governed by the rules on the Settlement of Estate of Deceased Person under the Rules of Court; Judge Santos should have referred the case to the PMC but he failed to do so; no reason for him not to refer to the PMC Special Proceedings No. 1870. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

***Violation of Supreme Court rules, directives and circulars, simple misconduct, gross inefficiency or undue delay, and gross ignorance of the law* —** Judge Santos committed the following offenses: 1. Failure to refer the case to the PMC as prescribed in A.M. No. 01-10-5-SC-PHILJA; 2. Pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety, *i.e.*, texting complainant's counsel, conducting an *ex parte* meeting with complainant and her counsel inside his chambers, and convincing the oppositor to settle amicably during their accidental meeting in Naga City; 3. Causing undue delay in terminating the preliminary conference amounting to gross inefficiency; 4. Issuing the Extended Order unduly castigating complainant's counsel after the withdrawal of the petition, thereby exceeding the bounds of propriety; and 5. Giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature as stated in Section 6, Rule 18 of the Rules of Court; Judge Santos' first second, and third offenses are less serious charges; specifically, the first offense constitutes a violation of Supreme Court rules, directives, and circulars under Section 9(4), Rule 140 of the Rules of Court; the second offense amount to simple misconduct under Section 9(7), Rule 140 of the Rules of Court, there being no corrupt or wrongful motive on the part of Judge Santos; the third offense which amounts to gross inefficiency or undue delay falls under Section 9(1), Rule 140 of the Rules of Court; applying Section 11, Rule 140, the Court deems it proper to impose a penalty of ₱12,000.00 each for the first and third offenses; as to the second offense, the Court previously found Judge Santos in A.M. No. MTJ-15-1850 guilty of violating Section 2, Canon 2 of the New Code of Judicial Conduct for initiating a conference among the parties in a pending case for the purpose of settling the cases pending not only before him but also those pending outside his *sala*; maximum penalty of ₱20,000.00; as to the fourth charge, the Court finds it as not attended by corrupt or wrongful motive on the part of Judge Santos in issuing the Extended

Order; it only amounts to simple misconduct which is a less serious charge under Section 9(7), Rule 140 of the Rules of Court; penalty of ₱12,000.00; the fifth offense constitutes gross ignorance of the law under Section 8(9), Rule 140 of the Rules of Court which is a serious charge; applying Section 11, Rule 140, the Court deems it proper to impose the penalty of ₱22,000.00. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

JUDGMENTS

Final and executory judgment **—** 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; otherwise stated, the new action is an action the purpose of which is not to reexamine and retry 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. (Ganal, *et al*. *vs.* Alpuerto, *et al.*, G.R. No. 205194, Feb. 12, 2020) p. 596

Immutability of final judgment **—** As a rule, a final judgment is immutable and unalterable; it cannot be disturbed or modified by any court even if the purpose of the alteration is to rectify perceived errors of fact or law; the doctrine of immutability of judgment is for the purpose of avoiding delay in the administration of justice and of putting an end to judicial controversies which cannot drag perpetually; pursuant to this doctrine, courts have the ministerial duty to enforce judgment that already attained finality; there are established exceptions to the foregoing rule, namely: (i) the correction of clerical errors; (ii) presence of *nunc pro tunc* entries, which cause no prejudice to any party; (iii) void judgment; and, (iv) whenever circumstances transpire after the finality of the judgment which renders the execution unjust and inequitable; here,

none of the foregoing exceptions is applicable; the assailed RTC Order which granted petitioner's application for writ of possession had already become final and executory; the RTC had in fact already issued the corresponding entry of judgment. (HH & Co. Agricultural Corporation *vs.* Perlas, G.R. No. 217095, Feb. 12, 2020) p. 608

— Since the Deed of Sale of Residential House was declared null and void in Civil Case No. 12-128721 and affirmed in CA-G.R. CV No. 107254, which decision has attained finality during the pendency of this case, Domingo can no longer claim any right to possess the subject property based on the said deed of sale; this issue has already been settled and can no longer be disturbed in this case; it is a general rule that "judgments by a court of competent jurisdiction, which have attained finality, are not subject to reversal, modification or alteration and are, thus, immutable"; doctrine was extensively discussed in *Vios v. Pantango, Jr.* (Samonte *vs.* Domingo, G.R. No. 237720, Feb. 5, 2020) p. 319

LAND REGISTRATION

Lands of the public domain **—** Section 3, Article XII of the 1987 Constitution classifies the lands of public domain as follows: (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks; only agricultural lands may be alienated and disposed of by the State. (Republic *vs.* San Lorenzo Development Corporation (SLDC), G.R. No. 220902, Feb. 17, 2020) p. 805

LEASE

Implied contract renewal **—** Based on the terms of the Lease Contract, renewal would be at the option of the lessee; however, after the original Lease Contract had expired, petitioners continued to pay rentals to the lessor; this constitutes an implied lease contract renewal, as the trial court and the Court of Appeals correctly found; *Dizon v. CA,* cited; this Court ruled that implied renewals do not include the option to buy, as it is not germane to the lessee's continued use of the property; moreover,

since Overland failed to avail of the option to buy within the stipulated period, it no longer had any right to enforce this option after that period had lapsed; petitioners can only invoke the right to ask for the rescission of the contract if their right to first refusal, as embodied in the original Lease Contract, is included in the implied renewal; based on Article 1643, the lessee's main obligation is to allow the lessee to enjoy the use of the thing leased; without any express contract renewal, this Court cannot presume that both parties agreed to revive all the terms in the previous lease contract. (Mañas, joined by wife Lena Isabelle Y. Mañas *vs.* Roca, *et al*., G.R. No. 208845, Feb. 3, 2020) p. 13

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

***Barangay conciliation proceedings* —** The Court of Appeals correctly affirmed the trial court's ruling that petitioners failed to comply with a condition precedent; Section 412 of R.A. No. 7160 provides: SECTION 412. C*onciliation. — (a) Pre-condition to Filing of Complaint in Court.* — No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat,* and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto; generally, all parties must first undergo barangay conciliation proceedings before filing a complaint in court; none of the exceptions under the law are present in this case. (Mañas, joined by wife Lena Isabelle Y. Mañas *vs.* Roca, *et al*., G.R. No. 208845, Feb. 3, 2020) 13

***Power to assess and collect real estate taxes* —** Under the Real Property Tax Code, the local government unit where the property is located has the authority to assess or appraise the current and fair market value of the property

and to collect the taxes due thereon; to determine who has the right to collect taxes from Sps. Braña, it is necessary to determine the location of the property; while the TCTs state that the location is in Pasig, the same cannot be relied in this case because the location of the property is precisely in dispute; the RTC of Antipolo, which has jurisdiction over the boundary dispute case, would be the best forum to determine the precise metes and bounds of the City of Pasig's and the Municipality of Cainta's respective territorial jurisdiction, as well as the extent of each local government unit's authority. (Municipality of Cainta, Rizal *vs.* Spouses Braña, *et al*., G.R. No. 199290, Feb. 3, 2020) p. 1

LOCAL TAXATION

***Payment during boundary dispute* —** Payment of real estate taxes must continue notwithstanding the boundary dispute case; Sps. Braña are ordered to deposit the succeeding payment of real estate taxes due on the subject properties in an account with the Land Bank of the Philippines in escrow for the City of Pasig/the Municipality of Cainta; the proceeds of the same will be released to the local government adjudged by virtue of a final judgment on the issue of territorial jurisdiction over the disputed areas. (Municipality of Cainta, Rizal *vs.* Spouses Braña, *et al*., G.R. No. 199290, Feb. 3, 2020) p. 1

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042), AS AMENDED BY R.A. NO. 10022

***Compulsory life insurance benefit* —** Section 23 of R.A. No. 10022 provides for the compulsory insurance coverage of migrant workers; respondents become liable for the payment of the compulsory life insurance benefit of US$15,000.00 only when the employee died of an accidental death; inasmuch as the Court had already ruled that Manuel committed suicide, the CA correctly deleted the award of US$15,000.00 by way of life insurance in favor of the petitioner; even assuming that respondents failed to procure a life insurance coverage for Manuel as mandated by R.A. No. 10022, such failure does not merit

the automatic award of the aforementioned sum to the petitioner as the same pertains to the minimum of the life insurance policy coverage to be paid by the insurance company only to qualified beneficiaries and for such causes as specified therein, and is not a penalty or fine to be paid by the manning agency. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

MITIGATING CIRCUMSTANCES

Voluntary surrender **—** Voluntary surrender must be considered in the instant case for the reduction of penalty; its requisites, as a mitigating circumstance, are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

MONETARY AWARDS

Legal interest **—** Based on the prevailing jurisprudence, the actual base for the computation of 6% per annum legal interest (the prevailing legal interest prescribed under Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013) of the total monetary awards shall be the amount finally adjudged, that is from the finality of this judgment until their full satisfaction. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Award of **—** Since respondents were able to duly prove, and the petitioner had already received the amount of US$670.03 representing Manuel's uncollected salary, the CA correctly deleted the same; petitioner is also not entitled to moral damages, exemplary damages and attorney's fees; the refusal of the respondents to pay the benefits being claimed by the petitioner, and the delay

in the eventual release of the last salary of Manuel, did not arise out of bad faith, but brought about by their firm belief of petitioner's lack of entitlement thereto and the merits of their cause; mere failure of the respondents to furnish the petitioner with a copy of the CBA does not establish bad faith; the terms of the employment contract of Manuel had been faithful to the benefits spelled out in the said CBA. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

MOTION TO DISMISS

Failure to state a cause of action **—** Failure to state a cause of action in an initiatory pleading is a ground for the dismissal of a case; Rule 16, Section 1(g) of the Rules of Court states that: 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: (g) That *the pleading asserting the claim* states no cause of action; though obvious from the text of the provision, the non-statement of the cause of action must be apparent from the complaint or other initiatory pleading; for this reason, it has been consistently held that in ruling upon a motion to dismiss grounded upon failure to state a cause of action, courts must only consider the facts alleged in the complaint, without reference to matters outside thereof; an early commentary on the Rules of Court describes a motion to dismiss as "the usual, proper, and ordinary method of testing the legal sufficiency of a *complaint*." (Tocoms Philippines, Inc. *vs.* Philips Electronics and Lighting, Inc., G.R. No. 214046, Feb. 5, 2020) p. 241

MURDER

Commission of **—** Ernie categorically stated that his father was sleeping inside the *nipa* hut when accused-appellant stabbed him using a "*pinuti*"; Olipio was lying on his stomach, with his face down, and it was in that position that he was killed by accused-appellant; under such

circumstance, there is no doubt that he was not in a position to put up any form of defense against his assailant. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

Elements — Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. (People *vs.* Pigar *y* @ "Biroy," G.R. No. 247658, Feb. 17, 2020) p. 939

(People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

— With respect to Criminal Case No. AR-4143, the crime of murder is defined under Article 248 of the Revised Penal Code *(RPC)*, as amended by R.A. No. 7659; the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

***Penalty* —** The RTC and CA were both correct in imposing the penalty of *reclusion perpetua*, together with the accessory penalty provided by law, instead of death considering that the latter penalty has been suspended by R.A. No. 9346; as to the award of damages, the modifications made by the CA already conform to the latest jurisprudence on the matter; when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua*, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages in view of the heinousness of the crime and to set an example; other than treachery which was used to qualify the killing, the special aggravating circumstance of relationship was specifically alleged in the information and the accused-appellant did not deny that he is the

victim's brother-in-law, a relative by affinity within the second civil degree. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

NATIONAL INTERNAL REVENUE CODE OF 1997

***Income taxation* —** Neither was there any showing that petitioner voluntarily opted to retire so as to treat the amount she received as her retirement pay; not being a retirement pay, it was plain error on the part of the CA to have applied the four conditions under Section 32(B)(6)(a) of the NIRC for tax exemption of retirement benefits; since the amount received by petitioner was separation pay, such is exempt from income tax under Section 32(B)(6)(b) of the NIRC. (Mateo *vs.* Coca-Cola Bottlers Phils. Inc., G.R. No. 226064, Feb. 17, 2020) p. 855

NATURALIZATION

***Effect* —** Clear from P.D. Nos. 836 and 923 is that the naturalization extends to the alien wife and minor children of the person naturalized upon the wife's showing that she does not suffer from any of the disqualifications under Letter of Instructions No. 270, and that she and her minor children reside permanently in the Philippines at the time of her husband's naturalization; in other words, the only persons to undergo the proceeding before the Special Committee on Naturalization will only be the person naturalized and his wife; the minor children, in the words of Letter of P.D. No. 836 "follow the acquired Filipino citizenship of their mother"; besides, the entries sought to be changed are the nationalities of Lao Kian Ben and Chia Kong Liong as appearing in the certificates of live birth of Winston Brian, Christopher Troy, and Jon Nicholas; therefore, the only relevant issue, at least for the present proceedings, is whether or not Lao Kian Ben and Chia Kong Liong have been issued their Certificates of Naturalization and have taken their Oaths of Allegiance as Filipinos, an issue that has been resolved in the affirmative. (Republic, Represented by the Special

Committee on Naturalization (SCN) *vs.* Chia Lao, *et al.*, G.R. No. 205218, Feb. 10, 2020) p. 499

Types of — Naturalization may be either administrative, judicial, or legislative; as the name implies, administrative naturalization is the grant of Filipino citizenship to aliens via administrative proceedings and is currently governed by R.A. No. 9139; judicial naturalization grants Filipino citizenship through a judicial decree and is governed by Commonwealth Act No. 423 or the Revised Naturalization Law, as amended; lastly, legislative naturalization bestows Filipino citizenship through a statute enacted by Congress; it is undisputed that Winston Brian, Christopher Troy, and Jon Nicholas' father, Lao Kian Ben, applied for naturalization under Letter of Instructions No. 270, and his application was granted under P.D. No. 923; P.D. No. 923 provided for the same rights, privileges, duties, and obligations as well as conditions and effects of naturalization as those provided in P.D. No. 836. (Republic, Represented by the Special Committee on Naturalization (SCN) *vs.* Chia Lao, *et al.*, G.R. No. 205218, Feb. 10, 2020) p. 499

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

Canon 2 — The Court finds Judge Santos guilty of violating Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary which provide: CANON 2. INTEGRITY. Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges; SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer; SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary; justice must not merely be done but must also be seen to be done; the Court has previously ruled: "It is obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that

they should act and behave in such a manner that the parties before them should have confidence in their impartiality"; while the courts are enjoined to make the parties agree on an equitable compromise, the judges' efforts to make the parties agree should be within the bounds of propriety and without the slightest perception of impartiality; from the very beginning, Judge Santos has shown his predisposition to resolve the case by way of an amicable settlement when he directed the parties to propose specific terms and conditions for possible amicable settlement, and constantly cajoled them to do so through his Orders; he did not deny that in his effort to persuade the parties, he committed the said acts. (Elgar *vs.* Judge Santos, Jr., Municipal Circuit Trial Court, Nabua-Bato, Camarines Sur, A.M. No. MTJ-16-1880, Feb. 4, 2020 [formerly OCA IPI No. 13-2565-MTJ]) p. 178

PARTIES TO CIVIL ACTIONS

Indispensable parties **—** Indispensable parties or parties in interest without whom no final determination can be had of an action, shall be joined either as plaintiffs or defendants; there are two consequences of a finding on appeal that indispensable parties have not been joined: first, all subsequent actions of the lower courts are null and void for lack of jurisdiction; second, the case should be remanded to the trial court for the inclusion of indispensable parties; it is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed; all subsequent actions of lower courts are void as to both the absent and present parties; the inclusion of an indispensable party is a jurisdictional requirement; both the Regional Trial Court and the Court of Appeals found that Diator, the seller in the Deeds of Absolute Sale, and Mahid's estate are indispensable parties, without whom no final determination can be had of the action for annulment filed by petitioners; since this case is dismissed for lack of jurisdiction by the trial court, the second case is not

an option. (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020)

***Real party in interest* —** An action for the annulment of contracts may be instituted by all who are obliged to it principally or subsidiarily; by the principle of relativity or privity of contracts, contracts take effect only between the parties, their assigns, and heirs; while the principle acknowledges that contractual obligations are transmissible to a party's assigns and heirs, petitioners here do not claim to be heirs of any party to the Deeds of Absolute Sale; it is actually respondent who was party to the sale, not Mahid; therefore, petitioners, not being privy to the Deeds of Absolute Sale, are not the real parties in interest to question their validity. (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020)

— Generally, every action must be prosecuted or defended in the name of the real party in interest, the one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit"; to be a real party in interest, one "should appear to be the present real owner of the right sought to be enforced, that is, his or her interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest"; rationale for such requirement, explained in *Stronghold Insurance Company, Inc. v. Cuenca*: The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy; considering that all civil actions must be based on a cause of action, the former as the defendant must be allowed to insist upon being opposed by the real party in interest so that he is protected from further suits

regarding the same claim; the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end"; the rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. (*Id.*)

— Petitioners here are not vested with direct and substantial interest in the subject parcels of land; they are not the present real owners of the right sought to be enforced; they claim their interests only as heirs of Mahid, who was not proven to have any right or interest in the parcels of land titled in respondent's name; not being real parties in interest, petitioners cannot invoke the jurisdiction of the court; persons having no material interest to protect cannot invoke its jurisdiction as the plaintiff in an action; "nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded." (*Id.*)

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

***Assessment of fitness to work of degree of disability* —** After undergoing a pre-employment medical examination (PEME), petitioner was declared fit to work and was permitted to board MV British Ruby on July 22, 2015; although a PEME is not expected to be an in-depth examination of a seafarer's health, still, it must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea; thus, if it concludes that a seafarer, even one with an existing medical condition, is "fit for sea duty," it must, on its face, be taken to mean that the seafarer is well in a position to engage in employment aboard a sea vessel without danger to his health. (Lemoncito *vs.* BSM Crew Service Centre Philippines, Inc./Bernard Schulte Shipmanagement (Isle of Man Ltd.), G.R. No. 247409, Feb. 3, 2020) p. 130

— In their final Medical Report, the company-designated doctors stated: On its face, there was no categorical statement that petitioner is fit or unfit to resume his work as a seaman; it simply stated: a) petitioner was previously cleared of his lower respiratory tract infection; b) petitioner's blood pressure is adequately controlled with medications; and c) petitioner was cleared cardiac wise as of July 1, 2016; this assessment is incomplete, nay, inconclusive; *Ampo-on v. Reinier Pacific International Shipping, Inc.* explains: Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation; this period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists; a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such; failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent. (Lemoncito *vs.* BSM Crew Service Centre Philippines, Inc./Bernard Schulte Shipmanagement (Isle of Man Ltd.), G.R. No. 247409, Feb. 3, 2020) p. 130

— The 2010 POEA-SEC imposes upon the company-designated physician the responsibility to arrive at a *definite assessment* of the seafarer's fitness to work or degree of disability within a period of 120 days from repatriation; during the said period, the seafarer shall be deemed on *temporary total disability* and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to

be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws; however, if the 120-day period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists; failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods, and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent. (Teodoro *vs.* Teekay Shipping Philippines, Inc., G.R. No. 244721, Feb. 5, 2020) p. 399

— There was no medical abandonment on the part of petitioner given that the company-designated physician, in the confidential medical report dated November 3, 2015, had already declared the former to have *"already reached his maximum medical improvement,"* thus, indicating his treatment through curative means to have already ended and that the subsequent check-ups were for the improvement of his physical appearance by means of fitting a scleral shell prosthesis; the said medical report also recommended a Grade 7 disability rating based on the specialist's finding that petitioner's visual prognosis and recovery were poor due to *"permanent loss of vision in one eye despite intravenous antibiotic and steroids as well as oral medications given,"* thus rendering him *"unfit for further sea duties";* considering that: (1) in the November 3, 2015 medical report, which was issued within the 120-day treatment period, the company-designated physician already gave petitioner a partial and permanent disability rating of Grade 7, *i.e.,* loss of vision or total blindness in one eye, and declared him to have already reached his maximum medical improvement, rendering him unfit for further sea duties; and (2) during petitioner's subsequent check-ups, the

company-designated physician did not find any significant improvement in his condition. (Teodoro *vs.* Teekay Shipping Philippines, Inc., G.R. No. 244721, Feb. 5, 2020) p. 399

— Under Section 20 (A) of the 2010 POEA-SEC, the employer shall be liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract; a work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied"; while petitioner's diagnosed condition is not among the listed occupational diseases under Section 32-A of the 2010 POEA-SEC, Section 20(A)(4) nonetheless states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related"; thus, the burden is on the employer to disprove the work-relatedness, failing which, the disputable presumption that a particular injury or illness that results in disability is work-related stands; unfortunately, the said presumption was not overturned by TSPI; the Grade 7 disability rating assessment by the company-designated physician negates any claim that the non-listed illness is not work-related. (Teodoro *vs.* Teekay Shipping Philippines, Inc., G.R. No. 244721, Feb. 5, 2020) p. 399

Disability compensation — There are three (3) instances when a seafarer may be entitled to 100% disability compensation, namely: (1) when the seafarer is declared to have suffered 100% disability; (2) when the seafarer is assessed with disability of at least 50%; and (3) when the seafarer is assessed at below 50% disability, but he or she is certified as permanently unfit for sea service; since petitioner was assessed a Grade 7 disability rating by the company-designated physician, which under the CBA Degree of Disability Rate for Ratings to which he belongs is equivalent to 37.244 or below the 50% disability, and further declared to be unfit for further sea duties as found by the PVA and reflected in the confidential medical report dated November 3, 2015, the CA erred in awarding partial and permanent disability only; petitioner is entitled

to 100% disability compensation or in the total amount of US$89,100.00 as provided under the CBA; considering that petitioner was clearly compelled to litigate to enforce what was rightfully due him under the CBA, the award of ten percent (10%) attorney's fees by the PVA was proper, and as such, must be reinstated; in line with prevailing jurisprudence, all monetary awards due petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid. (Teodoro *vs.* Teekay Shipping Philippines, Inc., G.R. No. 244721, Feb. 5, 2020) p. 399

***Permanent total disability compensation* —** Since petitioner was declared by no less than his attending specialist to be unfit for further sea service due to permanent loss of vision in his left eye, the Court finds his resulting disability to be not only partial and permanent as ruled by the CA, but rather total and permanent as correctly found by the PVA; in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity; *total disability* refers to an employee's *inability to perform his or her usual work;* it does not require total paralysis or complete helplessness; *permanent disability,* on the other hand, is a worker's *inability to perform his job for more than 120 days or 240 days,* if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body. (Teodoro *vs.* Teekay Shipping Philippines, Inc., G.R. No. 244721, Feb. 5, 2020) p. 399

— Without a valid final and definitive assessment from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent; by operation of law, petitioner is already totally and permanently disabled; besides, jurisprudence grants permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or even issued fit-to-work

certifications by company-designated doctors beyond 120 or 240 days from their repatriation. (Lemoncito *vs.* BSM Crew Service Centre Philippines, Inc./Bernard Schulte Shipmanagement (Isle of Man Ltd.), G.R. No. 247409, Feb. 3, 2020) p. 130

PLEADINGS

***Relief* —** The records do not show that respondents prayed for the conduct of a reinvestigation in their motion for reconsideration; jurisprudence dictates that the courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case; rationale for this rule, explained in *Bucal v. Bucal*, citing *Development Bank of the Philippines v. Teston;* the fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant; this protection against surprises granted to defendants should also be available to petitioners; both parties to a suit are entitled to due process against unforeseen and arbitrary judgments; the very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard; the trial court gravely abused its discretion when it issued the assailed September Order. (Social Security System *vs.* Seno, Jr., *et al.*, G.R. No. 183478, Feb. 10, 2020) p. 465

PRELIMINARY INJUNCTION

***Concept* —** Preliminary injunctions are issued to preserve the status quo, "the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case"; here, the injunctive relief was sought to bar the implementation of the *Sangguniang Panlalawigan* Resolutions, which would have significantly affected the exercise of power of the municipalities in conflict; contrary to petitioner's actuations, there need not be a determination of whether the March 26, 1962 Decision had attained finality; the trial court did not pass upon its finality when it determined

that the writ of preliminary injunction should be issued; respondent satisfactorily showed that its circumstances merited the temporary injunctive relief, lest the reliefs it prayed for in its main Petition be rendered moot when the case has been heard on the merits. (Municipality of Famy, Laguna *vs*. Municipality of Siniloan, Laguna, G.R. No. 203806, Feb. 10, 2020) p. 483

Writ of — Courts are given wide discretion in granting a writ of preliminary injunction; however, this discretion is with limit and must be exercised with great caution; in the absence of grave abuse of discretion, this Court shall not intervene in their exercise of discretion in injunctive matters; in *Ong Lay Hin v. Court of Appeals*, this Court defined grave abuse of discretion as: the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law." (Municipality of Famy, Laguna *vs*. Municipality of Siniloan, Laguna, G.R. No. 203806, Feb. 10, 2020) p. 483

— In *Spouses Nisce v. Equitable PCI Bank*, this Court explained that litigants applying for injunctive relief must exhibit their "present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages"; here, as an incident to its Petition for *Certiorari* and Prohibition, respondent prayed for injunctive relief to curtail the implementation of the *Sangguniang Panlalawigan* Resolutions, which had declared Barangays Kapatalan and Liyang to be under petitioner's jurisdiction; a perusal of the records reveals that respondent sufficiently alleged and substantiated its clear legal right sought to be protected through the writ of preliminary injunction; respondent, who had in its favor a March 26, 1962 Decision declaring its jurisdiction over the barangays, stood to suffer irreparable injury through the *Sangguniang Panlalawigan* Resolutions. (*Id.*)

— Injunction should not be issued "if there is *no clear legal right* materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant"; parties seeking injunction must present evidence to demonstrate their justification for the relief pending final judgment; the evidence need not be complete and conclusive proof; *prima facie* evidence suffices: It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, *mere prima facie evidence is needed* to establish the applicant's rights or interests in the subject matter of the main action; an applicant for a writ is required *only to show that he has an ostensible right to the final relief prayed for* in his complaint. (*Id.*)

— Rule 58, Section 1 of the Rules of Court defines preliminary injunction; otherwise stated, a writ of preliminary injunction is: an *ancillary* and *interlocutory* order issued as a result of an impartial determination of the context of both parties; it entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits; preliminary injunction may either be prohibitory, when it bars an act, or mandatory, when it requires the performance of a particular act; as an interlocutory order, it is a provisional remedy, temporary in nature; it is ancillary, an incident adjunct to a main action; preliminary injunction is "subject to the final disposition of the principal action"; the trial court's order issuing the injunction is neither a judgment on the merits nor a final disposition of the case. (*Id.*)

— Rule 58, Section 3 of the Rules of Court enumerates the grounds when a writ of preliminary injunction is proper: Jurisprudence provides that the following must be proven for a writ of preliminary injunction to be issued: (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and

adequate remedy exists to prevent the infliction of irreparable injury. (*Id.*)

PRESUMPTIONS

***Non-compliance with the chain of custody rule* —** The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case; it is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved; in *People v. Hilario*, the Court ruled that: the prosecution bears the burden to overcome such presumption; if the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal; on the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict; in order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense; absent faithful compliance with Section 21, Article II of R.A. No. 9165, which is primarily intended to, *first*, preserve the integrity and evidentiary value of the seized items in drugs cases, and *second*, to safeguard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

***Presumption of regular performance by police officers of their official duties* —** The prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein; even the presumption as to the regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves; *People v. Umipang* is instructive on the matter: Minor deviation from the procedure under R.A. No. 9165 would not

automatically exonerate an accused from the crimes of which he or she was convicted; this is especially true when the lapses in procedure were "recognized and explained in terms of justifiable grounds"; there must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason"; however, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. No. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence; this uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. (People *vs.* Kamad, G.R. No. 238174, Feb. 5, 2020) p. 329

Presumption of regularity and authenticity of notarized deeds — Respondent's titles were derived from the notarized Deeds of Absolute Sale between her and the seller, which are presumed valid, regular, and authentic; notarized deeds of absolute sale such as these enjoy a presumption of regularity and authenticity absent "strong, complete, and conclusive proof of its falsity"; since they assail the genuineness of the Deeds, petitioners must prove their allegation of falsity with clear, strong, and conclusive evidence; here, both the Regional Trial Court and the Court of Appeals did not give merit to petitioners' allegation of falsity of the Deeds of Absolute Sale; the documentary evidence submitted by petitioners — an Acknowledgment Receipt issued by the seller to Mahid indicating ₱2 million as partial payment for the properties, the loan obtained by Mahid from one Engr. Cosain Dalidig, and various official receipts of a store in Wao — are purely immaterial and do not show any link to the two (2) Deeds of Absolute Sale between respondent and the seller. (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020) p. 259

PROCEDURAL DUE PROCESS

***Requirements* —** It is an elementary rule that when a party files any pleading or motion, a copy thereof must be served on the adverse party; for the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard; an adverse party must be given an opportunity to be heard through his/her comment, before the case can be presented for adjudication. (Ganal, *et al. vs.* Alpuerto, *et al.*, G.R. No. 205194, Feb. 12, 2020) p. 596

PROCEDURAL RULES

***Interpretation* —** In a plethora of cases, the Court relaxed the application of procedural rules; a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure; thus, when the strict and rigid application of procedural rules would result in technicalities that tend to frustrate rather than promote substantial justice, they must always be eschewed; in the exercise of its equity jurisdiction, the Court finds it proper to resolve the case on the merits. (Spouses Soller, *et al. vs.* Hon. Singson, in his capacity as Secretary of Department of Public Works and Highways, *et al.*, G.R. No. 215547, Feb. 3, 2020) p. 32

— It is settled that "procedural rules are designed to facilitate the adjudication of cases; courts and litigants alike are enjoined to abide strictly by the rules"; however, it is not novel for courts to brush aside technicalities in the interest of substantial justice; in *Malixi v. Baltazar*, the Court recounted the long line of jurisprudence consistently supporting the relaxation of procedural rules if strict adherence thereto would only frustrate rather than promote justice; while the Court has entertained petitions in the past despite the presence of procedural lapses, the Court has restricted its liberality only to exceptional circumstances; to warrant relaxation of the rules, the erring party must: (a) show reasonable cause justifying

its noncompliance with the rules, (b) convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice, and (c) offer proof of at least a reasonable attempt at compliance therewith; "the desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse." (Kabalikat Para sa Maunlad na Buhay, Inc. *vs.* Commissioner of Internal Revenue, G.R. Nos. 217530-31, Feb. 10, 2020) p. 526

— There is no dispute that Lukban belatedly filed his MR before the CA; nevertheless, there is merit to his contention that the CA should have granted his MR; time and again, the Court has relaxed the observance of procedural rules to advance substantial justice; in *PNB v. Yeung*, although petitioner's MR of the CA decision therein was filed out of time, the Court still gave due course to the petition in view of the substantial merits of the case; the relaxation of procedural rules in the interest of substantial justice even finds application in judgments that are already final and executory, as in *Barnes v. Padilla;* the instances for relaxation of the rules are present in this case; the Court opts for a liberal application of the procedural rules especially considering that the substantial merits of the case warrant its review by the Court. (Lukban *vs.* Ombudsman Carpio-Morales, G.R. No. 238563, Feb. 12, 2020) p. 756

PROPERTY

Acquisition of possession — The Court observes that Atty. Bensi was in possession of the disputed property when the complainants tried to enter and take it; complainants believed that they were the lawful owners of the property on the strength of a Partial Summary Judgment which awarded the property to Lucille's now deceased parents; nevertheless, even if the complainants are indeed the lawful owners of the disputed property, they should not have taken the law into their own hands through force; what the complainants should have done was to invoke the aid of the proper court in lawfully taking possession

of the property; Article 536 of the Civil Code provides: Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto; he who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing. (Spouses Nocuenca *vs.* Atty. Bensi, A.C. No. 12609, Feb. 10, 2020) p. 430

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Land classification — In *Republic of the Philippines v. T.A.N Properties, Inc.,* the Court ruled that it is not enough for the CENRO or the Provincial Environment and Natural Resources (PENRO) to certify that the land applied for is alienable and disposable; the Court has consistently ruled that the applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy of the original land classification approved by the legal custodian of such official records to establish that the land for registration is alienable and disposable; in ruling in this wise, the Court explained that the CENRO or the PENRO are not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable; the certifications they issue relating to the character of the land cannot be considered *prima facie* evidence of the facts stated therein; here, the required copy of original land classification of the subject lands was not presented; both the RTC and the CA merely relied on the Certifications issued by the CENRO and the Regional Technical Director of the Lands Management Services of the DENR in ruling that the alienable and disposable nature of the subject lands was established; clearly, this is not sufficient to prove the alienability and disposability of the subject lands. (Republic *vs.* San Lorenzo Development Corporation (SLDC), G.R. No. 220902, Feb. 17, 2020) p. 805

— The fact that the alienable and disposable nature of the subject lands was not contested by the Republic in its

appeal before the Court, does not have the effect of impliedly admitting, much less proving, that the subject lands are alienable and disposable; the alienability and disposability of land are not among the matters that can be established by mere admissions or even by mere agreement of the parties; the law and jurisprudence provide stringent requirements to prove such fact; this is so because no less than the Constitution, provides for the doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land; as such, the courts are not only empowered, but in fact duty-bound, to ensure that such ownership of the State is duly protected by the proper observance of the rules and requirements on land registration; the alienable and disposable character of the land must be proven by clear and incontrovertible evidence to overcome the presumption of State ownership of the lands of public domain under the Regalian doctrine; the burden of proof in overcoming such presumption is upon the person applying for registration. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

***Conduct* —** What is material in this case is the fact that without his marriage being first dissolved, he lived with another woman not his wife, and with whom he found another family; all government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives; the good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account. (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra,

Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

Disgraceful and Immoral Conduct **—** Garra is also guilty of Disgraceful and Immoral Conduct as defined under Civil Service Commission Memorandum Circular No. 15, Series of 2010, which provides: *Section 1. Definition of Disgraceful and Immoral conduct* - Disgraceful and Immoral Conduct refers to an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society; it refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community; the same Circular highlights that "disgraceful and immoral conduct may be committed in a scandalous or discreet manner, within or out of the workplace"; this Court has held in a number of cases that a man having an illicit relationship with a woman not his wife is within the purview of "disgraceful and immoral conduct" under Civil Service Laws. (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

Disgraceful and Immoral Conduct, Violation of Reasonable Rules and Regulations, and Simple Dishonesty **—** According to Section 46 B.3, Rule 10 of the RRACCS, Disgraceful and Immoral Conduct is a grave offense punishable by suspension from service for a period of six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense; Section 46 F.3, Rule 10 of the same rules classifies Violation of Reasonable Rules and Regulations as a light offense, which is punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third

offense; under CSC Resolution No. 06-0538, Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year suspension for the second offense; and dismissal for the third offense. (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

***Dishonesty and conduct prejudicial to the best interest of the service* —** Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth; for dishonesty to be considered serious, thus warranting the penalty of dismissal from service, the presence of any one of the following attendant circumstances must be present: (1) The dishonest act caused serious damage and grave prejudice to the Government; (2) The respondent gravely abused his authority in order to commit the dishonest act; (3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (4) The dishonest act exhibits moral depravity on the part of the respondent; (5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (6) The dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; (8) Other analogous circumstances; dishonesty – like bad faith — is not simply bad judgment or negligence, but a question of intention; in evaluating such intention, the following are some considerations: the facts and circumstances

giving rise to the act committed; his state of mind at the time the offense was committed; the time he might have had at his disposal for the purpose of meditating on the consequences of his act; and the degree of reasoning he could have had at that moment; as for what specific acts constitute conduct prejudicial to the best interest of the service, there is no concrete description of such under the Civil Service law and rules; jurisprudence instructs that for an act to constitute such an administrative offense, it need not be related to or connected with the public officer's official functions; what is essential is that the questioned conduct tarnishes the image and integrity of his public office. (Lukban *vs*. Ombudsman Carpio-Morales, G.R. No. 238563, Feb. 12, 2020) p. 756

— Lukban was found to have committed serious dishonesty and conduct prejudicial to the best interest of the service by his having signed the "Noted by" portion of the Inspection Report Form without verifying the accuracy and truthfulness thereof, thereby facilitating the release of funds for the payment of supposedly brand-new helicopters which turned out to be secondhand units; however, a review of the functions and duties of his office leads the Court to conclude otherwise; at the time material to this case, Lukban was the Chief of the Management Division of the PNP Directorate for Comptrollership; based on the foregoing, which has not been disputed, Lukban's official duties revolve only around accounting and fund or resource management; his claim that the function of verifying the LPOH specifications belonged to different departments of the PNP is, in fact, already recognized by jurisprudence; *Field Investigation Office v. Piano*, cited; thus, the Court gives credence to Lukban's claim that he merely relied on the IAC Resolution as regards the compliance of the LPOHs with the NAPOLCOM specifications when he affixed his signature on the Inspection Report Form under the portion of "Noted by"; borrowing the language of the Court in *Field Investigation Office v. Piano*, it is the IAC that has the responsibility of inspecting the deliveries to make sure

they conform to the quantity and the approved technical specifications in the supply contract and the purchase order and to accept or reject the same, and it is only after the IAC's final acceptance of the items delivered can the supplier be paid by the PNP, so that it is the IAC Resolution that constitutes "the final act for the acceptance of these helicopters for the use of the PNP, and which was the basis for the PNP to pay the price of brand new helicopters for the delivered second-hand items"; it is the considered view of the Court that Lukban cannot be held liable for serious dishonesty or conduct prejudicial to the best interest of the service; dishonesty – like bad faith – is not simply bad judgment or negligence, but a question of intention; Lukban's acts do not show any disposition to defraud, cheat, deceive, or betray, nor any intent to violate the truth. (*Id.*)

***Simple dishonesty* —** CSC Resolution No. 06-0538 (Rules on the Administrative Offense of Dishonesty) provides for different circumstances when Dishonesty is considered Serious, Less Serious, or Simple; Section 5 of CSC Resolution No. 06-0538 provides that the presence of any of the following attendant circumstances in the commission of the dishonest act constitutes Simple Dishonesty: "(a) The dishonest act did not cause damage or prejudice to the government; (b) The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent; (c) In falsification of any official document, where the information falsified is not related to his/her employment; (d) That the dishonest act did not result in any gain or benefit to the offender; and (e) Other analogous circumstances." (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

— It is undisputed even by Garra that he remains legally married to Osbual; in this connection, we agree with the

OAS that his deliberate omission of this fact in his SALNs for several years constitutes Dishonesty; "dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth"; applying CSC Resolution No. 06-0538, while Garra's misrepresentation or omission of his marital status in his SALNs can be considered as a dishonest act, we agree with the OAS that such act constitutes *Simple* Dishonesty as the same did not cause damage or prejudice to the government and had no direct relation to or did not involve the duties and responsibilities of Garra as staff driver; the same is true with the misrepresentation he committed, where the information omitted is not related to his employment. (*Id.*)

Violation of two (2) or more different offenses — Under Section 55 of the 2017 Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more different offenses, the imposable penalty should be for the most serious offense, while the rest shall be considered aggravating; since the penalty for Immorality (Disgraceful and Immoral Conduct) is suspension for six (6) months and one (1) day for the first offense, in consideration of the two (2) aggravating circumstances in the case at bar, *we submit that the respondent be suspended for one (1) year;* Garra's deliberate omissions of his marital status in his SALNs were committed not less than three (3) times, particularly, when he intentionally made such omissions in his 2007 to 2011 SALNs, including his SALNs beginning 2013; these omissions, when so treated separately, could have merited the penalty of dismissal under the RRACCS; considering his length of service, and given that his marital status is not a material component of the SALNs, the penalty of suspension for a period of one (1) year is in order. (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center

Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

QUASI-DELICTS

***Institution of civil case with the criminal case* —** Under the Rules, when "a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action"; however, the civil action referred to in Articles 32, 33, 34, and 2176 of the New Civil Code shall "proceed independently of the criminal action and shall require only a preponderance of evidence"; it is explicitly stated in Article 2177 of the Civil Code that responsibility arising from quasi-delict "is entirely separate and distinct from the civil liability arising from negligence under the Penal Code"; the same rule finds support from Article 31 of the same Code which states that when "the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter"; regardless of the outcome of the criminal case for reckless imprudence resulting to homicide instituted against Timtim, a civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking, under Article 2180 of the New Civil Code. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

***Presumption of negligence* —** The basis for the liability of an employer of an erring driver resulting to injury or damage to a stranger may be found in Articles 2176 and 2180 of the New Civil Code; it has been proven by preponderant evidence that Timtim recklessly drove the prime mover truck which caused the death of Catalina; although the employer is not the actual tortfeasor, the law makes the employer vicariously liable on the basis

of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another; when the employee causes damage due to his own negligence while performing his own duties, there arises a presumption that the employer is negligent; this may be rebutted only by proof of observance of the diligence of a good father of a family; the "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees; in the selection of its prospective employees, the employer is required to examine them as to their qualifications, experience, and service records; ES Trucking is not only at fault for blatantly disregarding pertinent laws and rules governing trucks for hire but is also guilty of violating its undertaking to preserve the vehicle in its original state while the case is pending; ES Trucking failed to sufficiently exercise the diligence of a good father of a family in the selection and supervision of its employee, Timtim. (Heirs of Catalina P. Mendoza *vs.* ES Trucking and Forwarders, G.R. No. 243237, Feb. 17, 2020) p. 915

RAPE

Impotency as a defense — Accused-appellant attempts to cast doubt on his conviction by arguing that his advanced age made erection—and thus, sex—impossible; this argument is unmeritorious; impotence must be proven with certainty in order to overcome the presumption of potency; in rape cases, impotency as a defense must be proven with certainty to overcome the presumption in favor of potency; here, the evidence proffered by the defense failed to discharge such burden. (People *vs.* ZZZ, G.R. No. 229209, Feb. 12, 2020) p. 725

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Extrajudicial foreclosure of real estate mortgage — It is already a settled rule that a buyer in a foreclosure sale becomes the absolute owner of the property purchased if no redemption is made within one year from the registration of the sale; being the absolute owner, he is

entitled to all the rights of ownership over the property including the right of possession; the buyer can demand possession of the land even during the redemption period except that he has to post a bond pursuant to Section 7 of Act No. 3135, as amended; the bond is no longer required after the redemption period if the property is not redeemed; a writ of possession is a writ of execution used to enforce a judgment for the recovery of possession of a land; it instructs the sheriff to enter the subject land and gives its possession to the one entitled to under the judgment; further, a writ of possession may be issued in favor of the successful buyer in a foreclosure sale of REM either (1) within the one-year redemption period, upon the filing of a bond by the buyer; or (2) after the redemption period, with no bond required; the duty of the court to issue a writ of possession is ministerial and may not be stayed by a pending action for annulment of the mortgage or the foreclosure itself; the only exception is when a third party is actually holding the property by adverse title or right. (HH & Co. Agricultural Corporation *vs.* Perlas, G.R. No. 217095, Feb. 12, 2020) p. 608

REGIONAL TRIAL COURT (RTC)

***Jurisdiction* —** As conferred by Section 19 of B.P. Blg. 129, the RTC has jurisdiction over all civil cases in which the subject matter under litigation is incapable of pecuniary estimation; one of which, as established by jurisprudence, is a complaint for injunction; it is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the character of the relief sought; here, the principal action is one for injunction, which is within the jurisdiction of the RTC; in determining the jurisdiction of the RTC, what is controlling is the principal action, and not the ancilliary remedy which is merely an incident thereto. (Spouses Soller, *et al. vs.* Hon. Singson, in his capacity as Secretary of Department of Public Works and Highways, *et al.*, G.R. No. 215547, Feb. 3, 2020) p. 32

— Both the trial court and the respondents justify CIAC jurisdiction over the case at bar by citing the construction tribunal's expertise in handling factual circumstances involving construction matters; such justification loses sight of the fact that a trial court's main function is passing upon questions of fact; time and again, this Court has held that factual matters are best ventilated before the trial court, as it has the power to receive and evaluate evidence first-hand; that the dispute at bar involves technical matters does not automatically divest the trial court of its jurisdiction; the court *a quo* has ample means of handling such technical matters, as it may utilize expert testimony or appoint commissioners to handle the technical matters involved in the suit; the core issue of this suit is whether or not the construction activities of respondents caused the damage to the spouses Ang's house; and the resolution of this mixed question of fact and law is well within the jurisdiction of the court *a quo* to decide. (Ang *vs.* De Venecia, *et al.*, G.R. No. 217151, Feb. 12, 2020) p. 645

RES JUDICATA

***Bar by prior judgment* —** Even assuming that the Court of Appeals correctly categorized respondents defense as *res judicata* through bar by prior judgment, it would still not lie; this principle requires a prior valid judgment issued by a tribunal having jurisdiction over the subject matter; under the 2003 Rules of Procedure, the Department of Agrarian Reform Adjudication Board (DARAB) has jurisdiction over cases "involving the ejectment and dispossession of tenants and/or leaseholders" or "the review of leasehold rentals"; this controversy arose precisely because respondents *never submitted the property to the coverage of the Comprehensive Agrarian Reform Program (CARP)*, as required by the Compromise Agreement; the DARAB assumed jurisdiction over respondents' action based on a condition in the Compromise Agreement that *respondents never actually fulfilled; Department of Agrarian Reform v. Paramount Holdings Equities*, cited. (Heirs of Salvador and Salvacion

Lamirez, namely Martha, *et al. vs.* Spouses Ampatuan, *et al*., G.R. No. 226043, Feb. 3, 2020) pp. 97-98

— Here, the Court of Appeals seems to have confused the two concepts; "the resolution on the second case . . . as to whether respondents may be obliged to comply with the assailed provision in the Compromise Agreement, *i.e*., to offer the land to the government under the Voluntary Offer to Sell scheme, essentially hinges on the rights that have been previously determined with finality in the first case; while the identity of the parties is the same, the rights asserted and the reliefs prayed for are different in the two cases; the Department of Agrarian Reform Adjudication Board has no jurisdiction over an action for specific performance; the finality of the first case would not bar the adjudication of the present case. (*Id.*)

Concept — "*Res judicata* (meaning, a "matter adjudged") is a fundamental principle of law that precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment"; in *Degayo v. Magbanua-Dinglasan*, the Court explained the effect of *res judicata*: It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate; the doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court. (Samonte *vs.* Domingo, G.R. No. 237720, Feb. 5, 2020) p. 319

— *Res judicata* is a legal principle where a party is barred from raising an issue or presenting evidence on a fact that has already been judicially tried and decided; "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment"; application of the principle, provided under Rule 39, Section 47 of the

Rules of Court; as explained in *P.D. No. 1271 Committee v. De Guzman*, *res judicata* is premised on the idea that judgments must be final and conclusive; otherwise, there would be no end to litigation; in applying *res judicata*, courts must first distinguish between two (2) concepts: (1) bar by prior judgment; and (2) conclusiveness of judgment; in *Spouses Aboitiz v. Spouses Po*, this Court explained the difference between the two: *Res judicata* in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action"; it applies when the following are present: (a) there is a final judgment or order; (b) it is a judgment or order on the merits; (c) it was "rendered by a court having jurisdiction over the subject matter and parties"; and (d) there is "identity of parties, of subject matter, and of causes of action" between the first and second actions; *res judicata* in the concept of conclusiveness of judgment applies when there is an identity of issues in two (2) cases between the same parties involving different causes of action. (Heirs of Salvador and Salvacion Lamirez, namely Martha, *et al*. *vs*. Spouses Ampatuan, *et al*., G.R. No. 226043, Feb. 3, 2020) pp. 97-98

— Since the Court of Appeals reasoned that the specific performance case would involve a re-litigation of the same facts or issues as the recovery of possession case, the more accurate concept would have been conclusiveness of judgment; in *Spouses Antonio v. de Monje*: Where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein; concept of *res judicata* known as "conclusiveness of judgment"; any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether

or not the claim, demand, purpose, or subject matter of the two actions is the same; conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction; the fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment. (Heirs of Salvador and Salvacion Lamirez, namely Martha, *et al. vs.* Spouses Ampatuan, *et al*., G.R. No. 226043, Feb. 3, 2020)

— The issue raised in petitioner's action for specific performance is whether respondents can be compelled to comply with the stipulations in the Compromise Agreement; the trial court must address the preliminary issue of whether respondents actually complied with the stipulations in the Compromise Agreement; this must be conclusively resolved first before the Decision in the recovery of possession case can operate as *res judicata* through conclusiveness of judgment; a review of its Decision, however, shows that the Department of Agrarian Reform Adjudication Board (DARAB) never actually passed upon the issue of compliance; the Compromise Agreement shows that its main intent was to prevent petitioners' predecessors-in-interest, the disputed lot's actual occupants and cultivators, from being displaced; it expressly mandated that they "shall not be displaced and transferred to any area without their respective consent"; by instituting the case for recovery of possession, respondents would have violated the stipulations of the Compromise Agreement, since a favorable decision has the effect of displacing petitioners' predecessors-in-interest without their consent; the DARAB's Decision had no effect on the validity of the Compromise Agreement, because the ruling did not pass upon any of its stipulations;

petitioners, as the successors-in-interest, could institute an action for the enforcement of the Compromise Agreement. (Heirs of Salvador and Salvacion Lamirez, namely Martha, *et al. vs.* Spouses Ampatuan, *et al*., G.R. No. 226043, Feb. 3, 2020) pp. 97-98

— There are two (2) concepts of *res judicata*: 1) bar by prior judgment, which is found in Section 47(b) of Rule 39; and 2) conclusiveness of judgment, which is referred to in paragraph c of the same rule and section; distinction discussed in *Puerto Azul Land, Inc. v. Pacific Wide Realty Dev't. Corp.*: There is a bar by prior judgment where there is identity of parties, subject matter, and causes of action between the first case where the judgment was rendered and the second case that is sought to be barred; there is conclusiveness of judgment, on the other hand, where there is identity of parties in the first and second cases, but no identity of causes of action; *res judicata* in the concept of conclusiveness of judgment applies in this case; both the present case and Civil Case No. 12-128721 involve the same parties and subject matter; only the cause of action is different; *res judicata* in the concept of conclusiveness of judgment "precludes the relitigation only of a particular fact or issue necessary to the outcome of a prior action between the same parties on a different claim or cause of action." (Samonte *vs.* Domingo, G.R. No. 237720, Feb. 5, 2020) p. 319

RESISTANCE OR DISOBEDIENCE TO A PERSON IN AUTHORITY OR HIS AGENT

***Elements* —** Resistance or disobedience is punished under Article 151 of the Revised Penal Code; two (2) key elements must be shown: "(1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and (2) That the offender resists or seriously disobeys such person or his agent"; based on the circumstances, petitioner's resistance and use of force are not so serious to be deemed as direct assault; while she exerted force, it is not dangerous, grave, or severe enough to warrant the penalties attached

to the crime; thus, instead of direct assault, this Court convicts petitioner of resistance or disobedience; here, although the charge is direct assault, the prosecution was able to prove resistance or disobedience; these offenses have similar elements, varying only as to the degree of seriousness of the offender's resistance; direct assault necessarily includes resistance or disobedience; petitioner is found guilty beyond reasonable doubt of the crime of resistance or disobedience under Article 151 of the Revised Penal Code; penalty. (Mallari *vs*. People, G.R. No. 224679, Feb. 12, 2020) p. 687

REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS)

***Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty* —** Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty are grave offenses which are punishable by dismissal from the service; also, the following administrative disabilities shall be imposed: (1) cancellation of eligibility; (2) forfeiture of retirement and other benefits, except accrued leave credits, if any; (3) perpetual disqualification from holding public office; and (4) bar from taking civil service examinations; the penalty of fine should be imposed; and the amount of which lies within the Sound discretion of the Court; Section 51(d) of the RRACCS provides that the penalty of fine shall be in an amount not exceeding six months' salary of respondent; penalty of fine equivalent to Uyan's salary for one month which shall be deducted from his accrued leave benefits in view of the mitigating circumstances of advanced age and his length of service. (Office of the Court Administrator *vs.* Salunoy, Court Stenographer, A.M. No. P-07-2354, Feb. 4, 2020) p. 142

***Violation of Reasonable Office Rules and Regulations* —** By his own admission that he entered the premises of Sampaga's quarters in Room 110 instead of meeting her in the lounge as required by the House Rules, Garra is deemed liable for Violation of Reasonable Office Rules

and Regulations under Section 46(F)(3), Rule 10 of the RRACCS; whether Sampaga is Garra's legal or common-law spouse is of no moment; the rules are clear that all guests, regardless of their relation to the occupants of the PHILJA Training Center, are only allowed to conduct visits in the lounge. (Re: Incident Report of the Security Division and Alleged Various Infractions committed by Mr. Cloyd D. Garra, Judicial Staff Employee II, Mediation, Planning and Research Division, Philippine Mediation Center Office, Philippine Judicial Academy, A.M. No. 2019-14-SC, Feb. 10, 2020) p. 451

SAFE SPACES ACT (R.A. NO. 11313)

Duties of an employer **—** In recognizing the need to address these concerns, the State's policy against sexual harassment has been strengthened through R.A. No. 11313, otherwise known as the Safe Spaces Act; this law has expanded the definition of gender-based sexual harassment in the workplace and has added to the duties of an employer as to its prevention, deterrence, and punishment; it explicitly requires that complaints be investigated and resolved *within 10 days or less* upon its reporting; it likewise expressly provides for the liability of employers and duties of co-workers as to sexual harassment; the law likewise specifies the confidentiality of proceedings, and the issuance of a restraining order for the offended person; moreover, it allows local government units to impose heavier penalties on perpetrators; while this law does not apply to this case as it was enacted after the commission of Batucan's acts, its principles emphasize the need to accord more importance to complaints of sexual harassment and recognize the severity of the offense. (LBC Express-Vis, Inc. *vs.* Palco, G.R. No. 217101, Feb. 12, 2020) p. 617

SEAFARERS

Death benefits **—** Crucial to the determination of petitioner's entitlement to death benefits as well as her right to get reimbursement for transportation and burial expenses she incurred are Sections 18.1b, 21, 22, and 25 of the

CBA; the cause of death of the seafarer is immaterial to the determination of petitioner's entitlement to the said benefits; it is clear from the express provision of Section 25.1 of the CBA that respondents hold themselves liable for death benefits for the death of the seafarer under their employ for *any cause;* under Annex 4 of the CBA, the same shall be in the amount of US$89,100.00; respondents also obligated themselves to pay the transportation expenses for the repatriation of the body of the deceased, as well as the burial expenses; Sections 21 and 22 of the CBA did not limit the liability of the respondents to deaths that are directly attributable to sickness or injury, but rather widens its coverage to also include seafarers who died or signed off due to sickness or injury; it is settled that in the event that the clauses in the CBA provide for greater benefits to the seafarer, the same must prevail over the standard terms and benefits formulated by the POEA in its Standard Employment Contract inasmuch as a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer; maximum aid and full protection to labor enshrined in Article XIII of the 1987 Constitution. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

SELF-DEFENSE

As a justifying circumstance **—** Considering that self-defense is an affirmative allegation, and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence; the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution; self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. p. 888

— The nature, character, location and extent of these wounds belie accused-appellant's claim that Olipio attacked him with a *bolo*; and it was in self-defense that after wrestling the *bolo* from the victim, accused-appellant used it against the latter; the appearances of the wounds on the victim's heart, his internal organs and large intestine contradict accused-appellant's defense that he had only hit Olipio twice in the stomach and that after the second blow, both of them fell and rolled on the ground which caused the wounds at the back; assuming that Olipio was the aggressor, it is nevertheless apparent that at the time he was killed, the danger to accused-appellant had already ceased; even after taking full control of the *bolo*, he attacked the victim several times and stabbed him to death; settled is the rule that when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

***Elements* —** By invoking the justifying circumstance of self-defense, accused-appellant thus admits committing the acts constituting the crime for which he was charged and the burden of proof is on him to establish, by clear and convincing proof, that (1) there was unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel it; and (3) the lack of sufficient provocation on the part of the person defending himself. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

— The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel such aggression, and (3) lack of sufficient provocation on the part of the person defending himself; to successfully invoke self-defense, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means

to resist the attack; while all three elements must concur, first and foremost self-defense relies on proof of unlawful aggression on the part of the victim; unlawful aggression is a *condition sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

SETTLEMENT OF ESTATE OF DECEASED PERSONS

***Jurisdiction of probate courts* —** In *Bernardo v. Court of Appeals*, this Court held that the question of ownership of certain properties, whether they belong to the conjugal partnership or to the husband exclusively, is within the jurisdiction of the probate court, which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent: The jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate has been recognized to be vested in probate courts; this is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees; liquidation means determination of all the assets of the estate and payment of all the debts and expenses; thereafter, distribution is made of the decedent's liquidated estate among the persons entitled to succeed him; the proceeding is in the nature of an action of partition in which each party is required to bring into the mass whatever community property he has in his possession; to this end and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute; all the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected. (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020) p. 259

— In *Heirs of Reyes v. Reyes*, this Court affirmed the probate court's provisional inclusion of properties to the deceased's estate, without prejudice to the outcome of a separate action to determine ownership, because the properties were still titled under the Torrens system in the names of the deceased and his spouse; unlike in *Heirs of Reyes*, the parcels of land in this case were already titled in respondent's name alone; thus, to determine the issue of ownership in a separate proceeding would be unnecessary; it is settled that the "certificate of title is the best evidence of ownership of a property"; thus, the titles issued to respondent, being Torrens titles, are conclusive upon the parties: In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens Title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his or her title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title. (*Id.*)

Titles of properties — As a general rule, the question as to titles of properties should not be passed upon in testate or intestate proceedings, but should be ventilated in a separate action; however, for purposes of expediency and convenience, this general rule is subject to exceptions, such that: (1) "the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action"; and (2) the probate court is competent to decide the question of ownership "if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent" to the probate court's assumption of jurisdiction and "the rights of third parties are not impaired." (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020) p. 259

***SHARI'A* DISTRICT COURT**

***Jurisdiction* —** A probate court's determination of ownership over properties forming part of the estate is only provisional; as explained in *Romero v. Court of Appeals*, "this rule is applicable only as between the representatives of the estate and strangers thereto"; since petitioners and respondent are all heirs and parties in the settlement proceeding of Mahid's estate, petitioners should have contested the exclusion of the properties before the *Shari'a* District Court, then acting as a probate court; however, they did not lift a finger to ask the probate court to include the properties in the inventory; by failing to do so, petitioners are deemed to have acquiesced to the exclusion of the properties from the inventory, along with respondent's ownership over them; in *Pacioles, Jr. v. Chuatoco-Ching*, where the respondent and her representative could have opposed the petitioner's inventory and sought the exclusion of the properties she considered hers, but instead adopted the inventory, this Court held that she and her representative acquiesced with petitioner's inventory. (Mutilan, *et al. vs.* Mutilan, known recently as Cadidia Imam Samporna, *et al.*, G.R. No. 216109, Feb. 5, 2020) p. 259

— The Code of Muslim Personal Laws provides that "the *Shari'a* District Court shall have exclusive original jurisdiction over all cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property"; its decisions shall be final, except when it shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution; the *Shari'a* District Court, acting as a probate court, issued an Omnibus Order on October 15, 2008 approving the inventory of Mahid's estate, which excluded the two (2) parcels of land in respondent's name; in another Order, it ruled upon the Writ of Possession on the same parcels of land; thus, the *Shari'a* District Court acted pursuant

to the Code of Muslim Personal Laws, which provides: ARTICLE 38. *Regime of property relations*. — The property relations between the spouses, in the absence of any stipulation to the contrary in the marriage settlements or any other contract, shall be governed by the regime of complete separation of property in accordance with this Code and, in a suppletory manner, by the general principles of Islamic law and the Civil Code of the Philippines; considering that the interested parties here are all heirs of the decedent and there are no third parties whose rights will be impaired, this case falls under the exception to the general rule; the *Shari'a* District Court properly exercised its jurisdiction when it passed upon the question of title and excluded the parcels of land in respondent's name from the inventory of Mahid's estate; per the Code of Muslim Personal Laws, its decision shall be final. (*Id.*)

SUPREME COURT

Handling and management of court funds **—** Various circulars were issued by this Court as guidance as regards the handling and management of court funds: (1) *OCA Circular No. 50-95* which provides for guidelines and procedures in the manner of collecting and depositing court funds; (2) *OCA Circular No. 113-2004* which orders the submission of Monthly Reports of Collections and Deposits; (3) *Administrative Circular No. 35-2004* which states the duty of the Clerk of Court as regards the keeping of a cash book and cash collection to be deposited with the Land Bank of the Philippines; (4) *Administrative Circular No. 3-2000* which among others requires the upkeep of a book embodying all the fees received and collected by the court and demands that all fiduciary collection shall be immediately deposited by the clerk of court, upon receipt thereof, with an authorized government depository bank; (5) *Supreme Court Circular No. 13-92* which provides for the duty of the clerk of court to make the necessary deposits of the court's collection from bail bonds, rental deposits and other fiduciary collection; (6) *Supreme Court Circular No. 5-93* which requires

the clerk of court to deposit court collections with Land Bank of the Philippines or with the Municipal, City or Provincial Treasurer as the case may be; and (7) *The 2002 Revised Manual for Clerks of Court* which states the guidelines for the accounting of court funds; sufficiency in number of these issuances seeks to emphasize not only the administration of court funds, but also the accountability of court employees. (Office of the Court Administrator *vs.* Salunoy, Court Stenographer, A.M. No. P-07-2354, Feb. 4, 2020) p. 142

Power of administrative supervision — The retirement program budgets of retiring Justices of collegiate courts are not expressly provided under any law; they are not part of the "retirement and other benefits" to which the statutes pertain, *viz.*, pensions, lump sums, and survivorship; such retirement program budgets are more in the nature of administrative expenses which are allotted by the collegiate courts, with the approval of this Court *En Banc*, to their respective retiring members in order to recognize and celebrate the latter's service and contribution to the Judiciary, in particular, and the public, in general; there being no explicit statutory mandate that the Justices of the collegiate courts are entitled to retirement program budgets, then, there is also no basis for them to legally demand that such budgets be equal across collegiate courts of the same rank or level; the retirement program budgets of Justices of collegiate courts are subject to the discretion and approval of this Court, as part of its constitutional power of administrative supervision over all courts and personnel thereof; in the exercise of such discretion, the Court takes into consideration several factors, such as, but not limited to, the established or actual costs of the items and activities which are part of the retirement program, the number of employees of the collegiate court, the period of time since the last increase in the retirement program budget, and the availability of funds. (Re: Expenses of Retirement of Court of Appeals Justices, A.M. No. 19-02-03-CA, Feb. 11, 2020) p. 533

TREACHERY

***As an aggravating circumstance* —** Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is that, the attack is deliberate and without warning, and done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape; for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him; the above-mentioned elements are present in this case. (Casilac *vs.* People, G.R. No. 238436, Feb. 17, 2020) p. 888

— The qualifying aggravating circumstance of treachery was correctly appreciated in the killings of Suganob and Lomoljo because when they were shot while being hogtied and with plastic bags covering their hands, they had no opportunity to defend themselves and such means was deliberately adopted. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

UNLAWFUL DETAINER

***Physical or material possession of the property* —** "In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties"; thus, "courts may pass upon the issue of ownership only for purposes of ascertaining who has the better right of possession; any ruling on ownership is merely provisional and does not bar an action between the same parties regarding title to the property." (Samonte *vs.* Domingo, G.R. No. 237720, Feb. 5, 2020) p. 319

VALUE-ADDED TAX (VAT)

Administrative and judicial claim for refund **—** Section 112 (A) and (C) of the NIRC, cited; periods relative to the filing of a claim for VAT refunds; preliminarily, the law allows the taxpayer to file an administrative claim for refund with the BIR within two years after the close of the taxable quarter when the purchase was made (for the input tax paid on capital goods) or after the close of the taxable quarter when the zero-rated or effectively zero-rated sale was made (for input tax attributable to zero-rated sale); the CIR must then act on the claim within 120 days from the submission of complete documents in support of the application; in the event of an adverse decision, the taxpayer may elevate the matter to the CTA by way of a petition for review within 30 days from the receipt of the CIR's decision; if, on the other hand, the 120-day period lapses without any action from the CIR, the taxpayer may validly treat the inaction as denial and file a petition for review before the CTA within 30 days from the expiration of the 120-day period; an appeal taken prior to the expiration of the 120-day period without a decision or action of the CIR is premature, without a cause of action, and, therefore, dismissible on the ground of lack of jurisdiction; Chevron filed an administrative claim for refund with the BIR on November 2, 2010, which was well within the two-year prescriptive period provided by law; upon Chevron's submission of its supporting documents, the CIR had 120 days or until March 2, 2011 to decide whether to grant or deny the application; but the 120-day period expired without the CIR having acted on the claim; at this juncture, Chevron had 30 days from the lapse of the 120-day period or until April 1, 2011 to file its judicial claim; thus, when Chevron filed its petition for review with the CTA on March 23, 2011, it was properly made within the period prescribed by law. (Commissioner of Internal Revenue *vs.* Chevron Holdings, Inc., [Formerly Caltex (Asia) Limited], G.R. No. 233301, Feb. 17, 2020)

Judicial claim for refund or credit of input VAT — Settled is the rule that it is only upon the submission of complete documents in support of the application for tax credit/ refund that the 120-day period would begin to run; Chevron submitted all documents it deemed necessary for the grant of its refund claim; as in the *Pilipinas Total* case, the CIR did not notify the Chevron of the document it failed to submit, if any; there is not a single letter or notice sent to Chevron informing it of its failure to submit complete documents and/or ordering the production of the lacking documents necessary for the allowance of the claim; the CIR should have taken a positive step in apprising Chevron of the completeness and adequacy of its supporting documents considering their particular relevance in reckoning the 120-day period under Section 112(C) of the NIRC. (Commissioner of Internal Revenue *vs.* Chevron Holdings, Inc., [Formerly Caltex (Asia) Limited], G.R. No. 233301, Feb. 17, 2020) p. 863

— The Court rejects the CIR's bare claim that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons; the CIR asserts that Chevron did not imprint the word "zero-rated" on its invoices and receipts in violation of Section 113(B) of the NIRC, as amended, in relation to Revenue Regulations No. 16-05; in its original Decision, the CTA Division explicitly stated that Chevron presented various invoices, official receipts and other documents to substantiate its reported input VAT, all of which were examined by Atty. Landicho, Court-commissioned Independent Certified Public Accountant; it sustained the findings of Atty. Landicho and disallowed the ₱10,977,415.30 of Chevron's claimed input VAT for failure to comply with the substantiation and invoicing requirement as prescribed under Section 110(A) and Section 113(A) and (B) of the NIRC; it is thus clear that the invoices and receipts which were not compliant with the invoicing and accounting requirements were already excluded by the CTA Division when it rendered its Decision partially granting Chevron' refund claim;

Chevron has duly established its claim for refund or tax credit in the amount of ₱4,623,001.60 in accordance with the statutory requirement for the grant of a tax credit certificate/refund. (*Id.*)

— The issue of whether the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its claim for VAT refund had been squarely raised and amply settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue;* the CIR's reliance on RMO 53-98 is misplaced; *there is nothing in Section 12 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of refund or credit of input VAT;* granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim; a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT; RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities; no application in this case since Chevron's claim is one for refund of its input tax. (*Id.*)

VOLUNTARY ARBITRATION PROCEDURAL GUIDELINES

***Application of the Rules of Court* —** As ruled correctly by the CA, respondents' motion for reconsideration of the Panel's Decision had been timely filed; Section 3 of the VA Procedural Guidelines provides: SEC. 3. *Directory and Suppletory Application of the Guidelines and Rules of the Court.* – The rules governing the proceedings before a voluntary arbitrator shall be the subject of agreement among the parties to a labor dispute and their chosen arbitrator; in the absence of agreement on any or various aspects of the voluntary arbitration proceedings, the pertinent provisions of these Guidelines and the Revised Rules of Court shall apply by analogy or in a directory and suppletory character and effect; it clearly

recognizes that the Rules of Court shall apply suppletorily or by analogy to arbitration proceedings; Section 1, Rule 22 of the Rules of Court had been properly appreciated in determining the timeliness of the filing of respondents' motion for reconsideration; the said section provides: SEC. 1. How to compute time.– In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included; if the last day of the period, as thus computed, falls on a Saturday, or a legal holiday in the place where the court sits, the time shall not run until the next working day; here, respondents have 10 days from February 5, 2015, the day they received a copy of the Panel's Decision, within which to file their motion for reconsideration; given that February 15, 2015, falls on a Sunday, respondents have until the next business day to file their motion for reconsideration. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

***Motion for reconsideration* —** Petitioner contends that there is no motion for reconsideration which could have been considered as *duly filed* in this case that may be appealed to the CA as provided in Section 4, Rule 43 of the Rules of Court since respondents' motion for reconsideration had not been filed directly with the Panel in violation of Section 2, Rule III of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings (VA Procedural Guidelines); by no stretch of the imagination can Section 2, Rule III of the VA Procedural Guidelines be given a meaning as that advanced by the petitioner; "instrumentality," defined; the terms governmental "agency" or "instrumentality" are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed; since the Panel performs a state function pursuant to a governmental

power delegated to them under the Labor Code provisions, as a governmental instrumentality, the Panel holds office at the NCMB Office and the motion for reconsideration respondents filed thereat had been proper; the denial of the motion for reconsideration was not premised on the failure to *directly* file the motion with the Panel as the term is understood by the petitioner, but because the Panel found the motion to be lacking in merit and filed a day late. (Borreta as widow of Deceased Manuel A. Borreta, Jr. *vs.* Evic Human Resource Management, Inc., *et al.*, G.R. No. 224026, Feb. 3, 2020) p. 42

WITNESSES

***Credibility of* —** Accused-appellant also assails AAA's credibility on her testimony that he attempted to kill her; he claims that it was dubious how AAA sustained no physical injuries if he really did attack her with a bladed weapon; these matters, however, are irrelevant to the crime charged and do not deserve consideration; *People v. Nelmida* teaches that "an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction"; the Court of Appeals correctly upheld the Office of the Solicitor General's argument that it was not impossible to escape such an attack unscathed if AAA had successfully parried the bladed weapon. (People *vs.* ZZZ, G.R. No. 229209, Feb. 12, 2020) p. 725

— In assessing AAA's credibility, the Court of Appeals held that "it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame" — effectively reiterating an outdated standard for assessing witness credibility; this Court's discussion in *People v. Amarela* is more timely and appropriate for this case: More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant; in doing so, we have hinged on the impression that no young Filipina of decent repute would

publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor; however, this misconception, particularly in this day and age, not only puts the accused at un unfair disadvantage, but created a travesty of justice; this opinion borders on the fallacy of *non sequitur*; and while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman; We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today: she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights; in this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception; in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim; thus, in *Amarela*, the accused was acquitted because the victim's account was improbable and married by inconsistencies, regardless of the existing preconception that a Filipino woman's honor would prevent her from lying about her ordeal. (People *vs.* ZZZ, G.R. No. 229209, Feb. 12, 2020) p. 725

— It has been held that when the issue involves matters like credibility of witnesses, the calibration of their testimonies as well as the assessment of the probative weight thereof, findings of the trial court and its conclusions anchored on said findings are accorded high respect, if not conclusive effect; there being no showing that the RTC misconstrued or misapprehended any relevant fact in this case, the Court gives full respect to its findings and conclusion, which were sustained on appeal by the CA, supporting accused-appellant's conviction for Murder. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

— On Marietta's supposed failure to lend succor to her father who was being attacked, suffice it to state that

there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence; witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience; the workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility. (People *vs.* Pigar @ "Jerry", *et al*., G.R. No. 247658, Feb. 17, 2020) p. 939

— The trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal; however, this is not a hard and fast rule; the Court has reviewed the trial court's factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case; here, circumstances exist that raise serious doubts on accused-appellants' culpability of the crime charged. (People *vs.* Casilang*, et al*., G.R. No. 242159, Feb. 5, 2020) p. 379

— When the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case; this rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals. (People *vs.* Pigar @ "Jerry", *et al*. *vs.* Pigar @ "Biroy," G.R. No. 247658, Feb. 17, 2020) p. 939

— While accused-appellant attempts to cast doubt on the credibility of the prosecution's witnesses, the settled rule is that the trial court's determination of witness

credibility will not be disturbed on appeal unless significant matters have been overlooked; such determination is treated with respect, as the trial court has the opportunity to observe the witnesses' demeanor during trial; its findings assume ever greater weight when they are affirmed by the Court of Appeals; the Regional Trial Court found AAA's testimony credible and sufficiently corroborated; her straightforward and positive testimony that her grandfather raped her, Barangay Captain Lotec's testimony stating that she was "pale and trembling," the medical certificate indicating lacerations to her hymen, and accused-appellant's own admission of the paternal relationship between him and the victim were collectively deemed sufficient for conviction; these findings were then affirmed by the Court of Appeals, which found AAA to be unwavering in "the material points of her testimony"; the lower courts' findings on AAA's credibility should be upheld, more so in view of accused-appellant's failure to raise any cogent reason for reversal. (People *vs.* ZZZ, G.R. No. 229209, Feb. 12, 2020) p. 725

***State witness* —** As to the discharge of an accused as state witness, the Rules of Criminal Procedure provides that: (1) there is absolute necessity for the testimony of the accused whose discharge is requested; (2) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (3) the testimony of said accused can be substantially corroborated in its material points; (4) said accused does not appear to be the most guilty; and (5) said accused has not at any time been convicted of any offense involving moral turpitude. (People *vs.* P/Insp. Dongail, *et al.*, G.R. No. 217972, Feb. 17, 2020) p. 784

***Testimony of* —** Credence is accorded to the testimony of Ernie, who positively identified accused-appellant as the one who stabbed his father; the alleged inconsistency between Ernie's affidavit and his testimony in open court does not affect his credibility as it does not detract from the fact that he saw and identified accused-appellant as the assailant of his father; a sworn statement or an affidavit

does not purport to contain a complete compendium of the details of the event narrated by the affiant; sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court. (People *vs.* Dela Peña, G.R. No. 238120, Feb. 12, 2020) p. 742

CITATION

Page

I. LOCAL CASES

A.U. Valencia & Co. *vs*. Layug,
103 Phil. 747 (1958) 250
Acaylar, Jr. *vs*. Harayo, 582 Phil. 600 (2008) 531
Acebedo *vs*. Arquero, 447 Phil. 76, 85 (2003) 461
Adamos *vs*. J. M. Tuason & Co., Inc.,
134 Phil. 470 (1968) 250
Adriano *vs*. Lasala, 719 Phil. 408 (2013) 258
Agtarap *vs*. Agtarap, 666 Phil. 452, 468-469 (2011) 274-275
Agustin *vs*. Delos Santos, 596 Phil. 630 (2009) 115
Aichi Forging Co. of Asia, Inc. *vs*.
Court of Tax Appeals (En Banc),
817 Phil. 403, 409 (2017) 873
Albenson Enterprises Corp. *vs*. CA,
291 Phil. 17, 27 (1993) 254
Alcantara, Jr. *vs*. CA, 435 Phil. 395, 404 (2002) 75
Alfornon *vs*. Delos Santos,
789 Phil. 462, 473 (2016) 462, 775
Alilin *vs*. Petron Corporation,
735 Phil. 509, 527 (2014) 831
Aliling *vs*. Feliciano, 686 Phil. 889, 918 (2012) 595
Almeda *vs*. Heirs of Almeda,
818 Phil. 239, 255-256 (2017) 278
AMA Computer College-Santiago City, Inc. *vs*.
Nacino, 568 Phil. 465 (2008) 71
Ampil *vs*. Ombudsman, 715 Phil. 733, 738 (2013) 782
Ampo-on *vs*. Reinier Pacific International
Shipping, Inc., G.R. No. 240614, June 10, 2019 ...... 140, 411
Anderson *vs*. Ho, 701 Phil. 6, 18 (2013) 531
Aquino *vs*. Quiazon, 755 Phil. 793 (2015) 258
Arambulo et al. *vs*. Gungab,
508 Phil. 612, 623 (2005) 325
Arce *vs*. Arce, 282 Phil. 26, 38 (1992) 462
Arevalo *vs*. Benedicto, 157 Phil. 175, 181 (1974) 129
Arevalo Gomez Corporation *vs*.
Lao Hian Liong, 232 Phil. 343 (1987) 28
ASB Realty Corp. *vs*. Ortigas & Co. Ltd.
Partnership, 775 Phil. 262, 283 (2015) 252

Page

Asian Design and Mfg. Corp. *vs*. Deputy Minister of Labor, 226 Phil. 20 (1986) 683
Astorga *vs*. People, 459 Phil. 140 (2003) 802
Atienza *vs*. Orophil Shipping International Co., Inc., 815 Phil. 480, 508 (2017) 416
Aurelio *vs*. Baquiran, 100 Phil. 274 (1956) 250
Austria *vs*. National Labor Relations Commission, 371 Phil. 340, 353 (1999) 829, 836-837, 851
Autobus Workers' Union *vs*. NLRC, 353 Phil. 419 (1998) 683
Automotive Parts & Equipment Company, Inc. *vs*. Lingad, 140 Phil. 580, 587 (1969) 75
Balatero *vs*. Senator Crewing (Manila) Inc., et al., 811 Phil. 589, 600 (2017) 141
Bangko Sentral ng Pilipinas *vs*. Banco Filipino Savings and Mortgage Bank, G.R. Nos. 178696, 192607, July 30, 2018 605
Bangko Sentral ng Pilipinas *vs*. Legaspi, 782 Phil. 147 (2016) 252
Barnes *vs*. Padilla, 482 Phil. 903 (2004) 773
Baronda *vs*. CA, 771 Phil. 56 (2015) 71
Barroga *vs*. Data Center College of the Phils., et al., 667 Phil. 808 (2011) 531
Bascara *vs*. Javier, et al., 760 Phil. 766, 775 (2015) 616
Bases Conversion and Development Authority *vs*. Uy, 537 Phil. 18, 33 (2006) 40
Bergonia *vs.* Merrera, 446 Phil. 1, 10 (2003) 563
Bernardo *vs*. CA, 117 Phil. 385 (1963) 274
Bibon *vs*. David, A.M. No. MTJ-87-67, Mar. 24, 1988 204
Bicol Medical Center *vs*. Botor, 819 Phil. 447, 457-458 (2017) 494-496
Biñan Steel Corporation *vs*. CA, 439 Phil. 688, 703-704 (2002) 495
Bolisay *vs*. Alcid, 174 Phil. 463, 470 (1978) 277
Borromeo *vs*. Santos, A.M. No. MTJ-15-1850, Feb. 16, 2015 203
Botigan-Santos *vs*. Gener, 817 Phil. 655, 661 (2017) 171

Page

Bristol Myers Squibb (Phils.), Inc. *vs*. Baban,
594 Phil. 620, 628 (2008) 588
Bucal *vs*. Bucal, 760 Phil. 912, 921-922 (2015) 482
Bumagat *vs*. Arribay, 735 Phil. 595 (2014) 127
Cabigting *vs*. San Miguel Foods, Inc.,
620 Phil. 14, 24 (2009) 594-595
Cadavas *vs*. CA, G.R. No. 228765,
Mar. 20, 2019 588-590
Capuno *vs*. Jeramillo, Jr., 304 Phil. 383, 392 (1994) 204
Career Philippines Shipmanagement, Inc. *vs*.
Serna, 700 Phil. 1, 9 (2012) 683
Carreon *vs*. Province of Pampanga,
99 Phil. 808 (1956) 250
Casco *vs*. National Labor Relations Commission,
G.R. No. 200571, Feb. 19, 2018,
856 SCRA 12, 23-24 .... 587-590, 592
Centennial Transmarine, Inc. *vs*. Sales,
G.R. No. 196455, July 8, 2019 414
Chevron Philippines, Inc. *vs*. Mendoza,
G.R. Nos. 211533, 212071, June 19, 2019 253
China Banking Corporation *vs*. Spouses Lozada,
579 Phil. 454, 472-473 (2008) 616
China Road *vs*. CA, 401 Phil. 590 (2000) 251
Ching *vs*. San Pedro College of Business
Administration, 772 Phil. 204, 228 (2015) 327
Ching, et al. *vs*. Cheng, et al.,
745 Phil. 93, 107 (2014) 607
Chiok *vs*. People, et al.,
774 Phil. 230, 246, 248 (2015) 303, 314
Chris Garments Corporation *vs*. Sto. Tomas,
596 Phil. 14 (2009) 115
Chua *vs*. People, et al., G.R. No. 195248,
Nov. 22, 2017, 846 SCRA 74, 81-82 306
City of Taguig *vs*. City of Makati,
787 Phil. 367, 383-388 (2016) 77
Co *vs*. The Civil Register of Manila,
467 Phil. 904 (2004) 510, 514
Coca *vs*. Pizarras, 171 Phil. 246, 252 (1978) 274-275

Page

Coca-Cola Bottlers Philippines, Inc., et al. *vs*. Coca-Cola Bottlers Philippines, Inc., 502 Phil. 748 (2005) 71
Commissioner of Internal Revenue *vs*. Toledo Power, Inc., 725 Phil. 66, 82 (2014) 879
Committee *vs*. De Guzman, 801 Phil. 731, 763 (2016) 112-113
Condrada *vs*. People, 446 Phil. 635, 641 (2003) 314
Convets, Inc. *vs*. Nat. Dev. Co., 103 Phil. 46 (1958) 250
Cortal, et al. *vs*. Inaki A. Larrazabal Enterprises, et al., 817 Phil. 464, 476-477, 493 (2017) 39, 532
Cortez-Estrada *vs*. Heirs of Samut, 491 Phil. 458, 472 (2005) 486, 496
Crespo *vs*. Mogul, 235 Phil. 465, 476 (1987) 478
Cu *vs*. Small Business Guarantee and Finance Corporation, etc., G.R. No. 211222, Aug. 7, 2017 303
Cu *vs*. Ventura, G.R. No. 224567, Sept.26, 2018 303
Dabuco *vs*. CA, 379 Phil. 939, 951 (2000) 251
Daikoku Electronics Phils., Inc. *vs*. Raza, 606 Phil. 786, 803-804 (2009) 531
Dalandan *vs*. Julio, 119 Phil. 678 (1964) 250
De Guia *vs*. Romillo, Jr., 262 Phil. 524 (1990) 118
De Guzman *vs*. CA, 250 Phil. 613, 619-620 (1988) 930
De Jesus *vs*. Belarmino, 95 Phil. 365 (1954) 250
De La Cruz *vs*. National Labor Relations Commission, 258 Phil. 432 (1989) 683
De la Victoria *vs*. Cañete, 427 Phil. 775, 782-783 (2002) 172-174
De Lima *vs*. City of Manila, G.R. No. 222886, Oct. 17, 2018 82
Degayo *vs*. Magbanua-Dinglasan, 757 Phil. 376 (2015) 326
Dela Fuente Torres *vs*. Dalangin, A.C. Nos. 10758-61, Dec. 5, 2017, 847 SCRA 472, 297 437
Deocariza *vs*. Fleet Management Services Philippines, Inc., G.R. No. 229955, July 23, 2018 .... 411, 416

Page

Department of Agrarian Reform *vs*. Paramount Holdings Equities, 711 Phil. 30 (2013) 126
Department of Justice *vs.* Mislang, 791 Phil. 219 (2016) 208
Department of Public Works and Highways *vs*. City Advertising Ventures Corp., 799 Phil. 47, 64, 66 (2016) 494, 496
Development Bank of the Philippines *vs*. Carpio, 805 Phil. 99, 109-110 (2017) 38
Development Bank of the Philippines *vs*. Teston, 569 Phil. 137, 144 (2008) 482
Dimayuga *vs*. Dimayuga, 96 Phil. 859 (1955) 250
Dio *vs*. Subic Bay Marine Exploratorium, Inc., 736 Phil. 216, 224 (2014) 9
Diona *vs*. Balangue, 701 Phil. 19, 31 (2013) 481
Distribution & Control Products, Inc./Tiamsic *vs*. Santos, 813 Phil. 423, 436 (2017) 685
Dizon *vs*. CA, 361 Phil. 963 (1999) 16, 26
Dizon *vs*. Magsaysay, 156 Phil. 232 (1974) 16, 29
Doble *vs*. ABB, Inc./Nitin Desai, 810 Phil. 210 (2017) 531
Doctor *vs*. NII Enterprises, G.R. No. 194001, Nov. 22, 2017, 846 SCRA 53, 66 .... 85, 427, 682
Dungog *vs*. CA, 455 Phil. 675, 685 (2003) 494, 498
Durban Apartments Corporation *vs*. Catacutan, 514 Phil. 187 (2005) 531
Edaño *vs*. Asdala, 651 Phil. 183 (2010) 204
Elape *vs*. Elape, 574 Phil. 550, 554 (2008) 461
Emilia *vs*. Bado, 131 Phil. 711 (1968) 250
Evangelista *vs*. Sps. Andolong, et al., 800 Phil. 189, 195 (2016) 290
Evy Construction and Development Corporation *vs*. Valiant Roll Forming Sales Corporation, G.R. No. 207938, Oct. 11, 2017, 842 SCRA 464, 474 41
Excellent Quality Apparel, Inc. *vs*. Win Multi Rich Builders, Inc., 598 Phil. 94 (2009) 661
Fajardo *vs*. Corral, 813 Phil. 149, 156 (2017) 775

Page

Far Eastern Surety and Insurance Co., Inc. *vs*. People, 721 Phil. 760, 770 (2013) 291, 913
FGU Insurance Corp. *vs*. Regional Trial Court of Makati City, Branch 66, 559 Phil. 117, 123 (2011) 615
Field Investigation Office *vs*. Piano, G.R. No. 215042, Nov. 20, 2017, 845 SCRA 167, 184-185 .... 778, 780
Figueras *vs*. Jimenez, 729 Phil. 101, 108 (2014) 563
Fil-Estate Golf and Dev't., Inc. *vs*. CA, 333 Phil. 465 (1996) 251
Florete, Jr. *vs*. Florete, 778 Phil. 614, 652 (2016) 281
Fluor Daniel, Inc.-Philippines *vs*. E.B. Villarosa and Partners Co., Ltd., 555 Phil. 295 (2007) 252
Fort Bonifacio Development Corp. *vs*. Domingo, 599 Phil. 554 (2009) 660-661
Fortune Corporation *vs*. CA, 299 Phil. 356 (1994) 376
Fortune Tobacco Corp. *vs*. Commissioner of Internal Revenue, 762 Phil. 450, 465 531
Francisco *vs*. Robles, 94 Phil. 1035 (1954) 250
Galman *vs*. Sandiganbayan, 228 Phil. 42 (1986) 315
Gamboa *vs*. Maunlad Trans, Inc., G.R. No. 232905, Aug. 20, 2018 141
Gamboa *vs*. Teodoro, G.R. No. L-4893, May 13, 1952 450
Gammon Philippines, Inc. *vs*. Metro Rail Transit Dev't. Corp 516 Phil. 561, 573 (2006) 661-662
Gelig *vs*. People, 640 Phil. 109, 116 (2010) 697
General Milling Corporation *vs*. Viajar, 702 Phil. 532, 540 (2013) 682
Genuino Agro-lndustrial Development Corporation *vs*. Romano, G.R. No. 204782, Sept. 18, 2019 595
Gimeno *vs*. Zaide, 759 Phil. 10 (2015) 239
Globe Mackay Radio and Cable Corp. *vs*. CA, 57 Phil. 783 (1989) 253-254
Go *vs*. The Fifth Division, Sandiganbayan, 549 Phil. 783, 800-801 (2007) 886
Goopio *vs*. Maglalang, A.C. No. 10555, July 31, 2018 436

Page

Gopiao *vs*. Metropolitan Bank & Trust Co.,
739 Phil. 731, 736 (2014) 616
Grande *vs*. Philippine Nautical Training Colleges,
806 Phil. 601, 612 (2017) 679, 682
Guagua National Colleges *vs*. CA, G.R. No. 188492,
Aug. 28, 2018 71-72
Gubaton *vs*. Amador, A.C. No. 8962, July 9, 2018 446
Guillermo *vs*. Philippine Information Agency,
807 Phil. 555 (2017) 258
Gumabon *vs*. Philippine National Bank,
791 Phil. 101, 116 (2016) 426
Hacienda Bigaa, Inc. *vs*. Chavez,
632 Phil. 574 (2010) 115
Heirs of Rolando N. Abadilla *vs*. Galarosa,
527 Phil. 264 (2006) 115
Heirs of Albano *vs*. Spouses Ravanes,
790 Phil. 557, 573 (2016) 82
Heirs of Juliana Clavano *vs*. Genato,
170 Phil. 275 (1977) 250
Heirs of Licuanan *vs*. Singa Ship Management,
Inc., G.R. Nos. 238261, 238567, June 26, 2019 410
Heirs of Loreto Maramag *vs*. Maramag,
606 Phil. 782 (2009) 251
Heirs of Reyes *vs*. Reyes, 399 Phil. 282 (2000) 277
Heirs of the late Flor Tungpalan *vs*. CA,
499 Phil. 384, 390 (2005) 606
Heirs of Amada Zaulda *vs*. Zaulda,
729 Phil. 639 (2014) 531
Heirs of Zoleta *vs*. Land Bank of the Philippines,
816 Phil. 389 (2017) 120
Hilado *vs*. Chavez, 482 Phil. 104 (2004) 129
Holy Trinity Realty Development Corporation *vs*.
Abacan, 709 Phil. 653, 661 (2013) 913
Horlardor *vs*. Philippine Transmarine Carriers, Inc.,
G.R. No. 236576, Sept. 5, 2018 416
Hutchison Ports Philippines, Ltd. *vs*.
Subic Bay Metropolitan Authority,
393 Phil. 843, 859 (2000) 495

Page

Hyatt Taxi Services, Inc. *vs*. Catinoy,
412 Phil. 295, 306 (2001) 630
Ignacio *vs*. Reyes, 813 Phil. 717, 732 (2017) 277
In Re: Application for Land Registration, Dumo *vs*.
Republic of the Philippines, G.R. No. 218269,
June 6, 2018 813-814
In re Lozano, 54 Phil. 801 450
In Re: Petition to Sign in the Roll of Attorneys,
Michael A. Medado, 718 Phil. 286, 291 (2013) 555
In the Matter of the Proceedings for Disciplinary
Action Against Atty. Almacen, et al. *vs*.
Yaptinchay, 142 Phil. 353, 371 (1970) 446
Isidro *vs*. CA, 298-A Phil. 481 (1993) 127
Jornales *vs*. Central Azucarera de Bais,
118 Phil. 909, 911 (1963) 252
Kestrel Shipping Co., Inc. *vs*. Munar,
702 Phil. 717 (2013) 412
La Suerte Cigar *vs*. Central Azucarera de Davao,
132 Phil. 163 (1968) 250
Lagua *vs*. CA, 689 Phil. 452 (2012) 496
Lara's Gifts & Decor, Inc. *vs*. Midtown
Industrial Sales, Inc., G.R. No. 225433,
Aug. 28, 2019 95
Layos *vs*. Villanueva, 749 Phil. 1, 8-9 (2014) 563
LBC Express, Inc. *vs*. CA, 306 Phil. 624 (1994) 258
Legal Heirs of Deauna *vs*. Fil-Star Maritime
Corporation, 688 Phil. 582, 601 (2012) 89
Legaspi *vs*. Garrete, 312 Phil. 783, 805 (1995) 570
Leyte IV Electric Cooperative, Inc. *vs*.
LEYECO IV Employees Union-ALU,
562 Phil. 743 (2007) 71
Lim *vs*. De los Santos, 118 Phil. 800 (1963) 250
Lim, et al. *vs*. Gamosa, et al., 774 Phil. 31 (2015) 658
Lima Land, Inc. *vs*. Cuevas,
635 Phil. 36, 48-49 (2010) 589
Long *vs*. Basa, G.R. Nos. 134963-64,
135152-53, 418 Phil. 375, 397 (2001) 833, 853
Lozano *vs*. People, 638 Phil. 582 (2010) 801

Page

Luzon Development Bank *vs*. Association
of Luzon Development Bank Employees,
319 Phil. 262, 270 (1995) 75
LZK Holdings & Dev't. Corp. *vs*.
Planters Dev't. Bank, 725 Phil. 83, 88 (2014) 616
M+W Zander Philippines, Inc. *vs*.
Enriquez, 606 Phil. 591, 607 (2009) 633
Madridejos *vs*. NYK-FIL Ship Management,
Inc., 810 Phil. 704, 723 (2017) 683
Maersk-Filipinas Crewing, Inc. *vs*.
Malicse, G.R. Nos. 200576, 200626,
Nov. 20, 2017, 845 SCRA 69, 80, 85 .... 89, 94
Magdadaro *vs*. Saniel, Jr., 700 Phil. 513 (2012) 199
Malixi *vs*. Baltazar, G.R. No. 208224,
Nov. 22, 2017, 846 SCRA 244 531
Manansala *vs*. Marlow Navigation Phils.,
Inc., et al., 817 Phil. 84, 102-103 (2017)............................ 139
Mancol, Jr. *vs*. Development Bank of the
Philippines, G.R. No. 204289, Nov. 22, 2017,
846 SCRA 131 307
Manila Electric Company *vs*. Gala,
683 Phil. 356 (2012) 531
Manila Midtown Hotel *vs*. Borromeo,
482 Phil. 137 (2004) 70
Marabiles *vs*. Quito, 100 Phil. 64 (1956) 250
Marcopper Mining Corp. *vs*. Garcia,
227 Phil. 166 (1986) 251
Mata *vs*. Agravante, 583 Phil. 64 (2008) 255
Medina *vs*. Asistio, 269 Phil. 225 (1990) 477
Mediserv, Inc. *vs*. CA (Special Former
13th Division), et al., 631 Phil. 282, 295 (2010) 531
Mendoza *vda. de* Robosa *vs*. Mendoza, et al.,
769 Phil. 359, 377-378 (2015) 563
Mercury Drug Corp., et al. *vs*. Spouses Huang,
et al., 817 Phil. 434, 445-446 (2017) 615
Microsoft Corporation *vs*. Manansala,
772 Phil. 14, 22 (2015)... 75
Mindanao Realty Corp. *vs*. Kintanar,
116 Phil. 1130 (1962) 250

Page

Mitra *vs*. Sablan-Guevarra, G.R. No. 213994,
April 18, 2018, 862 SCRA 32 773
Mitsubishi Motors Philippines Corporation *vs*.
Bureau of Customs, 760 Phil. 954, 962 (2015) 531
Montoya *vs*. Transmed Manila Corporation,
613 Phil. 696, 707 (2009) 587
Mora *vs.* Avesco Marketing Corporation,
591 Phil. 827 (2008) 71
Mun. of Tacurong *vs*. Abragan,
130 Phil. 542 (1968) 250
Municipal Board of Cabanatuan City *vs*.
Samahang Magsasaka, Inc., 159 Phil. 493 (1975) 118
Nacar *vs.* Gallery Frames, et al.,
716 Phil. 267, 283 (2013) 291, 416, 741, 938
Natcher *vs*. CA, 418 Phil. 669, 679 (2001) 274-275
National Power Corporation *vs*. Adiong,
670 Phil. 21, 34-35 (2011) 571
New City Builders, Inc. *vs*. NLRC,
499 Phil. 207, 212-213 (2005) 291
New Puerto Commercial, et al. *vs*.
Lopez, et al., 639 Phil. 437, 445 (2010).............................. 685
Nippon Paint Employees Union-Olalia *vs*. CA,
485 Phil. 675 (2004) 70
Nissan Motors Phils., Inc. *vs*. Angelo,
673 Phil. 150, 160 (2011) 592, 683
NYK-FIL Ship Management, Incorporated *vs.*
Dabu, G.R. No. 225142, Sept.13, 2017,
839 SCRA 601 71
Ocampo *vs*. People, G.R. No. 242911, Mar. 11, 2019 749
Oceanic Bic Division (FFW) *vs*. Romero,
215 Phil. 340, 349 (1984) 75
Odin Security Agency, Inc. *vs*. Sandiganbayan,
417 Phil. 73, 680 (2001) 478
Office of the Court Administrator *vs*.
Adalim-White, A.M. No. RTJ-15-2440,
Sept. 4, 2018 571
Cabe, 389 Phil. 685, 697, 698-699 (2000) 172, 177
Dequito, 799 Phil. 607, 617 (2016) 175
Fortaleza, 434 Phil. 511, 523 (2002) 155

Page

Gaspar, 659 Phil. 437, 442 (2011) 175
Guan, 764 Phil. 1, 12 (2015) 157
Indar, 725 Phil. 164, 179-180 (2014) 572
Indar, 685 Phil. 272, 287-288 (2012) 570
Lometillo, 662 Phil. 106 (2011) 158
Paduganan-Peñaranda, 630 Phil. 169, 179 (2010) 155
Ramirez, 489 Phil. 262, 272 (2005) 176
Viesca, 758 Phil. 16, 25 (2015) 155
Office of the Ombudsman *vs*. Apolonio,
683 Phil. 553, 563 (2012) 782
Ong Lay Hin *vs*. CA, 752 Phil. 15 (2015) 496
Oropeza Marketing Corp. *vs*. Allied Banking Corp.,
441 Phil. 551, 563 (2002) 112
Pacioles, Jr. *vs*. Chuatoco-Ching,
503 Phil. 707 (2005) 276
Paras *vs*. Baldado, 406 Phil. 589 (2001) 531
Pascual *vs*. Burgos, 776 Phil. 167, 182 (2016) 278, 477
Pascual *vs*. Pascual, 73 Phil. 561, 562 (1942) 274
Pastor *vs*. Bibby Shipping Philippines, Inc.,
G.R. No. 238842, Nov. 19, 2018 413
Paulino *vs*. NLRC, 687 Phil. 220, 225-226 (2012) 428
PCGG *vs*. Navarro-Gutierrez, et al.,
772 Phil. 91 (2015) 887
PCGG *vs*. Office of the Ombudsman,
G.R. No. 194619, Mar. 20, 2019 886
Pelagio *vs*. Transmarine Carriers, Inc.,
G.R. No. 231773, Mar. 11, 2019 416
Peñaranda *vs*. Baganga Plywood Corp.,
522 Phil. 640, 650-652 (2006) 632
People *vs*. Abaño, 659 Phil. 25, 29 (2011) 753
Alarcon, 69 Phil. 265 450
Allingag, G.R. No. 233477, July 30, 2018 361
Almorfe, 631 Phil. 51, 60 (2010) 394
Amarela, G.R. Nos. 225642-43, Jan. 17, 2018,
852 SCRA 54, 68 .... 728, 737
Ambatang, 808 Phil. 236, 243 (2017) 950
Ampo, G.R. No. 229938, Feb. 27, 2019 905
Año, G.R. No. 230070, Mar. 14, 2018,
859 SCRA 380, 388-389 390

Page

Araneta, 48 Phil. 650 (1926) ... 799
Asilan, 685 Phil. 633, 651 (2012) ... 755
Austria, 389 Phil. 737, 753-754 (2000) ... 740
Banez, et al., 770 Phil. 40, 46 (2015) ... 949
Barquilla, 319 Phil. 302 (1995) ... 752
Breis, 766 Phil. 785 (2015) ... 700
CA, et al., 468 Phil. 1 (2004) ... 314
Candaza, 524 Phil. 589 (2006) ... 754
Caritativo, 451 Phil. 741, 769 (2003) ... 745, 752
Casas, 755 Phil. 210, 220 (2015) ... 752
Clariño, 414 Phil. 358, 377 (2001) ... 752
Collamat, et al., G.R. No. 218200, Aug. 15, 2018 ... 947
Cornel *y* Asuncion, G.R. No. 229047,
April 16, 2018 ... 342, 716
Cortez, et al., G.R. No. 239137, Dec. 5, 2018 ... 951
Crispo, G.R. No. 230065, Mar. 14, 2018,
859 SCRA 356, 376-377 ... 363, 395
Cruz, 612 Phil. 726, 735 (2009) ... 740
Dahil, 750 Phil. 212 (2015) ... 396
Dayaday, 803 SCRA 363, 370-371 ... 748
De Guzman, 630 Phil. 637 (2010) ... 394
Dela Rosa, 822 Phil. 885, 910 (2017) ... 398
Diu, 708 Phil. 218, 232 (2013) ... 728, 736, 740
Dumaplin, 700 Phil. 737, 747 (2012) ... 360
Flores, et al., G.R. No. 228886, Aug. 8, 2018 ... 947
Galido, 470 Phil. 345 (2004) ... 753
Gervero, G.R. No. 206725, July 11, 2018 ... 954
Go, 730 Phil. 362, 369 (2014) ... 886
Guzon, 719 Phil. 441, 451 (2013) ... 359
Hernando, 195 Phil. 21 (1981) ... 315
Hilario, G.R. No. 210610, Jan. 11, 2018,
851 SCRA 1 ... 350, 723
Ismael, 806 Phil. 21, 29 (2017) ... 340, 714
Jugueta, 783 Phil. 806, 843,
847-848 (2016) ... 741, 755, 803, 905, 954
Lababo, G.R. No. 234651, June 6, 2018,
865 SCRA 609, 628-629 ... 950
Layug, 818 Phil. 1021 (2017) ... 755

Page

Li Wai Cheung, 289 Phil. 105 (1992) 799
Lim, G.R. No. 231989, Sept. 4, 2018 .... 347, 360, 362, 721
Maraorao, 688 Phil. 458, 464-465 (2012) 390
Mendoza, 736 Phil. 749 (2014) 343, 717
Mola, G.R. No. 226481, April 18, 2018 360-362
Moreno, G.R. No. 217889, Mar. 14, 2018,
859 SCRA 229, 248 952
Nelmida, 694 Phil. 529 (2012) 737
Obmiranis, 594 Phil. 561, 570-571,579 (2008) 382, 398
Ocampo, G.R. No. 232300, Aug. 1, 2018 361
Opiana, 750 Phil. 140, 147 (2015) 359
Petalino, G.R. No. 213222, Sept. 24, 2018 950
Placer, 719 Phil. 268, 281-282 (2013) 903
Plaza, G.R. No. 235467, Aug. 20, 2018 395
Pulgo, 813 Phil. 205, 212, 215 (2017) 947, 949
Que, G.R. No. 212994, Jan. 31, 2018,
853 SCRA 487 .... 342, 717
Racal, G.R. No. 224886, Sept. 4, 2017,
838 SCRA 476, 488-489 899
Ramos, G.R. No. 233744, Feb. 28, 2018,
857 SCRA 175, 190-191 362
Relato, 679 Phil. 268 (2012) 346, 720
Remigio, 700 Phil. 452, 464-465 (2012) 360
Reyes, G.R. No. 219953, April 23, 2018,
862 SCRA 352 .... 344, 361-362, 718
Sanchez, G.R. No. 231383, Mar. 7, 2018,
858 SCRA 94, 110-111 363
Santiago, 255 Phil. 851 (1989) 304
Sapigao, Jr., 614 Phil. 589 (2009) 800
Sipin *y* De Castro, G.R. No. 224290,
June 11, 2018 .... 345, 361-362, 719
Solar, G.R. No. 225595, Aug. 6, 2019 754
Sood, G.R. No. 227394, June 6, 2018,
865 SCRA 368, 389 393
Sota, et al., G.R. No. 203121, Nov. 29, 2017,
847 SCRA 113, 127-128, 143 .... 748, 953
Tica, G.R. No. 222561, Aug. 30, 2017,
838 SCRA 390, 397, 400 .... 900, 905
Umipang, 686 Phil. 1024 (2012) 348, 394, 722

Page

Ursua *y* Bernal, 819 Phil. 467, 476 (2017) 954
Vega, G.R. No. 216018, Mar. 27, 2019 749
Velasco, 394 Phil. 517 (2000) 316, 318
Vermudez, 361 Phil. 952 (1999) 752
Wagas, 717 Phil. 224, 227 (2013) 382
Yanson, 674 Phil. 169, 180 (2011) 749
Perkin Elmer Singapore Pte. Ltd. *vs.*
Dakila Trading Corp., 556 Phil. 822 (2007) 251
Perkins *vs.* Director of Prisons, 58 Phil. 271 450
PEZA *vs.* Vianzon, 319 Phil. 186 (2000) 498
Phil. Aeolus Auto-Motive United Corp. *vs.*
National Labor Relations Commission,
387 Phil. 250, 264 (2000) 631
Philco Aero, Inc. *vs.* Secretary Tugade,
G.R. No. 237486, July 3, 2019 40
Philex Gold Philippines, Inc. *vs.* Philex
Bulawan Supervisors Union, 505 Phil. 224 (2005) 71
Philippine Airlines *vs.* Miano, 312 Phil. 287 (1995) 258
Philippine Bank of Communications *vs.*
Echiverri, 197 Phil. 842 (1980) 118
Philippine Electric Corporation *vs.* CA,
749 Phil. 686, 709 (2014) 69, 71
Philippine National Bank *vs.* Abello,
G.R. No. 242570, Sept. 18, 2019 252
Philippine Veterans Bank *vs.* Monillas,
573 Phil. 384 (2008) 655
Philippine-Singapore Transport Services, Inc. *vs.*
National Labor Relations Commission,
343 Phil. 284, 290-293 (1997) 685
Philman Marine Agency, Inc. *vs.*
Cabanban, 715 Phil. 454, 471 (2013) 831
Pilipinas Total Gas, Inc. *vs.* Commissioner
of Internal Revenue, 774 Phil. 473, 492 (2015) 874-875
Pineda *vs.* Heirs of Eliseo Guevara,
544 Phil. 554 (2007) 666
PJ Lhuillier, Inc. *vs.* Camacho,
806 Phil. 413, 430 (2017) 685
PLDT Company, Inc. *vs.* Tiamson,
511 Phil. 384, 395 (2005) 427

Page

PNB *vs*. Yeung, 722 Phil. 710 (2013) 772
Province of Camarines Sur *vs*. Bodega
Glassware, 807 Phil. 865 (2017) 328
Prudential Guarantee and Assurance, Inc. *vs*.
Anscor Land, Inc., 644 Phil. 634, 642 (2010) 657
Puerto Azul Land, Inc. *vs*. Pacific Wide Realty
Dev't. Corp., 743 Phil. 222, 231 (2014) 326-327
Quiem *vs*. Seriña, 126 Phil. 1426 (1966) 250
Quijano *vs*. Amante, 745 Phil. 40 (2014) 914
Quilo *vs*. Bajao, 445 Phil. 453 (2016) 38
Ramirez *vs*. Buhayang-Margallo,
752 Phil. 473, 480-481 (2015) 561
Ramos *vs*. Condez, 127 Phil. 601 (1967) 250
Ramos, et al. *vs*. People, G.R. No. 218466,
Jan. 23, 2017 898
Raymundo *vs*. CA, 288 Phil. 344, 349 (1992) 494
Re: (a) Request of Assistant Court Administrators
for Upgrading of Their Rank, Salary and Privileges
Upon Effectivity of Republic Act No. 9282 Elevating
the Court of Tax Appeals and (b) Grant of Special
Distortion Allowance to Positions in the Judiciary
with Rank of Judges of Metropolitan Trial Courts,
Assistant Clerk of Court of the Court of Appeals
and Division Clerks of Court of the Court of Appeals,
528 Phil. 13, 25 (2006) 538
Re: Anonymous Complaints against Judge Bandong,
RTC, Br. 59, Lucena City, Quezon Province,
819 Phil. 518 (2017) 200
Re: Non-submission of Monthly Financial Reports
of Ms. Erlinda P. Patiag, Clerk of Court, Municipal
Trial Court in Cities, Gapan City, Nueva Ecija,
A.M. No. 11-6-60-MTCC, June 18, 2019 157
Re: Report on the Financial Audit Conducted
at the Municipal Trial Court, Baliuag, Bulacan,
753 Phil. 31, 37 (2015) 154
Re: Report on the Judicial Audit conducted
in the RTC, Branch 9, Silay City,
410 Phil. 126 (2001) 206
Re: Toledo *vs*. Toledo, 568 Phil. 24 (2008) 177

Page

Reinares *vs*. Arrastia and Hizon,
115 Phil. 726 (1962) 250
Remalante *vs*. Tibe, 241 Phil. 930 (1988) 291
Republic *vs*. Ang Cho Kio, 95 Phil. 475 (1954) 317
Bautista, G.R. No. 211664, Nov. 12, 2018 813
Dimarucot, G.R. No. 202069, Mar. 7, 2018 39
Evangelista, 504 Phil. 115, 123 (2005) 496
Medida, G.R. No. 195097, 692 Phil. 454, 468 (2012) 814
T.A.N. Properties, Inc., 578 Phil. 441 (2008) 813
Republic Bank *vs*. Cuaderno, 125 Phil. 1076 (1967) 250
Reyes *vs*. Doctolero, G.R. No. 185597, Aug. 2, 2017 933
Glaucoma Research Foundation, Inc.,
760 Phil. 779, 789, 792 (2015) 830, 832
Global Beer Below Zero, Inc.,
819 Phil. 483, 494 (2017) 426
Nieva, 794 Phil. 360, 379 (2016) 437
People, 764 Phil. 294, 305 (2015) 82
Reynolds Phil. Corp. *vs*. Eslava,
221 Phil. 614 (1985) 683
Rivera *vs*. People, 501 Phil. 37 (2005) 699
Romero *vs*. CA, 686 Phil. 203, 213 (2012) 273, 276
Royal Plant Workers Union *vs*.
Coca-Cola Bottlers Philippines,
Inc.-Cebu Plant. 709 Phil. 350 (2013) 71
Ruperto *vs*. Fernando and Tianco,
83 Phil. 943 (1949) 250
Sabio *vs*. Field Investigation Office,
G.R. No. 229882, Feb. 13, 2018,
855 SCRA 293, 305 776
Sagales *vs*. Rustan's Commercial Corporation,
592 Phil. 468 (2008) 595
Saint Luis University, Inc. *vs.* Cobarrubias,
640 Phil. 682 (2010) 71
Salvador *vs*. Limsiaco, Jr., 519 Phil. 683 (2006) 199
Samahan ng Manggagawa sa Moldex Products,
Inc. *vs*. National Labor Relations Commission,
381 Phil. 254, 264 (2000) 85
Samahan ng mga Manggagawa sa Hyatt *vs.* Hon.
Voluntary Arbitrator Magsalin, 665 Phil. 584 (2011) 71

Page

Samahan ng mga Manggagawa sa
Hyatt-Nuwhrain-APL *vs.* Voluntary
Arbitrator Bacungan, 601 Phil. 365 (2009) 71
Santamaria, et al. *vs.* Cleary,
787 Phil. 305, 317 (2016) 378
Santiago *vs.* Northbay Knitting,
G.R. No. 217296, Oct. 11, 2017,
842 SCRA 502, 511 914
Santiago *vs.* Pioneer Savings and
Loan Bank, 241 Phil. 113, 117 (1988) 248
Santos *vs.* Orda, Jr., 481 Phil.
93, 105-106 (2004) 478-479
Santos *vs.* San Miguel Corporation,
447 Phil. 264, 276-277 (2003) 684
Saudi Arabian Airlines (Saudia) *vs.* Rebesencio,
750 Phil. 791, 839 (2015) 629-630
Sea Commercial Company, Inc. *vs.* CA,
377 Phil. 221 (1999) 254
Sesbreño *vs.* Garcia, 261 Phil. 1 (1990) 449
Sevilla *vs.* People, 741 Phil. 198 (2014) 705
Sevilla Trading Company *vs.* Semana,
472 Phil. 220 (2004) 70
Sibayan-Joaquin *vs.* Javellana,
420 Phil. 584, 589-590 (2001) 203
Silverio *vs.* Republic, 562 Phil. 953, 970 (2007) 517
Singian, Jr. *vs.* Sandiganbayan (Third Division),
514 Phil. 536 (2005) 886
So *vs.* Republic, 542 Phil. 259, 271 (2007) 518
Social Security System *vs.* Isip,
549 Phil. 112, 116 (2007) 615
Socorro *vs.* Vargas, 134 Phil. 641 (1968) 250
Solancho *vs.* Ramos, 126 Phil. 179 (1967) 250
Spouses Aboitiz *vs.* Spouses Po,
810 Phil. 123 (2017) 113
Spouses Antonio *vs.* de Monje, 646 Phil. 90 (2010) 114
Spouses Aranda *vs.* Elayda, 653 Phil. 1, 10 (2010) 562
Spouses Atuel *vs.* Spouses Valdez,
451 Phil. 631, 643 (2003) 127

Page

Spouses Barias *vs*. Heirs of Boeno, et al.,
623 Phil. 82, 88 (2009) 327
Spouses Bernales *vs*. Heirs of Julian Sambaan,
624 Phil. 88, 97 (2010) 278
Spouses Fernandez *vs*. Smart Communications,
Inc., G.R. No. 212885, July 17, 2019 257-258
Spouses Gallent *vs*. Velasquez,
784 Phil. 44, 63 (2016) 617
Spouses Gimena *vs*. Vijiga,
A.C. No. 11828, Nov. 22, 2017 561
Spouses Marquez *vs*. Sps. Alindog,
725 Phil. 237, 246-247 (2014) 616
Spouses Miano *vs*. Manila Electric Company,
800 Phil. 118 (2016) 695
Spouses Nisce *vs*. Equitable PCI Bank,
545 Phil. 138, 160 (2007) 495, 497
Spouses Noceda *vs*. Arbizo-Directo,
639 Phil. 483 (2010) 327
Spouses Ramos *vs*. Obispo,
705 Phil. 221, 230 (2013) 290
Spouses Reyes *vs*. Sps. Chang,
818 Phil. 225, 236 (2017) 616
Spouses Tolosa *vs*. United Coconut Planters
Bank, 708 Phil. 134, 141 (2013) 616
St. James College of Parañaque *vs*.
Equitable PCI Bank, 641 Phil. 452, 466 (2010) 495
State Prosecutor Comilang *vs*. Belen,
689 Phil. 134, 148 (2012) 571
Sterling Paper Products Enterprises, Inc. *vs*.
KMM-Katipunan, et al., 815 Phil. 425,
435-437 (2017) 428, 679, 683
Stronghold Insurance Company, Inc. *vs*.
Cuenca, 705 Phil. 441, 454-455 (2013) 279-280
Supra Multi-Services, Inc., et al. *vs*. Labitigan,
792 Phil. 336 (2016) 684
Supreme Transliner, Inc. *vs*. CA,
421 Phil. 692, 699 (2001) 290
Surviving Heirs of Alfredo R. Bautista *vs*.
Lindo, 728 Phil. 630, 637 (2014) 41

Page

Sy *vs*. Neat, Inc., G.R. No. 213748,
Nov. 27, 2017, 846 SCRA 612, 633 428
Sydeco *vs*. People, 746 Phil. 916, 932-933 (2014) 701
Symex Security Services, Inc. *vs*. Rivera, Jr.,
G.R. No. 202613, Nov. 8, 2017,
844 SCRA 416, 435 682-683
Tan *vs*. Dir. of Forestry, 210 Phil. 244 (1983) 251
Teng *vs*. Pahagac, 649 Phil. 460 (2010) 72
Teves *vs*. Integrated Credit & Corporate
Services, Co. (now Carol Aqui), G.R. No. 216714,
April 4, 2018, 860 SCRA 493, 508 616
The Manila Insurance Co., Inc. *vs*.
Sps. Amurao, 701 Phil. 557 (2013) 661
The Orchard Golf and Country Club *vs*.
Francisco, 706 Phil. 479, 500 (2013) 685
Tible & Tible Company, Inc. *vs*. Royal Savings
and Loan Association, 574 Phil. 20, 38 (2008) 771
Ting Trucking/Mary Violaine A. Ting *vs*.
Makilan, 787 Phil. 651, 663 (2016) 428
Tolentino *vs*. Cabral, 385 Phil. 631 (2000) 447
Torreda *vs*. Toshiba Information Equipment
(Phils.), Inc., et al., 544 Phil. 71 (2007) 676
Torreon *vs*. Aparra, Jr., G.R. No. 188493,
Dec. 13, 2017 937
Trajano *vs*. Uniwide Sales Warehouse Club,
736 Phil. 264 (2014) 531
Transglobal Maritime Agency, Inc. *vs*. Chua, Jr.,
G.R. No. 222430, Aug. 30, 2017 96
Union Glass & Container Corp., et al. *vs*.
SEC, et al., 211 Phil. 222 (1983) 658
United States *vs*. Cox, 3 Phil. 140 (1904) 699
Gumban, 39 Phil. 76 (1918) 698
Tabiana, 37 Phil. 515 (1918) 701
Taylor, 6 Phil. 162, 163 (1906) 697
University of the East *vs*. Jader,
382 Phil. 697 (2000) 254
UST, et al. *vs*. Sanchez, 640 Phil. 189 (2010) 666
Uy *vs*. Chua, 616 Phil. 768 (2009) 655

Page

Uy Chao *vs*. De la Rama Steamship Co., Inc.,
116 Phil. 392 (1962) 250
Uyboco *vs*. People, 749 Phil. 987, 993-994 (2014).......... 886-887
Verdadero *vs*. Barney Autolines Group
of Companies Transport, Inc.,
693 Phil. 646 (2012) 626, 633
Viesca *vs*. Gilinsky, 553 Phil. 498 (2007) 118
Villavicencio *vs*. Lukban, 39 Phil. 778..................................... 450
Vios *vs*. Pantango, Jr., 597 Phil. 705 (2009)........................... 328
Visayan Electric Co. Employees Union-ALU-TUCP,
et al. *vs*. Visayan Electric Company, Inc.,
764 Phil. 608, 626 (2015) 685
Wise & Co., Inc. *vs*. City of Manila,
101 Phil. 244 (1957) 250
Yap @ "Charlie," etc. *vs*. People,
G.R. No. 234217, Nov. 14, 2018 902
Yu *vs*. Reyes-Carpio, et al.,
667 Phil. 474, 481-482 (2011) 307
Yu, Jr. *vs*. Mupas, A.M. No. RTJ-17-2491,
July 4, 2018.. 571
Zabala *vs*. People, 752 Phil. 59 801
Zamora *vs*. Quinan, Jr., G.R. No. 216139,
Nov. 29, 2017, 847 SCRA 251, 256-262 77
Zobel *vs*. Abreu, 98 Phil. 343 (1956).. 250

II. FOREIGN CASES

Colonial Auto Ctr. *vs*. Tomlin,
184 B.R. 720, 724 (1995) 606
Hosanna-Tabor Evangelical Lutheran Church
and School *vs*. EEOC, 565 U.S. 171 (2012) 845
Hosanna-Tabor Evangelical Lutheran Church
and School *vs*. Equal Employment Opportunity
Commission, 132 S. Ct. 694 (2012) 839
Kepner *vs*. United States, 195 U.S. 100 (1904) 312
Kisaka *vs*. Univ. of S. California,
2018 Cal. App Unpub. LEXIS 8687,
2018 WL 67165308 607

Page

Locals No. 1470, No. 1469, and No. 1512 of International Longshoremen's Ass'n *vs*. Southern Pac. Co., 131 F.2d 605 (1942) 251
Serbian Orthodox Diocese *vs*. Milivojevich, 426 U.S. 696 (1976) 848
Watson *vs*. Jones, 80 U.S. 679, 722 (1871) 844, 846

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1987 Constitution
- Art. II, Sec. 6 836
- Art. III, Sec. 1 844
  - Secs. 2, 3(2) 311
  - Sec. 5 ..... 836, 844
  - Sec. 14(2) 349, 723
- Art. VIII, Sec. 6 542
- Art. XI, Secs. 1, 12 782
- Art. XII, Sec. 2 814
  - Sec. 3 813
- Art. XIII 89
  - Sec. 3 843

1973 Constitution
- Art. IV, Sec. 8 845

B. STATUTES

Act
- No. 939 487
- No. 3135, Sec. 7 616
- No. 3753, Sec. 5 513
- Nos. 4103, 4225 904

Administrative Matter
- A.M. No. 01-8-10-SC, Sec. 7 212
- A.M. No. 01-10-5-SC-PHILJA 200, 213

Page

A.M. No. 03-1-09-SC 193-194, 204
A.M. No. 10-4-20-SC, Sec. 3 (h, m) 885
A.M. No. 15-08-02-SC 954
Batas Pambansa
B.P. Blg. 74 927
B.P. Blg. 129, Sec. 19 40
B.P. Blg. 873 698
Civil Code, New
Art. 19 .... 253-254, 258
Art. 20 253-254
Art. 21 .... 253-255, 258
Arts. 31-34, 1732, 2177 926
Arts. 407, 412 514
Art. 408 512
Art. 536 438
Art. 728 201
Art. 1311 279
Art. 1390 30
Art. 1397 .... 31, 278
Art. 1643 28
Art. 1670 26
Arts. 2042-2046 666
Art. 2176 .... 926, 932
Art. 2180 .... 924, 926, 932-933
Arts. 2199, 2206 937
Art. 2208 415
Code of Judicial Conduct, New
Canon 2, Sec. 1 .... 198, 202
Sec. 2 .... 198, 202, 214
Code of Muslim Personal Laws
Art. 38 275
Art. 143(b) 273
Art. 145 273
Code of Professional Responsibility
Canon 1, Rule 1.01 .... 432, 434
Canon 8, Rule 8.01 240
Canon 10, Rule 10.01 .... 432, 434
Canon 11, Rule 11.03 .... 240, 442, 444-446

Page

Canon 18 558
Rule 18.02 563
Rule 18.03 .... 559-560, 564
Commonwealth Act
C.A. No. 423 518
C.A. No. 473 515
Sec. 15 511-512
Corporation Code
Secs. 91, 109 854
Executive Order
E.O. No. 129-A, Sec 13 119
E.O. No. 229, Sec. 17 119
E.O. No. 1008 660
Sec. 2 659
Sec. 4 .... 656, 661
Labor Code
Arts. 197-199 409
Art. 276 (formerly 262-A) 69, 70, 72
Art. 279 594
Art. 283 .... 859, 861
Art. 297 (formerly 282) 588, 681
Art. 297 (a, c) 674
Local Government Code
Secs. 201, 247 11
National Internal Revenue Code, 1997
Sec. 32 (B) (6) (a) 862
Sec. 32 (B) (6) (b) 857-858, 862
Sec. 110 (A) 879
Sec. 112 (A) 871
Sec. 112 (C) 878
Sec. 113 (A) 879
Sec. 113 (B) 878-879
Penal Code, Revised
Art. 6 902
Art. 14, Sec. 16 899
Art. 48 .... 796, 799
Arts. 51, 61 par. 2 904
Art. 63 .... 904, 954

Page

Art. 124 804
Art. 148 .... 689, 696
Art. 151 .... 689, 696, 700, 705
Art. 152 698
Art. 172 547-548
Art. 248 .... 745, 800, 803, 898-899
Art. 266-A 735, 741
Arts. 312-313 548
Art. 315 547
Presidential Decree
P.D. No. 27 371
P.D. No. 464 10
Secs. 5, 57 11
P.D. No. 836 .... 510, 517-518, 521, 524
P.D. No. 923 .... 503, 510, 517 -518, 523
P.D. No. 1271 112-113
P.D. No. 1486 539
P.D. No. 1529 807
Chapter III, Sec. 14 (1) 808, 810-811
Sec. 14 (2) 810-812, 814
P.D. No. 1606 539-540
P.D. No. 1818 37
Republic Act
R.A. No. 910 541-542
R.A. No. 1125 537
Sec. 1 538
R.A. No. 1161, Sec. 22 (a, d) 469, 471
`Sec. 28 (e) 470-471
Sec. 28 (f) 470
R.A. Nos. 2614, 9227, 9946 541
R.A. No. 3019, Sec. 3 884-886
Sec. 3 (e) 566, 764, 881, 883-884
Sec. 3 (g) 764, 886-888
Sec. 4 883
Sec. 4 (b) 884
R.A. No. 4136 927
R.A. No. 6425, Art. III, Sec. 16 166

Page

R.A. No. 6657, Sec. 3 128
Sec. 50 120
R.A. No. 7160 8
Sec. 412 31
R.A. No. 7659 .... 898, 946
R.A. No. 7877, Sec. 3 (a) (3) 628, 631
Sec. 5 634
Sec. 6 644
R.A. Nos. 7975, 8249 540
R.A. No. 8282 470
R.A. No. 8425 528
R.A. No. 8975 37
Sec. 3 39-40
R.A. No. 9139 518
R.A. No. 9165, Art. II, Sec. 5 .... 335, 338, 340, 350, 354
Sec. 21 .... 340-342, 350, 387
Sec. 21(1) 359-361, 389, 395
R.A. No. 9165, Sec. 5 358
Sec. 21 .... 360, 364, 716
Sec. 27 168
R.A. No. 9184 764
R.A. No. 9282 538
R.A. No. 9285, Secs. 21, 35 665
R.A. No. 9346 755
R.A. No. 9503 539
R.A. No. 10022 .... 55-56, 61, 67, 90
Sec. 23 89
R.A. No. 10640 .... 340, 361, 393, 717
Sec. 1 341
Sec. 21 .... 341, 343, 715
R.A. No. 10660 541
R.A. No. 11313, Sec. 2 643
Secs. 16-17 641
Secs. 18-19 642
Secs. 26-27, 30 643
Rules of Civil Procedure (1997)
Rule 52, Sec. 2 82

Page

Rules of Court, Revised
Rule 1, Sec. 6 771
Rule 2, Sec. 2 252
Rule 3, Sec. 2 279
Sec. 7 281
Rule 7, Sec. 5 77
Rule 16, Sec. 1 (g) 249
Rule 17, Sec. 3 .... 373, 606
Rule 18, Sec. 2 196
Sec. 6 .... 210, 213, 215
Rule 22, Sec. 1 .... 68, 74, 76
Rule 23, Sec. 1 .... 372-373, 375
Secs. 3, 17 .... 373, 378
Sec. 14 378
Sec. 10 .... 374, 378
Sec. 15 375-376
Rule 32 666
Rule 37, Sec. 2 655
Rule 39, Sec. 47 .... 112, 326
Sec. 47 (b) 327
Rule 41 912
Sec. 1 38
Sec. 2 (c) 9
Sec. 4 915
Rule 43 .... 64, 69, 71, 407
Sec. 4 .... 70, 73-74
Sec. 7 530
Rule 44, Sec. 7 .... 558, 561
Rule 45 .... 35, 132, 137, 245, 284
Sec. 1 .... 278, 655
Rule 50, Sec. 1 561
Rule 56, Sec. 5 604
Rule 58, Sec. 1 493
Sec. 3 494
Rule 65 .... 38, 301, 306, 584, 881
Rule 70, Sec. 16 913
Rule 72, Sec. 2 .... 196, 199

Page

Rule 108 .... 505-507, 510, 516
Sec. 4 515
Rule 110, Sec. 8 952
Rule 111, Secs. 1, 3 926
Rule 117, Sec. 3 (a) 884
Rule 120, Secs. 4-5 705
Rule 130, Sec. 49 666
Sec. 51 (a) (3) 238
Rule 136, Sec. 7 170-171
Rule 138, Sec. 2 554
Sec. 20 (f) 237-238, 436
Rule 140, Sec. 8 (7) 234
Sec. 8 (9) 215
Sec. 9 (4) (7) 214
Sec. 11 .... 212, 214-215, 571
Rules of Criminal Procedure (2000)
Rule 110, Sec. 6 753
Rule 117, Sec. 9 754
Rule 119, Sec. 17 802
Rules on Evidence, Revised
Rule 133, Sec. 4 800

C. OTHERS

Department of Agrarian Reform Adjudication Board (DARAB) Rules of Procedure (2003)
Rule II, Sec. 1 (1.4, 1.7) 125
Sec. 1 (1.11) 128
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Rule II, Sec. 1 121-122
Sec. 2 120
Implementing Rules and Regulation of Labor Code Book IV, Title II
Rule X, Sec. 2 (a) 409
Implementing Rules and Regulation of R.A. No. 9165
Sec. 21 398
Sec. 21 (a) 392-393, 717

Page

Revised Rules on Administrative Cases in the Civil Service
Rule 10, Sec. 46 156
Sec. 46 b.3 463
Sec. 46 (e) 464
Sec. 46 (f) (3) 461
Sec. 51 (d) 157
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Sec. 52 (a), pars. 1-2, 20 765
Sec. 56 (d) 571

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