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SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

JULY 13 - 27, 2020

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1013

IV. CITATIONS 1099

PHILIPPINE REPORTS

Page

Abaya, et al., Merardo C. –
Philippine Navy Golf Club, Inc. *vs.* 186
Abpi, Razul K. *vs.* Commission on Audit 362
Abueva, Helenmie P. – People of the Philippines *vs.* 864
Albania, Moises – Brig. General
Marcial A. Collao, Jr., in his capacity
as Commanding General, Headquarters,
and Headquarters Support Group,
Philippine Army *vs.* 669
Aleson, Shipping Lines *vs.*
CGU International Ins. Plc., et al. 540
American Express Transnational (now American
International Tours, Inc.), et al. *vs.*
Menandro T. Borre 651
American Express Transnational (now American
International Tours, Inc.), et al. –
Menandro T. Borre *vs.* 651
Andag, namely Veneranda B. Andag, et al.,
The Heirs of Reynaldo A. *vs.* DMC
Construction Equipment Resources, Inc., et al. 252
AZ Communications, Inc. – Express
Telecommunications Co., Inc. (EXTELCOM) *vs.* 44
Bacalla, Jr., et al., Marciano S. –
Bank of the Philippine Islands *vs.* 590
Bank of the Philippine Islands *vs.*
Marciano S. Bacalla, Jr., et al. 590
Barrameda, Heirs of Leoncio –
Land Bank of the Philippines *vs.* 89
Borre, Menandro T. – American Express
Transnational (now American International
Tours, Inc.), et al. *vs.* 651
Borre, Menandro T. *vs.* American Express
Transnational (now American International
Tours, Inc.), et al. 651
CGU International Ins. Plc., et al. –
Aleson, Shipping Lines *vs.* 540

Page

Collao, Jr., Brig. General Marcial L., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Moises Albania 669

Coloma, Jr., Dionisio B. *vs.* People of the Philippines, et al. 124

Commission on Audit – Razul K. Abpi *vs.* 362

Commissioner of Internal Revenue (CIR) – Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ *vs.* 903

Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd. 799

CQM Management, Inc., [as successor-in-interest of the Philippine Investment One (SPV-AMC), Inc.] – Provincial Government of Cavite, et al. *vs.* 947

Cuadra, et al., Melchor *vs.* San Miguel Corporation 22

Dayandayan, et al., Teresita *vs.* Spouses Eduardo P. Rojas and Enriquita A. Rojas 628

De Guzman, Susana G. *vs.* Atty. Federico T. Venzon, et al. 960

De Vera, Augustus 'Jojit" – Araceli Reburiano *vs.* 880

Denila, Helen P. *vs.* Republic of the Philippines, et al. 380

Department of Public Works and Highways *vs.* Italian-Thai Development Public Company, Ltd., et al. 204

Deutsche Knowledge Services Pte. Ltd. – Commissioner of Internal Revenue *vs.* 799

Diaz, Merlina R. *vs.* People of the Philippines 523

DMC Construction Equipment Resources, Inc., et al. – The Heirs of Reynaldo A. Andag, namely Veneranda B. Andag, et al. *vs.* 252

Duadua, Sr., Spouses Dionisio and Consolatriz De Peralta Duadua, substituted by their heirs Gliceria Duadua Tomboc, et al. *vs.* R.T. Dino Development Corporation represented by its President Rolando T. Dino, et al. 922

Duran, Atty. Armand – Pedro Salazar *vs.* 1

Page

Eagle Clarc Shipping Philippines, Inc., et al. *vs.* National Labor Relations Commission (Fourth Division), et al. 263
Engineering & Construction Corporation of Asia (now First Balfour, Incorporated) *vs.* Segundino Palle, et al. 60
Express Telecommunications Co., Inc. (EXTELCOM) *vs.* AZ Communications, Inc. 44
Filcon Ready Mixed, Inc., et al. *vs.* UCPB General Insurance Company, Inc. 729
GMA Network, Inc. – Henry T. Paragele, et al. *vs.* 140
Goyala, Jr., Adolfo – People of the Philippines *vs.* 610
Guerrero, Angelino B. – Intercontinental Broadcasting Corporation *vs.* 689
Intercontinental Broadcasting Corporation *vs.* Angelino B. Guerrero 689
Italian-Thai Development Public Company, Ltd., et al. – Department of Public Works and Highways *vs.* 204
Keh, et al., Benito T. *vs.* People of the Philippines 76
Ko, Nenita *vs.* Atty. Ladimir Ian G. Maduramente, et al. 331
Lacson *y* Navarro, Ma. Grace – People of the Philippines *vs.* 709
Land Bank of the Philippines *vs.* Heirs of Leoncio Barrameda 89
Leocadio *y* Salazar, et al., Emma – People of the Philippines *vs.* 819
Lopez *y* Canlas, Peter – People of the Philippines *vs.* 302
Lopez *y* Mayao, John Paul – People of the Philippines *vs.* 782
Lusabia, et al., Robe Ann B. *vs.* Super K Drug Corporation, et al. 575
Maduramente, et al., Atty. Ladimir Ian G. – Nenita Ko *vs.* 331
Naag, Jr., et al., Domingo *vs.* People of the Philippines 115

Page

National Labor Relations Commission (Fourth Division), et al. – Eagle Clarc Shipping Philippines, Inc., et al. *vs.* 263
Oledan, Noel E. – People of the Philippines *vs.* 848
Ontuca *y* Peleño, Annabelle (Mother and Guardian of her Minor Child, Zsanine Kimberly Jariol *y* Ontuca) – Republic of the Philippines *vs.* 765
Palle, et al., Segundino – Engineering & Construction Corporation of Asia (now First Balfour, Incorporated) *vs.* 60
Paragele, et al., Henry T. *vs.* GMA Network, Inc. 140
Parente, Layla M. – Team Pacific Corporation, et al. *vs.* 479
People of the Philippines – Merlina R. Diaz *vs.* 523
– Benito T. Keh, et al. *vs.* 76
– Domingo Naag, Jr., et al. *vs.* 115
– Fredierose Tamboa *y* Laday *vs.* 1002
People of the Philippines *vs.* Helenmie P. Abueva 864
Adolfo A. Goyala, Jr. 610
Ma. Grace Lacson *y* Navarro 709
Emma Leocadio *y* Salazar, et al. 819
Peter Lopez *y* Canlas 302
John Paul Lopez *y* Mayao 782
Noel E. Oledan 848
David James Pis-An *y* Diputado 235
Siu Ming Tat, et al. 279
XXX 742
People of the Philippines, et al. – Dionisio B. Coloma, Jr., et al. *vs.* 124
Philippine Navy Golf Club, Inc., et al. *vs.* Merardo C. Abaya, et al. 186
Pioneer Insurance & Surety Corporation *vs.* Carmen G. Tan also known as Carmen S.F. Gatmaytan and/or Unknown Owner/Proprietor of Save More Drug doing business under the name and style of Save More Drug 222
Pis-An *y* Diputado, David James – People of the Philippines *vs.* 235

Page

Provincial Government of Cavite, et al. *vs.*
CQM Management, Inc., [as successor-in-interest
of the Philippine Investment One (SPV-AMC), Inc.] 947
R.T. Dino Development Corporation represented
by its President Rolando T. Dino, et al. –
Spouses Dionisio Duadua, Sr. and Consolatriz
De Peralta Duadua, substituted by their heirs
Gliceria Duadua Tomboc, et al. *vs.* 922
Re: Allegation of Falsification Against Process
Servers Maximo D. Legaspi and Desiderio S.
Tesiorna, Branch 43 and Office of the Clerk of Court,
respectively, both of the Metropolitan Trial Court
Quezon City 352
Re: Employees Incurring Habitual Tardiness and
Undertime in the First Semester of 2017 969
Reburiano, Araceli *vs.* Augustus "Jojit" De Vera 880
Republic of the Philippines – Ususan Development
Corporation, represented by Atty. Roel A. Pacio *vs.* 512
Republic of the Philippines *vs.* Annabelle
Ontuca *y* Peleño (Mother and Guardian
of her Minor Child, Zsanine Kimberly
Jariol *y* Ontuca) 765
Republic of the Philippines, et al. –
Helen P. Denila *vs.* 380
Rojas, Spouses Eduardo P. and Enriquita A. –
Teresita Dayandayan, et al. *vs.* 628
Salazar, Pedro *vs.* Atty. Armand Duran 1
San Miguel Corporation –
Melchor A. Cuadra, et al. *vs.* 22
Santos, Gerardo A. –
SPC Power Corporation, et al. *vs.* 983
Siu Ming Tat, et al. – People of the Philippines *vs.* 279
SPC Power Corporation, et al. *vs.*
Gerardo A. Santos 983
Super K Drug Corporation, et al. –
Robe Ann B. Lusabia, et al. *vs.* 575
Tamboa *y* Laday, Fredierose *vs.*
People of the Philippines *vs.* 1002

Page

Tan, Carmen G. Tan also known as Carmen S.F. Gatmaytan and/or Unknown Owner/Proprietor of Save More Drug doing business under the name and style of Save More Drug – Pioneer Insurance & Surety Corporation *vs.* 222
Team Pacific Corporation, et al. *vs.* Layla M. Parente 479
UCPB General Insurance Company, Inc. – Filcon Ready Mixed, Inc., et al. *vs.* 729
Ususan Development Corporation, represented by Atty. Roel A. Pacio *vs.* Republic of the Philippines 512
Venzon, et al., Atty. Federico T. – Susana G. De Guzman *vs.* 960
XXX – People of the Philippines *vs.* 742
Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ *vs.* Commissioner of Internal Revenue (CIR) 903

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 7035. July 13, 2020]

PEDRO SALAZAR, *complainant, vs.* **ATTY. ARMAND DURAN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY AND LAWYER'S OATH; EVERY LAWYER IS ENJOINED TO OBEY THE LAWS OF THE LAND, TO REFRAIN FROM DOING ANY FALSEHOOD IN OR OUT OF COURT OR FROM CONSENTING TO THE DOING OF ANY IN COURT, AND TO CONDUCT HIMSELF ACCORDING TO THE BEST OF HIS KNOWLEDGE AND DISCRETION WITH ALL GOOD FIDELITY TO THE COURTS AND TO HIS CLIENTS.** — In all his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. Every lawyer is enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts and to his clients. These expectations, though high and demanding, are basic professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession

Canon 10, Rule 10.01 of the CPR echoes the Lawyer's Oath, *viz.*: CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT. Rule 10.01 — 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. Indeed, to all lawyers, honesty and trustworthiness have the highest value. In *Young v. Batuegas*, we explained: A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will "do no falsehood nor consent to the doing of any in court" and he shall "conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients." He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth.

2. **ID.; ID.; ID.; A LAWYER SHALL BE ADMINISTRATIVELY LIABLE FOR WITHHOLDING THE TRUE FACTS OF THE CASE WITH INTENT TO MISLEAD THE COURT; PENALTY OF REPRIMAND IMPOSED UPON THE RESPONDENT FOR BREACH OF HIS DUTIES AS A LAWYER UNDER THE LAWYER'S OATH AND CANON 10, RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY. —** [W]e penalized lawyers for withholding the true facts of the case with intent to mislead the court. x x x. [I]n *Coloma v. Ulep,* we imposed the penalty of suspension from the practice of law for against the erring government lawyer who falsely testified in court. x x x. In the present case, Atty. Duran had been untruthful when he testified during the hearing on the motion to segregate 20% of complainant's share in the just compensation. x x x. x x x. [A]tty. Duran did not disclose his true participation in the check right away. Nevertheless, he corrected himself after realizing the erroneous statement he made. [D]uring the mandatory conference before the IBP-CBD on October 2, 2007, he reiterated that the check was indorsed to him by complainant. Truly, it

was revealed to the court that he received the proceeds of the check as an endorsee. In the circumstances, we conclude that Atty. Duran did not knowingly and consciously lied about the events that transpired in his acquisition of the check with the intent to deceive the trial court. Accordingly, we deem the penalty of reprimand recommended by the IBP-CBD in its Report dated April 24, 2009 and approved by the IBP Board of Governors in its Resolution No. XIX-2011-189 dated May 14, 2011 sufficient. Atty. Duran was careless and remiss in his duty to correctly inform the court of the facts and circumstances surrounding the check at the earliest opportunity, in violation of the lawyer's oath and Canon 10, Rule 1.01 of the CPR. Further, there is no evidence that complainant suffered any material damage or prejudice as a result of the recanted testimony, or of any malice or intent to defraud the trial court on the part of Atty. Duran. Also, this is Atty. Duran's first offense and there is nothing in the records that shows that a similar administrative offense was filed against him.

3. **ID.; ID.; ID.; LAWYERS ENJOY THE PRESUMPTION OF INNOCENCE, AND THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT TO CLEARLY PROVE HIS ALLEGATIONS BY PREPONDERANT EVIDENCE. —** [W]e find it improper for the IBP to suspend Atty. Duran from the practice of law for three months based solely on the allegation that he was engaged in unethical conduct in his prior dealings with other clients. There is nothing in the records that supports this claim. We stress that lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove his allegations by preponderant evidence.

4. **ID.; ID.; ID.; ATTORNEY'S FEES MUST BE FAIR AND REASONABLE; FACTORS IN DETERMINING ATTORNEY'S FEES. —** As to the moneys received by Atty. Duran from complainant, a perusal of the records shows that these were payment for attorney's fees. We note in the Complaint-Affidavit that complainant intended the LBP check as payment to Atty. Duran for his services, although not for the entire amount of the check. Records also show that complainant and Atty. Duran divided the value of the LBP bonds between them. xxx. Canon 20 of the CPR requires that attorney's fees must be fair and reasonable. Rule 20.1 of the CPR enumerates criteria to be considered in assessing the proper amount of compensation

that a lawyer should receive: Rule 20.01. A lawyer shall be guided by the following factors in determining his fees: (a) The time spent and the extent of the services rendered or required; (b) The novelty and difficulty of the question involved; (c) The importance of the subject matter; (d) The skill demanded; (e) The probability of losing other employment as a result of acceptance of the proffered case; (f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs; (g) The amount involved in the controversy and the benefits resulting to the client from the service; (h) The contingency or certainty of compensation; (i) The character of the employment, whether occasional or established; and (j) The professional standing of the lawyer.

5. **ID.; ID.; ID.; ATTORNEY'S FEES RECEIVED BY THE RESPONDENT WERE REASONABLE AND COMMENSURATE TO THE SERVICES RENDERED.—** Atty. Duran admitted that out of the ₱339,854.60 value of the check deposited in his account, he gave ₱160,000.00 to complainant, leaving a balance of ₱179,854.60. Complainant did not dispute receiving this amount. Further, the value of the LBP bonds assigned to Atty. Duran was ₱332,520.59. In all, Atty. Duran received ₱512,375.19 as attorney's fees. The complainant conceded in the termination letter which he prepared, that Atty. Duran was already paid "more than [₱500,000.00]." Atty. Duran claimed that he thoroughly studied the partition case, filed the necessary pleadings, and through his efforts, complainant secured part of the just compensation for some of the estate. Before complainant terminated Atty. Duran's services, complainant was able to collect ₱13,171,334.66 as just compensation, 25% of which represents his share. Complainant did not dispute these facts. Under the contingent fee arrangement, 20% of complainant's share in the partition case shall inure to the benefit of Atty. Duran as attorney's fees, or an estimated amount of ₱658,566.73. Considering the number of properties involved in the partition case (74 parcels of land), that Atty. Duran is the counsel of complainant in other cases, to which attorney's fees was not proven to have been paid, and that Atty. Duran has been in practice of law for at least four decades, we find the amount of ₱512,375.19 attorney's fees commensurate to the services rendered and reasonable in the circumstances.

APPEARANCES OF COUNSEL

Mamerto D. Piccio for complainant.

RESOLUTION

LOPEZ, *J.*:

This is an administrative complaint filed by Pedro Salazar against Atty. Armand Duran for unethical conduct, dishonesty, false testimony, violation of the lawyer's oath, and for acts inimical to his client.

Facts

In his Complaint-Affidavit,[1] Pedro alleged that he engaged the services of Atty. Duran in a partition case involving the estate of his (Pedro) parents. Thereafter, Pedro and Atty. Duran executed two contracts for attorney's fees: one, a contract on contingent basis wherein 20% of any and all proceeds of the partition case will be paid to Atty. Duran;[2] and second, a contract wherein the attorney's fees and acceptance fee were set at ₱50,000.00 each, subject to certain conditions.[3]

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[1] *Rollo*, pp. 1-9.

[2] *Id*. at 11. The Agreement for Attorney's Fee reads in part, as follows:

That in consideration for filing a partition case to recover my hereditary share in the estates left b[y] my late parents Jesus Salazar and Soledad F. Salazar, together with the handling of all other ancillary or collateral cases related to or also involving the recovery of said share in any court, agency or tribunal, I PEDRO F. SALAZAR, x x x do hereby bind myself to pay ATTY. ARMAND A. DURAN of the "Duran and Associates" Law Office, on contingent basis, twenty (20) percent of all rights, properties, real or personal, that I may recover as his attorney's fees.

[3] *Id*. at 12. The conditions are as follows:

a. Should there be no settlement within 6 months as aforementioned, an additional sum of ₱100,000.00 shall be paid within 30 days thereafter plus ₱100,000.00 as additional expenses of litigation[;]

b. In case of appeal, attorney[']s fee[s] in the Court of Appeals is ₱100,000.00 and in the Supreme Court, another ₱100,000.00. These amounts are subjected to 10% annual and cumulative increase[;]

Meantime, Pedro received a Land Bank of the Philippines (LBP) check[4] in the amount of ₱339,854.50 and LBP bonds representing his share in the just compensation of his parent's property that was expropriated. With the money available, Pedro informed Atty. Duran that he will pay him the attorney's fees. At the behest of Atty. Duran, Pedro signed a waiver for the LBP bonds in his favor. However, when Pedro learned that the value of the LBP bonds was considerably higher than the attorney's fees stipulated in the two contracts, he asked Atty. Duran to return the excess but Atty. Duran refused. Pedro claimed that the value of the LBP bonds was ₱821,038.50, more or less.[5]

On March 17, 1997, Pedro tried to cash the LBP check but Atty. Duran grabbed it from him and left. Pedro then learned that Atty. Duran deposited the check in his own account with Allied Bank. Further, Atty. Duran secured a loan from LBP and used the money value of the LBP bonds to pay off the loan.[6] With these actuations of Atty. Duran, Pedro lost the trust and confidence in him and terminated his services.[7]

Later, another property of Pedro's parents was expropriated. Since the partition case between the heirs was still pending, LBP required a court order for the release of the just compensation to the heirs. Pedro requested the assistance of a new lawyer, Atty. Gualberto C. Manlagñit, to file the necessary motion in the partition case. To Pedro's surprise, Atty. Duran intervened, claiming 20% of the just compensation due to Pedro. Eventually,

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c. In addition, [Pedro Salazar] shall defray all expenses or litigation including appearance expenses of ₱1,000.00 per hearing. The sum of ₱100,000.00 shall initially be paid to initiate the case[;]

d. Other ancillary and collateral cases that may crop up also involving the recovery of said hereditary share also be compensated upon agreement of the parties.

[4] *Id*. at 13-14.

[5] *Id*. at 3; paragraph 8 of the Complaint-Affidavit. See also *id*. at 242.

[6] *Id*. at 15.

[7] *Id*. at 18.

the trial court ordered LBP to release Pedro's share but withheld 20% of it pending the determination of Atty. Duran's claim.[8]

Pedro alleged that it was during the hearing on the motion that Atty. Duran committed false testimony. Atty. Duran testified that he signed the LBP check only as a witness, and that it was Pedro who received the money.[9] However, on cross-examination, Atty. Duran stated that he deposited the check in his account with Allied Bank, withdrew some money, and gave it to Pedro.[10]

Consequently, Pedro filed the instant complaint praying that Atty. Duran be administratively investigated for his unethical conduct, dishonesty, false testimony, and violation of the lawyer's oath.[11]

In his Comment,[12] Atty. Duran averred that the attorney's fees he received from Pedro were reasonable and that he was the victim who was betrayed by his client. He narrated that Pedro was one of the heirs of Soledad F. Salazar. Since the heirs, except for Pedro, had already appropriated for themselves substantial portions of the estate, Pedro sought assistance from him to obtain his rightful share. Pedro, however, could not afford the expenses of litigation. Thus, Atty. Duran agreed to advance all litigation expenses on the condition that the attorney's fees will be on a contingent basis equivalent to 20% of the value of Pedro's share in the estate.

Later, Atty. Duran learned that Pedro hired another lawyer to file motions to withdraw a total of ₱5,046,945.13 just compensation from LBP. Apparently, Pedro did this to avoid paying the 20% attorney's fees due to him under the contract. When Atty. Duran discovered this, he intervened and asked

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[8] *Id*. at 5; paragraph 21 of the Complaint-Affidavit.

[9] See *id*. at 39-40.

[10] See *id*. at 48-50.

[11] *Id*. at 9.

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

for the trial court to segregate 20% of Pedro's share in the just compensation as attorney's fees. It was during the hearing on the motion that he allegedly committed false testimony. Nevertheless, Atty. Duran averred that the false testimony charge was already dismissed.[13]

On December 6, 2006, we referred the administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[14]

Proceedings in the IBP

In his Position Paper,[15] Atty. Duran reiterated his comment to the complaint. He explained that the contingent fee contract contained an addendum allowing Pedro to pay attorney's fees on a non-contingent basis if he can secure a loan to finance the expenses of litigation.[16] However, since Pedro failed to secure the loan, the contingent fee contract was implemented.

Atty. Duran admitted that he deposited the LBP check in his own account with Allied Bank but he withdrew ₱160,000.00[17] and gave it to Pedro. Then, at his office, he gave ₱111,200.00 to Pedro after they agreed that he will be paid an additional amount of ₱67,800.00 as attorney's fees. With respect to the LBP bonds, Atty. Duran claimed that only ₱332,520.59 was assigned to him, to which he realized ₱243,467.32 after trading.

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[13] *Id*. at 74-82, 98-100, 101-102.

[14] *Id*. at 121.

[15] *Id*. at 224-236.

[16] *Id*. at 248. The addendum reads:

The attached Agreement for attorney[']s fee is subject to renegotiation within 45 days from date thereof if the client PEDRO F. SALAZAR is able to arrange for a loan to pay the attorney[']s fee on a non-contingent basis in which case, a new agreement for attorney[']s fee will be drafted based on the attached draft.

Legaspi City, 10 January 1997.

(signed)
PEDRO F. SALAZAR

[17] *Id*. at 243-245.

On April 24, 2009, the IBP Commission on Bar Discipline (IBP-CBD) issued its Report[18] finding Atty. Duran's inconsistent statements on the witness stand reflective of his poor moral character and on his fitness to practice law. However, since Pedro did not suffer any prejudice as a result of Atty. Duran's acts, the IBP-CBD recommended that Atty. Duran be reprimanded with a stern warning that repetition of the same or similar acts shall be dealt with more severely.

As to the allegations of "check-grabbing" and that Atty. Duran forced Pedro to surrender the LBP bonds to him, the IBP-CBD found no evidence to support Pedro's claims. Likewise, the attorney's fees received by Atty. Duran under the first contract in the amount of ₱423,111.85 were reasonable under Canon 20[19] of the Code of Professional Responsibility (CPR).

On May 14, 2011, the IBP Board of Governors passed a Resolution[20] dismissing the charges of dishonesty, false testimony, and violation of the lawyer's oath against Atty. Duran, but reprimanded him for unethical conduct, *viz.*:

RESOLUTION NO. XIX-2011-189
Adm. Case No. 7035
Pedro Salazar v. Atty. Armand Duran

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the charges of dishonesty, false testimony and violation of the lawyer's Oath against Respondent, are hereby* ***DISMISSED****. However, on the charge of unethical conduct, Atty. Armand Duran is hereby* ***REPRIMANDED*** *considering his*

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[18] *Id.* at 259-279.

[19] CANON 20 — A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

[20] *Rollo,* pp. 257-258.

conflicting declaration under oath, with the stern Warning that repetition of the same or similar acts shall be dealt with more severely.[21]

Pedro sought reconsideration,[22] alleging a pattern of flawed behavior on Atty. Duran that is deserving of the penalty of disbarment. Pedro claimed that Atty. Duran previously defrauded another client in Naga City and that Atty. Duran fomented lawsuits to advance his financial interests.

On February 11, 2014, the IBP Board of Governors granted Pedro's motion and imposed upon Atty. Duran the penalty of suspension from the practice of law for three months:[23]

RESOLUTION NO. XX-2014-16
Adm. Case No. 7035
Pedro Salazar v. Atty. Armand Duran

RESOLVED to GRANT Complainant's Motion for Reconsideration except for the penalty. Thus, Resolution No. XIX-2011-189 dated May 14, 2011 is hereby ***SET ASIDE*** *and Respondent is hereby* ***SUSPENDED from the practice of law for three (3) months*** *instead.*[24]

On April 25, 2014, the IBP-CBD transmitted the pertinent records of the case to this Court.[25]

Meantime, Atty. Duran filed a Motion to Set Aside Resolution No. XX-2014-16,[26] which was transmitted by the IBP-CBD to the Office of the Bar Confidant in its Indorsement dated May 29, 2014.[27] In his motion, Atty. Duran averred that the new charges in the motion for reconsideration must be reinvestigated properly and that he will be allowed to adduce his evidence to controvert the new charges.

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[21] *Id*. at 257. Emphases retained.

[22] *Rollo*, pp. 280-312.

[23] *Id*. at 368.

[24] *Id*. Emphases retained.

[25] *Rollo*, p. 367.

[26] *Id*. at 394-417.

[27] *Id*. at 393.

On June 27, 2016, we referred Atty. Duran's motion to the IBP.[28]

On November 28, 2017, the IBP Board of Governors passed a Resolution denying Atty. Duran's motion, *viz.*:[29]

Adm. Case No. 7035
Pedro Salazar v. Atty. Armand Duran

RESOLVED to DENY the respondent's Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.[30]

Thereafter, the case was transmitted to this Court for review.[31]

Issue

Whether Atty. Duran should be administratively liable for unethical conduct, dishonesty, false testimony, violation of the lawyer's oath, and for acts inimical to his client.

Ruling

First off, we emphasize that the dismissal of the criminal charge of false testimony against Atty. Duran has no bearing on the administrative complaint. Disbarment proceedings are *sui generis*; they belong to a class of their own and are distinct from that of civil or criminal actions.[32]

We shall now discuss Atty. Duran's conduct as a lawyer.

In its Report, the IBP-CBD found Atty. Duran untruthful and unethical when he testified about his participation in the check. Atty. Duran stated that he signed in the check as a witness but his signature and account number were found at the back of the check indicating that complainant indorsed it to him.

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[28] *Id*. at 424-425.

[29] *Id*. at 431-432.

[30] *Id*. at 431. Emphases retained.

[31] *Id*. at 429.

[32] *Gonzalez v. Atty. Alcaraz*, 534 Phil. 471, 481-482 (2006).

The IBP-CBP found Atty. Duran's claim of sudden recollection of the events that actually transpired too contrived and convenient to be worthy of belief. Atty. Duran could not have forgotten how he received a check for a substantial sum especially the argument that allegedly ensued between him and complainant on that day. Further, Atty. Duran himself filed the motion to segregate his supposed share in the just compensation. Hence, there was a presumption that he prepared for his testimony. For him not to remember the facts of his own case was, therefore, quite farfetched. Accordingly, the IBP reprimanded him for unethical conduct.

However, the IBP modified the penalty to suspension for three months after taking into consideration the new allegations of complainant in his motion for reconsideration. Complainant alleged that Atty. Duran previously defrauded another client and that he initiated lawsuits for personal gain.

We modify the recommendation of the IBP.

In all his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy.[33] Every lawyer is enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts and to his clients.[34] These

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[33] *Samonte v. Atty. Abellana*, 736 Phil. 718, 729 (2014).

[34] The Lawyer's Oath:

I, ___________________, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

expectations, though high and demanding, are basic professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession.[35]

Canon 10, Rule 10.01 of the CPR echoes the Lawyer's Oath, *viz.*:

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — 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.

Indeed, to all lawyers, honesty and trustworthiness have the highest value. In *Young v. Batuegas*,[36] we explained:

A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will "do no falsehood nor consent to the doing of any in court" and he shall "conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients." He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth.

Thus, we penalized lawyers for withholding the true facts of the case with intent to mislead the court. In *Molina v. Atty. Magat*,[37] we suspended the respondent lawyer for **six months**

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[35] *Supra* note 33.

[36] 451 Phil. 155, 161-162 (2003), quoted in *De Leon v. Atty. Castelo*, 654 Phil. 224, 232 (2011).

[37] 687 Phil. 1 (2012).

for making untruthful statements on the existence of a similar case to mislead the court into dismissing the case due to double jeopardy.[38] Similarly, in *Coloma v. Ulep*,[39] we imposed the penalty of suspension from the practice of law for **six months** against the erring government lawyer who falsely testified in court. Meanwhile, in *Maligaya v. Atty. Doronilla, Jr.*,[40] the respondent lawyer stated untruthfully in open court that complainant had agreed to withdraw his lawsuits. His unethical conduct was compounded by his obstinate refusal to acknowledge the impropriety of his acts. We suspended him from the practice of law for **two months** after considering mitigating circumstances, *i.e.* he admitted during investigation the falsity of the statements he made, there was no material damage to complainant, and he was not previously charged with an administrative offense.

In the present case, Atty. Duran had been untruthful when he testified during the hearing on the motion to segregate 20% of complainant's share in the just compensation. At first, he claimed that his signature appearing at the back of the check was only as a witness and not an endorsee. Further, he feigned unawareness of the account number appearing below his own signature at the back of the check. It must be noted that under the Negotiable Instruments Law,[41] a signature on an instrument payable to order, such as a check, without additional words, constitutes an indorsement.[42]

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[38] *Id*. at 6.

[39] A.C. No. 5961, February 13, 2019.

[40] 533 Phil. 303 (2006).

[41] Act No. 2031, February 3, 1911.

[42] See Sections 30 and 31, Act No. 2031.

Sec. 30. *What constitutes negotiation*. — An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

ATTY. MANLAGÑIT:
Q: Now, Atty. Duran x x x about March 17, 1997 you received a check from Pedro M. Salazar in the amount of ₱339,854.60 x x x at the back of the check is a signature of P. Salazar and apparently your signature, kindly look over this document and tell the honorable court whether you have taken or received the check from Pedro Salazar?

A: **I merely signed as a witness. He was the one who received the money.** I have no right to receive the money. I am not the payee.

Q: You mean your signature here is not an endorsement?

A: That is only as witness. I do not know the bank requirements but I was together with Mr. Salazar and then he was the one in the counter and I was sitting in the benches for those who are waiting for such to be called and I was asked by Mr. Salazar to approach and to signed (*sic*) as a witness. **That's only my participation.**

Q: In short, Atty. Duran, you are saying under oath that you did not receive a single centavo out of the check?

A: No, I did not say that. I say that I was not the one who received the money. He was the one who received the money because he was the payee because I was only made a witness.

COURT (to the witness)

Q: This 0460-004056 below the signature of Atty. Duran is that the account number or what?

A: I do not know, Your Honor.[43]

On cross-examination, however, Atty. Duran recanted his testimony. He clarified that he deposited the check in his own account with Allied Bank after reaching an agreement with the complainant that he will be paid for the litigation expenses that he advanced with the value of the check.

Q: Atty. Duran, x x x with respect to the check according to you, you were only asked to signed (*sic*) as a witness?

Sec. 31. *Indorsement; How Made*. — The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

[43] *Rollo*, pp. 39-40. Emphasis supplied.

A: Which check?

Q: The check which you have already identified in the sum of ₱339,000.00, so you merely signed there as a witness, and it was [complainant/Pedro] who actually [cashed] the check, am I right?

A: I remember this check now. You know it's been a long time. **I remember that, that check after discussing we were supposed to talk about the reimbursement of the amount that I had advanced and according to him [complainant/Pedro], let[']s go to your bank, I now remember it was deposited in my account but we were together and I gave him the money.**

COURT:

Where?

WITNESS

A: In the bank.

COURT (to the witness)

Q: On the same day that you have deposited that?

A: Yes x x x

Q: What is your bank?

A: Allied.

Q: From the Land Bank of the Philippines, you mean to say that you withdrew from your own funds because that check cannot be encash[ed] except from the Land Bank of the Philippines?

A: I deposited it in my account.

Q: Correct, you mean to say you withdrew an amount to this check that you gave to Mr. Salazar?

A: I think so, I even have money in my vault, it could be lower amount and then he cover (*sic*) the balance of the amount in my vault.[44]

Clearly, Atty. Duran did not disclose his true participation in the check right away. Nevertheless, he corrected himself after

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

realizing the erroneous statement he made. To be sure, during the mandatory conference before the IBP-CBD on October 2, 2007, he reiterated that the check was indorsed to him by complainant.[45] Truly, it was revealed to the court that he received the proceeds of the check as an endorsee. In the circumstances, we conclude that Atty. Duran did not knowingly and consciously lied about the events that transpired in his acquisition of the check with the intent to deceive the trial court.

Furthermore, complainant failed to substantiate his claim that (1) Atty. Duran grabbed the check from him before he could deposit it in his LBP account, and (2) Atty. Duran "pressure[d]" him to assign the value of the LBP bonds to him. We quote with approval the disquisition of the IBP-CBD:

> 4.09. Complainant also takes issue with respondent's failure to mention anything at all about the "check-grabbing." Complainant's lawyer, however, never directly questioned respondent about how the latter physically acquired the check or explicitly asked him if he actually grabbed it from complainant. At any rate, other than complainant's allegations, there is no evidence to support such assertions. No doubt, the supposed grabbing would have caused quite a stir in the bank premises yet complainant did not present any witness to corroborate his claim. This Commission is thus inclined to conclude that the alleged incident did not take place. The Regional Prosecutor's disposition of the same issue is quite convincing:
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>> x x x the claim of [complainant herein] that [respondent herein] grabbed the check while he was about to encash the same with the Land Bank of Legazpi is incredible, since human nature dictates that if indeed [respondent] had done that [complainant's] reaction would be to run after him or seek the help of bank employees, [other] bank clients and [bank] security guard[s].

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[45] See *id*. at 128.

ATTY. DURAN:

That I and my client, the complainant in this case, went together to the Land Bank to get this check and by agreement this check was turned over to me by Mr. Salazar for encashment and an amount was partially taken by Mr. Salazar from the account of this representation as respondent inside the Allied Bank Legaspi City itself. x x x.

> He could have created a commotion or a scene that could have attracted [their attention]. But he never did that. Nor did he file charges against [respondent] as a consequence of his alleged grabbing of said checks. x x x.

4.10. Complainant also alleges that respondent forced him to cede the Land Bank bonds in the amount of ₱295,573.86 in favor of respondent. This Commission likewise finds no evidence on record to substantiate such allegation. Complainant's failure to take measures to invalidate the agreement or to prevent the bonds from being traded further diminishes the veracity of this claim.

Accordingly, we deem the penalty of reprimand recommended by the IBP-CBD in its Report dated April 24, 2009 and approved by the IBP Board of Governors in its Resolution No. XIX-2011-189 dated May 14, 2011 sufficient. Atty. Duran was careless and remiss in his duty to correctly inform the court of the facts and circumstances surrounding the check at the earliest opportunity, in violation of the lawyer's oath and Canon 10, Rule 1.01 of the CPR. Further, there is no evidence that complainant suffered any material damage or prejudice as a result of the recanted testimony, or of any malice or intent to defraud the trial court on the part of Atty. Duran.[46] Also, this is Atty. Duran's first offense and there is nothing in the records that shows that a similar administrative offense was filed against him.[47]

Therefore, we find it improper for the IBP to suspend Atty. Duran from the practice of law for three months based solely on the allegation that he was engaged in unethical conduct in his prior dealings with other clients. There is nothing in the records that supports this claim. We stress that lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove his allegations by preponderant evidence.[48]

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[46] See *Maligaya v. Doronilla, Jr.*, *supra* note 40 at 311, citing *Cailing v. Espinosa*, 103 Phil. 1165 (1958).

[47] *Id.*, citing *e.g.*, *Whitson v. Atienza*, 457 Phil. 11 (2003); *Alcantara v. Pefianco*, 441 Phil. 514 (2002); *Fernandez v. Novero, Jr.*, 441 Phil. 506 (2002).

[48] *Rodica v. Atty. Lazaro, et al.*, 693 Phil. 174, 183 (2012).

Attorney's Fees

As to the moneys received by Atty. Duran from complainant, a perusal of the records shows that these were payment for attorney's fees. We note in the Complaint-Affidavit that complainant intended the LBP check as payment to Atty. Duran for his services,[49] although not for the entire amount of the check. Records also show that complainant and Atty. Duran divided the value of the LBP bonds between them.[50] As previously discussed, the case is bereft of evidence that Atty. Duran forced or pressured complainant to surrender the LBP bonds to him. In the circumstances, we conclude that the moneys given by complainant to Atty. Duran were payment for services rendered.

We shall now determine whether the attorney's fees received by Atty. Duran are unconscionable.

Canon 20[51] of the CPR requires that attorney's fees must be fair and reasonable. Rule 20.1 of the CPR enumerates criteria to be considered in assessing the proper amount of compensation that a lawyer should receive:

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

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[49] See paragraphs 4, 5 and 6 of the Complaint-Affidavit; *rollo*, p. 2.

4. While the partition case was pending I was able to receive money as my share in the compensation for the property of my late parents that was involuntarily taken by the government through it Agrarian Reform Program. This money consisted of land bonds plus cash in the sum of **Php339,854.60**.

5. Atty. ARMAND DURAN has no participation whatsoever in that case for just compensation. The government initiated and fixed the compensation and it was also the government through the Land Bank of the Philippines (LBP for brevity) who effected payment. As heirs, our respective shares were agreed and fixed us.

6. Because of this supervening event that was independent from our agreement, I informed and apprised respondent Atty. Duran that I may pay him the attorney's fees, per contract, when I receive the money. x x x.

[50] See *id*. at 242.

[51] *Supra* note 19.

(a) The time spent and the extent of the services rendered or required;

(b) The novelty and difficulty of the question involved;

(c) The importance of the subject matter;

(d) The skill demanded;

(e) The probability of losing other employment as a result of acceptance of the proffered case;

(f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;

(g) The amount involved in the controversy and the benefits resulting to the client from the service;

(h) The contingency or certainty of compensation;

(i) The character of the employment, whether occasional or established; and

(j) The professional standing of the lawyer.

Atty. Duran admitted that out of the ₱339,854.60 value of the check deposited in his account, he gave ₱160,000.00 to complainant,[52] leaving a balance of ₱179,854.60. Complainant did not dispute receiving this amount. Further, the value of the LBP bonds assigned to Atty. Duran was ₱332,520.59.[53] In all, Atty. Duran received ₱512,375.19[54] as attorney's fees. The complainant conceded in the termination letter which he prepared, that Atty. Duran was already paid "more than [₱500,000.00]."[55]

Atty. Duran claimed that he thoroughly studied the partition case, filed the necessary pleadings, and through his efforts, complainant secured part of the just compensation for some of

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[52] *Rollo*, pp. 243-245.

[53] *Id*. at 70; paragraph 4.8, sub-paragraph c of the Comment.

[54] ₱179,854.60 plus ₱332,520.59.

[55] See *rollo*, p. 18. The Letter reads in part, as follows:

You complained that you have not been paid your attorney's fees. You know this is not true because per my record, you have already taken from me more than Five Hundred Thousand Pesos (₱500,000.00).

the estate. Before complainant terminated Atty. Duran's services, complainant was able to collect ₱13,171,334.66 as just compensation, 25% of which represents his share. Complainant did not dispute these facts. Under the contingent fee arrangement, 20% of complainant's share in the partition case shall inure to the benefit of Atty. Duran as attorney's fees, or an estimated amount of ₱658,566.73.[56]

Considering the number of properties involved in the partition case (74 parcels of land),[57] that Atty. Duran is the counsel of complainant in other cases, to which attorney's fees was not proven to have been paid,[58] and that Atty. Duran has been in practice of law for at least four decades, we find the amount of ₱512,375.19 attorney's fees commensurate to the services rendered and reasonable in the circumstances.

FOR THESE REASONS, this Court resolves to **ADOPT and APPROVE** the recommendation of the Integrated Bar of the Philippines' Board of Governors in its Notice of Resolution No. XIX-2011-189 dated May 14, 2011. The Resolution No. XX-2014-16 dated February 11, 2014 and Notice of Resolution dated November 28, 2017 are hereby **SET ASIDE**. Accordingly, respondent Atty. Armand Duran is **REPRIMANDED** for breach of his duties as a lawyer under the Lawyer's Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility, **WITH A STERN WARNING** that a repetition of the same or any similar act will be dealt with more severely.

SO ORDERED.

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

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[56] ₱13,171,334.66 x 0.25 x 0.20 = ₱658,566.73.

[57] See *rollo*, pp. 337-349.

[58] *Id*. at 18.

THIRD DIVISION

[G.R. No. 194467. July 13, 2020]

MELCHOR A. CUADRA, MELENCIO TRINIDAD, and SERAFIN TRINIDAD, *petitioners*, *vs.* **SAN MIGUEL CORPORATION,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; CONSTRUED. —** The parol evidence rule provides that "when the terms of an agreement have been reduced into writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; AN EMPLOYEE WHO RETURNS TO WORK UPON AN ORDER OF REINSTATEMENT IS NOT CONSIDERED A NEW HIRE; THE RECKONING POINT OF THE LENGTH OF SERVICE MUST BE THE DATE THE EMPLOYEE FIRST BEGAN WORKING FOR THE EMPLOYER. —** [A]n employee who returns to work for the same employer is considered a new hire if prior employment was validly terminated, either voluntarily or under any of the just and authorized causes provided in the Labor Code. Therefore, the reckoning point of the length of service, for purposes of security of tenure, begins on the date the employee was re-hired. However, if an employee returns to work upon an order of reinstatement, he or she is not considered a new hire. Because reinstatement presupposes the illegality of the dismissal, the employee is deemed to have remained under the employ of the employer from the date of illegal dismissal to actual reinstatement. Further, there is no "prior employment" to speak of, and the payment of backwages is compensation for the time the employee was illegally deprived of work. In the latter case, the reckoning point of the length of service must be the date the employee first began working for the employer, not when he or she returned for work. x x x In sum, service to an employer

> is presumed continuous unless there is evidence that employer-employee relations were validly severed in the interim. Here, the employer-employee relationship between respondent, on the one hand, and petitioners, on the other, was not validly severed when respondent illegally dismissed them. Consequently, the length of service of petitioners must be reckoned from the time they first started working[.]

APPEARANCES OF COUNSEL

Miralles & Associates Law Office for petitioners.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

LEONEN, *J.*:

When there is no evidence to the contrary, an employee's period of service is presumed continuous and its reckoning point shall be the day the employee first came under the employ of the employer. However, if in the interim, the employer-employee relationship was validly severed, returning to the same employer for work shall be considered a rehiring, and the length of service shall be reckoned from the day the employee was rehired.

This resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 104828. The Court of Appeals declared that the length of service of Melchor Cuadra (Melchor), Melencio

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[1] *Rollo*, pp. 7-24.

[2] *Id.* at 25-37. The June 29, 2010 Decision was penned by Associate Justice Amelita G. Tolentino and was concurred in by Associate Justices Normandie B. Pizarro and Jane Aurora C. Lantion of the Special Eighth Division of the Court of Appeals, Manila.

[3] *Id.* at 38-42. The November 8, 2010 Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Jane Aurora Lantion of the Former Special Eighth Division of the Court of Appeals, Manila.

Trinidad (Melencio), and Serafin Trinidad (Serafin) in San Miguel Corporation (San Miguel) must be reckoned from the time they were declared regular employees on December 15, 1994.[4] Thus, the Court of Appeals affirmed with modification the Voluntary Arbitrator's Decision[5] that reckoned the computation of Melchor, Melencio, and Serafin's length of service from the time they first started working in San Miguel, *i.e.*, 1985 for Melchor, and 1988 for Melencio and Serafin.

Melchor, Melencio, and Serafin were among the 60[6] complainants who filed an illegal dismissal case before the National Labor Relations Commission against Lippercon Services, Inc. and San Miguel on January 4, 1991.[7] During the pendency of the proceedings before the Labor Arbiter, 51 out of the 60 complainants amicably settled with San Miguel.

In the December 15, 1994 Decision,[8] Labor Arbiter Manuel R. Caday (Labor Arbiter Caday) found that the remaining nine (9) complainants were regular employees of San Miguel. According to Labor Arbiter Caday, Lippercon Services was a mere labor-only contractor and that San Miguel was the true employer of complainants. Therefore, it was San Miguel who was ordered to reinstate the complainants to their former positions as regular employees, their regular status "effective as of the date of [the Labor Arbiter's] decision."[9] The complainants were then awarded backwages "of not more than three (3) years"[10] as well as wage differentials pursuant to Wage Order Nos. NCR-01

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[4] *Id.* at 52.

[5] *Id.* at 51-57. The July 22, 2008 Decision was penned by Voluntary Arbitrator Angel A. Ancheta.

[6] *Id.* at 52.

[7] *Id.* at 58.

[8] *Id.* at 58-74. The Decision dated December 15, 1994 was penned by Labor Arbiter Manuel R. Caday of the National Labor Relations Commission, National Capital Region, Manila.

[9] *Id.* at 73.

[10] *Id.*

and NCR-02. The dispositive portion of Labor Arbiter Caday's December 15, 1994 Decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered declaring the respondent San Miguel Corporation (SMC) as the true employer of the remaining nine (9) complainants, with the respondent Lippercon Services, Inc. as "labor only" contractor; declaring the dismissal of the said remaining nine (9) complainants to be illegal and ordering the respondent San Miguel Corporation to reinstate them as regular employees, effective as of the date of this decision, to their former positions at its Manila Glass Plant with backwages of not more than three (3) years without any qualification or reductions and to pay them the ₱17.00 and ₱10.00 Wage increases under Wage Order No. NCR-01 and Wage Order No. 2 pursuant to the above dispositions.

SO ORDERED. [11]

San Miguel appealed before the National Labor Relations Commission. In its May 31, 1995 Resolution, the Commission's Third Division modified the Decision of Labor Arbiter Caday, ordering instead the payment of separation pay to complainants, thus:

WHEREFORE, premises considered, the appealed decision is hereby MODIFIED as aforediscussed. The award of reinstatement with one (1) year backwages is hereby deleted. In lieu thereof, respondent is hereby ordered to pay complainants their separation pay equivalent to one (1) month salary for every year of service, as period of at least six (6) months considered as one (1) whole year or the benefits provided under the Company's total assistance program, whichever is higher.[12]

Alleging grave abuse of discretion on the National Labor Relations Commission's part, the complainants directly filed a Petition for *Certiorari* before this Court.[13] However, pursuant to *St. Martin Funeral Homes v. National Labor Relations*

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[11] *Id.*

[12] *Id.* at 76. Writ of Execution.

[13] *Id.*

Commission,[14] this Court referred the Petition for *Certiorari* to the Court of Appeals.[15]

In the April 12, 1999 Resolution, the Court of Appeals affirmed with modification the National Labor Relations Commission's Decision. The Court of Appeals further ordered the payment of backwages to complainants to be computed from the time they were dismissed until the furnace they used for work was closed in June 1993.[16] The dispositive portion of the April 12, 1999 Resolution reads:

> WHEREFORE, premises considered, the appealed Decision dated 31 May 1995 and Resolution dated 13 October 1995 are both AFFIRMED with modification that the petitioners are likewise entitled to backwages corresponding to the period commencing on their respective dates of dismissal until the closure of the furnace in June 1993. The case is hereby REMANDED to the public respondent for a computation of the amount of backwages to be paid to petitioners in accordance with this decision as modified.[17]

San Miguel Corporation filed a Motion for Reconsideration and the complainants filed a Motion for Partial Reconsideration of the April 12, 1999 Resolution.[18] The Court of Appeals, in an October 14, 1999 Resolution, denied San Miguel's Motion for Reconsideration and partly granted the complainants' Motion for Partial Reconsideration by deleting the award of separation pay and ordering the complainants' reinstatement.[19] The dispositive portion of the October 14, 1999 Resolution states:

> Accordingly, the private respondent's motion for reconsideration is DENIED and the petitioners' Motion for Partial Reconsideration is partly granted. The Court's Decision dated April 12, 1999 is

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[14] 356 Phil. 811 (1998) [Per *J.* Regalado, *En Banc*].

[15] *Rollo*, p. 76.

[16] *Id.*

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

[18] *Id.* at 77.

[19] *Id.*

MODIFIED to the extent that the award of separation pay is deleted and private respondent is directed to reinstate the petitioners to their former positions. In all other respects, the Decision stands.[20]

The Petition for Review on *Certiorari* filed by San Miguel was denied by this Court in the Resolution dated December 15, 1999 for having been filed out of time and for lack of the required affidavit of service. San Miguel's Motion for Reconsideration and Second Motion for Reconsideration were likewise denied by this Court.[21]

On May 25, 2000, this Court made an Entry of Judgment in its Book of Entries of Judgments, declaring its December 15, 1999 and February 7, 2000 Resolutions final and executory.[22]

On Melchor, Melencio, and Serafin's motion, Labor Arbiter Caday issued a Writ of Execution on September 1, 2000, directing the Sheriff to implement the order of reinstatement, thus:

NOW THEREFORE, you are hereby commanded to proceed to the premises of the respondents at SMC Complex, San Miguel Avenue, Mandaluyong City, or wherever it may be found to cause the immediate reinstatement of complainants herein as decreed in the dispositive portion of the decision.[23]

During the execution proceedings, the parties entered into a compromise. Specifically for Melchor, Melencio, and Serafin, they each received ₱550,000.00 "as full, complete, absolute[,] and final settlement and satisfaction"[24] of each of their money claims and benefits as well as "any and all claims" connected with the illegal dismissal case filed before the National Labor Relations Commission. The complete terms of the quitclaim are as follows:

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 78.

[24] *Id.* at 32. Court of Appeals Decision.

I, Melchor A. Cuadra[,] of legal age, Filipino[,] and with residence address at _________, hereby acknowledge receipt of United Coconut Planters Bank (UCPB-SMC Complex, Mandaluyong City) Check No. 0000047548 dated May 23, 2003 in the amount of Five Hundred Fifty Thousand Pesos (PhP 550,000.00) only, given to me by San Miguel Corporation as full, complete, absolute[,] and final settlement and satisfaction of all my money claims and benefits in connection with the case of Melchor Cuadra, et al. vs. San Miguel Corporation, et al.[,] [d]ocketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and whatever claims I may have in connection therewith as well as any and all claims of whatever kind and nature which I had, I now may have or hereafter have against all respondents regarding incidents of this case and if any and all other cases, related to or which arose from the incidents of this case which were filed or are still pending.[25]

The compromise agreement was approved by Labor Arbiter Antonio R. Macam (Labor Arbiter Macam),[26] replacing Labor Arbiter Caday who had died during the pendency of the execution proceedings.[27] Labor Arbiter Macam's June 25, 2003 Order provides:

The parties appeared and manifested that they have finally settled the case with each complainant receiving a sum of ₱550,000.00 plus reinstatement with a daily salary rate of ₱400.00. Reinstatement will begin on July 1, 2003. Submitted in addition, are the respective Quitclaim and Release which complainants have executed.

ACCORDINGLY, finding the agreement to be fair and reasonable, the same is approved and the case dismissed, with prejudice.[28]

Pursuant to the compromise agreement, Melchor, Melencio, and Serafin were accordingly reinstated on July 1, 2003. However, as reflected in their newly issued identification cards, San Miguel reckoned the date of their employment from July 1, 2003—not from the time they were first hired to work in San Miguel,

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[25] *Id.*

[26] *Id.* at 33.

[27] *Id.* at 55. Voluntary Arbitrator's Decision.

[28] *Id.*

which was 1985 for Melchor, and 1988 for Melencio and Serafin.[29]

Thus, with the reckoning date of their service's length in San Miguel as the sole issue for resolution, Melchor, Melencio, and Serafin submitted their grievance to the Office of the Voluntary Arbitrator of the National Conciliation and Mediation Board.[30]

For them, Melchor's reckoning date should be from 1985, while Melencio and Serafin's should be from 1988, simply because they began their employment in those years. As for San Miguel, however, the lump sum paid under the quitclaim already included Melchor, Melencio, and Serafin's separation pay. Thus, they were already effectively new hires upon reinstatement, considering that their new positions were substantially different from their previous positions.[31]

Furthermore, the reckoning date—as San Miguel concluded—should begin on July 1, 2003, as provided in Labor Arbiter Macam's Order. Neither should the length of service be reckoned from December 15, 1994, the date of Labor Arbiter Caday's Decision; nor should it be reckoned from 1985 and 1988— the years when Melchor, Melencio, and Serafin began their employment in San Miguel.[32]

Voluntary Arbitrator Angel A. Ancheta (Voluntary Arbitrator Ancheta) decided the grievance, ruling in favor of Melchor, Melencio, and Serafin. Voluntary Arbitrator Ancheta held that the length of their service should be reckoned from the date when they were first hired, *i.e.*, 1985 for Melchor, and 1988 for Melencio and Serafin. His reason was that reinstatement, "in its generally accepted sense, refers or denotes to restoration to a state which one has been removed or separated."[33]

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[29] *Id.*

[30] *Id.* at 51.

[31] *Id.* at 55.

[32] *Id.* at 56.

[33] *Id.* at 57.

Moreover, "[s]ince [Melchor, Melencio, and Serafin] were to be restored to their [former] positions and [their] status being found to be regular employees[.]" Voluntary Arbitrator Ancheta concluded that they "could not be said as having started their employment only on the date when they were reinstated unless proven otherwise."[34]

Examining the terms of the quitclaim executed by Melchor, Melencio, and Serafin, Voluntary Arbitrator Ancheta held that nothing in the quitclaim provided that the compromise amount included separation pay. Therefore, based on the Parol Evidence Rule,[35] San Miguel cannot claim that Melchor, Melencio, and Serafin received the ₱550,000.00 as separation pay. They were not new hires when they commenced their employment on July 1, 2003, and their length of service must be reckoned from the time they were first hired: 1985 for Melchor and 1988 for Melencio and Serafin.

The dispositive portion of Voluntary Arbitrator Ancheta's July 22, 2008 Decision[36] reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring that the complainants' length of service must be reckoned from the date when they were hired specifically in 1985 for Melchor Cuadra, 1988 for both Melencio and Serafin Trinidad.

All other claims are dismissed for lack of merit.

SO ORDERED.[37] (Emphasis in the original)

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[34] *Id.*

[35] RULES OF COURT, Rule 130, Sec. 9 provides:

SECTION 9. *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

[36] *Rollo*, pp. 51-57.

[37] *Id.* at 57.

Similar to Voluntary Arbitrator Ancheta's finding, the Court of Appeals found that the parties agreed on reinstatement, defined as the "continuation of the service that was temporarily stopped due to an act of illegal dismissal imposed against an employee."[38] It noted that the June 25, 2003 compromise judgment ordered reinstatement.[39] Therefore, San Miguel cannot conclude that the compromise amount included separation pay.

For the Court of Appeals, the contention that the new positions given to Melchor, Melencio, and Serafin were substantially different from the previous positions they held does not mean that they were new hires when they returned for work on July 1, 2003.[40]

Moreover, the Court of Appeals said that "while an employer cannot be compelled to reinstate an employee to the same position if it is already legally impossible, [the employer], however, can choose to reinstate the latter to a different position subject to the acceptance of the said employee."[41] Considering that Melchor, Melencio, and Serafin accepted their new positions, the Court of Appeals said that such acceptance amounted to "a waiver of their right to be restored to their prior positions."[42]

However, the Court of Appeals differed from Voluntary Arbitrator Ancheta's finding on the reckoning date of Melchor, Melencio, and Serafin's length of service. For the Court of Appeals, the date should be reckoned from December 15, 1994: the date when they were officially declared as regular employees of San Miguel. The reason was that reinstatement is "a right accorded to an illegally dismissed *regular* employee."[43]

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[38] *Id.* at 34. Court of Appeals Decision.

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

[40] *Id.* at 34-35.

[41] *Id.* at 35.

[42] *Id.*

[43] *Id.* at 36.

The dispositive portion of the June 29, 2010 Decision[44] of the Court of Appeals reads:

> **WHEREFORE**, premises considered, the assailed decision of the Voluntary Arbitrator dated July 22, 2008 is **AFFIRMED** with the **MODIFICATION** that the reckoning period for the computation of the length of service of the private respondents shall be on December 15, 1994.
>
> **SO ORDERED**.[45] (Emphasis in the original)

Melchor, Melencio, and Serafin then filed a Motion for Partial Reconsideration, maintaining that the length of service should be reckoned from 1985 for Melchor, and 1988 for Melencio and Serafin.

The Court of Appeals, however, rejected their argument. According to the Court of Appeals, Melchor, Melencio, and Serafin were initially hired as contractual employees through "labor-only"[46] contractor Lippercon Services when they first started working in San Miguel.

To attain regular status, they had to file a Complaint before the National Labor Relations Commission; further, it was in Labor Arbiter Caday's Decision where they were ordered "reinstated with backwages, but this time as regular employees already effective as of this date of the decision[,]"[47] *i.e.*, December 15, 1994. The Court of Appeals then found that the issue of when they became regular employees remained undisputed; hence, already the law of the case. As such, the date of their reinstatement as regular employees may no longer be assailed.[48]

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[44] *Id.* at 25-37.

[45] *Id.* at 36-37.

[46] *Id.* at 39.

[47] *Id.* at 40.

[48] *Id.* at 41.

The dispositive portion of the November 8, 2010 Court of Appeals Resolution[49] reads:

WHEREFORE, the respondents' Partial Motion for Reconsideration is ***DENIED*** for lack of merit.

SO ORDERED.[50] (Emphasis in the original)

On January 3, 2011, petitioners filed their Petition for Review on *Certiorari*,[51] which respondent commented on April 11, 2011.[52]

On January 12, 2010, petitioners filed their Reply[53] to the Comment. Although respondent filed a Rejoinder,[54] which was merely noted without action per A.M. No. 99-2-04-SC dispensing with the filing of rejoinder.[55]

In the January 28, 2013 Resolution, this Court gave due course to the Petition and directed the parties to file their respective memoranda.[56] Petitioners filed their Memorandum[57] on April 19, 2013, while respondent filed its own[58] on April 25, 2013.

On July 4, 2018, this Court ordered the parties to move in the premises by filing a manifestation of pertinent subsequent developments that may help this Court in the immediate disposition of the case or that may have rendered the case moot and academic.[59]

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

[50] *Id.* at 42.

[51] *Id.* at 7-24.

[52] *Id.* at 84-97.

[53] *Id.* at 101-106.

[54] *Id.* at 115-124.

[55] *Id.* at 127. Resolution dated August 29, 2012.

[56] *Id.* at 129-130.

[57] *Id.* at 131-141.

[58] *Id.* at 142-158.

[59] *Id.* at 191.

In its July 30, 2018 Manifestation,[60] respondent argued that, as to petitioner Serafin, the Petition had been rendered moot and academic by his execution of a Release, Waiver, and Quitclaim that released San Miguel from any and all claims that he may have against the corporation.[61]

Further, respondent alleged that petitioner Serafin had been separated since May 31, 2013 due to an Involuntary Separation Program it had implemented to install labor saving devices. Petitioner Serafin then filed anew an illegal dismissal case against respondent, but the parties amicably settled. The 2013 illegal dismissal case was closed and terminated in an April 13, 2015 Order issued by Labor Arbiter Fe S. Cellan. As for petitioners Melencio and Melchor, respondent alleged that no relevant event supervened during the pendency of the case.[62]

In their own Manifestation/Compliance,[63] petitioner Serafin agreed that he had waived all his claims against respondent.

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

[61] *Id.* at 172. Serafin Trinidad's Release, Waiver, and Quitclaim dated February 27, 2015 provided:

I also manifest that the payment by the Respondent Company of any or all of the foregoing sum of money shall neither be taken by me, my heirs or assigns as a confession and/or admission of the existence of employment relationship between the Respondent Company and I nor any liability on the part of the Respondent Company, as well as successors-in-interest, stockholders, officers, directors, agents or employees for any matter, cause[,] demand or claim that I may have against any or all of them. I acknowledge that I have received all amounts that are now, or in the future, may be due me from the Company. If hereafter, I am found to be entitled to any other amount, the above consideration shall constitute a full and final satisfaction of any and all such undisclosed claims. I also acknowledge that I have not suffered any illness or injury directly or indirectly caused or aggravated by my employment with the Respondent Company.

I further warrant that neither I nor my heirs or assigns will institute any action and will continue to prosecute any pending action, if any, against the Respondent Company and Individual Respondent, as well as their successors-in-interest, stockholders, officers, directors, agents or employees, by reason of my past transactions with the Company.

[62] *Id.* at 171-172.

[63] *Id.* at 183-186.

However, petitioners Melencio and Melchor maintain that they "are still employees of [respondent] and . . . [are] petitioners in this case."[64]

The sole issue for this Court's resolution is the reckoning date of petitioners' length of service in San Miguel.

Petitioners maintain that the date of their reinstatement cannot be deemed the reckoning date for computing the length of their service in San Miguel. Petitioners defined the term "length of service" as "the period that an employee rendered service and it commences when the employee was hired[,]"[65] and that "reinstatement," on the other hand, means "restoration to a state which one has been removed or separated."[66]

Therefore, the Court of Appeals' pronouncement that the length of service should be reckoned from the time petitioners were declared as regular employees on December 15, 1994 was "erroneous and contrary to law"[67] because "declaration of status as regular employee could be years after an employee started working[,]"[68] as in this case.

Petitioners cite Articles 283[69] and 284[70] of the Labor Code and argue that the basis of separation pay is the employee's

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[64] *Id.* at 184.

[65] *Id.* at 139.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] LABOR CODE, Art. 283 (now Art. 298) provides:

ARTICLE 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 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 decides or redundancy, the worker affected thereby shall be entitled to a

years of service, not when the employee was declared regular. The Court of Appeals' declaration, therefore, had no legal basis and must be modified to reckon petitioners' length of service from the years they first came under the employ of respondent.[71]

Respondent counters that petitioners are already estopped from raising the issue of the date of their reinstatement.[72] That they were regular employees as of December 15, 1994 was already final and executory. As such, when Labor Arbiter Caday ordered their reinstatement as regular employees as of the date of his decision, petitioners' length of service should commence on December 15, 1994.[73]

We grant the Petition as to petitioners Melchor Cuadra and Melencio Trinidad. Their length of service should be reckoned from the time they first came under the employ of respondent, *i.e.*, 1985 for Melchor and 1988 for Melencio. However, given Serafin Trinidad's waiver of his claims against respondent, the Petition is deemed moot and academic as to him.

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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 one-half (1/2) 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.

[70] LABOR CODE, Art. 284 (now Art. 299) provides:

ARTICLE 284. *Disease as ground for termination*. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[71] *Rollo*, p. 140. Memorandum for Petitioners.

[72] *Id.* at 151. Memorandum for Respondent.

[73] *Id.* at 151-152.

The parol evidence rule provides that "when the terms of an agreement have been reduced into writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."[74] In this case, the parties entered into a compromise agreement to put an end to the litigation between them, and the terms of the quitclaim executed by petitioners are as follows:

> I, [name of employee], of legal age, Filipino[,] and with residence address at _______, hereby acknowledge receipt of United Coconut Planters Bank (UCPB-SMC Complex, Mandaluyong City) Check No. 0000047548 dated May 23, 2003 in the amount of Five Hundred Fifty Thousand Pesos (Php550,000.00) only, given to me by San Miguel Corporation as full, complete, absolute and final settlement and satisfaction of all my money claims and benefits in connection with the case of Melchor Cuadra, et al. vs. San Miguel Corporation, et al., [d]ocketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and whatever claims I may have in connection therewith as well as any and all claims of whatever kind and nature which I had, I now may have or hereafter have against all respondents regarding incidents of this case and if any and all other cases, related to or which arose from the incidents of this case which were filed or are still pending.[75]

The quitclaim provides that the compromise amount of ₱550,000.00 shall serve as "*full, complete, absolute and final settlement and satisfaction* of *all my money claims and benefits* in connection with the case of *Melchor Cuadra, et al. vs. San Miguel Corporation, et al.*, docketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and *whatever claims I may have in connection therewith* as well as *any and all claims of whatever kind and nature which I had*, I now may have or hereafter have against all respondents regarding incidents of this case[.]" These claims, in connection with the case, are the claims for payment of backwages, for regularization, and for reinstatement. Nothing in the quitclaim, however, indicates

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[74] RULES OF COURT, Rule 130, Sec. 9.

[75] *Rollo*, p. 32. Court of Appeals Decision.

that the compromise amount respectively paid to petitioners included separation pay.

Since there is no evidence that the compromise amount included separation pay, the services of petitioners are presumed continuous, reckoned from the date they first came under the employ of respondent.

The present case should be contrasted with *Carandang v. Dulay*,[76] *Sta. Catalina Colleges v. National Labor Relations Commission*,[77] and *Philippine Village Hotel v. National Labor Relations Commission*[78] where this Court likewise determined length of service but did *not* consider as reckoning point the employee's first day of work with the same employer.

Carandang involved a high school teacher, Felisa Carandang, who was first hired in 1974 but had to resign in 1979 to take graduate studies. Upon her application, she was re-employed in 1985 by respondent school, Diocesan Schools of La Union. In 1988, the school wrote Carandang, stating that it would no longer be renewing her employment for the next school year because she failed to pass the evaluation conducted for probationary teachers. Thus, Carandang filed a complaint for illegal dismissal, contending that she was already a permanent employee in 1988 and may only be removed for just or authorized causes; not for failure to pass evaluations meant for probationary employees.[79]

This Court held that Carandang was illegally dismissed because she was already a permanent employee when the school terminated her employment. However, due to the strained relations between her and the school, she was instead awarded separation pay. In computing Carandang's separation pay, this Court reckoned Carandang's length of service from 1985, not from 1974 when she first started working in the school. This

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[76] 266 Phil. 862 (1990) [Per *J*. Cortes, Third Division].

[77] 461 Phil. 720 (2003) [Per *J*. Carpio Morales, Third Division].

[78] 300 Phil. 445 (1994) [Per *J*. Nocon, Second Division].

[79] *Carandang v. Dulay*, 266 Phil. 862, 863-865 (1990) [Per *J*. Cortes, Third Division].

Court noted that Carandang voluntarily resigned in 1979; hence, when she was re-employed in 1985, she started as a probationary employee again, effectively a new hire with "zero" experience.[80]

Sta. Catalina College likewise involved a teacher, Hilaria Tercero, who first started working in Sta. Catalina College in 1955. In 1970, the school granted her leave of absence for one (1) year because of her mother's illness. However, after her leave of absence expired, the school had not heard from her until she returned in 1982 to apply for re-employment. She was then accepted again by the school.[81]

In 1997, Tercero reached the compulsory retirement age of 65. In computing her retirement pay, the school only considered her service from 1982 to 1997, and excluded her service rendered from 1955 to 1970. It was the school's contention that Tercero abandoned her employment in 1971 when she failed to return for work after the expiration of her leave of absence.[82]

This Court agreed with the school, holding that, for purposes of computing Tercero's retirement benefits, her length of service should be reckoned from 1982 when she was re-employed, and not from 1955 when she first started working in the school. This Court found that Tercero abandoned her employment in 1971 when she failed to return after the expiration of her leave of absence. She was even employed in a different school for the school years 1980-1981 and 1981-1982 before she returned to Sta. Catalina in 1982. Having abandoned her employment in Sta. Catalina from 1955 to 1971, this Court said that she "effectively relinquished the retirement benefits accumulated during the said period."[83]

Philippine Village Hotel involved a hotel that was closed down in 1986 due to serious business losses, resulting in the

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[80] *Id.* at 865-868.

[81] *Sta. Catalina College v. National Labor Relations Commission*, 461 Phil. 720, 725-726 (2003) [Per *J.* Carpio Morales, Third Division].

[82] *Id.* at 726-727.

[83] *Id.* at 730.

dismissal of employees. The employees then filed a complaint before the National Labor Relations Commission, but the validity of the closure was upheld.[84]

In 1989, the hotel decided to have a one-month dry-run operation to explore the possibility of resuming its operations. It then re-hired some of the employees it had dismissed earlier in 1986. However, by the end of the month, the hotel dismissed the re-hired employees again. This caused them to file another illegal dismissal case.[85]

This Court held that the subsequently re-hired employees were validly dismissed after the end of the one-month contract. According to this Court, the employees "voluntarily and knowingly agreed to be employed only for a period of one (1) month[.]"[86] As a consequence, the employees were not "deemed to have continued their regular employment status, which they had enjoyed before their . . . termination due to [Philippine Village Hotel's] financial losses."[87] In this Court's words, "the prior employment which was terminated cannot be joined or tacked to the new employment for purposes of security of tenure."[88]

Carandang, *Sta. Catalina College*, and *Philippine Village Hotel* all illustrate how an employee who returns to work for the same employer is considered a new hire if prior employment was validly terminated, either voluntarily or under any of the just and authorized causes provided in the Labor Code. Therefore, the reckoning point of the length of service, for purposes of security of tenure, begins on the date the employee was re-hired.

However, if an employee returns to work upon an order of reinstatement, he or she is not considered a new hire. Because reinstatement presupposes the illegality of the dismissal,[89] the

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[84] *Philippine Village Hotel v. National Labor Relations Commission*, 300 Phil. 445, 447-448 (1994) [Per *J.* Nocon, Second Division].

[85] *Id.* at 448.

[86] *Id.* at 449.

[87] *Id.* at 451.

[88] *Id.* at 452.

[89] LABOR CODE, Art. 279 (now Art. 294).

employee is deemed to have remained under the employ of the employer from the date of illegal dismissal to actual reinstatement. Further, there is no "prior employment"[90] to speak of, and the payment of backwages is compensation for the time the employee was illegally deprived of work. In the latter case, the reckoning point of the length of service must be the date the employee first began working for the employer, not when he or she returned for work.

In *Carandang*, *Sta. Catalina*, and *Philippine Village Hotel*, the prior employment of the employees were all validly terminated. Carandang voluntarily resigned from work before she was re-hired, while Tercero abandoned her prior employment in Sta. Catalina. The closure of the establishment of Philippine Village Hotel was declared valid in a final and executory judgment of the National Labor Relations Commission. In these cases, the reckoning point of the employees' length of service is the date when they were re-hired.

The same, however, cannot be said in this case. Here, petitioners were found to have been illegally dismissed and only returned to work upon an order of reinstatement. Further, they were not new hires when they returned in San Miguel. Under the law, they remained under the employ of respondent from the time they were illegally dismissed up to the time of their actual reinstatement. The reckoning point of their length of service must be the date they first started working in San Miguel, *i.e.*, 1985 for Melchor, and 1988 for Melencio and Serafin.

The Court of Appeals erred when it reckoned petitioners' length of service from the time they were supposedly declared as regular employees pursuant to the December 15, 1994 Decision of Labor Arbiter Caday. What Labor Arbiter Caday declared was that petitioners were "reinstated with backwages, but this time as regular employees already effective as of this date of the decision."[91] The use of "already effective" means that they

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[90] *Philippine Village Hotel v. National Labor Relations Commission*, 300 Phil. 445, 452 (1994) [Per *J*. Nocon, Second Division].

[91] *Rollo*, p. 72. Labor Arbiter Caday's Decision.

became regular employees *even before* the Labor Arbiter's Decision was rendered in December 15, 1994. This is consistent with Labor Arbiter Caday's finding that petitioner Melchor was illegally dismissed on January 26, 1991, while petitioners Melencio and Serafin were illegally dismissed on November 21, 1990:

> With respect to the third issue of whether or not the remaining nine (9) complainants were illegally dismissed, the evidence on record equally and convincingly requires an affirmative answer.
>
> The evidence shows that complainants Melchor Cuadra, Joselito Flores, Dennis Rauto, were dismissed on January 26, 1991, while Raymundo Gaviola, Eliseo Yumang, Abelardo Carlos, Serafin Trinidad and Melencio Trinidad were dismissed on November 21, 1990 and Ben Mangindin on December 27, 1991, all by respondent [San Miguel Corporation].
>
> As undisputedly testified to by the complainants, they were dismissed by respondent [San Miguel Corporation] due to different reasons. According to complainant Melchor Cuadra, on January 21, 1991 they were told by foreman Salucia that their line will be shut down or closed because of the Gulf War (t.s.n. 27, Oct. 3, 1991). While complainants Eliseo Yumang and Serafin Trinidad were told by their supervisor Oligario that they are being terminated because they were among those laid off or retrenched (t.s.n., pp. 19-23, Sept. 20, 1993 and pp. 15-17, Nov. 11, 1993). On the other hand, complainant Ben Mangindin testified that in the notice posted in the Bulletin Board on December 27, 1991, it was announced that all contract workers assigned at the Applied Color Level (ACL) Department of SMC Manila Glass Plant will be up to December 27, 1991 only (tsn, pp. 9-11, July 28, 1993).[92]

For there to be an illegal dismissal, there must first exist the status as regular employee and the concomitant violation of the regular employee's security of tenure.[93] There can be no illegal dismissal in 1990 or 1991 when the employee only became a regular employee in 1994.

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[92] *Rollo*, pp. 70-71.

[93] LABOR CODE, Art. 279, renumbered Art. 294, provides:

ARTICLE 294. [279] *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee

In sum, service to an employer is presumed continuous unless there is evidence that employer-employee relations were validly severed in the interim. Here, the employer-employee relationship between respondent, on the one hand, and petitioners, on the other, was not validly severed when respondent illegally dismissed them. Consequently, the length of service of petitioners must be reckoned from the time they first started working in San Miguel—1985 for Melchor, and 1988 for Melencio and Serafin Trinidad.

However, considering that petitioner Serafin had waived his claims against respondent as he had manifested,[94] the Petition is moot and academic as to him.

WHEREFORE, as to petitioner Serafin Trinidad, the Petition for Review on *Certiorari* is **DISMISSED** for being moot and academic.

However, as for petitioners Melchor Cuadra and Melencio Trinidad, the Petition for Review on *Certiorari* is **GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 104828 are **REVERSED** and **SET ASIDE**. Their length of service must be reckoned from the time they first started working for respondent San Miguel Corporation, specifically, 1985 for petitioner Melchor Cuadra, and 1988 for petitioner Melencio Trinidad.

SO ORDERED.

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

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except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[94] *Rollo*, pp. 183-184.

THIRD DIVISION

[G.R. No. 196902. July 13, 2020]

EXPRESS TELECOMMUNICATIONS CO., INC., (EXTELCOM), *petitioner*, *vs.* **AZ COMMUNICATIONS, INC.,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; A CASE IS MOOT WHEN A SUPERVENING EVENT HAS TERMINATED THE LEGAL ISSUE BETWEEN THE PARTIES, SUCH THAT THE COURT IS LEFT WITH NOTHING TO RESOLVE, AND CAN NO LONGER GRANT ANY RELIEF OR ENFORCE ANY RIGHT, AND ANYTHING IT SAYS ON THE MATTER WILL HAVE NO PRACTICAL USE OR VALUE. —** A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*: A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

2. **ID.; ID.; ID.; ID.; THE COURT'S JUDICIAL POWER IS LIMITED TO SETTLING ACTUAL CASES AND CONTROVERSIES INVOLVING LEGALLY DEMANDABLE AND ENFORCEABLE RIGHTS; THE COURT SHALL NOT RENDER ADVISORY OPINIONS OR RESOLVE THEORETICAL ISSUE. —** Without any legal relief that may be granted, courts generally decline to resolve

moot cases, lest the ruling result in a mere advisory opinion. This rule stems from this Court's judicial power, which is limited to settling actual cases and controversies involving legally demandable and enforceable rights. There must be a judicially resolvable conflict involving legal rights, with one party asserting a claim and the other opposing it: An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest"; a real and substantial controversy admitting of specific relief. Thus, in *Republic v. Moldex Realty, Inc.*, this Court declined to rule on an application for registration of title after it had been withdrawn by the party filing it: x x x. Courts have no power to act on a matter if there is no actual case or justiciable controversy. This Court shall not render advisory opinions or resolve theoretical issues. The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent. When a case has become moot, there is no longer a conflict of rights that needs to be resolved by the courts.

3. **ID.; ID.; ID.; ID.; A CASE SHOULD NOT BE DISMISSED SIMPLY BECAUSE ONE OF THE ISSUES RAISED THEREIN HAD BECOME MOOT AND ACADEMIC BY THE ONSET OF A SUPERVENING EVENT, WHETHER INTENDED OR INCIDENTAL, IF THERE ARE OTHER CAUSES WHICH NEED TO BE RESOLVED AFTER TRIAL; WHEN A CASE IS DISMISSED WITHOUT THE OTHER SUBSTANTIVE ISSUES IN THE CASE HAVING BEEN RESOLVED WOULD BE TANTAMOUNT TO A DENIAL OF THE RIGHT OF THE PLAINTIFF TO DUE PROCESS; OTHER INSTANCES WHEN THE COURT MAY RULE ON MOOT CASES; NOT PRESENT. —** The rule admits several exceptions. In *Ilusorio v. Baguio Country Club Corporation*, this Court discussed that while one issue in the case became moot, the case should not be automatically dismissed if there are other issues raised that need resolving: x x x. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive

issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process. *Osmeña III v. Social Security System* also enumerated other exceptions: x x x. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness — save *when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review*. x x x. *Moldex* also enumerated other instances when this Court may rule on moot cases: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review. None of these exceptions are present in this case.

4. **ID.; ID.; ID.; ID.; THE DENIAL OF THE PETITION WITH FINALITY WILL RENDER THE MOTION TO INTERVENE MOOT, AS THERE IS NO MORE CASE TO INTERVENE IN; THUS, TO RULE ON THE PARTY'S RIGHT TO INTERVENE WOULD BE A USELESS EXERCISE AND WILL RESULT IN AN OPINION ON A HYPOTHETICAL SITUATION. —** Claiming that its rights may be adversely affected, petitioner here seeks to intervene in respondent's Petition in what later became G.R. No. 199915. However, since that Petition has been denied with finality, there is no more need to rule on whether petitioner may still intervene in that case. To begin with, there is no more case to intervene in. Thus, to rule on whether petitioner had the right to intervene would be a useless exercise and will result in an opinion on a hypothetical situation. Moreover, respondent and no longer assert any right to the last 3G radio frequency band, as the National Telecommunications Commission did not deem it qualified under the 2005 Memorandum. This finding has been affirmed by this Court with finality. Thus, there is no longer anything that would affect petitioner's alleged right under the 2010 Memorandum. As far as its intervention is concerned, it no longer has any standing. Even petitioner is aware that the denial of respondent's Petition will render its own Petition in this case moot.

APPEARANCES OF COUNSEL

Bohol Bohol II, Jimenez Law Office for petitioner.
Feria Tantoco Robeniol Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

When a case has been resolved with finality by this Court, a motion to intervene, as in this case, effectively becomes moot.

Before this Court is a Petition for Review on *Certiorari*[1] that assails the Court of Appeals' Resolutions[2] denying Express Telecommunications Company, Inc.'s (Extelcom) Motion for Leave to Intervene.

On August 23, 2005, the National Telecommunications Commission opened applications for the assignment of five 3G radio frequency bands to qualified public telecommunications entities.[3] This was undertaken through Memorandum Circular No. 07-08-2005, or the Rules and Regulations on the Allocation and Assignment of 3G Radio Frequency Bands (2005 Memorandum).[4]

AZ Communications, Inc. (AZ Comm) was one of the applicants.[5]

Upon evaluation, four of the five 3G radio frequency bands were given to Smart Communications, Inc., Globe Telecoms, Inc., Digitel Mobile Philippines, Inc., and Connectivity Unlimited

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[1] *Rollo*, pp. 26-59.

[2] *Id.* at 12-14 and 16-18. The November 8, 2010 and May 16, 2011 Resolutions were penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan-Castillo of the Fourth Division of the Court of Appeals, Manila.

[3] *Id.* at 28.

[4] *Id.* at 83.

[5] *Id.* at 29.

Resource Enterprise, Inc.[6] AZ Comm's application was denied, along with those of Bayan Telecommunications, Inc. (BayanTel), Next Mobile, Inc. (Next Mobile), and Multi-Media Telephony, Inc. (Multi-Media).[7]

AZ Comm and the other companies sought reconsideration, but their motions were denied. Thus, they filed separate petitions to question the denial of their claims. For its part, AZ Comm went to the Court of Appeals, filing a Petition for Review under Rule 43 of the Rules of Court.[8]

In the meantime, the National Telecommunications Commission declared the 2005 Memorandum as *functus officio*, or expired. In its stead, Memorandum Circular No. 01-03-2010 (2010 Memorandum) was issued on March 12, 2010, outlining the new rules on the assignment of the last allocated 3G radio frequency band.[9]

Extelcom entered at this juncture, applying for the last band under the 2010 Memorandum. On account of its application, Extelcom also sought to intervene in the separate petitions of AZ Comm, BayanTel, Next Mobile, and Multi-Media.[10] It argued that its application would be affected by the grant of the petitions in these cases.[11]

Extelcom was allowed to intervene in the petitions of BayanTel, Next Mobile, and Multi-Media.[12]

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[6] *Id.* at 13 and 29.

[7] *Id.* at 29.

[8] *Id.*

[9] *Id.* at 30.

[10] *Id.*

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

[12] *Id.* at 31. It cites the following as the case numbers of the said cases: G.R. No. 191656, CA-G.R. SP No. 105250, and G.R. No. 189221 for Bayantel, Next Mobile, and Multi-Media, respectively.

However, as to AZ Comm's petition, Extelcom's motion was denied.[13] In its November 8, 2010 Resolution,[14] the Court of Appeals ruled that Extelcom had no standing to intervene because it did not apply for a 3G radio frequency band under the 2005 Memorandum. It further noted that Extelcom failed to intervene in the proceedings before judgment has become final and executory. Thus, it found that allowing the motion for intervention would only delay the proceedings.[15]

Extelcom sought reconsideration, but in a May 16, 2011 Resolution,[16] the Court of Appeals denied its motion. Hence, Extelcom filed this Petition for Review on *Certiorari*[17] against AZ Comm.

Insisting that it has standing to intervene in respondent's Petition, petitioner asserts its clear legal interest as a prospective applicant for the last 3G radio frequency band, noting that its application would be affected if respondent were awarded instead.[18] It argues that the grant of respondent's petition will render moot the 2010 Memorandum and its own application.[19] Petitioner will also allegedly suffer damages as it has already spent millions to develop a 3G-compliant network system.[20]

Petitioner also contends that its right to apply under the 2010 Memorandum is absolute.[21] It avers that its proposal to the National Telecommunications Commission exceeds the minimum requirements and qualifications, making it the best qualified applicant for the 3G radio frequency band.[22]

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[13] *Id.* at 14.

[14] *Id.* at 12-14.

[15] *Id.* at 13-14.

[16] *Id.* at 16-18.

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

[18] *Id.* at 33 and 37.

[19] *Id.* at 37.

[20] *Id.* at 38.

[21] *Id.* at 35.

[22] *Id.* at 35-37.

Petitioner maintains that intervention is still proper since there is no final and executory judgment yet. It notes, at the outset, that the Court of Appeals erred in classifying the National Telecommunications Commission proceedings as trial proceedings, when they are administrative in character.[23] Even if they were trial proceedings, petitioner notes that it had been allowed to intervene in the other cases, notably when this Court itself had allowed its intervention in BayanTel's case.[24]

In any case, petitioner says that since it sought to intervene before the pending case was decided on its merits, the intervention must prosper.[25]

Petitioner further asserts that its intervention will not delay or prejudice the parties' rights. It claims that its intervention is necessary as it hinges on the same issue of whether respondent should be awarded the last remaining 3G radio frequency band. To require a separate action, it points out, will cause more costs and delays, and encourage multiplicity of suits.[26]

Petitioner also points out that conflicting court decisions may arise should there be a separate suit. It notes that this Court has even consolidated the petitions of BayanTel and Next Mobile to avoid confusion.[27]

Furthermore, petitioner argues that the matter is of transcendental importance because telecommunications services are imbued with public interest. The radio frequency spectrum is allegedly a "scarce public resource" that should be granted only to those most qualified.[28]

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

[24] *Id.* at 41.

[25] *Id.*

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

[27] *Id.* at 45.

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

In any case, petitioner argues that the award of the 3G radio frequency band to respondent will be improper given that the 2005 Memorandum has been declared *functus officio*.[29] Moreover, it asserts that the National Telecommunications Commission's factual findings are entitled to great weight and respect.[30]

In its Comment,[31] respondent refutes petitioner's insistence on having legal standing.[32] It points out that petitioner admitted that it was not an original applicant for the 3G radio frequency band under the 2005 Memorandum and is not even a party to the proceedings before the National Telecommunications Commission.[33] It adds that petitioner's desire and qualification to be awarded the 3G radio frequency band is not a sufficient legal interest over the subject matter in litigation.[34]

Respondent further maintains that petitioner's participation in the proceedings is not a matter of transcendental importance. It argues that there will be no violation of any constitutional or legal provision if it received the 3G radio frequency band.[35]

In any case, respondent points out that petitioner allegedly cannot claim that there are no other parties with a more direct and specific interest in the subject matter in litigation because there are numerous other party-litigants.[36] It adds that allowing the intervention would disregard due process of law and will cause numerous delays. As to the contention on a possible multiplicity of suits, respondent notes that petitioner, to begin

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[29] *Id.* at 46.

[30] *Id.* at 48.

[31] *Id.* at 129-137.

[32] *Id.* at 132.

[33] *Id.* at 131.

[34] *Id.* at 132.

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

[36] *Id.* at 134.

with, cannot file a separate suit since it has no connection to the subject matter in litigation.[37]

In its Reply,[38] petitioner again asserts that it should be allowed to intervene in respondent's case, it having a right as an applicant under the 2010 Memorandum.[39]

Petitioner further reiterates that it has been allowed to intervene in the cases of BayanTel, Next Mobile, and Multi-Media, which have the same factual milieu, and in which it has been recognized to be adversely affected by the disposition of the matter in litigation.[40]

Petitioner also insists that the requirement of standing may be relaxed because telecommunications services are of transcendental importance and of a high degree of public interest.[41]

Finally, petitioner argues there is no factual or legal basis to conclude that due process would be disregarded and that proceedings would be delayed because of its intervention. It maintains that the exercise of its right under the 2010 Memorandum rests on the same issues in respondent's case.[42]

In a July 16, 2012 Resolution, this Court directed respondent to inform it of the status of its case m CA-G.R. SP No. 105251, where petitioner seeks to intervene.[43]

Respondent filed its Compliance,[44] manifesting that it has elevated the case to this Court *via* a Petition for Review on

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[37] *Id.* at 134-135.

[38] *Id.* at 144-155.

[39] *Id.* at 147.

[40] *Id.* at 148-149.

[41] *Id.* at 149.

[42] *Id.* at 151.

[43] *Id.* at 156. *AZ Communications, Inc. vs. GLOBE Telecoms, Inc., et al.*, CA-G.R. SP No. 105251.

[44] *Id.* at 157-163-A.

Certiorari. The case was docketed in the Third Division as G.R. No. 199915, entitled *AZ Communications, Inc. vs. Globe Telecoms, Inc., et al.*[45]

In its April 11, 2012 Resolution, this Court's Third Division denied respondent's Petition in G.R. No. 199915.[46] It affirmed the National Telecommunications Commission's denial of respondent's application for failing to meet the qualifications under the 2005 Memorandum.[47] This ruling was denied with finality in a July 16, 2012 Resolution.[48]

In its October 17, 2012 Resolution, this Court noted and accepted respondent's Compliance.[49]

The sole issue now is whether or not this Court's denial with finality of respondent AZ Communications, Inc.'s Petition in G.R. No. 199915 renders moot petitioner Express Telecommunications Company, Inc.'s motion to intervene.

This Court holds that this case is moot.

A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value.[50] In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*:[51]

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events,

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[45] *Id.* at 157-159.

[46] *Id.* at 246.

[47] *Id.*

[48] *Id.* at 261.

[49] *Id.* at 262.

[50] *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[51] 728 Phil. 525 (2014) [Per *J.* Perlas-Bernabe, Second Division].

so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case *a quo* — that is the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case.[52] (Citations omitted)

Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion.[53] This rule stems from this Court's judicial power, which is limited to settling actual cases and controversies involving legally demandable and enforceable rights.[54] There must be a judicially resolvable conflict involving legal rights, with one party asserting a claim and the other opposing it:

An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse

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[52] *Id.* at 540-541.

[53] *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per *J.* Leonen, Second Division].

[54] CONST., Art. VIII, Sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

legal interest"; a real and substantial controversy admitting of specific relief.[55] (Citation omitted)

Thus, in *Republic v. Moldex Realty, Inc.*,[56] this Court declined to rule on an application for registration of title after it had been withdrawn by the party filing it:

This court's power of judicial review is limited to actual cases and controversies. Article VIII, Section 1 of the Constitution provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

There is an actual case or controversy when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding. . . .

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A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness."

Respondent's Manifestation stating its withdrawal of its application for registration has erased the conflicting interests that used to be present in this case. Respondent's Manifestation was an expression of its intent not to act on whatever claim or right it has to the property involved. Thus, the controversy ended when respondent filed that Manifestation.

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[55] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[56] 780 Phil. 553 (2016) [Per *J*. Leonen, Second Division].

A ruling on the issue of respondent's right to registration would be nothing but an advisory opinion. "[T]he power of judicial review does not repose upon the courts a "self-starting capacity." This court cannot, through affirmation or denial, rule on the issue of respondent's right to registration because respondent no longer asserts this right.[57] (Emphasis supplied, citations omitted)

Courts have no power to act on a matter if there is no actual case or justiciable controversy. This Court shall not render advisory opinions or resolve theoretical issues. The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent. When a case has become moot, there is no longer a conflict of rights that needs to be resolved by the courts.

The rule admits several exceptions. In *Ilusorio v. Baguio Country Club Corporation*,[58] this Court discussed that while one issue in the case became moot, the case should not be automatically dismissed if there are other issues raised that need resolving:

There is no dispute that the action for *mandamus* and injunction filed by Erlinda has been mooted by the removal of the cottage from the premises of BCCC. The staleness of the claims becomes more manifest considering the reliefs sought by Erlinda, *i.e.*, to provide access and to supply water and electricity to the property in dispute, are hinged on the existence of the cottage. Collolarily, the eventual removal of the cottage rendered the resolution of issues relating to the prayers for *mandamus* and injunction of no practical or legal effect. A perusal of the complaint, however, reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property. In such a case, the court should not have dismissed the complaint and should have proceeded to trial in order to determine the propriety of the

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[57] *Id.* at 559-561.

[58] 738 Phil. 135 (2014) [Per *J*. Perez, Second Division].

remaining claims. Instructive on this point is the Court's ruling in *Garayblas v. Atienza, Jr.*:

> The Court has ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.[59] (Citations omitted)

Osmeña III v. Social Security System[60] also enumerated other exceptions:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness — save *when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review*.

The case, with the view we take of it, has indeed become moot and academic for interrelated reasons.

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Under the law on obligations and contracts, the obligation to give a determinate thing is extinguished if the object is lost without the

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[59] *Id.* at 140-142.

[60] 559 Phil. 723 (2007) [Per *J.* Garcia, *En Banc*].

fault of the debtor. And per Art. 1192 (2) of the Civil Code, a thing is considered lost when it perishes or disappears in such a way that it cannot be recovered. In a very real sense, the interplay of the ensuing factors: a) the BDO-EPCIB merger; and b) the cancellation of subject Shares and their replacement by totally new common shares of BDO, has rendered the erstwhile 187.84 million EPCIB shares of SSS "unrecoverable" in the contemplation of the adverted Civil Code provision.[61] (Citations omitted)

Moldex also enumerated other instances when this Court may rule on moot cases:

(1) Grave constitutional violations;

(2) Exceptional character of the case;

(3) Paramount public interest;

(4) The case presents an opportunity to guide the bench, the bar, and the public; or

(5) The case is capable of repetition yet evading review.[62] (Citations omitted)

None of these exceptions are present in this case.

Claiming that its rights may be adversely affected, petitioner here seeks to intervene in respondent's Petition in what later became G.R. No. 199915. However, since that Petition has been denied with finality, there is no more need to rule on whether petitioner may still intervene in that case.

To begin with, there is no more case to intervene in. Thus, to rule on whether petitioner had the right to intervene would be a useless exercise and will result in an opinion on a hypothetical situation.

Moreover, respondent can no longer assert any right to the last 3G radio frequency band, as the National Telecommunications

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[61] *Id.* at 735-736.

[62] *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016) [Per *J.* Leonen, Second Division].

Commission did not deem it qualified under the 2005 Memorandum. This finding has been affirmed by this Court with finality. Thus, there is no longer anything that would affect petitioner's alleged right under the 2010 Memorandum. As far as its intervention is concerned, it no longer has any standing.

Even petitioner is aware that the denial of respondent's Petition will render its own Petition in this case moot. In its Petition, it stated:

16. As narrated earlier, the Honorable Court of Appeals denied herein petitioner's Motion for Leave to Intervene and Admit Attached Opposition-in-Intervention in a Resolution dated 08 November 2010. Its subsequent Motion for Reconsideration was likewise denied in a Resolution dated 16 May 2011.

17. It bears mentioning however that in a later Resolution dated 26 May 2011, the Honorable Court of Appeals dismissed Respondent's appeal via a Petition for Review under Rule 43. *In effect, herein Petitioner's attempts at intervention may be possibly rendered moot and academic*.

18. The said decision, however, has not yet become final and executory at this time. Nonetheless, Petitioner hereby submits the present Petition for Review on *Certiorari Ex Abutandi Ad Cautelam* in order to protect its interest and in order not to foreclose its legal standing to intervene in the said case.[63] (Emphasis supplied)

Additionally, in its Reply, petitioner alleged:

6. In a Resolution dated 11 April 2012 in G.R. No. 199915, this Honorable Court denied herein respondent's (petitioner therein) petition and held that the Court of Appeals was correct in upholding the Orders of the National Telecommunications Commission (NTC) which denied herein respondent's application for the issuance of a certificate of public convenience and necessity, . . .

7. On 14 May 2012, herein petitioner received a copy of herein respondent's Motion for Reconsideration of the Resolution dated 11 April 2012 in G.R. No. 199915.

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[63] *Rollo*, pp. 31-32.

8. Hence, considering that the denial of respondent's petition has not yet attained finality in view of its motion for reconsideration, herein petitioner respectfully submits its Reply *Ex Abutandi Ad Cautelam* to respondent's Comment/Opposition in order not to foreclose its legal standing to intervene in the said case.[64]

Before petitioner even filed its Petition here, it had manifested that it would withdraw its case if respondent decided not to seek reconsideration of the Court of Appeals Decision in CA-G.R. SP No. 105251.[65]

Thus, petitioner is merely waiting for the denial of respondent's Petition to be final. It recognizes that if this was denied with finality, there is no need for intervention. Indeed, that was what eventually happened.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** on the ground of mootness.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 201247. July 13, 2020]

ENGINEERING & CONSTRUCTION CORPORATION OF ASIA [now FIRST BALFOUR, INCORPORATED], *petitioner, vs.* **SEGUNDINO PALLE, FELIX VELOSA, ALBERTO PAMPANGA, RANDY GALABO, MARCO GALAPIN and GERARDO FELICITAS,** *respondents.*

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[64] *Id.* at 145-146.

[65] *Id.* at 20.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; REGULAR AND PROJECT EMPLOYEES, DISTINGUISHED. —** [B]ased on [Article 295[280] of the Labor Code and DOLE Department Order No. 19, series of 1993 (D.O. No. 19], an employment is generally deemed regular where: (i) the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, subject to exceptions, such as when one is a fixed, project or seasonal employee; or (ii) the employee has been engaged for at least a year, with respect to the activity he or she is hired, and the employment of such employee remains while such activity exists. On the other hand, a project employee "is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee." Thus, the "services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired."

2. **ID.; ID.; ID.; PROJECT EMPLOYMENT; THE FACT THAT A PROJECT EMPLOYEE'S WORK IS USUALLY NECESSARY AND DESIRABLE IN THE BUSINESS OPERATION OF HIS/HER EMPLOYER DOES NOT NECESSARILY IMPAIR THE VALIDITY OF THE PROJECT EMPLOYMENT CONTRACT WHICH SPECIFICALLY STIPULATES A FIXED DURATION OF EMPLOYMENT. —** Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure. However, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project. In addition, a project employee's work may or may not be usually necessary or desirable in the usual business or trade of the employer. Thus, the fact that a project employee's work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment. In *Lopez v. Irvine Construction*

Corp., it was held that "the principal test for determining whether particular employees are properly characterized as 'project employees[,]' as distinguished from 'regular employees,' is whether or not the 'project employees' were assigned to carry out a 'specific project or undertaking,' the duration and scope of which were specified at the time the employees were engaged for that project."

3. **ID.; ID.; ID.; ID.; ALTHOUGH THE ABSENCE OF A WRITTEN CONTRACT DOES NOT BY ITSELF GRANT REGULAR STATUS TO THE EMPLOYEES, A WRITTEN CONTRACT SERVES AS EVIDENCE THAT THEY WERE INFORMED OF THE DURATION AND SCOPE OF THEIR STATUS AS PROJECT EMPLOYEES AT THE START OF THEIR ENGAGEMENT; THE FAILURE OF THE COMPANY TO SUBMIT A REPORT WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) OF THE TERMINATION OF THE EMPLOYEES' EMPLOYMENT EVERY TIME A PROJECT IS COMPLETED IS AN INDICATION THAT THEY WERE NOT PROJECT EMPLOYEES BUT REGULAR ONES. —** We find that ECCA failed to present substantial evidence to show that it informed respondents of the duration and scope of their work at the time of their hiring. Upon careful review of the company's respective contracts of employment with respondents, this Court holds that the employment contracts were lacking in details to prove that respondents had been duly informed of the duration and scope of their work, and of their status as project employees at the time of their hiring. The respective contracts of respondents may have been dated at the time of their issuance, but nowhere did said contracts show as to when respondents supposedly signed or received the same or were informed of the contents thereof. This gives rise to the distinct possibility that respondents were not informed of their status as project employees, as well as the scope and duration of the projects that were assigned to them at the time of their engagement. Thus, ECCA failed to refute respondents' claim that they worked in new projects or they were transferred to other existing projects without the benefit of their corresponding employment contracts. Therefore, ECCA failed to persuasively show that respondents herein were informed *at the time of their engagement* that their work was only for the duration of the project. Moreover, ECCA failed to present other evidence or

other written contracts to show that it informed respondents of the duration and scope of their work. Settled is the rule that "although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement. When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees." In addition, We likewise note that the company did not submit a report with the DOLE of the termination of respondents' employment every time a project is completed, which is an indication that the workers were not project employees but regular ones.

4. **ID.; ID.; ID.; ID.; THE EMPLOYER MUST ESTABLISH THAT THE EMPLOYEE WAS ASSIGNED TO CARRY OUT A PARTICULAR PROJECT OR UNDERTAKING, AND THE DURATION AND SCOPE OF WHICH WAS SPECIFIC AT THE TIME OF ENGAGEMENT. —** It is necessary to note that an employer has the burden to prove that the employee is indeed a project employee. Thus, "the employer must establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specific at the time of engagement." However, this Court finds that ECCA failed to proved that it informed respondents, at the time of engagement, that they were hired as project employees. Hence, respondents were without prior notice of the duration and scope of their work. Indeed, "[w]hile the lack of a written contract does not necessarily make one a regular employee, a written contract serves as proof that employees were informed of the duration and scope of their work and their status as project employee at the commencement of their engagement." Therefore, without such proof, it is presumed that respondents are regular employees.

5. **ID.; ID.; ID.; REGULAR EMPLOYMENT; THE EMPLOYEES ARE PRESUMED REGULAR EMPLOYEES WHERE THE EMPLOYER FAILED TO DISCHARGE ITS BURDEN TO PROVE THAT THEY WERE PROJECT EMPLOYEES; COMPLETION OF A PROJECT IS NOT A VALID CAUSE TO TERMINATE REGULAR EMPLOYEES; RESPONDENTS WERE ILLEGALLY DISMISSED; SIX PERCENT (6%)**

INTEREST PER *ANNUM,* IMPOSED ON ALL THE MONETARY AWARDS. — In view of ECCA's indisputable failure to discharge its burden to prove that respondents were project employees, We find that the CA properly found them to be regular employees. Therefore, respondents, as regular employees, may only be dismissed for just or authorized causes and upon compliance with procedural due process, *i.e*., notice and hearing. This Court notes that completion of a project is not a valid cause to terminate regular employees, such as respondents herein. Since the foregoing requirements were not observed, this Court upholds the finding of the CA and Labor Arbiter that the respondents were illegally dismissed. Finally, pursuant to prevailing jurisprudence, we hereby impose interest at the rate of six percent (6%) per *annum* on all the monetary awards from the finality of this Decision until paid in full.

APPEARANCES OF COUNSEL

Sanidad Abaya Te Viterbo Enriquez & Tan for petitioner.
Quial Beltran & Yu Law Offices for respondents.

D E C I S I O N

HERNANDO, *J*.:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the September 13, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 114599 which held that respondents Segundino Palle (Palle), Felix Velosa (Velosa), Alberto Pampanga (Pampanga), Randy Galabo (Galabo), Marco Galapin (Galapin) and Gerardo Felicitas (Felicitas) were regular employees of petitioner Engineering & Construction Corporation of Asia (ECCA) who were illegally terminated, and its March 22, 2012 Resolution[2] which denied the Motion for Partial Reconsideration thereof.

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[1] *Rollo*, pp. 36-54; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

[2] *Id.* at 56-57.

The Parties

Petitioner ECCA, now known as First Balfour Incorporated, is a domestic corporation engaged in the construction business. In 2003, it merged with First Philippine Balfour Beatty Incorporated, with the latter being absorbed by the former. Subsequently, it was renamed First Balfour Incorporated.[3]

Respondents Palle, Velosa, Pampanga, Galabo, Galapin and Felicitas (collectively, respondents) were hired by ECCA on various dates to work in its construction business.

The Antecedents

The instant case stemmed from the illegal dismissal complaint filed in 2004 by the respondents with the National Labor Relations Commission (NLRC) against ECCA and its president, Oscar Lopez.

Petitioner ECCA's Version

ECCA claimed that respondents, as project employees, were validly terminated in view of the project's completion. It pointed out that respondents were not regular employees, but merely project employees since they were hired for a specific project or undertaking, the termination of which was determined at the time they were hired.[4]

In addition, it argued that: (i) the company hired respondents as project employees to work at its various construction projects from the year 1990; (ii) it informed them of the scope and duration of their work at the time they were engaged in each of those projects; and (iii) their project employment contract expired upon completion of the specific project. Consequently, they were also separated from service upon completion of each project.[5]

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[3] *Id*. at 9.

[4] *Id*. at 11 and 22.

[5] *Id*. at 22.

Respondents' Version

Respondents mainly argued that they were not project employees but were regular employees of ECCA.[6] They claimed that ECCA hired them on different dates to perform tasks which were necessary and desirable in its construction business. However, ECCA informed them that the cause of their termination was "project completion." The details of respondents' employment terms were as follows:[7]

Complainants	Date Hired	Nature of Work	Date of Termination
Palle	1975	Carpenter	Aug. 30, 2001
Velosa	1982	Carpenter	Feb. 25, 2001
Felicitas	1982	Carpenter	Aug. 30, 2001
Pampanga	Feb. 4, 1997	Plumber/ Pipefitter	Sept. 1, 2001
Galabo	Oct. 1998	Steelman	Sept. 10, 2001
Galapin	Oct. 1998	Steelman	Sept. 15, 2001

Respondents further claimed that ECCA continuously employed them for different construction projects of the company. However, they did not enjoy the benefits given by the company to its regular employees, such as, Christmas bonuses, hospitalization benefits, sick leaves, vacation leaves and service incentive leaves, among others.[8]

Respondents further pointed out that they were regular employees, and not project employees, since they performed tasks which were vital, necessary and indispensable to ECCA's construction business, thus there was a reasonable connection between their nature of work and ECCA's business.[9]

Moreover, respondents asserted that although they may have signed employment contracts for some of ECCA's projects,

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[6] *Id.* at 38.

[7] *Id.* at 37.

[8] *Id.* at 38.

[9] *Id.*

they were asked to work in new projects or transferred to other existing projects without the benefit of corresponding employment contracts.[10]

Furthermore, respondents claim that ECCA's failure to report the termination of their employment to the Department of Labor and Employment (DOLE) every time that the company completed a project proved that respondents were not project employees but its regular employees.[11]

In addition, respondents argued that since they have attained the status as ECCA's regular employees, they were entitled to all the benefits and rights appurtenant to a regular employee, including security of tenure. Thus, respondents prayed that they be reinstated to their former positions and that they be awarded wages and other monetary benefits, as authorized by law.[12]

Labor Arbiter's Decision

In a June 16, 2007 Decision,[13] the Labor Arbiter held that respondents were regular employees of ECCA. The Labor Arbiter pointed out that the company has not presented any document showing that in every termination of the project, respondents' employment was also terminated.[14] Furthermore, the Labor Arbiter also noted that respondents were hired by ECCA for one project but were later repeatedly rehired for more than 20 to 30 years in several other projects. Thus, this showed that respondents have become regular employees of ECCA. The Labor Arbiter emphasized that where the employment of project employees is extended long after the first project had been finished, the employees are removed from the scope of project employment and are considered regular employees. Furthermore, the Labor Arbiter held that respondents have become regular

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[10] *Id*.

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

[12] *Id*. at 39.

[13] *Id*. at 424-434; penned by Labor Arbiter Nieves Vivar De Castro.

[14] *Id*. at 430.

employees of ECCA by the mere fact that the company failed to submit termination reports to the DOLE following the termination of respondents' project employment.[15] Thus, the Labor Arbiter ordered ECCA to reinstate respondents to their former positions effective June 16, 2007 and to pay them full backwages, 13th month pay, service incentive leave pay, and cost of living allowance, or a total of ₱3,655,326.82.[16] The dispositive portion of the Labor Arbiter's Decision partly reads:

> WHEREFORE, [petitioner is] hereby directed to reinstate complainants to their former positions effective June 16, 2007 and to pay full backwages in the total amount of ₱3,655,328.82 [x x x].[17]

National Labor Relations Commission's Decision

Aggrieved, ECCA filed an appeal with the NLRC. In its March 23, 2009 Decision,[18] the NLRC reversed the findings of the Labor Arbiter and granted ECCA's appeal. The NLRC cited the rulings in *Cioco, Jr. v. C.E. Construction Corporation*[19] and *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*[20] that repeated hiring does not change the status of one's employment as project employee or automatically makes one as a regular employee.[21] Thus, the NLRC held that respondents were not illegally terminated but that their employment ended in view of the completion of the projects.[22] The dispositive portion of said Decision reads:

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[15] *Id*. at 43; *see also* June 16, 2007 Labor Arbiter's Decision, p. 430.

[16] *Id*. at 41; *see also* June 16, 2007 Labor Arbiter's Decision, p. 433.

[17] *Id*. at 433-434.

[18] *Id*. at 393-405; penned by Commissioner Romeo L. Go, and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[19] 481 Phil. 270, 276 (2004).

[20] 493 Phil. 923, 934 (2005).

[21] *Rollo*, p. 400.

[22] *Id*. at 403.

WHEREFORE, the instant appeal is hereby **GRANTED**. The assailed decision of the Labor Arbiter dated 16 June 2007 is REVERSED and SET ASIDE and the complaint dismissed for lack of merit.[23]

Respondents filed a Motion for Reconsideration of the foregoing Decision, which was denied in the NLRC's March 24, 2010 Resolution.[24]

Court of Appeals' Decision

Aggrieved, respondents filed a Petition for *Certiorari*[25] under Rule 65 of the Rules of Court with the CA. In its September 13, 2011 Decision, the CA held in favor of respondents and ruled that they were regular employees, and were therefore illegally dismissed. The appellate court pointed out that ECCA failed to present any written contract of employment to substantiate its claim before the court. Thus, the appellate court held that although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement.[26] The dispositive portion of said Decision reads:

WHEREFORE, the petition is **GRANTED**. The assailed March 23, 2009 Decision of public respondent NLRC in NLRC-NCR CA No. 00-002296-07 [NLRC Case No. NCR 00-09-10553-04] is **REVERSED and SET ASIDE**. In lieu thereof, a new judgment is rendered reinstating the Decision dated June 16, 2007 of the Labor Arbiter in NLRC-NCR Case Nos. 00-08-09014-04, 00-09-09960-04 and 00-09-10553-04 with the **MODIFICATION** that the liability of respondent Oscar Lopez for the payment of backwages and other monetary benefits in favor of [respondents] is **DELETED**.

SO ORDERED.[27]

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[23] *Id*.

[24] *Id*. at 45.

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

[26] *Id*. at 51.

[27] *Id*. at 53-54.

ECCA filed a Motion for Reconsideration which was denied in the CA's March 22, 2012 Resolution.[28]

ECCA then filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, raising the following assignment of error:

> The Court of Appeals erred and gravely abused its discretion in granting the petition and finding that respondents were regular employees of petitioner and were illegally dismissed.[29]

In sum, the main issue in the instant case is whether or not respondents were illegally dismissed as regular employees or validly terminated in view of the completion of their contract as project employees.

The Court's Ruling

We find ECCA's petition unmeritorious. Thus, we uphold the findings of the CA that respondents were regular employees who were illegally terminated.

Regular and Project Employees, distinguished.

Article 295 [280] of the Labor Code provides the following definition of regular and project employees:

> ARTICLE 295. [280] *Regular and Casual Employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, **an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

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[28] *Id*. at 56-57.

[29] *Id*. at 19.

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

On the other hand, DOLE's Department Order No. 19, series of 1993 (D.O. No. 19), otherwise known as the Guidelines Governing the Employment of Workers in the Construction Industry, provides:

Section 2. EMPLOYMENT STATUS

2.1 Classification of employees. – The employees in the construction industry are generally categorized as a.) project employees and b.) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminous with each project or phase of the project to which they are assigned.

x x x x x x x x x

2.3 Project completion and rehiring of workers. –

x x x x x x x x x

b.) Upon completion of the project or a phase thereof, the project employee may be rehired for another undertaking provided, however, that such rehiring conforms with the provisions of law and this issuance. In such case, the last day of service with the employer in the preceding project should be indicated in the employment agreement.

x x x x x x x x x

Thus, based on the foregoing provisions, an employment is generally deemed regular where: (i) the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, subject to exceptions, such as when one is a fixed, project or seasonal employee; or (ii) the employee has been engaged for at least a year, with respect to the activity he or she is hired, and the employment of such employee remains while such activity exists.

On the other hand, a project employee "is one whose employment has been fixed for a specific project or undertaking,

the completion or termination of which has been determined at the time of the engagement of the employee."[30] Thus, the "services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired."[31]

Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure. However, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project.[32] In addition, a project employee's work may or may not be usually necessary or desirable in the usual business or trade of the employer. Thus, the fact that a project employee's work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment.[33]

In *Lopez v. Irvine Construction Corp.*,[34] it was held that "the principal test for determining whether particular employees are properly characterized as 'project employees[,]' as distinguished from 'regular employees,' is whether or not the 'project employees' were assigned to carry out a 'specific project or undertaking,' the duration and scope of which were specified at the time the employees were engaged for that project."

In the instant case, in order to ascertain whether respondents were project employees, as claimed by ECCA, it is essential to

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[30] *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668, 679 (2017).

[31] *Id*.

[32] *William Uy Construction Corp. v. Trinidad*, 629 Phil. 185, 190 (2010).

[33] *Herma Shipyard, Inc. v. Oliveros*, *supra* note 31, at 684-685; see also *San Esteban v. Sowa Construction*, G.R. No. 241612 (Notice), December 3, 2018 citing *Palomares v. National Labor Relations Commission*, 343 Phil. 213, 223 (1997).

[34] 741 Phil. 728, 737 (2014); see also *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 191 (2016); and *William Uy Construction Corp. v. Trinidad*, *supra* at 191.

determine whether notice was given to them that they were being engaged just for a specific project, which notice must be made at the time of hiring.

We find that ECCA failed to present substantial evidence to show that it informed respondents of the duration and scope of their work at the time of their hiring. Upon careful review of the company's respective contracts of employment with respondents, this Court holds that the employment contracts were lacking in details to prove that respondents had been duly informed of the duration and scope of their work, and of their status as project employees at the time of their hiring. The respective contracts of respondents may have been dated at the time of their issuance, but nowhere did said contracts show as to when respondents supposedly signed or received the same or were informed of the contents thereof. This gives rise to the distinct possibility that respondents were not informed of their status as project employees, as well as the scope and duration of the projects that were assigned to them at the time of their engagement. Thus, ECCA failed to refute respondents' claim that they worked in new projects or they were transferred to other existing projects without the benefit of their corresponding employment contracts.[35] Therefore, ECCA failed to persuasively show that respondents herein were informed *at the time of their engagement* that their work was only for the duration of the project.

Moreover, ECCA failed to present other evidence or other written contracts to show that it informed respondents of the duration and scope of their work. Settled is the rule that "although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement. When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees."[36]

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[35] *Id.*; *See also Rollo*, Employment Contracts of respondents, pp. 82-126.

[36] *Quebral v. Angbus Construction, Inc.*, *supra* note 34 at 192; citations omitted.

In addition, We likewise note that the company did not submit a report with the DOLE of the termination of respondents' employment every time a project is completed, which is an indication that the workers were not project employees but regular ones.[37]

The employer has the burden to prove that an employee was hired for project employment.

It is necessary to note that an employer has the burden to prove that the employee is indeed a project employee. Thus, "the employer must establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specified at the time of engagement."[38]

However, this Court finds that ECCA failed to prove that it informed respondents, at the time of engagement, that they were hired as project employees. Hence, respondents were without prior notice of the duration and scope of their work. Indeed, "[w]hile the lack of a written contract does not necessarily make one a regular employee, a written contract serves as proof that employees were informed of the duration and scope of their work and their status as project employee at the commencement of their engagement."[39]

Therefore, without such proof, it is presumed that respondents are regular employees.[40]

Respondents were illegally terminated.

In view of ECCA's indisputable failure to discharge its burden to prove that respondents were project employees, We find that

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[37] D.O. No. 19, series of 1993, Section 2.2.(e); see also *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

[38] *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

[39] *Id.*

[40] *Quebral v. Angbus Construction, Inc.*, *supra* note 34 at 192.

the CA properly found them to be regular employees. Therefore, respondents, as regular employees, may only be dismissed for just or authorized causes and upon compliance with procedural due process, *i.e.*, notice and hearing.[41] This Court notes that completion of a project is not a valid cause to terminate regular employees, such as respondents herein.[42]

Since the foregoing requirements were not observed, this Court upholds the finding of the CA and Labor Arbiter that the respondents were illegally dismissed.

Finally, pursuant to prevailing jurisprudence, we hereby impose interest at the rate of six percent (6%) per *annum* on all the monetary awards from the finality of this Decision until paid in full.[43]

ACCORDINGLY, the instant Petition is **DENIED**. The assailed September 13, 2011 Decision and the March 22, 2012 Resolution of the Court of Appeals in CA G.R. SP No. 114599 are hereby **AFFIRMED with MODIFICATION** that interest at the rate of six percent (6%) per *annum* is imposed on all monetary awards from the finality of this Decision until fully paid. No pronouncement as to costs.

SO ORDERED.

Perlas-Bernabe (Chairperson), Leonen,[*] *Inting,* and *Delos Santos, JJ.,* concur.

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[41] *Lopez v. Irvine Construction Corp.*, 741 Phil. 728, 739 (2014).

[42] *Inocentes v. R. Syjuco Construction*, *supra* note 38.

[43] *Id*.

[*] Designated as Additional Member of the Second Division per Special Order No. 2780-QQ dated July 3, 2020.

FIRST DIVISION

[G.R. Nos. 217592-93. July 13, 2020]

BENITO T. KEH and GAUDENCIO S. QUIBALLO, *petitioners*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; *CERTIORARI* IS NOT A VIABLE REMEDY FOR THE DENIAL OF A MOTION TO QUASH A CRIMINAL INFORMATION; QUASHAL OF THE INFORMATION AND THE CONSEQUENT DISMISSAL OF THE CASE AT BAR WITHOUT PREJUDICE, NOT PROPER. —** [*C*]*ertiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information. Be that as it may, the pending petition for *certiorari* and *mandamus* in CA-G.R. SP No. 116798 has been mooted when the trial court eventually quashed the information which, in turn, gave rise to the petition in CA-G.R. CR No. 34411. The Court notes that the propriety of the action of the trial court in quashing the information is the lynchpin that will put to rest petitioners' present recourse. As the Court undertakes to bring such resolve, we declare the quashal of the information and the consequent dismissal of the case without prejudice to be out of order.

2. **MERCANTILE LAW; THE CORPORATION CODE; SECTION 74, IN RELATION TO SECTION 144 THEREOF; CORPORATE BOOKS AND RECORDS TO BE KEPT; THE CORPORATION HAS THE DUTY TO KEEP AND PRESERVE A RECORD OF ALL BUSINESS TRANSACTIONS AND MINUTES OF ALL MEETINGS OF STOCKHOLDERS, MEMBERS, OR THE BOARD OF DIRECTORS OR TRUSTEES, ALONG WITH THE DUTY TO MAKE SUCH RECORD AVAILABLE TO ITS STOCKHOLDERS OR MEMBERS UPON WRITTEN REQUEST THEREFOR; VIOLATION THEREOF INVITES CRIMINAL PROSECUTION AGAINST THE ERRING OFFICERS; ELEMENTS THEREOF. —** The underlying prosecution is for the alleged violation of Section 74 of the Corporation Code,

in relation to Section 144 thereof. Collectively, these provisions create the duty on the part of the corporation to keep and preserve a record of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or trustees, along with the duty to make such record available to its stockholders or members upon written request therefor; a violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties. Jurisprudence cites the elements of the subject offense as follows: First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes; Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and, Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; THE FUNDAMENTAL TEST IN DETERMINING THE SUFFICIENCY OF THE MATERIAL AVERMENTS IN AN INFORMATION IS WHETHER OR NOT THE FACTS ALLEGED THEREIN, WHICH ARE HYPOTHETICALLY ADMITTED, WOULD ESTABLISH THE ESSENTIAL ELEMENTS OF THE CRIME DEFINED BY LAW; EVIDENCE *ALIUNDE* OR MATTERS EXTRINSIC OF THE INFORMATION ARE NOT TO BE CONSIDERED; ELEMENTS OF THE OFFENSE OF VIOLATION OF SECTION 74, IN RELATION TO SECTION 144, OF THE CORPORATION CODE, SUFFICIENTLY ALLEGED IN THE INFORMATION IN THE CASE AT BAR. —** It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information. Be

that as it may, the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. Section 6, Rule 110 of the Revised Rules of Court only requires, among others, that it must state the acts or omissions so complained of as constitutive of the offense. Thus, the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered. Scrutinizing the subject information, the Court finds the allegations therein to be sufficient to propel a prosecution for the crime defined and punished under Section 74, in relation to Section 144, of the Corporation Code. *First*, that the first element of the offense is missing on its face is belied by the specific employment of the phrase "refuse, without showing any justifiable cause[,] to open to inspection x x x the corporate books and records," which reasonably implies that a prior request for access to information has been made upon petitioners. To be sure, refusal is understood quite simply as the act of refusing or denying; a rejection of something demanded, solicited, or offered for acceptance. In some cases, refusal is meant as a neglect to perform a duty which the party is required by law or his agreement to do. *Second*, that the information, in order to validly charge petitioners, should have alleged as well the fourth element of the offense is, to our mind, an undue exaction on the prosecutor to include extraneous matters that must be properly addressed during the trial proper. The fourth element of the offense unmistakably pertains to a matter of defense — specifically, a justifying circumstance — that must be pleaded by petitioners at the trial in open court rather than at the indictment stage. Thus, as a justifying circumstance which could potentially exonerate the accused from liability, its function is to merely take the burden of proof from the shareholder and place it on the corporation. It suffices to say that these matters have already been put forth before and addressed by the OCP in the resolution from which the subject information took off.

4. ID.; ID.; ID.; THE SUFFICIENCY OF THE ALLEGATIONS IN THE INFORMATION SERVES THE FUNDAMENTAL RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE OF THE CHARGE AND TO ENABLE HIM TO SUITABLY AND ADEQUATELY PREPARE HIS

DEFENSE, AS HE IS PRESUMED TO HAVE NO INDEPENDENT KNOWLEDGE OF THE FACTS THAT CONSTITUTE THE OFFENSE. — Indeed, the sufficiency of the allegations in the information serves the fundamental right of the accused to be informed of the nature of the charge and to enable him to suitably and adequately prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense. In the instant petition, we find that petitioners, by the subject information, have been fully informed of the offense with which they have been charged and to which they have pleaded and have thus far been tried. Given the undue termination of petitioners' prosecution before the trial court, however, a remand for further proceedings is in order.

APPEARANCES OF COUNSEL

Francisco Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Petitioners Benito T. Keh and Gaudencio S. Quiballo assail the April 28, 2014 Decision[1] and the March 23, 2015 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 116798[3] and CA-G.R. CR No. 34411.[4] The assailed decision affirmed the August 25, 2011 Order[5] of the Regional Trial Court *(RTC)*

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[1] *Rollo*, pp. 98-117. Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

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

[3] Entitled *Benito T. Keh and Gaudencio S. Quiballo v. Presiding Judge Emma C. Matammu, etc., et al.*

[4] Entitled *People of the Philippines v. Benito T. Keh and Gaudencio S. Quiballo.*

[5] *Rollo*, pp. 834-837.

of Valenzuela City, Branch 269, which directed to quash the subject criminal information. As the consequent dismissal is without prejudice, this petition for review on *certiorari*[6] now seeks the penultimate dismissal of the underlying criminal case — one for violation of Section 74, in relation to Section 144, of the Corporation Code.

Petitioners Keh and Quiballo, respectively the chairman/ president and the corporate secretary of Ferrotech Steel Corporation, were charged before the Office of the City Prosecutor *(OCP)* of Valenzuela City with violation of Section 74, in relation to Section 144, of the Corporation Code, allegedly for their unjustified refusal to open the corporate books and records to one of their stockholders, Ireneo C. Quizon.[7] The OCP found probable cause, and resolved[8] to file the Information[9] before the RTC of Valenzuela City.

Petitioners filed a motion for reconsideration[10] of the OCP Resolution and, on that ground, filed a motion before the trial court for deferment of arraignment, suspension of proceedings, and quashal of the information; they likewise pleaded the trial

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[6] *Id.* at 26-90.

[7] Records, pp. 63-65.

[8] *Id.* at 4-5. Resolution dated January 5, 2010.

[9] *Id.* at 1. The indictment reads:

The undersigned State Prosecutor accuses BENITO T. KEH and GAUDENCIO S. QUIBALLO of the crime of "Violation of Section[s] 74 & 75 in relation to Sec. 144 of the Corporation [Code,]" committed as follows:

That on or about June 30, 2009 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being the Chairman/President and Corporate Secretary of Ferrotech Steel Corporation existing under Philippine Law and with principal office in Ugong, Valenzuela City, conspiring together and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously refuse, without showing any justifiable cause[,] to open to inspection to IRENEO C. QUIZON, a stockholder of said corporation[,] the [corporate] books and records of said corporation.

CONTRARY TO LAW.

[10] *Id.* at 379-397. Motions to Defer Proceedings, particularly Arraignment; to Determine Probable Cause; and/or to Quash the Information.

court to make its own determination of probable cause. The trial court denied this motion in its June 15, 2010 Order,[11] and set petitioners for arraignment instead.

Before they could be arraigned, petitioners filed Omnibus Motions[12] for inhibition of the presiding judge and for reconsideration of the June 15, 2010 Order on the ground that the information did not contain all the elements of the charge. Partially acting on the motion, the presiding judge voluntarily recused himself from the proceedings. The case was then raffled to Branch 269[13] which, in its November 9, 2010 Order,[14] denied the reconsideration sought on the ground that the proffered arguments related to evidentiary matters which ought to be brought to trial. As to the determination of probable cause, the trial court rightly declared that the trial court judge does determine probable cause but only with respect to the propriety of issuing a warrant of arrest.[15]

As the trial court declined to suspend the proceedings, to postpone the arraignment, and to quash the information and/or determine probable cause on its own, petitioners filed a Petition for *Certiorari* and *Mandamus* before the Court of Appeals against the June 15, 2010 and November 9, 2010 Orders. This petition was docketed as CA-G.R. SP No. 116798.[16]

Petitioners were arraigned and tried in the interim. The prosecution formally offered its evidence after having presented the principal complainant and sole witness, Ireneo Quizon, who openly professed the denial by petitioners of access to the corporate books despite his two written demands.[17]

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[11] *Id.* at 453-457.

[12] *Id.* at 459-469.

[13] Presided by Judge Emma C. Matammu.

[14] Records, pp. 537-538.

[15] *Id.* at 538.

[16] CA *rollo* (CA-G.R. SP No. 116798), pp. 3-25.

[17] Records, pp. 773-806, 808, and 810-815.

Petitioners then filed Omnibus Motions *Ex Abundante Ad Cautelam* and Demurrer to Evidence,[18] still insisting on the quashal of the supposed defective Information, as well as on the dismissal of the case on improper venue and insufficiency of evidence. Agreeing with petitioners this time, the trial court, in its August 25, 2011 Order,[19] directed the quashal of the information for being defective. Accordingly, it dismissed the criminal case without prejudice as follows:

WHEREFORE, the motion to quash the Information is hereby GRANTED. Accordingly, the instant case is hereby DISMISSED without prejudice.

SO ORDERED.[20]

Still feeling aggrieved, petitioners appealed to the Court of Appeals and bid for a dismissal with prejudice on the ground that the eventual re-filing of the case would amount to double jeopardy. Here, they reiterated the supposed defective and insufficient allegations contained in the information, and insisted on its quashal, as well as on the dismissal of the criminal case with prejudice. This appeal was docketed as CA-G.R. CR No. 34411.[21]

Disposing the two incidents, the Court of Appeals denied relief from petitioners in the assailed consolidated Decision as follows:

WHEREFORE, in the light of the foregoing premises, We hereby DENY the appeal in CA-[G.R.] CR No. 34411 and DISMISS the Petition for *Certiorari* in CA-[G.R.] SP No. 116798.

SO ORDERED.[22]

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[18] *Id.* at 824-843.

[19] *Id.* at 857-860.

[20] *Id.* at 860.

[21] CA *rollo* (CA-G.R. CR No. 34411), pp. 24-47; and Notice of Appeal, records, pp. 862-864.

[22] *Rollo*, p. 117.

In their present bid to secure the dismissal of the case with prejudice, petitioners ascribe error to the Court of Appeals in (a) upholding the dismissal of the case without prejudice; (b) holding that there was no reason for the trial court to await the resolution of the OCP of the motion for reconsideration since there was no existing motion to impede the arraignment of petitioners; (c) holding that the trial court's order to rebuff the motion to quash was a mere interlocutory order and not subject to an appeal; and (d) ruling that *certiorari* and prohibition were improper remedies against an order denying a motion to quash.[23]

We deny the petition.

To start with, *certiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information.[24] Be that as it may, the pending petition for *certiorari* and *mandamus* in CA-G.R. SP No. 116798 has been mooted when the trial court eventually quashed the information which, in turn, gave rise to the petition in CA-G.R. CR No. 34411. The Court notes that the propriety of the action of the trial court in quashing the information is the lynchpin that will put to rest petitioners' present recourse. As the Court undertakes to bring such resolve, we declare the quashal of the information and the consequent dismissal of the case without prejudice to be out of order.

The underlying prosecution is for the alleged violation of Section 74[25] of the Corporation Code, in relation to

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

[24] See *Navaja v. Hon. De Castro, et al.*, 761 Phil. 142, 160 (2015).

[25] Sec. 74. *Books to be kept; stock transfer agent*. — Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made.

Section 144[26] thereof. Collectively, these provisions create the duty on the part of the corporation to keep and preserve a record

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The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfers of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: Provided, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable.

[26] Sec. 144. Violations of the Code. Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall

of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or trustees, along with the duty to make such record available to its stockholders or members upon written request therefor; a violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties.

Jurisprudence cites the elements of the subject offense as follows:

> First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;
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> Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;
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> Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,
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> Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[27]

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be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

[27] *Ang-Abaya, et al. v. Ang*, 593 Phil. 530, 543-544 (2008).

Meanwhile, the criminal information filed by the OCP with the trial court alleged that petitioners —

being the Chairman/President and Corporate Secretary of Ferrotech Steel Corporation x x x, conspiring together and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously refuse, without showing any justifiable cause[,] to open to inspection to IRENEO C. QUIZON, a stockholder of said corporation[,] the [corporate] books and records of said corporation.[28]

In its August 25, 2011 Order, the trial court perceived the above allegations to be insufficient to support the charge for which petitioners have thus far been prosecuted. It noted the absence in the subject indictment of the first and fourth elements of the offense, and held the same to be a fatal defect that inevitably should avoid the criminal information.[29] This pronouncement was validated in the assailed April 28, 2014 Decision of the Court of Appeals, where the appellate court went on to say that the information was not merely defective, but rather, it did not charge any offense at all.[30] We differ.

It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information.[31] Be that as it may, the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. Section 6,[32] Rule 110 of the Revised Rules of Court only requires, among others, that it must state the acts or omissions so complained of as

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[28] Records, p. 1.

[29] *Id.* at 859.

[30] *Rollo*, p. 115.

[31] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).

[32] Sec. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

constitutive of the offense. Thus, the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered.[33]

Scrutinizing the subject information, the Court finds the allegations therein to be sufficient to propel a prosecution for the crime defined and punished under Section 74, in relation to Section 144, of the Corporation Code. *First*, that the first element of the offense is missing on its face is belied by the specific employment of the phrase "refuse, without showing any justifiable cause[,] to open to inspection x x x the corporate books and records," which reasonably implies that a prior request for access to information has been made upon petitioners. To be sure, refusal is understood quite simply as the act of refusing or denying; a rejection of something demanded, solicited, or offered for acceptance.[34] In some cases, refusal is meant as a neglect to perform a duty which the party is required by law or his agreement to do.[35]

Second, that the information, in order to validly charge petitioners, should have alleged as well the fourth element of the offense is, to our mind, an undue exaction on the prosecutor to include extraneous matters that must be properly addressed during the trial proper. The fourth element of the offense unmistakably pertains to a matter of defense — specifically, a justifying circumstance — that must be pleaded by petitioners at the trial in open court rather than at the indictment stage. Thus, as a justifying circumstance which could potentially exonerate the accused from liability, its function is to merely

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[33] *People v. Odtuhan*, 714 Phil. 349, 356 (2013).

[34] Webster's Third New International Dictionary of the English Language (1993).

[35] A Law Dictionary, Adapted to the Constitution and Laws of the United States, John Bouvier (1856). See also https://legal-dictionary.thefreedictionary.com/Refusal (last visited February 7, 2020).

take the burden of proof from the shareholder and place it on the corporation.[36] It suffices to say that these matters have already been put forth before and addressed by the OCP in the resolution from which the subject information took off.[37]

Indeed, the sufficiency of the allegations in the information serves the fundamental right of the accused to be informed of the nature of the charge and to enable him to suitably and adequately prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[38] In the instant petition, we find that petitioners, by the subject information, have been fully informed of the offense with which they have been charged and to which they have pleaded and have thus far been tried. Given the undue termination of petitioners' prosecution before the trial court, however, a remand for further proceedings is in order.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The April 28, 2014 Decision of the Court of Appeals in CA-G.R. CR No. 34411 and CA-G.R. SP No. 116798 is **SET ASIDE**. Let this case be **REMANDED** to the Regional Trial Court of Valenzuela City, Branch 269, for further proceedings with deliberate dispatch.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[36] *Sy Tiong Shiou, et al. v. Sy Chim, et al.*, 601 Phil. 510, 525 (2009).

[37] Records, pp. 4-5.

[38] See *People v. Dimaano*, 506 Phil. 630, 649-650 (2005).

FIRST DIVISION

[G.R. No. 221216. July 13, 2020]

LAND BANK OF THE PHILIPPINES, *petitioner*, *vs*. **HEIRS OF LEONCIO BARRAMEDA**, *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 6657); EXPROPRIATION; JUST COMPENSATION MUST NOT EXTEND BEYOND THE PROPERTY OWNER'S LOSS OR INJURY, AS UNDERVALUATION WOULD DEPRIVE THE OWNER OF HIS PROPERTY WITHOUT DUE PROCESS, SO TOO WOULD ITS OVERVALUATION UNDULY FAVOR HIM TO THE PREJUDICE OF THE PUBLIC; THUS, THE COMPENSATION TO BE PAID MUST BE TRULY JUST, NOT ONLY FOR THE OWNER WHOSE PROPERTY WAS TAKEN, BUT ALSO TO THE PUBLIC WHO BEARS THE COST OF EXPROPRIATION; THE COMPENSATION FOR EXPROPRIATED PROPERTY MUST BE FAIR, REASONABLE, AND PAID WITHOUT DELAY, FOR ABSENT PROMPT PAYMENT DESPITE THE TAKING OF THE PROPERTY, THE OWNER SUFFERS IMMEDIATE DEPRIVATION NOT ONLY OF HIS LAND, BUT ALSO OF ITS FRUITS OR INCOME. —** Just compensation carries the invariable definition of being the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. As a modifier to the word compensation, "just" means that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample. On every occasion, as well, the true measure of just compensation is not the expropriator's gain but the owner's loss. Necessarily, just compensation must not extend beyond the property owner's loss or injury. Even as undervaluation would deprive the owner of his property without due process, so too would its

overvaluation unduly favor him to the prejudice of the public. In this manner, the compensation to be paid is truly just, not only for the owner whose property was taken, but also to the public who bears the cost of expropriation. Apart from the requirement that the compensation for expropriated property must be fair and reasonable, the payment must also be made without delay. Absent prompt payment despite the taking of the property, the owner suffers immediate deprivation not only of his land, but also of its fruits or income.

2. **ID.; ID.; ID.; WHEN PROPERTY OWNERS ARE DEPRIVED OF THEIR LANDS WITHOUT BEING PROPERLY COMPENSATED AT THE TIME OF TAKING, INTEREST ON JUST COMPENSATION IS DUE FOR THE PURPOSE OF COMPENSATING THE PROPERTY OWNERS FOR THE INCOME THAT THEY WOULD HAVE OTHERWISE MADE, WHICH DELAY MUST BE SUFFICIENTLY ESTABLISHED. —** [W]hen property owners are deprived of their lands without being properly compensated at the time of taking, interest on just compensation is due for the purpose of compensating the property owners for the income that they would have otherwise made. In *Republic v. Mupas*, we held: x x x. Thus, **interest in eminent domain cases "runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking."** As elucidated in *Apo Fruits Corporation v. Landbank of the Phils.*: We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that: [I]f property is taken for public use before compensation is deposited with the court having jurisdiction over the case, **the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue** in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. In other words, interest on just compensation is imposed when there is delay in the full payment thereof, which delay must be sufficiently established.

3. **ID.; ID.; ID.; PAYMENT OF JUST COMPENSATION SHOULD BE RECKONED FROM THE DATE OF TAKING WHEN SUCH PRECEDED THE FILING OF THE COMPLAINT FOR EXPROPRIATION; IN EXCEPTIONAL CIRCUMSTANCES, PAYMENT OF JUST COMPENSATION MAY BE RECKONED FROM THE TIME THE PROPERTY OWNERS INITIATED INVERSE CONDEMNATION PROCEEDINGS NOTWITHSTANDING THAT THE ACTUAL TAKING OF THE PROPERTIES OCCURRED EARLIER; THE ACCRUAL OF THE PAYMENT OF INTEREST, WHEN THERE IS DELAY, FOLLOWS THE RECKONING POINT WHEN JUST COMPENSATION SHOULD HAVE BEEN PAID. —** The rule is that the payment of just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first. As such, payment of just compensation should be reckoned from the date of taking when such preceded the filing of the complaint for expropriation. In exceptional circumstances, payment of just compensation may be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the actual taking of the properties occurred earlier. Whether it is the general rule or the exception that is applied, the accrual of the payment of interest, when there is delay, follows the reckoning point when just compensation should have been paid. In the case at bar, the time of taking, or the time when the owner was deprived of the use and benefit of his property, is the date when the title or the emancipation patents were issued in the names of the farmer-beneficiaries on April 16, 1990. Thus, ordinarily, the property should have been valued as of April 16, 1990 for purposes of computing just compensation, and the interest due to delay should have been reckoned on said date. However, x x x we find meritorious LBP's contention that interest should be reckoned from July 1, 2009, instead of April 16, 1990.

4. **ID.; ID.; ID.; THE UNPAID LANDOWNERS WHOSE CLAIMS WERE COVERED UNDER P.D. NO. 27 AND E.O. NO. 228 AND REVALUED UNDER R.A. NO. 6657 OR R.A. NO. 9700, ARE NO LONGER ALLOWED TO AVAIL OF THE 6% INCREMENTAL INTEREST UNDER A.O. NO. 13-94 AND ITS AMENDATORY ORDERS, AS THE UPDATED VALUES UNDER A.O. NO. 01-10, WHICH TOOK EFFECT ON JULY 1, 2009, ANSWER FOR THE INEQUITY THAT THE UNPAID LANDOWNERS**

SUFFERED ON ACCOUNT OF THE DELAY IN THE PAYMENT OF JUST COMPENSATION.— On July 1, 2009, A.O. No. 01-10 took effect and likewise covered those lands which were already distributed to the farmer-beneficiaries but the documentation and/or valuation are/is not yet complete. However, unlike P.D. No. 27, E.O. No. 228, A.O. No. 13-94 and its amendatory orders, the values used to determine the land value for purposes of computing just compensation were not those of 1972, but were reckoned on June 30, 2009 x x x. Since the values used were already updated as of June 30, 2009, the unpaid landowners whose claims were covered under P.D. No. 27 and E.O. No. 228 and revalued under R.A. No. 6657, were no longer allowed to avail of the 6% incremental interest under A.O. No. 13-94 and its amendatory orders. In other words, the updated values under A.O. No. 01-10 answer for the inequity that the unpaid landowners suffered on account of the delay in the payment of just compensation.

5. ID.; ID.; ID.; INTEREST ON ACCOUNT OF DELAY SHOULD BE RECKONED FROM JULY 1, 2009 UNTIL ACTUAL PAYMENT ON NOVEMBER 19, 2013, AS THERE WILL BE DOUBLE IMPOSITION OF INTEREST ON ACCOUNT OF DELAY IF SUCH INTEREST SHALL BE RECKONED FROM THE DATE OF TAKING ON APRIL 16, 1990, DESPITE THE USE OF THE UPDATED VALUES UNDER A.O. NO. 01-10. — [T]he formula under A.O. No. 01-10 was used by LBP to arrive at the computation for the payment of compensation. The use of this formula was approved by the RTC-SAC and the CA, and was no longer contested by the heirs of Barrameda. Following the Court's reasoning in Puyat and Imperial, there will be double imposition of interest on account of delay if such interest shall likewise be reckoned from the date of taking on April 16, 1990, despite the use of the updated values under A.O. No. 01-10. Given that the application of the formula under A.O. No. 01-10 sufficiently answers for the delay suffered by the landowners from the time of taking up to June 30, 2009, the imposition of legal interest is justified only if the landowner thereafter remains unpaid. In that case, interest should be reckoned from July 1, 2009 up to actual payment. Considering that the entire amount of compensation in this case was paid only on November 19, 2014, such should earn legal interest reckoned from July 1, 2009 until November 19, 2013.

6. **ID.; ID.; ID.; THE DELAY IN THE PAYMENT OF JUST COMPENSATION IS A FORBEARANCE OF MONEY; THUS, IS ENTITLED TO EARN INTEREST; THE DIFFERENCE IN THE AMOUNT BETWEEN THE INITIAL PAYMENT MADE BY THE GOVERNMENT AND FINAL AMOUNT OF JUST COMPENSATION AS ADJUDGED BY THE COURT, SHOULD EARN LEGAL INTEREST AS A FORBEARANCE OF MONEY; THE AMOUNT OF JUST COMPENSATION DUE TO THE RESPONDENTS FOR THEIR EXPROPRIATED PROPERTY COMPUTED PURSUANT TO A.O. NO. 01-10, SHALL EARN INTEREST AT THE RATE OF 12% PER ANNUM FROM JULY 1, 2009 UNTIL JUNE 30, 2013, AND, THEREAFTER, AT THE RATE OF 6% UNTIL NOVEMBER 19, 2013. —** In *Evergreen Manufacturing Corporation v. Republic*, the Court explained the nature of the delay in the payment of just compensation, as follows: x x x. x x x. **The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest.** The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government – which is part and parcel of the just compensation due to the property owner – should earn legal interest as a forbearance of money. In *Republic v. Mupas*, we stated clearly: x x x **Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation.** x x x**. With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals*, and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.** In this case, the compensation in the amount of ₱653,818.99 computed pursuant to A.O. No. 01-10 shall earn interest at the rate of 12% per annum from July 1, 2009 until June 30, 2013, and, thereafter, at the rate of 6% until November 19, 2013.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Fe Rosario Pejo-Buelva for respondents.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 assails the Decision[2] dated March 26, 2015 and the Resolution[3] dated October 29, 2015 of the Court of Appeals (CA) which affirmed with modification the ruling of the Regional Trial Court sitting as a Special Agrarian Court (RTC-SAC). Petitioner Land Bank of the Philippines (LBP) imputes error on the part of the CA when it imposed a 12% interest per annum on the amount of just compensation on account of LBP's delay in payment which the CA reckoned from the issuance of the emancipation patents in favor of the farmer-beneficiaries.

Facts

The facts are undisputed. Leoncio Barrameda (Barrameda) was the registered owner of a parcel of land located at San Jose, Camarines Sur and covered by Transfer Certificate of Title (TCT) No. RT-8786 with an area of 6.1415 hectares. Upon his death, the property was transferred to his heirs (heirs of Barrameda). A 5.7602-hectare portion of said property was placed under the coverage of Presidential Decree (P.D.) No. 27[4] and was distributed as follows: (1) 1.6900 hectares in favor of Ester Pejo; (2) 1.5814 hectares in favor of Damian C. Pilapil; and

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[1] *Rollo*, pp. 11-29.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy, concurring; *id.* at 30-41.

[3] *Id.* at 44.

[4] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land they Till and Providing the Instruments and Mechanism Therefor, October 21, 1972.

(3) 2.5885 hectares in favor of Juan P. Sarcilla. The corresponding emancipation patents and tax declarations were issued in the names of said farmer-beneficiaries.

On September 20, 2000, the heirs of Barrameda filed a complaint for determination and payment of just compensation against the Department of Agrarian Reform (DAR) Secretary and the LBP. They alleged that the farmer-beneficiaries had been in possession of the property since 1972 and that the DAR and the LBP failed to pay just compensation despite demands. They prayed for the payment of just compensation at ₱150,000.00 per hectare.

By way of answer,[5] DAR and LBP contended that the amount of just compensation should be computed pursuant to Section 1 of P.D. No. 27 and Section 2 of Executive Order (E.O.) No. 228.[6] They argued that since the property was placed under the coverage of P.D. No. 27 and at the time Republic Act (R.A.) No. 6657[7] or the Comprehensive Agrarian Reform Law (CARL) took effect the valuation process thereof has not yet been completed, the valuation should be governed by Section 17 of R.A. No. 6657.

They further argued that Section 17 of R.A. No. 6657 has been formularized by the DAR under Administrative Order No. 1, Series of 2010 (A.O. No. 01-10). Under A.O. No. 01-10, the annual gross production (AGP) should be that corresponding to the latest available 12 months' gross production immediately preceding June 30, 2009; the selling price (SP) should be the

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[5] *Rollo*, p. 113.

[6] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject of P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and mode of Compensation to the Landowner, July 17, 1987.

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

average of the latest available 12 months' selling prices prior to June 30, 2009; and the market value (MV) per tax declaration should be the latest tax declaration and schedule of unit of market value (SUMV) prior to June 30, 2009, and that the MV shall be grossed-up to June 30, 2009.[8] As, thus, computed, they prayed that the property be valued at ₱113,506.30 per hectare.[9]

Ruling of the RTC-SAC

In its Decision dated August 15, 2013, the RTC-SAC upheld LBP's valuation. It ruled that LBP's valuation as prescribed by A.O. No. 01-10 was just and reasonable.[10] Nevertheless, it found that LBP was guilty of delay in the payment of just compensation. Thus, the RTC-SAC imposed a 12% interest per annum on the total amount of just compensation of ₱653,818.99 reckoned from January 1998, or the time when tax declarations were issued in the names of the farmer-beneficiaries, up to the time said amount shall have been fully paid.[11]

The RTC-SAC disposed:

> WHEREFORE, premises considered, judgment is hereby rendered fixing the just compensation of the subject property at [₱]653,818.99 plus interest at the rate of 12% per annum counted from January 1998 up to the time the said amount shall have been fully paid.
>
> SO ORDERED.[12]

LBP moved for partial reconsideration as regards the imposition of the 12% interest reckoned from January 1998 as it was allegedly tantamount to an award of excess damages. According to the LBP, the amount of ₱653,818.99 was determined using valuation factors updated as of July 2009. As such, the interest which may be considered from January 1998 was already included and

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[8] *Rollo*, pp. 120-121.

[9] *Id.* at 122.

[10] *Id.* at 32.

[11] *Id.* at 79.

[12] *Id.* at 30.

reflected in the value of ₱653,818.99.[13] Should it be made to pay interest, LBP argued that it should be at the rate of 12% reckoned from the finality of the decision until full payment.[14] The RTC-SAC denied LBP's motion on the ground that "[t]he fact[s] that the LBP valued the property using [June 30, 2009] values and that the LBP valuation was upheld by the court, do not change the fact that [the heirs of Barrameda] [were] deprived of [their] property without having paid its just value."[15]

Consequently, LBP elevated the case to the CA, arguing that the RTC-SAC erred in imposing interest on the full amount of just compensation reckoned from January 1998. It was LBP's position that since the valuations used, *i.e.*, AGP, SP, and MV, in determining the just compensation were current or were pegged on June 30, 2009, it should not be made liable to pay for interest reckoned from January 1998. However, in an apparent shift of its alternate theory, LBP argued that assuming it is liable to pay for interest, such should be reckoned only from June 30, 2009. Finally, LBP argued that the interest rate should be 6%, rather than 12%, pursuant to Article 2209 of the Civil Code.[16]

Meanwhile, a few days after it filed its appeal before the CA, or on November 19, 2013, LBP deposited in cash the amount of ₱65,381.90 and in bonds the amount of ₱588,437.09, for the total amount of ₱653,818.99, as compensation for the property.[17]

Ruling of the CA

In denying LBP's appeal, the CA reasoned that the provisions of A.O. No. 01-10 should not be taken to mean that the actual time of taking of the property was June 30, 2009 as said provisions merely provide the formula in determining just compensation.

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[13] *Id.* at 70.

[14] *Id.* at 71.

[15] *Id.* at 74.

[16] *Id.* at 84-85.

[17] *Id.* at 67.

Moreover, the CA held that there is no such "statutory date of taking" in agrarian reform cases and that the taking of landholdings or properties covered by P.D. No. 27 should be reckoned from the issuance of emancipation patents.[18] The CA disregarded LBP's position that the interest was already included in the value of ₱653,818.99. It ruled that while double imposition of interest was proscribed in cases where the legal interest was deemed included in the valuation, such cases involved valuations of just compensation computed in accordance with DAR Administrative Order No. 13, Series of 1994 (A.O. No. 13-94) which provides for a 6% annual interest. In this case, the CA ruled that the just compensation was computed in accordance with A.O. No. 01-10 which did not contain a similar provision regarding the imposition of interest.[19]

According to the CA, since LBP took a considerable length of time to pay the just compensation, the imposition of interest at the rate of 12% per annum was justified. The 6% rate, according to the CA, finds significance in labor cases as in *Nacar v. Gallery Frames*[20] but not in the determination of just compensation. However, considering that the records before the CA were insufficient to determine when the emancipation patents were issued as to determine the date of taking, the CA remanded the case to the RTC-SAC to receive evidence pertaining to the actual date of issuance of said emancipation patents.

In disposal, the CA held:

WHEREFORE, the Decision dated August 15, 2013 of the Regional Trial Court [Branch 23, Naga City] in Civil Case No. 2000-0143 is ***AFFIRMED*** with the ***MODIFICATION*** in that the 12% interest per annum on the amount of just compensation ([₱]653,818.99) shall be reckoned from the actual time of taking of the subject property. For this purpose, the Regional Trial Court [Branch 23, Naga City] is hereby ORDERED to proceed with deliberate dispatch to receive

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[18] *Id.* at 35.

[19] *Id.*

[20] 716 Phil. 267 (2013).

evidence pertaining to the actual date when the emancipation patents were issued to the farmer-beneficiaries, which shall serve as the reckoning point for the imposition of the interest.

SO ORDERED.[21]

Its motion for reconsideration having been denied, LBP resorts to the present petition.

In this petition, LBP reiterates its argument that its use of the current valuation as prescribed under A.O. No. 01-10 negates compensable loss of the landowner from the time of actual taking until June 30, 2009.[22] It asserts that any loss which the landowner may have suffered has already been offset by the increase in valuation under A.O. No. 01-10.[23] Assuming it is liable for interest, LBP maintains that the rate thereof should be 6%, rather than 12%, in accordance with BSP Monetary Board Circular No. 799, Series of 2013.

Commenting on the petition, the heirs of Barrameda contend that just compensation should be reckoned from the date of taking which were the issue dates of emancipation patents on April 16, 1990.[24] They also argue that the CA was correct in imposing a 12% interest by way of damages because LBP incurred delay in the payment of just compensation.[25]

Issues

There is no dispute as regards the valuation and computation of the just compensation in the instant case. There is likewise no dispute that LBP incurred delay in the payment of just compensation as the properties had been distributed to the farmer-beneficiaries and emancipation patents were issued on April 16,

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[21] *Rollo*, p. 40.

[22] *Id.* at 16.

[23] *Id.* at 20.

[24] *Id.* at 132. Copies of the Emancipation Patents issued to the farmer-beneficiaries were attached to the Comment; *id.* at 134-145.

[25] *Id.*

1990, while the payment for just compensation was deposited by the LBP only on November 19, 2013.

The controversy lies as to whether interest on account of LBP's delay in the payment of just compensation should be reckoned from the issuance of the emancipation patents on April 16, 1990, as the CA held, or from June 30, 2009, as LBP argues, considering that the valuation at that time was used in determining just compensation. If interest were due, the further question is which between the rate of 12% and 6% should be used.

Ruling of the Court

The petition is partly meritorious.

Just compensation must be fair, reasonable, and paid without delay

Just compensation carries the invariable definition of being the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government.[26] As a modifier to the word compensation, "just" means that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.[27]

On every occasion, as well, the true measure of just compensation is not the expropriator's gain but the owner's loss.[28] Necessarily, just compensation must not extend beyond the property owner's loss or injury. Even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice

[26] *Landbank of the Philippines v. Orilla*, 578 Phil. 663, 676 (2008).

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

[28] *Republic v. Mupas*, 785 Phil. 40, 64 (2.016) citing *Republic v. Asia Pacific Integrated Steel Corp.*, 729 Phil. 402 (2014).

of the public. In this manner, the compensation to be paid is truly just, not only for the owner whose property was taken, but also to the public who bears the cost of expropriation.[29]

Apart from the requirement that the compensation for expropriated property must be fair and reasonable, the payment must also be made without delay. Absent prompt payment despite the taking of the property, the owner suffers immediate deprivation not only of his land, but also of its fruits or income.[30]

Interest compensates for delay in the payment of compensation for property already taken

Consequently, when property owners are deprived of their lands without being properly compensated at the time of taking, interest on just compensation is due for the purpose of compensating the property owners for the income that they would have otherwise made.[31] In *Republic v. Mupas*,[32] we held:

Ideally, just compensation should be immediately made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property.

However, if full compensation is not paid for the property taken, then the State must pay for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived. Interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.

Thus, **interest in eminent domain cases "runs as a matter of law and follows as a matter of course from the right of the landowner**

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[29] *Id.* at 64, citing *B.H. Berkenkotter & Co. v. Court of Appeals*, 290-A Phil. 371 (1992).

[30] *Apo Fruits Corporation v. Landbank of the Phils.*, (Resolution), 647 Phil. 251, 273 (2010).

[31] *Evergreen Manufacturing Corp. v. Republic*, 817 Phil. 1048 (2017).

[32] 769 Phil. 21 (2015).

to be placed in as good a position as money can accomplish, as of the date of taking." (Emphasis supplied)

As elucidated in *Apo Fruits Corporation v. Landbank of the Phils.*:[33]

> We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
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>> [I]f property is taken for public use before compensation is deposited with the court having jurisdiction over the case, **the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue** in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. (Emphasis supplied)

In other words, interest on just compensation is imposed when there is delay in the full payment thereof, which delay must be sufficiently established.[34]

The rule is that the payment of just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first. As such, payment of just compensation should be reckoned from the date of taking when such preceded the filing of the complaint for expropriation.[35] In exceptional circumstances,[36] payment of just compensation may be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the actual taking of the

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[33] *Apo Fruits Corporation v. Landbank of the Philippines*, *supra* note 30.

[34] *Landbank of the Phils. v. Kumassie Plantation Co., Inc.*, 608 Phil. 523 (2009).

[35] *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 713 Phil. 55 (2013).

[36] See *National Power Corporation v. Heirs of Macabangkit Sangkay*, 671 Phil. 569, 597 (2011).

properties occurred earlier. Whether it is the general rule or the exception that is applied, the accrual of the payment of interest, when there is delay, follows the reckoning point when just compensation should have been paid.

In the case at bar, the time of taking, or the time when the owner was deprived of the use and benefit of his property, is the date when the title or the emancipation patents were issued in the names of the farmer-beneficiaries[37] on April 16, 1990. Thus, ordinarily, the property should have been valued as of April 16, 1990 for purposes of computing just compensation, and the interest due to delay should have been reckoned on said date.

However, for reasons hereunder discussed, we find meritorious LBP's contention that interest should be reckoned from July 1, 2009, instead of April 16, 1990.

Just compensation in this case was determined following the formula prescribed under A.O. No. 01-10

To reiterate, the parties no longer dispute the formula used as well as the amount of the just compensation due in this case. However, to resolve the ultimate issue on when interest on account of delay should accrue, a clear recount of the law and the formula applied in this case is in order.

Settled is the rule that when the acquisition process under P.D. No. 27 remains incomplete or when the government does not pay the landowner his just compensation until after the effectivity of R.A. No. 6657 in 1988, the process should be completed under the new law,[38] with P.D. No. 27 and E.O. No. 228 to be applied suppletorily.[39] The reason for this is stated in *Landbank of the Philippines v. Natividad*:[40]

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[37] *Landbank of the Phils. v. Heirs of Tapulado*, 807 Phil. 74 (2017).

[38] *Landbank of the Phils. v. Heirs of Puyat*, 689 Phil. 505, 514-515 (2012).

[39] *Paris v. Alfeche*, 416 Phil. 473, 488 (2001).

[40] 497 Phil. 738, 746-747 (2005).

It would certainly be inequitable to determine just compensation based on the guideline provided by [P.D. No. 27] considering the DAR's failure to determine just compensation for a considerable length of time. That just compensation should be determined in accordance with [R.A. No. 6657], and not [P.D. No. 27] or [E.O. No. 228] is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.

R.A. No. 6657 provides sufficient factors to determine just compensation, thus, its provisions, particularly Section 17[41] thereof, governs. Even with the advent of R.A. No. 9700,[42] the completion and final resolution of all previously acquired lands wherein valuation is subject to challenge by the landowners shall still be made pursuant to Section 17 of R.A. No. 6657.[43]

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[41] Section 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by the government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

[42] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR; August 7, 2009.

[43] Section 5 of R.A. No. 9700 provides:

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

SEC. 7. *Priorities*. — The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

This is confirmed under DAR Administrative Order No. 2, Series of 2009 (A.O. No. 02-09)[44] which provides that with respect to land valuation, all claim folders received by the LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700.[45]

Equally settled is the rule that the RTC-SAC must consider the factors mentioned in Section 17 of R.A. No. 6657 as translated into the applicable formula prescribed by the DAR owing to the latter's expertise as implementing agency.[46] With respect to the DAR-prescribed formulae, specifically as regards the imposition of interest, pertinent to the case at bar are DAR A.O. No. 13-94,[47] and its amendatory rules (Administrative Order

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Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate land holdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: Provided, That with respect to voluntary land transfer only those submitted by June 30, 2009 shall be allowed. Provided, further, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: **Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, *as amended*:** x x x (Emphasis supplied)

[44] Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands under R.A. No. 6657, as amended by R.A. No. 9700.

[45] VI. TRANSITORY PROVISION

With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700. However, with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

[46] *Landbank of the Phils. v. Tapulado*, 807 Phil. 74, 84 (2017), citing *Alfonso v. Landbank of the Phils*.

[47] Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228; Adopted on October 27, 1994.

No. 2, Series of 2004 [A.O. No. 02-04][48] and Administrative Order No. 6, Series of 2008 [A.O. No. 06-08][49]), and A.O. No. 01-10.[50]

A.O. No. 13-94 grants an increment of 6% yearly interest compounded annually based on the land value as determined under the existing valuation formula. Under A.O. No. 13-94, to arrive at the land value, the AGP was determined in accordance with DAR Memorandum Circular No. 26, series of 1973, which pegs the value of the land to 2 ½ times the average gross harvest of three normal crop years immediately preceding October 21, 1972; and the government support price for *palay* and corn in 1972 was used.[51]

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[48] Amendment to Administrative Order No. 13, Series of 1994 Entitled "Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228"; Dated November 4, 2004.

[49] Amendment to DAR Administrative Order No. 2, S. of 2004 On The Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree (PD) No. 27 and Executive Order (EO) No. 228; Dated July 28, 2008.

[50] Rules and Regulations on Valuation and Landowners Compensation Involving Tenanted Rice and Corn Lands Under Presidential Decree (P.D.) No. 27 and Executive Order (E.O.) No. 228.

[51] IV. Increment Formula

The following formula shall apply:

For *palay*: LV = (2.5 x AGP x ₱35) x (1.06)n

For corn: LV = (2.5 x AGP x ₱31) x (1.06)n

where:

LV = Land Value

AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, series of 1973

₱35 = Government Support Price for *palay* in 1972 pursuant to Executive Order No. 228

₱31 = Government Support Price for corn in 1972 pursuant to Executive Order No. 228

n = number of years from date of tenancy up to effectivity date of this Order.

The 6% increment was sought to enhance the valuation of rice and corn under P.D. 27 and E.O. No. 228 to cover those instances where landowners were dispossessed of their lands but remained unpaid,[52] thus:

> Presidential Decree No. 27 issued on 21 October 1972 and Executive Order No. 228 dated 17 August 1987, declared the actual tenant-tillers as deemed full owners of the land they till, thereby resulting in the effective dispossession of the landowners of their lands. A number of these landholdings remain unpaid in view of the non-acceptance by the landowners of the compensation due to low valuation. Had the landowner been paid from the time of taking his land and the money deposited in a bank, the money would have earned the same interest rate compounded annually as authorized under the banking laws, rules and regulations.
>
> To address these problems, the Presidential Agrarian Reform Council (PARC), in its resolution dated 25 October 1994, approved the grant of an increment of six percent (6%) yearly interest compounded annually based on the land value as determined under existing valuation formula.[53]

The grant of the 6% yearly interest compounded annually was reckoned from October 21, 1972 up to November 1994 (if tenanted as of October 21, 1972), or from the date when the land was actually tenanted up to November 1994 (if tenanted after October 21, 1972).

Since a number of landowners remained unpaid even after November 1994, the prescribed period of computing the 6% annual interest compounded yearly was extended from November 1994 up to the date of actual payment but not later than December

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[52] II. Coverage

These rules and regulations shall apply to landowners:

1. Whose lands are actually tenanted as of 21 October 1972 or thereafter and covered by OLT;
2. Who opted for Government financing through Land Bank of the Philippines as the mode of compensation; and
3. Who have not yet been paid for the value of their land.

[53] Prefatory Statement.

2006, pursuant to A.O. No. 02-04. Similar to A.O. No. 13-94, the values used to determine the land value were the average gross harvest of three normal crop years immediately preceding October 21, 1972, and the government support price for *palay* and corn in 1972. The period was further extended to the date of actual payment but not later than December 2009, under A.O. No. 06-08.

In *Landbank of the Philippines v. Puyat*,[54] LBP raised the issue of whether the award of interest on account of delay in the payment of just compensation constitutes double imposition of interest given the 6% increment prescribed under A.O. No. 13-94. Answering in the negative, the Court held:

> The trial and appellate courts imposed an interest of 6% per annum on the just compensation to be given to the respondents based on the finding that Land Bank was guilty of delay.
>
> Land Bank maintains that the formula contained in DAR [A.O. No. 13-94] already provides for 6% compounded interest. Thus, the additional imposition of 6% interest by the trial and appellate courts is unwarranted.
>
> There is a fallacy in Land Bank's position. The 6% interest rate imposed by the trial and appellate courts would be a double imposition of interest had the courts below also applied DAR [A.O. No. 13-94]. But the fact remains that the courts below did not apply DAR [A.O. No. 13-94]. In fact, that is precisely the reason why Land Bank appealed the trial court's decision to the CA, and the latter's decision to this Court. Therefore, Land Bank is cognizant that the lower courts' imposition of the 6% interest cannot constitute double imposition of a legal interest.

Stated differently, if the just compensation was computed pursuant to A.O. No. 13-94 (or its amendatory orders) where an incremental interest of 6% was already imposed up to November 1994, December 2006, or December 2009, as the case may be, the award of legal interest on account of delay covering the same period would constitute double imposition of interest.

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[54] 689 Phil. 505, 516-517 (2012).

This much was the import of the pronouncement in *Land Bank of the Philippines v. Imperial*[55] where the Court, acknowledging that the 6% interest granted under A.O. No. 13-94, as amended, compounded annually, could be granted only up to the time of actual payment but not later than December 2006, and that, after which, the 6% interest can no longer be imposed. Realizing that there was a need to compensate the landowner who remains unpaid beyond December 2006, the Court awarded a 12% interest *per annum* to run from January 1, 2007 until full payment. The Court reasoned:

> As can be gleaned from the foregoing, the 6% interest, compounded annually, could be granted only up to the time of actual payment but not later than December 2006. In effect, there could be no award of interest from January 1, 2007 onwards.
>
> Such being the case, it is inequitable to determine the just compensation based solely on the formula provided by DAR A.O. No. 13, as amended. Thus, we return to the guidelines provided under P.D. No. 27 and E.O. No. 228 since the same remained operative despite the passage of [R.A.] No. 6657. On this score, E.O. No. 229, which provides for the mechanism of [R.A.] No. 6657, specifically states: "[P.D.] No. 27, as amended, shall continue to operate with respect to rice and corn lands, covered thereunder. . . ." **However, since just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also its payment within a reasonable time from the taking of the land, we think that the appellate court correctly imposed an interest in the nature of damages for the delay.** In line with current jurisprudence, we set the legal interest at 12% per annum. To this extent, we agree that we should modify the appellate court's ruling. (Emphasis supplied)

There was no double imposition of interest in *Imperial* precisely because the legal interest of 12% was reckoned only from January 1, 2007, given that the formula under A.O. No. 13-94, as amended, was used.

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[55] 544 Phil. 378 (2007).

Claims that were revalued under R.A. No. 6657 or R.A. No. 9700 are no longer entitled to the incremental interest of 6%

On July 1, 2009, A.O. No. 01-10 took effect and likewise covered those lands which were already distributed to the farmer-beneficiaries but the documentation and/or valuation are/is not yet complete. However, unlike P.D. No. 27, E.O. No. 228, A.O. No. 13-94 and its amendatory orders, the values used to determine the land value for purposes of computing just compensation were not those of 1972, but were reckoned on June 30, 2009, thus:

IV. *Land Valuation*

1. ***For lands already distributed by the DAR to the farmer-beneficiaries where documentation and/or valuation are/is not yet complete (DNYD) AND for claims with the LBP, the formula shall be:***

LV = (CNI x 0.90) + (MV x 0.10)

Where:

LV = Land Value

CNI = Capitalized Net Income which refers to the gross sales (AGP x SP) with assumed net income rate of 20% capitalized at 0.12

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) \times 0.20}{0.12}$$

Where:

AGP = Annual Gross Production corresponding to the latest available 12 month's gross production immediately preceding 30 June 2009. The AGP shall be secured from the Department of Agriculture (DA) or Bureau of Agriculture Statistics (BAS). The AGP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, AGP may be secured within the province or region.

SP = The average of the latest available 12 months' selling prices prior to 30 June 2009 such prices to be secured from the Department of Agriculture (DA) or Bureau of Agricultural Statistics (BAS). If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

MV = Market Value per Tax Declaration which is the latest Tax Declaration and Schedule of Unit of Market Value (SUMV) issued prior to 30 June 2009. MV shall be grossed-up up to 30 June 2009.

The reckoning date of the AGP and SP shall be June 30, 2009.

x x x x x x x x x (Emphases supplied)

Since the values used were already updated as of June 30, 2009, the unpaid landowners whose claims were covered under P.D. No. 27 and E.O. No. 228 and revalued under R.A. No. 6657, were no longer allowed to avail of the 6% incremental interest under A.O. No. 13-94 and its amendatory orders.[56] In other words, the updated values under A.O. No. 01-10 answer for the inequity that the unpaid landowners suffered on account of the delay in the payment of just compensation.

To recall, the formula under A.O. No. 01-10 was used by LBP to arrive at the computation for the payment of compensation. The use of this formula was approved by the RTC-SAC and the CA, and was no longer contested by the heirs of Barrameda. Following the Court's reasoning in *Puyat* and *Imperial*, there will be double imposition of interest on account of delay if such interest shall likewise be reckoned from the date of taking on April 16, 1990, despite the use of the updated values under A.O. No. 01-10.

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[56] III. Statement of Policies

x x x x x x x x x

3. Claims covered under PD 27/EO 228 and revalued under RA 6657 or RA 9700 shall no longer be entitled to the coverage of DAR Administrative Order No. 13, Series of 1994, DAR Administrative No. 02, Series of 2004 and DAR Administrative Order No. 06, Series of 2008.

Interest on account of delay should be reckoned from July 1, 2009 until actual payment on November 19, 2013

Given that the application of the formula under A.O. No. 01-10 sufficiently answers for the delay suffered by the landowners from the time of taking up to June 30, 2009, the imposition of legal interest is justified only if the landowner thereafter remains unpaid. In that case, interest should be reckoned from July 1, 2009 up to actual payment.

Considering that the entire amount of compensation in this case was paid only on November 19, 2014, such should earn legal interest reckoned from July 1, 2009 until November 19, 2013.

Delay in the payment of just compensation is a forbearance of money

In *Evergreen Manufacturing Corporation v. Republic*,[57] the Court explained the nature of the delay in the payment of just compensation, as follows:

> As explained by this Court in *Apo Fruits Corporation v. Land Bank of the Philippines*, the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been properly compensated – meaning if they had been paid the full amount of just compensation – at the time of taking when they were deprived of their property. The Court held:
>
> > We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
> >
> > > The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary

[57] *Supra* note 31, at 1068-1070.

> course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.

In Republic, the Court recognized that the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State. Applying the Eastern Shipping Lines ruling, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.

The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government – which is part and parcel of the just compensation due to the property owner – should earn legal interest as a forbearance of money. In *Republic v. Mupas*, we stated clearly:

> **Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation.** The difference in the amount between the final payment and the initial payment – in the interim or before the

> judgment on just compensation becomes final and executory – is not unliquidated damages which do not earn interest until the amount of damages is established with reasonable certainty. The difference between final and initial payments forms part of the just compensation that the property owner is entitled from the date of taking of the property.
>
> Thus, when the taking of the property precedes the filing of the complaint for expropriation, the Court orders the condemnor to pay the full amount of just compensation from the date of taking whose interest shall likewise commence on the same date. The Court does not rule that the interest on just compensation shall commence [on] the date when the amount of just compensation becomes certain, *e.g.*, from the promulgation of the Court's decision or the finality of the eminent domain case.

With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in Eastern Shipping Lines, Inc. v. Court of Appeals, and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum. (Emphases supplied and original citations omitted)

In this case, the compensation in the amount of ₱653,818.99 computed pursuant to A.O. No. 01-10 shall earn interest at the rate of 12% per annum from July 1, 2009 until June 30, 2013, and, thereafter, at the rate of 6% until November 19, 2013.

WHEREFORE, the petition is **PARTLY GRANTED**. Land Bank of the Philippines is **ORDERED** to **PAY** interest on the amount of ₱653,818.99 at the rate of 12% per annum from July 1, 2009 until June 30, 2013, and, thereafter, at the rate of 6% until November 19, 2013.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 228638. July 13, 2020]

DOMINGO NAAG, JR., MARLON U. RIVERA and BENJAMIN N. RIVERA, *petitioners*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ERRORS WHICH ARE FACTUAL OR APPRECIATION OF EVIDENCE ERRORS MAY NOT BE RAISED THEREIN. —** [T]he errors raised by the petitioners are all factual or "appreciation of evidence" errors which are not within the purview of a petition for review on *certiorari* under Rule 45 of the Rules of Court — which mandates that only questions of law may be set forth x x x. In the case at bench, the submitted errors, requiring as they do a re-appreciation and re-examination of the trial evidence, are evidentiary and factual in nature. The petition must perforce be denied on this basis because "*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, this Court, being a non-trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin," which was not the case here.

2. **CRIMINAL LAW; FRUSTRATED HOMICIDE; ELEMENTS. —** [T]he Court finds that the CA correctly affirmed the RTC's conviction of petitioners for frustrated homicide, which has the following for its elements: (*1*) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (*2*) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (*3*) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code (RPC) is present. The foregoing elements were duly established during trial.

3. **ID.; ID.; WHERE THE CRIME OF FRUSTRATED HOMICIDE IS COMMITTED, MORAL DAMAGES AS WELL AS CIVIL INDEMNITY SHOULD BE AWARDED TO THE VICTIM. —** *People v. Jugueta*, instructs that where the crime of frustrated homicide is committed, moral damages as well as civil indemnity should be awarded to the victim in the amount of ₱30,000.00 each. Thus, the Court rules that Joseph is entitled to recover moral damages and civil indemnity in the amount of ₱30,000.00 each, in addition to the award of actual damages in the amount of ₱58,922.10. The monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

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

Assailed in the instant Petition[1] for Review on *Certiorari* are the February 29, 2016 Decision[2] and November 29, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 36273 affirming the November 7, 2013 Decision[4] of the Regional Trial Court (RTC) of Naga City, Branch 21 in Criminal Case No. RTC-2009-0462 finding petitioners Domingo Naag, Jr. (Domingo), Marlon U. Rivera (Marlon), and Benjamin N. Rivera (Benjamin; collectively, petitioners) guilty beyond reasonable doubt of the crime of Frustrated Homicide.

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[1] *Rollo*, pp. 12-36.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Henri Jean Paul B. Inting (now a Member of this Court), concurring; *id.* at 38-58.

[3] *Id.* at 60.

[4] Penned by Judge Pablo Cabillan Formaran III; *id.* at 81-95.

The Facts

On October 5, 2009, petitioners were charged in an Information that reads as follows:

> That on November 21, 2008 at around 12:30 a.m. in Magarao, Camarines Sur and within the jurisdiction of the Honorable Court, the above-named accused, conspiring with one another and with intent to kill, did then and there willfully, unlawfully and feloniously attack and assault by striking with iron pipes one JOSEPH CEA hitting the latter on the head thereby sustaining fatal injuries that could have cause[d] his death if not for the timely medical treatment rendered, to the damage and prejudice of herein private complainant.
>
> CONTRARY TO LAW.[5]

When arraigned on January 14, 2010, petitioners pleaded not guilty to the charge, and, during the pre-trial, interposed the justifying circumstance of self-defense. Thus, a reverse trial ensued.[6]

Version of the Defense

The combined testimonies of petitioners and defense witnesses Wilson Alaya (Wilson), Ramon Roja, Jr. (Ramon), and Rommel Girao (Rommel), all of whom were employees of Metro Naga Water District (MNWD), sought to prove the following facts:

On November 20, 2008, from 6:00 p.m. until 12:00 a.m., eight employees of the MNWD conducted emergency water flushing operations on three fire hydrants located in Magarao, Camarines Sur. At half past midnight, Domingo and Marlon were closing off a fire hydrant situated in Barangay Sto. Tomas when a certain "Igan" came running to inform them that *Tropang Asero* was approaching. Suddenly, six men appeared and began hitting them. Domingo recognized one of the attackers as private complainant Joseph Cea[7] (Joseph) whom he personally knew

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[5] *Id.* at 81.

[6] *Id.* at 82.

[7] Also referred to as "Joseph Cea *y* San Buenaventura" in some parts of the *rollo*.

as "Pading Ope." Marlon was smacked at the back of his head with a rock and fell unconscious. Domingo fought back and yelled for assistance. Benjamin arrived and, upon seeing his son Marlon on the ground, turned to face the aggressors. Joseph then swung a baseball bat at Benjamin but the latter was able to dodge so Domingo's left ear was hit instead. Thereafter, Benjamin punched Joseph and succeeded to wrestle the baseball bat from him. Moments later, policemen arrived and brought Marlon, Domingo, and Benjamin to the police station after they received medical treatment at the Bicol Medical Center (BicolMed) in Naga City.

Wilson, Ramon, and Rommel corroborated the material parts of petitioners' testimonies.

Version of the Prosecution

The prosecution, through the testimonies of Joseph, Joven Alfie Ciudadano (Joven), Brylle Sinfuego (Brylle), and Dr. Juan Carlos Marzan (Dr. Marzan), presented a totally different version.

Joseph claimed that on November 21, 2008 he attended a birthday party with Brylle and Ricky Mendoza (Ricky). They left the party at around 12:30 a.m. and met Joven on their way home. While passing by a bridge, Joseph approached a group of men who were talking loudly and said to them "*Boss, mga taga saen kamo*." Domingo angrily replied, "*Anong problema mo, Noy?*" to which Joseph answered, "*Dai man, mga tanod kami igdi*" and told the group that they were not looking for trouble. Benjamin then asked Joseph, "*Kaya mo na Noy ang buhay?*" but before the latter could give a reply, Marlon punched him on his right cheek causing him to fall down on the ground. Joseph, upon noticing that Domingo and Benjamin got a pipe wrench from a motorcycle, immediately got up, scampered away with his friends, and retreated to Joven's nipa hut. Thereafter, Domingo, together with Ramon and one other unidentified man, pounded on the walls of the nipa hut and called out Joseph's name. Fearing for his life, Joseph ran out the back door of the nipa hut and descended towards the bridge. There, he was able to evade Benjamin and Marlon but Domingo caught up to him

and whacked him on the forehead with a pipe wrench rendering him unconscious on the ground.[8]

On December 5, 2008, Joseph regained consciousness at the BicolMed where he was confined for 15 days incurring medical expenses in the amount of ₱58,922.10. As indicated in a Medical Certificate dated November 26, 2008 issued by Dr. Harold G. Esparcia, Joseph suffered from T/C diffuse axonal injury and subarachnoid hemorrhage fracture, left frontal and medial wall of left orbit.[9]

The foregoing declaration was corroborated by the testimonies of Brylle and Joven. Dr. Marzan confirmed that: 1) the phrase "Subarachnoid Hemorrhage" means that there is bleeding in that part of the brain; 2) the term "Diffuse Axonal Injury" or "*nabugbog*" in tagalog, refers to an internal injury inside the brain; 3) the words "Fracture Left Frontal and Medial of the Left Orbit" simply means a crack sustained in the skull or forehead; 4) the laceration on the left frontal area could have been caused either by a blunt object, like a pipe wrench, or a vehicular accident; and finally, 5) the said injuries were all fatal and could lead to death if not given timely medical attention.[10]

The RTC Ruling

In its Decision dated November 7, 2013, the RTC found petitioners guilty as charged and sentenced each of them to an indeterminate prison term from two years, four months, and one day of *prision correccional* medium, as minimum, to eight years and one day of *prision mayor* medium, as maximum.[11] It likewise ordered petitioners to jointly and severally pay Joseph the amount of ₱58,922.10 as actual damages with an interest of 12% *per annum* from the finality of said Decision until fully paid.[12]

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 105-106.

[11] *Id.* at 95.

[12] *Id.*

The RTC refused to give credence to petitioners' claim of self-defense, pointing out that their testimonies evince material loopholes and that there was no solid evidence of unlawful aggression on the part of Joseph.

The CA Ruling

Upon appeal, the CA, in the herein assailed Decision dated February 29, 2016 affirmed petitioners' conviction agreeing with the RTC that the existence of unlawful aggression was not satisfactorily proven. It emphasized that, indeed, petitioners' plea of self-defense was self-serving, it being uncorroborated by credible testimony or evidence. The decretal portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision dated November 7, 2013 rendered by the [RTC] of Naga City, Branch 21, in Criminal Case No. RTC 2009-0462 is **AFFIRMED**.
>
> **SO ORDERED**.[13]

Petitioners filed a Motion for Reconsideration[14] but the same was denied in a Resolution dated November 29, 2016.

Hence, the instant appeal contending that the CA erred in sustaining the verdict of the RTC considering that: 1) petitioners' acts were completely justified under the circumstances; and 2) the element of intent to kill and conspiracy were not duly established.

In its Comment[15] dated August 7, 2017, respondent, through the Office of the Solicitor General (OSG), prayed that the assailed CA ruling be affirmed since: 1) petitioners unsuccessfully invoked the justifying circumstance of self-defense, there being no unlawful aggression; and 2) all the elements of frustrated homicide were found present in this case.

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[13] *Id.* at 56.

[14] *Id.* at 113-120.

[15] *Id.* at 132-143.

Petitioners, in their Reply[16] dated November 27, 2017, reiterated that they simply defended themselves from six malefactors who unexpectedly attacked them.

The Issue

The sole issue for the Court's resolution is whether or not the CA correctly upheld petitioners' conviction for Frustrated Homicide.

The Court's Ruling

The petition is bereft of merit.

Notably, the errors raised by the petitioners are all factual or "appreciation of evidence" errors which are not within the purview of a petition for review on *certiorari* under Rule 45 of the Rules of Court — which mandates that only questions of law may be set forth, *viz.*:

> Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.[17] (Emphasis supplied)

In the case at bench, the submitted errors, requiring as they do a re-appreciation and re-examination of the trial evidence, are evidentiary and factual in nature.[18] The petition must perforce be denied on this basis because "*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, this Court, being a non-trier of facts, will not disturb

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[16] *Id.* at 152-159.

[17] *Roque v. People*, G.R. No. 193169 (Resolution), April 6, 2015.

[18] *Batistis v. People*, 623 Phil. 246, 255 (2009).

the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin," which was not the case here.[19]

At any rate, the Court finds that the CA correctly affirmed the RTC's conviction of petitioners for frustrated homicide, which has the following for its elements: (*1*) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (*2*) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (*3*) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code (RPC) is present.[20]

The foregoing elements were duly established during trial. Noticeably, the parties presented two disparate versions of what really happened during the wee hours of November 21, 2008. Be that as it may, the Court agrees with both the RTC's and CA's observation that the narrative of the prosecution anchored mainly on the testimony of Joseph, was highly credible than that of petitioners. *First*, direct and positive testimonies of prosecution witnesses established that Joseph suffered a heavy blow on the head caused by a blunt object like a pipe wrench.[21] Certainly, the nature of the head injury sustained by him demonstrate petitioners' intent to kill. *Second*, the blunt force trauma sustained by Joseph was fatal. In technical medical terms, Joseph was found to have endured "T/C Diffuse Axonal Injury and Subarachnoid Hemorrhage Fracture, Left Frontal and Medial of Left Orbit Secondary to Mauling." In plain terms, "*nabugbog*"; an internal brain injury. The blow was so sharp and serious that Joseph laid unconscious in the hospital for 14 days. As testified to by Dr. Marzan, Joseph would have succumbed to death due to the said head trauma if not for the timely medical attention.[22] *Third*, no qualifying circumstance for murder was

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[19] *Id.*

[20] *Josue y Gonzales v. People*, 700 Phil. 782 (2012).

[21] See TSN dated February 7, 2013, pp. 7-8.

[22] *Id.*

alleged in the Information whereby petitioners were formally charged.

Neither is there any reason for the Court to depart from the common findings of the RTC and the CA that petitioners' claim of self-defense crumbles in the face of the fact that there was no unlawful aggression[23] at all on the part of Joseph which petitioners were impelled to repel. As succinctly explained by the CA, a simple question of "*Boss, mga taga saen kamo?*" could hardly constitute unlawful aggression.[24] Verily, the circumstances in this case make out a case for frustrated homicide as petitioners performed all the acts necessary to kill Joseph — who only survived due to timely medical intervention.

Nonetheless, the Court modifies the award of damages granted and legal interest imposed by the RTC, as affirmed by the CA. *People v. Jugueta*,[25] instructs that where the crime of frustrated homicide is committed, moral damages as well as civil indemnity should be awarded to the victim in the amount of ₱30,000.00 each. Thus, the Court rules that Joseph is entitled to recover moral damages and civil indemnity in the amount of ₱30,000.00 each, in addition to the award of actual damages in the amount of ₱58,922.10. The monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.[26]

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[23] ART. 11. *Justifying circumstances*. — The following do not incur any criminal liability:

1. Any one who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself. (RPC)

[24] *Rollo*, p. 51.

[25] G.R. No. 202124, April 5, 2016.

[26] *Tiña v. People*, G.R. No. 231437 (Notice), September 6, 2017.

WHEREFORE, the present Petition is **DENIED**. The Decision dated February 29, 2016 and the Resolution dated November 29, 2016 of the Court of Appeals in CA-G.R. CR No. 36273, are hereby **AFFIRMED** with **MODIFICATION** in that petitioners Domingo Naag, Jr., Marlon U. Rivera, and Benjamin N. Rivera are also ordered to pay private complainant Joseph Cea: (1) civil indemnity in the amount of ₱30,000.00; (2) moral damages of ₱30,000.00; and that (3) the said awards shall be subject to interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 233152. July 13, 2020]

DIONISIO B. COLOMA, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN (FOURTH DIVISION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW AND NOT QUESTIONS OF FACT MAY BE RAISED IN CASES OF APPEALS FROM THE SANDIGANBAYAN; ABSENT ANY SHOWING THAT THE FACTUAL FINDINGS OF THE SANDIGANBAYAN COME UNDER THE ESTABLISHED EXCEPTIONS, THE SAME REMAIN CONCLUSIVE AND BINDING TO THE COURT. — Let it be first noted that in cases of appeals from the Sandiganbayan, like this one, only

questions of law and not questions of fact may be raised. And, absent any showing that they come under the established exceptions, the Sandiganbayan's findings on the aforesaid matters remain conclusive and binding to the Court. Suffice it to say, that the Court does not find any of the recognized exceptions in this case.

2. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); VIOLATION OF SECTION 3(e) THEREOF, ELEMENTS; PRESENT. —**The Court concurs with the ruling of the Sandiganbayan that extant in this case are all the elements of violation of Section 3(e) of R.A. No. 3019, which are: *(a)* the accused must be a public officer discharging administrative, judicial or official functions; *(b)* he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and *(c)* his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

3. **ID.; ID.; SECTION 3(e) OF R.A. NO. 3019 MAYBE VIOLATED THROUGH MANIFEST PARTIALITY, OR WITH EVIDENT BAD FAITH, OR THROUGH GROSS INEXCUSABLE NEGLIGENCE; EXPLAINED. —**Verily, there are two ways by which Section 3(e) of R.A. No. 3019 may be violated, that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both, as here.In *Rivera v. People,* citing *Fonacier v. Sandiganbayan,* the Court defined "partiality," "bad faith," and "gross negligence" as: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wil[l]fully and intentionally with a conscious

indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

4. **ID.; ID.; ELEMENTS OF VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019, ESTABLISHED; CONVICTION OF ACCUSED-APPELLANT, AFFIRMED. —** [T]here is no question that, at the time the offense was committed, Coloma was a public officer discharging his function as the Deputy Director of the PNPA and, incidentally, as Special Assistant to the PPSC President on Real Property Acquisition Projects. We, thus, proceed to the remaining elements. First off is the giving of unwarranted benefit, advantage, or preference to Engr. Lim of ACLC and his wife, Mrs. Lim. As correctly found by the Sandiganbayan, no explanation was given as to how Engr. Lim and/or ACLC entered into the picture and was chosen as the contractor for the RTS-9 project. After the public bidding was declared a failure, ACLC was unilaterally chosen. The following circumstances clearly show Coloma's participation or involvement thereat: (1) Tabrilla testified it was Coloma who communicated with ACLC to provide labor and materials for the RTS-9 project; and (2) during the investigation, Engr. Lim admitted that he and Coloma were close friends. Then, Coloma just conveniently suggested purchasing a 10,000-square/meter-property purportedly owned by the Spouses Lim as the site for the construction of the RTS-9 project — which brings us to the undue injury or damage caused to the government, particularly PPSC, in the amount of ₱1,500,000.00. Coloma reported that Mrs. Lim was willing to donate the said land to PPSC. However, this is belied by Mrs. Lim herself in her *Sinumpaang Salaysay* dated December 17, 2002 stating that she received ₱1,500,000.00 from PPSC for the property. x x x. What's more, as it turned out, the purchase amount of ₱1,500,000.00 was grossly overpriced considering that, at the time, the market value of the property per hectare was only ₱9,730.00 as per a provincial ordinance passed by the local government of Tawi-Tawi in 2001. As to the element of manifest partiality and evident bad faith, the Sandiganbayan properly found Coloma to have acted with both manifest partiality and evident bad faith. x x x. All told, the Court finds no reason to overturn the ruling of the Sandiganbayan that Coloma is guilty of violating Section 3(e) of R.A. No. 3019.

APPEARANCES OF COUNSEL

Maria Nympha Mandagan for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

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

On September 16, 2005, the Office of the Ombudsman (Ombudsman) found probable cause to charge petitioner Police Chief Superintendent (P/C Supt.) Dionisio B. Coloma, Jr. (Coloma) before the Sandiganbayan with three counts of violation of Section 3(e)[1] of Republic Act No. (R.A.) 3019 otherwise known as the "*Anti-Graft and Corrupt Practices Act*".

The present Rule 45 Petition[2] involves one of the said three counts thus filed. Specifically, the Amended Information[3] dated August 9, 2007 docketed as SB-07-CRM-0021, which states:

That sometime between June 2001 to October 2001, or **sometime** prior to subsequent thereto, in Bongao, Tawi-Tawi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a high-ranking public official, **being then the** [P/C Supt.] **with** Salary Grade 27, of the [PNP], committing the offense in relation to office and with grave abuse thereof, did then and there willfully, unlawfully, and criminally in his capacity as then **Deputy** Director of the **Philippine National Training Institute (PNTI), Philippine**

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[1] SEC. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: 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[.]

[2] *Rollo*, pp. 9-20.

[3] *Id.* at 203-206.

Public Safety College (PPSC), tasked to implement and oversee the construction of **training school annex and facilities** at the **municipality of** Bongao, **province of** Tawi-Tawi, **gave unwarranted benefit, advantage, favor and/or privilege to private contractor Engr. Rolando Lim Yankee Espaldon of A.C. Lim Construction in Bongao, Tawi-tawi and his wife Albia J. Lim,** and caused undue injury to [PPSC], **by purchasing from said spouses Lim a property totaling 10,000 square meters** covered by Original Transfer Certificate No. P-260 Free Patent No. 322421 in the name of Juaini Bahad, located in Tubig Sillang, Sanga-Sanga, Bongao, Tawi-tawi, for the construction of training school and facilities, at the cost of One Million Five Hundred Thousand Pesos ([₱]1,500,000.00) **and proceeding with the lot purchase using public funds despite the following, *viz*: (a) There was no prior authority from PPSC for the lot purchase; (b) There was neither a public bidding nor a survey conducted of other properties feasible for the project with the least cost and most benefit to the government; (c) There is no document to establish ownership by spouses Lim of the subject property; (d) There was no Deed of Sale prior to purchase and release of payment for said purchase; (e) The municipal government lot at Baranggay Tubig-Tanah, Bongao, Tawi-Tawi allocated to PPSC for the establishment of a training school was not considered prior to the purchase of the property in issue; and (f) The market value of ₱9,730 per hectare of land in Bongao, Tawi-Tawi was not considered prior to the purchase of the property in issue** to the damage and prejudice of the [PPSC] in the amount of One Million Five Hundred Thousand Pesos ([₱]1,500,000.00).

CONTRARY TO LAW.

When arraigned, Coloma pleaded not guilty; hence, the case proceeded to trial.[4]

Version of the Prosecution

The version of the prosecution, as summarized by respondent People of the Philippines represented by the Office of the Special Prosecutor, is as follows:

In 1998, the Department of Budget and Management (DBM) issued a Special Allotment Release Order (SARO) authorizing the release

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[4] *Id.* at 23.

of funds amounting to [₱81,750,000.00] for the construction/completion of various training facilities of the Philippine Public Safety College (PPSC), Philippine National Training Institute (PNTI) in different parts of the country.

Among the training facilities benefited by the release of the DBM SARO was the Regional Training School (RTS-9) Annex School in Tawi-Tawi. Item F [in] the List of PPSC-Wide Construction Outlay ("construction plan") for calendar year 1998 indicated that the construction would consist of site development, perimeter fence, road net, main gate, water supply, electrical supply, drainage and gutter system, one administration building, two classroom buildings, fifty-capacity dormitory building, and fifty-capacity mess hall.

RTS-9 was designed to cater to the training needs of [the] policemen in Tawi-Tawi and Sulu islands. It was given a budget funding of [₱6,000,000.00] [taken] from the Community Development Fund (CDF) of Tawi-Tawi Congressman Nur Jaafar (Cong. Jaafar)[.]

The construction plan for the year 1998 revealed that there is no provision for the acquisition of land for the RTS-9.

It was reported that a Philippine National Police (PNP)-owned site was chosen for the construction of the RTS-9. With a site already available, the Pre-Qualification Bids and Awards Committee (PBAC) of PPSC proceeded to bid out the construction of RTS-9. However, the lowest bidder turned out to be a "black-listed" contractor. Hence, the PBAC awarded the project to the second lowest bidder — Jaya Builders Construction (Jaya Builders).

When the PBAC later learned that Jaya Builders is owned by the supporter of the political opponent of Congressman Jaafar, it halted the award of the project. Thereafter, upon recommendation of Coloma[,] then Director of the Philippine National Police Academy (PNPA) and concurrently acting as Special Assistant to the PPSC President on Real Property Acquisition Projects[,] PPSC shifted the implementation of the project from "by-contract" to "by-administration". This means that the implementation of the project will be done by two separate entities, one each for materials and labor.

PPSC then negotiated with a contractor of Cong. Jaafar. The contract for the provision of material and labor for the construction of the [RTS-9] project was awarded to A.C. Lim Construction [(ACLC)] in the amount of [₱5,760,00.00].

In the meantime, the PNP disapproved the use of the original PNP-owned site chosen by the PPSC as it decided to use the same in the future. On the other hand, the Municipality of Bongao, Tawi-Tawi allocated a lot to PPSC for the establishment of [RTS-9].

In a meeting held in May 2001, x x x Coloma x x x suggested to then PPSC President Ernesto B. Gimenez (Gimenez) that PPSC purchase a one[-]hectare (10,000 square meters) land situated in Sanga-Sanga, Bongao, Tawi-Tawi worth [₱1,500,000.00]

Coloma further suggested that the transfer of the land should be made to appear to be in the form of [a] donation. However, the money for the payment of the acquisition of the land should be taken from the [₱]5,760,000.00 budget allocated for the construction of RTS-9. This scheme was resorted to because [as previously stated] there is no provision in the budget for the x x x purchase of a land.

Incidentally, in the same [May 2001] meeting, PPSC President Gimenez informed the attendees therein that the budget allocated for Tawi-Tawi and Maguindanao projects will revert back to the National Treasury if the fund is not liquidated by 30 June 2001.

Thus, Coloma x x x suggested to x x x Gimenez to transfer the money to the bank account of the contractor — [ACLC].

Acting on Coloma's advice, Gimenez approved the transfer of the money to the bank account of the contractor on the condition that the same should be under [a] joint savings account between a representative of PPSC and the contractor. The project was also reported "as 100% complete" to the DBM despite the contrary fact.

Coloma thereafter instructed then Camp Engineer [(Engr.)] Dosmedo C. Tabrilla (Tabrilla) of PPSC to conduct a site inspection in Tawi-Tawi from 30 May to 06 June 2001. During the inspection, Tabrilla was accompanied by Coloma and Atty. Nympha Madagan. While in Tawi-Tawi, they stayed at [a] beach resort [owned by] Engr. Rolando Lim (Engr. Lim), the labor contractor for the [RTS-9] project.

Upon reaching the project site in Sanga-Sanga, Bongao, Tabrilla observed that the land is an open field planted with coconut trees. x x x The visit to the project site lasted less than an hour, and Tabrilla no longer conducted a layout of the site as Coloma had [Engr.] Lim do the project layout.

After the project site inspection, Coloma, together with Tabrilla and Engr. Lim proceeded to the Landbank of Tawi-Tawi where Coloma and Engr. Lim opened a checking account. Thereafter, Coloma issued a check in the amount of [₱]500,000.00 to [Engr.] Lim as mobilization cost. Thus, from the time Coloma and Engr. Lim opened a joint account xxx, the PPSC lost control of its money as the same, by then, was in the name of the contractor Engr. Lim and Coloma. PPSC also subsequently lost control of the financial status of the [RTS-9] project since the check book for the said checking account remain[ed] in the possession of Coloma and was never turned-over to PPSC.

x x x x x x x x x

In a Memorandum dated 16 April 2001 to the PPSC, Coloma cited the advantages of using the private land (subject of the inspection). Among other considerations, Coloma cited the willingness of the supposed land owner Albia Lim [(Mrs. Lim)] — who turns out to be the wife of Engr. Lim — to donate the private land at no cost to the government.

Coloma's Memorandum was allegedly approved by PPSC President Gimenez who signed the same in the presence of Coloma and Antonio Rodriguez.

Coloma prepared an After-Mission Report dated 10 October 2001. On page 2 [thereof], Coloma made the entries[:] "Lot purchase (10,000 sq.ms.)," and opposite it, the amount of "[₱]1,500,000.00," can be noted. He explained that it was the labor contractor xxx who purchased the land from his wife, out of his own money, so the land could be donated to PPSC. The amount of [₱]1,500,000.00 was an amount provided to him by Engr. Lim, who said it was the prevailing market price for such land. On paper, however, the donor who signed the Deed of Donation [was] Juaini Bahad (Bahad), because at the time, although the land was already purchased by Mrs. Lim from Bahad, the title over the land was not yet transferred [to] Mrs. Lim.

Meanwhile, in July 2001, the PPSC changed leadership. Gimenez was replaced by Ramsey Ocampo (Ocampo) as Acting President of PPSC.

Ocampo terminated the designation of Coloma as Special Assistant to the PPSC President on Real Property Acquisition Projects on 02 August 2001 reasoning that he found no need for an advisor on real estate acquisition as there is no capital outlay for land that is available in the budget.

Ocampo further instructed Tabrilla to give a status report on the RTS-9 project. Tabrilla complied by submitting [a] *Memorandum* dated 13 August 2001 which prompted the Legal Department of PPSC to conduct an investigation on the matter.

Gilbert Concepcion (Concepcion), the investigator appointed by Ocampo, issued his Investigation Report dated 04 July 2002 and made a contrary finding to the content of the After-Mission Report of Coloma. Concepcion found that the value of the property per hectare is only [₱]9,730.00 and not [₱]1,500,000.00. He also discovered from Mrs. Lim that the latter only paid [₱10,000.00] for the property to Bahad.

It was also discovered during the investigation that on 14 June 1999, the Sangguniang Bayan of Bongao, Tawi-Tawi passed a resolution authorizing its mayor to enter into a memorandum of agreement with PPSC for the use of a parcel of land owned by the municipality for the establishment of the training school.

In December 2002, Concepcion proceeded to Bongao, Tawi-Tawi. He went to Engr. Lim's house to get a copy of the title of the property over which the RTS-9 facilities were constructed[.] Engr. Lim and Mrs. Lim [(Spouses Lim)] handed to him a prepared sworn statement (*Sinumpaang Salaysay*) which was signed by Mrs. Lim in the presence of Concepcion and duly notarized by Atty. Robert Lim, a relative of Engr. Lim.

In essence, the *Sinumpaang Salaysay* stated that Mrs. Lim bought a parcel of land from Bahad in x x x 1992. Thereafter, her husband and Coloma agreed that the land would be used for the construction of [the RTS-9 project]. She was then paid the sum of [₱1,500,000.00], which was later contradicted in open court x x x by Engr. Lim where the latter testified that no consideration was given for the use of the land [by] PPSC.

Concepcion also investigated the joint bank account opened by Engr. Lim and Coloma and found out that said bank account [did] in fact exist and x x x has a balance of around [₱200.00] at the time.

In the meantime, PPSC resident auditor Teresita De Castro (De Castro) was also tasked to conduct an audit of the project but was unable to fully conduct the required audit because she has not received any disbursement vouchers and other supporting documents on the supposed subject matter of the audit. This claim was corroborated by xxx Tabrilla who declared that upon his assumption of duty as

Chief of the Installation Division and Acting Director of the Logistics and Installation Service (LIS), not a single document — like vouchers, ROA, contracts, purchase order, abstract of canvass and bids, notice of award, and notice to proceed work pertaining to the RTS-9 project — was turned over to him.

De Castro was given copies of the Advise to Debit Account (ADA). This ADA is the authority given by the agency (PPSC) to the servicing bank to pay the agency's creditors, but before the ADA can be issued, there must have been first valid disbursement voucher and supporting documents.

Based on the ADA dated 27 December 2000 given to De Castro, the project appears to have been paid in full; hence, the project must have been 100% complete.

Likewise, based on the eight (8) ADAs furnished to De Castro by Jimena Piga, the Chief Accountant, Budget Management Service of PPSC, the names of the contractors were identified and the corresponding amount paid to them for a total of [₱]5,727,302.60 was ascertained.

De Castro was further able to obtain an unapproved disbursement voucher from the LIS of PPSC. From these findings, she brought the matter to the attention of the PPSC President in a *Memorandum* dated 18 October 2002.

In June 2005, the Commission on Audit-ARMM conducted a special audit of the RTS-9 project.

The Special Audit Team (SAT) thus created could not find any documents relating to the expenses disbursed for the said project consistent with the claim of De Castro and Tabrilla. The SAT found that no actual purchase of land took place because there was no Deed of Sale. There is also no finding as to who received the [₱1,500,000.00] price for the purchase of the land of Bahad taken from the budget for the construction of RTS-9.

The SAT also found the purchase price of [₱1,500,000.00] for the land to be overpriced as the prevailing market price for a one-hectare land at that time is only [₱]9,730.00. This finding was based on Tawi-Tawi's Provincial Ordinance No. 09, series of 2001[.][5] (citations and numbering omitted)

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[5] See Comment dated February 22, 2018; *id.* at 153-158.

Version of the Defense

Coloma, on the other hand, averred that: (*i*) in 1999, Gimenez assigned him to assist in the search for a suitable construction site of the RTS 9 project; (*ii*) a piece of land located beside the airport owned by the Spouses Lim was reported to Gimenez as an ideal location for the RTS-9; (*iii*) Gimenez approved the report for acquisition of the present site; (*iv*) Mylene Rondina, budget officer of PPSC, certified that funds were available for the project, and thus allotted ₱1,500,000.00 for the purchase; (*v*) PPSC Accounting Division processed the Disbursement Voucher with supporting documents signed by Gimenez; (*vi*) his After-Mission Report dated October 11, 2001, merely recommended the procuring of the property in question.[6]

Ruling of the Sandiganbayan

In the herein assailed March 30, 2017 Decision,[7] the Sandiganbayan found Coloma guilty as charged. The decretal portion of which reads:

> **ACCORDINGLY[,]** and in view of the foregoing, this Court finds accused [Coloma] **GUILTY** of violation of Section 3 (e), R.A. 3019, as amended. Applying the Indeterminate Sentence Law (ISL), there being no aggravating and mitigating circumstance to be appreciated, he is hereby sentenced to suffer an imprisonment of Six (6) years and One (1) Month[,] as minimum[,] to Ten (10) Years, as maximum, and perpetual disqualification from holding public office.
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> **SO ORDERED.**

It extensively discussed the presence of all the elements of the imputed crime. It held that Coloma, in the performance of his official function, caused undue injury to the government by facilitating the unauthorized purchase of a property in the

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[6] See Reply dated October 4, 2018; *id.* at 195-196.

[7] Penned by Associate Justice Geraldine Faith A. Econg (sitting as member of the Special Fourth Division per Administrative Order No. 024-2017 dated February 1, 2017), with Associate Justices Alex L. Quiroz and Reynaldo P. Cruz, concurring; *id.* at 21-47.

amount of ₱1,500,000.00 and gave ACLC and/or private individual Engr. Lim unwarranted benefit, advantage or preference by ensuring the award of the RTS-9 contract in their favor and even buying the latter's property. Moreover, Coloma with both manifest partiality in favoring Engr. Lim and/or ACLC and using PPSC funds to pay for Lim's property instead of utilizing it solely for the construction of RTS-9, and evident bad faith when he orchestrated the immediate transfer of the funds to the contractors to prevent said funds from reverting to the National Treasury and falsely reporting that the RTS-9 project was already 100% complete.

The Sandiganbayan, in a Resolution[8] dated July 25, 2017, denied the Motion for Reconsideration[9] filed by Coloma.

Hence, this Petition essentially questions the totality of the evidence presented and the weight given to it by the Sandiganbayan.

Issue

Whether Coloma's conviction for the crime of violation of Section 3(e) of R.A. 3019 should be upheld.

Our Ruling

The petition is bereft of merit.

Let it be first noted that in cases of appeals from the Sandiganbayan, like this one, only questions of law and not questions of fact may be raised. And, absent any showing that they come under the established exceptions,[10] the Sandiganbayan's

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[8] *Id.* at 48-53.

[9] *Id.* at 54-64.

[10] Well-settled is the rule that factual findings of the Sandiganbayan are conclusive upon this Court save in the following cases: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; 2) the inference made is manifestly an error or founded on a mistake; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record; and 6) said findings of fact are conclusions

findings on the aforesaid matters remain conclusive and binding to the Court. Suffice it to say, that the Court does not find any of the recognized exceptions in this case.

The Court concurs with the ruling of the Sandiganbayan that extant in this case are all the elements of violation of Section 3(e) of R.A. No. 3019, which are: *(a)* the accused must be a public officer discharging administrative, judicial or official functions; *(b)* he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and *(c)* his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[11]

Verily, there are two ways by which Section 3(e) of R.A. No. 3019 may be violated, that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence, namely: *(a)* by causing undue injury to any party, including the Government; or *(b)* by giving any private party any unwarranted benefit, advantage or preference.[12] The accused may be charged under either mode or both, as here.

In *Rivera v. People,*[13] citing *Fonacier v. Sandiganbayan,*[14] the Court defined "partiality," "bad faith," and "gross negligence" as:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or

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without citation of specific evidence on which they are based. *Cadiac-Palacios v. People,* 601 Phil. 695-704 (2009).

[11] *Lihaylihay v. People*, 715 Phil. 722-729 (2013).

[12] *Noveras v. Sandiganbayan [Sixth Division],* G.R. No. 245933 (Notice), June 10, 2019.

[13] G.R. No. 228154, October 16, 2019.

[14] 308 Phil. 693 (1994).

intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wil[l]fully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

Applying the foregoing to this case, there is no question that, at the time the offense was committed, Coloma was a public officer discharging his function as the Deputy Director of the PNPA and, incidentally, as Special Assistant to the PPSC President on Real Property Acquisition Projects.

We, thus, proceed to the remaining elements.

First off is the giving of unwarranted benefit, advantage, or preference to Engr. Lim of ACLC and his wife, Mrs. Lim. As correctly found by the Sandiganbayan, no explanation was given as to how Engr. Lim and/or ACLC entered into the picture and was chosen as the contractor for the RTS-9 project. After the public bidding was declared a failure, ACLC was unilaterally chosen. The following circumstances clearly show Coloma's participation or involvement thereat: (1) Tabrilla testified it was Coloma who communicated with ACLC to provide labor and materials for the RTS-9 project; and (2) during the investigation, Engr. Lim admitted that he and Coloma were close friends.[15] Then, Coloma just conveniently suggested purchasing a 10,000-square/meter-property purportedly owned by the Spouses Lim as the site for the construction of the RTS-9 project[16] — which brings us to the undue injury or damage caused to the government, particularly PPSC, in the amount of ₱1,500,000.00. Coloma reported that Mrs. Lim was willing to donate the said land to PPSC.[17] However, this is belied by Mrs. Lim herself in her *Sinumpaang Salaysay* dated December 17, 2002 stating that she received ₱1,500,000.00 from PPSC for

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[15] *Rollo*, p. 41.

[16] *Id.*

[17] *Id.*

the property.[18] Further, the Sandiganbayan aptly observed that Coloma's After-Mission Report dated October 10, 2001 stated that a total of ₱5,727,278.59 was released to the contractors and out of such disbursement, the following expenses were incurred:

Total Project Cost (net)	₱5,727,278.59
LESS:	
Lot Purchase (10,000 sqm.) Land development/purchase of construction materials	₱1,500,000.00
Partial Labor Cost	₱2,345,455.70
Total:	₱3,845,455.70
Total Balance of Project Cost:	₱1,881,882.89[19]

What's more, as it turned out, the purchase amount of ₱1,500,000.00 was grossly overpriced considering that, at the time, the market value of the property per hectare was only ₱9,730.00 as per a provincial ordinance passed by the local government of Tawi-Tawi in 2001.[20]

As to the element of manifest partiality and evident bad faith, the Sandiganbayan properly found Coloma to have acted with both manifest partiality and evident bad faith, *viz.*:

Coloma acted with manifest partiality in favoring Engr. Lim and/ or [ACLC], choosing it to be the contractor of the [RTS-9] project, negotiating for the purchase of the property of Engr. Lim's wife instead of choosing other properties made available to PPSC for free, and using PPSC funds to pay for Lim's property, instead of utilizing all of it for the construction of the training facilities.

Bad faith was likewise manifestly shown by Coloma when he orchestrated the immediate transfer of the funds to the bank accounts

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[18] *Id.* at 42.

[19] *Id.* at 43-44.

[20] *Id.* at 42.

of the contractors, to prevent these funds from reverting back to the national treasury. This was done without a single disbursement voucher being approved or any supporting document being submitted. Coloma likewise accorded himself control over the funds by making himself co-signatory to the checking account over these funds, and disbursing the said funds to the contractors. x x x

From the onset, there was evident intent to deceive the government. After the funds were removed from the control of PPSC, Coloma continued to perpetrate his conscious doing of a wrong by subsequently reporting that the project was completed, when in fact it was not. In accounting for the funds, he made it appear that the money paid for the land was part of the cost of materials purchased for the construction of the training buildings, since there is nothing in the budget providing for an acquisition of land.[21]

All told, the Court finds no reason to overturn the ruling of the Sandiganbayan that Coloma is guilty of violating Section 3(e) of R.A. No. 3019. Interestingly, the factual milieu of this case is identical to that in *Coloma, Jr. v. Sandiganbayan*,[22] where the Court held that Coloma failed to controvert the evidence against him. The opinion of the Court remains the same here.

WHEREFORE, the petition is **DENIED**. The challenged March 30, 2017 Decision and July 25, 2017 Resolution of the Sandiganbayan in SB-07-CRM-0021, are hereby **AFFIRMED**.

SO ORDERED.

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

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[21] *Rollo*, 45-46.

[22] 744 Phil. 214 (2014).

THIRD DIVISION

[G.R. No. 235315. July 13, 2020]

HENRY T. PARAGELE, ROLAND ELLY C. JASO, JULIE B. APARENTE, RODERICO S. ABAD, MILANDRO B. ZAFE JR., RICHARD P. BERNARDO, JOSEPH C. AGUS, ROMERALD S. TARUC, ZERNAN BAUTISTA, ARNOLD MOTITA, JEFFREY CANARIA, ROMMEL F. BULIC, HENRY N. CHING, NOMER C. OROZCO, JAMESON M. FAJILAN, JAY ALBERT E. TORRES, RODEL P. GALERO, CARL LAWRENCE JASA NARIO, ROMEO SANCHEZ MANGALI III, FRANCISCO ROSALES JR., BONICARL PENAFLORIDA USARAGA, JOVEN P. LICON, NORIEL BARCITA SY, GONZALO MANABAT BAWAR, DAVID ADONIS S. VENTURA, SOLOMON PICO SARTE, JONY F. LIBOON, JONATHAN PERALTA ANITO, JEROME TORRALBA, and JAYZON MARSAN, *petitioners, vs.* **GMA NETWORK, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; LABOR CASES WHICH ARE ELEVATED TO THE SUPREME COURT THROUGH RULE 45 PETITIONS, FOLLOWING RULE 65 PETITIONS DECIDED BY THE COURT OF APPEALS ON RULINGS MADE BY THE NATIONAL LABOR RELATIONS COMMISSION, ARE LIMITED TO QUESTIONS OF LAW AND THE DETERMINATION OF WHETHER THE COURT OF APPEALS ERRED IN DETERMINING THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION AND DECIDING OTHER JURISDICTIONAL ERRORS OF THE NATIONAL LABOR RELATIONS COMMISSION; GRAVE ABUSE OF DISCRETION, WHEN COMMITTED BY THE NATIONAL LABOR RELATIONS COMMISSION. —** Labor cases are elevated to this Court through Rule 45 petitions, following Rule 65 petitions decided by the Court of Appeals on rulings made by the National Labor Relations Commission. From this, two (2) chief considerations become apparent: (1) the general injunction that Rule 45 petitions are limited to questions of law; and (2) that the more basic

underlying issue is the National Labor Relations Commission's potential grave abuse of its discretion. In labor disputes then, this Court may only resolve the matter of whether the Court of Appeals erred in determining "the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission." The general limitation on Rule 45 petitions being concerned with questions of law was discussed in *Abunda v. L. Natividad Poultry Farms:* When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under Rule 45, the general rule is that this Court may only pass upon questions of law. x x x. In addition, *E. Ganzon, Inc. v. Ando, Jr.*, citing *Montoya v. Transmed*, is instructive: In labor cases. Our power of review is limited to the determination of whether the [Court of Appeals] correctly resolved the presence or absence of grave abuse of discretion on the part of the [National Labor Relations Commission]. x x x. It has been settled that the National Labor Relations Commission may be found to have committed grave abuse of discretion when its decision does not provide the following, as stated in *E. Ganzon, Inc.*: . . . not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the [National Labor Relations Commission] contradict those of the [Labor Arbiter]; and when necessary to arrive at a just decision of the case."

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST TO DETERMINE THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP: (A) THE SELECTION AND ENGAGEMENT OF THE EMPLOYEE; (B) THE PAYMENT OF WAGES; (C) THE POWER OF DISMISSAL; AND (D) THE EMPLOYER'S POWER TO CONTROL THE EMPLOYEE ON THE MEANS AND METHODS BY WHICH THE WORK IS ACCOMPLISHED.** — A four-fold test has been applied in determining the existence of an employer-employee relationship. In *Begino v. ABS-CBN*: To determine the existence of [an employer-employee relationship], case law has consistently applied the four-fold test, to wit: (a) *the selection and engagement of the employee*; (b) the *payment of wages*; (c) the *power of dismissal*; and

(d) the employer's *power to control* the employee on the means and methods by which the work is accomplished. Of these criteria, the so-called "*control test*" *is generally regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship*. Under this test, an employer-employee relationship is said to exist where the person for whom the services are performed reserves the right to control not only the end result but also the manner and means utilized to achieve the same.

3. **ID.; ID.; ID.; ID.; EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE RESPONDENT AND PETITIONERS, ESTABLISHED; MODE OF COMPUTING COMPENSATION IS NOT THE DECISIVE FACTOR IN ASCERTAINING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP, FOR WHAT MATTERS IS THAT THE EMPLOYEE RECEIVED COMPENSATION FROM THE EMPLOYER FOR THE SERVICES THAT HE OR SHE RENDERED; DISENGAGEMENT IN THE CONTEXT OF AN EMPLOYER-EMPLOYEE RELATIONSHIP AMOUNTS TO DISMISSAL. —** [T]o be considered employees of GMA, petitioners must prove the following: (1) that GMA engaged their services; (2) that GMA compensated them; (3) that GMA had the power to dismiss them; and more importantly, (4) that GMA exercised control over the means and methods of their work. On the power of hiring, there is no question that petitioners were engaged by and rendered services directly to GMA. Even GMA concedes that it engaged petitioners to perform functions, which had been found by the National Labor Relations Commission and the Court of Appeals to be necessary and desirable to GMA's usual business as both a television and broadcasting company. On the payment of wages, that petitioners were paid so-called "service fees" and not "wages" is merely a matter of nomenclature. Likewise, it is of no consequence that petitioners were paid on a per-shoot basis, since this is only a mode of computing compensation and does not, in any way, preclude GMA's control over the distribution of their wages and the manner by which they carried out their work. It is settled that the mode of computing compensation is not the decisive factor in ascertaining the existence of an employer-employee relationship. What matters is that the employee received compensation from the employer for the services that he or

she rendered. Here, there is no question that GMA directly compensated petitioners for their services. On the power to dismiss, the Court of Appeals correctly sustained the National Labor Relations Commission in noting that the power of dismissal "is implied and is concomitant with the power to select and engage; in other words, it is also the power to disengage." GMA maintains that petitioners were merely "disengaged" from service. This, again, is a futile effort at splitting hairs. Disengagement in the context of an employer-employee relationship amounts to dismissal.

4. **ID.; ID.; ID.; ID.; CONTROL TEST; INDEPENDENT CONTRACTOR AND EMPLOYEE, DISTINGUISHED; A WORKER WHO WAS HIRED BECAUSE OF HIS UNIQUE SKILLS AND TALENTS THAT SET HIM OR HER APART FROM ORDINARY EMPLOYEE, AND ENJOYS INDEPENDENCE AND FREEDOM FROM THE CONTROL AND SUPERVISION OVER THE MEANS AND METHODS IN THE PERFORMANCE OF HIS OR HER WORK, IS RECOGNIZED AS AN INDEPENDENT CONTRACTOR. —** GMA rejects an explicit nomenclature recognizing it as having engaged petitioners as "talents" or independent contractors. Yet, its denial of an employer-employee relationship, coupled with the claim that it merely exercised control over the output required of petitioners, is an implicit assertion that it engaged petitioners as independent contractors. It also does not escape this Court's attention that the remuneration given to the petitioners was denominated as "*talent* fee." This is consistent with petitioners' allegation that they were made to sign contracts indicating that they were "talents" or independent contractors of GMA. x x x. An independent contractor "enjoys independence and freedom from the control and supervision of his principal" as opposed to an employee who is "subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished." This Court exhaustively discussed the nature of an independent contractor relation in *Fuji Television Network, Inc. v. Espiritu*: x x x *Jurisprudence has recognized another kind of independent contractor: individuals with unique skills and talents that set them apart from ordinary employees.* There is no trilateral relationship in this case because the independent contractor himself or herself performs the work for the principal. In other words, the relationship is bilateral. x x x.

5. **ID.; ID.; ID.; ID.; PETITIONERS WERE EMPLOYEES OF THE RESPONDENT, NOT INDEPENDENT CONTRACTORS, AS IT WAS NOT SHOWN THEY WERE HIRED BECAUSE OF THEIR UNIQUE SKILLS AND TALENTS, AND THE SHEER MODESTY OF THE REMUNERATION RENDERED TO THE PETITIONERS AS CAMERA OPERATORS UNDERMINES THE ASSERTION THAT THERE WAS SOMETHING PARTICULARLY UNIQUE ABOUT THEIR STATUS, TALENTS, OR SKILLS. —** [T]he relationship between GMA and petitioners is bilateral since petitioners themselves performed work for GMA. Therefore, in order to be considered independent contractors and not employees of GMA, it must be shown that petitioners were hired because of their "unique skills and talents" and that GMA did not exercise control over the means and methods of their work. x x x. Here, petitioners were hired by GMA as camera operators. There is no showing at all that they were hired because of their "unique skills, talent and celebrity status not possessed by ordinary employees." They were paid a meager salary ranging from ₱750.00 to ₱1500.00 per taping. Though wages are not a "conclusive factor in determining whether one is an employee or an independent contractor," it "may indicate whether one is an independent contractor." In this case, the sheer modesty of the remuneration rendered to petitioners undermines the assertion that there was something particularly unique about their status, talents, or skills. More importantly, petitioners were subject to GMA's control and supervision. Moreover: (1) Their recordings and shoots were never left to their own discretion and craft; (2) They were required to follow the work schedules which GMA provided to them; (3) They were not allowed to leave the work site during tapings, which often lasted for days; (4) They were also required to follow company rules like any other employee. GMA provided the equipment they used during tapings. GMA also assigned supervisors to monitor their performance and guarantee their compliance with company protocols and standards.

6. **ID.; ID.; ID.; CATEGORIES OF EMPLOYEES; WHETHER AN EMPLOYEE IS ENGAGED AS A REGULAR, PROJECT, SEASONAL, CASUAL, OR FIXED-TERM EMPLOYEE IS DETERMINED BY LAW, REGARDLESS OF ANY CONTRACT EXPRESSING OTHERWISE; REGULAR, PROJECT OR SEASONAL, AND CASUAL**

EMPLOYEE, DISTINGUISHED. — Classifying employment, that is, whether an employee is engaged as a regular, project, seasonal, casual, or fixed-term employee, is "determined by law, regardless of any contract expressing otherwise." Article 295 of the Labor Code identifies four (4) categories of employees, namely: (1) regular; (2) project; (3) seasonal; and (4) casual employees. x x x. *Brent School, Inc. v. Zamora* recognized another category: fixed-term employees. Fixed-term employment sanctions the possibility of a purely contractual relationship between the employer and the fixed-term employee, provided that certain requisites are met. Consequently, terms and conditions stipulated in the contract govern their relationship, particularly with respect to the duration of employment. Pursuant to Article 295, *GMA Network, Inc. v. Pabriga* states: . . . employees performing activities which are usually necessary or desirable in the employer's usual business or trade can either be *regular, project or seasonal employees*, while, as a general rule, those performing activities not usually necessary or desirable in the employer's usual business or trade are *casual employees*. Nevertheless, though project and seasonal employees may perform functions that are necessary and desirable to the usual business or trade of the employer, the law distinguishes them from regular employees in that, project and seasonal employees are generally needed and engaged to perform tasks which only last for a specified duration. The relevance of this distinction finds support in how "only employers who constantly need the specified tasks to be performed can be justifiably charged to uphold the constitutionally protected security of tenure of the corresponding workers."

7. **ID.; ID.; ID.; ID.; THE REQUIREMENT TO RENDER A YEAR'S WORTH OF SERVICE BEFORE AN EMPLOYEE IS DEEMED TO HAVE ATTAINED REGULAR STATUS, ONLY APPLIES TO A CASUAL EMPLOYEE, BUT NOT TO AN EMPLOYEE WHO WAS ENGAGED TO PERFORM FUNCTIONS WHICH ARE NECESSARY AND DESIRABLE TO THE USUAL BUSINESS AND TRADE OF THE EMPLOYER, WHERE ENGAGEMENT FOR A YEAR-LONG DURATION IS NOT A CONTROLLING CONSIDERATION. —** GMA argues that petitioners should have rendered "at least one (1)year of service equivalent to 313 working days (6-day work per week) or 261 days (5-day work per week)" before they are deemed to have attained regular

status. x x x. Quite notably, GMA does not refute the finding that petitioners performed functions necessary and desirable to its usual business, it merely insists on a supposedly requisite duration. From the plain language of the second paragraph of Article 295 of the Labor Code, it is clear that the requirement of rendering "at least one (1) year of service[,]" before an employee is deemed to have attained regular status, only applies to casual employees. An employee is regarded a casual employee if he or she was engaged to perform functions which are *not* necessary and desirable to the usual business and trade of the employer. Thus, when one is engaged to perform functions which are necessary and desirable to the usual business and trade of the employer, engagement for a year-long duration is not a controlling consideration. GMA's claim that petitioners were required to render at least one (1) year of service before they may be considered regular employees finds no basis in law. Petitioners were never casual employees precisely because they performed functions that were necessary and desirable to the usual business of GMA. They did not need to render a year's worth of service to be considered regular employees.

8. **ID.; ID.; ID.; PROJECT EMPLOYMENT; A PROJECT EMPLOYMENT ULTIMATELY REQUIRES THE EXISTENCE OF A PROJECT OR AN UNDERTAKING WHICH COULD EITHER BE A PARTICULAR JOB WITHIN THE REGULAR OR USUAL BUSINESS OF THE EMPLOYER, BUT WHICH IS DISTINCT AND SEPARATE, AND IDENTIFIABLE AS SUCH, FROM THE OTHER UNDERTAKINGS OF THE COMPANY; OR A PARTICULAR JOB NOT WITHIN THE REGULAR OR USUAL BUSINESS OF THE COMPANY; IT IS NOT ENOUGH THAT THE EMPLOYEE IS MADE AWARE OF THE DURATION AND SCOPE OF EMPLOYMENT AT THE TIME OF ENGAGEMENT, FOR TO RULE OTHERWISE WOULD BE TO ALLOW EMPLOYERS TO EASILY CIRCUMVENT AN EMPLOYEE'S RIGHT TO SECURITY OF TENURE THROUGH THE CONVENIENT ARTIFICE OF COMMUNICATING A DURATION OR SCOPE. —** [T]hat petitioners performed functions which were necessary and desirable to GMA's usual trade business could nevertheless mean that they were project employees whose engagements were fundamentally time-bound. This Court finds that they were not. As opposed to a regular employee, a project

employee *may or may not* perform functions that are usually necessary or desirable in the usual business or trade of the employer. This has been extensively discussed in *GMA Network, Inc. v. Pabriga*: [T]he activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer, as we have discussed in *ALU-TUCP v. National Labor Relations Commission*, and recently reiterated in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*. In said cases, we clarified the term "project" in the test for determining whether an employee is a regular or project employee: x x x. For, as is evident from the provisions of Article [295] of the Labor Code, quoted earlier, **the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees,"** ***is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.*** In the realm of business and industry, we note that **"project" could refer to one or the other of at least two (2) distinguishable types of activities.** ***Firstly*****, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company,** ***but which is distinct and separate*****, and identifiable as such, from the other undertakings of the company.** Such job or undertaking begins and ends at determined or determinable times. x x x. **The term "project" could also refer to, <u>secondly</u>, a particular job or undertaking that <u>is not within the regular business of the corporation</u>**. x x x. From this, project employment ultimately requires the existence of a project or an undertaking which could either be: (1) a particular job within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job not within the regular business of the company. It is not enough that the employee is made aware of the duration and scope of employment at the time of engagement. To rule otherwise would be to allow employers to easily circumvent an employee's right to security of tenure through the convenient artifice of communicating a duration or scope. In this case, GMA repeatedly engaged petitioners as camera operators for its television programs. As camera

operators, petitioners performed activities which are: (1) within the regular and usual business of GMA; and (2) not identifiably distinct or separate from the other undertakings of GMA. It would be absurd to consider the nature of their work of operating cameras as distinct or separate from the business of GMA, a broadcasting company that produces, records, and airs television programs. From this alone, the petitioners cannot be considered project employees for there is no distinctive "project" to even speak of.

9. **ID.; ID.; ID.; ID.; IN DETERMINING WHETHER AN EMPLOYMENT SHOULD BE CONSIDERED REGULAR OR NON-REGULAR, THE APPLICABLE TEST IS THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY PERFORMED BY THE EMPLOYEE IN RELATION TO THE USUAL BUSINESS OR TRADE OF THE EMPLOYER; THAT IS, WHETHER THE WORK UNDERTAKEN IS NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER, A FACT THAT CAN BE ASSESSED BY LOOKING INTO THE NATURE OF THE SERVICES RENDERED AND ITS RELATION TO THE GENERAL SCHEME UNDER WHICH THE BUSINESS OR TRADE IS PURSUED IN THE USUAL COURSE; A REASONABLE CONNECTION EXISTS BETWEEN PETITIONERS' WORK AS CAMERA OPERATORS AND RESPONDENT'S BUSINESS AS BOTH A TELEVISION AND BROADCASTING COMPANY, AND THE REPEATED ENGAGEMENT OF PETITIONERS OVER THE YEARS REINFORCES THE INDISPENSABILITY OF THEIR SERVICES TO THE RESPONDENT'S BUSINESS. —** Neither should GMA's assertion that petitioners were merely engaged as pinch-hitters or substitutes, whose employment are for a specific duration or period, prevent them from being regular employees. x x x. *Fuji*, citing *ABS-CBN Broadcasting Corporation v. Nazareno*, explained the test for determining regular employment, as follows: x x x. As stated in *ABS-CBN Broadcasting Corporation v. Nazareno*: In determining whether an employment should be considered regular or non-regular, the applicable test is the *reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer*. The standard, supplied by the law itself, *is whether the work undertaken is*

necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade. GMA is primarily engaged in the business of broadcasting, which encompasses the production of television programs. Following the nature of its business, GMA is naturally and logically expected to engage the service of camera operators such as petitioners, in case it ceases business by failing to shoot and record any television program. Again, that petitioners' work as camera operators was necessary and desirable to the usual business of GMA has long been settled by the consistent rulings of both the National Labor Relations Commission and the Court of Appeals. Even GMA fails to refute these findings. This Court finds no cogent reason to depart from these rulings. There is no denying that a reasonable connection exists between petitioners' work as camera operators and GMA's business as both a television and broadcasting company. The repeated engagement of petitioners over the years only reinforces the indispensability of their services to GMA's business. Mindful of these considerations, this Court is certain that the petitioners were GMA's regular employees.

10. ID.; ID.; ID.; FIXED-TERM EMPLOYMENT; WHERE FROM THE CIRCUMSTANCES IT IS APPARENT THAT THE PERIODS HAVE BEEN IMPOSED TO PRECLUDE ACQUISITION OF TENURIAL SECURITY BY THE EMPLOYEE, THEY SHOULD BE STRUCK DOWN AS CONTRARY TO PUBLIC POLICY OR MORALS; A CONTRACT KNOWINGLY AND VOLUNTARILY AGREED UPON BY THE PARTIES, AND THE EMPLOYER AND THE EMPLOYEE DEALT WITH EACH OTHER ON MORE OR LESS EQUAL TERMS WITH NO MORAL DOMINANCE EXERCISED BY THE FORMER OR THE LATTER, WHEN TAKEN TOGETHER, RENDERS A CONTRACT FOR FIXED-TERM EMPLOYMENT VALID AND ENFORCEABLE. — *Fuji*, citing *Pabriga*, explained the standards on fixed-term employment contracts established in *Brent* in this manner: Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that *where*

from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals. We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely: 1) The fixed period of employment *was knowingly and voluntarily agreed upon* by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or 2) It satisfactorily appears that the employer and the employee *dealt with each other on more or less equal terms with no moral dominance* exercised by the former or the latter. x x x. That the contract was "knowingly and voluntarily agreed upon" and that the "employer and employee dealt with each other on more or less equal terms," when taken together, renders a contract for fixed-term employment valid and enforceable.

11. **ID.; ID.; ID.; ID.; THE EMPLOYER MUST SATISFACTORILY SHOW THAT IT WAS NOT IN A DOMINANT POSITION OF ADVANTAGE IN DEALING WITH ITS PROSPECTIVE EMPLOYEE, AS THE COURT WILL INVALIDATE FIXED-TERM EMPLOYMENT CONTRACTS IN INSTANCES WHERE THE EMPLOYER FAILS TO SHOW THAT IT DEALT WITH THE EMPLOYEE IN "MORE OR LESS EQUAL TERMS; SWEEPING GUARANTEES THAT THE CONTRACT WAS KNOWINGLY AND VOLUNTARILY AGREED UPON BY THE PARTIES AND THAT THE EMPLOYER AND THE EMPLOYEE STOOD ON EQUAL FOOTING, WILL NOT SUFFICE. —** [T]his Court has not cowered in invalidating fixed-term employment contracts in instances where the employer fails to show that it dealt with the employee in "more or less equal terms." As discussed in *Pabriga*: x x x. To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee. Thus, in *Philips Semiconductors (Phils.), Inc. v. Fadriquela,* thus Court rejected the employer's insistence on the application of the Brent doctrine when the sole justification of the fixed terms is to respond to temporary albeit frequent

need of such workers x x x. Similarly in this case, this Court cannot enable GMA in hiring and rehiring workers solely depending on its fancy, getting rid of them when, in its mind, they are bereft of prior utility, and with a view to circumvent their right to security of tenure. It would be improper to classify Ventura as a fixed-term employee considering that GMA did not even allege the manner as to how the terms of the contract with him were agreed upon. It is "the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee." Thus, the burden is upon GMA as the employer to prove that it dealt with Ventura in more or less equal terms in the execution of the talent agreements with him. Sweeping guarantees that the contract was knowingly and voluntarily agreed upon by the parties and that the employer and the employee stood on equal footing will not suffice. That Ventura never contested the execution of his talent agreements cannot in any way operate to preclude him from attaining regular employment status. This Court is not blind to the unfortunate tendency for many employees to cede their right to security of tenure rather than face total unemployment.

12. **ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE BURDEN TO PROVE THAT A DISMISSAL WAS ANCHORED ON A JUST OR AUTHORIZED CAUSE RESTS ON THE EMPLOYER, AND THE FAILURE OF THE EMPLOYER TO DISCHARGE THIS BURDEN LEADS TO NO OTHER CONCLUSION THAN THAT A DISMISSAL WAS ILLEGAL; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO REINSTATEMENT TO THEIR POSITIONS WITH FULL BACKWAGES COMPUTED FROM THE TIME OF DISMISSAL UP TO THE TIME OF ACTUAL REINSTATEMENT; AWARD OF ATTORNEY'S FEES, PROPER. —** As regular employees, petitioners enjoy the right to security of tenure. Thus, they may only be terminated for just or authorized cause, and after due notice and hearing. The burden to prove that a dismissal was anchored on a just or authorized cause rests on the employer. The employer's failure to discharge this burden leads to no other conclusion than that a dismissal was illegal. It was thus, incumbent upon GMA to ensure that petitioners' dismissals were made in keeping with the requirements of substantive and procedural due process. GMA, however, miserably failed to allege in its Comment, much

less prove, that petitioners' dismissals were impelled by any of the just or authorized causes recognized in in Articles 297, 298, 299 or 279(a) of the Labor Code. As illegally dismissed employees, petitioners are entitled to reinstatement to their positions with full backwages computed from the time of dismissal up to the time of actual reinstatement. Where reinstatement is no longer feasible, petitioners should be given separation pay in addition to full backwages. Further, petitioners are entitled to the payment of attorney's fees as they were forced to litigate. "It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable." Finally, petitioners are entitled to interest at the legal rate at the rate of 6% per annum until the monetary awards due to them are fully paid, pursuant to *Nacar v. Gallery Frames*.

APPEARANCES OF COUNSEL

Noel V. Neri for petitioners.
Belo Gozon Elma Parel Asuncion & Lucila for respondent.

D E C I S I O N

LEONEN, *J*.:

Only casual employees performing work that is neither necessary nor desirable to the usual business and trade of the employer are required to render at least one (1) year of service to attain regular status. Employees who perform functions which are necessary and desirable to the usual business and trade of the employer attain regular status from the time of engagement.

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioners Henry T. Paragele, Roland Elly C. Jaso, Julie B. Aparente, Roderico S. Abad, Milandro B. Zafe Jr., Richard P. Bernardo, Joseph C. Agus, Romerald S. Taruc, Zernan Bautista, Arnold Motita, Jeffrey

[1] *Rollo*, pp. 9-26.

Canaria, Rommel F. Bulic, Henry N. Ching, Nomer C. Orozco, Jameson M. Fajilan, Jay Albert E. Torres, Rodel P. Galero, Carl Lawrence Jasa Nario, Romeo Sanchez Mangali III, Francisco Rosales Jr., Bonicarl Penaflorida Usaraga, Joven P. Licon, Noriel Barcita Sy, Gonzalo Manabat Bawar, David Adonis S. Ventura, Solomon Pico Sarte, Jony F. Liboon, Jonathan Peralta Anito, Jerome Torralba, and Jayzon Marsan (collectively, "petitioners"), praying that the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 136396 be reversed and set aside.

The dispute subject of the present Petition arose from a consolidated Complaint for regularization, which was subsequently converted into one for "illegal dismissal, non-payment of salary/wages, and regularization"[4] filed by petitioners and other co-complainants against respondent GMA Network, Inc. (GMA).[5]

Petitioners claimed that they were regular employees of GMA, having been employed and dismissed as follows:

NAME	POSITION	SALARY *PER* TAPING	DATE HIRED	DATE DISMISSED
(1) Henry Paragele	Cameraman	₱1,500.00	Sept. 2011	May 2013
(2) Roland Elly Jaso	Cameraman	₱1,500.00	2008	May 2013
(3) Julie Aparente	Asst. Cameraman	₱750.00	2011	May 2013

[2] *Id.* at 978-990-A. The Decision dated March 3, 2017 was penned by Associate Justice (now Associate Justice of this Court) Rosmari D. Carandang (Chairperson) and concurred in by Associate Justices Mario V. Lopez (now Associate Justice of this Court) and Myra V. Garcia-Fernandez of the Third Division, Court of Appeals, Manila.

[3] *Id.* at 1006-1007. The Resolution dated October 26, 2017 was penned by Associate Justice (now Associate Justice of this Court) Rosmari D. Carandang (Chairperson) and concurred in by Associate Justices Mario V. Lopez (now Associate Justice of this Court) and Myra V. Garcia-Fernandez of the Former Third Division, Court of Appeals, Manila.

[4] *Id.* at 53.

[5] *Id.* at 979.

(4) Joseph Agus	Asst. Cameraman	₱1,500.00	2011	May 2013
(5) Roxin Larazo	Cameraman	₱1,500.00	2005	May 2013
(6) Francisco Rosales Jr.	Asst. Cameraman	₱750.00	2011	May 2013
(7) Henry Ching	Cameraman	₱1,500.00	2007	May 2013
(8) Carl Lawrence Nario	Cameraman	₱1,500.00	Sept. 2011	May 2013
(9) Romerald Taruc	Asst. Cameraman	₱750.00	2010	May 2013
(10) Adonis Ventura	Cameraman	₱1,500.00	2011	May 2013
(11) Romeo S. Mangali III	Asst. Cameraman	₱750.00	2011	May 2013
(12) Rodel Galero	Cameraman	₱1,500.00	2010	May 2013
(13) Bonikarl Usaraga	Asst. Cameraman	₱750.00	2011	May 2013
(14) Solomon P. Sarte	Cameraman	₱1,500.00	2011	May 2013
(15) Nomer C. Orozco	Asst. Cameraman	₱750.00	2010	May 2013
(16) Noriel Sy	Asst. Cameraman	₱1500.00	2011	May 2013
(17) Romel Bulic	Asst. Cameraman	₱750.00	2011	May 2013
(18) Richard Bernardo	Asst. Cameraman	₱750.00	2011	May 2013
(19) Joven Licon	Asst. Cameraman	₱750.00	2011	May 2013
(20) Johnny Liboon	Asst. Cameraman	₱750.00	2011	May 2013
(21) Milandro Zafe Jr.	Asst. Cameraman	₱750.00	2011	May 2013
(22) Roderico Abad	Asst. Cameraman	₱750.00	2011	May 2013
(23) Gonzalo Bawar	Cameraman	₱1,500.00	2011	May 2013

(24) Jayson Marzan	Asst. Cameraman	₱750.00	2011	May 2013
(25) Jameson Fajilan	Asst. Cameraman	₱750.00	2011	May 2013
(26) Arnold Motita	Asst. Cameraman	₱750.00	2011	May 2013
(27) Jerome T. Torralba	Cameraman	₱1500.00	2011	May 2013
(28) Zernan Bautista				
(29) Jefrey Canaria	Cameraman	₱1,500.00	2009	May 2013
(30) Jay Albert Torres	Cameraman	₱1,500.00	2000	May 2013
(31) Jonathan P. Anito[6]				

Countering petitioners, GMA denied the existence of an employer-employee relationship. It insisted that petitioners were engaged as mere "pinch-hitters or relievers" whose services were engaged only when there was a need for substitute or additional workforce.[7]

On December 16, 2014, Labor Arbiter Elias H. Salinas dismissed[8] the consolidated Complaint due to petitioners' failure to prove the existence of an employer-employee relationship. Conformably, as no employer-employee relationship existed for him, Labor Arbiter Salinas ruled that no illegal dismissal could have ensued.[9]

On appeal the National Labor Relations Commission, in its March 28, 2014 Decision,[10] modified Labor Arbiter Salinas' Decision. The National Labor Relations Commission recognized petitioners as employees of GMA, but held that only one of

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[6] *Id.* at 979-981.

[7] *Id.* at 982.

[8] *Id.* at 788-803.

[9] *Id.* at 802.

[10] *Id.* at 869-889.

their co-complainants, Roxin Lazaro (Lazaro), was a regular employee.[11]

The National Labor Relations Commission explained that GMA directly engaged petitioners as camera operators to perform services that were necessary and desirable to its business as a broadcasting company.[12] It added that GMA's mere designation that they are "pinch-hitters or relievers" cannot exclude them from what the law considers to be employees.[13]

However, the National Labor Relations Commission added that the existence of an employer-employee relationship between petitioners and GMA does not automatically mean that petitioners were regular employees of GMA.[14] It reasoned that, pursuant to Article 295 (formerly Article 280) of the Labor Code,[15] petitioners should have first rendered "at least one year of service, whether such service is continuous or broken"[16] before they can be considered regular employees of GMA. In view of this,

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[11] *Id.* at 888.

[12] *Id.* at 879.

[13] *Id.* at 880.

[14] *Id.* at 883-884.

[15] LABOR CODE, Art. 295 provides:

ARTICLE 295. [280] *Regular and Casual Employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

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

[16] *Rollo*, p. 886.

only Lazaro, who had served a total of 477 days from June 2005 to April 2013, was considered to have attained regular status.[17]

Petitioners asked the National Labor Relations Commission to partially reconsider its March 28, 2014 Decision. However, their Motion was denied by the National Labor Relations Commission in a Resolution dated May 21, 2014.[18]

Aggrieved, petitioners filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.[19]

On March 3, 2017, the Court of Appeals dismissed their Rule 65 Petition for lack of merit and sustained the March 28, 2014 Decision and May 21, 2014 Resolution of the National Labor Relations Commission.[20]

Citing the National Labor Relations Commission's March 28, 2014 Decision with approval, the Court of Appeals maintained that an employer-employee relationship existed between petitioners and GMA.[21] However, it explained that the existence of an employer-employee relationship does not automatically confer regular employment status on employees who were merely employed as "relievers for aggregate periods of less than a year each."[22]

On March 30, 2017, petitioners moved for the reconsideration of the March 3, 2017 Decision of the Court of Appeals, but their Motion was denied in a Resolution dated October 26, 2017.[23]

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[17] *Id.* at 886-887.

[18] *Id.* at 904-909.

[19] *Id.* at 27-52.

[20] *Id.* at 978-990.

[21] *Id.* at 986.

[22] *Id.* at 987.

[23] *Id.* at 1006-1007.

Petitioners then filed the present Petition for Review on *Certiorari*,[24] praying that: (1) the March 3, 2017 Decision and October 26, 2017 Resolution of the Court of Appeals be reversed and set aside; (2) they be declared regular employees of GMA who were illegally dismissed from their service; and ultimately (3) that they be reinstated with full backwages.

Petitioners maintain that they are employees of GMA having satisfied the four-fold test of employer-employee relationship in this manner:

(1) GMA hired them as camera operators;

(2) GMA compensated them for their service;

(3) GMA exercised its power of dismissal, albeit unjustly, over them; and

(4) GMA had control over the means and methods of their work.[25]

With respect to the element of control, petitioners allege that their work schedules were provided by GMA and that they were required to stay in their work sites before and after every taping. GMA likewise provided the equipment they used for tapings such as cameras, lighting, and audio equipment.[26] Moreover, GMA assigned supervisors to monitor their work and ensure their compliance with company standards. Petitioners were likewise obliged to follow company rules and regulations.[27]

Petitioners assert that as camera operators assigned to several television programs of GMA, they performed functions that were necessary and desirable to GMA's business as both a television and broadcasting company. They further contend that their repeated and continuous employment with GMA after each television program they covered shows the necessity and

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

[25] *Id.* at 16-17.

[26] *Id.* at 13.

[27] *Id.* at 16.

desirability of their functions. Hence, they have already attained the status of regular employees.[28]

Ultimately, petitioners argue that, as regular employees, they are accorded the right to security of tenure and, therefore, their dismissal was illegal for want of just or authorized cause.[29]

In its Comment,[30] upon being required to submit by this Court through its April 2, 2018 Resolution,[31] GMA refutes the existence of an employer-employee relationship.[32] It maintains that petitioners were mere "pinch-hitters or relievers" who were engaged to augment its regular crew whenever there is a need for substitute or additional workforce.[33]

Further, GMA asserts that the "service fees" given to the workers were "not compensation paid to an employee, but rather remuneration for the services rendered" as pinch-hitters/ freelancers.[34] Furthermore, GMA also belies the contention that it exercised control over the workers. It claims that it only monitored the performance of their work to ensure that the "end result" is compliant with company standards.[35]

GMA adds that, even assuming that an employer-employee relationship did exist between them, petitioners could not have attained regular status considering their failure to render "at least one year of service" as required by law.[36]

Specifically, with respect to petitioner Adonis S. Ventura (Ventura), GMA added that he was engaged as a fixed-term

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

[29] *Id.* at 19.

[30] *Id.* at 1023-1081.

[31] *Id.* at 1015-1016.

[32] *Id.* at 1062.

[33] *Id.* at 1065.

[34] *Id.* at 1068.

[35] *Id.*

[36] *Id.* at 1059.

employee under a valid "Talent Agreement." Accordingly, Ventura's employment was automatically terminated upon the happening of the day certain stipulated in the contract. GMA further maintains that it may not be obliged to re-engage Ventura.[37]

Ultimately, GMA argues that petitioners could not have been illegally dismissed since they were not regular employees with tenurial security.[38] GMA maintains that as pinch-hitters/ freelancers, petitioners' engagement ceased at the end of every shoot. Consequently, there exists no obligation on the part of GMA to re-engage them.[39]

For this Court's resolution are the following issues:

First, whether or not an employer-employee relationship existed between the petitioners and GMA;

Second—assuming the existence of an employer-employee relationship—whether or not the petitioners are regular employees of GMA;

Third, assuming regular employment status, whether or not the petitioners were illegally dismissed.

The petition is meritorious.

I

Labor cases are elevated to this Court through Rule 45 petitions, following Rule 65 petitions decided by the Court of Appeals on rulings made by the National Labor Relations Commission. From this, two (2) chief considerations become apparent: (1) the general injunction that Rule 45 petitions are limited to questions of law; and (2) that the more basic underlying issue is the National Labor Relations Commission's potential grave abuse of its discretion. In labor disputes then, this Court may only resolve the matter of whether the Court of Appeals erred in determining "the presence or absence of grave abuse

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[37] *Id.* at 1070.

[38] *Id.* at 1078.

[39] *Id.* at 1067.

of discretion and deciding other jurisdictional errors of the National Labor Relations Commission."[40]

The general limitation on Rule 45 petitions being concerned with questions of law was discussed in *Abuda v. L. Natividad Poultry Farms*:[41]

> When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under Rule 45, the general rule is that this Court may only pass upon questions of law. *Meralco Industrial Engineering Services Corp. v. National Labor Relations Commission* emphasized as follows:
>
>> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the [National Labor Relations Commission], when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[42] (Citations omitted, emphasis in the original)

In addition, *E. Ganzon, Inc. v. Ando, Jr.*,[43] citing *Montoya v. Transmed*,[44] is instructive:

> In labor cases. Our power of review is limited to the determination of whether the [Court of Appeals] correctly resolved the presence or absence of grave abuse of discretion on the part of the [National Labor Relations Commission]. The Court explained this in *Montoya v. Transmed Manila Corporation*:

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[40] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014) [Per *J.* Leonen, Second Division].

[41] 870 SCRA 468, July 4, 2018 [Per *J*. Leonen, Third Division].

[42] *Id.* at 483-484 *citing Meralco Industrial Engineering Services v. National Labor Relations Commission*, 572 Phil. 94 (2008) [Per *J.* Chico-Nazario, Third Division].

[43] 806 Phil. 58 (2017) [Per *J*. Peralta, Second Division].

[44] 613 Phil. 696 (2009) [Per *J*. Brion, Second Division].

> . . . In a Rule 45 review, we consider the correctness of the assailed [Court of Appeals] 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 [Court of Appeals] decision. In ruling for legal correctness, we have to view the [Court of Appeals] decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the [Court of Appeals] decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it, not on the basis of whether the [National Labor Relations Commission] decision on the merits of the case was correct. In other words, we have to be keenly aware that the [Court of Appeals] undertook a Rule 65 review, not a review on appeal, of the [National Labor Relations Commission] decision challenged before it. This is the approach that should be basic in a Rule 45 review of a [Court of Appeals] ruling in a labor case. In question form, the question to ask is: *Did the [Court of Appeals] correctly determine whether the [National Labor Relations Commission] committed grave abuse of discretion in ruling on the case?*[45] (Citation omitted, emphasis supplied)

It has been settled that the National Labor Relations Commission may be found to have committed grave abuse of discretion when its decision does not provide the following, as stated in *E. Ganzon, Inc.*:

. . . not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the [National Labor Relations Commission] contradict those of the [Labor Arbiter]; and when necessary to arrive at a just decision of the case."[46] (Citation omitted)

These parameters shall guide this Court in resolving the substantial issues in the present Petition.

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[45] *E. Ganzon, Inc. v. Ando Jr.*, 806 Phil. 58, 63-64 (2017) [Per *J*. Peralta, Second Division], Citations omitted.

[46] *Id.* at 65.

II

GMA insists that petitioners were never hired as its employees, "whether probationary, casual[,] or any type of employment.,[47] According to it, petitioners were merely pinch-hitters or freelancers engaged on a per-shoot basis whenever the need for additional workforce arose.[48]

GMA's arguments fail to impress.

The question of whether an employer-employee relationship existed between petitioners and GMA has already been settled by the consistent rulings of the National Labor Relations Commission and the Court of Appeals. To once and for all put this matter to rest, this Court further clarifies their pronouncements.

A four-fold test has been applied in determining the existence of an employer-employee relationship. In *Begino v. ABS-CBN*:[49]

> To determine the existence of [an employer-employee relationship], case law has consistently applied the four-fold test, to wit: (a) *the selection and engagement of the employee*; (b) the *payment of wages*; (c) the *power of dismissal*; and (d) the employer's *power to control* the employee on the means and methods by which the work is accomplished. Of these criteria, the so-called "*control test*" *is generally regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship*. Under this test, an employer-employee relationship is said to exist where the person for whom the services are performed reserves the right to control not only the end result but also the manner and means utilized to achieve the same.[50] (Citations omitted, emphasis supplied)

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[47] *Rollo*, p. 1065.

[48] *Id.*

[49] 758 Phil. 467 (2015) [Per *J.* Perez, First Division].

[50] *Id.* at 478-479 *citing Bernarte v. Philippine Basketball Association*, 673 Phil. 384 (2011) [Per *J.* Carpio, Second Division]; and *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, 474 Phil. 414 (2004) [Per *J.* Ynares-Santiago, First Division].

Thus, to be considered employees of GMA, petitioners must prove the following: (1) that GMA engaged their services; (2) that GMA compensated them; (3) that GMA had the power to dismiss them; and more importantly, (4) that GMA exercised control over the means and methods of their work.

On the power of hiring, there is no question that petitioners were engaged by and rendered services directly to GMA. Even GMA concedes that it engaged petitioners to perform functions, which had been found by the National Labor Relations Commission and the Court of Appeals to be necessary and desirable to GMA's usual business as both a television and broadcasting company.[51]

On the payment of wages, that petitioners were paid so-called "service fees" and not "wages"[52] is merely a matter of nomenclature. Likewise, it is of no consequence that petitioners were paid on a per-shoot basis, since this is only a mode of computing compensation and does not, in any way, preclude GMA's control over the distribution of their wages and the manner by which they carried out their work.

It is settled that the mode of computing compensation is not the decisive factor in ascertaining the existence of an employer-employee relationship. What matters is that the employee received compensation from the employer for the services that he or she rendered.[53] Here, there is no question that GMA directly compensated petitioners for their services.

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[51] *Rollo*, p. 1064.

[52] *Id.* at 1068.

[53] See *Chavez v. National Labor Relations Commission,* 489 Phil. 444, 456-457 (2005) [Per *J.* Callejo, Second Division]:

Wages are defined as "remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered." That the petitioner was paid on a per trip basis is not significant. This is merely a method of computing compensation and

On the power to dismiss, the Court of Appeals correctly sustained the National Labor Relations Commission in noting that the power of dismissal "is implied and is concomitant with the power to select and engage; in other words, it is also the power to disengage."[54] GMA maintains that petitioners were merely "disengaged" from service. This, again, is a futile effort at splitting hairs. Disengagement in the context of an employer-employee relationship amounts to dismissal.

Finally, on the most important element of control, it becomes necessary to determine whether GMA exercised control over the means and methods of petitioners' work. Moreover, given GMA's specific representations on the nature of its engagement with petitioners, a review of the difference between an independent contractor and an employee is in order.

GMA rejects an explicit nomenclature recognizing it as having engaged petitioners as "talents" or independent contractors.[55] Yet, its denial of an employer-employee relationship, coupled with the claim that it merely exercised control over the output required of petitioners,[56] is an implicit assertion that it engaged petitioners as independent contractors. It also does not escape this Court's attention that the remuneration given to the petitioners was denominated as "*talent* fee."[57] This is consistent with petitioners' allegation that they were made to sign contracts indicating that they were "talents" or independent contractors of GMA.[58]

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not a basis for determining the existence or absence of employer-employee relationship. One may be paid on the basis of results or time expended on the work, and may or may not acquire an employment status, depending on whether the elements of an employer-employee relationship are present or not.

[54] *Rollo*, p. 1067.

[55] *Id.* at 1064.

[56] *Id.* at 1069.

[57] *Id.* at 738 and 98.

[58] *Id.* at 14.

Chavez v. National Labor Relations[59] defines an independent contractor as:

. . . one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under its own responsibility according to its own manner and method, *free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof*."[60] (Citation omitted, emphasis supplied)

An independent contractor "enjoys independence and freedom from the control and supervision of his principal" as opposed to an employee who is "subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished."[61]

This Court exhaustively discussed the nature of an independent contractor relation in *Fuji Television Network, Inc. v. Espiritu*:[62]

Independent contractors are recognized under Article 106 of the Labor Code:

> Art. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
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> . . . .
>
> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine

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[59] 489 Phil. 444 (2005) [Per *J*. Callejo, Second Division].

[60] *Id.* at 457-458. Citing *Tan v. Lagrama*, 436 Phil. 190 (2002) [Per *J*. Mendoza, Second Division].

[61] *Id.* at 458.

[62] 749 Phil. 388 (2014) [Per *J*. Leonen, Second Division].

> who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
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> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In Department Order No. 18-A, Series of 2011, of the Department of Labor and Employment, a contractor is defined as having:

> Section 3. . . .
>
> (c) . . . an arrangement whereby a principal agrees to put out or farm out with a contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.

This department order also states that there is a trilateral relationship in legitimate job contracting and subcontracting arrangements among the principal, contractor, and employees of the contractor. There is no employer-employee relationship between the contractor and principal who engages the contractor's services, but there is an employer-employee relationship between the contractor and workers hired to accomplish the work for the principal.

Jurisprudence has recognized another kind of independent contractor: individuals with unique skills and talents that set them apart from ordinary employees. There is no trilateral relationship in this case because the independent contractor himself or herself performs the work for the principal. In other words, the relationship is bilateral.

In *Orozco v. Court of Appeals*, Wilhelmina Orozco was a columnist for the Philippine Daily Inquirer. This court ruled that she was an independent contractor because of her "talent, skill, experience, and

her unique viewpoint as a feminist advocate." In addition, the Philippine Daily Inquirer *did not have the power of control over Orozco, and she worked at her own pleasure*.

Semblante v. Court of Appeals involved a *masiador* and a *sentenciador*. This court ruled that "petitioners performed their functions as masiador and sentenciador *free from the direction and control of respondents*" and that the masiador and sentenciador "relied mainly on their 'expertise that is characteristic of the cockfight gambling.'" Hence, no employer-employee relationship existed.

Bernarte v. Philippine Basketball Association involved a basketball referee. This court ruled that "a referee is an independent contractor, *whose special skills and independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party*."

In these cases, the workers were found to be independent contractors *because of their unique skills and talents and the lack of control over the means and methods in the performance of their work*.

In other words, there are different kinds of independent contractors: those engaged in legitimate job contracting and those who have unique skills and talents that set them apart from ordinary employees.[63] (Citations omitted, emphasis supplied)

Evidently, the relationship between GMA and petitioners is bilateral since petitioners themselves performed work for GMA. Therefore, in order to be considered independent contractors and not employees of GMA, it must be shown that petitioners were hired because of their "unique skills and talents" and that GMA did not exercise control over the means and methods of their work.

Fuji's resolution of whether there existed an independent contractual relationship in that case entailed a comparison of the circumstances surrounding two (2) prior cases decided by this Court. *Fuji* considered *Sonza v. ABS-CBN*[64] and *Dumpit Murillo v. Court of Appeals*[65] in the following manner:

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[63] *Id.* at 424-427.

[64] 475 Phil. 539 (2004) [Per *J.* Carpio, First Division].

[65] 551 Phil. 725 (2007) [Per *J.* Quisumbing, Second Division].

Sonza was engaged by ABS-CBN *in view of his "unique skills, talent and celebrity status not possessed by ordinary employees."* His work was for radio and television programs. On the other hand, Dumpit-Murillo was hired by ABC as a newscaster and co-anchor.

Sonza's *talent fee amounted to ₱317,000.00 per month*, which this court found to be a substantial amount that indicated he was an independent contractor rather than a regular employee. Meanwhile, Dumpit-Murillo's monthly salary was ₱28,000.00, a very low amount compared to what Sonza received.

Sonza was unable to prove that ABS-CBN could terminate his services apart from breach of contract. There was no indication that he could be terminated based on just or authorized causes under the Labor Code. In addition, ABS-CBN continued to pay his talent fee under their agreement, even though his programs were no longer broadcasted. Dumpit-Murillo was found to have been illegally dismissed by her employer when they did not renew her contract on her fourth year with ABC.

In Sonza, this court ruled that ABS-CBN *did not control how Sonza delivered his lines, how he appeared on television, or how he sounded on radio*. All that Sonza needed was his talent. Further, "ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work . . . did not meet ABS-CBN's approval." In Dumpit-Murillo, the duties and responsibilities enumerated in her contract was a clear indication that ABC had control over her work.[66] (Citations omitted, emphasis supplied)

Here, petitioners were hired by GMA as camera operators. There is no showing at all that they were hired because of their "unique skills, talent and celebrity status not possessed by ordinary employees."

They were paid a meager salary ranging from ₱750.00 to ₱1500.00 per taping. Though wages are not a "conclusive factor in determining whether one is an employee or an independent contractor," it "may indicate whether one is an independent

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[66] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388. 432-433 (2014) [Per *J.* Leonen, Second Division].

contractor."[67] In this case, the sheer modesty of the remuneration rendered to petitioners undermines the assertion that there was something particularly unique about their status, talents, or skills.

More importantly, petitioners were subject to GMA's control and supervision. Moreover:

(1) Their recordings and shoots were never left to their own discretion and craft;

(2) They were required to follow the work schedules which GMA provided to them;

(3) They were not allowed to leave the work site during tapings, which often lasted for days;

(4) They were also required to follow company rules like any other employee.

GMA provided the equipment they used during tapings. GMA also assigned supervisors to monitor their performance and guarantee their compliance with company protocols and standards.[68]

Having satisfied the element of control in determining the existence of an employer-employee relationship, the next matter for resolution is whether petitioners were regular employees of GMA.

III

Petitioners maintain that as camera operators, petitioners performed functions that were necessary and desirable to GMA's usual business as a television and broadcasting company. They emphasize that their continuous employment with GMA, despite the end of shooting and recording for each television program to which they were assigned, further demonstrates the necessity and desirability of the functions they were performing. Accordingly, they were regular employees.[69]

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[67] *Id.* at 433.

[68] *Rollo*, p. 883.

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

Petitioners' assertions are well-taken.

Classifying employment, that is, whether an employee is engaged as a regular, project, seasonal, casual, or fixed-term employee, is "determined by law, regardless of any contract expressing otherwise."[70]

Article 295 of the Labor Code identifies four (4) categories of employees, namely: (1) regular; (2) project; (3) seasonal; and (4) casual employees. Furthermore:

> Article 295. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular *where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer*, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That [sic], any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

Brent School, Inc. v. Zamora[71] recognized another category: fixed-term employees. Fixed-term employment sanctions the possibility of a purely contractual relationship between the employer and the fixed-term employee, provided that certain requisites are met. Consequently, terms and conditions stipulated in the contract govern their relationship, particularly with respect to the duration of employment.[72]

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[70] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 169 (2013) [Per *J.* Leonardo-De Castro, First Division].

[71] 260 Phil. 747 (1990) [Per *J.* Narvasa, *En Banc*].

[72] *Id.* at 760.

Pursuant to Article 295, *GMA Network, Inc. v. Pabriga* states:

> . . . employees performing activities which are usually necessary or desirable in the employer's usual business or trade can either be *regular, project or seasonal employees*, while, as a general rule, those performing activities not usually necessary or desirable in the employer's usual business or trade are *casual employees*."[73] (Emphasis supplied)

Nevertheless, though project and seasonal employees may perform functions that are necessary and desirable to the usual business or trade of the employer, the law distinguishes them from regular employees in that, project and seasonal employees are generally needed and engaged to perform tasks which only last for a specified duration. The relevance of this distinction finds support in how "only employers who constantly need the specified tasks to be performed can be justifiably charged to uphold the constitutionally protected security of tenure of the corresponding workers."[74]

Conformably, Article 294 of the Labor Code provides:

> Article 294. [279] *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Citation omitted)

Here, GMA argues that petitioners should have rendered "at least one (1) year of service equivalent to 313 working days (6-day work per week) or 261 days (5-day work per week)"

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[73] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 170 (2013) [Per *J.* Leonardo-De Castro, First Division].

[74] *Id.*

before they are deemed to have attained regular status.[75] It harps on the March 3, 2017 Decision of the Court of Appeals which noted that petitioners cannot be deemed regular employees since they failed to comply with the one-year period supposedly required by law. Quite notably, GMA does not refute the finding that petitioners performed functions necessary and desirable to its usual business, it merely insists on a supposedly requisite duration.

From the plain language of the second paragraph of Article 295 of the Labor Code,[76] it is clear that the requirement of rendering "at least one (1) year of service[,]" before an employee is deemed to have attained regular status, only applies to casual employees. An employee is regarded a casual employee if he or she was engaged to perform functions which are *not* necessary and desirable to the usual business and trade of the employer.[77] Thus, when one is engaged to perform functions which are necessary and desirable to the usual business and trade of the employer, engagement for a year-long duration is not a controlling consideration.

GMA's claim that petitioners were required to render at least one (1) year of service before they may be considered regular employees finds no basis in law. Petitioners were never casual employees precisely because they performed functions that were necessary and desirable to the usual business of GMA. They did not need to render a year's worth of service to be considered regular employees.

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[75] *Rollo*, p. 1060.

[76] LABOR CODE, Art. 295, par. 2 provides:

Article 295, par. 2. *Regular and casual employment*. — An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That [*sic*] any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[77] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 170-171 (2013) [Per *J*. Leonardo-De Castro, First Division].

Of course, that petitioners performed functions which were necessary and desirable to GMA's usual trade business could nevertheless mean that they were project employees whose engagements were fundamentally time-bound. This Court finds that they were not.

As opposed to a regular employee, a project employee *may or may not* perform functions that are usually necessary or desirable in the usual business or trade of the employer. This has been extensively discussed in *GMA Network, Inc. v. Pabriga*:[78]

[T]he activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer, as we have discussed in *ALU-TUCP v. National Labor Relations Commission*, and recently reiterated in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*. In said cases, we clarified the term "project" in the test for determining whether an employee is a regular or project employee:

> It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. It is unusual (but still conceivable) for a company to undertake a project which has absolutely no relationship to the usual business of the company; thus, for instance, it would be an unusual steel-making company which would undertake the breeding and production of fish or the cultivation of vegetables. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as

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[78] 722 Phil. 170 (2013) [Per *J*. Leonardo-De Castro, First Division].

> distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." For, as is evident from the provisions of Article [295] of the Labor Code, quoted earlier, **the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees,"** ***is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.***
>
> In the realm of business and industry, we note that **"project" could refer to one or the other of at least two (2) distinguishable types of activities. *Firstly*, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, *but which is distinct and separate*, and identifiable as such, from the other undertakings of the company.** Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more [distinct] identifiable construction projects: e.g., a twenty-five-[story] hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.
>
> **The term "project" could also refer to, <u>secondly</u>, a particular job or undertaking that is *not within the regular business of the corporation*.** Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times...

Thus, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove *that the duration and*

scope of the employment was specified at the time they were engaged, but also *that there was indeed a project*. As discussed above, the project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the specified employee. If the particular job or undertaking is within the regular or usual business of the employer company *and* it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.[79] (Citations omitted, emphasis and underscoring in the original)

From this, project employment ultimately requires the existence of a project or an undertaking which could either be: (1) a particular job within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job not within the regular business of the company. It is not enough that the employee is made aware of the duration and scope of employment at the time of engagement. To rule otherwise would be to allow employers to easily circumvent an employee's right to security of tenure through the convenient artifice of communicating a duration or scope.

In this case, GMA repeatedly engaged petitioners as camera operators for its television programs. As camera operators, petitioners performed activities which are: (1) within the regular and usual business of GMA; and (2) not identifiably distinct or separate from the other undertakings of GMA. It would be absurd to consider the nature of their work of operating cameras as distinct or separate from the business of GMA, a broadcasting company that produces, records, and airs television programs.

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[79] *Id.* at 170-172.

From this alone, the petitioners cannot be considered project employees for there is no distinctive "project" to even speak of.

Neither should GMA's assertion that petitioners were merely engaged as pinch-hitters or substitutes, whose employment are for a specific duration or period, prevent them from being regular employees. Again, from *GMA Network, Inc. v. Pabriga*:[80]

Every industry, even public offices, has to deal with securing substitutes for employees who are absent or on leave. Such tasks, whether performed by the usual employee or by a substitute, cannot be considered separate and distinct from the other undertakings of the company. *While it is management's prerogative to device a method to deal with this issue, such prerogative is not absolute and is limited to systems wherein employees are not ingeniously and methodically deprived of their constitutionally protected right to security of tenure. We are not convinced that a big corporation such as petitioner cannot device a system wherein a sufficient number of technicians can be hired with a regular status who can take over when their colleagues are absent or on leave, especially when it appears from the records that petitioner hires so-called pinch-hitters regularly every month*.[81] (Emphasis supplied)

Fuji,[82] citing *ABS-CBN Broadcasting Corporation v. Nazareno*,[83] explained the test for determining regular employment, as follows:

The test for determining regular employment is whether there is a reasonable connection between the employee's activities and the usual business of the employer. Article [295] provides that the nature of work must be "necessary or desirable in the usual business or trade of the employer" as the test for determining regular employment. As stated in *ABS-CBN Broadcasting Corporation v. Nazareno*:

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[80] 722 Phil. 161 (2013) [Per *J.* Leonardo-De Castro, First Division].

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

[82] 749 Phil. 388 (2014) [Per *J.* Leonen, Second Division].

[83] 534 Phil. 306 (2006) [Per *J.* Callejo, Sr., First Division].

> In determining whether an employment should be considered regular or non-regular, the applicable test is the *reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer*. The standard, supplied by the law itself, *is whether the work undertaken is necessary or desirable in the usual business or trade of the employer*, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade.[84] (Emphasis supplied)

GMA is primarily engaged in the business of broadcasting, which encompasses the production of television programs. Following the nature of its business, GMA is naturally and logically expected to engage the service of camera operators such as petitioners, in case it ceases business by failing to shoot and record any television program. Again, that petitioners' work as camera operators was necessary and desirable to the usual business of GMA has long been settled by the consistent rulings of both the National Labor Relations Commission and the Court of Appeals. Even GMA fails to refute these findings.

This Court finds no cogent reason to depart from these rulings. There is no denying that a reasonable connection exists between petitioners' work as camera operators and GMA's business as both a television and broadcasting company. The repeated engagement of petitioners over the years only reinforces the indispensability of their services to GMA's business. Mindful of these considerations, this Court is certain that the petitioners were GMA's regular employees.

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[84] *Fuji Television Network, Inc. v. Espiritu,* 749 Phil. 388, 435 (2014) [Per *J*. Leonen, Second Division].

IV

Fuji,[85] citing *Pabriga*,[86] explained the standards on fixed-term employment contracts established in *Brent* in this manner:

> Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that *where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals*. We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:
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> 1) The fixed period of employment *was knowingly and voluntarily agreed upon* by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee *dealt with each other on more or less equal terms with no moral dominance* exercised by the former or the latter.
>
> These indications, which must be read together, make the Brent doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee.[87] (Citation omitted, emphasis supplied)

That the contract was "knowingly and voluntarily agreed upon" and that the "employer and employee dealt with each

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[85] 749 Phil. 388 (2014) [Per *J*. Leonen, Second Division].

[86] 722 Phil. 161 (2013) [Per *J*. Leonardo-De Castro, First Division].

[87] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 422-423 (2014) [Per *J*. Leonen, Second Division].

other on more or less equal terms," when taken together, renders a contract for fixed-term employment valid and enforceable.

Nevertheless, this Court has not cowered in invalidating fixed-term employment contracts in instances where the employer fails to show that it dealt with the employee in "more or less equal terms." As discussed in *Pabriga*:[88]

> [W]hen a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee. These indications were applied in *Pure Foods Corporation v. National Labor Relations Commission*, where we discussed the patent inequality between the employer and employees therein:
>
> > [I]t could not be supposed that private respondents and all other so-called "casual" workers of [the employer] knowingly and voluntarily agreed to the 5-month employment contract. Cannery workers are never on equal terms with their employers. Almost always, they agree to any terms of an employment contract just to get employed considering that it is difficult to find work given their ordinary qualifications. Their freedom to contract is empty and hollow because theirs is the freedom to starve if they refuse to work as casual or contractual workers. Indeed, to the unemployed, security of tenure has no value. It could not then be said that petitioner and private respondents "dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.["]

To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee. Thus, in *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, this Court rejected the employer's insistence on the application of the Brent doctrine when the sole employer's insistence on the

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[88] 722 Phil. 161 (2013) [Per *J*. Leonardo-De Castro, First Division].

application of the Brent doctrine when the sole justification of the fixed terms is to respond to temporary albeit frequent need of such workers:

> We reject the petitioner's submission that it resorted to hiring employees for fixed terms to augment or supplement its regular employment "for the duration of peak loads" during short-term surges to respond to cyclical demands; hence, it may hire and retire workers on fixed terms, ad infinitum, depending upon the needs of its customers, domestic and international. Under the petitioner's submission, any worker hired by it for fixed terms of months or years can never attain regular employment status. . . .[89] (Citations omitted)

Similarly, in this case, this Court cannot enable GMA in hiring and rehiring workers solely depending on its fancy, getting rid of them when, in its mind, they are bereft of prior utility, and with a view to circumvent their right to security of tenure. It would be improper to classify Ventura as a fixed-term employee considering that GMA did not even allege the manner as to how the terms of the contract with him were agreed upon.

It is "the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee."[90] Thus, the burden is upon GMA as the employer to prove that it dealt with Ventura in more or less equal terms in the execution of the talent agreements with him. Sweeping guarantees that the contract was knowingly and voluntarily agreed upon by the parties and that the employer and the employee stood on equal footing will not suffice.

That Ventura never contested the execution of his talent agreements cannot in any way operate to preclude him from attaining regular employment status. This Court is not blind to the unfortunate tendency for many employees to cede their right to security of tenure rather than face total unemployment.

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[89] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 179 (2013) [Per *J.* Leonardo-De Castro, First Division].

[90] *Id.* at 179.

V

As regular employees, petitioners enjoy the right to security of tenure. Thus, they may only be terminated for just or authorized cause, and after due notice and hearing. The burden to prove that a dismissal was anchored on a just or authorized cause rests on the employer. The employer's failure to discharge this burden leads to no other conclusion than that a dismissal was illegal.

It was thus, incumbent upon GMA to ensure that petitioners' dismissals were made in keeping with the requirements of substantive and procedural due process. GMA, however, miserably failed to allege in its Comment, much less prove, that petitioners' dismissals were impelled by any of the just or authorized causes recognized in Articles 297,[91] 298,[92] 299[93] or 279(a)[94] of the Labor Code.

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[91] LABOR CODE, Art. 297 provides:

ARTICLE 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;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[92] LABOR CODE, Art. 298 provides:

ARTICLE 298. [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 of circumventing the previsions 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

As illegally dismissed employees, petitioners are entitled to reinstatement to their positions with full backwages computed from the time of dismissal up to the time of actual reinstatement. Where reinstatement is no longer feasible, petitioners should be given separation pay in addition to full backwages.

Further, petitioners are entitled to the payment of attorney's fees as they were forced to litigate. "It is settled that in actions for recovery of wages or where an employee was forced to

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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.

[93] LABOR CODE, Art. 299 provides:

ARTICLE 299. [284] Disease as Ground for Termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[94] LABOR CODE, Art. 279 provides:

ARTICLE 279. [264] Prohibited Activities. — (a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry. No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout. Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."[95]

Finally, petitioners are entitled to interest at the legal rate at the rate of 6% per annum until the monetary awards due to them are fully paid, pursuant to *Nacar v. Gallery Frames*.[96]

WHEREFORE, this Court resolves to **GRANT** the Petition. The assailed March 3, 2017 Decision and October 26, 2017 Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**.

The following petitioners are **DECLARED** regular employees of respondent GMA Network Inc. and are **ORDERED REINSTATED** to their former positions and to be **PAID** backwages, allowances, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement:

1. Henry T. Paragele
2. Roland Elly C. Jaso
3. Julie B. Aparente
4. Roderico S. Abad
5. Milandro B. Zafe Jr.
6. Richard P. Bernardo
7. Joseph C. Agus
8. Romerald S. Taruc
9. Zernan Bautista
10. Arnold Motita
11. Jeffrey Canaria
12. Rommel F. Bulic
13. Henry N. Ching
14. Nomer C. Orozco
15. Jameson M. Fajilan
16. Jay Albert E. Torres

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[95] *Aliling v. Feliciano*, 686 Phil. 889, 922 (2012) [Per *J*. Velasco, Jr., Third Division], citing *Rutaquio v. National Labor Relations Commission,* 375 Phil. 405, 418 (1999) [Per *J*. Purisima, Third Division].

[96] 716 Phil. 267 (2013) [Per *J*. Peralta, *En Banc*].

17. Rodel P. Galero
18. Carl Lawrence Jasa Nario
19. Romeo Sanchez Mangali III
20. Francisco Rosales Jr.
21. Bonicarl Penaflorida Usaraga
22. Joven P. Licon
23. Noriel Barcita Sy
24. Gonzalo Manabat Bawar
25. David Adonis S. Ventura
26. Solomon Pico Sarte
27. Jony F. Liboon
28. Jonathan Peralta Anito
29. Jerome Torralba
30. Jayzon Marsan

Respondent GMA Network, Inc, is further ordered to pay each of the petitioners' attorney's fees equivalent to ten percent (10%) of total monetary award accruing to each of them.

The amounts due to each petitioner shall bear legal interest at the rate of six percent (6%) per annum, to be computed from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter for the computation of backwages and other monetary awards due to petitioners.

SO ORDERED.

Gesmundo, Zalameda, Delos Santos,[*] and *Gaerlan, JJ.*, concur.

[*] Designated additional Member per Raffle date July 13, 2020.

FIRST DIVISION

[G.R. No. 235619. July 13, 2020]

PHILIPPINE NAVY GOLF CLUB, INC., THE PHILIPPINE NAVY and THE PHILIPPINE NAVY FLAG OFFICER-IN-COMMAND, *petitioners, vs.* **MERARDO C. ABAYA, ANGELITO P. MAGLONZO, RUBEN I. FOLLOSCO and ELIAS B. STA. CLARA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; FORT ANDRES BONIFACIO MILITARY RESERVATION; THE EMPTY LAND, ON WHICH THE PHILIPPINE NAVY GOLF COURSE STANDS, REMAINS PART OF THE ALIENABLE AND DISPOSABLE PUBLIC LAND OF THE ARMED FORCES OF THE PHILIPPINES (AFP) OFFICERS' VILLAGE. —** Initially, the lands in the Fort Andres Bonifacio Military Reservation are inalienable and cannot be disposed of by sale or other modes of transfer. In 1965, however, Proclamation No. 461 removed portions of the reservation and declared them as part of the AFP Officers' Village, to wit: x x x. **do hereby exclude from the operation of Proclamation No. 423 dated July 12, 1957, which established the military reservation known as Fort William McKinley (now Fort Andres Bonifacio)**, x x x, **and declare the same as AFP Officers' Village to be disposed of under the provisions of Republic Acts Nos. 274 and 730 in relation to the provisions of the Public Land Act** x x x. **Such part or parts of the area herein declared open to disposition under the provisions of Republic Acts (*sic*) Nos. 274 and 730 in relation to the provisions of the Public Land Act as are being used or earmarked for public or quasi-public purposes, shall be excluded from such disposition.** x x x. Clearly, Proclamation No. 461 reclassified portions of the military reservation to alienable and disposable lands. Yet, the proclamation also provided an exclusionary clause wherein areas being used or earmarked for public or quasi-public purposes shall not be disposed. The Philippine Navy and the Golf Club invoked this clause arguing that the golf course is needed for public service

because it serves as a security buffer and training ground for the navy. We disagree. Notably, the exclusionary clause applies only to areas that are being used or earmarked for public or quasi-public purposes. Here, the golf course does not yet exist at the time Proclamation No. 461 was issued in 1965. The golf course was developed only in 1976 upon the proposal of then Navy Flag Officer-in-Command Admiral Ogbinar. As such, the empty land, on which the golf course now stands, remains part of the alienable and disposable public land of the AFP Officers' Village. The exclusionary clause cannot comprehend the golf course which is inexistent at the time the proclamation was issued. There is no basis to identify whether the empty land is being used for public or quasi-public purposes.

2. **ID.; ID.; ID.; ID.; ID.; NO EXISTING LAW OR PROCLAMATION WHICH ALLOCATED THE AREAS OF THE MILITARY RESERVATION AND OF THE AFP OFFICER'S VILLAGE FOR THE CONSTRUCTION OF THE GOLF COURSE; THE PHILIPPINE NAVY AND ANY OF ITS OFFICERS ARE NOT VESTED WITH THE POWER TO CLASSIFY AND RE-CLASSIFY LANDS OF PUBLIC DOMAIN. —** [N]o subsequent law or proclamation earmarked the land for the construction of the golf course. Indeed, several proclamations were issued from 1965 onwards, allocating the areas of the military reservation and of the AFP Officer's Village for various public and quasi-public purposes. In *Navy Officer's Village Association Inc. v. Republic of the Philippines,* we upheld the nullification of petitioner's title over the land situated within the AFP Officers' Village. In that case, the petitioner acquired the land after Proclamation No. 478 declared the area as part of the Veterans Rehabilitation and Medical Training Center. As such, the land reverted to its original classification as non-alienable and non-disposable public land. In contrast, there is no existing issuance which allocated the land within the AFP Officers' Village for the construction of the golf course. To be sure, the Philippine Navy and any of its officers are not vested with the power to classify and re-classify lands of public domain. At most, the subsequent development of the golf course was a unilateral decision on the part of the Philippine Navy, which is not ratified by any proclamation from the President. The exclusionary clause cannot be use to shield the land on which the golf course stands against the actual purpose

for which it was allotted — the housing of the AFP officers and veterans, who meritoriously served and protected our country. Corollarily, the Philippine Navy and the Golf Club cannot deprive Abaya, *et al.* the enjoyment of the lands awarded to them.

3. **ID.; ID.; ID.; ANY ACTION FOR REVERSION TO LANDS OF PUBLIC DOMAIN SHOULD BE INSTITUTED BEFORE THE PROPER COURTS, AND ANY OBJECTION TO THE APPLICATION OR CONCESSION MAY BE FILED BEFORE THE PROPER GOVERNMENT ADMINISTRATIVE OFFICES IN OBSERVANCE WITH THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES. —** The Philippine Navy and the Golf Club insisted that the orders of award in favor of Abaya, *et al.* are invalid for violating Memorandum Order No. 172 which prohibited the sale of certain areas of the military reservation. Moreover, Abaya, *et al.* made false declarations in their applications. There was no approving authority in the valuation and the auction sale was dubious. It bears emphasis that this case originated from an *accion reinvindicatoria* — or a suit to recover possession of a parcel of land as an element of ownership. However, this proceeding is not the proper forum to assail the DENR's orders of award. The Public Land Act explicitly provides that any action for reversion to lands of public domain should be instituted before the proper courts, and any objection to the application or concession may be filed before the proper government administrative offices in observance with the doctrine of exhaustion of administrative remedies.

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE APPRECIATION OF EVIDENCE WHICH IS ONE OF FACT IS BEYOND THE AMBIT OF THE COURT'S JURISDICTION IN A PETITION FOR REVIEW ON *CERTIORARI*, AS IT IS NOT THE COURT'S TASK TO GO OVER THE PROOFS PRESENTED BELOW TO ASCERTAIN IF THEY WERE WEIGHED CORRECTLY; EXCEPTIONS, NOT PRESENT. —** [T]he RTC and the CA speak as one in their findings and conclusions that the orders of award in favor of Abaya, *et al.* were validly issued. Contrary to the Philippine Navy and the Golf Club's allegations, the CA noted that there was an approving authority and the appraised value of the lots was set at ₱15.00 *per* square

meter. Likewise, a public auction was held and Abaya, *et al*. were the highest bidders. As a matter of sound practice and procedure, the appreciation of evidence which is one of fact is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari.* It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.

5. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; FORT ANDRES BONIFACIO MILITARY RESERVATION; MEMORANDUM ORDER NO. 172 WHICH PROHIBITS THE SALE OF CERTAIN AREAS OF THE MILITARY RESERVATION IS INAPPLICABLE TO THE CASE AT BAR BECAUSE IT ONLY PROHIBITS THE ISSUANCE OF DEEDS OF SALE AND NOT ORDERS OF AWARD; AN ORDER OF AWARD DISTINGUISHED FROM A DEED OF SALE; MEMORANDUM ORDER NO. 26 LIFTED THE BAN ON THE ISSUANCE OF DEEDS OF SALE WITH RESPECT TO THE ALIENABLE AND DISPOSABLE LANDS OF THE AFP OFFICERS' VILLAGE. —** [W]e agree with the CA that Memorandum Order No. 172 is inapplicable because it only prohibits the issuance of deeds of sale and not orders of award. The two concepts are different. An order of award is issued to an applicant after a successful bidding and after submission of proofs of publication and notice of sale. On the other hand, a deed of sale is released to the applicant only as a last part of the application process, or only after all requirements is already complied with. Notably, Memorandum Order No. 126 subsequently lifted the ban on the issuance of deeds of sale with respect to the alienable and disposable lands of the AFP Officers' Village after it was found that Memorandum Order No. 172 deprived 2,382 *bona fide* members and heads of families of the AFP/PNP to legally acquire possession and ownership of the declared land area x x x. It does not escape us that Memorandum Order No. 126 was issued in 2000 or after Abaya, *et al*. were awarded the lots in 1996 and 1998. Yet, this does not negate the findings that Memorandum Order No. 172 is inapplicable in the present case and that Memorandum Order No. 126 lifted the ban in recognition of the significant purpose of Proclamation No. 461 to provide housing for the AFP retired and active members who meritoriously rendered the noblest services to our country.

6. **ID.; ID.; ID.; ID.; THE DOCTRINE THAT THE STATE MAY NOT BE SUED WITHOUT ITS CONSENT IS NOT ABSOLUTE, AS THE STATE MAY WAIVE ITS CLOAK OF IMMUNITY EXPRESSLY OR BY IMPLICATION, AND THE DOCTRINE MAY BE SHELVED WHEN ITS STUBBORN OBSERVANCE WILL LEAD TO THE SUBVERSION OF THE ENDS OF JUSTICE; THE PHILIPPINE NAVY CANNOT VALIDLY INVOKE THE DOCTRINE OF STATE IMMUNITY FROM SUIT, AS IT HAS NO VALID REASON TO DEPRIVE THE RESPONDENTS OF THE ENJOYMENT OF THE LANDS AWARDED TO THEM; THE COURT CANNOT SANCTION AN INJUSTICE SO PATENT ON ITS FACE.** — The State may not be sued without its consent. This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends. Yet, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication. Also, the doctrine may be shelved when its stubborn observance will lead to the subversion of the ends of justice. Thus, in *Amigable v. Cuenca*, this Court shred the protective shroud which shields the State from suit, reiterating our decree in the landmark case of *Ministerio v. CFI of Cebu* that, "*the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen.*" It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. Although *Amigable* and *Ministerio* tackled the issue of just compensation for the expropriated property, we find the principles applicable to the present case. Here, the Philippine Navy cannot invoke the doctrine of state immunity considering that it has no valid reason to deprive Abaya, *et al*. the enjoyment of the lands awarded to them. Moreover, the Philippine Navy fully utilized the lands for more or less 20 years to generate income in violation of Abaya, *et al*.'s property rights. This Court, as the staunch guardian of the citizens' rights and welfare, cannot sanction an injustice so patent on its face.

7. **ID.; ID.; ID.; ID.; THE PHILIPPINE NAVY AND THE GOLF CLUB MUST TURNOVER THE SUBJECT LOTS TO THE RESPONDENTS, AND PAY RENTAL FEES WHICH SHALL EARN INTEREST AT THE RATE OF 6% PER**

ANNUM. — The Constitution itself identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law.As such, the RTC and CA correctly ordered the Philippine Navy and the Golf Club to turn over the lots to Abaya, *et al*. and to pay rental fees in the reasonable amount of ₱5,000.00 per month. These rental fees accrued not from the filing of the complaint but from the time Abaya, *et al*. acquired ownership of the lots. Here, the DENR awarded the lots to Merardo Abaya and Ruben Follosco in December 1996 and to Angelito Maglonzo and Elias Sta. Clara in November 1998. Thus, Abaya, *et al.* are entitled to rental fees reckoned from such dates. Notably, the Philippine Navy and the Golf Club were already occupying the lands in 1976 and Abaya, *et al.* were unable to introduce any improvement. Lastly, the rental fees shall earn interest at the rate of 6% *per annum* from the date of the RTC Decision on June 24, 2015 until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Rolando B. Faller for respondents.

D E C I S I O N

LOPEZ, *J*.:

The proper classification of public lands is the main issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[1] dated July 10, 2017 in CA-G.R. CV No. 106451, which affirmed the findings of the Regional Trial Court (RTC) in Civil Case No. 67458.[2]

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[1] *Rollo*, pp. 61-73; penned by Associate Justice Marlene B. Gonzales-Sison, with the concurrence of Associate Justices Ramon A. Cruz and Zenaida T. Galapate-Laguilles.

[2] *Id.* at 113-119; penned by Presiding Judge Toribio E. Ilao, Jr.

ANTECEDENTS

In 1957, President Carlos Garcia established[3] the Fort William McKinley later renamed as the Fort Andres Bonifacio Military Reservation.[4] In 1965, President Diosdado Macapagal issued Proclamation No. 461[5] excluding portions of the reservation and declaring them the Armed Forces of the Philippines (AFP) Officer's Village to be disposed of under Republic Act (RA) Nos. 274[6] and 730[7] in relation to Commonwealth Act No. 141, as amended or the Public Land Act.[8] In 1976, the Philippine Navy developed a part of the village into a golf course which is managed and controlled by the Philippine Navy Golf Club, Inc.

Later, the Department of Environment and Natural Resources (DENR) awarded lots to former military officers, namely: Merardo Abaya and Ruben Follosco in December 1996 and Angelito Maglonzo and Elias Sta. Clara in November 1998 (Abaya, *et al*.).[9] However, Abaya, *et al*. were unable to introduce any improvement because the Philippine Navy and the Golf Club were already occupying the lands. Thus, Abaya, *et al.* filed an *accion reinvindicatoria* against the Philippine Navy and

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[3] Proclamation No. 423 entitled "Reserving for Military Purposes of Certain Parcels of Public Domain in Pasig, Taguig, Parañaque in Rizal and Pasay City," July 12, 1957.

[4] Formerly known as Fort William McKinley.

[5] Declaration of Fort Andres Bonifacio as AFP Officers' Village for Disposition Under RA Nos. 274 and 730, September 20, 1965.

[6] An Act Authorizing The Director Of Lands To Subdivide The Lands Within Military Reservations Belonging To The Republic Of The Philippines Which Are No Longer Needed For Military Purposes. And To Dispose Of The Same By Sale Subject To Certain Conditions, And For Other Purposes, June 1948.

[7] An Act To Permit The Sale Without Public Auction Of Public Lands Of The Republic Of The Philippines For Residential Purposes To Qualified Applicants Under Certain Conditions, June 18, 1952.

[8] An Act To Amend And Compile The Laws Relative To Lands Of The Public Domain, The Public Land Act, November 7, 1936.

[9] *Rollo*, p. 115.

the Golf Club before the RTC docketed as Civil Case No. 67458.[10] On the other hand, the Philippine Navy and the Golf Club invoked the exclusionary clause in Proclamation No. 461 claiming that the land developed as golf course is not included in the alienable and disposable lots in AFP Officer's Village. At any rate, the Philippine Navy cannot be sued without its consent.[11]

On June 24, 2015, the RTC granted the complaint and ordered the Philippine Navy and the Golf Club to turn over the lots to Abaya, *et al*. and to pay rental fees,[12] thus:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs Merardo C. Abaya, Heirs of Angelito P. Maglonzo. Ruben I. Follosco and Elias B. Sta. Clara and against [defendant] Philippine Navy Golf Club, Inc., The Philippine Navy and the Philippine Navy Flag Officer [-]in[-]Command ordering defendants **to turn over the subject parcels of land to plaintiffs**. Further, defendants Philippine Navy Golf Club and Philippine Navy are ordered **to jointly and severally pay plaintiffs ₱5,000.00 per month on each of the parcels of land computed from the date of filing of the Complaint until they are actually vacated by defendant Golf Club, and 12% interest per annum from finality of judgment to its full satisfaction**.
>
> Plaintiffs' claim for moral and exemplary damages and attorney's fees are denied for failure to prove the same. Likewise[,] public defendants" counterclaim for reimbursement of necessary and useful expenses, expenses for pure luxury or pleasure and charges and expenses for cultivation are denied for failure to establish the same.
>
> SO ORDERED.[13] (Emphasis supplied.)

Unsuccessful at a reconsideration, the Philippine Navy and the Golf Club elevated the case to the CA docketed as CA-G.R. CV No. 106451. They claimed that the lots are being used for public or quasi-public purposes and should not have been awarded to Abaya, *et al.* The disposition of the lots in favor of

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[10] *Id.* at 62-63.

[11] *Id.* at 63.

[12] *Id.* at 113-119.

[13] *Id.* at 119.

Abaya, *et al*. violated Memorandum Order No. 172 prohibiting the sale of certain areas of the military reservation.[14]

On July 10, 2017, the CA affirmed the findings of the RTC. It explained that Proclamation No. 461 declared the lots within the AFP Officer's Village available for disposition but no subsequent proclamation reserved the lands for the use of the Golf Club or the development of the golf course. Further, Memorandum Order No. 172 is inapplicable because it only prohibits the issuance of deeds of sale and not orders of award. Lastly, the doctrine of non-suability cannot be utilized to perpetrate an injustice against the retired AFP members and beneficiaries. However, the CA reduced the legal interest on the monetary award,[15] *viz.*:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED** and the 24 June 2015 Decision and 24 November 2015 Order of the Regional Trial Court of Pasig City, Branch 266 are hereby **AFFIRMED with MODIFICATION** such that the monetary award shall earn legal interest of 6% per annum from finality of judgment until full satisfaction.
>
> **SO ORDERED.**[16] (Emphasis in the original.)

The Philippine Navy and the Golf Club sought reconsideration but was denied.[17] Hence, this petition.[18]

RULING

The petition is unmeritorious.

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[14] Entitled: "Directing The Secretary Of The Department Of Environment And Natural Resources To Prohibit The Land Management Bureau To Execute And/Or Issue Deeds Of Sale On Certain Areas Of The Fort Bonifacio Military Reservation," October 16, 1993.

[15] *Rollo*, pp. 61-73.

[16] *Id.* at 72.

[17] *Id.* at 75-76.

[18] *Id.* at 17-53.

Commonwealth Act No. 141 or the Public Land Act is the country's primary law on matters concerning classification and disposition of lands of the public domain. It provides that the President, upon the recommendation of the Secretary of Environment and Natural Resources, may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Republic or any of its branches, or for quasi-public uses or purposes. The tract or tracts of land thus reserved shall be non-alienable and shall not be subject to sale or other disposition until again declared alienable.[19] Thus, we find it necessary to determine the proper classification of the public land that the Philippine Navy developed into a golf course.

The area where the Philippine Navy Golf Course stands remains to be a part of the alienable and disposable public land of the AFP Officers' Village.

Initially, the lands in the Fort Andres Bonifacio Military Reservation are inalienable and cannot be disposed of by sale or other modes of transfer.[20] In 1965, however, Proclamation No. 461 removed portions of the reservation and declared them as part of the AFP Officers' Village, to wit:

> Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I, Diosdado Macapagal, President of the Philippines, **do hereby exclude from the operation of Proclamation No. 423 dated July 12, 1957, which established the military reservation known as Fort William McKinley (now Fort Andres Bonifacio)**, situated in the municipalities of Pasig, Taguig and Parañaque, Province of Rizal, and Pasay City, Island of Luzon, a certain portion of the land embraced therein, located in the municipalities of Taguig and Parañaque, Province of Rizal, and in Pasay City, Island of Luzon, **and declare the same as AFP Officers' Village to be disposed of under the provisions of Republic Acts Nos. 274 and 730 in relation to the provisions**

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[19] *Republic v. Southside Homeowners Association*, *Inc*., 534 Phil. 8 (2006).

[20] Commonwealth Act No. 141 of 1936, Section 88.

of the Public Land Act x x x **containing an area of 2,455,310 square meters, more or less.**

Such part or parts of the area herein declared open to disposition under the provisions of Republic Acts (*sic*) Nos. 274 and 730 in relation to the provisions of the Public Land Act as are being used or earmarked for public or quasi-public purposes, shall be excluded from such disposition. Except in favor of the Government or any of its branches or agencies, all lands disposed of under this proclamation shall not be subject to alienation and encumbrance for a term of ten (10) years from the issuance of title in case of sale, or execution of contract in case of lease, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period: but the improvements on the land may be mortgaged to qualified persons, associations or corporations.[21] (Emphases supplied.)

Clearly, Proclamation No. 461 reclassified portions of the military reservation to alienable and disposable lands. Yet, the proclamation also provided an exclusionary clause wherein areas being used or earmarked for public or quasi-public purposes shall not be disposed. The Philippine Navy and the Golf Club invoked this clause arguing that the golf course is needed for public service because it serves as a security buffer and training ground for the navy.[22] We disagree.

Notably, the exclusionary clause applies only to areas that are being used or earmarked for public or quasi-public purposes. Here, the golf course does not yet exist at the time Proclamation No. 461 was issued in 1965. The golf course was developed only in 1976 upon the proposal of then Navy Flag Officer-in-Command Admiral Ogbinar.[23] As such, the empty land, on which the golf course now stands, remains part of the alienable and disposable public land of the AFP Officers' Village. The exclusionary clause cannot comprehend the golf course which

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[21] Declaration of Fort Andres Bonifacio as AFP Officers' Village for Disposition under RA Nos. 274 and 730, Proclamation No. 461, September 29, 1965.

[22] *Rollo*, p. 33.

[23] *Id.* at 116.

is inexistent at the time the proclamation was issued. There is no basis to identify whether the empty land is being used for public or quasi-public purposes. Moreover, no subsequent law or proclamation earmarked the land for the construction of the golf course. Indeed, several proclamations[24] were issued from 1965 onwards, allocating the areas of the military reservation and of the AFP Officer's Village for various public and quasi-public purposes.

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[24] The following areas segregated by Proclamation Nos.:

(1) 461, series of 1965; (AFP Officers Village)

(2) 462, series of 1965; (AFP Enlisted Men's Village)

(3) 192, series of 1967; (Veterans Center)

(4) 208, series of 1967; (National Shrines)

(5) 469, series of 1969; (Philippine College of Commerce)

(6) 653, series of 1970; (National Manpower and Youth Council)

(7) 684, series of 1970; (University Center)

(8) 1041, series of 1972; (Open Lease Concession)

(9) 1160, series of 1973; (Manila Technical Institute)

(10) 1217, series of 1970; (Maharlika Village)

(11) 682, series of 1970; (Civil Aviation Purposes)

(12) 1048, series of 1975; (Civil Aviation Purposes)

(13) 1453, series of 1975; (National Police Commission)

(14) 1633, series of 1977; (Housing and Urban Development)

(15) 2219, series of 1982; (Ministry of Human Settlements, BLISS)

(16) 172, series of 1987; (Upper, Lower and Western Bicutan and Signal Housing)

(17) 389, series of 1989; (National Mapping and Resource Information Authority)

(18) 518, series of 1990; (CEMBO, SO CEMBO, W REMBO, E REMBO, COMEMBO, PEMBO, PITOGO)

(19) 467, series of 1968; (General Manila Terminal Food Market Site)

(20) 347, series of 1968; (Greater Manila Food Market Site)

(21) 376, series of 1968; (National Development Board and Science Community)

(22) Republic Act No. 7227, series of 1992 (Bases Conversion and Development Act of 1992).

In *Navy Officer's Village Association Inc. v. Republic of the Philippines,*[25] we upheld the nullification of petitioner's title over the land situated within the AFP Officers' Village. In that case, the petitioner acquired the land after Proclamation No. 478 declared the area as part of the Veterans Rehabilitation and Medical Training Center.[26] As such, the land reverted to its original classification as non-alienable and non-disposable public land.[27] In contrast, there is no existing issuance which allocated the land within the AFP Officers' Village for the construction of the golf course. To be sure, the Philippine Navy and any of its officers are not vested with the power to classify and re-classify lands of public domain. At most, the subsequent development of the golf course was a unilateral decision on the part of the Philippine Navy, which is not ratified by any proclamation from the President. The exclusionary clause cannot be use to shield the land on which the golf course stands against the actual purpose for which it was allotted — the housing of the AFP officers and veterans, who meritoriously served and protected our country. Corollarily, the Philippine Navy and the Golf Club cannot deprive Abaya, *et al*. the enjoyment of the lands awarded to them.

Any irregularity on the DENR's orders of award should have been questioned before the proper forum.

The Philippine Navy and the Golf Club insisted that the orders of award in favor of Abaya, *et al*. are invalid for violating

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[25] 765 Phil. 429 (2015).

[26] Entitled "Reserving For The Veterans Rehabilitation, Medicare And Training Center Site Purposes A Certain Parcel Of Land Of The Private Domain Situated In The Province Of Rizal, Island Of Luzon," October 25, 1965.

[27] SECTION 88. The tract or tracts of land **reserved** under the provisions of section eighty-three **shall be non-alienable** and shall not be subject to occupation, entry, sale, lease, or other disposition **until again declared alienable under the provisions of this Act or by proclamation of the President**. The Public Land Act, Commonwealth Act No. 141, November 7, 1936. (Emphasis supplied.)

Memorandum Order No. 172 which prohibited the sale of certain areas of the military reservation. Moreover, Abaya, *et al*. made false declarations in their applications. There was no approving authority in the valuation and the auction sale was dubious.

It bears emphasis that this case originated from an *accion reinvindicatoria* — or a suit to recover possession of a parcel of land as an element of ownership. However, this proceeding is not the proper forum to assail the DENR's orders of award. The Public Land Act explicitly provides that any action for reversion to lands of public domain should be instituted before the proper courts, and any objection to the application or concession may be filed before the proper government administrative offices[28] in observance with the doctrine of exhaustion of administrative remedies, to wit:

SECTION 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon **shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts**, in the name of the Commonwealth of the Philippines.

SECTION 102. **Any person, corporation, or association may file an objection under oath to any application or concession under this Act, grounded on any reason sufficient under this Act for the denial or cancellation of the application or the denial of the patent or grant.** If, alter the applicant or the grantee has been given suitable opportunity to be duly heard, the objection is found to be well founded, **the Director of Lands shall deny or cancel the application or deny patent or grant,** and the person objecting shall, if qualified, be granted a prior right of entry for a term of sixty days from the date of the notice.

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[28] DENR Administrative Order No. 031-16, entitled "**Procedure in the Investigation and Resolution of Land Claims and Conflicts Cases**", December 29, 2016; DA Administrative Order No. 01-17, entitled "**Guidelines on the Issuance of Certification for Land Use Reclassification**," February 8, 2017.

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SECTION 106. If at any time after the approval of the application and before the issuance of a patent or the final concession of the land, or during the life of the lease, or at any time when the applicant or grantee still has obligations pending with the Government, in accordance with this Act, **it appears that the land applied for is necessary, in the public interest, for the protection of any source of water or for any work for the public benefit that the Government wishes to undertake, the Secretary of Agriculture and Commerce may order the cancellation of the application** or the non issuance of the patent or concession or the exclusion from the land applied for of such portion as may be required, upon payment of the value of the improvements, if any. (Emphases supplied.)

At any rate, the RTC and the CA speak as one in their findings and conclusions that the orders of award in favor of Abaya, *et al.* were validly issued. Contrary to the Philippine Navy and the Golf Club's allegations, the CA noted that there was an approving authority and the appraised value of the lots was set at ₱15.00 *per* square meter. Likewise, a public auction was held and Abaya, *et al.* were the highest bidders. As a matter of sound practice and procedure, the appreciation of evidence which is one of fact is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari.* It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.[29]

Similarly, we agree with the CA that Memorandum Order No. 172 is inapplicable because it only prohibits the issuance of deeds of sale and not orders of award. The two concepts are different. An order of award is issued to an applicant after a successful bidding and after submission of proofs of publication and notice of sale. On the other hand, a deed of sale is released

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[29] *Spouses Cabrera v. Cu*, G.R. No. 243281 (Notice), December 5, 2018, citing *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 854-855 (2015).

to the applicant only as a last part of the application process, or only after all requirements is already complied with.[30]

Notably, Memorandum Order No. 126 subsequently lifted the ban on the issuance of deeds of sale with respect to the alienable and disposable lands of the AFP Officers' Village after it was found that Memorandum Order No. 172 deprived 2,382 *bona fide* members and heads of families of the AFP/PNP to legally acquire possession and ownership of the declared land area,[31] thus:

WHEREAS, **the intent and purpose of Proclamation No. 461 is proper and lawful to provide a decent place of habitat and fitting tribute to retired and active members of AFP/PNP who meritoriously rendered the noblest services to the government and the Filipino people**;

WHEREAS, Memorandum Order No. 172 paragraph (a), prohibiting the Director of the Land Management Bureau from executing/issuing **Deeds of Sale covering the AFP Officers Village** Association Incorporated Land Area **deprived the 2,382 bonafide members and heads of families of the AFP/PNP to legally acquire possession and ownership of the declared land area**;

WHEREAS, the alleged anomalies involving the disposition and titling of certain portions of Fort Andres Bonifacio Military Reservation **has not been ascertained devoid the intent and purpose of Proclamation No. 461**.

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of the powers vested in me by law, do **hereby lift the provision of paragraph (a), Memorandum Order No. 172** and likewise, **directed the Secretary of the Department of Environment and Natural Resources (DENR) to execute and/ or issue Deeds of Sale on the areas covered by Proclamation No. 461**. (Emphases supplied.)

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[30] *Rollo*, pp. 77-83.

[31] Lifting of Paragraph (A) of Presidential Memorandum Order No. 172 Dated October 16, 1993 "Prohibiting Director of Land Management Bureau to Execute/Issue Deeds of Sale Covering the AFP Officers Village Association Inc., Land Area," Memorandum Order No. 126, December 4, 2000.

It does not escape us that Memorandum Order No. 126 was issued in 2000 or after Abaya, *et al*. were awarded the lots in 1996 and 1998. Yet, this does not negate the findings that Memorandum Order No. 172 is inapplicable in the present case and that Memorandum Order No. 126 lifted the ban in recognition of the significant purpose of Proclamation No. 461 to provide housing for the AFP retired and active members who meritoriously rendered the noblest services to our country.

Philippine Navy cannot validly invoke the doctrine of state immunity from suit.

The State may not be sued without its consent.[32] This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends.[33] Yet, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication. Also, the doctrine may be shelved when its stubborn observance will lead to the subversion of the ends of justice.

Thus, in *Amigable v. Cuenca*,[34] this Court shred the protective shroud which shields the State from suit, reiterating our decree in the landmark case of *Ministerio v. CFI of Cebu*[35] that, "*the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen.*"[36] It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were

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[32] CONSTITUTION, Art. XVI, Sec. 3.

[33] *Republic v. Villasor*, 153 Phil. 356, 360 (1973); and *United States of America v. Hon. Guinto*, 261 Phil. 777, 791 (1990) both citing *Justice Oliver Wendell Holmes in Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907).

[34] 150 Phil. 422 (1972).

[35] 148-B Phil. 474 (1971).

[36] See also *Heirs of Pidacan v. ATO*, 552 Phil. 48 (2007); *Vigilar v. Aquino*, 654 Phil. 755 (2011); and *Philippine Textile Research Institute v. CA*, G.R. Nos. 223319 & 247736, October 9, 2019.

to be maintained. Although *Amigable* and *Ministerio* tackled the issue of just compensation for the expropriated property, we find the principles applicable to the present case. Here, the Philippine Navy cannot invoke the doctrine of state immunity considering that it has no valid reason to deprive Abaya, *et al.* the enjoyment of the lands awarded to them. Moreover, the Philippine Navy fully utilized the lands for more or less 20 years to generate income in violation of Abaya, *et al.*'s property rights. This Court, as the staunch guardian of the citizens' rights and welfare, cannot sanction an injustice so patent on its face.

Philippine Navy and Golf Club are liable to turn over the lots and pay rental fees.

The Constitution itself identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law.[37] As such, the RTC and CA correctly ordered the Philippine Navy and the Golf Club to turn over the lots to Abaya, *et al.* and to pay rental fees in the reasonable amount of ₱5,000.00 per month.[38] These rental fees accrued not from the filing of the complaint but from the time Abaya, *et al.* acquired ownership of the lots.[39] Here, the DENR awarded the lots to Merardo Abaya and Ruben Follosco in December 1996 and to Angelito Maglonzo and Elias Sta. Clara in November 1998. Thus, Abaya, *et al.* are entitled

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[37] *Department of Transportation and Communications v. Spouses Abecina*, 788 Phil. 645 (2016).

[38] What is reasonable tends to differ on a case to case basis, for example, in the case of *Republic v. Hidalgo* (561 Phil. 22 [2007]), this Court ruled that a reasonable amount of ₱20,000.00 per month beginning July 1975 should be paid by the Office of the President to private respondent Mendoza, after it was established that the latter really owned the Arlegui property but it was the Office of the President which actually has beneficial possession of and use over it since the 1975 without going through the legal process of expropriation, or payment of just compensation.

[39] *Guzman v. Court of Appeals*, 258 Phil. 410 (1989).

to rental fees reckoned from such dates. Notably, the Philippine Navy and the Golf Club were already occupying the lands in 1976 and Abaya, *et al.* were unable to introduce any improvement. Lastly, the rental fees shall earn interest at the rate of 6% *per annum* from the date of the RTC Decision on June 24, 2015 until full payment.[40]

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals' Decision dated July 10, 2017 in CA-G.R. CV No. 106451 is **AFFIRMED** with **MODIFICATIONS** in that the Philippine Navy and the Philippine Navy Golf Club, Inc. are ordered to pay rental fees of ₱5,000.00 *per* month to: (a) Merardo Abaya computed from December 1996; (b) Ruben Follosco computed from December 1996; (c) Angelito Maglonzo computed from November 1998; and (d) Elias Sta. Clara computed from November 1998, until they have completely vacated the lots. In addition, the rental fees shall earn interest at the rate of 6% *per annum* from the date of the RTC Decision on June 24, 2015 until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 235853. July 13, 2020]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner*, *vs.* **ITALIAN-THAI DEVELOPMENT PUBLIC COMPANY, LTD. and KATAHIRA & ENGINEERS INTERNATIONAL,** *respondents.*

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[40] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SYLLABUS

1. **CIVIL LAW; ARBITRATION; CONSTRUCTION INDUSTRY ARBITRATION LAW; ARBITRAL AWARD; THE FINDINGS OF FACT OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) SHALL BE FINAL AND UNAPPEALABLE, AND THE ARBITRAL AWARD MAY ONLY BE ASSAILED BEFORE THE SUPREME COURT ON PURE QUESTIONS OF LAW; RATIONALE. —** Section 1, Rule 45 of the Revised Rules of Court expressly states that a petition for review on *certiorari* under this Rule shall raise only pure question of law, which must be distinctly set forth. This Rule is complemented by Section 19 of the Construction Industry Arbitration Law which states that CIAC arbitral awards may only be assailed on pure questions of law: SEC. 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and [unappealable] except on questions of law which shall be appealable to the Supreme Court. In the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.* the Court explained why this rule should be applied rigorously: Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable. Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. x x x.

2. **ID.; ID.; ID.; ID.; THE FACTUAL FINDINGS OF THE CIAC, WHICH POSSESSES THE REQUIRED EXPERTISE IN THE FIELD OF CONSTRUCTION ARBITRATION, ARE**

FINAL AND CONCLUSIVE AND ARE NOT REVIEWABLE BY THE COURT ON APPEAL, AS THE COURT IS DUTY-BOUND TO ENSURE THAT AN APPEAL DOES NOT UNDERMINE THE INTEGRITY OF ARBITRATION OR THE PROCESS WHICH THE PARTIES VOLUNTARILY ELECTED TO ENGAGE IN, OR CONVENIENTLY SET ASIDE THE CONCLUSIONS MADE BY THE ARBITRAL TRIBUNAL. — [The] restrictive approach, as explained by the Court in *CE Construction Corp. v. Araneta Center, Inc*., renders this Court duty-bound to ensure that an appeal does not undermine the integrity of arbitration or conveniently set aside the conclusions made by the arbitral tribunal. An appeal, according to the aforementioned case, is not an artifice for the parties to undermine the process they voluntarily elected to engage in. Thus, the settled rule is that factual findings of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA. The factual findings of the CIAC, which possesses the required expertise in the field of construction arbitration, are final and conclusive and are not reviewable by this Court on appeal.

3. **ID.; ID.; ID.; ID.; THE FACTUAL FINDINGS OF THE CIAC ARBITRAL TRIBUNALS MAY BE REVIEWED ONLY IN CASES WHERE THE SAME CONDUCTED THEIR AFFAIRS IN A HAPHAZARD, IMMODEST MANNER THAT THE MOST BASIC INTEGRITY OF THE ARBITRAL PROCESS WAS IMPERILED; OTHER RECOGNIZED EXCEPTIONS; NOT PRESENT. —** Even as exceptions are to be admitted, they should be on the narrowest of grounds: Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the [narrowest] of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, **not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled.** In *Shinryo (Phils.) Company, Inc. v. RRN, Inc*., the Court held that factual findings of construction arbitrators may be reviewed by this Court when

the petitioner proves affirmatively that: x x x (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process. We find that none of the above-mentioned circumstances exists in this case.

4. **ID.; ID.; ID.; ID.; THE COURT WILL NOT PERMIT THE PARTIES TO RELITIGATE BEFORE IT THE ISSUES OF FACTS PREVIOUSLY PRESENTED AND ARGUED BEFORE THE ARBITRAL TRIBUNAL, SAVE ONLY WHERE A VERY CLEAR SHOWING IS MADE THAT, IN REACHING ITS FACTUAL CONCLUSIONS, THE ARBITRAL TRIBUNAL COMMITTED AN ERROR SO EGREGIOUS AND HURTFUL TO ONE PARTY AS TO CONSTITUTE A GRAVE ABUSE OF DISCRETION, SUCH AS WHERE IT WAS SHOWN THAT THE PARTY WAS DEPRIVED OF A FAIR OPPORTUNITY TO PRESENT ITS POSITION BEFORE THE ARBITRAL TRIBUNAL OR THAT THE AWARD WAS OBTAINED THROUGH FRAUD OR CORRUPTION OF ARBITRATORS.** — The allegation that the CA gravely abused its discretion in appreciating the facts and the evidence on record is not enough to claim exception from the stringent application of Rule 45 of the Rules of Court. In order for grave abuse of discretion to be recognized as an exception, the party alleging must, at the very least, show that it was deprived of a fair opportunity to

present its position before the CIAC, or that award was obtained through fraud or corruption of arbitrators. This Court, in the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.,* emphasized that it will not review the factual findings of the arbitral tribunal on the allegation that such body misapprehended the facts: Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purpose. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.

5. **ID.; ID.; ID.; ID.; THE COURT IS DUTY-BOUND TO UPHOLD THE INTEGRITY OF THE ARBITRATION PROCESS AND ENSURE THAT THE PARTIES DO NOT UNDERMINE THE PROCESS THEY VOLUNTARILY ENGAGED THEMSELVES IN, UNLESS THE PARTY CLAIMING FOR EXCEPTION SHOWS THAT ANY OF THE EXCEPTIONAL CIRCUMSTANCES EXISTS; CLAIM FOR EXCEPTION OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DENIED. —** [D]PWD's claim for exception is denied. As a rule, the arbitral award of the CIAC is final and unappealable, and may only be questioned before this Court on pure questions of law. Unless

the party claiming for exception shows that any of the exceptional circumstances mentioned in *Shinryo (Phils.) Company, Inc. v. RRN, Inc.* exists, this Court is duty-bound to uphold the integrity of the arbitration process and ensure that the parties do not undermine the process they voluntarily engaged themselves in.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

De Guzman San Diego Mejia & Hernandez Law Offices for respondent Katahira & Engineers International.

Gerodias Suchianco Estrella for respondent Italian-Thai Development Public Co., Ltd.

D E C I S I O N

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

This resolves the Petition for Review[1] under Rule 45 of the Rules of Court, seeking the reversal of the Decision[2] dated November 27, 2017 issued by the Court of Appeals (CA) in CA-G.R. SP No. 133771.

The Facts

On March 15, 2002, petitioner Department of Public Works and Highways (DPWH) and the Joint Venture of Katahira & Engineers International (KEI), Pertconsult International, Techniks Group Corporation, Multi-Infra Konsult, Inc. and E.H. Sison Engineers Co. entered into an "Agreement for Consultancy Services for the Detailed Engineering Design and Construction Supervision of the Patapat Viaduct, Suyo-Cervantes-Mankayan-Abatan, Cervantes Sabangan, and Ligao-Pio Duran Road Improvement Project under the Arterial Road Links Development

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[1] *Rollo*, pp. 12-170.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ramon A. Cruz and Maria Elisa Sempio Diy, concurring, *id.* at 177-196.

Project V, PH-217 (Consultancy Agreement)." DPWH appointed the Joint Venture to be its engineering consulting firm, which carries out, among others, the following: a) detailed engineering design of the project; b) bidding assistance to DPWH; c) construction supervision; d) monitoring of Environmental Compliance Certificate (ECC) requirements; e) assistance to DPWH in land acquisition; f) assistance to DPWH in coordinating with concerned Local Government Units; and g) other technical services deemed relevant to the Contract Package IV-A, Suyo-Cervantes Road Section of the Arterial Road Links Development Project, Phase V (the Project).

In 2003, DPWH and KEI expanded the scope of work under the Consultancy Agreement under Realignment No. 1 and caused the preparation of the Engineering Geological and Geohazard Assessment Report (EGGAR), which contains a thorough analysis of the geological characteristics and engineering properties of the project site. Specifically, the EGGAR was conducted in order for KEI to gather information necessary for the planning and design of the Project and to investigate its geological condition.

As Project Consultant and Project Engineer, KEI created the original sloping design (.20:1 to .50:1, II:V) and a road width of 4.0 to 5.0 meters. The original sloping design was included in the Bid documents, formed part of the Contract documents and became the design of the Project. Subsequently, however, KEI, with agreement of DPWH, abandoned the original sloping design, and created and imposed the Overhang Design.

The civil works for the Patapat Viaduct, Suyo-Cervantes-Mankayan-Abatan, Cervantes-Sabangan, and Ligao-Pio Duran Roads were divided into different sections. Separate biddings were then conducted for the construction of these sections.

Italian-Thai Development Public Company, Ltd. (ITD) submitted the lowest bid for the rehabilitation and/or widening of the existing road of the Suyo-Cervantes Road Section. On March 27, 2006, the parties entered into a Contract Agreement for the implementation of civil works for the Project. The Project

consisted of: 1) construction of 45.01 kilometers of concrete road; 2) improvement of drainage system; 3) construction of slope protection structures and countermeasure works against floods; 4) construction and replacement of nine bridges, one multi-barrel RCBC spillway type and three special-type RCBC; and 5) rehabilitation and repair of one existing bridge.

Under the Contract Agreement, DPWH undertakes to pay ITD the amount of ₱1,164,622,570.23. After the approval of Variation Order No. 4, the contract amount increased to ₱1,184,169,948.20.

The Contract Agreement consists of two parts: Part I — General Conditions (Conditions of Contracts for Works of Civil Engineering Constructions [FIDIC], Fourth Edition 1987), and 1988 with Editorial Amendments and 1992 with further Amendments (FIDIC Conditions); and Part II — Conditions of Particular Application (COPA).

On December 17, 2006, ITD was instructed by KEI's Senior Highway Engineer Hideki Yasuyama, to widen the carriageway of the road to a uniform width of 6.10 m instead of the original 4.0 m to 5.0 m and to limit the height of the stone masonry to 1.0 m.

Subsequently, several Variation Orders were issued, with approval of DPWH. On February 22, 2007, DPWH approved the Variation Order No. 1 which provided for a shift from Asphalt Cement Pavement (ACP) to Portland Cement Concrete Pavement (PCCP). On the other hand, the standardization of the road width from the original width of 4.0 m to 5.0 m to a uniform road width of 6.10 m with overhang design was reflected in Variation Order No. 2, which was approved by DPWH on June 5, 2008. On February 20, 2009, Variation Order No. 3 was also approved, which provided for the addition of the Butac Slope Protection. Subsequently, Variation Order No. 4 was likewise approved, providing for additional slope protection for both sides of the road and reinstatement of a catch fence.

In July 2010, ITD submitted its claim for overrun earthwork quantities to DPWH and KEI. KEI, however, submitted to DPWH

a technical evaluation report, where it outlined the reasons why ITD's claims should be denied. Consequently, a joint survey was conducted by the parties on the 314 cross-sections with overhang design of the Suyo-Cervantes Road Section, which is the subject of ITD's claim.

On August 23, 2011, KEI informed ITD that its claim for additional compensation on the overrun earthwork quantities could not be allowed. Thus, in September 2011, ITD informed DPWH of its intention to commence arbitration proceedings with the Construction Industry Arbitration Commission (CIAC) in order to resolve the dispute.

The matter was subsequently referred to CIAC, where ITD claimed for overrun earthwork quantities due to: 1) overhang design in the amount of ₱184,957,341.20; 2) road realignment in the amount of ₱115,616,592.15; 3) road improvement in the amount of ₱12,138,852.37. ITD also claimed for miscellaneous works in the amount of ₱7,226,406.07 and legal expenses including the expert's fees and expenses in the amount of ₱5,000,000.00.

On the other hand, the DPWH has counterclaims against ITD for temperate damages, exemplary damages and litigation expenses, while KEI claimed for attorney's fees, litigation expenses, moral damages, and exemplary damages.

Ruling of the CIAC

In the Final Award dated January 14, 2014, CIAC found that the DPWH was liable for ITD's claim for overrun earthwork quantities, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of **Claimant Italian-Thai Development Company, Ltd. ("ITD")** and against **Respondent Department of Public Works and Highways (DPWH)** in the total amount of **One Hundred Six Million Five Hundred Nine Thousand Seven Hundred Twenty-Four & 49/100 (₱106,509,724.49) Pesos only**, broken down as follows:

In favor of Claimant Italian-Thai Development Public Company, Ltd. ("ITD"):

Claims on Respondents DPWH and KEI:

Overrun earthwork quantities due to overhang design	
Overrun earthwork quantities due to road alignment	
Overrun earthwork quantities due to road improvement	
Miscellaneous works	
Total	**₱116,755,596.96**
Legal expenses including the expert's fees and expenses	0.00
Total	₱116,755,596.96
Less: Deduction for payment of FVO to ITD	10,245,872.47
Net	**₱106,509,724.49**

In favor of Respondent Department of Public Works and Highways (DPWH):

Counterclaims on Claimant ITD:

Temperate damages	₱	0.00
Exemplary damages		0.00
Litigation expenses		0.00
Total	**₱**	**0.00**

Cross[-]claims on Co-Respondent KEI

Overrun earthwork quantities due to overhang design		
Overrun earthwork quantities due to road alignment		
Overrun earthwork quantities due to road improvement		
Legal expenses including the expert's fees and expenses		
Total	**₱**	**0.00**

In favor of Respondent Katahira & Engineers International (KEI):

Counterclaim[s] on Claimant ITD:

Attorney's fees	₱	0.00
Litigation expenses		0.00
Moral damages		0.00

Exemplary damages			0.00
	Total	**₱**	**0.00**

Upon the award becoming final and executory, interest of **Six (6%) Percent** per annum shall be further paid to Claimant ITD on the outstanding amount until full payment thereof shall have been made (BSP Circular No. 799 Series of 2013).[3] (Emphases in the original)

With regard to ITD's claim for overrun earthwork quantities due to overhang design, the CIAC ruled that the change from the original sloping design to overhang design resulted to the overrun earthwork quantities as evidenced by rock collapse, slope failures, collapse of overhang portion and side slopes, and landslides and cliff edge collapse. According to the CIAC, ITD, during its blasting activities, consistently experienced collapses at the mountain side of the Project area even beyond the intended area of the blasting, collapses from the overhang portion and side slopes, and landslides. For CIAC, these prove that the overhang design is inappropriate as the nature of the rocks and their composition are too unstable to support this design.

On ITD's claim for overrun earthwork quantities due to road realignment, CIAC held that KEI's instruction to widen the carriageway of the road to a uniform width of 6.10 m instead of the original 4.0 m to 5.0 m, and to limit the height of the stone masonry to 1.0 m, constrained ITD to realign the road and excavate into the mountain in order to maintain the required road width. Moreover, in order to reduce the height of the stone masonry to 1.0 m, ITD also excavated into the mountains to construct it on more stable ground.

CIAC also held that ITD is entitled to its claim for additional earthwork quantities due to road improvements amounting to ₱9,119,385.91. According to CIAC, ITD was only paid of its miscellaneous works and overrun earthwork quantities for the Bessang Pass, the Bessang Bridge and the two ends of the High Slope of Sta. 362, while the middle portion of the road improvement for the High Slope of Sta. 362 remained unpaid.

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[3] *Rollo*, pp. 356-357.

While CIAC found ITD entitled to its claims for overrun earthwork quantities, it ruled that ITD is only entitled to temperate damages in the amount of ₱116,755,596.96 instead of actual damages as the latter could not be determined because the joint survey was not completed by the parties.

According to CIAC, ITD's claims are not barred by waiver, abandonment or estoppel despite its failure to comply with the notice requirement under the FIDIC and COPA. CIAC reasoned that ITD's non-compliance with the notice requirement is mooted by the express provision under FIDIC which allows claims decided under arbitration even though a party failed to comply with timely notice and submission of contemporary records requirement. Moreover, when DPWH, through Undersecretary Romeo S. Momo, decided to conduct a joint survey to evaluate and resolve ITD's claims, DPWH is estopped from raising this issue. Finally, CIAC held that there can be no waiver because ITD officially notified DPWH and KEI of its intention to be paid for its claims for overrun earthwork quantities.

CIAC, however, found no basis for the grant of attorney's fees/legal fees, including expert's fees expenses. CIAC reasoned that while there were lapses on the part of the DPWH and KEI, these lapses do not constitute gross and evident bad faith as to justify the award of these fees and expenses. Thus, CIAC ruled that it would be more equitable and reasonable if all the parties shoulder their respective expenses.

The counterclaims of DPWH and KEI against ITD, on the other hand, were denied.

Ruling of the CA

Not satisfied with the Final Award of CIAC, DPWH filed a Petition for Review under Rule 43 of the Rules of Court before the CA. The CA, however, in its Decision dated November 27, 2017, dismissed the Petition. The CA ruled that CIAC did not err in ruling that the overrun earthwork quantities should be paid by DPWH as records show that the Variation Orders were issued at its behest. The CA agreed with the CIAC that ITD was constrained to realign the roads and excavate into the

mountains to accommodate the changes stated in the Variation Orders. This led to the collapse of cliff edges, reduction of stone masonry and widening of sharp curves, which could have been prevented had DPWH and KEI foreseen the possible effects of the substantial changes in the design as stated in the Variation Orders.

The CA also found it undisputed that neither DPWH nor KEI informed ITD about the existence of the EGGAR which shows that the rocks are unsuitable for the application of the overhang design.

According to the CA, DPWH and KEI's failure to foresee the effects of the changes stated in the Variation Orders and their non-disclosure of the EGGAR to ITD, led the latter to incur overrun earthwork quantities. Thus, the CA ruled that DPWH, being the project owner, should compensate ITD for the same.

As regards DPWH's claim that the overrun earthwork quantities were due to excessive blasting, the CA held that DPWH failed to substantiate such allegation with convincing evidence.

On the alleged failure of ITD to follow the provisions for settlement of claims under the FIDIC and COPA, the CA ruled that DPWH effectively waived the requirements when it agreed to proceed directly to negotiation with ITD, and when it allowed the conduct of a joint survey to determine the final settlement amount.

Not convinced by the disposition of the CA, DPWH elevated the matter before this Court through a Petition for Review under Rule 45 of the Rules of Court on the following grounds:

The [CA] committed grave abuse of discretion in rendering the herein assailed Decision dismissing petitioner's appeal considering that:

I.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities which resulted from respondent ITD's implementation of the overhang design.

II.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities due to road realignment.

III.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities due to road improvements and miscellaneous works.

IV.

The CIAC seriously erred in ruling that the FIDIC and COPA provisions on the procedure for claims have become moot and academic.

V.

The CIAC seriously erred in holding that respondent ITD's varying claims did not cast doubt on its entitlement thereto.

VI.

The CIAC seriously erred in holding that petitioner is not entitled to its cross-claims against respondent KEI.

VII.

The CIAC seriously erred in awarding temperate damages to respondent ITD.[4]

By imputing grave abuse of discretion on the part of the CA, DPWH claims exception to the rule that only pure questions of law may be raised in a Petition for Review under Rule 45 of the Rules of Court. DPWH submits that the CA grossly misappreciated the facts and made findings that are contrary to the evidence on record. Hence, DPWH claims that the CA gravely abused its discretion in appreciating the evidence presented by the parties, which warrants a review of the factual issues by the Court.

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

The Court is, thus, called to determine whether it should relax the strict requirement of Rule 45 of the Rules of Court and admit the exception claimed by DPWH, and if the exception applies, whether it should reverse the Decision of the CA.

The Court's Ruling

We deny the Petition.

Section 1, Rule 45 of the Revised Rules of Court expressly states that a petition for review on *certiorari* under this Rule shall raise only pure questions of law, which must be distinctly set forth.

This Rule is complemented by Section 19 of the Construction Industry Arbitration Law which states that CIAC arbitral awards may only be assailed on pure questions of law:

> SEC. 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and [unappealable] except on questions of law which shall be appealable to the Supreme Court.

In the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.*,[5] the Court explained why this rule should be applied rigorously:

> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties

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[5] 298-A Phil. 361, 372 (1993).

to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

This restrictive approach, as explained by the Court in *CE Construction Corp. v. Araneta Center, Inc.*,[6] renders this Court duty-bound to ensure that an appeal does not undermine the integrity of arbitration or conveniently set aside the conclusions made by the arbitral tribunal. An appeal, according to the aforementioned case, is not an artifice for the parties to undermine the process they voluntarily elected to engage in.[7]

Thus, the settled rule is that factual findings of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA.[8] The factual findings of the CIAC, which possesses the required expertise in the field of construction arbitration, are final and conclusive and are not reviewable by this Court on appeal.[9] Even as exceptions are to be admitted, they should be on the narrowest of grounds:

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the [narrowest] of grounds. Factual findings of CIAC arbitral tribunals may be revisited

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[6] 816 Phil. 221 (2017).

[7] *Id.* at 260.

[8] *Department of Public Works and Highways v. Foundation Specialists, Inc.*, 760 Phil. 795, 807 (2015).

[9] *Id.*

not merely because arbitral tribunals may have erred, **not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled**.[10] (Emphasis supplied and citation omitted)

In *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*,[11] the Court held that factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that:

x x x (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process. (Citations omitted)

We find that none of the above-mentioned circumstances exists in this case. The allegation that the CA gravely abused

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[10] *CE Construction Corp. v. Araneta Center, Inc., supra* note 6, at 260-261.

[11] 648 Phil. 342, 350 (2010), citing *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350, 360-361 (2006).

its discretion in appreciating the facts and the evidence on record is not enough to claim exception from the stringent application of Rule 45 of the Rules of Court. In order for grave abuse of discretion to be recognized as an exception, the party alleging must, at the very least, show that it was deprived of a fair opportunity to present its position before the CIAC, or that the award was obtained through fraud or corruption of arbitrators.

This Court, in the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.*,[12] emphasized that it will not review the factual findings of the arbitral tribunal on the allegation that such body misapprehended the facts:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.

Thus, DPWH's claim for exception is denied. As a rule, the arbitral award of the CIAC is final and unappealable, and may

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[12] *Supra* note 5, at 373-374.

only be questioned before this Court on pure questions of law. Unless the party claiming for exception shows that any of the exceptional circumstances mentioned in *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*[13] exists, this Court is duty-bound to uphold the integrity of the arbitration process and ensure that the parties do not undermine the process they voluntarily engaged themselves in.

WHEREFORE, the Petition is **DENIED**. The Decision dated November 27, 2017 issued by the Court of Appeals in CA-G.R. SP No. 133771 is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 239989. July 13, 2020]

PIONEER INSURANCE & SURETY CORPORATION, *petitioner*, *vs.* **CARMEN G. TAN also known as CARMEN S.F. GATMAYTAN and/or UNKNOWN OWNER/PROPRIETOR OF SAVE MORE DRUG doing business under the name and style of SAVE MORE DRUG,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; GENERALLY LIMITED TO THE REVIEW OF ERRORS OF LAW COMMITTED BY THE APPELLATE COURT, AS THE SUPREME COURT IS

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[13] *Supra* note 11.

NOT OBLIGED TO REVIEW ALL OVER AGAIN THE EVIDENCE WHICH THE PARTIES ADDUCED IN THE COURT *A QUO*, EXCEPT WHERE THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT ARE CONFLICTING OR CONTRADICTORY. — Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory, as in this case. The conflicting findings as to the nature of the contract between respondent and Unilab warrant the exercise of the Court's discretionary power of review.

2. **ID.; ID.; ID.; ISSUES; POINTS OF LAW, THEORIES, ISSUES, AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER COURT WILL NOT BE ORDINARILY CONSIDERED BY A REVIEWING COURT, INASMUCH AS THEY CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; PROHIBITION ON SHIFTING THE THEORY OF THE CASE ON APPEAL, EXPLAINED. —**Dismayed by the ruling of the RTC, respondent changed her theory of defense on appeal and maintained that the contract is not one of sale, but of consignment. For the first time on appeal, respondent averred that the contract of consignment eliminated petitioner's right of action against her because she is considered as an extension of Unilab, being an agent of the latter. On this note, the Court maintains that respondent's course of action is not sanctioned by law. On the dictates of fair play, due process, and justice, points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. The prohibition on shifting the theory of the case on appeal was explained by the Court in this manner: The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal,

because to permit him to do so would be unfair to the adverse party. Not only that such principle finds its legal footing on equity, but also on law.

3. **ID.; ID.; ID.; ID.; GIVING DUE COURSE TO ISSUES WHICH WERE NOT VENTILATED BEFORE THE TRIAL COURT STRIPS OFF THE REVIEWING COURT OF JURISDICTION TO DECIDE A QUESTION NOT PUT FORTH AS AN ISSUE; THUS, ANY JUDGMENT RENDERED THEREON IS EXTRAJUDICIAL AND INVALID; EXCEPT, WHEN THE FACTUAL BASES THEREOF WOULD NOT REQUIRE PRESENTATION OF ANY FURTHER EVIDENCE BY THE ADVERSE PARTY IN ORDER TO ENABLE IT TO PROPERLY MEET THE ISSUE RAISED IN THE NEW THEORY; EXCEPTION DOES NOT APPLY IN THE CASE AT BAR. —** The effect of giving due course to an issue which were not ventilated before the trial court is to strip off the reviewing court of jurisdiction to decide a question not put forth as an issue; therefore, any judgment rendered thereof is extrajudicial and invalid. In the cases of *Chinatrust (Phils) Commercial Bank v. Turner, Bote v. Spouses Veloso, Wallen Philippines Services, Inc. v. Heirs of the Late Peter Padrones,* to cite a few, the Court did not hesitate to strike down a decision of a reviewing court which failed to apply this doctrine. However, this rule admits of an exception, that is, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. In this case, respondent adopted a different theory on appeal, that is, that the relationship between her and Unilab was based on an alleged contract of consignment. Evidently, the introduction of such theory would necessitate the presentation of such contract. Based on the records, the efficacy and existence of such contract were neither alleged nor proven. From all the faces of legal prism, the exception does not apply in this case. Verily, the judgment of the CA which passed upon a new issue which was neither raised nor discussed before the trial court is invalid in the absence of the reviewing court's jurisdiction.

4. **MERCANTILE LAW; INSURANCE; RIGHT OF SUBROGATION; THE INSURER, AFTER SATISFACTION OF THE INSURANCE CLAIM OF THE INSURED, MAY COLLECT PAYMENT FROM THE THIRD PARTY**

WHOSE NEGLIGENCE CAUSED THE LOSS. — As it stands and as aptly ruled by the RTC, Unilab retained insurable interest over the goods by virtue of the agreement between it and the respondent that the ownership thereof shall remain with Unilab until full payment. Corollary, the liability of respondent stems from the same agreement, stating that the buyer bears the risk of loss arising from any cause upon delivery of the goods to respondent. As it was uncontroverted during trial that the destroyed goods which were situated at respondent's warehouse were still unpaid, the RTC was correct in directing the respondent to pay the petitioner the amount which the petitioner paid to Unilab as insurance proceeds. By right of subrogation, petitioner as the insurer may collect payment from respondent after the satisfaction of the insurance claim of Unilab.

APPEARANCES OF COUNSEL

Astorga & Repol Law Offices for petitioner.
Madrid Danao & Carullo for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] are the Amended Decision[2] dated June 16, 2017 and Resolution[3] dated June 5, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 103363 which dismissed the complaint for damages filed by Pioneer Insurance & Surety Corporation (petitioner).

The Relevant Antecedents

As culled from the records, the facts of the case are as follows:

Petitioner, engaged in the business of fire insurance, extended Fire Insurance Policy No. FI-PP-03-0000356-00-D (subject policy) in favor of United Laboratories, Inc. (Unilab) for the

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[1] *Rollo*, pp. 10-52.

[2] Penned by Associate Justice Rodil V. Zalameda (now a Member of the Court), with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; *id.* at 53-65.

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

latter's stocks of various drugs, medicines, and pharmaceutical products. The policy was in effect for a period of one year from December 29, 2003 to December 29, 2004.[4]

Among the goods covered by the subject policy were delivered to Carmen G. Tan (respondent), proprietor of Save More Drug (Save More). Said goods were stored at respondent's warehouse at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City.[5] Notably, the Terms and Conditions of the Delivery Receipts state:[6]

> x x x Goods remain the property of UNITED LABORATORIES, INC., until fully paid but risk of loss arising from any cause shall be for buyer's own account from the moment the goods are delivered to the buyer or the common carrier.

Stocks were continuously being replenished based on the purchase orders made by respondent.[7]

On August 28, 2004, the entire Save More warehouse, including Unilab's goods, was razed by fire. Unilab then filed a claim with petitioner pursuant to the subject policy. Successfully, Unilab obtained the amount of ₱13,430,528.22 which represented the value of the goods stored by Unilab in the Save More warehouse lost by fire. In exchange, Unilab executed in favor of petitioner a Release Claim and a Loss and Subrogation Receipt.[8]

Consequently, petitioner sought to recover from respondent the amount it paid to Unilab. However, respondent refused, prompting petitioner to file a complaint for damages.[9]

In its Complaint,[10] petitioner alleged that pursuant to a contract of sale, Unilab delivered to respondent various pharmaceutical

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[4] *Id.* at 533.

[5] *Id.* at 534.

[6] *Id.* at 124-190.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 107-114.

products which were stored to the latter's warehouse. However, said products were lost due to fire. Since the cause of the loss was due to negligence of respondent, the latter should reimburse the petitioner for whatever was paid to Unilab by virtue of the former's right of subrogation.

In her Answer with Counterclaim,[11] respondent averred the fire was accidental; hence, petitioner could not recover from her.

In a Decision[12] dated December 27, 2013, the Regional Trial Court of Makati City, Branch 62 (RTC) maintained that by subrogation, petitioner's payment to the insured, Unilab, operated as an assignment to the former of all remedies that the latter may have against the third party whose negligence caused the loss. Moreover, the RTC held that whether the cause of the loss was due to a fortuitous event was beside the point. What is axiomatic is that the respondent's obligation is the payment of money, which is a generic obligation; and failure to make payment shall not relieve her of liability even by reason of fortuitous event. The *fallo* thereof reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff PIONEER INSURANCE & SURETY CORPORATION ordering defendants CARMEN G. TAN also known as "CARMEN S.F. GATMAYTAN" and/or UNKNOWN OWNER/ PROPERTIES of SAVE MORE DRUG doing business under the name and style of "SAVE MORE DRUG" to pay the plaintiff the following:

1) Thirteen million four hundred thirty thousand five hundred twenty-eight & 22/100 pesos (₱13,4340,528.22) representing the amount of actual damages plus interest at the legal rate of 6% per annum from date of demand until finality and another 12% per annum from finality until fully paid;

2) five percent (5%) of number 1 as attorney's fees; and

3) costs of suit.

SO ORDERED.[13]

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[11] *Id.* at 408-414.

[12] Penned by Judge Selma Palacio Alaras; *id.* at 445-455.

[13] *Id.* at 455.

To this, respondent filed an appeal questioning the propriety of the award of damages in favor of petitioner.[14] In an unprecedented manner, respondent raised that it is not liable for damages to petitioner based on the nature of the contract executed between her and Unilab, that is, a contract of consignment.

In a Decision[15] dated August 31, 2016, the CA denied the appeal and affirmed with modification the ruling of the RTC. Adopting the factual findings of the RTC, the CA found that the contract between respondent and Unilab is one of sale. The CA further maintained that Unilab nevertheless retained insurable interest over such goods until full payment of the purchase price. As such, the insurance contract was not terminated by virtue of the transfer of ownership to respondent. Unilab can recover from petitioner for any loss covered by the subject policy, which is payment for unpaid debts and receivables. The prestation under the subject policy is a generic thing, which is not extinguishable even by fortuitous event. Corollary, petitioner can claim from respondent whatever it has paid to Unilab under the rule that one who pays for another may demand from the debtor what he had paid.

The dispositive portion thereof provides:

> **WHEREFORE**, the appeal is hereby **DENIED**. The Assailed Decision dated 27 December 2013 is rendered by Branch 62, Regional Trial Court of Makati City is hereby **AFFIRMED with MODIFICATION**, that is, the legal rate of interest at twelve percent (12%) per annum shall be imposed from the date of demand until 30 June 2013. Thereafter, the rate of six percent (6%) per *annum* shall apply until complete satisfaction of the money award.
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> **SO ORDERED**. [16]

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[14] *Id.* at 538.

[15] Penned by Associate Justice Rodil V. Zalameda (now a Member of the Court), with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; *id.* at 530-544.

[16] *Id.* at 543.

In a Motion for Reconsideration filed by respondent, she assailed the findings of the CA as to the nature of the contract between her and Unilab. Respondent argued that the contract is one of consignment, which made her an extension of Unilab as principal. That being said, respondent averred that she could not have been liable to petitioner as she had identical interest with Unilab insofar as the subject policy is concerned.[17]

In an Amended Decision[18] dated June 16, 2017, the CA reversed its earlier ruling. Holding that respondent was not liable to petitioner, the CA reviewed the records and found that the contract was one of consignment. Thus, respondent was considered as an agent of Unilab; and as such, cannot be deemed liable to petitioner for the loss of goods. The *fallo* thereof reads:

> **WHEREFORE**, in view of the foregoing, the instant Motion for Reconsideration filed by defendant-appellant is hereby **GRANTED** and Our Decision dated 31 August 2016 is hereby **RECONSIDERED** and **SET ASIDE**.
>
> Accordingly, the Decision dated 27 December 2013 of the Regional Trial Court of Makati City, Branch 62 in Civil Case No. 07-106 is likewise **REVERSED** and **SET ASIDE** and plaintiff-appellee Pioneer Insurance & Surety Corporation's Amended Complaint is **DISMISSED.**
>
> **SO ORDERED**.[19]

Said disposition was fortified in a Resolution[20] dated June 5, 2018 following petitioner's motion for reconsideration.

Hence, this petition.

Summarily, petitioner assails the decision of the CA in allowing respondent to change her theory of defense on appeal and subsequently in granting respondent's appeal based on such.

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[17] *Id.* at 549-551.

[18] *Supra* note 2.

[19] *Id.* at 63.

[20] *Supra* note 3.

In her Comment,[21] respondent insists on the contract of consignment executed between her and Unilab.

In its Reply,[22] petitioner reiterates its earlier arguments in the petition.

The Issue

Petitioner's 13 assignment of errors can be encapsulated in the following issues: (1) whether or not the CA erred in allowing the respondent to change her theory on appeal; (2) whether or not the contract between respondent and Unilab is one of consignment; and (3) whether or not petitioner can recover from respondent based on the former's right to subrogation.

The Court's Ruling

Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory, as in this case.[23] The conflicting findings as to the nature of the contract between respondent and Unilab warrant the exercise of the Court's discretionary power of review.

Petitioner's argument that the CA erred in passing upon the new issue, *i.e.*, whether or not the contract between respondent and Unilab is one of consignment, is meritorious.

Mainly, respondent admitted in its Answer with Counterclaim the allegations of petitioner that it is indeed a buyer of Unilab's pharmaceutical products, thus evincing that the relationship between her and Unilab is governed by a contract of sale, to wit:

COMPLAINT

x x x x x x x x x

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[21] *Rollo*, pp. 719-765.

[22] *Id.* at 769-795.

[23] *Miro v. Vda. De Erederos*, 721 Phil. 787 (2013).

2.1 **Defendant** was and still the owner and/or proprietor of Save More Drug located at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City. Further, Defendant was and still is engaged in wholesale and commission trade and was the **buyer of various drugs, medicines and pharmaceutical products of United Laboratories, Inc.**[24] (Emphasis supplied)

x x x x x x x x x

AMENDED COMPLAINT

x x x x x x x x x

2.1 **Defendant** was and still the owner and/or proprietor of Save More Drug located at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City. Further, Defendant was and still is engaged in wholesale and commission trade and was the **buyer of various drugs, medicines and pharmaceutical products of United Laboratories, Inc**.[25] (Emphasis supplied)

ANSWER WITH COMPULSORY COUNTERCLAIM

x x x x x x x x x

1.2 The defendant **admits** the allegations contained in paragraphs 2 and 2.1 of the complaint.[26] (Emphasis supplied)

x x x x x x x x x

In her Memorandum[27] filed before the RTC, respondent further denied her liability by claiming that petitioner's right to subrogation does not automatically mean that it is liable for loss or damage of the goods of Unilab; for petitioner as subrogee has the burden of proving that the loss or damage was a result of a wrong or breach of contract on the part of the respondent.

In all, there was no allegation that the contract between respondent and Unilab is one of consignment until or prior to the appeal.

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[24] *Id.* at 107.

[25] *Id.* at 115-116.

[26] *Id.* at 408.

[27] *Id.* at 433-444.

Naturally, the trial before the RTC operated upon these premises: that Unilab and respondent entered into a contract of sale; and that respondent's main defense was that petitioner had no cause of action against it because the cause of the loss was by no means attributable to her negligence or fault; hence, a fortuitous event. Consequently, the course of the trial was geared towards such facts; and consequently, the RTC ruled in favor of petitioner.

Dismayed by the ruling of the RTC, respondent changed her theory of defense on appeal and maintained that the contract is not one of sale, but of consignment. For the first time on appeal, respondent averred that the contract of consignment eliminated petitioner's right of action against her because she is considered as an extension of Unilab, being an agent of the latter.

On this note, the Court maintains that respondent's course of action is not sanctioned by law.

On the dictates of fair play, due process, and justice, points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal.[28]

The prohibition on shifting the theory of the case on appeal was explained by the Court in this manner:

> The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[29] (Citation omitted)

Not only that such principle finds its legal footing on equity, but also on law. Section 15, Rule 44 of the Rules of Court provides:

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[28] *Peña v. Spouses Tolentino*, 700 Phil. 78, 88 (2012).

[29] *Bote v. Spouses Veloso*, G.R. No. 194270, December 3, 2012.

SEC. 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

The effect of giving due course to an issue which were not ventilated before the trial court is to strip off the reviewing court of jurisdiction to decide a question not put forth as an issue; therefore, any judgment rendered thereof is extrajudicial and invalid.[30]

In the cases of *Chinatrust (Phils.) Commercial Bank v. Turner*,[31] *Bote v. Spouses Veloso*,[32] *Wallem Philippines Services, Inc. v. Heirs of the Late Peter Padrones*,[33] to cite a few, the Court did not hesitate to strike down a decision of a reviewing court which failed to apply this doctrine.

However, this rule admits of an exception, that is, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[34]

In this case, respondent adopted a different theory on appeal, that is, that the relationship between her and Unilab was based on an alleged contract of consignment. Evidently, the introduction of such theory would necessitate the presentation of such contract. Based on the records, the efficacy and existence of such contract were neither alleged nor proven. From all the faces of legal prism, the exception does not apply in this case.

Verily, the judgment of the CA which passed upon a new issue which was neither raised nor discussed before the trial

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[30] *Bernas v. Court of Appeals*, 296-A Phil. 90, 140 (1993).

[31] 812 Phil. 1 (2017).

[32] *Supra* note 29.

[33] 756 Phil. 14 (2015).

[34] *Bote v. Spouses Veloso*, *supra* note 29.

court is invalid in the absence of the reviewing court's jurisdiction. As such, the Court deems it reasonable not to belabor anymore on the other issues raised in the petition.

As it stands and as aptly ruled by the RTC, Unilab retained insurable interest over the goods by virtue of the agreement between it and the respondent that the ownership thereof shall remain with Unilab until full payment. Corollary, the liability of respondent stems from the same agreement, stating that the buyer bears the risk of loss arising from any cause upon delivery of the goods to respondent.

As it was uncontroverted during trial that the destroyed goods which were situated at respondent's warehouse were still unpaid, the RTC was correct in directing the respondent to pay the petitioner the amount which the petitioner paid to Unilab as insurance proceeds. By right of subrogation, petitioner as the insurer may collect payment from respondent after the satisfaction of the insurance claim of Unilab.[35]

Likewise, the stipulation as to the award of attorney's fees which was mitigated from 25% to 5% of the amount adjudged is upheld.

WHEREFORE, the instant petition is hereby **GRANTED.** Accordingly, the Amended Decision dated June 16, 2017 and the Resolution dated June 5, 2018 of the Court of Appeals in CA-G.R. CV No. 103363 are **REVERSED and SET ASIDE.** The Decision dated December 27, 2013 of the Regional Trial Court of Makati City, Branch 62 is **REINSTATED**.

SO ORDERED.

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

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[35] See *Gaisano Cagayan, Inc. v. Insurance Company of North America*, G.R. No. 147839, June 8, 2006.

FIRST DIVISION

[G.R. No. 242692. July 13, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **DAVID JAMES PIS-AN *y* DIPUTADO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL POSSESSION OF A DANGEROUS DRUG; ELEMENTS; PRESENT. —** For the charge of illegal possession of a dangerous drug to prosper, it must be proven that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. In the case at bench, the courts *a quo* correctly held that all the aforementioned elements are present here, since: (*i*) by virtue of SW No. 10-2015, a valid search warrant, the police officers recovered, among others, 14 heat-sealed transparent plastic sachets containing white crystalline substance which later tested positive for methamphetamine hydrochloride or *shabu*; (*ii*) such possession is not authorized by law as Pis-an himself admitted during the pre-trial; and (*iii*) the prohibited drugs were uncovered from Pis-an's house which was a *prima facie* evidence of knowledge or *animus possidendi*. Verily, the factual findings of the CA affirming those of the RTC are binding upon this Court absent any showing that such findings are tainted with arbitrariness, capriciousness or palpable error.
2. **ID.; ID.; CHAIN OF CUSTODY RULE; THE MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF THE SEIZED ITEMS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF THE SAME, IN THE PRESENCE OF THE ACCUSED OR THE PERSON FROM WHOM THE ITEMS WERE SEIZED, OR HIS REPRESENTATIVE OR COUNSEL, AS WELL AS THE THREE REQUIRED WITNESSES; COMPLIED WITH; THE CHAIN OF CUSTODY OVER THE SEIZED DRUGS**

REMAINED UNBROKEN WHERE THE RECOVERY AND PROPER HANDLING OF THE *CORPUS DELICTI* WERE SUFFICIENTLY SHOWN. — [T]he Court agrees that the police officers duly complied with the chain of custody rule under Section 21, Article II of R.A. No. 9165 and its Implementing Rules and Regulations. The Court, in *Aranas y Dimaala v. People*, declared that: [T]o establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, inter alia, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media AND the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." Records reveal that right after Pis-an was arrested, the police officers immediately took custody of the seized items and marked them right there and then. They also conducted the requisite inventory and photography in the presence of all three (3) insulating witnesses as required by R.A. No, 9165 prior to its amendment, namely: Brgy. Kagawad Dicen; media practitioner Gallarde; and DOJ representative Benlot. Thereafter, PO2 Calumba delivered the confiscated drugs to PCIsp. Llena for laboratory examination. Later, confimatory tests on all 14 heat-sealed transparent plastic sachets would yield a positive findings for the presence of methamphetamine hydrochloride or more commonly known as *shabu*. Clearly, therefore, the chain of custody over the seized drugs remained unbroken as the recovery and proper handling of the *corpus delicti* were sufficiently shown.

3. ID.; ID.; ILLEGAL POSSESSION OF A DANGEROUS DRUGS; PROPER IMPOSABLE PENALTY; THE MAXIMUM PENALTY OF LIFE IMPRISONMENT MAY ONLY BE IMPOSED WHEN THE CRIME OF ILLEGAL POSSESSION WAS COMMITTED IN THE PRESENCE OF TWO OR MORE PERSONS OR IN A SOCIAL GATHERING.— [P]is-an was caught in possession of 9.38 grams of *shabu* and the illegal possession of such quantity of dangerous drugs is punishable under Section 11, paragraph 2(2), Article II of R.A. No. 9165, as follows: (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00), to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of x x x methamphetamine hydrochloride or "*shabu*"[.] However, as succinctly pointed out by Justice Mario V. Lopez in his Reflections, the maximum penalty of life imprisonment may only be imposed when the crime of illegal possession was committed in the presence of two or more persons or in a social gathering pursuant to Section 13 of R.A. No. 9165. Here, since it was not shown Pis-an was caught possessing the dangerous drugs during a party, or at a social gathering or meeting, or in the proximate company of at least two persons, the maximum imposable penalty should be below life imprisonment which is currently pegged 40 years and 1 day. In view of the foregoing, we modify the penalty imposed by the RTC, as affirmed by the CA. Since Pis-an was found to have been in illegal possession of 9.38 grams of *shabu,* he is meted the penalty of imprisonment ranging from 20 years and one day, as minimum, to 30 years, as maximum.

CAGUIOA, *J.*, *concurring opinion*:

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21, ARTICLE II THEREOF; TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE, THE SEIZED ITEMS MUST BE INVENTORIED AND PHOTOGRAPHED IMMEDIATELY AFTER SEIZURE OR CONFISCATION IN THE PRESENCE OF THE ACCUSED OR HIS/HER

REPRESENTATIVE OR COUNSEL AND THE THREE REQUIRED WITNESSES. — In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the offense under RA No. 9165, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedure laid down by it to ensure that rights are safeguarded. In this connection, Section 21, Article II of RA No. 9165, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation: (2) 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.

2. **ID.; ID.; ID.; FOUR LINKS IN THE CHAIN OF CUSTODY; THE PROSECUTION MUST ESTABLISH AN UNBROKEN CHAIN OF CUSTODY IN ORDER TO PRESERVE THE EVIDENTIARY VALUE AND INTEGRITY OF THE *CORPUS DELICTI*; REQUIREMENTS OF THE LAW ARE MANDATORY AND MUST BE STRICTLY COMPLIED WITH; RATIONALE. —** [I]n order to preserve the evidentiary value and integrity of the *corpus delicti,* the prosecution must establish an unbroken chain of custody. The four (4) links that should be established in the chain of custody of the confiscated item are as follows. *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the seized illegal drug seized by the apprehending officer to the investigating office; *third*, the turnover by the investigating officer of the same illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked seized illegal drug seized from the forensic chemist to the court. These mandatory and strict requirements of the law

are set in place as safeguards against the possible tampering, alteration or substitution of the seized drugs and to prevent other possible abuses by police officers because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of, or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

3. **ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY, PROVED. —** In this case, the prosecution was able to prove all the links in the chain of custody. The police officers were likewise able to strictly comply with the requirements laid down in Section 21. The police officers immediately conducted the physical inventory, marking, and photography of the seized items in the presence of the accused-appellant, a representative from the media, a representative of the DOJ, and a barangay official **at the place where the accused-appellant was arrested.** Thereafter, PO2 Eugene A. Calumba delivered the confiscated drugs to PCInsp. Josephine Suico Llena for laboratory examination. Later, confirmatory tests on all 14 heat-sealed transparent plastic sachets would yielded a positive finding for the presence of methamphetamine hydrochloride or more commonly known as *shabu*. As sufficiently shown above, the police officers were able to meticulously and competently follow the procedure laid out in Section 21 from the arrest of the accused-appellant and the seizure, marking, photography, and inventory of the seized illegal drugs in the presence of the three (3) mandatory witnesses, to the turnover of the illegal drugs seized to the investigator and then to the forensic chemist, until its final turnover to the Court.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Allan C. Martinez for accused-appellant.

DECISION

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

Assailed in this ordinary appeal[1] is the March 28, 2018 Decision[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 02422 affirming the September 12, 2016 Judgment[3] of the Regional Trial Court (RTC) of Dumaguete City, Negros Oriental, Branch 30 in Criminal Case No. 2015-22801, finding accused-appellant David James Pis-an *y* Diputado (Pis-an) guilty beyond reasonable doubt of violation of Section 11 (illegal possession), Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On February 16, 2015, Pis-an was placed under surveillance after the police received a tip from a confidential informant that the former was involved in drug dealing. The police then conducted a test-buy operation and was able to recover from Pis-an one transparent plastic sachet which yielded positive results for *shabu* per Chemistry Report No. 063-15[4] dated February 16, 2015, issued by Police Chief Inspector Josephine Suico Llena (PCInsp. Llena).

Thus, on February 18, 2015, Police Officer 3 Derek T. Alcoran (PO3 Alcoran) applied for a search warrant before the RTC of Dumaguete City, Negros Oriental.[5] That same day, Search Warrant (SW) No. 10-2015[6] was issued by Executive Judge Gerardo A. Paguio, Jr., authorizing the search of Pis-an's

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[1] See Notice of Appeal dated May 7, 2018; CA *rollo*, p. 128.

[2] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring; *id.* at 102-114.

[3] Penned by Judge Rafael Crescencio O. Tan, Jr.; records, pp. 146-151.

[4] Records (Exhibits), p. 17.

[5] *Id.* at 13.

[6] *Id.* at 19.

residence located in Barangay (Brgy.) Camanjac, Dumaguete City.

On February 25, 2015, a team headed by PO2 Eugene A. Calumba (PO2 Calumba) and PO2 Dexter S. Banua (PO2 Banua) discussed their individual assignments and plan of action. After receiving the coordination control number from the local Philippine Drug Enforcement Agency (PDEA), the team marched to implement SW No. 10-2015. Upon reaching the house of Pis-an, the police officers, along with *Brgy. Kagawad* Raul Dicen (*Brgy. Kagawad* Dicen), enforced the warrant and seized the following:

1. One (1) red coin purse containing 14 pieces of heat-sealed transparent plastic sachets each containing white crystalline substance;
2. Four (4) pieces of disposable lighters;
3. Two (2) pieces of plastic straws;
4. Two (2) pieces of metal clips;
5. Three (3) pieces of assorted needles;
6. Three (3) pairs of scissors;
7. Seven (7) pieces of tin foil;
8. Two (2) pieces of improvised tooters; and
9. A total of ₱3,050 in various denominations.

All the items were carried out to the porch of the house where PO2 Calumba marked[7] them while PO2 Banua took photos. Afterwards, an inventory was made in the presence of Pis-an

[7] The initials used by PO2 Calumba were "DJP," which stands for David James Pis-an; "SW," which stands for search warrant, while the numbers immediately following differentiate one item from the other; and the series of numbers refer to the date of the search operation. "DJP-SW1 02/25/15 to DJP-SW14 02/25/15" for the 14 heat-sealed transparent plastic sachets, respectively; "DJP-SW15 02/25/15" for the red coin purse; "DJP-SW16 02/25/15" collectively for the four (4) pieces of disposable lighters; "DJP-SW17 02/25/15" collectively for the two (2) pieces of plastic straws; "DJP-

and *Brgy. Kagawad* Dicen; together with media practitioner Juancho Gallarde (Gallarde) and Department of Justice (DOJ) representative Anthony Chilius Benlot (Benlot), who had both arrived by then.[8] Thereafter, Pis-an and the seized items were brought to the Provincial Intelligence Branch (PIB) satellite office where a Memorandum Request for Laboratory Examination and Drug Test[9] and a Return of Search Warrant[10] were prepared and signed by PO2 Calumba.

That afternoon, at the crime laboratory, PCInsp. Llena received the confiscated items from PO2 Calumba and proceeded to conduct confirmatory tests thereon. In her Chemistry Report No. D-079-15,[11] PCInsp. Llena stated that the 14 pieces of transparent plastic sachets containing white crystalline substance have a total aggregate weight of 9.38 grams and all tested positive for methamphetamine hydrochloride or *shabu*. PCInsp. Llena also examined the urine sample taken from Pis-an and, as inscribed in her Chemistry Report No. DT-068-15,[12] the same also tested positive for the presence of methamphetamine.

Consequently, Pis-an was charged under an Amended Information[13] dated March 10, 2015, *viz.*:

That on or about the 25th day of February, 2015 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused DAVID JAMES PIS-AN *y* DIPUTADO, without authority of law and legal justification, did, then and there

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SW18 02/25/15" collectively for the two (2) pieces of metal clips; "DJP-SW19 02/25/15" collectively for the three (3) pieces of assorted needles; "DJP-SW20 02/25/15" collectively for the three (3) pairs of scissors; "DJP-SW21 02/25/15" collectively for seven (7) pieces of assorted tin foils; "DJP-SW22 02/25/15" collectively for the two (2) improvised tooters.

[8] See Inventory of Property/ies Seized; records (exhibits), p. 4.

[9] *Id.* at 1.

[10] *Id.* at 20.

[11] *Id.* at 2.

[12] *Id.* at 12.

[13] Records, pp. 52-53.

willfully, unlawfully and feloniously possess or have under his custody and control fourteen [14] pieces transparent plastic sachets containing white crystalline substance weighing 3.25 grams, 4.13 gram[s], 0.28 gram, 0.24 gram, 0.26 gram, 0.23 gram, 0.16 gram. 0.11 gram, 0.15 gram, 0.18 gram, 0.13 gram, 0.07 gram, 0.13 gram, 0.06 gram, with a total aggregate weight of 9.38 grams which substances after examination conducted on specimen were found positive to the test of Methamphetamine Hydrochloride, also known as [*shabu*], a dangerous drug, in violation of [R.A.] No. 9165.

That the accused was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-068-15.

Contrary to Section 11 Article II of [R.A.] No. 9165. (Underscoring supplied)

Arraigned thereon, Pis-an entered a "not guilty" plea[14] whereupon trial on the merits ensued.

During trial, Pis-an denied the charge against him and testified that *(i)* on February 25, 2015, at around 5:00 a.m., police officers barged through their gates and demanded to search the place;[15] and *(ii)* he asked to see the search warrant but PO2 Calumba replied that there was no need to show the same as it was already signed by higher authorities.[16] Pis-an contended that he was not able to witness the search as he was made to stay on the porch of the house.[17]

The RTC Ruling

The RTC rendered its Judgment dated September 12, 2016, convicting Pis-an of the crime charged, the *fallo* of which reads:

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused [Pis-an] GUILTY beyond reasonable doubt of the offense of illegal possession of 9.38 grams of *shabu* in violation of

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[14] See Certificate of Arraignment; *id.* at 57.

[15] TSN, August 22, 2016, p. 3.

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

[17] *Id.* at 6.

Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of twenty (20) years and one (1) day to life imprisonment and to pay a fine of Four Hundred Thousand Pesos ([₱]400,000.00).

The fourteen (14) heat-sealed transparent plastic sachets with markings "DJP-SW1 02/25/15" to "DJP-SW14 02/25/15", respectively, and containing a total aggregate weight of 9.38 grams of Methamphetamine Hydrochloride or *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused [Pis-an] shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.

Aggrieved, Pis-an elevated his conviction before the CA.

The CA Ruling

In its March 28, 2018 Decision, the CA affirmed the ruling of the RTC. In doing so, the CA held that the prosecution was able to prove all the elements required to secure Pis-an's conviction. Moreover, the CA observed that the integrity and evidentiary value of the seized drugs were properly preserved as each link in the chain of custody rule was duly established by the prosecution. Further, the CA opined that Pis-an's allegation that no search warrant was shown to him was belied by the fact that his signature appears thereon.

Thus, the dispositive portion of the decision states:

WHEREFORE, the Judgment dated September 12, 2016, issued by the [RTC], Branch 30, Dumaguete City in Criminal Case No. 2015-22801 convicting accused-appellant [Pis-an] of Violation of Section 11, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act is hereby **AFFIRMED**.

With costs against [Pis-an].

SO ORDERED.

Hence, this appeal.

The Court required[18] both parties to file their respective supplementary briefs; however, they opted not to file the same.

Issue

Here, as in all criminal cases, the primordial issue is whether the guilt of the accused has been established beyond reasonable doubt.

Our Ruling

The appeal, after a judicious review, fails.

For the charge of illegal possession of a dangerous drug to prosper, it must be proven that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[19]

In the case at bench, the courts *a quo* correctly held that all the aforementioned elements are present here, since: *(i)* by virtue of SW No. 10-2015, a valid search warrant, the police officers recovered, among others, 14 heat-sealed transparent plastic sachets containing white crystalline substance which later tested positive for methamphetamine hydrochloride or *shabu*; *(ii)* such possession is not authorized by law as Pis-an himself admitted during the pre-trial;[20] and *(iii)* the prohibited drugs were uncovered from Pis-an's house which was a *prima facie* evidence of knowledge or *animus possidendi*. Verily, the factual findings of the CA affirming those of the RTC are binding upon this Court absent any showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[21]

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[18] *Rollo*, p. 24.

[19] *People v. Rivera*, 90 Phil. 770, 778 (2016).

[20] See Pre-Trial Order; records, p. 87.

[21] *Valleno v. People*, 701 Phil. 313, 321 (2013).

In addition, the Court agrees that the police officers duly complied with the chain of custody rule under Section 21, Article II of R.A. No. 9165[22] and its Implementing Rules and Regulations.[23]

The Court, in *Aranas y Dimaala v. People*,[24] declared that:

[T]o establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, inter alia, that the

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[22] 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[.]

[23] SEC. 21. x x x

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

[24] G.R. No. 242315, July 3, 2019.

marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of_RA 9165 by RA 10640, a representative from the media AND the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." (Citations omitted)

Records reveal that right after Pis-an was arrested, the police officers immediately took custody of the seized items and marked them right there and then. They also conducted the requisite inventory and photography in the presence of all three (3) insulating witnesses as required by R.A. No. 9165 prior to its amendment, namely: Brgy. Kagawad Dicen; media practitioner Gallarde; and DOJ representative Benlot. Thereafter, PO2 Calumba delivered the confiscated drugs to PCInsp. Llena for laboratory examination. Later, confirmatory tests on all 14 heat-sealed transparent plastic sachets would yield a positive finding for the presence of methamphetamine hydrochloride or more commonly known as *shabu*. Clearly, therefore, the chain of custody over the seized drugs remained unbroken as the recovery and proper handling of the *corpus delicti* were sufficiently shown.

Undeniably, Pis-an was caught in possession of 9.38 grams of *shabu* and the illegal possession of such quantity of dangerous drugs is punishable under Section 11, paragraph 2 (2), Article II of R.A. No. 9165, as follows:

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of x x x methamphetamine hydrochloride or "*shabu*"[.]

However, as succinctly pointed out by Justice Mario V. Lopez in his Reflections, the maximum penalty of life imprisonment may only be imposed when the crime of illegal possession was committed in the presence of two or more persons or in a social gathering pursuant to Section 13[25] of R.A. No. 9165. Here, since it was not shown Pis-an was caught possessing the dangerous drugs during a party, or at a social gathering or meeting, or in the proximate company of at least two persons, the maximum imposable penalty should be below life imprisonment which is currently pegged 40 years and 1 day.

In view of the foregoing, we modify the penalty imposed by the RTC, as affirmed by the CA. Since Pis-an was found to have been in illegal possession of 9.38 grams of *shabu*, he is meted the penalty of imprisonment ranging from 20 years and one day, as minimum, to 30 years, as maximum.[26]

WHEREFORE, the Decision dated March 28, 2018 of the Court of Appeals-Cebu City in CA-G.R. CR-HC No. 02422 is **AFFIRMED** with **MODIFICATION**. Accused-appellant David James Pis-an *y* Diputado is sentenced to suffer the penalty of twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and to pay a fine of ₱400,000.00.

SO ORDERED.

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

Caguioa (Working Chairperson), J., see concurring opinion.

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[25] **SEC. 13.** *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings*. — Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs.

[26] *People v. Obias, Jr. y Arroyo*, G.R. No. 222187, March 25, 2019.

CONCURRING OPINION

CAGUIOA, ***J.*:**

I concur with the *ponencia* that the accused-appellant is guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) No. 9165 (Illegal Possession of Dangerous Drugs).

I write this concurring opinion to stress that, as exemplified in this case, the mandatory requirements of Section 21, Article II of RA No. 9165 are not unreasonable and are in fact, not difficult to follow.

In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the offense under RA No. 9165, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[1] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[2] the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In this connection, Section 21,[3] Article II of RA No. 9165, lays down the procedure that police operatives must follow to

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[1] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[2] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[3] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory

maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation: (2) 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.

Further, in order to preserve the evidentiary value and integrity of the *corpus delicti*, the prosecution must establish an unbroken chain of custody. The four (4) links that should be established in the chain of custody of the confiscated item are as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the same illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked seized illegal drug seized from the forensic chemist to the court.[4]

These mandatory and strict requirements of the law are set in place as safeguards against the possible tampering, alteration or substitution of the seized drugs and to prevent other possible abuses by police officers because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of, or hands of unsuspecting provincial hicks, and the secrecy that

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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.

[4] *People v. Holgado*, 741 Phil. 78, 94-95 (2014), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

inevitably shrouds all drug deals, the possibility of abuse is great."[5]

In this case, the prosecution was able to prove all the links in the chain of custody. The police officers were likewise able to strictly comply with the requirements laid down in Section 21. The police officers immediately conducted the physical inventory, marking, and photography of the seized items in the presence of the accused-appellant, a representative from the media, a representative of the DOJ, and a barangay official **at the place where the accused-appellant was arrested**.[6] Thereafter, PO2 Eugene A. Calumba delivered the confiscated drugs to PCInsp. Josephine Suico Llena for laboratory examination.[7] Later, confirmatory tests on all 14 heat-sealed transparent plastic sachets would yielded a positive finding for the presence of methamphetamine hydrochloride or more commonly known as *shabu*.[8]

As sufficiently shown above, the police officers were able to meticulously and competently follow the procedure laid out in Section 21 — from the arrest of the accused-appellant and the seizure, marking, photography, and inventory of the seized illegal drugs in the presence of the three (3) mandatory witnesses, to the turnover of the illegal drugs seized to the investigator and then to the forensic chemist, until its final turnover to the Court.

On a final note, I would like to take this opportunity to emphasize that this case shows the reasonableness and practicality of the mandatory provisions of RA No. 9165 and thus defeats the usual flimsy excuses of police officers for non-compliance with the strict requirements of the law. The buy-bust conducted here is an exemplar of how the law can be easily followed and

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[5] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[6] *Ponencia*, p. 6.

[7] *Id.*

[8] *Id.* at 6-7.

more importantly, it shows that if police officers diligently perform their duties and obligations and remain conscientious and steadfast in their adherence to the rule of law, justice will be rightfully served.

Based on these premises, I vote to **AFFIRM** the conviction of the accused-appellant.

SECOND DIVISION

[G.R. No. 244361. July 13, 2020]

THE HEIRS OF REYNALDO A. ANDAG, namely VENERANDA B. ANDAG, JAYMARK B. ANDAG, HONEY GRACE B. ANDAG and KIM PHILIP B. ANDAG, represented by their ATTORNEY-IN-FACT, VENERANDA B. ANDAG, *petitioners*, *vs.* **DMC CONSTRUCTION EQUIPMENT RESOURCES, INC., JORGE A. CONSUNJI, President, and AGUSTINE B. GONZALEZ, Area Manager,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; REVIEW OF THE COURT OF APPEALS' RULING IN LABOR CASES; DISCUSSED. ––** "Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision." "Case law

states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."

2. **LABOR AND SOCIAL LEGISLATION; DEATH COMPENSATION; SEAFARER DEPLOYED IN AN INTER-ISLAND VESSEL SAILING DOMESTIC WATERS IS NOT COVERED BY THE POEA-SEC AND ABSENT ANY SPECIFIC PROVISION IN THE EMPLOYMENT CONTRACT, THE EMPLOYEE'S DEATH ON DUTY IS GOVERNED BY THE LABOR CODE. —** Anent the death compensation/benefits, the NLRC aptly noted that while Reynaldo was indeed employed by DMCI as a seafarer, it must nevertheless be pointed out that he was merely deployed in an inter-island vessel sailing domestic waters. This being the case, his employment was not covered by any POEA-Standard Employment Contract typical to employment contracts involving seafarers sailing in international waters — a contract which specifically contains provisions which make an employer liable should a seafarer perish while on duty. Absent any specific provision in his employment contract with DMCI, Reynaldo's death on duty is governed by the Labor Code, particularly, Articles 174, 178, 179, and 200 (a) [formerly Articles 168, 172, 173, and 194 (a)] thereof. In this regard, case law instructs that "[t]he clear intent of the law is that the employer should be relieved of the obligation of directly paying his employees compensation for work-connected illness or injury on the theory that this is part of the cost of production or business activity; and that no longer would there be need for adversarial proceedings between an employer and his employee in which there were specific legal presumptions operating in favor of the employee and statutorily specified defenses available to an employer." Hence, "[o]nce the employer pays

his share to the fund, all obligation on his part to his employees is ended." Given the foregoing, the Labor Tribunals correctly ruled that DMCI is not liable for Reynaldo's death benefits as it is the State Insurance Fund, more particularly the SSS, which is liable therefor.

3. **CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; DAMAGES ARISING FROM THE EMPLOYER'S PURPORTED NEGLIGENCE RESULTING TO EMPLOYEE'S DEATH IS COGNIZABLE BY THE REGULAR COURTS. —** Anent petitioner's claim for damages arising from DMCI's purported negligence which resulted in Reynaldo's death, the NLRC correctly ruled that petitioners' allegations in their Position Paper before the LA make out a cause of action for a tort, which is cognizable not by the labor tribunals, but by the regular courts. On this note, while the maintenance of a safe and healthy workplace is ordinarily a subject of labor cases, case law nevertheless clarifies that a claim ***specifically grounded on the employer's negligence*** to provide a safe, healthy and workable environment for its employees is no longer a labor issue, but rather, is a case for *quasi-delict* which is under the jurisdiction of the regular courts, as in this case. Hence, should petitioners wish to pursue this cause of action against DMCI, it should file the proper case therefor before the regular courts.

APPEARANCES OF COUNSEL

Trenas and Rubias Law Office for petitioners.
Redencio Villarivera for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 28, 2018 and the Resolution[3] dated

[1] *Rollo*, pp. 24-42.

[2] *Id.* at 63-73. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Geraldine C. Fiel-Macaraig and Gabriel T. Robeniol, concurring.

[3] *Id.* at 45-48. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Edgardo L. Delos Santos (now a member of this Court) and Emily R. Aliño-Geluz, concurring.

December 12, 2018 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 10946 which upheld the Decision[4] dated January 30, 2017 and the Resolution[5] dated March 23, 2017 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-01-000024-2017 which held, *inter alia*, that: (*a*) petitioners Heirs of Reynaldo A. Andag (Reynaldo), namely Veneranda B. Andag, Jaymark B. Andag, Honey Grace B. Andag, *et al.*'s (petitioners) claim for damages against respondent DMC Construction Equipment Resources, Inc. (DMCI) is a claim based on torts which is cognizable by the regular courts; and (*b*) petitioners are not entitled to the monetary reliefs sought.

The Facts

Petitioners alleged that on July 16, 2012, respondent DMC Construction Equipment Resources, Inc. (DMCI) employed Reynaldo as Second Mate on its tugboat, the M/T Alexander Paul. On October 18, 2013, as the tugboat was towing an overloaded barge, a recoiling rope accidentally struck Reynaldo causing him to be thrown towards the ship's iron bars. Reynaldo was rushed to the hospital where he was pronounced dead on arrival. Months after, DMCI contacted petitioners and told them that it would give them the amount of ₱200,000.00 as compensation for Reynaldo's death under the condition that they would execute a waiver and quitclaim in its favor. After refusing the offer, petitioners no longer heard from DMCI, prompting them to send a formal demand letter, which the latter ignored.[6] Thus, they were constrained to file the instant complaint against respondent before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VI of Iloilo City seeking, *inter alia*, the payment of: (*a*) death compensation/benefits; (*b*) actual damages, moral damages, exemplary damages, and attorney's fees for the latter's alleged

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[4] *Id.* at 233-243. Penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioners Julie C. Rendoque and Jose G. Gutierrez, concurring.

[5] *Id.* at 211-215.

[6] *Id.* at 234-235.

negligence resulting in the death of Reynaldo; and (*c*) other monetary claims due to Reynaldo, *e.g.*, holiday pay, service incentive leave pay, and 13th month pay.[7]

In its defense, DMCI maintained that: (*a*) petitioners should recover death benefits not from it as Reynaldo's employer, but from the State Insurance Fund, *i.e.*, the Social Security System (SSS); (*b*) the amount of ₱200,000.00 it offered to petitioners represents the proceeds of the accidental death insurance policy it voluntarily secured in favor of its employees which the latter, unfortunately, refused to accept; and (*c*) it had already paid Reynaldo's monetary benefits as evidenced by various documents such as the latter's payslips.[8]

The LA Ruling

In a Decision[9] dated September 28, 2016, the Labor Arbiter (LA) dismissed the complaint for lack of cause of action.[10] The LA agreed with DMCI that petitioners' claim for death benefits should have been made before the State Insurance Fund. It also pointed out that petitioners failed to present evidence of DMCI's liability for Reynaldo's death.[11] Further, it denied their claim for moral and exemplary damages for lack of merit.[12] Finally, the LA found that DMCI had already paid all the wages and monetary benefits due to Reynaldo.[13]

Aggrieved, petitioners appealed to the NLRC.

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[7] *Id.* at 233-234.

[8] *Id.* at 236.

[9] *Id.* at 245-253. Penned by Labor Arbiter Rodrigo P. Camacho.

[10] *Id.* at 253.

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

[12] *Id.* at 252-253.

[13] *Id.* at 253.

The NLRC Ruling

In a Decision[14] dated January 30, 2017, the NLRC affirmed the LA ruling with modification, ordering DMCI to turn over to petitioners the ₱200,000.00 accidental death insurance proceeds without any condition.[15] It ruled that: ***first***, as to the death benefits, since it was shown that Reynaldo was an inter-island seaman, *i.e.*, working within Philippine waters, and in the absence of any contractual provision showing that DMCI is liable for death benefits, petitioners should seek payment of such death benefits not from DMCI, but from the State Insurance Fund, particularly the SSS.[16] ***Second***, as for the claim of damages arising from DMCI's alleged negligence resulting in the death of Reynaldo, the NLRC held that the Labor Tribunals have no jurisdiction to hear this cause of action, as it is a claim based on torts which is cognizable by the regular courts.[17] ***Third***, as for the additional death insurance proceeds, the same should be released to petitioners without any condition considering that the same had already been released to DMCI, albeit the latter was unable to turn-over the same to petitioners because it unduly conditioned it on petitioners signing a waiver and quitclaim.[18] Finally, while the NLRC was silent as to petitioners' other monetary claims due to Reynaldo, the ruling implied that it was upholding the LA's findings on this regard, *i.e.*, that the same had already been paid by DMCI.

Dissatisfied, petitioners moved for partial reconsideration[19] but were denied in a Resolution[20] dated March 23, 2017. Hence, they filed a petition for *certiorari*[21] before the CA, principally

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[14] *Id.* at 233-243.

[15] *Id.* at 243.

[16] *Id.* at 238-239.

[17] *Id.* at 239-242.

[18] *Id.* at 242.

[19] *Id.* at 216-231.

[20] *Id.* at 211-215.

[21] *Id.* at 74-100.

assailing the NLRC's findings that: (*a*) petitioners' claim for damages against DMCI is a claim based on torts which is cognizable by the regular courts; and (*b*) petitioners are not entitled to the monetary reliefs sought.

The CA Ruling

In a Decision[22] dated February 28, 2018, the CA upheld the assailed NLRC rulings. It held that the NLRC did not gravely abuse its discretion in holding that: (*a*) petitioners' claim for damages against DMCI is a claim based on torts which is cognizable by the regular courts; and (*b*) petitioners are not entitled to the monetary reliefs sought as it was shown that DMCI had already paid the same.[23]

Undaunted, petitioners moved for reconsideration which the CA denied in a Resolution[24] dated December 12, 2018. Hence, this petition.[25]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that the NLRC did not gravely abuse its discretion in issuing its assailed rulings.

The Court's Ruling

The petition is without merit.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented

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

[23] *Id.* at 69-73.

[24] *Id.* at 45-48.

[25] See *id.* at 32-36.

to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[26]

"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[27]

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[28]

Guided by the foregoing considerations, the Court finds that the CA correctly found no grave abuse of discretion on the part of the NLRC in issuing its assailed rulings, as the same is in accord with the evidence on record, as well as settled principles of labor law.

At this juncture, the Court deems it worthy to point out that petitioners seek the following: (*a*) death compensation/benefits for Reynaldo; (*b*) damages arising from DMCI's purported negligence which resulted in Reynaldo's death; (*c*) additional death benefits; and (*d*) other monetary claims due to Reynaldo, *e.g.*, holiday pay, service incentive leave pay, and 13th month pay.

Anent the death compensation/benefits, the NLRC aptly noted that while Reynaldo was indeed employed by DMCI as a seafarer,

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[26] *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019; citation omitted.

[27] *Id.*

[28] *Id.*

it must nevertheless be pointed out that he was merely deployed in an inter-island vessel sailing domestic waters. This being the case, his employment was not covered by any POEA-Standard Employment Contract typical to employment contracts involving seafarers sailing in international waters — a contract which specifically contains provisions which make an employer liable should a seafarer perish while on duty. Absent any specific provision in his employment contract with DMCI, Reynaldo's death on duty is governed by the Labor Code, particularly, Articles 174, 178, 179, and 200 (a) [formerly Articles 168, 172, 173, and 194 (a)][29] thereof. In this regard, case law instructs that "[t]he clear intent of the law is that the employer should be relieved of the obligation of directly paying his employees compensation for work-connected illness or injury on the theory

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[29] See Department of Labor and Employment Department Advisory No. 1, series of 2015, entitled "RENUMBERING THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." The foregoing provisions read:

Article 174. [168] *Compulsory Coverage*. — Coverage in the State Insurance Fund shall be compulsory upon all employers and their employees not over sixty (60) years of age; *Provided*, That an employee who is over sixty (60) years of age and paying contributions to qualify for the retirement or life insurance benefit administered by the System shall be subject to compulsory coverage.

Article 178. [172] *Limitation of Liability*. — The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

Article 179. [173] *Extent of Liability*. — Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall not bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven Hundred Sixty-One, as amended, Republic Act Numbered Six Hundred Ten, as amended, Republic Act Numbered Forty-Eight Hundred Sixty-Four, as amended, and other laws whose benefits are administered by the System or by other agencies of the government.

Article 200. [194] *Death*. — (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the

that this is part of the cost of production or business activity; and that no longer would there be need for adversarial proceedings between an employer and his employee in which there were specific legal presumptions operating in favor of the employee and statutorily specified defenses available to an employer."[30] Hence, "[o]nce the employer pays his share to the fund, all obligation on his part to his employees is ended."[31] Given the foregoing, the Labor Tribunals correctly ruled that DMCI is not liable for Reynaldo's death benefits as it is the State Insurance Fund, more particularly the SSS, which is liable therefor.

Anent petitioner's claim for damages arising from DMCI's purported negligence which resulted in Reynaldo's death, the NLRC correctly ruled that petitioners' allegations in their Position Paper[32] before the LA make out a cause of action for a tort, which is cognizable not by the labor tribunals, but by the regular courts.[33] On this note, while the maintenance of a safe and healthy workplace is ordinarily a subject of labor cases, case law nevertheless clarifies that a claim ***specifically grounded on the employer's negligence*** to provide a safe, healthy and workable environment for its employees is no longer a labor issue, but rather, is a case for *quasi-delict* which is under the jurisdiction of the regular courts,[34] as in this case. Hence, should petitioners

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death of the covered employee under this Title, an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 hereof: *Provided, however*, That the monthly income benefit shall be guaranteed for five years: *Provided, further*, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: *Provided, finally*, That the minimum death benefit shall not be less than fifteen thousand pesos.

[30] *San Miguel Corporation v. NLRC*, 247 Phil. 338, 348 (1988).

[31] *Id.*

[32] See *rollo*, pp. 254-270, particularly pp. 265-267.

[33] See *id.* at 239-242.

[34] See *Indophil Textile Mills, Inc. v. Adviento*, 740 Phil. 336, 348 (2014). See also *Tolosa v. NLRC*, 449 Phil. 271, 284 (2003).

wish to pursue this cause of action against DMCI, it should file the proper case therefor before the regular courts.

As for the claim for additional death benefits, the Court notes that the NLRC already ruled that petitioners are entitled to the amount of ₱200,000.00 representing the accidental death insurance proceeds which DMCI voluntarily procured for its employees, such as Reynaldo; and that DMCI should turn-over said amount to petitioners *sans* any condition.

Finally, as for the other monetary claims purportedly still due to Reynaldo, the Labor Tribunals had correctly found that the same had already been paid for by DMCI, as such finding was substantiated by evidence on record, *e.g.*, payslips. Verily, factual findings of labor tribunals, especially when affirmed by the CA, are generally accorded not only with respect, but even with finality, and are thus binding on the Court.[35]

In conclusion, no grave abuse of discretion may be ascribed in the assailed NLRC rulings. Hence, the CA correctly affirmed the same.

WHEREFORE, the petition is **DENIED**. The Decision dated February 28, 2018 and the Resolution dated December 12, 2018 of the Court of Appeals in CA-G.R. CEB-SP No. 10946 are hereby **AFFIRMED**.

SO ORDERED.

Reyes,[*] *J. Jr., Hernando, Zalameda,*[**] and *Gaerlan,*[***] *JJ.*, concur.

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[35] See *Nahas v. Olarte*, 734 Phil. 569, 579 (2014); *ODFJELL Philippines, Inc. v. Cruz*, G.R. No. 246776, July 8, 2019 (Notice); and *Salazar v. Loxon Wandset, Inc.*, UDK-16194, June 18, 2018 (Minute Resolution). See also *Kintanar, et al. v. Sampaguita Tourist Inn/Abella G. Dacudao, et al.*, (Minute Resolution), G.R. No. 225563, August 30, 2016; and *Padernal v. Pedia-AIDS, Inc.*, G.R. No. 215665, January 11, 2016 (Minute Resolution).

[*] Designated additional member per raffle dated March 16, 2020.

[**] Designated additional member per raffle dated June 22, 2020.

[***] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 245370. July 13, 2020]

EAGLE CLARC SHIPPING PHILIPPINES, INC., MAMA SHIPPING SARL and CAPT. LEOPOLDO ARCILLA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) and JOHN P. LOYOLA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; THE RULE ON VERIFICATION OF A PLEADING IS A FORMAL, NOT JURISDICTIONAL REQUIREMENT, AND NON-COMPLIANCE WITH THE VERIFICATION REQUIREMENT DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE, AS IT IS SUBSTANTIALLY COMPLIED WITH WHEN SIGNED BY ONE WHO HAS AMPLE KNOWLEDGE OF THE TRUTH OF THE ALLEGATIONS IN THE COMPLAINT OR PETITION, AND WHEN MATTERS ALLEGED IN THE PETITION HAVE BEEN MADE IN GOOD FAITH OR ARE TRUE AND CORRECT; WHEN THE COUNSEL WHO SIGNED THE CERTIFICATION WAS GIVEN A SPECIAL POWER OF ATTORNEY BY THE CLIENT, THERE IS SUBSTANTIAL COMPLIANCE WITH THE RULES ON VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING. —** Petitioners argue that Loyola's lapses in procedure, particularly his failure to personally file the complaint, attend the mandatory hearings and execute the verification and certification against non-forum shopping, merit the dismissal of his complaint before the Labor Arbiter. The NLRC and the CA were correct in not giving weight to these assertions. The rule on verification of a pleading is a formal, not jurisdictional, requirement. Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, as it is substantially complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true

and correct. Certification, not signed by a duly authorized person, meanwhile, renders the petition subject to dismissal. But there are cases when this Court acts with leniency due to the presence of special circumstances or compelling reasons. When the counsel who signed the certification was given a special power of attorney by the client, there is substantial compliance with the rules on verification and certification against forum shopping. Consistent with the Court's vow to render and dispense justice, we will not hesitate in relaxing procedural rules, if needed, so as not to unjustly deprive a litigant the chance to present his or her case on the merits.

2. **ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF ADMINISTRATIVE OR *QUASI*-JUDICIAL BODIES, WHICH INCLUDE LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT BY THE COURT, AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. —** We agree with both the NLRC and the CA that petitioners failed to discharge its burden of proving that Loyola was dismissed due to a just and authorized cause and that the twin notice requirements were complied with. The general rule is that factual findings of administrative or *quasi*-judicial bodies, which include labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FOR DISMISSAL TO BE VALID, THE EMPLOYER MUST SHOW THROUGH SUBSTANTIAL EVIDENCE OR SUCH AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, THAT THE DISMISSAL WAS FOR A JUST OR AUTHORIZED CAUSE, AND THE DISMISSED EMPLOYEE WAS AFFORDED DUE PROCESS. —** In labor cases, the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion is that the dismissal was unjustified and, therefore, illegal. Moreover, not only must the dismissal be for a cause

provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and defend one's self. Thus, for dismissal to be valid, the employer must show through substantial evidence – or such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion – that (1) the dismissal was for a just or authorized cause; and (2) the dismissed employee was afforded due process.

4. **ID.; SEAFARER; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); INCOMPETENCE OR INEFFICIENCY, AS A GROUND FOR DISMISSAL, CONTEMPLATES THE FAILURE TO ATTAIN WORK GOALS OR WORK QUOTAS, EITHER BY FAILING TO COMPLETE THE SAME WITHIN THE ALLOTTED REASONABLE PERIOD, OR BY PRODUCING UNSATISFACTORY RESULTS; ALLEGATION OF INCOMPETENCE AND INEFFICIENCY, NOT PROVED; UNCORROBORATED AND SELF-SERVING STATEMENTS OF EMPLOYERS ARE SORELY INADEQUATE IN MEETING THE REQUIRED QUANTUM OF PROOF TO DISCHARGE THEIR BURDEN. —** [P]etitioners assert that Loyola's termination was due to his incompetence and inefficiency. Incompetence or inefficiency as a ground for dismissal contemplates the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. Apart from their bare allegation that Loyola was dismissed due to incompetence and inefficiency as he "failed to pass the criteria set by petitioners in relation to his work," petitioners failed to present any evidence to substantiate such claim. As noted by the NLRC and the CA, no evidence was presented to support the allegation that he was grossly and habitually neglectful of his duties that would merit his dismissal. The Court has consistently held that uncorroborated and self-serving statements of employers are sorely inadequate in meeting the required quantum of proof to discharge their burden.

5. **ID.; ID.; ID.; FOR THE MANNER OF DISMISSAL IN TERMINATION PROCEEDINGS TO BE VALID, THE EMPLOYER MUST COMPLY WITH THE EMPLOYEE'S RIGHT TO PROCEDURAL DUE PROCESS BY FURNISHING HIM WITH TWO WRITTEN NOTICES**

BEFORE THE TERMINATION OF HIS EMPLOYMENT; NOT COMPLIED WITH.— As for the notice requirements, it is settled that for the manner of dismissal in termination proceedings to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination of his employment. The first notice apprises the employee of the specific acts or omissions for which his or her dismissal is sought, while the second informs the employee of the employer's decision to dismiss him or her. Section 17 of the POEA-SEC provides for the disciplinary procedures against erring seafarers x x x. In this case, we find no reason to reverse the findings of the CA and the NLRC that respondent was not given ample time to answer the charge against him. The notations in the notices that Loyola refused to sign or receive were also not sufficient proof that the petitioners attempted to serve the notices to him.

6. **ID.; ID.; ID.; MONETARY AWARDS; AN ILLEGALLY DISMISSED SEAFARER, WHOSE EMPLOYMENT CONTRACT IS FOR LESS THAN A YEAR, IS ENTITLED TO BE PAID HIS SALARIES FOR THE UNEXPIRED PORTION OF HIS EMPLOYMENT CONTRACT, WHICH INCLUDES HIS MONTHLY VACATION LEAVE PAY AND OTHER BONUSES WHICH ARE EXPRESSLY PROVIDED AND GUARANTEED IN HIS EMPLOYMENT CONTRACT AS PART OF HIS MONTHLY SALARY AND BENEFIT PACKAGE. —** As for the monetary awards, we find that a modification of the CA decision is in order. Prevailing jurisprudence provides that in cases where the employment contract of the illegally dismissed seafarer is for less than a year, said respondent should be paid his salaries for the unexpired portion of his employment contract. This amount includes all the seafarer's monthly vacation leave pay and other bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package. Here, Loyola was employed by Eagle Clarc, as Able Seaman under an eight-month contract, with a basic monthly salary of US$ 577.00, with fixed monthly overtime pay of US$ 283.00, leave pay of US$ 144.00 per month, weekend compensation of US$ 150.00 and social benefits and bonus of US$ 126.00. The NLRC was, therefore, correct in ruling that herein petitioners are jointly and severally liable to pay US$ 7,680.00, which is US$ 1,280 x 6 months.

7. ID.; ID.; ID.; ID.; AN ILLEGALLY DISMISSED SEAFARER IS ENTITLED TO THE FULL REIMBURSEMENT OF HIS PLACEMENT FEE WITH 12% INTEREST PER ANNUM; AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES, AFFIRMED. — [W]e find that Loyola is entitled to the full reimbursement of his placement fee with 12% interest per annum in accordance with the fifth paragraph of Section 10 of Republic Act (R.A.) No. 8042, as amended, or the Migrant Workers Act x x x. As for the other monetary awards, the CA correctly affirmed the NLRC. We have held that moral damages are proper where the dismissal was tainted with bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy. Exemplary damages meanwhile are recoverable if the dismissal was done in a wanton, oppressive or malevolent manner. Here, we find no reason to overturn the NLRC and CA rulings which awarded moral and exemplary damages in favor of Loyola, in view of the Ship Master's manner of dismissing Loyola and the lack of proof that Loyola was duly notified of the charges and disciplinary hearing or investigation against him. As for the attorney's fees, the same are likewise proper in view of the fact that Loyola was forced to litigate and thus, incur expenses to protect his rights and interest.

8. ID.; MIGRANT WORKERS ACT (REPUBLIC ACT NO. 8042), AS AMENDED; IF THE RECRUITMENT OR PLACEMENT AGENCY IS A JURIDICAL BEING, ITS CORPORATE OFFICERS, DIRECTORS AND PARTNERS, AS THE CASE MAY BE, SHALL BE JOINTLY AND SOLIDARILY LIABLE WITH THE CORPORATION OR PARTNERSHIP FOR THE CLAIMS AND DAMAGES AGAINST IT. — As to the question of whether Capt. Arcilla should be held solidarily liable with the other petitioners, Section 10 of R.A. No. 8042, as amended by R.A. No. 10022 provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. Since Capt. Arcilla is the President and General Manager of Eagle Clarc, he cannot evade liability in this case.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Nelson Loyola for private respondent.

D E C I S I O N

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

Before the Court is a Petition for Review assailing the Decision[1] dated August 31, 2018 and the Resolution[2] dated February 21, 2019 of the Court of Appeals (CA) in CA-G.R. No. SP. No. 154877.

John P. Loyola (Loyola) was employed by Eagle Clarc Shipping, Philippines, Inc. (Eagle Clarc), for and in behalf of its foreign principal, Mama Shipping Sarl (Mama Shipping), as an Able Seaman under an eight-month contract which started on November 12, 2015. His basic monthly salary was US$ 577.00, with fixed monthly overtime pay of US$ 283.00 and US$ 4.04 in excess of 70 hours, leave pay of US$ 144.00 per month, weekend compensation of US$ 150.00 and social benefits and bonus of US$ 126.00. The contract was supplemented by the Italian Collective Bargaining Agreement (CBA).

On November 26, 2015, Loyola boarded the vessel *MV Grande Luanda* and he disembarked on February 2, 2016 or six months before the expiration of his contract.

On October 19, 2016, Loyola filed a complaint for illegal dismissal and monetary claims against Eagle Clarc, Mama Shipping and Capt. Leopoldo Arcilla, as officer of Eagle Clarc (herein petitioners), claiming that on January 29, 2016, he was called by Capt. Palerom Guiseppe and referred to Chief Mate Rago Francesco. He was shown a document which he refused

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Myra V. Garcia-Fernandez and Ronaldo Roberto B. Martin, concurring; *rollo*, pp. 67-84.

[2] *Id.* at 27-29; 85-87.

to sign because he did not know the contents thereof. Because of his refusal to sign the document, Loyola was advised that he was terminated and forced to disembark from the vessel. He alleged that prior to his disembarkation, he was neither informed of the offense he allegedly committed nor afforded due process. He asked for the payment of his salary for the unexpired portion of his contract and other benefits, plus damages.

Petitioners meanwhile averred that Loyola had difficulty performing his tasks. The Ship Master served a first formal warning to him which informed him of his breach of the Code of Conduct, incompetence and inefficiency in performing his duties on-board. A disciplinary hearing was set to investigate his alleged poor performance. The petitioners maintained that Loyola's dismissal on the ground of 'incompetency and inefficiency' was based on Section 33 of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) in relation to Article 297 of the Labor Code. They alleged that Loyola's failure to comply with the standards set forth in the company's Code of Conduct was sufficient justification to terminate his contract. They also averred that he was afforded due process through the two notices which he refused to receive.[3] After the investigation and hearing, Loyola was notified of the termination of his contract which stated that he did not pass the training/probation period as mentioned in the contract of employment. They argued that he was not entitled to monetary claims as there was no bad faith or malice on their part when they terminated his contract, and that he cannot claim attorney's fees because the severance of his contract was due to his own fault.[4]

Labor Arbiter Ruling

On June 16, 2017, the Labor Arbiter dismissed Loyola's complaint due to his failure to sign the verification in his position paper.[5]

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[3] *Id.* at 68-70.

[4] *Id.* at 71.

[5] *Id.* at 16-17.

Loyola filed a Memorandum on Appeal asserting that the complaint affidavit was duly executed and signed under oath. He also averred that the outright termination of his employment contract was a gross violation of Articles 297 and 298 of the Labor Code and the twin requirements of due process.[6]

NLRC Ruling

On June 16, 2017, the National Labor Relations Commission (NLRC) issued a Decision granting Loyola's appeal, in this wise:

> WHEREFORE, the instant appeal is PARTLY GRANTED. The assailed Decision dated 16 June 2017 is hereby REVERSED and SET ASIDE and a new one is entered finding complainant to have been illegally dismissed. Consequently, respondents are jointly and severally liable to pay complainant —
>
> 1. The amount corresponding to the unexpired portion of his contract in its US dollar amount in USD 7,680.00 (USD 1,280 x 6 mos.) or its Philippine Peso equivalent at the time of payment;
> 2. Moral damages in the amount of ₱10,000.00;
> 3. Exemplary damages in the amount of ₱10,000.00;
> 4. Attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> All other claims are DISMISSED.
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> SO ORDERED.[7]

The NLRC found that Loyola substantially complied with the procedural requirements when he duly authorized his counsel, through a Special Power of Attorney, to sign in his behalf the verification and certification of non-forum shopping in his position paper.

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[6] *Id.* at 17.

[7] *Id.* at 10.

As for the legality of Loyola's dismissal, the NLRC found no evidence to support the allegation that he was grossly and habitually neglectful of his duties to be considered incompetent or inefficient, or to be assessed with unsatisfactory work performance. The NLRC noted that Loyola was not given ample time to answer the charge against him as he was directed to attend a disciplinary hearing on the same day that he purportedly received the notice. As for the procedural requirements of termination, the notations in the notices that Loyola refused to sign or receive were not sufficient proof that the petitioners attempted to serve the notices to him. There was no detail as to what transpired during the alleged disciplinary investigation.

Petitioners' motion for reconsideration was denied by the NLRC on November 20, 2017.[8]

Court of Appeals Ruling

Petitioners filed a petition for *certiorari* under Rule 65 with the CA claiming that the NLRC disregarded the evidence available on record which proved that Loyola violated his contract which warranted his dismissal. They also averred that they complied with the twin notice requirements.[9]

On August 31, 2018, the CA rendered its Decision, thus:

> WHEREFORE the petition is DENIED DUE COURSE and it is consequently DISMISSED.
>
> We, however, modify the amount of salary, which should include only, the basic monthly wages of Loyola multiplied by the remaining portion of the contract, to be computed as follows:
>
> US$ 577.00 x six months = US$ 3,462 (or its Philippine Peso equivalent at the time of payment).
>
> Given that the petitioners already paid in full the judgment award in compliance with the writ of execution dated 18 May 2018, the private respondent John P. Loyola is directed to return to the petitioners

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[8] *Id.* at 13.

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

the excess payment made in view of the modification of the computation of the monetary award.

IT IS SO ORDERED.[10]

The CA held that Loyola substantially complied with the verification and certification requirements while petitioners failed to support their claims with substantial evidence.

The CA held that petitioners failed to prove why Loyola did not pass the training or probation period which would warrant the termination of his contract. The alleged Notification of Disciplinary Hearing cited "poor ability to steering" or breach of paragraph C2-02 of the Code of Conduct. But the notice of termination stated that Loyola's disembarkation was due to his not passing the training or probation period. This, notwithstanding the fact that the contract that Loyola and Capt. Arcilla signed did not indicate that Loyola was to serve a probationary period. The CA held that nothing in the submitted evidence showed Loyola's unsatisfactory work performance. Not a single affidavit from any of Loyola's co-workers on-board was adduced by petitioners to corroborate their claim of valid and lawful dismissal. Petitioners also did not offer in evidence entries in the ship's official logbook that would have shown the performance assessment or rating of Loyola while on-board.[11]

The CA then affirmed the NLRC's decision with modification only as to the amount of salary due the respondent.[12]

Both parties moved for reconsideration which the CA denied on February 21, 2019.[13]

Present Petition

Eagle Clarc, Mama Shipping and Capt. Arcilla are now before the Court raising the following issues:

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[10] *Id.* at 25-26.

[11] *Id.* at 22-23.

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

[13] *Id.* at 82-83.

I. THE HONORABLE COURT COMMITTED GRAVE ERROR WHEN IT AWARDED RESPONDENT WITH THE UNEXPIRED PORTION OF HIS CONTRACT.

II. THE HONORABLE COURT GRAVELY ERRED WHEN IT AWARDED BENEFITS FOR ILLEGAL DISMISSAL. PRIVATE RESPONDENT'S DISMISSAL WAS LEGAL, VALID AND JUST UNDER THE CIRCUMSTANCES. LIKEWISE, THE TWIN NOTICE RULE IN TERMINATION DISPUTES HAS BEEN COMPLIED WITH.

III. IN THE REMOTE EVENT ILLEGAL DISMISSAL IS FOUND TO BE PRESENT, THE AWARD SHOULD BE LIMITED TO PRIVATE RESPONDENT'S BASIC SALARY ONLY. THERE IS NO BASIS TO AWARD OTHER ALLOWANCES UNPROVEN BY PRIVATE RESPONDENT.

IV. THE AWARD FOR ATTORNEY'S FEES AND DAMAGES SHOULD LIKEWISE BE DENIED. PETITIONERS CANNOT BE FAULTED FOR PURSUING AND DEFENDING AGAINST RESPONDENT'S UNFOUNDED CLAIM.

V. MR. LEOPOLDO ARCILLA SHOULD NOT BE SOLIDARILY LIABLE WITH PETITIONERS.[14]

The Court finds NO MERIT in the petition.

Petitioners argue that Loyola's lapses in procedure, particularly his failure to personally file the complaint, attend the mandatory hearings and execute the verification and certification against non-forum shopping, merit the dismissal of his complaint before the Labor Arbiter.[15]

The NLRC and the CA were correct in not giving weight to these assertions.

The rule on verification of a pleading is a formal, not jurisdictional, requirement. Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, as it is substantially complied with when signed by

[14] *Id.* at 48-58.

[15] *Id.* at 47-51.

one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct.[16]

Certification, not signed by a duly authorized person, meanwhile, renders the petition subject to dismissal. But there are cases when this Court acts with leniency due to the presence of special circumstances or compelling reasons. When the counsel who signed the certification was given a special power of attorney by the client, there is substantial compliance with the rules on verification and certification against forum shopping.[17]

Consistent with the Court's vow to render and dispense justice, we will not hesitate in relaxing procedural rules, if needed, so as not to unjustly deprive a litigant the chance to present his or her case on the merits.[18]

As for the issue of illegal dismissal, petitioners invoke Section 33 of the POEA Employment Contract, alleging that Loyola was guilty of incompetence and inefficiency. According to petitioners, respondent failed to pass the criteria set by petitioners in relation to his work, which is a sufficient ground to terminate him from employment. They claim that Loyola was notified of his poor performance on board and was given the opportunity to explain when he was given the formal warning. He was notified of the schedule of the hearing and eventually notified of his termination. To prove that he was duly notified of his termination, petitioners cite the notice of termination signed by the Chief Mate, Bosun and Master on board the vessel.[19]

We agree with both the NLRC and the CA that petitioners failed to discharge its burden of proving that Loyola was dismissed due to a just and authorized cause and that the twin notice requirements were complied with.

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[16] *Steamship Mutual Underwriting Association (Bermuda) Limited v. Sulpicio Lines, Inc.*, 818 Phil. 464-524 (2017).

[17] *Id.*

[18] *Victoriano v. Dominguez*, G.R. No. 214794, July 23, 2018.

[19] *Rollo*, pp. 52-54.

The general rule is that factual findings of administrative or *quasi*-judicial bodies, which include labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[20]

In labor cases, the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion is that the dismissal was unjustified and, therefore, illegal.[21] Moreover, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and defend one's self. Thus, for dismissal to be valid, the employer must show through substantial evidence – or such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion – that (1) the dismissal was for a just or authorized cause; and (2) the dismissed employee was afforded due process.[22]

In this case, petitioners assert that Loyola's termination was due to his incompetence and inefficiency. Incompetence or inefficiency as a ground for dismissal contemplates the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.[23]

Apart from their bare allegation that Loyola was dismissed due to incompetence and inefficiency as he "failed to pass the criteria set by petitioners in relation to his work," petitioners failed to present any evidence to substantiate such claim. As noted by the NLRC and the CA, no evidence was presented to

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[20] *Magat v. Inter Orient Maritime Enterprises, Inc.*, G.R. No. 232892, April 4, 2018.

[21] *Maersk-Filipinas Crewing, Inc. v. Avestruz*, 754 Phil. 307-322 (2015).

[22] *Evic Human Resource Management, Inc. v. Panahon*, 814 Phil. 1040-1055 (2017).

[23] *Evic Human Resource Management, Inc. v. Panahon*, *supra*.

support the allegation that he was grossly and habitually neglectful of his duties that would merit his dismissal.

The Court has consistently held that uncorroborated and self-serving statements of employers are sorely inadequate in meeting the required quantum of proof to discharge their burden.[24]

As for the notice requirements, it is settled that for the manner of dismissal in termination proceedings to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination of his employment. The first notice apprises the employee of the specific acts or omissions for which his or her dismissal is sought, while the second informs the employee of the employer's decision to dismiss him or her.[25]

Section 17 of the POEA-SEC provides for the disciplinary procedures against erring seafarers, to wit:

SEC. 17. DISCIPLINARY PROCEDURES. —

The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 31 of this Contract.
2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.

C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written

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[24] *Id.*

[25] *Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, July 3, 2019.

notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if doing so will prejudice the safety of the crew or the vessel. This information shall be entered in the ship's logbook. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

In this case, we find no reason to reverse the findings of the CA and the NLRC that respondent was not given ample time to answer the charge against him. The notations in the notices that Loyola refused to sign or receive were also not sufficient proof that the petitioners attempted to serve the notices to him.

As for the monetary awards, we find that a modification of the CA decision is in order.

Prevailing jurisprudence provides that in cases where the employment contract of the illegally dismissed seafarer is for less than a year, said respondent should be paid his salaries for the unexpired portion of his employment contract. This amount includes all the seafarer's monthly vacation leave pay and other bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package.[26] Here, Loyola was employed by Eagle Clarc, as Able Seaman under an eight-month contract, with a basic monthly salary of US$ 577.00, with fixed monthly overtime pay of US$ 283.00, leave pay of US$ 144.00 per month, weekend compensation of US$ 150.00 and social benefits and bonus of US$ 126.00.

The NLRC was, therefore, correct in ruling that herein petitioners are jointly and severally liable to pay US$ 7,680.00, which is US$ 1,280 x 6 months.

In addition, we find that Loyola is entitled to the full reimbursement of his placement fee with 12% interest per annum

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[26] *Tangga-an v. Philippine Transmarine Carriers, Inc.*, G.R. No. 180636, March 13, 2013; *Meco Manning & Crewing Services, Inc. v. Cuyos*, *supra.*

in accordance with the fifth paragraph of Section 10 of Republic Act (R.A.) No. 8042, as amended, or the Migrant Workers Act, which states:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract. x x x

As for the other monetary awards, the CA correctly affirmed the NLRC. We have held that moral damages are proper where the dismissal was tainted with bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy. Exemplary damages meanwhile are recoverable if the dismissal was done in a wanton, oppressive or malevolent manner.[27]

Here, we find no reason to overturn the NLRC and CA rulings which awarded moral and exemplary damages in favor of Loyola, in view of the Ship Master's manner of dismissing Loyola and the lack of proof that Loyola was duly notified of the charges and disciplinary hearing or investigation against him. As for the attorney's fees, the same are likewise proper in view of the fact that Loyola was forced to litigate and thus, incur expenses to protect his rights and interest.[28]

As to the question of whether Capt. Arcilla should be held solidarily liable with the other petitioners, Section 10 of R.A. No. 8042, as amended by R.A. No. 10022 provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it.[29] Since Capt. Arcilla is

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[27] *Meco Manning & Crewing Services, Inc. v. Cuyos, id.*

[28] *Meco Manning & Crewing Services, Inc. v. Cuyos, id.*

[29] *Meco Manning & Crewing Services, Inc. v. Cuyos*, *id.*

the President and General Manager of Eagle Clarc, he cannot evade liability in this case.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 31, 2018 and Resolution dated February 21, 2019 of the Court of Appeals in CA-G.R. No. SP No. 154877 are hereby **AFFIRMED with MODIFICATION** in that the amount due John P. Loyola, corresponding to the unexpired portion of his contract is US$ 7,680 or its Philippine Peso equivalent at the time of payment. In addition, he is entitled to the full reimbursement of his placement fee with 12% interest per annum. The monetary awards granted shall further earn legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 246577. July 13, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SIU MING TAT and LEE YOONG HOEW,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.** –– To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the

following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment 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. In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.

2. **REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED. —** Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.

3. **ID.; ID.; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; PREVAILS AS AGAINST THE DEFENSE OF DENIAL OR FRAME-UP. —** It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular

and proper manner, which the appellants failed to do in the instant case. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONIES. —** This Court has ruled that "inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor." It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.

5. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; FOUR LINKS IN THE CHAIN OF CUSTODY. —** In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, *i.e.*, the prohibited or regulated drug, has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. 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*. In other words, it must be established with

unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. Generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.

6. **ID.; ID.; ID.; THE DIFFERENCE BETWEEN THE DRUGS THAT WERE SUPPOSEDLY BOUGHT AND THE DRUGS THAT WERE ACTUALLY BOUGHT IS IRRELEVANT.** — Appellants also question the finding of guilt by the trial court on the ground that the drugs that were supposedly bought, seized, recovered, confiscated and inventoried are "*shabu,*" but the prosecution presented "*ephedrine*." We find this to be inconsequential and does not affect the finding of guilt by the accused. Even if the police transacted for the sale of *shabu*, the fact that the seized drugs are *ephedrine,* will not warrant a reversal of the finding of guilt of the accused. In any case, the charge in the information was clearly for violation of Section 5 in relation to Section 26, paragraph (b), Article II of R.A. No. 9165. It is immaterial whether the allegation was for *shabu* or *ephedrine,* since both are dangerous drugs. Further, the purpose of the laboratory examination is to confirm that the seized items are indeed dangerous drugs. The police officers cannot be expected to conclude with certainty whether the suspected dangerous drugs are *shabu* or *ephedrine* just by visual inspection. What matters is that the prosecution was able to prove that the seized items are indeed dangerous drugs and are the ones presented in court. This matter was already settled in the case of *People v. Noque y Gomez,* wherein this Court held that an accused can be convicted for the sale of *shabu*, despite the fact that what was established and proven was the sale of *ephedrine*.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; 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.** — Sections 4 and 5, Rule 120 of the Rules of Court, can be

applied by analogy in convicting the appellant of the offenses charged, which are included in the crimes proved. Under these provisions, 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. At any rate, a minor variance between the Information and the evidence does not alter the nature of the offense, nor does it determine or qualify the crime or penalty, so that even if a discrepancy exists, this cannot be pleaded as a ground for acquittal. In other words, his right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.

CAGUIOA, *J.*, *concurring opinion*:

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; THE PROCEDURES LAID DOWN UNDER SECTION 21 OF RA 9165 CAN BE STRICTLY COMPLIED WITH. –– I submit this Concurring Opinion to underscore that the procedures laid down under Section 21, Article II of R.A. No. 9165 can be strictly complied with. x x x This case helps us see how a strict compliance in the chain of custody rule can be sufficiently complied with from the point of marking, inventory, and photography of the seized item **at the site of arrest in the presence of the insulating witnesses,** to its delivery to the duty investigator and to its transport to the laboratory for examination until the same is admitted and identified in court. The chain of custody rule exists to safeguard the rights of the individuals and avoid situations where the *corpus delicti* is planted fraudulently and thus wrongly convict someone. Law enforcement officers must then be reminded of the importance of Section 21, R.A. No. 9165, x x x I highlight that the chain of custody rule can simply be observed, as in this case, where the buy-bust team strictly complied with the requirements under Section 21 of R.A. No. 9165. The buy-bust team here proves that if the ultimate aim of police officers is achieving justice, there is no difficulty on their part in following the chain of custody rule.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Palad Lauron & Palad Law Firm for accused-appellants.

D E C I S I O N

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

Before us is an appeal assailing the Decision[1] dated October 9, 2018 of the Court of Appeals (CA) in CA G.R. CR-HC No. 09200.

Factual Antecedents

Accused-appellants Siu Ming Tat (Tat) and Lee Yoong Heow (Lee) were charged with Violation of Section 5 in relation to Section 26, paragraph (b), Article II of Republic Act (R.A.) No. 9165 under the following Information:[2]

> That on or about the 26th day of July 2012, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell and dispose of any dangerous drugs, did, then and there, willfully, unlawfully and knowingly, deliver and sell, in conspiracy with one another, to one PO3 Ernesto A. Mabanglo, one (1) light yellow colored plastic bag labeled "Shenzen Lido Hotel and Chinese Characters" containing one (1) heat sealed transparent plastic bag containing Four Hundred Twenty Six point Thirty grams (426.30 grams) of white crystalline substance, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory, gave positive results for the presence of Ephedrine, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.

During arraignment, with the assistance of a counsel, appellants Tat and Lee entered a plea of "not guilty" to the

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Stephen C. Cruz and Geraldine C. Fiel-Macaraig; *rollo,* pp. 3-15.

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

offense charged against them. At the pre-trial conference, the parties stipulated on the following:[3]

1. The testimony of Assistant City Prosecutor (ACP) Purificacion A. Baring Tuvera that she was requested to serve as witness to the inventory of the items allegedly recovered from the accused. She signed as witness to the inventory after seeing that the same is already filled up and contains the signature of PO3 Mabanglo. Her image also appeared in the photographs taken during the investigation but she has no personal knowledge of the actual arrest and the recovery of items from the accused;

2. The testimony of SPO1 Enrico Calva that he acted as investigator of this case. He prepared the documents during the investigation and that the seized items were shown to him in the course of the investigation which he can readily identify before the court. He also declared that the appellants were presented to him and that he personally brought the seized items and the request for laboratory examination to the crime laboratory. He was also present when ACP Tuvera and Brgy. Chairman John Que arrived and signed as witnesses to the inventory. His image also appeared in the photographs taken during the investigation; and

3. The testimony of Brgy. Chairman John Que that he is the Chairman of Barangay 295, Zone 28, Binondo, Manila. He was present during the conduct of the inventory and that he signed as one of the witnesses in the inventory on June 26, 2012. He also signed the Certification after reading its contents.

Thereafter, trial on the merits ensued.[4]

Version of the Prosecution

The prosecution presented as witnesses the following: (1) Police Officer 3 (PO3) Ernesto Mabanglo (PO3 Mabanglo); (2) Police Chief Inspector (PCI) Mark Alain Ballesteros (PCI Ballesteros); and Police Inspector (PI) Michael Angelo Salmingo (PI Salmingo).[5]

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

[4] *Id.* at 5.

[5] *Id.*

A briefing was conducted by the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF), Special Operations Unit-2 at Camp Crame, Quezon City on July 25, 2012. The purpose of the briefing was to discuss the buy-bust operation that will be conducted on the basis of the information gathered from a confidential informant who was able to arrange a drug deal with certain persons, who turned out to be appellants Tat and Lee.[6]

During the briefing, PO3 Mabanglo was assigned as the *poseur*-buyer while PI Salmingo was his immediate backup. Thereafter, PCI Arnulfo Ibañez, (PCI Ibañez), the team leader, handed to PO3 Mabanglo 10 pieces of ₱1,000 bills to be used as the buy-bust money. The latter then prepared the boodle money to be used together with the genuine ₱1,000 bills as the deal made by the confidential informant was for about half-kilo of *shabu* worth ₱1.3 Million.[7]

After the briefing at around 4 p.m. of the same day, PO3 Mabanglo and PI Salmingo left the office and checked in at the China Town Hotel as the confidential informant informed them that the appellants were already in the said hotel. They stayed at Room 316 and waited for the confidential informant's call. At 9 p.m. the following day, the confidential informant called PO3 Mabanglo and met him at the hotel lobby at around 9:30 a.m. At the lobby, the confidential informant told PO3 Mabanglo that the deal that he arranged will be held at Room 315 of the hotel.[8]

Subsequently, PO3 Mabanglo called PCI Ibañez and informed him about what had transpired. The latter then gave the former the "go" signal and thus, the confidential informant and PO3 Mabanglo proceeded to Room 315 while PI Salmingo was instructed to remain on standby in Room 316.[9]

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[6] *Id.*

[7] *Id.*

[8] *Id.*

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

Upon reaching the target area, they were greeted by a Chinese-looking man, later identified as appellant Tat, who told them to go inside. Inside the room, PO3 Mabanglo was introduced to appellant Tat by the confidential informant as the one who will buy the drugs. Appellant Lee was also seen in the room seated on the bed. PO3 Mabanglo was then asked if he had the money to which he answered in the affirmative. After that, appellant Tat then went to the cabinet at the left side of the room and got a travelling bag. He placed the bag on top of the bed and pulled out a yellow plastic bag with Chinese characters. From the yellow plastic bag, appellant Tat took out one heat-sealed transparent plastic sachet containing 426.30 grams of white crystalline substance. Appellant Tat then showed the sachet to PO3 Mabanglo, who told the former that "it was good" and gave the money to appellant Lee.[10]

Immediately thereafter, PO3 Mabanglo executed the pre-arranged signal by pressing on his cellphone PI Salmingo's number to signify that the deal had already been consummated. The latter then rushed to the scene and effected the arrest of appellant Lee while PO3 Mabanglo arrested appellant Tat. The appellants were then apprised of their violation and constitutional rights.[11]

Following that, SPO1 Calva and PCI Ibañez arrived at the crime scene while the other members of the buy-bust team prepared the documentation of the evidence seized from the appellants. Seized from the appellants were the yellow plastic bag and one plastic sachet containing white crystalline substance as well as the buy-bust money. PO3 Mabanglo then, with the assistance of the members of the team, conducted the marking and physical inventory of the seized items in the presence of the appellants, ACP Tuvera, Brgy. Chairman Que, and Marco Gutierez, a media representative from ABS-CBN. The plastic sachet containing white crystalline substance confiscated from the appellants was marked as "EAM 07-26-2012 EXH. A."

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[10] *Id.* at 6.

[11] *Id.*

Photographs of the same were taken as well. The seized items were then turned over to the duty investigator, SPO1 Calva, by PO3 Mabanglo after accomplishing the Receipt/Inventory Form and the Chain of Custody Form as proof that he was turning over the seized items to the former.[12]

After making the request for laboratory examination and drug testing, the specimen was brought to the laboratory for qualitative examination. After conducting the said examination on the contents of the plastic sachet, Forensic Chemist, PCI Ballesteros found that the seized item tested positive for *ephedrine*, a dangerous drug, as shown in the Chemistry Report No. D-220-1213 dated July 26, 2012. The *ephedrine* subject of the sale was brought to and duly identified in open court.[13]

Version of the Defense

The defense, on the other hand, presented its witness in the person of appellants Tat and Lee who denied the accusations against them.[14]

Appellant Tat declared that on July 25, 2012, he and appellant Lee arrived in the Philippines from Hongkong through Clark International Airport in Pampanga to take their vacation. From the airport, they immediately proceeded to Binondo, Manila by taking a taxi. Upon arrival thereat, they checked-in into a hotel in Binondo. The following day, around 8 a.m., Tat asked appellant Lee to go to a travel agency in Binondo to buy airline tickets. While he was left alone inside the hotel room, police officers went inside the room and pointed a gun at him. One of the police officers handcuffed him and searched the room. When appellant Lee arrived at the hotel room at around 10:30 a.m., he was surprised to see appellant Tat in handcuffs and being ganged up by police officers. He was also handcuffed and he saw one of the police officers bring something into the room and placed this thing inside a plastic bag owned by him. He

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[12] *Id.*

[13] *Id.* at 6-7.

[14] *Id.* at 7.

also saw a paper bag with money inside and photographs were taken as well by a media representative. Thereafter, they were brought to the police station.[15]

Appellant Lee corroborated the testimony of appellant Tat in its material points.[16]

Merlyn Tadoy, was the last witness who testified for the defense. She declared that she works as a Reservation Officer at Timberfield Travel and Tours Agency. She presented documents to show that appellant Lee purchased a Cebu Pacific ticket bound for Malaysia on July 26, 2012. However, she stated later that she does not know Lee as she was not the one who dealt with the latter but her boss.[17]

After the prosecution and the defense rested their respective cases, the RTC, Branch 13 of Manila rendered its assailed Decision dated November 22, 2016, finding appellants Tat and Lee guilty beyond reasonable doubt of the offense charged in the Information, the decretal portion of which reads:[18]

> WHEREFORE, in view of the foregoing, this Court finds the accused SIU MING TAT & LEE YOONG HOEW GUILTY beyond reasonable doubt as principals for violation of Sections 5 in relation to Article 26 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing ephedrine) as charged and sentences each of them to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount ₱500,000.00 each.
>
> The plastic bag of ephedrine and the other items recovered from the accused are ordered confiscated in favor of the government to be disposed of in accordance with law.
>
> Issue mittimus orders committing SIU MING TAT & LEE YOONG HOEW to the National Bilibid Prisons for service of sentence.

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[15] *Id.*

[16] *Id.*

[17] *Id.*

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

Send copies of this Decision to the Director General of the Philippine Drug Enforcement Agency (PDEA), to the Director of the National Bureau of Investigation (NBI) and to the Philippine National Police Anti-Illegal Drugs Group (PNP-AIDG).

SO ORDERED.[19]

Displeased, appellants Tat and Lee moved for a reconsideration of the foregoing ruling but the same was denied by the RTC, Branch 50 of Manila in its Order dated March 3, 2017.[20]

Appellants appealed to the CA and assigned the following errors:[21]

(1) the court *a quo* (RTC Branch 13) seriously erred when it issued its Decision dated November 22, 2016 finding them guilty beyond reasonable doubt of Violating Section 5, 1st paragraph in relation to Section 26 (B) of Article II of R.A. No. 9165, when the testimonies of the two (2) prosecution witnesses are highly incredible and unbelievable to prove the alleged buy-bust that happened inside a hotel room;

(2) the court *a quo* seriously erred in issuing the assailed Decision when it failed to give credence to the testimony of the defense witnesses who clearly testified that no buy-bust occurred on July 26, 2012 at 9:00 am;

(3) the court *a quo* seriously erred when it issued the assailed Decision despite the fact that the prosecution witnesses failed to comply with the mandatory provisions of Section 21 of R.A. No. 9165, on the matter of physical inventory, and picture-taking of the pieces of evidence allegedly seized from them;

(4) the court *a quo* seriously erred when it failed to give credence to the testimony of the third witness for the defense Merly Tadoy who testified that appellant Lee was at their office buying airline tickets on the date and time of the arrest; and

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[19] CA *rollo,* pp. 134-135.

[20] *Rollo*, p. 8.

[21] CA *rollo*, pp. 43-44.

(5) the court *a quo* (RTC Branch 50) seriously erred when it issued the Order dated March 3, 2017 denying their Motion for Reconsideration.

On the other hand, the plaintiff-appellee People of the Philippines (People), through the Office of the Solicitor General (OSG), argued that:[22]

(1) The prosecution's evidence established appellants' guilt beyond reasonable doubt.

(2) The difference between the drugs that were supposedly bought and the drugs that were actually bought is irrelevant

(3) The *corpus delicti* has not lost its integrity and evidentiary value.

(4) Appellants' defense of denial fa[i]ls in the face of positive identification and lack of motive from the witnesses.

The CA, in its Decision dated October 9, 2018, denied the appeal. The CA found that the integrity and evidentiary value of the seized item as provided by the rules was substantiated beyond an iota of doubt by the prosecution.[23]

On October 25, 2018, appellants filed a Notice of Appeal with the CA on grounds of serious errors in the findings of facts and conclusions of law.[24]

The Court issued a Resolution dated June 26, 2019 requiring the parties to submit their respective Supplemental Briefs simultaneously, if they so desire, within thirty (30) days from notice.[25]

On September 6, 2019, appellee People of the Philippines, through the OSG, filed a Manifestation and Motion (In Lieu of Supplemental Brief), manifesting that it will no longer file a

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[22] *Id.* at 149.

[23] *Rollo*, p. 9.

[24] *Id.* at 16.

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

Supplemental Brief considering that the appellants did not raise new matters, and in order to expedite the resolution of the present proceedings.[26]

Appellants also filed an *Ex-Parte* Manifestation and Motion (In Lieu of Supplemental Brief) dated September 17, 2019, stating that they are no longer filing their Supplemental Brief and hereby adopt the allegations contained in their Brief in support of this appeal.[27]

The Court's Ruling

This Court finds the appeal unmeritorious.

The elements of illegal sale of dangerous drugs had been proven beyond reasonable doubt.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment 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.[28]

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[29]

As noted by the CA, it is clear from the records of the case that appellants Tat and Lee were caught *in flagrante delicto* of

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[26] *Id.* at 27-30.

[27] *Id.* at 36-37.

[28] *People v. Ismael y Radang*, 806 Phil. 21, 29 (2017) (citations omitted).

[29] *People v. Amaro y Catubay,* 786 Phil. 139, 147 (2016) (citations omitted).

selling a dangerous drug, *ephedrine,* to PO3 Mabanglo on July 26, 2012. The appellants sold and delivered the plastic sachet containing *ephedrine* to PO3 Mabanglo posing as buyer. There was an actual exchange of the marked money and the plastic sachet containing *ephedrine*. Further, the appellants were positively identified in open court by the prosecution witnesses as the persons who sold the dangerous drugs to PO3 Mabanglo.[30]

Appellants also claim that there are inconsistencies in the testimonies of the prosecution witnesses and that they were framed by the police. We also find the same to be untenable.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[31]

We find no compelling reason to disturb the findings of both the RTC and CA which would justify an exception to the rule.

It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[32] The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs

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[30] *Rollo,* pp. 11-12.

[31] *Madali v. People*, 612 Phil. 582, 595 (2009).

[32] *People v. De Guzman y Miranda*, 564 Phil. 282, 293 (2007).

Act. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner, which the appellants failed to do in the instant case.[33]

Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld.[34]

A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[35]

In addition, the claimed inconsistencies by appellants pertain to the events prior to the buy-bust operation. Appellants point out that there is a material discrepancy as to the time of coordination with other police offices including PDEA which was made as early as 10:00 a.m. on July 25, 2012, when in fact the police informant only arrived at their office at 1:00 p.m. on July 25, [2012]. We find the same to be immaterial to the determination of the guilt or innocence of the accused and does not affect the credibility of PI Salmingo. The alleged inconsistencies do not even pertain to the *corpus delicti* and its integrity.

This Court has ruled that "inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor."[36]

It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant

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[33] *Id.*

[34] *People v. Calvelo y Consada*, G.R. No. 223526, December 6, 2017.

[35] *People v. Umapas y Crisostomo*, 807 Phil. 975, 989-990 (2017).

[36] *Tionco y Ortega v. People*, 755 Phil. 646, 653 (2015).

point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.[37]

There was an unbroken chain of custody of the seized drugs and the corpus delicti has not lost its integrity and evidentiary value.

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[38]

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, *i.e.*, the prohibited or regulated drug, has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. 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

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[37] *Madali v. People*, *supra* note 31, at 604.

[38] *People v. Ismael y Radang*, *supra* note 28, at 29.

corpus delicti. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[39]

Generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.[40]

We find that the prosecution sufficiently established all the links in the chain of custody and proved that the integrity and evidentiary value of the seized drugs had not been compromised. We adopt the findings of the CA, which is consistent with that of the RTC:

> A perusal of the records clearly reveals how PO3 Mabanglo, assisted by PI Salmingo, effected the arrests immediately after appellants Tat and Lee sold to him the plastic sachet containing white crystalline substance. Thereafter, he immediately marked the seized item with "EAM 07-26-2012 EXH. A". The same was inventoried and photographed in the presence of the appellants, ACP Tuvera, Brgy. Chairman Que and Marco Gutierez, a media representative from ABS-CBN. Clearly, the requirements provided under Section 21 (1) of R.A. No. 9165 as amended by R.A. No. 10640 was faithfully complied with by the apprehending team. Following that, the seized item was brought to the police station and was turned over to the duty investigator, SPO1 Calva. After making the proper documentation, the specimen was brought to the crime laboratory for qualitative examination which was received by PCI Ballesteros. Upon receipt of the specimen, consisting of one (1) heat-sealed transparent plastic sachet with markings "EAM 07-26-2012 EXH. A" containing 426.30 grams of white crystalline substance, PCI Ballesteros conducted the examination thereof. The

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[39] *People v. Calvelo y Consada*, *supra* note 34 (citations omitted).

[40] *People v. De Leon*, G.R. No. 227867, June 26, 2019.

said specimen tested positive for *ephedrine,* a dangerous drug, as shown in the Chemistry Report No. D-220-12 dated July 26, 2012. The *ephedrine* subject of the sale was brought to and duly identified in open court.[41]

The difference between the drugs that were supposedly bought and the drugs that were actually bought is irrelevant

Appellants also question the finding of guilt by the trial court on the ground that the drugs that were supposedly bought, seized, recovered, confiscated and inventoried are "*shabu,*" but the prosecution presented "*ephedrine*."

We find this to be inconsequential and does not affect the finding of guilt by the accused. Even if the police transacted for the sale of *shabu*, the fact that the seized drugs are *ephedrine,* will not warrant a reversal of the finding of guilt of the accused.

In any case, the charge in the information was clearly for violation of Section 5 in relation to Section 26, paragraph (b), Article II of R.A. No. 9165. It is immaterial whether the allegation was for *shabu* or *ephedrine,* since both are dangerous drugs.

Further, the purpose of the laboratory examination is to confirm that the seized items are indeed dangerous drugs. The police officers cannot be expected to conclude with certainty whether the suspected dangerous drugs are *shabu* or *ephedrine* just by visual inspection. What matters is that the prosecution was able to prove that the seized items are indeed dangerous drugs and are the ones presented in court.

This matter was already settled in the case of *People v. Noque y Gomez,*[42] wherein this Court held that an accused can be convicted for the sale of *shabu*, despite the fact that what was established and proven was the sale of *ephedrine*.

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[41] *Rollo,* p. 10.

[42] 624 Phil. 187 (2010).

Sections 4 and 5, Rule 120 of the Rules of Court, can be applied by analogy in convicting the appellant of the offenses charged, which are included in the crimes proved. Under these provisions, 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. At any rate, a minor variance between the Information and the evidence does not alter the nature of the offense, nor does it determine or qualify the crime or penalty, so that even if a discrepancy exists, this cannot be pleaded as a ground for acquittal. In other words, his right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.[43]

WHEREFORE, the appeal is **DENIED**. The Decision dated October 9, 2018 of the Court of Appeals in CA G.R. CR-HC No. 09200 is **AFFIRMED.** Accused-appellants Siu Ming Tat and Lee Yoong Hoew are found **GUILTY** beyond reasonable doubt of illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and are hereby **SENTENCED** to suffer the penalty of life imprisonment and to each **PAY** a **FINE** of Five Hundred Thousand Pesos (₱500,000.00).

SO ORDERED.

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

Caguioa (Working Chairperson), J., see concurring opinion.

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[43] *People v. Noque y Gomez,* 624 Phil. 187, 198 (2010) (citations omitted).

CONCURRING OPINION

CAGUIOA, *J.*:

I concur. The *ponencia* is correct in convicting the accused-appellants with violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

I submit this Concurring Opinion to underscore that the procedures laid down under Section 21, Article II of R.A. No. 9165 can be strictly complied with.

In cases involving violations of R.A. No. 9165, the prosecution must prove beyond reasonable doubt not only every element of the crime or offense charged but must likewise establish the identity of the *corpus delicti*, *i.e.*, the seized drugs.[1] It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.[2] As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the dangerous drugs offered in court as evidence were the same substances bought during the buy-bust operation.[3]

For this purpose, Section 21 (1) of R.A. No. 9165, prior to its amendment, lays down the procedure to be followed in the seizure and custody of the dangerous drugs. The provision requires that the apprehending team shall, among others:

> 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

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[1] *People v. Arbuis*, G.R. No. 234154, July 23, 2018, 873 SCRA 543, 549.

[2] *People v. Burdeos,* G.R. No. 218434, July 17, 2019, accessed at <https://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/65487>.

[3] *People v. Angngao*, 755 Phil. 597, 604 (2015), citing *People v. Pagaduan*, 641 Phil. 432 (2010).

who shall be required to sign the copies of the inventory and be given a copy thereof[.][4]

What is more, this Court has recognized the following links that should be established in the chain of custody of the confiscated item to preserve the evidentiary value and integrity of the *corpus delicti*: *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.[5]

In the instant case, the prosecution was able to prove the unbroken chain of custody of the seized item.

First, PO3 Ernesto Mabanglo, assisted by PI Michael Angelo Salmingo, effected the arrests immediately after accused-appellants sold to him the plastic sachet containing white crystalline substance. Thereafter, he **immediately marked** the seized item with "EAM 07-26-2012 EXH. A." The same was also **immediately inventoried** and photographed in the presence of the accused-appellants, a representative of the Department of Justice, a barangay official, and a media representative.[6]

Second, the seized item was brought to the police station and was turned over to the duty investigator, SPO1 Enrico Calva.[7]

Third, after making the proper documentation, the specimen was brought to the crime laboratory for qualitative examination which was received by PCI Mark Allain Ballesteros. Upon receipt

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[4] R.A. No. 9165, Section 21(1).

[5] *People v. Ubungen y Pulido,* G.R. No. 225497, July 23, 2018, 873 SCRA 172, 182, citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

[6] *Ponencia,* pp. 10-11.

[7] *Id.* at 11.

of the specimen, consisting of one (1) heat-sealed transparent plastic sachet with markings "EAM 07-26-2012 EXH. A" containing 426.30 grams of white crystalline substance, PCI Ballesteros conducted the examination thereof. The said specimen tested positive for ephedrine, a dangerous drug.[8]

Finally, the ephedrine subject of the sale was brought to and duly identified in open court.[9]

This case helps us see how a strict compliance in the chain of custody rule can be sufficiently complied with from the point of marking, inventory, and photography of the seized item <u>**at the site of arrest in the presence of the insulating witnesses**</u>, to its delivery to the duty investigator and to its transport to the laboratory for examination until the same is admitted and identified in court.

The chain of custody rule exists to safeguard the rights of the individuals and avoid situations where the *corpus delicti* is planted fraudulently and thus wrongly convict someone. Law enforcement officers must then be reminded of the importance of Section 21, R.A. No. 9165, *viz.*:

> Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement **forecloses opportunities for planting, contaminating, or tampering of evidence in any manner**.[10]

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[8] *Id.*

[9] *Id.*

[10] *People v. Holgado,* 741 Phil. 78, 93 (2014).

As a final word, I highlight that the chain of custody rule can simply be observed, as in this case, where the buy-bust team strictly complied with the requirements under Section 21 of R.A. No. 9165. The buy-bust team here proves that if the ultimate aim of police officers is achieving justice, there is no difficulty on their part in following the chain of custody rule. Still, despite the mandatory procedures of R.A. No. 9165, a number of law enforcement officers unjustifiably deviate from its strict compliance. More and more drugs cases with police officers who ignore what the law mandates are brought before the courts. Law enforcement officers should be aware that the chain of custody rule is not at all difficult to observe and can in fact be strictly followed without violating the rights of individuals. Thus, when the chain of custody is severly compromised, and when it appears that the police did not even attempt to comply with such a procedure — these create, in the mind of the Court, that the supposed buy-bust operation did not really transpire, and were merely concocted by the police to circumvent and violate the law.

Based on these premises, I vote to **AFFIRM** the conviction of the accused-appellants.

FIRST DIVISION

[G.R. No. 247974. July 13, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **PETER LOPEZ *y* CANLAS,** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; EVERY APPEAL OF A CRIMINAL CONVICTION OPENS THE

ENTIRE RECORD TO THE REVIEWING COURT WHICH SHOULD ITSELF DETERMINE WHETHER THE FINDINGS ADVERSE TO THE ACCUSED SHOULD BE UPHELD OR STRUCK DOWN IN HIS FAVOR. — Insofar as the charge for violation of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 is concerned, the Court finds no compelling reason to deviate from the lower courts' findings that, indeed, the guilt of Lopez was sufficiently proven by the prosecution beyond reasonable doubt. However, with respect to the charge for violation of Section 15, Article II of R.A. No. 9165 on illegal use of dangerous drugs, the Court finds that the prosecution failed to prove the conduct of a confirmatory test subsequent to the screening test as required by law. Hence, to this charge, Lopez should be acquitted. In so disposing, the Court considers, as is true in all appeals from conviction of crimes, any fact or circumstance in the accused-appellant's favor regardless of whether such fact or circumstance was raised as a defense or assigned as an error and despite the similar pronouncement of guilt by both the trial court and the appellate court. Every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether the findings adverse to the accused should be upheld or struck down in his favor.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED. —** In Criminal Case No. IR-10559, Lopez stood charged, tried, and was found guilty by the lower courts of the crime of illegal sale of dangerous drugs defined and punished under the first paragraph of Section 5, Article II of R.A. No. 9165 x x x. In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drug seized as evidence. x x x. In the present case, the Court agrees with the lower courts that the elements of illegal sale of dangerous drugs were adequately and satisfactorily established by the prosecution.

3. **ID.; ID.; ID.; IN APPREHENSIONS PURSUANT TO A BUY-BUST OPERATION, THE DELIVERY OF THE ILLEGAL DRUG TO THE POSEUR-BUYER AND THE RECEIPT BY THE SELLER OF THE MARKED MONEY, COMPLETES THE ILLEGAL TRANSACTION. —** The commission of the offense of illegal sale of dangerous drugs requires the consummation of the illegal sale which is statutorily defined as "[a]ny act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration". In apprehensions pursuant to a buy-bust operation, delivery of the illegal drug to the poseur-buyer and the receipt by the seller of the marked money completes the illegal transaction. Stated otherwise, as long as the police officer went through the operation as a buyer and his offer was accepted by the accused-appellant who delivers the dangerous drugs to the former, the crime is consummated. Conviction follows as a matter of due course barring any irregularities in the handling of the seized dangerous drug and its presentation was accounted for, photographed before the trial court. x x x. Considering that there is positive testimony, corroborated in its material points, and supporting documentary evidence identifying Lopez as the one who offered to sell, and in fact sold, the dangerous drug in exchange for ₱2,000.00 and who, upon receipt of the consideration, delivered the dangerous drug to the poseur-buyer, it is clear that all elements of the crime of illegal sale of dangerous drugs had been proven.

4. **ID.; ID.; ID.; THE ABSENCE OF A PRIOR SURVEILLANCE DOES NOT AFFECT THE VALIDITY OF AN ENTRAPMENT OPERATION, MUCH LESS RESULT IN THE EXONERATION OF THE ACCUSED, ESPECIALLY IN LIGHT OF EVIDENCE ESTABLISHING THE ELEMENTS OF THE CRIME. —** The Court has ruled that the absence of a prior surveillance does not affect the validity of an entrapment operation, much less result in the exoneration of the accused, especially in light of evidence establishing the elements of the crime. In *People v. Manlangit*, citing *Quinicot v. People*, the Court pronounced: Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior

surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.

5. **ID.; ID.; SECTION 21 OF R.A. NO. 9165; MANDATORY PROCEDURE IN THE CUSTODY AND DISPOSITION OF THE CONFISCATED DANGEROUS DRUGS; LINK IN THE CHAIN OF CUSTODY; TO ESTABLISH THE REQUISITE IDENTITY OF THE DANGEROUS DRUG, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUG IS SEIZED UP TO ITS PRESENTATION IN COURT AS EVIDENCE. —** [T]he Court must still determine whether the dangerous drug, the *corpus delicti* of the crime, reached the court with its identity and integrity preserved. This must be established with moral certainty. In arriving at this certainty, the very nature of prohibited drugs, they being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime. To establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link of the chain of custody from the moment the drug is seized up to its presentation in court as evidence. Section 21 of R.A. No. 9165 describes the x x x procedure x x x. The events of this case occurred prior to the effectivity date of Republic Act No. 10640 which amended Section 21 of R.A. No. 9165. Parsing the provision, the law requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) 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 DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the law requires that "within twenty-four (24) hours [after seizure of the prohibited drug], the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative

examination." The forensic laboratory examiner shall then issue a certification of the forensic laboratory examination results, which shall be done under oath, within 24 hours after receipt of the seized items. A careful perusal of the testimonies of the apprehending officers as well as the documentary exhibits presented by the prosecution show a buy-bust operation the custodial links of which remained unbroken.

6. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; COMPLIANCE WITH THE CHAIN OF CUSTODY ENSURES THE INTEGRITY OF CONFISCATED, SEIZED, AND/OR SURRENDERED DRUGS AND/OR DRUG PARAPHERNALIA AS TO THE NATURE AND QUANTITY OF THE SUBSTANCES OR ITEMS SEIZED, THE RELATION OF THE SUBSTANCES OR ITEMS SEIZED TO THE INCIDENT ALLEGEDLY CAUSING THEIR SEIZURE, AND THE RELATION OF THE SUBSTANCES OR ITEMS SEIZED TO THE PERSON/S ALLEGED TO HAVE BEEN IN POSSESSION OF OR PEDDLING THEM. —** Much has been said about the conduct of buy-bust operations as a tool in flushing out illegal transactions that are otherwise conducted covertly and in secrecy. While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations and has generally left to the discretion of police authorities the selection of effective means to apprehend drug dealers, the buy-bust operation's peculiar characteristics of having the benefit of planning, preparation, and foresight impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards. On this note, law enforcement agencies should continually be reminded of the purpose and importance of the chain of custody rule in Section 21, Article II of R.A. No. 9165: Compliance with the chain of custody requirement provided by Section 21, therefore, **ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia** in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement **forecloses opportunities for planting, contaminating, or tampering of evidence in any manner**.

7. **ID.; ID.; ID.; STRICT ADHERENCE WITH SECTION 21 OF R.A. NO. 9165 IS THE RULE, AS ANYTHING LESS THAN THIS WOULD AUTOMATICALLY BE A DEVIATION FROM THE CHAIN OF CUSTODY RULE THAT WOULD ONLY PASS JUDICIAL MUSTER IN THE MOST EXACTING OF STANDARDS FOLLOWING THE TWIN-REQUIREMENTS OF EXISTENCE OF JUSTIFIABLE REASONS, AND PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS. —** To be clear, strict adherence with Section 21 remains to be the rule. This is a singular and rigid standard. Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin-requirements of: (1) existence of justifiable reasons, and (2) preservation of the integrity and evidentiary value of the seized items. In these cases, the point of contention should not revolve around the amount of illegal drugs seized, but on whether the constitutional and statutory rights of an accused are protected in the prosecution of the crime he or she stands accused. The Court notes in this case the meticulousness of the apprehending officers in their compliance with the chain of custody rule and in documenting their movements. Additional safeguards employed by the police operatives in this case such as the taking of photographs in every step of the operation, though not legally required, are commendable practices in law enforcement. Equal note should also be made on the prosecution's efforts in drawing out the details in establishing the crucial custodial links to secure the identity and integrity of the dangerous drug seized from the accused. **This shows that the requirements imposed by Section 21, while exacting considering the liberties at stake, are logical and susceptible to strict and full compliance.**

8. **ID.; ID.; ILLEGAL USE OF DANGEROUS DRUGS; A PRIOR CONDUCT OF AN INITIAL SCREENING TEST AND A SUBSEQUENT CONFIRMATORY TEST ON THE URINE SAMPLE, BOTH YIELDING POSITIVE RESULTS FOR ILLEGAL DRUG USE, ARE REQUIRED FOR CONVICTION; A POSITIVE SCREENING TEST MUST BE CONFIRMED FOR IT TO BE VALID IN A COURT OF LAW, FOR WITHOUT THE REQUISITE CONFIRMATORY TEST, THE ACCUSED-APPELLANT CANNOT BE HELD CRIMINALLY LIABLE FOR**

ILLEGAL USE OF DANGEROUS DRUGS. — In Criminal Case No. IR-10614, Lopez stood charged for illegal use of dangerous drugs, defined and penalized under Section 15, Article II of R.A. No. 9165 x x x. While Section 15 penalizes a person apprehended or arrested for unlawful acts listed under Article II of R.A. No. 9165 and who is found to be positive for use of any dangerous drug, a conviction presupposes the prior conduct of an initial screening test and a subsequent confirmatory test both yielding positive results for illegal drug use. [From Section 36 of R.A. No. 9165], two distinct drug tests are required: a screening test and a confirmatory test. A positive screening test must be confirmed for it to be valid in a court of law. The evidence for the prosecution, however, shows the conduct of only one test. PSI Malong conducted the examination on the urine sample taken from Lopez after his apprehension. x x x. While PSI Malong mentions the conduct of a "screening test and a confirmatory test" on the urine sample, his testimony on the actual test conducted on the sample as well as the chemical laboratory report presented in court show otherwise. x x x. When the urine sample recovered from Lopez yielded a positive result, the specimen should have been subjected to a second test — the confirmatory test. R.A. No. 9165 describes the confirmatory test as "[a]n analytical test using a device, tool or equipment with a different chemical or physical principle that is more specific which will validate and confirm the result of the screening test." It is the second or further analytical procedure to more accurately determine the presence of dangerous drugs in the specimen. The records are silent on any reference to a second, more specific, examination on the urine sample. Considering that Chemistry Report No. DTC-081-2014 merely contains the results of the screening test conducted, the same cannot be valid before any court of law absent the required confirmatory test report. Without the requisite confirmatory test, the accused-appellant cannot be held criminally liable for illegal use of dangerous drugs under Section 15, R.A. No. 9165. An acquittal for this charge follows as a necessary consequence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal[1] from the Decision[2] dated March 29, 2019 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09769, which affirmed the Judgment[3] dated July 27, 2017 rendered by the Regional Trial Court (RTC), Fifth Judicial Region, Branch 34 of Iriga City, in Criminal Case Nos. IR-10559 and IR-10614 titled "*People of the Philippines v. Peter Lopez y Canlas*" finding the accused-appellant Peter Lopez *y* Canlas (Lopez) guilty beyond reasonable doubt for violations of Sections 5 and 15, Article II of Republic Act (R.A.) No. 9165, otherwise known as *The Comprehensive Dangerous Drugs Act of 2002*.

Facts

Lopez was charged with the crimes of **illegal sale and use of dangerous drugs** defined under Sections 5 and 15, respectively, of Article II, R.A. No. 9165, under two separate *Informations* in Criminal Case Nos. IR-10559 and IR-10614, the accusatory portions of which read:

Criminal Case No. IR-10559:

x x x x x x x x x

That on or about March 30, 2014, in the evening at Barangay San Francisco, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did, then and there unlawfully and feloniously sell/deliver one (1) medium size *(sic)* heat sealed transparent plastic sachet containing methamphetamine hydrochloride or "shabu" weighing 0.193

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[1] Notice of Appeal dated May 2, 2019, *Rollo*, p. 16.

[2] *Id.* at 3-15; penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justice Marlene Gonzales-Sison and Associate Justice Victoria Isabel A. Paredes concurring.

[3] Records (Criminal Case No. IR-10559), pp. 159-164; penned by Presiding Judge Manuel M. Rosales.

gram, a dangerous drug, to PO1 Jonard B. Buenaflor who acted as poseur-buyer and who was with a police asset in a buy-bust operation with the use of four (4) pieces 500 peso bill with serial nos. TC170638, TJ333021, RG551486 and VG967118, to the damage and prejudice of the public interest.

ACTS CONTRARY TO LAW.[4]

Criminal Case No. IR-10614:

x x x x x x x x x

That in the evening of March 30, 2014, or prior thereto, at San Fracisco, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and knowingly use methamphetamine hydrochloride or "shabu," as he was found positive for use of 'methamphetamine,' a dangerous drug, after he was arrested after a buy-bust operation conducted against him by the members of the Philippine National Police assigned at the Intel Drug Enforcement of the Iriga City Police Station as his urine sample was submitted for laboratory examination per Chemistry Report No. DTC-081-2014 signed by Police Senior Inspector and Forensic Chemist Jun Fernandez Malong of the Camarines Sur Crime Laboratory Office, Naga City, to the damage and prejudice of the public interest.

ACTS CONTRARY TO LAW.[5]

When arraigned, Lopez pleaded not guilty to both charges. Trial on the merits ensued.[6]

Version of the Prosecution

As narrated in the Assailed Decision, the prosecution presented the following version of the facts:

On [March 20, 2014], the intelligence operatives of the Philippine National Police (PNP) Iriga City held a briefing in preparation for a buy-bust operation against [Lopez]. His identity was confirmed by a confidential asset. PO1 Jonard Buenaflor was designated to act as

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

[5] *Id.* at 4.

[6] *Id.*

a poseur-buyer and tasked to use [PhP]2,000.00 as marked money consisting of four five hundred peso bills during the operation.

The police asset informed PO1 Buenaflor that [Lopez] would meet them in front of Trinidad Building, Tantiado Hardware at San Francisco, Iriga City. As they waited for [Lopez], the back-up operatives positioned themselves in the area. [Lopez] arrived on a motorcycle and proceeded to ask the informant how much they would be buying. PO1 Buenaflor then handed ₱2,000.00 to [Lopez]. In turn, the latter gave him a small heat-sealed transparent sachet containing crystalline substance which the poseur-buyer suspected as shabu.

PO1 Buenaflor performed the pre-arranged signal by removing his cap to indicate a positive buy-bust operation. He arrested [Lopez], while the back-up operatives rushed to the scene. Representatives from the Department of Justice (DOJ), the media, and a Barangay Councilor were also called to serve as witnesses to the body search, marking and photographing of seized items. When they arrived, PO1 Buenaflor marked the plastic sachet "JBB 22 3-30-14." Meanwhile, PO3 Ric Reginales [(PO3 Reginales)] searched the person of [Lopez] and recovered from him the following items: (1) buy-bust money, (2) cellphone, (3) lighter, (4) twenty-peso bill, and (5) coins.

Thereafter, the operatives headed to the police station with [Lopez]. The Inventory/Confiscation Receipt was prepared by PO2 Joel Tabangan and signed by the DOJ representative Doris Viñas (Viñas), media representative Gloria Bongais (Bongais), and *Barangay Kagawad* Ramer Samantela (Samantela). On the other hand, PO2 Roger Tuyay drafted the requests for laboratory examination and drug test.

PO1 Buenaflor delivered the seized plastic sachet and [Lopez] to the provincial crime laboratory for examination. Based on the Chemistry Report No. D-109-2014 and Chemistry Report No. DTC-081-2014 prepared by the forensic chemist Police Senior Inspector (PSI) Jun Malong, the contents of the plastic sachet and [Lopez's] urine tested positive for methamphetamine hydrochloride, a dangerous drug.[7]

Version of the Defense

The defense's version of the facts, as culled from the Assailed Decision, is as follows:

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

On [March 30, 2014], [Lopez] just came from a gas station where he met a certain Rico Murillo who gave him ₱2,000.00. He was instructed by the latter to give the same to a person who he knew went by the name Engineer Tubig. He then rode his motorcycle and went on his way only to be flagged down by PO1 Buenaflor upon reaching Tantiado Hardware. When he inquired what his violation was, the police officer told him to hold the money, but ordered him to stay put. In addition to that, PO1 Buenaflor collected the keys of his motorcycle. After some time, about five to six policemen arrived at the scene.

When Viñas and Bongais showed up, the police officers took photographs of [Lopez], whereas, the money he was holding was placed on the road. He was also frisked, but the police Officers found nothing in his person. However, he saw one police officer in civilian clothes take a plastic sachet from his own pocket which he revealed to Viñas and Bongais.

After [Lopez's] arrest, he was taken to the police station where he was photographed with the plastic sachet and the money. Later, he was brought to the crime laboratory. He was provided with water to drink which tasted unpleasant. Nevertheless, he still drank it since the police officers needed his urine sample.[8]

The Ruling of the RTC

In its Judgment, the RTC found Lopez guilty beyond reasonable doubt of the crimes charged. The RTC gave full credence to the testimony of the apprehending officers considering that their testimonies were corroborated on material matters by documentary proof.[9]

The dispositive portion of the Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. IR-10559 accused is found GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 5 Art. II of Republic Act No. 9165 or the *(sic)* "The Comprehensive Dangerous Drugs Act of 2002" and

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[8] *Id.* at 6.

[9] Records (Criminal Case No. IR-10559), p. 163.

accordingly sentencing him to suffer the penalty of life imprisonment and a fine of Php500,000.00.

2. In Criminal Case No. IR-10614 accused is found GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 15 Art II of Republic Act No. 9165 or the *(sic)* "The Comprehensive Dangerous Drugs Act of 2002" and accordingly sentencing him to suffer the penalty of a minimum of six (6) months rehabilitation in a government center.

SO ORDERED.[10]

From the Judgment, Lopez filed a Notice of Appeal dated August 23, 2017.[11]

The Ruling of the CA

In the Assailed Decision, the CA affirmed the RTC's Judgment and sustained the conviction of Lopez. The dispositive portion of the Assailed Decision reads:

WHEREFORE, premises considered, the Judgment dated [July 27, 2017] rendered by the Regional Trial Court, Fifth Judicial Region, Branch 34, Iriga City in Criminal Case Nos. IR-10559 and IR-10164 is AFFIRMED.

SO ORDERED.[12]

Responding to the arguments raised by Lopez in his appeal, the CA ruled that the prosecution need not have conducted surveillance prior to the buy-bust operation.[13] Furthermore, the failure of the prosecution to present the informant in court was not fatal to its case.[14]

In any case, the CA found that the prosecution successfully proved the identity and integrity of the *corpus delicti*[15] since

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[10] *Id.* at 164.

[11] *Id.* at 156.

[12] *Rollo*, p. 14.

[13] *Id.* at 8.

[14] *Id.* at 8-9.

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

all links in the chain of custody were proven.[16] The CA did not give due credence to the defenses of denial and frame-up as these were not substantiated by clear and convincing evidence.[17]

From the Assailed Decision, Lopez filed his Notice of Appeal dated May 2, 2019.[18]

Issue

The issue for resolution before the Court is whether the CA erred in affirming the RTC's Judgment finding Lopez guilty beyond reasonable doubt for violations of Sections 5 and 15, Article II of R.A. No. 9165.

The Court's Ruling

After a careful review of the records, the Court partly grants the appeal.

Insofar as the charge for violation of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 is concerned, the Court finds no compelling reason to deviate from the lower courts' findings that, indeed, the guilt of Lopez was sufficiently proven by the prosecution beyond reasonable doubt.

However, with respect to the charge for violation of Section 15, Article II of R.A. No. 9165 on illegal use of dangerous drugs, the Court finds that the prosecution failed to prove the conduct of a confirmatory test subsequent to the screening test as required by law. Hence, to this charge, Lopez should be acquitted.

In so disposing, the Court considers, as is true in all appeals from conviction of crimes, any fact or circumstance in the accused-appellant's favor regardless of whether such fact or circumstance was raised as a defense or assigned as an error and despite the similar pronouncement of guilt by both the trial court and the appellate court. Every appeal of a criminal

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[16] *Id.* at 10-13.

[17] *Id.* at 13.

[18] *Id.* at 16.

conviction opens the entire record to the reviewing court which should itself determine whether the findings adverse to the accused should be upheld or struck down in his favor.

The criminal liability of the accused-appellant under both charges are discussed separately.

I.

In Criminal Case No. IR-10559, Lopez stood charged, tried, and was found guilty by the lower courts of the crime of illegal sale of dangerous drugs defined and punished under the first paragraph of Section 5, Article II of R.A. No. 9165 which provides:

> 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. (Emphasis supplied)

In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[19] What is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drug seized as evidence.

The commission of the offense of illegal sale of dangerous drugs requires the consummation of the illegal sale which is statutorily defined as "[a]ny act of giving away any dangerous drug and/or controlled precursor and essential chemical whether

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[19] *People v. Villarta*, 740 Phil. 279 (2014).

for money or any other consideration.[20]" In apprehensions pursuant to a buy-bust operation, delivery of the illegal drug to the poseur-buyer and the receipt by the seller of the marked money completes the illegal transaction.[21] Stated otherwise, as long as the police officer went through the operation as a buyer and his offer was accepted by the accused-appellant who delivers the dangerous drugs to the former, the crime is consummated.[22] Conviction follows as a matter of due course barring any irregularities in the handling of the seized dangerous drug and its presentation was accounted for, photographed before the trial court.

In the present case, the Court agrees with the lower courts that the elements of illegal sale of dangerous drugs were adequately and satisfactorily established by the prosecution.

A perusal of the proceedings before the trial court shows that in the afternoon of March 30, 2014 the police operatives of PNP Iriga City held a briefing for the conduct of a buy-bust operation against Lopez,[23] the details of which are reduced in the Pre-Operation Report dated March 30, 2014.[24] PO1 Buenaflor, together with their confidential informant, acted as the poseur-buyer of the operation[25] and took custody of the marked money to be used.[26] The marked money used in this operation was accounted, photographed, photocopied, and positively identified[27] before the trial court.

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[20] R.A. No. 9165, Art. 1, Sec. 3 (ii).

[21] *People v. Asislo*, 778 Phil. 509 (2016); *People v. Reyes*, 797 Phil. 671 (2016).

[22] *People v. Dela Rosa*, 655 Phil. 630 (2011).

[23] TSN dated October 20, 2014, p. 3.

[24] RTC Records in Criminal Case No. IR-10559, p. 10; TSN dated October 20, 2014, p. 6.

[25] TSN dated October 20, 2014, p. 4.

[26] TSN dated October 20, 2014, pp. 5-6.

[27] TSN dated October 20, 2014, pp. 4-5.

PO1 Buenaflor positively identified[28] Lopez during trial as the same person who approached them after being contacted by their confidential informant[29] for a possible sale. Upon meeting PO1 Buenaflor and the confidential informant, it was Lopez who asked them how much they would be buying.[30] Lopez made the offer and PO1 Buenaflor, as poseur-buyer, accepted. It was Lopez as well who received the marked money from PO1 Buenaflor, and who handed over a heat-sealed transparent sachet containing a crystalline substance.[31]

Considering that there is positive testimony, corroborated in its material points, and supporting documentary evidence identifying Lopez as the one who offered to sell, and in fact sold, the dangerous drug in exchange for ₱2,000.00 and who, upon receipt of the consideration, delivered the dangerous drug to the poseur-buyer, it is clear that all elements of the crime of illegal sale of dangerous drugs had been proven.

In his defense, Lopez ascribed irregularity in the conduct of the buy-bust operation because no surveillance was done nor was a sketch-plan made prior to the conduct of the buy-bust operation, and that the operation proceeded merely on the information given by the confidential informant.[32] Relying on *People v. Rojo*,[33] Lopez argued that the trial court should have been circumspect in its appreciation of the testimonies surrounding the operation.

The challenge fails. The Court has ruled that the absence of a prior surveillance does not affect the validity of an entrapment operation, much less result in the exoneration of the accused, especially in light of evidence establishing the elements of the

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[28] TSN dated October 20, 2014, p. 9.

[29] TSN dated October 20, 2014, p. 8.

[30] TSN dated October 20, 2014, p. 8.

[31] TSN dated October 20, 2014, p. 9.

[32] CA *rollo*, p. 46.

[33] 256 Phil. 571 (1989).

crime. In *People v. Manlangit*,[34] citing *Quinicot v. People*,[35] the Court pronounced:

> Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.[36]

Lopez's reliance on *Rojo* is likewise misplaced. The Court in *Rojo* appreciated in favor of the accused the fact that none of the prosecution witnesses saw the accused therein deliver the dangerous drugs to the informant since the police operatives were meters away from the alleged illegal transaction. When the confidential informant in *Rojo* was not presented in court, the Court found that there was no direct evidence in *Rojo* to establish the alleged illegal sale:

> In this particular case, the witnesses for the prosecution who were members of the police team at the time of the alleged "buy-bust operation," particularly Sgt. Carbonel and Pat. Balatbat, were in their jeep parked at Beata street, some 100 meters away from the scene. Pat. Alferos was 10 meters away from the informant and the appellant while Pat. Maniquez was about seven (7) meters away and the others stayed at a far distance so as not to arouse suspicion. It was only after the informant gave the signal by scratching the left side of his head with his left hand to indicate that the marijuana was already handed to him and that he in turn gave the money to the appellant that the said police officers converged and arrested the appellant.

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[34] 654 Phil. 427 (2011).

[35] 608 Phil. 259 (2009).

[36] Citations omitted.

These are the facts as found by the trial court which show that none of the prosecution witnesses actually saw the appellant deliver the alleged bag of flowering tops of marijuana which was allegedly sold to the informant. It also indicates that they did not see the informant pay the alleged consideration of the sale with a 10-peso bill. They just assumed that the transaction was consummated upon a signal from the informant. There is, therefore, no direct evidence, much less conclusive proof, to establish the alleged unlawful sale of marijuana being pinned on the appellant.

If truly there was such an entrapment that was undertaken in this case, the informant would be the best witness for the prosecution.[37]

The prosecution in this case presented the testimony of PO1 Buenaflor who acted as the poseur-buyer. In *Rojo*, the illegal sale transpired between the accused and the informant alone. Hence, it was necessary for the prosecution therein to present the informant as the police officers were stationed meters away from the alleged illegal sale and could not have seen the transaction from that far a distance. In contrast, the illegal drug and the marked money in this case exchanged hands between Lopez and PO1 Buenaflor. Unlike in *Rojo*, the prosecution presented direct evidence of the illegal sale in the form of PO1 Buenaflor's testimony.

Clearly, while the prosecution in *Rojo* grappled with a paucity of evidence, the same cannot be said for the prosecution in the case at bar. Moreover, the prosecution's case is supported by positive and corroborative testimony as well as documentary evidence sufficient to negate any reasonable doubt as to the occurrence of the buy-bust operation.

The analysis does not end here. The Court must still determine whether the dangerous drug, the *corpus delicti* of the crime,[38] reached the court with its identity and integrity preserved. This

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[37] *People v. Rojo, supra* note 33.

[38] *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018).

must be established with moral certainty.[39] In arriving at this certainty, the very nature of prohibited drugs, they being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime.

To establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link of the chain of custody from the moment the drug is seized up to its presentation in court as evidence.[40] Section 21 of R.A. No. 9165 describes the following procedure:[41]

> Section 21. *Custody and Disposition of Confiscated Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

The events of this case occurred prior to the effectivity date of Republic Act No. 10640[42] which amended Section 21

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[39] *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[40] *People v. Año*, 828 Phil. 439, 447-448 (2018).

[41] The criminal acts subject of this case occurred prior to the effectivity of Republic Act No. 10640 which took effect on July 23, 2014.

[42] An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002."

of R.A. No. 9165. Parsing the provision, the law requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) 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 DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

Thereafter, the law requires that "within twenty-four (24) hours [after seizure of the prohibited drug], the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination."[43] The forensic laboratory examiner shall then issue a certification of the forensic laboratory examination results, which shall be done under oath, within 24 hours after receipt of the seized items.[44]

A careful perusal of the testimonies of the apprehending officers as well as the documentary exhibits presented by the prosecution show a buy-bust operation the custodial links of which remained unbroken.

To recall, after the exchange of the prohibited drug and marked money, PO1 Buenaflor performed the pre-arranged signal indicating a positive operation and then proceeded to arrest Lopez.[45] While PO1 Buenaflor was reading to Lopez his constitutional rights, the operation's team leader, PO3 Kerwin Awa called the witnesses.[46] All three insulating witnesses were thus present at the place of arrest: Viñas from the DOJ, Bongais from the media, and an elected public official in the person of *Barangay Kagawad* Samantela.

In the presence of the three insulating witnesses,[47] PO1 Buenaflor marked the seized dangerous drug with the marking

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[43] R.A. No. 9165, Section 21 (2).

[44] R.A. No. 9165, Section 21 (3).

[45] TSN dated October 20, 2014, p. 9.

[46] TSN dated December 9, 2014, p. 6.

[47] TSN dated December 9, 2014, p. 13.

"JBB 22 3-30-14,"[48] and a body search of Lopez was conducted by PO1 Reginales.[49] All of the items seized from Lopez, which included the marked money and the dangerous drugs, were photographed at the scene of the operation.[50] The marked money recovered from Lopez was compared with the photocopies by the police operatives.[51] The photographs taken and presented before the trial court show that the entire procedure was witnessed by the three required witnesses.

Before the trial court, PO1 Buenaflor testified and identified the plastic sachet seized from Lopez.[52] The Inventory/ Confiscation Receipt[53] dated March 30, 2014 was prepared by PO2 Joel T. Tabagan in the presence of Lopez and the three insulating witnesses who all signed the same.[54] Apart from the Inventory/Confiscation Receipt, photographs of the preparation and signing of the witnesses were likewise presented.[55] These photographs were taken by PO2 Tuyay who identified all the photographs taken during the operation before the trial court.[56]

Requests for Laboratory Examination were then prepared for both the item seized and the urine sample.[57] Around 11:14 p.m. of the day of the buy-bust operation, the seized item was delivered to the Provincial Crime Laboratory Office at Concepcion Grande, Naga City.[58] PO1 Buenaflor testified that he was in

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[48] TSN dated October 20, 2014, p. 13.

[49] TSN dated December 9, 2014, p. 7.

[50] TSN dated October 20, 2014, p. 11.

[51] TSN dated October 20, 2014, p. 12; TSN dated December 9, 2014, p. 7.

[52] TSN dated October 20, 2014, p. 13.

[53] Records (Criminal Case No. IR-10559), p. 12.

[54] TSN dated October 20, 2014, p. 14.

[55] TSN dated October 20, 2014, p. 14; Records (Criminal Case No. IR-10559), pp. 124-125.

[56] TSN dated February 17, 2015.

[57] TSN dated October 20, 2014, p. 15.

[58] TSN dated October 20, 2014, p. 16.

possession of the seized item from the time of its apprehension, post-marking, until he surrendered possession thereof to PO2 Dela Cruz, the receiving clerk of the Crime Laboratory.[59] The prosecution likewise drew out the fact that the seized item was heat-sealed when it was received by PO1 Buenaflor from Lopez during the buy-bust operation and it remained in the same condition when he turned it over to the Crime Laboratory Office.[60] PO1 Buenaflor identified before the court the Chain of Custody Form[61] for "Case No. D-109-2014 [,One (1) piece medium heat sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu* marked as JBB22 3-30-14]." Upon presentation of PO2 Dela Cruz, the parties stipulated on the authenticity of his signature appearing in the Chain of Custody Form and Request for Laboratory Examination.[62]

PSI Malong, the forensic chemist who examined the specimens, testified that the heat-sealed plastic was surrendered by PO1 Buenaflor, together with the letter-request for laboratory examination,[63] to the crime laboratory and was received by PO2 Dela Cruz.[64] The specimens were turned over by PO2 Dela Cruz to PSI Malong on the same day they were received.[65] PSI Malong conducted the qualitative examination, physical examination, and chemical test which all yielded a positive result of methamphetamine hydrochloride, or "*shabu*", a dangerous drug.[66] PSI Malong positively identified the specimen presented in court as the same one from which he extracted a representative

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[59] TSN dated October 20, 2014, p. 16.

[60] TSN dated October 20, 2014, p. 17.

[61] Records (Criminal Case No. IR-10559), p. 17.

[62] TSN dated January 19, 2015.

[63] TSN dated August 22, 2014, p. 4.

[64] TSN dated August 22, 2014, p. 5.

[65] TSN dated August 22, 2014, p. 5.

[66] TSN dated August 22, 2014, pp. 5-6.

sample for his tests.[67] These findings were reduced into Chemistry Report No. D-109-2014.[68]

In his assignment of errors, Lopez does not contest the existence of the unbroken custodial links but argues that there is conflicting identification as to the size of the alleged seized item.[69] On the one hand, PO1 Buenaflor testified that what he allegedly brought from Lopez was a "small-sized" heat-sealed transparent sachet.[70] However, in the Inventory/Confiscation Receipt, Chain of Custody Form, and Request for Laboratory Examination, it was indicated that the seized item was "medium" in size.[71]

The alleged inconsistency is more apparent than real. The characterization of the size of the seized item was obviously qualitative and necessarily subjective. It does not negate the established fact that the item seized from the accused-appellant was identified as the exact same item that was marked, inventoried, photographed, tested, and finally presented in court.

Much has been said about the conduct of buy-bust operations as a tool in flushing out illegal transactions that are otherwise conducted covertly and in secrecy.[72] While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations[73] and has generally left to the discretion of police authorities the selection of effective means to apprehend drug dealers,[74] the buy-bust operation's peculiar characteristics of having the benefit of planning, preparation,

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[67] TSN dated August 22, 2014, pp. 3, 7.

[68] TSN dated August 22, 2014, p. 8.

[69] Brief for the Accused-Appellant, p. 12; CA *rollo*, p. 49.

[70] *Id.*, citing TSN dated October 20, 2014, p. 9.

[71] *Id.*

[72] *People v. Garcia*, 599 Phil. 416 (2009).

[73] *Castro v. People*, 597 Phil. 722 (2009).

[74] *Quinicot v. People, supra* note 35.

and foresight[75] impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards.[76] On this note, law enforcement agencies should continually be reminded of the purpose and importance of the chain of custody rule in Section 21, Article II of R.A. No. 9165:

> Compliance with the chain of custody requirement provided by Section 21, therefore, **ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia** in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement **forecloses opportunities for planting, contaminating, or tampering of evidence in any manner**.[77] (Emphasis supplied)

To be clear, strict adherence with Section 21 remains to be the rule. This is a singular and rigid standard. Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin-requirements of: (1) existence of justifiable reasons, and (2) preservation of the integrity and evidentiary value of the seized items.[78] In these cases, the point of contention should not revolve around the amount of illegal drugs seized, but on whether the constitutional and statutory rights of an accused are protected in the prosecution of the crime he or she stands accused.

The Court notes in this case the meticulousness of the apprehending officers in their compliance with the chain of custody rule and in documenting their movements. Additional safeguards employed by the police operatives in this case such

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[75] *People v. Luna*, 828 Phil. 671, 688 (2018).

[76] *People v. Umipang*, 686 Phil. 1024 (2012).

[77] *People v. Holgado*, 741 Phil. 78, 93 (2014).

[78] Implementing Rules and Regulations of R.A. No. 9165, Sec. 21 (a).

as the taking of photographs in every step of the operation, though not legally required, are commendable practices in law enforcement. Equal note should also be made on the prosecution's efforts in drawing out the details in establishing the crucial custodial links to secure the identity and integrity of the dangerous drug seized from the accused. **This shows that the requirements imposed by Section 21, while exacting considering the liberties at stake, are logical and susceptible to strict and full compliance**.

II.

In Criminal Case No. IR-10614, Lopez stood charged for illegal use of dangerous drugs, defined and penalized under Section 15, Article II of R.A. No. 9165, which provides:

> Section 15. *Use of Dangerous Drugs*. — **A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense**, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (PhP50,000.00) to Two hundred thousand pesos (PhP200,000.00); *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (Emphasis supplied)

While Section 15 penalizes a person apprehended or arrested for unlawful acts listed under Article II of R.A. No. 9165 and who is found to be positive for use of any dangerous drug,[79] a conviction presupposes the prior conduct of an initial screening test and a subsequent confirmatory test both yielding positive results for illegal drug use. In this regard, Section 36 of R.A. No. 9165 provides, in part:

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[79] See *Dela Cruz v. People*, 739 Phil. 578 (2014).

Section 36. *Authorized Drug Testing*. — Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. **The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of the drug used and the confirmatory test which will confirm a positive screening test**. Drug test certificates issued by accredited drug testing centers shall be valid for a one-year period from the date of issue which may be used for other purposes. The following shall be subjected to undergo drug testing: x x x. (Emphasis supplied)

Meanwhile, Section 38 of R.A. No. 9165 provides:

Section 38. *Laboratory Examination or Test on Apprehended/ Arrested Offenders*. — **Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours**, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. **If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be *prima facie* evidence that such person has used dangerous drugs**, which is without prejudice for the prosecution for other violations of the provisions of this Act: *Provided*, That **a positive screening laboratory test must be confirmed for it to be valid in a court of law**. (Emphasis and underscoring supplied)

From the foregoing, two distinct drug tests are required: a screening test and a confirmatory test. A positive screening test must be confirmed for it to be valid in a court of law. The evidence for the prosecution, however, shows the conduct of only one test.

PSI Malong conducted the examination on the urine sample taken from Lopez after his apprehension.[80] His testimony in this regard is reproduced below in full:

PROS. JOCOM:

Q: In the urine sample that you examined, you indicated in your report that the same gave positive result to the presence of methamphetamine hydrochloride, and negative for THC metabolites. [N]ow, tell us, how did you arrive at such conclusion or findings that the result was positive for the presence of methamphetamine hydrochloride?

A: I arrive to this finding, sir, because I conducted the screening test and confirmatory test of the urine specimen, sir.

Q: Okay, when you said you conducted confirmatory test, what did you mean by that?

A: The urine sample was subjected to TLC, sir, wherein the urine sample was extracted and then, compared with the standard methamphetamine hydrochloride, sir.

Q: And what was the result or the color if there was any change in the color that you subject that for test *(sic)* that you could say that there was the presence of methamphetamine?

A: On the TLC plate, sir, we would be able to see that the spot develop of *(sic)* the same location, sir, meaning they have the same chemical characteristics with the standard methamphetamine hydrochloride, sir.

Q: After conducting the confirmatory test, what did you do with the sample, the urine?

A: It was placed on *(sic)* the refrigerator, sir. I sealed it and placed on the refrigerator.

Q: Until now, it is with your office?

A: It was already discarded, sir.[81]

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[80] TSN dated August 22, 2014, p. 8.

[81] TSN dated August 22, 2014, pp. 12-13.

While PSI Malong mentions the conduct of a "screening test and a confirmatory test" on the urine sample, his testimony on the actual test conducted on the sample as well as the chemical laboratory report presented in court show otherwise.

The test conducted on the urine specimen of the accused-appellant was a Thin Layer Chromatography or TLC — a screening test. A screening test is statutorily defined as "[a] rapid test performed to establish potential/presumptive positive result."[82] It refers to the immunoassay test to eliminate a "negative" specimen, *i.e.*, one without the presence of dangerous drugs, from further consideration and to identify the presumptively positive specimen that requires confirmatory test.[83] Under existing regulations of the Dangerous Drugs Board, the TLC is a screening test that is subject to further confirmatory examinations if it yields a positive result.[84]

When the urine sample recovered from Lopez yielded a positive result, the specimen should have been subjected to a second test — the confirmatory test. R.A. No. 9165 describes the confirmatory test as "[a]n analytical test using a device, tool or equipment with a different chemical or physical principle that is more specific which will validate and confirm the result of the screening test."[85] It is the second or further analytical procedure to more accurately determine the presence of dangerous drugs in the specimen.[86] The records are silent on any reference to a second, more specific, examination on the urine sample.

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[82] R.A. No. 9165, Art. I, Sec. 3 (hh).

[83] Implementing Rules and Regulations of R.A. No. 9165, Art. I, Sec. 3 (pp).

[84] *See* Dangerous Drugs Board, Board Regulation No. 2, series of 2003, "Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines."

[85] R.A. No. 9165, Art. I. Sec. 3 (f).

[86] Implementing Rules and Regulations of R.A. No. 9165, Art. I, Sec. 3 (i).

Considering that Chemistry Report No. DTC-081-2014[87] merely contains the results of the screening test conducted, the same cannot be valid before any court of law absent the required confirmatory test report.[88] Without the requisite confirmatory test, the accused-appellant cannot be held criminally liable for illegal use of dangerous drugs under Section 15, R.A. No. 9165. An acquittal for this charge follows as a necessary consequence.

WHEREFORE, in view of the foregoing, the appeal is **PARTLY GRANTED**. The Decision dated March 29, 2019 of the Court of Appeals, Twelfth Division in CA-G.R. CR-HC No. 09769 is hereby **MODIFIED** as follows:

In Criminal Case No. IR-10614 for violation of Section 15, Article II of R.A. No. 9165, accused-appellant PETER LOPEZ *Y* CANLAS is **ACQUITTED** for failure of the prosecution to prove the elements thereof.

In Criminal Case No. IR-10559, the conviction of accused-appellant PETER LOPEZ *Y* CANLAS for violation of Section 5, Article II of R.A. No. 9165 is **AFFIRMED**.

SO ORDERED.

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

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[87] Records (Criminal Case No. IR-10614), p. 8.

[88] R.A. No. 9165, Sec. 38.

EN BANC

[A.C. No. 11118. July 14, 2020]
(Formerly CBD Case No. 08-2140)

NENITA KO, *complainant*, *vs.* **ATTY. LADIMIR IAN G. MADURAMENTE and ATTY. MERCY GRACE L. MADURAMENTE,** *respondents*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; MUST MAINTAIN THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION BY REFRAINING FROM COMMITTING ACTS WHICH MIGHT DIMINISH IN ANY DEGREE THE CONFIDENCE OF THE PUBLIC IN THE FIDELITY, HONESTY, AND INTEGRITY OF THE PROFESSION. —** Time and again, the Court has emphasized that being a lawyer is a privilege burdened with conditions. As a member of the bar, he/she must maintain the integrity and dignity of the legal profession by refraining from committing acts which might diminish in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. He/she is thus expected to preserve the trust and confidence reposed upon him/her by his/her clients, his/her profession, the courts and the public. He/she must also retain a high sense of morality, and fair dealing to continue his/her membership in good standing. Otherwise, a lawyer may be "disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity."
2. **ID.; ID.; ID.; DISHONESTY AND GROSS MISCONDUCT; COMMITTED WHEN THE LAWYER'S OATH AND CANONS 7, 15, 17 AND 18, AND RULES 1.01, 7.03 AND 16.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR) ARE VIOLATED. —** It is, x x x, undisputed that Atty. Ladimir and Atty. Mercy are guilty of dishonesty and gross misconduct. They have breached the trust reposed upon them by their client, Nenita, in violation of the Lawyer's Oath and Canons 7, 15, 17, and 18, and Rules 1.01, 7.03, and 16.03 of the CPR.

3. ID.; ID.; ID.; BUSINESS TRANSACTIONS BETWEEN AN ATTORNEY AND HIS/HER CLIENT ARE DISFAVORED AND DISCOURAGED BY THE POLICY OF THE LAW; RATIONALE; CASE AT BAR. — Atty. Ladimir and Atty. Mercy acted both as agents and as lawyers of Nenita in the purported sale transaction. This is in contravention of our settled rule discouraging lawyers to engage in business transactions with their clients. As aptly held in *HDI Holdings Philippines, Inc. v. Atty. Cruz*: As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith. The measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard that is required in business dealings where the parties trade at arm's length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to assure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor. x x x

4. ID.; ID.; ID.; THE HIGHLY FIDUCIARY NATURE OF THE RELATIONSHIP BETWEEN A LAWYER AND HIS/HER CLIENT IMPOSES UPON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS/HER CLIENT; A LAWYER'S FAILURE TO RETURN UPON DEMAND THE FUNDS HELD BY HIM/HER ON BEHALF OF HIS/HER CLIENT GIVES RISE TO THE PRESUMPTION THAT HE/SHE HAS APPROPRIATED THE SAME FOR HIS/HER OWN USE IN VIOLATION OF THE TRUST REPOSED IN HIM/HER BY THE CLIENT; CASE AT BAR. — Worse, Atty. Ladimir and Atty. Mercy's failure to return upon demand the ₱5,000,000.00 gave rise to the presumption that they appropriated the money for themselves in violation of the trust reposed in them by Nenita. In *Egger v. Duran*, the Court stressed that the relationship between a lawyer and his client is highly fiduciary, *viz.*: The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The

highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics. Undoubtedly, Atty. Ladimir and Atty. Mercy utterly disregarded the trust reposed in them by Nenita. Their acts are in gross violation of general morality, as well as of professional ethics.

5. **ID.; ID.; CANON 7 AND RULE 15.06 OF THE CPR; INFLUENCE PEDDLING IS VIOLATIVE THEREOF; CASE AT BAR. —** Atty. Mercy is likewise guilty of influence peddling in violation of Canon 7 of the CPR mandating that a "lawyer shall at all times uphold the integrity and dignity of the legal profession," as well as of Rule 15.06 proscribing a lawyer from stating or implying "that he is able to influence any public official, tribunal or legislative body." Here, Atty. Mercy boasted that her connections with influential persons, would get Nenita a favorable rate for the sale of the hotel. At the same time, she used her alleged connections to discourage Nenita from filing a complaint against her and Atty. Ladimir. The judiciary has been working tirelessly to preserve its integrity and independence. It continuously strives to maintain an orderly administration of justice by ensuring that those who marred its reputation would be properly sanctioned. By giving the impression that justice is served depending on one's connections, and insinuating that the administration of justice is susceptible to corruption and misconduct, Atty. Mercy has placed the judiciary in a bad light thereby eroding the public's trust and confidence in the judicial system. As an officer of the court, Atty. Mercy failed to uphold a high regard to the profession by staying true to her oath and keeping her actions beyond reproach.

6. **ID.; ID.; COMMINGLING OF FUNDS WITH CLIENT IS VIOLATIVE OF THE CPR. —** Atty. Mercy should not have consented to the issuance of the checks by Nenita in her name. This alone constitutes a violation of the Code which mandates lawyers to keep the "funds of each client separate and apart from his own and those of others kept by him."

7. **ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; DISBARMENT, WHEN PROPER; A LAWYER'S ABSOLUTE DISREGARD OF HIS/HER BOUNDEN DUTIES INSCRIBED IN THE LAWYER'S OATH AND THE CPR WARRANTS THE MOST SEVERE PENALTY OF DISBARMENT; CASE AT BAR. —** Section 27, Rule 138 of the Rules of Court enumerates the grounds when a lawyer may be suspended from the practice of law or be disbarred. x x x The Court is mindful that the power to disbar must be exercised with great caution. Disbarment should be imposed in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstance. "The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." Here, Atty. Ladimir and Atty. Mercy both showed an absolute disregard of their bounden duties inscribed in the Lawyer's Oath and the CPR. They misappropriated the funds given by Nenita for the purchase of the Manila Prince Hotel. These only demonstrate their absence of good moral character, a continuous requirement for membership in the bar. Moreover, Atty. Mercy commingled the funds with her account by allowing the checks be payable to her order. Worse, she tarnished the reputation of the judiciary by using her political connections not only to gain the trust of Nenita but also to discourage her from filing any complaint against her and Atty. Ladimir before the courts thereby impressing upon Nenita that this Court can be swayed by political connections. Clearly, these actuations of Atty. Ladimir and Atty. Mercy demonstrated that they do not possess not even a scintilla of high moral fiber thereby making them unworthy of public confidence, and of being members of the legal profession. Their violations clearly caused damage and prejudice to their client, and had put the administration of justice in a bad light. Thus, the Court finds it appropriate to impose on both respondent lawyers the most severe penalty of disbarment and their names stricken off the Roll of Attorneys.

APPEARANCES OF COUNSEL

Manicad Ong Dela Cruz & Fallarme Law Offices for respondent Mercy Grace L. Maduramente.

DECISION

***PER CURIAM*:**

This is a Petition[1] for disbarment filed by Nenita Ko (Nenita) against respondents Atty. Ladimir Ian G. Maduramente (Atty. Ladimir) and Atty. Mercy Grace L. Maduramente (Atty. Mercy; collectively, respondent lawyers) for committing dishonest acts and grave misconduct in violation of the Code of Professional Responsibility (CPR).

The Factual Antecedents

Nenita alleged that sometime in July 2006, Atty. Ladimir and Atty. Mercy informed her that the Manila Prince Hotel in San Marcelino, Manila, owned by the Manila Prince Hotel Corporation and affiliated with Manila Hotel, was for sale. Respondent lawyers allegedly made representations that:

a. They knew the President of Manila Hotel, former Senator Joey Lina;

b. The ₱50,000,000.00 purchase price was a reasonable consideration, and lower than the fair market value of the property;

c. They can get a preferential rate because Atty. Mercy had close relations with the hotel owners since she worked at the Malacañang Palace;

d. The hotel is immediately operational without any legal issues, complete with necessary equipment, furniture, and fixtures;

e. The payment scheme is on installment basis which made it more affordable and not burdensome on the part of Nenita;

f. The return of investment will only be for a short period since the hotel business is booming;

g. A mere ₱5,000,000.00 as down payment is required for Nenita to possess and control the hotel, subject to

[1] *Rollo*, pp. 2-10.

the payment of the balance in accordance with the agreed payment scheme; and

h. Nenita would only pay ₱32,000,000.00 since respondent lawyers will pay the balance of the purchase price as part of their joint/conjugal investment as industrial partners.[2]

Persuaded by the representations of respondent lawyers, Nenita agreed to buy the hotel. She later issued three checks in the amounts of ₱5,000,000.00, ₱6,000,000.00, and another ₱6,000,000.00, all payable to the order of Atty. Mercy.[3] Upon receipt of the checks, Atty. Mercy executed an Acknowledgment[4] to Nenita.

A few days later, Nenita inquired from respondent lawyers about the status of the sale. To her dismay, respondent lawyers informed her that there would be a delay in the turnover of the hotel as they were still working on the documents for its transfer. Nenita then asked Atty. Ladimir and Atty. Mercy to give her a list of the inventoried equipment, fixtures, and furniture in the hotel, but no list was given to her. Nenita thus suspected that something is amiss in the sale transaction.

Upon inquiry with her financial consultant, she discovered that no sale transaction was concluded with respect to the said hotel.

Nenita thus confronted respondent lawyers about her discovery. Still, they insisted that the hotel was validly sold to her and that she had nothing to worry about. However, when Nenita demanded from them to produce the documents of the purported sale, they failed to comply.

Instead, Atty. Mercy berated Nenita for attributing to her the botched sale transaction. She also bragged about her alleged connections in the Office of the President in order to dissuade Nenita from filing any complaint against her and Atty. Ladimir.

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

[3] *Id.* at 11-13.

[4] *Id.* at 14.

Consequently, Nenita asked respondent lawyers to just return the two remaining checks to her which they did.

Since the first check in the amount of ₱5,000,000.00 was already encashed, Nenita requested Atty. Ladimir and Atty. Mercy to return the value thereof. However, Atty. Ladimir admitted that they already used the said amount. Respondent lawyers then requested for some time to return the money to which Nenita agreed.

Unfortunately, Atty. Ladimir and Atty. Mercy still failed to return the amount despite repeated demands prompting Nenita to inform them of her intention of filing a case against them. Atty. Ladimir pleaded for additional time to return the amount.

Eventually, respondent lawyers returned the amount of ₱500,000.00 to Nenita. As to the remaining ₱4,500,000.00, Atty. Ladimir executed a Deed of Undertaking[5] stating that the ₱500,000.00 shall be paid through bank transfer to Nenita's account, while the remaining ₱4,000,000.00 would be covered by a check[6] dated September 30, 2007. Pursuant to the Undertaking, Atty. Ladimir and Atty. Mercy transferred ₱500,000.00 to Nenita's account. Sadly, however, the check issued by Atty. Ladimir in the amount of ₱4,000,000.00 was dishonored due to closed account.

On November 7, 2007, Nenita, through her counsel, sent a final demand letter to Atty. Ladimir and Atty. Mercy asking them to pay the remaining ₱4,000,000.00. But her demand fell on deaf ears. Hence, this complaint for disbarment against Atty. Ladimir and Atty. Mercy for utter violation of the CPR.

In her Answer,[7] Atty. Mercy denied that she and Atty. Ladimir convinced Nenita to purchase or invest in the Manila Prince Hotel for ₱50,000,000.00. She averred that Nenita expressed her interest in purchasing not the hotel but the M/V Asian

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[5] *Id.* at 15.

[6] *Id.* at 15 and16.

[7] *Id.* at 53-71.

Princess, also known as Manila Floating Restaurant. However, it was Atty. Ladimir who actually offered it to Nenita who received the documents of the restaurant.

Atty. Mercy claimed that what she actually offered to sell to Nenita were shares of stocks of the Manila Prince Corporation. She also disclaimed Nenita's allegation that she made representations that she could get a preferential rate because of her work connections. Lastly, Atty. Mercy insisted that she did not encash the check in the amount of ₱5,000,000.00. Neither did she own the bank account in which the check was deposited.

Atty. Ladimir also filed his Answer[8] wherein he asserted that it was Atty. Mercy who mentioned to Nenita the sale of Manila Prince Hotel in the amount of ₱50,000,000.00. However, he himself did not get involved in the sale transaction to avoid conflict of interest.

Atty. Ladimir narrated that it was Atty. Mercy who persuaded Nenita to enter into a partnership agreement because of her connections. Atty. Ladimir claimed that he had no idea about the details of the transaction and that he only learned that the deal materialized when he was informed by his office staff, Flordeliza Sarmiento, that Nenita already issued postdated checks to Atty. Mercy.

Atty. Ladimir explained that he suspected that something went wrong when Atty. Mercy presented a Special Power of Attorney stating the amount of US$50,000,000.00 instead of Philippine pesos and when Nenita demanded the return of the ₱5,000,000.00, the amount of the first check that was encashed, as well as the other checks she issued. Atty. Ladimir professed that he did not know where the initial payment of ₱5,000,000.00 was used. All he knew was that Atty. Mercy failed to make good her promise to return the same.

One day, Nenita met with Atty. Ladimir demanding for the reimbursement of her payment. He called Atty. Mercy who

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[8] *Id.* at 138-146.

agreed to refund the remaining balance of ₱4,000,000.00 within two months. To pacify Nenita, Atty. Ladimir issued a check in her favor for the sole purpose of showing it to her husband. He informed her that the check would be replaced by an actual refund as soon as it becomes available.

The Initial Report and Recommendation of the Integrated Bar of the Philippines (IBP)

In his Report and Recommendation,[9] Investigating Commissioner Oliver A. Cachapero found Atty. Mercy guilty of dishonesty and immoral misconduct for her failure to account for and return the money entrusted to her by Nenita. The Investigating Commissioner found sufficient proof that Atty. Mercy offered to Nenita the sale of the Manila Prince Hotel, and benefited therefrom when she encashed the check valued at ₱5,000,000.00 that was issued in her name. The Investigating Commissioner thus recommended that Atty. Mercy be suspended for a period of two (2) years from the practice of law.

Anent Atty. Ladimir, the Investigating Commissioner recommended the dismissal of the complaint against him for lack of sufficient basis.

On April 15, 2013, the IBP Board of Governors (BOG) issued a Resolution[10] adopting the Investigating Commissioner's recommendation. The Resolution reads:

RESOLUTION NO. XX-2013-432
CBD Case No. 08-2140
Nenita Ko vs.
Atty. Ladimir Ian G. Maduramente and
Atty. Mercy Grace L. Maduramente

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the

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[9] *Id.* at 192-197.

[10] *Id.* at 190.

applicable laws and rules and considering that Respondent Mercy Grace L. Maduramente is guilty of gross misconduct, Atty. Mercy Grace L. Maduramente is hereby SUSPENDED from the practice of law for two (2) years. However, considering that the complaint against Atty. Ladimir Ian G. Maduramente is without merit, the case is hereby DISMISSED.

Atty. Mercy filed a Motion for Reconsideration[11] before the IBP-BOG. Meantime, Nenita likewise filed a complaint for estafa against respondent lawyers before the Regional Trial Court, Branch 87 of Quezon City (RTC-Quezon City) docketed as Crim. Case No. R-QZN-14-01681-CR.

On June 5, 2015, the IBP-BOG issued Resolution No. XXI-2015-401[12] denying Atty. Mercy's Motion for Reconsideration for lack of merit, to wit:

RESOLUTION NO. XXI-2015-401
CBD Case No. 08-2140
Nenita Ko vs.
Atty. Ladimir Ian G. Maduramente and
Atty. Mercy Grace L. Maduramente

RESOLVED to DENY Respondent's Atty. Mercy Grace L. Maduramente Motion for Reconsideration, there being no cogent reason to reverse the findings and the resolution of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-432, dated April 15, 2013, is hereby AFFIRMED.

Subsequently, Atty. Mercy filed a Manifestation[13] dated September 17, 2015 stating that during the testimony of Nenita in the Estafa case pending before the RTC-Quezon City, it was discovered that she (Atty. Mercy) did not endorse the check valued at ₱5,000,000.00 and that the same was also not deposited in her alleged bank account as evidenced by the certification[14]

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[11] *Id.* at 198-213.

[12] *Id.* at 291.

[13] *Id.* at 220-223.

[14] *Id.* at 265.

from the bank. It was Nenita's husband, William Ko, who actually issued the subject check contrary to Nenita's claim in the disbarment complaint.[15]

Upon receipt of the June 5, 2015 IBP-BOG Resolution No. XXI-2015-401, Atty. Mercy filed a Petition for Review on *Certiorari* with Urgent Motion for Reinvestigation[16] before this Court. She averred that the IBP did not consider her September 17, 2015 Manifestation which would have reversed its April 15, 2013 Resolution. Atty. Mercy then filed a Motion with Leave of Court to Amend Petition for Review with Motion for Reinvestigation[17] claiming that the IBP gravely abused its discretion because: (a) it did not clearly state the facts and reasons for the denial of her Motion for Reconsideration; and (b) it failed to consider evidence which would exonerate her from any liability.

Atty. Mercy insisted that she was not part of the sale transaction and that she did not deceive Nenita. She averred that she only introduced Nenita and William Ko to Senator Joey Lina, then President of the Manila Hotel which is affiliated with the Manila Prince Hotel Corporation.

Atty. Mercy further alleged that she received the three checks which she held in trust for Nenita as payment for the assignment of shares of the Manila Prince Hotel. However, the checks were actually endorsed and turned over to Atty. Ladimir. Atty. Mercy posited that it was Atty. Ladimir who transacted the first check amounting to ₱5,000,000.00 which was deposited to an unnamed account. Since the check did not bear her endorsement and that its amount was not deposited to her account, Atty. Mercy asserted that she had no obligation to account for the ₱5,000,000.00.

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[15] *Id.* at 264.

[16] *Id.* at 266-277.

[17] *Id.* at 305-309.

On April 5, 2016, this Court issued a Resolution[18] referring the petition to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

Report and Recommendation of the OBC:

In its August 1, 2016 Report and Recommendation,[19] the OBC recommended that Atty. Mercy's Motion for Reinvestigation be granted and the IBP be directed to conduct further investigation and to submit its report and recommendation within 90 days.

In Our April 18, 2017 Resolution,[20] the IBP was directed to conduct further investigation on this case and to submit its report and recommendation thereon.

Final Report and Recommendation of the IBP:

By way of compliance, the IBP submitted its Report and Recommendation[21] dated June 9, 2017. This time, the IBP found both Atty. Ladimir and Atty. Mercy to have violated the CPR for their failure to account for and return their client's money despite demand. Worse, they misappropriated the same for their own use in violation of Nenita's trust and to her prejudice. Thus, the IBP recommended that the penalty of suspension from the practice of law for two years be imposed against both respondent lawyers.

Issue

The sole issue is whether respondent lawyers are both guilty of dishonesty and grave misconduct.

The Court's Ruling

Time and again, the Court has emphasized that being a lawyer is a privilege burdened with conditions.[22] As a member of the

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[18] *Id.* at 569-570.

[19] *Id.* at 578-582.

[20] *Id.* at 615.

[21] *Id.* at 632-637.

[22] *Saladaga v. Atty. Astorga*, 748 Phil. 1, 5 (2014).

bar, he/she must maintain the integrity and dignity of the legal profession by refraining from committing acts which might diminish in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.[23] He/she is thus expected to preserve the trust and confidence reposed upon him/her by his/her clients, his/her profession, the courts and the public.[24] He/she must also retain a high sense of morality, and fair dealing to continue his/her membership in good standing. Otherwise, a lawyer may be "disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity."[25]

The Court, after a judicious review of the records, adopts the findings of the IBP, but with modification as regards the recommended penalty.

Indeed, Atty. Ladimir and Atty. Mercy failed to live up to the high moral standards required of them as members of the legal profession.

The defenses raised by Atty. Mercy deserve scant consideration.

Atty. Mercy proffered that she did not own the bank account wherein the first check valued at ₱5,000,000.00 was deposited. She also averred that her participation was limited only to introducing Nenita and William Ko to the management of the Manila Prince Hotel and that she was not privy to the said transaction.

These defenses of denial cannot outweigh the evidence presented by Nenita.

Records show that the checks[26] issued by Nenita for the sale of the Manila Prince Hotel were all payable to the order of

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[23] *Berbano v. Atty. Barcelona*, 457 Phil. 331, 335-336 (2003).

[24] *Id.* at 335.

[25] *Tumbokon v. Atty. Pefianco*, 692 Phil. 202, 207 (2012).

[26] *Rollo*, pp. 11-13.

Atty. Mercy. Atty. Mercy duly received the checks as evidenced by the Acknowledgment[27] which she herself executed. Remarkably, the checks were also crossed checks which meant that these were for deposit only by Atty. Mercy in her bank account.[28]

Further, if Atty. Mercy was not a participant in the purported sale transaction, it baffles this Court as to why the checks were payable to her order instead of the Manila Prince Hotel Corporation, the owner of the Manila Prince Hotel. Unfortunately, Atty. Mercy failed to give a plausible explanation as to why the checks were payable to her name. Atty. Mercy did not even dispute her signature in the Acknowledgment. Having received the checks in due course, it is presumed that the same were in her possession and disposed of or used by her. She failed to present any convincing evidence that it was Atty. Ladimir or any other person who endorsed said checks.

Atty. Ladimir's claim that he was not a party to the purported sale lacks merit.

The Court is likewise not persuaded by Atty. Ladimir's declaration that he had limited or no participation at all in the alleged sale transaction.

It is undisputed that Atty. Ladimir introduced his wife, Atty. Mercy, to Nenita. The proposal to purchase the hotel was made to Nenita in Atty. Ladimir's presence in his law office, and therefore, with his knowledge. He and Atty. Mercy even volunteered to oversee the execution of the deed of sale and to process other documents related thereto. Further, Atty. Ladimir even admitted that he, Atty. Mercy and Nenita met with Senator Lina on several occasions for the sale of the hotel. In fact, the preparation and drafting of the deed of sale as well as its

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[27] *Id.* at 14.

[28] *Security Bank Corp. v. Court of Appeals*, G.R. No. 170149, August 17, 2016.

registration and annotation on the title, were entrusted to him and to Atty. Mercy.

Moreover, Atty. Ladimir and Atty. Mercy were husband and wife hence, it is impossible that he did not know anything about the sale especially since it involved his client, Nenita. As husband and wife, Atty. Ladimir would have benefited from the purported sale even if the checks were in the name of Atty. Mercy only. This is in accordance with the legal presumption that the money acquired by reason of the encashment of the check belongs to their conjugal partnership.[29]

Further, Atty. Ladimir admitted to Nenita that he and Atty. Mercy misappropriated for themselves the ₱5,000,000.00, and even requested Nenita to simply consider the same as a loan. He even executed an Undertaking[30] promising to pay Nenita the alleged loaned amount by depositing ₱500,000.00 to the latter's account, and issuing a postdated check for ₱4,000,000.00. Indeed, Atty. Ladimir's admission and contemporaneous acts strengthen the plausible inference that he took part in the purported sale together with his estranged wife, Atty. Mercy, and benefited from the same at the expense of Nenita. Besides, no person in his right mind would undertake to pay such a huge amount on behalf of another person if he himself did not benefit therefrom. Records also show that Atty. Ladimir personally issued the check[31] for ₱4,000,000.00 pursuant to the terms of the Undertaking that he himself voluntarily executed.

Atty. Ladimir and Atty. Mercy are guilty of Dishonesty and Gross Misconduct in violation of Canons 7, 15, 17, and 18, and Rules 1.01, 7.03, and 16.03 of the CPR

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[29] New Civil Code, Article 160.

Article 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

[30] *Rollo*, p. 15.

[31] *Id.*

It is, therefore, undisputed that Atty. Ladimir and Atty. Mercy are guilty of dishonesty and gross misconduct. They have breached the trust reposed upon them by their client, Nenita, in violation of the Lawyer's Oath and Canons 7, 15, 17, and 18, and Rules 1.01, 7.03, and 16.03 of the CPR which read:

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

CANON 7 — A Lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 — A lawyer shall serve his client with competence and diligence.

Atty. Ladimir and Atty. Mercy acted both as agents and as lawyers of Nenita in the purported sale transaction. This is in contravention of our settled rule discouraging lawyers to engage in business transactions with their clients. As aptly held in *HDI Holdings Philippines, Inc. v. Atty. Cruz*:[32]

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[32] A.C. No. 11724, July 31, 2018.

As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith. The measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard that is required in business dealings where the parties trade at arm's length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to assure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor. x x x

Worse, Atty. Ladimir and Atty. Mercy's failure to return upon demand the ₱5,000,000.00 gave rise to the presumption that they appropriated the money for themselves in violation of the trust reposed in them by Nenita.[33] In *Egger v. Duran*,[34] the Court stressed that the relationship between a lawyer and his client is highly fiduciary, *viz.*:

The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.[35]

Undoubtedly, Atty. Ladimir and Atty. Mercy utterly disregarded the trust reposed in them by Nenita. Their acts are in gross violation of general morality, as well as of professional ethics.[36]

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[33] *Id.*

[34] 795 Phil. 9 (2016).

[35] *Id.* at 17.

[36] *HDI Holdings Philippines, Inc. v. Atty. Cruz*, *supra* note 32.

Atty. Mercy is likewise guilty of influence peddling, and of commingling of funds with client.

Atty. Mercy is likewise guilty of influence peddling in violation of Canon 7 of the CPR the mandating that a "lawyer shall at all times uphold the integrity and dignity of the legal profession," as well as of Rule 15.06 proscribing a lawyer from stating or implying "that he is able to influence any public official, tribunal or legislative body."

Here, Atty. Mercy boasted that her connections with influential persons would get Nenita a favorable rate for the sale of the hotel. At the same time, she used her alleged connections to discourage Nenita from filing a complaint against her and Atty. Ladimir.

The judiciary has been working tirelessly to preserve its integrity and independence. It continuously strives to maintain an orderly administration of justice by ensuring that those who marred its reputation would be properly sanctioned. By giving the impression that justice is served depending on one's connections, and insinuating that the administration of justice is susceptible to corruption and misconduct, Atty. Mercy has placed the judiciary in a bad light thereby eroding the public's trust and confidence in the judicial system.

As an officer of the court, Atty. Mercy failed to uphold a high regard to the profession by staying true to her oath and keeping her actions beyond reproach.[37] She also did not observe her bounden duty as a lawyer to keep the reputation of the courts untarnished.[38] As expounded in *Francia v. Abdon*,[39] citing *Berbano v. Barcelona*:[40]

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[37] *Francia v. Atty. Abdon*, 739 Phil. 299, 313 (2014).

[38] *Id.*

[39] *Id.*

[40] *Supra* note 23 at 345.

A lawyer is an officer of the courts; he is, "like the court itself, an instrument or agency to advance the ends of justice.' [x x x]. His duty is to uphold the dignity and authority of the courts to which he owes fidelity, 'not to promote distrust in the administration of justice." [x x x] Faith in the courts a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of the government and to the attainment of the liberties of the people." [x x x]. Thus has it been said of a lawyer that "[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice."

Further, Atty. Mercy should not have consented to the issuance of the checks by Nenita in her name. This alone constitutes a violation of the Code which mandates lawyers to keep the "funds of each client separate and apart from his own and those of others kept by him."[41]

The appropriate penalty

Section 27, Rule 138 of the Rules of Court enumerates the grounds when a lawyer may be suspended from the practice of law or be disbarred, to wit:

SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

The Court is mindful that the power to disbar must be exercised with great caution. Disbarment should be imposed in clear cases of misconduct that seriously affect the standing and character

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[41] Canon 16, Rule 16.02, Code of Professional Responsibility.

of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstance.[42] "The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[43]

Here, Atty. Ladimir and Atty. Mercy both showed an absolute disregard of their bounden duties inscribed in the Lawyer's Oath and the CPR. They misappropriated the funds given by Nenita for the purchase of the Manila Prince Hotel. These only demonstrate their absence of good moral character, a continuous requirement for membership in the bar.[44]

Moreover, Atty. Mercy commingled the funds with her account by allowing the checks be payable to her order. Worse, she tarnished the reputation of the judiciary by using her political connections not only to gain the trust of Nenita but also to discourage her from filing any complaint against her and Atty. Ladimir before the courts thereby impressing upon Nenita that this Court can be swayed by political connections.

Clearly, these actuations of Atty. Ladimir and Atty. Mercy demonstrated that they do not possess not even a scintilla of high moral fiber thereby making them unworthy of public confidence, and of being members of the legal profession. Their violations clearly caused damage and prejudice to their client, and had put the administration of justice in a bad light. Thus, the Court finds it appropriate to impose on both respondent lawyers the most severe penalty of disbarment and their names stricken off the Roll of Attorneys.[45]

WHEREFORE, Atty. Ladimir Ian Maduramente and Atty. Mercy Grace Maduramente are found **GUILTY** of violating Canons 7, 15, 17, and 18, and Rules 1.01, 7.03, 15.06, 16.02

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[42] *Tumbokon v. Atty. Pefianco, supra* note 25 at 208-209.

[43] *De Borja v. Atty. Mendez, Jr.*, A.C. No. 11185, July 4, 2018.

[44] *Ong v. Atty. Delos Santos*, 728 Phil. 332, 337 (2014).

[45] *Domingo v. Atty. Sacdalan*, A.C. No. 12475, March 26, 2019.

and 16.03 of the Code of Professional Responsibility, and of the Lawyer's Oath. They are thus ordered **DISBARRED** from the practice of law and their names stricken off the Roll of Attorneys, effective immediately.

Moreover, Atty. Ladimir Ian Maduramente and Atty. Mercy Grace Maduramente are **ORDERED** to **RETURN** to complainant Nenita Ko the amount of Four Million Pesos (₱4,000,000.00), if it is still unpaid, with interest of six percent (6%) per *annum* reckoned from the date of finality of this Decision until full payment.[46]

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the respective records of Atty. Ladimir and Atty. Mercy. Copies shall likewise be furnished to the (a) Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; (b) all administrative and quasi-judicial agencies of the Republic of the Philippines; and (c) the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

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[46] See *Domingo v. Sacdalan*, *id.* and *HDI Holdings Philippines, Inc. v. Atty. Cruz, supra* note 32.

EN BANC

[A.M. No. 11-7-76-MeTC. July 14, 2020]

RE: ALLEGATION OF FALSIFICATION AGAINST PROCESS SERVERS MAXIMO D. LEGASPI AND DESIDERIO S. TESIORNA, BRANCH 43 AND OFFICE OF THE CLERK OF COURT, RESPECTIVELY, BOTH OF THE METROPOLITAN TRIAL COURT, QUEZON CITY

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; TO SUSTAIN A FINDING OF ADMINISTRATIVE CULPABILITY, ONLY SUBSTANTIAL EVIDENCE IS REQUIRED, NOT OVERWHELMING OR PREPONDERANT, AND VERY MUCH LESS THAN PROOF BEYOND REASONABLE DOUBT AS REQUIRED IN CRIMINAL CASES. —** After a thorough review of the matter, the Court adopts the recommendations of Judge Sagun. Tesiorna is guilty of dishonesty and falsification of official document, while the case against Legaspi should be dismissed for lack of legal and factual basis. To sustain a finding of administrative culpability, only substantial evidence is required, not overwhelming or preponderant, and very much less than proof beyond reasonable doubt as required in criminal cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, the Court finds that this quantum of proof has been met.

2. **ID.; ID.; ID.; DISHONESTY INVOLVES INTENTIONALLY MAKING A FALSE STATEMENT TO DECEIVE OR COMMIT A FRAUD, WHICH IS A MALEVOLENT ACT THAT HAS NO PLACE IN THE JUDICIARY, AS NO OTHER OFFICE IN THE GOVERNMENT SERVICE EXACTS A GREATER DEMAND FOR MORAL RIGHTEOUSNESS FROM AN EMPLOYEE THAN A POSITION IN THE JUDICIARY; RESPONDENT'S ACT OF REPRESENTING HIMSELF AS HAVING THE CAPACITY TO SECURE A MARRIAGE CERTIFICATE FOR A PARTY, WHICH IS OUTSIDE THE PURVIEW OF HIS JOB AS A PROCESS SERVER, CONSTITUTES DISHONESTY. —**

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity". It involves intentionally making a false statement to deceive or commit a fraud. Here, Tesiorna represented himself as having the capacity to secure a marriage certificate for Springael, when in truth and in fact, his duties as a process server do not even include this function. Atty. Ortiz explained that as a process server, Tesiorna was only tasked to serve notices of the OCC and other related functions, and not the processing of marriage papers which was the duty of another court personnel. Consequently, even the receipts of an application of solemnization of marriage is outside the purview of his job. Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as "no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary". While it cannot be gainsaid that there is no direct evidence that it was Tesiorna who actually forged Judge Diaz's signature, the surrounding circumstances herein undoubtedly show his direct participation in procuring a marriage certificate for Springael. Notably, the records of this case are bereft of any showing that Springael was impelled by any improper motive as to falsely accuse Tesiorna with such a serious offense.

3. **ID.; ID.; ID.; FALSIFICATION OF OFFICIAL DOCUMENT, AS AN ADMINISTRATIVE OFFENSE, IS KNOWINGLY MAKING FALSE STATEMENTS IN OFFICIAL OR PUBLIC DOCUMENTS; RESPONDENT FOUND GUILTY OF FALSIFICATION OF OFFICIAL DOCUMENT WHEN HE FORGED THE SIGNATURE OF A JUDGE ON THE MARRIAGE CERTIFICATE TO MAKE IT APPEAR THAT THE LATTER OFFICIATED THE MARRIAGE. —** [F]alsification of an official document, as an administrative offense, is knowingly making false statements in official or public documents. The affixing of Judge Diaz's purported signature on the marriage certificate made it appear that the former officiated Springael's marriage when in truth, he was on official leave and outside of the country. Aside from Judge Diaz's testimony disavowing his signature, documents submitted in court, *i.e.*, photocopies of the stamps in his passport, show that he was abroad from 9 April to 19 May 2011. Clearly, Judge Diaz could neither have

solemnized Springael's wedding on 18 April 2011 nor signed the marriage certificate.

4. **ID.; ID.; ID.; ALL JUDICIARY EMPLOYEES ARE EXPECTED TO CONDUCT THEMSELVES WITH PROPRIETY AND DECORUM AT ALL TIMES, AND AN ACT THAT FALLS SHORT OF THE EXACTING STANDARDS SET FOR PUBLIC OFFICERS, ESPECIALLY THOSE IN THE JUDICIARY, SHALL NOT BE COUNTENANCED; RESPONDENT FOUND GUILTY OF DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT, WHICH ARE BOTH GRAVE OFFENSES; PENALTY OF DISMISSAL FROM GOVERNMENT SERVICE, WITHOUT PREJUDICE TO CRIMINAL OR CIVIL LIABILITY, IMPOSED. —** Under Rule IV, Section 52 (A) (1) of the Uniform Rules in Administrative Cases in the Civil Service dishonesty and falsification of official document are both grave offenses punishable by dismissal from government service, without prejudice to criminal or civil liability. The penalty also carries with it the cancellation of respondent's eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. In a catena of cases, the penalty of dismissal is impose even on the first offense. This is not unexpected as dishonesty and falsification are malevolent acts that have no place in the Judiciary. In *Villordon v. Avila*, the Court stressed that employment in the judiciary demands the highest degree of responsibility, integrity, loyalty and efficiency from its personnel. All judiciary employees are expected to conduct themselves with propriety and decorum at all times. An act that falls short of the exacting standards set for public officers, especially those in the judiciary, shall not be countenanced. By his acts of dishonesty and falsification of an official document, Tesiorna has failed to measure up to the high and exacting standards set for judicial employees and must therefore be dismissed from service. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel.

DECISION

***PER CURIAM*:**

The Case

This administrative matter stems from an investigation conducted by Atty. Jose R. Ortiz, Jr. (Atty. Ortiz)[1] of the Office of the Clerk of Court, Metropolitan Trial Court (MeTC) of Quezon City regarding the falsification of the signature of Judge Augustus C. Diaz (Judge Diaz) on a marriage certificate, allegedly committed by Maximo D. Legaspi (Legaspi) and Desiderio S. Tesiorna (Tesiorna; collectively, respondents), Process Servers of the MeTC.

The Facts

In a letter[2] dated 06 June 2011, Atty. Ortiz sought the assistance of Executive Judge Caridad Walse-Lutero (Judge Walse-Lutero) in an investigation for falsification of official document, in particular, a marriage certificate signed by Judge Diaz of MeTC, Branch 37 which was prompted by a letter-complaint by Nathaniel Jonathan Springael (Springael).

Atty. Ortiz stated that on 02 June 2011, Judge Diaz together with his Branch Clerk of Court and Springael came to his office to inquire about a Certificate of Marriage with Registry No. 2011-05595.[3] It appears in the said certificate that a marriage was solemnized by Judge Diaz on 18 April 2011 between Springael and his partner, Willy Rose Lagulao. However, Judge Diaz explained that this was impossible, considering that he was on official leave and in the United States at that time.[4] Consequently, he disavowed his signature therein.

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[1] Clerk of Court IV of the MeTC of Quezon City.

[2] *Rollo*, pp. 2-4.

[3] *Id.* at 7.

[4] *Id.* at 2.

In his letter-complaint,[5] Springael related that in early April 2011, he went to Quezon City Hall to apply for marriage papers where he met a certain "Derio" who undertook to assist him. He explained that he would be having a wedding but since his pastor had an expired license, he needed a marriage certificate. Springael received some forms from Derio who intimated that there was no need for a personal appearance before the judge for the purpose, as a marriage certificate would nonetheless be issued. Springael went along with Derio's suggestion, considering he was an employee of the Court. He gave Derio ₱5,000.00 and after Holy Week, he picked up the signed marriage certificate. On 01 June 2011, Springael went to the office of Judge Diaz to personally express his appreciation and it was then that he discovered that Judge Diaz did not sign the marriage certificate.

During his investigation, Atty. Ortiz summoned Tesiorna, a Process Server from the Office of the Clerk of Court (OCC) of the MeTC, being the only employee known as "Derio" in their office. When he appeared, Springael positively identified him as the person who "processed" his marriage documents.[6]

In view of the accusation against him, Atty. Ortiz issued a Memorandum[7] to Tesiorna, directing him to explain. On 03 June 2011, Tesiorna submitted a handwritten *Sinumpaang Salaysay*[8] admitting that: (i) he gave Springael a blank marriage certificate and (ii) he typed the entries in the marriage certificate but stating that it was a certain "Max", who caused the affixing of Judge Diaz's "signature" therein. Tesiorna later identified Max as Legaspi, a Process Server from Branch 43 of the MeTC.

Judge Walse-Lutero issued a Memorandum[9] dated 07 June 2011 directing Legaspi to comment on the allegations. In his

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[5] *Id.* at 6.

[6] *Id.* at 2.

[7] Not attached to the *rollo*.

[8] *Rollo*, p. 5.

[9] *Id.* at 8.

Compliance[10] dated 08 June 2011, Legaspi denied any participation in the issuance of the fraudulent marriage certificate. He denied receiving papers related to the subject marriage certificate or even talking to Tesiorna concerning Springael.

Pursuant to the Resolution[11] dated 30 September 2013, the instant administrative complaint against respondents was referred to the Executive Judge of the Regional Trial Court of Quezon City for investigation.

Executive Judge Report and Recommendation

On 12 September 2016, Executive Judge Fernando T. Sagun, Jr. (Judge Sagun) issued a Resolution[12] finding Tesiorna guilty of dishonesty and falsification of official document. He determined that it was sufficient to hold Tesiorna administratively liable for these charges based on the latter's own admission in his *Sinumpaang Salaysay* whereby he admitted to issuing a blank marriage certificate to Springael, thus:

> *Ang sabi ko po susubukan ko po at bibigyan ko po sila ng Certificate of Marriage na blanko para papirmahan sa both parties, ninang at ninong, after a week binalik po sa akin ang marriage certificate na may mga pirma na at pagkakuha ko ng marriage license noong April 18, 2011 agad kung tinype sa Certificate of Marriage at ibinigay ko kay Max, at kung may alam syang gagaya sa pirma ni Judge, mahigit isang ling(g)o ibinalik sa akin na may pirma na. Hindi ko alam kung saan sya pinapirmahan.*[13]

Judge Sagun concluded that more than substantial evidence was adduced, in fact, proof beyond reasonable doubt established Tesiorna's culpability.[14] As regards Legaspi, he determined that the forgery of Judge Diaz's signature could not be shifted to him considering that Springael testified that he neither met

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[10] *Id.* at 9.

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

[12] *Id.* at 257-264.

[13] *Id.* at 278. (Underscoring supplied)

[14] *Id.* at 264.

nor transacted with him. It was only Tesiorna whom he dealt with regarding his request for a marriage certificate. Thus, the following recommendations were made:

1. That Tesiorna be permanently dismissed from service as Process Server of the OCC of MeTC of Quezon City;

2. That Legaspi be acquitted/exonerated from the charge for complete lack of evidence and that the administrative complaint as to him be dismissed.

The OCA's Evaluation and Recommendation

In a Memorandum[15] dated 29 September 2017, the Office of the Court Administrator (OCA) adopted the findings of Judge Sagun and recommended that Tesiorna be found guilty of Falsification of Official Document. Accordingly, he was meted the penalty of dismissal from service with forfeiture of his retirement benefits except accrued leave credits, and perpetual disqualification from reemployment from government service. Meanwhile, the OCA determined that the administrative case against Legaspi should be dismissed for lack of substantial evidence.

The Court's Ruling

After a thorough review of the matter, the Court adopts the recommendations of Judge Sagun. Tesiorna is guilty of dishonesty and falsification of official document, while the case against Legaspi should be dismissed for lack of legal and factual basis.

To sustain a finding of administrative culpability, only substantial evidence is required, not overwhelming or preponderant, and very much less than proof beyond reasonable doubt as required in criminal cases.[16] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[17] In this case, the Court finds that this quantum of proof has been met.

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[15] *Id.* at 284-288.

[16] *Office of the Ombudsman v. Torres*, 567 Phil. 46, 57 (2008).

[17] Section 5, Rule 133 of the Revised Rules of Court.

In his defense, Tesiorna argues that no falsification of official document was committed because Springael testified that what he received from the former was an application for marriage license and not a marriage certificate; in fact, Springael did not even file a formal complaint against him. As testified by Springael, he also did not witness Tesiorna forge Judge Diaz's signature. Similarly, save for his bare allegation, there was no proof that Tesiorna received ₱5,000.00 as claimed.[18]

Such arguments do not serve to exculpate Tesiorna from administrative liability.

At the onset, it bears stressing that upon clarification by the court on cross-examination, Springael testified that what was given to him was a certificate of marriage and not a marriage license as earlier stated.[19] To eliminate any uncertainty, upon directive by the court, Springael was shown the documents submitted into evidence where he identified the marriage certificate as the paper given to him by Tesiorna. Furthermore, he stated in no uncertain terms that he transacted with Tesiorna.[20] More importantly, Tesiorna himself admitted[21] that he gave Springael a blank, marriage certificate. The Court sustains the determination by Judge Sagun that such act in itself is sufficient to hold him administratively liable.

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."[22] It involves intentionally making a false statement to deceive or commit a fraud.[23] Here, Tesiorna represented himself as having the capacity to secure a marriage certificate for Springael, when

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[18] *Rollo*, pp. 72-74.

[19] *Id.* at 149-150; TSN, 10 January 2014, pp. 8-14.

[20] *Id.* at 108-109; TSN, 18 December 2013, pp. 33-34.

[21] See Sinumpaang Salaysay dated 06 June 2011; *id.* at 56-57, Judicial Affidavit of Desiderio S. Tesiorna dated 04 February 2014.

[22] *Office of the Ombudsman v. Fetalvero, Jr.*, G.R. No. 211450, 23 July 2018.

[23] *Id.*

in truth and in fact, his duties as a process server do not even include this function. Atty. Ortiz explained that as a process server, Tesiorna was only tasked to serve notices of the OCC and other related functions, and not the processing of marriage papers which was the duty of another court personnel.[24] Consequently, even the receipt of an application of solemnization of marriage is outside the purview of his job.

Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity.[25] It is a malevolent act that has no place in the judiciary, as "no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary."[26] While it cannot be gainsaid that there is no direct evidence that it was Tesiorna who actually forged Judge Diaz's signature, the surrounding circumstances herein undoubtedly show his direct participation in procuring a marriage certificate for Springael. Notably, the records of this case are bereft of any showing that Springael was impelled by any improper motive as to falsely accuse Tesiorna with such a serious offense. On the other hand, falsification of an official document, as an administrative offense, is knowingly making false statements in official or public documents.[27] The affixing of Judge Diaz's purported signature on the marriage certificate made it appear that the former officiated Springael's marriage when in truth, he was on official leave and outside of the country. Aside from Judge Diaz's testimony disavowing his signature, documents submitted in court, *i.e.*, photocopies of the stamps in his passport,[28] show that he was abroad from 9 April to 19 May 2011. Clearly, Judge Diaz could neither have solemnized

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[24] *Rollo*, pp. 2-3.

[25] *Atty. Nava v. Prosecutor Artuz*, 817 Phil. 242, 255 (2017).

[26] *Id.*

[27] *Office of the Ombudsman v. Torres*, *supra* note 16, at 58.

[28] *Rollo*, pp. 51-52.

Springael's wedding on 18 April 2011 nor signed the marriage certificate.

Under Rule IV, Section 52 (A) (1) of the Uniform Rules in Administrative Cases in the Civil Service[29] dishonesty and falsification of official document are both grave offenses punishable by dismissal from government service, without prejudice to criminal or civil liability. The penalty also carries with it the cancellation of respondent's eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.[30] In a catena of cases, the penalty of dismissal is imposed even on the first offense.[31] This is not unexpected as dishonesty and falsification are malevolent acts that have no place in the judiciary. In *Villordon v. Avila*,[32] the Court stressed that employment in the judiciary demands the highest degree of responsibility, integrity, loyalty and efficiency from its personnel. All judiciary employees are expected to conduct themselves with propriety and decorum at all times.[33] An act that falls short of the exacting standards set for public officers, especially those in the judiciary, shall not be countenanced.

By his acts of dishonesty and falsification of an official document, Tesiorna has failed to measure up to the high and exacting standards set for judicial employees and must therefore be dismissed from service. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel.[34]

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[29] Civil Service Resolution No. 991936 (1999).

[30] Section 58 (a), Uniform Rules in Administrative Cases in the Civil Service.

[31] See *Quinsay v. Avellaneda*, 507 Phil. 417 (2005); *Retired Employee v. Manubag*, 591 Phil. 21 (2008).

[32] 692 Phil. 388 (2012).

[33] *Id.* at 398.

[34] *Adm. Case for Dishonesty and Falsification Against Luna*, 463 Phil. 878, 889 (2003).

Meanwhile the Court sustains the recommendation that the administrative case be dismissed as against Legaspi. Save for Tesiorna's bare allegation that he gave the marriage certificate to Legaspi, who thus returned it with Judge Diaz's purported "signature," no other evidence was presented implicating Legaspi. Throughout the investigations conducted by the MeTC and Judge Sagun, Springael has consistently stated that he only dealt with Tesiorna regarding his request for a marriage certificate. He had neither seen nor met Legaspi until the hearing before Judge Sagun.

WHEREFORE, the Court finds respondent Desiderio S. Tesiorna **GUILTY** of dishonesty and falsification of official document. He is forthwith **DISMISSED** from service, with cancellation of eligibility, forfeiture of all benefits, except accrued leave credits, and disqualification for reemployment in the government service, including in government-owned or controlled corporations.

The administrative case against respondent Maximo D. Legaspi is **DISMISSED** for lack of substantial evidence.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

EN BANC

[G.R. No. 252367. July 14, 2020]

RAZUL K. ABPI, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; REVIEW OF JUDGMENTS AND ORDERS OF THE COMMISSION ON AUDIT (COA); RULE 64 PETITION; BELATED FILING OF A PETITION FOR *CERTIORARI* IS FATAL, AS PROCEDURAL RULES SHOULD BE TREATED WITH UTMOST RESPECT AND DUE REGARD SINCE THEY ARE DESIGNED TO FACILITATE THE ADJUDICATION OF CASES TO REMEDY THE WORSENING PROBLEM OF DELAY IN THE RESOLUTION OF RIVAL CLAIMS AND IN THE ADMINISTRATION OF JUSTICE; THE COURT MAY RELAX THE STRICT APPLICATION OF THE RULES OF PROCEDURE IN THE EXERCISE OF ITS LEGAL JURISDICTION, WHERE STRONG CONSIDERATIONS OF SUBSTANTIVE JUSTICE ARE MANIFEST IN THE PETITION. —** The Court has time and again ruled that the belated filing of a petition for *certiorari* under Rule 64 is fatal. As explained in *Binga Hydroelectric Plant, Inc. v. Commission on Audit*: ***We have said previously that the belated filing of a petition for certiorari under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.*** *From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.*

2. **ID.; ID.; ID.; ID.; A PARTY HAS THIRTY (30) DAYS FROM NOTICE OF THE JUDGMENT OR FINAL ORDER OR RESOLUTION SOUGHT TO BE REVIEWED TO FILE A PETITION FOR *CERTIORARI*, WHICH PERIOD MAY BE INTERRUPTED BY THE FILING OF A MOTION FOR NEW TRIAL OR RECONSIDERATION; IF THE MOTION**

IS DENIED, THE AGGRIEVED PARTY MAY FILE THE PETITION WITHIN THE REMAINING PERIOD, BUT WHICH SHALL NOT BE LESS THAN FIVE (5) DAYS, RECKONED FROM NOTICE OF DENIAL. — Section 3, Rule 64 of the Rules of Court provides that the petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. Petitioner reckoned the reglementary period to appeal the assailed Decision to the Court from his receipt of the assailed Resolution on 10 March 2020. This is erroneous because the 30-day period commenced upon receipt of the assailed Decision and was merely interrupted by the filing of the omnibus motion. Since petitioner received a copy of the assailed Decision on 09 November 2018 and filed an omnibus motion on 19 November 2018, petitioner had 20 days within which to file a petition for *certiorari*. On 10 March 2020, petitioner received a copy of the assailed Resolution. Thus, another five (5) days passed, *i.e.,* 15 days remained before the Supreme Court issued Administrative Circular No. 31-2020 on 16 March 2020 providing for an extension of 30 calendar days to be counted from 16 April 2020 for petitions that fall due from 15 March 2020 to 15 April 2020. Applying the foregoing, the last day of filing of a Petition for *Certiorari* falls on 18 May 2020. However, petitioner only filed his Petition for *Certiorari* on 26 June 2020 or 39 days after the last day for filing. The records are bereft of any showing that petitioner either filed a motion for extension of time or proffered any compelling reason in the Petition to warrant the relaxation of procedural rules.

3. **ID.; ID.; ID.; ID.; A *CERTIORARI* PETITION MUST BE VERIFIED AND ACCOMPANIED BY A CERTIFICATION AGAINST FORUM-SHOPPING; THE ABSENCE OR A DEFECT IN THE EXECUTION OF A CERTIFICATION AGAINST FORUM SHOPPING IS GENERALLY NOT CURABLE BY THE SUBMISSION THEREOF AFTER THE FILING OF THE PETITION. —** [A] *certiorari* petition filed under Rule 64 of the Rules of Court must be verified and

accompanied by a certification against forum-shopping. Notably, attached to the Petition for *Certiorari* is a Manifestation by undersigned counsel of petitioner to the effect that the Verification and Certification against Forum-Shopping is a mere photocopy and undertakes to submit the original within three (3) days upon receipt. Records reveal that this has yet to be complied with. While verification is a formal rather than jurisdictional requirement and thus, its absence is not detrimental to a petition; the absence or a defect in the execution of a certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 64 of the Rules of Court states that the failure of the petitioner to comply with the foregoing requirements shall be sufficient ground for the dismissal of the petition.

4. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION ON THE PART OF THE COMMISSION ON AUDIT (COA) IMPLIES SUCH CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AS IS EQUIVALENT TO LACK OR EXCESS OF JURISDICTION OR, THE EXERCISE OF THE POWER IN AN ARBITRARY MANNER BY REASON OF PASSION, PREJUDICE, OR PERSONAL HOSTILITY, WHICH MUST BE SO PATENT OR GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR TO A VIRTUAL REFUSAL TO PERFORM THE DUTY ENJOINED OR TO ACT AT ALL IN CONTEMPLATION OF LAW; GRAVE ABUSE OF DISCRETION, NOT COMMITTED BY THE COA WHEN IT DENIED THE PETITION FOR REVIEW AND SUSTAINED THE NOTICES OF DISALLOWANCES. — Grave abuse of discretion on the part of the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Thus, it is incumbent upon petitioner to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. After a judicious study of the case, the Court finds that petitioner has failed in this regard. x x x [T]he COA acted in accordance with the law, rules, and regulations in denying

the Petition for Review and consequently, sustaining the NDs issued against petitioner.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT (RRPC); AN APPEAL TO THE OFFICE OF THE SPECIAL AUDITS DIRECTOR MUST BE FILED WITHIN SIX (6) MONTHS AFTER RECEIPT OF THE DECISION APPEALED FROM, AND AN APPEAL WITH THE COA COMMISSION PROPER SHOULD BE FILED WITHIN THE TIME REMAINING OF THE SIX MONTH REGLEMENTARY PERIOD; THE DECISION OF THE SPECIAL AUDITS OFFICE (SAO) UPHOLDING THE VALIDITY OF THE NOTICES OF DISALLOWANCES BECAME FINAL AND EXECUTORY, WHERE THE PETITION FOR REVIEW ASSAILING THE SAME WAS FILED BEYOND THE REGLEMENTARY PERIOD. —** Under Section 4, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC), an appeal to the Director must be filed within six (6) months after receipt of the decision appealed from. However, this must be read in conjunction with Section 3 of Rule VII of the RRPC which is emphatic that an appeal with the Commission Proper should be filed within the time remaining of the six month reglementary period: x x x. In the case of petitioner, the entire six (6) month period to appeal from the Office of the SAO Director and the Commission Proper had already lapsed even before the filing of the Petition for Review before the COA. Records show that petitioner received the NDs on 06 December 2011. Petitioner filed his Appeal Memorandum on 04 June 2012, or after 180 days, which is within the six (6) months period prescribed. On 23 May 2013, the Office of the SAO Director denied the appeal on the merits in SAO Decision No. 2013-001, a copy of which was received by petitioner on 24 June 2013. On 04 July 2013, or after ten days from receipt thereof, petitioner filed a Petition for Review with the Commission Proper. It is clear that petitioner filed the Petition for Review beyond the reglementary period which is within six (6) months or 180 days after receipt of copies of the NDS. Thus, SAO Decision No. 2013-001, upholding the validity of the NDs, became final and executory in accordance with Section 51 of the Government Auditing Code of the Philippines and Section 3, Rule X of the RRPC.

6. REMEDIAL LAW; CIVIL PROCEDURE; REVIEW OF JUDGMENTS AND ORDERS OF THE COMMISSION ON AUDIT (COA); RULE 64 PETITION; NOT ALL ERRORS OF THE COMMISSION ON AUDIT IS REVIEWABLE BY THE COURT, AS THE COURT'S REVIEW IS CONFINED SOLELY TO QUESTIONS OF JURISDICTION WHENEVER A TRIBUNAL, BOARD OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTION ACTS WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES CHARGED WITH THEIR SPECIFIC FIELD OF EXPERTISE, ARE AFFORDED GREAT WEIGHT BY THE COURTS, AND IN THE ABSENCE OF SUBSTANTIAL SHOWING THAT SUCH FINDINGS WERE MADE FROM AN ERRONEOUS ESTIMATION OF THE EVIDENCE PRESENTED, THEY ARE CONCLUSIVE, AND IN THE INTEREST OF STABILITY OF THE GOVERNMENTAL STRUCTURE, SHOULD NOT BE DISTURBED. — [F]actual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. As explained in *Maritime Industry Authority v. Commission on Audit*, not all errors of the Commission on Audit is reviewable by this Court, thus: A Rule 65 petition is a unique and special rule because it commands limited review of the question raised. As an *extraordinary remedy*, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The limitation of the Court's power of review over COA rulings merely complements its nature as an ***independent constitutional body*** that is tasked to safeguard the proper use of the government and, ultimately, the people's

property by vesting it with power to (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.

7. **ID.; ID.; ID.; ID.; THE FINDINGS OF FACT OF THE COMMISSION ON AUDIT SUPPORTED BY SUBSTANTIAL EVIDENCE SHALL BE FINAL AND NON-REVIEWABLE; THE COURT SUSTAINS THE DECISIONS OF ADMINISTRATIVE AUTHORITIES, ESPECIALLY ONE WHICH IS CONSTITUTIONALLY-CREATED NOT ONLY ON THE BASIS OF THE DOCTRINE OF SEPARATION OF POWERS, BUT ALSO FOR THEIR PRESUMED EXPERTISE IN THE LAWS THAT THEY ARE ENTRUSTED TO ENFORCE. —** [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce. While the assailed Decision and Resolution refrained from discussing at length the findings of the SAO upon which liability on petitioner is imposed; reference to the SAO Decision and SAO Report, from which the SAO Decision is based, reveals that there was factual and legal basis why the flagged transactions were deemed irregular and correspondingly, petitioner's involvement therein. Section 5, Rule 64 of the Rules of Court states that the findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. It bears to note that the nature of petitioner's participation and/or involvement in the questioned transactions subject of the 16 NDs were specified individually yet petitioner focused his arguments on a general discussion rather than directing his averments to the specific audit findings. Needless to state, each transaction is attended by its own peculiarities and it is incumbent upon petitioner to address them in point. Petitioner has not established that the COA's findings and conclusions fall short of required quantum of proof.

8. **ID.; ID.; JUDGMENTS; DOCTRINE OF FINALITY AND IMMUTABILITY OF JUDGMENT; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE**

MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW, AND EVEN IF THE MODIFICATION IS MADE BY THE COURT THAT RENDERED IT OR BY THE HIGHEST COURT OF THE LAND. — [P]etitioner's failure to seasonably file a Petition for Review before the COA of SAO Decision No. 2013-001 which affirmed the NDs affixing petitioner's liability, rendered the same final and executory. Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land.

APPEARANCES OF COUNSEL

Redemptor D. Peig for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

DELOS SANTOS, *J.*:

The Case

This Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court seeks the reversal of the Decision[2] dated 19 October 2016 and the Resolution[3] dated 29 January 2020 rendered by the Commission on Audit (COA). The assailed Decision and Resolution sustained the Notices of Disallowances[4] (NDs) issued to Razul K. Abpi (petitioner) totaling to ₱846,536,603.80 incurred during his tenure as Caretaker of Department of Public Works and Highways-Autonomous Region in Muslim Mindanao (DPWH-ARMM).

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[1] *Rollo,* pp. 3-21.

[2] *Id.* at 26-29; COA Decision No. 2016-297.

[3] *Id.* at 30-34; COA Decision No. 2020-175.

[4] *Id.* at 165-249.

The Facts

Before his retirement in 2012,[5] petitioner concurrently held the positions of Provincial Engineer of Maguindanao[6] and DPWH-ARMM Caretaker as of 03 October 2005.[7]

In 2010, the COA created a Special Audit Team (SAT) to assess the propriety of the accounting and utilization of funds, and the efficiency and effectiveness of project implementation of DPWH-ARMM from January 2008 to December 2009.[8] The audit concluded that the funds received by DPWH-ARMM were not properly recorded, utilized, and managed in accordance with prevailing law, rules, and regulations. The SAT detailed their findings in Special Audits Office (SAO) Report No. 2010-05[9] covering transactions involving the procurement of construction materials, construction/rehabilitation of various farm to market roads, utilization of cash advances, and payments to *pakyaw* labor contractors and suppliers/contractors. In view of the numerous anomalies discovered, SAT issued sixteen (16) NDs[10] where petitioner is included as one of the individuals being held accountable. In the case of petitioner, his inclusion in the NDs resulted from, among others, his role as the approving officer insofar as he: (1) signed disbursement vouchers, purchase orders, requisition and issuance slips in spite of the absence of supporting documents; (2) awarded contracts which were not subjected to public bidding; and (3) certified in certificates of completion to the effect that projects were constructed in accordance with the plans and specifications but in actuality, had evident deficiencies.

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[5] *Id.* at 334.

[6] *Id.* at 5; Petitioner was appointed as Provincial Engineer in July 2002.

[7] *Id.*; Petitioner was appointed as Caretaker of DPWH-ARMM on 03 October 2005 under Office Order No. 2010-531, Series of 2005 by Regional Governor Zaldy Ampatuan.

[8] *Id.* at 40.

[9] *Id.* at 36-164.

[10] *Id.* at 165-249.

On 14 June 2013, petitioner filed an Appeal Memorandum and Motion for Exclusion[11] with the Office of the SAO Director to assail the audit findings which formed the basis of the 16 NDs. In his defense, petitioner asserted, among others, that he acted in good faith when he relied on the certifications and recommendations of his subordinates and maintained that the presumption of regularity in the performance of official duties was applicable. Insofar as his signature was found in the questioned documents, he claimed that he was merely performing a ministerial duty which should not make him personally liable.[12]

On 23 May 2013, the SAO denied petitioner's appeal in SAO Decision No. 2013-00.[13] In so ruling, Director Susan P. Garcia reiterated the findings in SAO Report No. 2010-05 and detailed petitioner's participation in each ND for which he was being held accountable. It was ruled that petitioner's participation in the questioned transactions could not be considered ministerial, considering that the deficiencies in the documents were clearly apparent. As the designated Caretaker of DPWH-ARMM, he was primarily responsible under Section 102 of Presidential Decree No. 1445[14] for all funds and property of DPWH-ARMM.

On 04 July 2013, petitioner filed a Petition for Review with Motion for Exclusion from the Persons Liable[15] with the COA Commission Proper.

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[11] *Id.* at 250-271.

[12] *Id.* at 267.

[13] Penned by Director IV Susan P. Garcia; *id.* at 272-284.

[14] Ordaining and Instituting A Government Auditing Code of the Philippines, Presidential Decree No. 1445 [Government Auditing Code of the Philippines] (1978).

Section 102. Primary and secondary responsibility.

(1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible.

[15] *Rollo*, pp. 285-305.

Ruling by the Commission Proper

On 19 October 2016, the COA rendered COA Decision No. 2016-297[16] (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the petition for review with motion for exclusion of Mr. Razul K. Abpi, Caretaker, Department of Public Works and Highways-Autonomous Region in Muslim Mindanao, is hereby **DISMISSED** for having been filed out of time. Accordingly, Special Audit Office (SAO) Decision No. 2013-001 dated May 23, 2013, which affirmed SAO Notice of Disallowance Nos. DPWH-11-001-101-(09), 11-006-101-(09), 11-016-101-(09), DPWH-11-002 to 005-101-(08 & 09), 11-009 to 010-101-(08 & 09), 11-013-101-(08 & 09), 11-015-101-(08 & 09), and DPWH-11-007 to 008-101-(08), 11-011 to 012-101-(08), and 11-014-101-(08), all dated August 26, 2011, in the total amount of ₱846,536,603.80, is **FINAL and EXECUTORY**.[17]

The assailed Decision dismissed the petition for review for being belatedly filed. This notwithstanding, the COA held that the appeal would still be denied for lack of legal and factual basis. In a *Separate Opinion*[18] penned by COA Chairperson Michael Aguinaldo, despite the denial of the petition for review, he averred that the amount of disallowance may be reduced by the reasonable value of any materials actually delivered, or work actually completed which actually benefitted the government as held in *Melchor v. Commission on Audit*.[19]

On 28 February 2018, a Notice of Finality of Decision (NFD) No. 2018-038[20] was issued stating that the assailed Decision had become final and executory.

Aggrieved, petitioner moved for reconsideration *via* an Omnibus Motion to Lift Finality of Decision, Reconsideration,

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[16] *Id.* at 26-29.

[17] *Id.* at 28.

[18] *Id.* at 35.

[19] 277 Phil. 801 (1991).

[20] *Rollo,* pp. 314-316.

and Exclusion from Persons Liable.[21] On 29 January 2020, the COA issued the assailed Resolution[22] denying the same. The COA maintained that the petition for review was belatedly filed and upheld the audit findings of SAT which it held was sufficient to warrant a conclusion that the transactions subject of the NDs were spurious and irregular. Finally, the COA ruled that petitioner could not invoke *Arias v. Sandiganbayan*[23] to anchor his exclusion from liability. Rather than a mere approving authority, petitioner directly participated in the procedure leading to the consummation of the disallowed transactions.

The Issues

I. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the notices of disallowances based on [an] incomplete audit.

II. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed petitioner's liability for the notices of disallowances.

The Court's Ruling

The Petition for *Certiorari* is denied for: (a) being filed out of time; (b) defective verification and certification against forum shopping; and (c) failure to show grave abuse of discretion on the part of the COA.

The Court has time and again ruled that the belated filing of a petition for *certiorari* under Rule 64 is fatal. As explained in *Binga Hydroelectric Plant, Inc. v. Commission on Audit*:[24]

We have said previously that the belated filing of a petition for certiorari under Rule 64 is fatal. Procedural rules should be treated

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[21] *Id.* at 317-331.

[22] *Id.* at 30-34.

[23] 259 Phil. 794 (1989).

[24] G.R. No. 218721, 10 July 2018.

> ***with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.*** *From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.*[25]

Section 3, Rule 64 of the Rules of Court provides that the petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Petitioner reckoned the reglementary period to appeal the assailed Decision to the Court from his receipt of the assailed Resolution on 10 March 2020.[26] This is erroneous because the 30-day period commenced upon receipt of the assailed Decision and was merely interrupted by the filing of the omnibus motion. Since petitioner received a copy of the assailed Decision on 09 November 2018 and filed an omnibus motion on 19 November 2018, petitioner had 20 days within which to file a petition for *certiorari*. On 10 March 2020,[27] petitioner received a copy of the assailed Resolution. Thus, another five (5) days passed,

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[25] *Id.* (Emphasis supplied)

[26] *Rollo*, p. 4.

[27] *Id.*

i.e., 15 days remained before the Supreme Court issued Administrative Circular No. 31-2020[28] on 16 March 2020 providing for an extension of 30 calendar days to be counted from 16 April 2020 for petitions that fall due from 15 March 2020 to 15 April 2020.

Applying the foregoing, the last day of filing of a Petition for *Certiorari* falls on 18 May 2020.[29] However, petitioner only filed his Petition for *Certiorari* on 26 June 2020[30] or 39 days after the last day for filing. The records are bereft of any showing that petitioner either filed a motion for extension of time or proffered any compelling reason in the Petition to warrant the relaxation of procedural rules.

Moreover, a *certiorari* petition filed under Rule 64 of the Rules of Court must be verified[31] and accompanied by a certification against forum-shopping.[32] Notably, attached to the Petition for *Certiorari* is a Manifestation[33] by undersigned counsel of petitioner to the effect that the Verification and Certification against Forum-Shopping is a mere photocopy and undertakes to submit the original within three (3) days upon receipt. Records reveal that this has yet to be complied with.

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[28] Supreme Court Administrative Circular No. 31-2020 dated 16 March 2020 Re: Rising Cases of COVID-19.

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6. The filing of petitions and appeals, complaints, motions, pleadings, and other court submission that fall due during the period from 15 March 2020 until 15 April 2020 is EXTENDED for THIRTY (30) calendar days counted from 16 April 2020. However, those who prefer to file the said pleadings within the reglementary period without need of the extension granted may do so by facsimile or by transmitting them through electronic means, if available. x x x

[29] 30 calendar days from 16 April 2020 is 16 May 2020, a Saturday.

[30] *Rollo,* p. 3.

[31] *Vallacar Transit, Inc. v. Catubig*, 664 Phil. 529, 540-541 (2011).

[32] Rules of Court, Rule 64, Sec. 5.

[33] *Rollo,* p. 20.

While verification is a formal rather than jurisdictional requirement and thus, its absence is not detrimental to a petition; the absence or a defect in the execution of a certification against forum shopping is generally not curable by the submission thereof after the filing of the petition.[34] Section 5, Rule 64 of the Rules of Court states that the failure of the petitioner to comply with the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Even if the Court were to disregard these procedural infirmities, the Petition would nonetheless be dismissed.

Grave abuse of discretion on the part of the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[35] Thus, it is incumbent upon petitioner to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. After a judicious study of the case, the Court finds that petitioner has failed in this regard. As will be further discussed below, the COA acted in accordance with the law, rules, and regulations in denying the Petition for Review and consequently, sustaining the NDs issued against petitioner.

Under Section 4, Rule V[36] of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC), an appeal to the Director must be filed within six (6) months after receipt of the decision appealed from. However, this must be read in conjunction with Section 3 of Rule VII of the RRPC which is emphatic that an appeal with the Commission Proper should

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[34] *Jacinto v. Gumaru, Jr.*, 734 Phil. 685, 696 (2014).

[35] *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97, 107 (2015).

[36] Rule V Proceedings Before the Director.

be filed within the time remaining of the six month reglementary period, thus:

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

In the case of petitioner, the entire six (6) month period to appeal from the Office of the SAO Director and the Commission Proper had already lapsed even before the filing of the Petition for Review before the COA. Records show that petitioner received the NDs on 06 December 2011.[37] Petitioner filed his Appeal Memorandum on 04 June 2012,[38] or after 180 days, which is within the six (6) months period prescribed. On 23 May 2013, the Office of the SAO Director denied the appeal on the merits in SAO Decision No. 2013-001, a copy of which was received by petitioner on 24 June 2013.[39] On 04 July 2013, or after ten days from receipt thereof, petitioner filed a Petition for Review with the Commission Proper.[40]

It is clear that petitioner filed the Petition for Review beyond the reglementary period which is within six (6) months or 180 days after receipt of copies of the NDS. Thus, SAO Decision No. 2013-001, upholding the validity of the NDs, became final and executory in accordance with Section 51[41] of the Government

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[37] *Rollo,* p. 253. Petitioner admitted receipt of the copies of the Notices of Disallowance on 06 December 2011 in his Appeal Memorandum dated 28 May 2012. Moreover, petitioner affixed his signature on each Notice of Disallowance, and beside it the date 12/6/11.

[38] *Id.* at 27.

[39] *Id.* at 285.

[40] *Id.*

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

Auditing Code of the Philippines and Section 3, Rule X[42] of the RRPC.

Even if this Court were to disregard the belated filing of the Petition for Review, it bears stressing that petitioner has not successfully shown that the COA acted with grave abuse of discretion in sustaining the NDs and holding him liable therefor.

At the onset, factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[43] As explained in *Maritime Industry Authority v. Commission on Audit*,[44] not all errors of the Commission on Audit is reviewable by this Court, thus:

> A Rule 65 petition is a unique and special rule because it commands limited review of the question raised. As an *extraordinary remedy*, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.
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> The limitation of the Court's power of review over COA rulings merely complements its nature as an ***independent constitutional body*** that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (i)

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[42] Section 13. *Entry of Decision*. — If no appeal is filed within the time provided in these rules, the decision of the Commission shall be entered by the Commission Secretary in the Docket which shall contain the dispositive part of the decision and shall be signed by the Secretary with a certificate that such decision has become final and executory. Such recording of the decision shall constitute the entry.

[43] *Lumayna v. Commission on Audit*, 616 Phil. 929, 940 (2009).

[44] 750 Phil. 288 (2015).

determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.[45]

Guided by these juridical pronouncements, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce.[46] While the assailed Decision and Resolution refrained from discussing at length the findings of the SAO upon which liability on petitioner is imposed; reference to the SAO Decision and SAO Report, from which the SAO Decision is based, reveals that there was factual and legal basis why the flagged transactions were deemed irregular and correspondingly, petitioner's involvement therein. Section 5, Rule 64 of the Rules of Court states that the findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. It bears to note that the nature of petitioner's participation and/or involvement in the questioned transactions subject of the 16 NDs were specified individually yet petitioner focused his arguments on a general discussion rather than directing his averments to the specific audit findings. Needless to state, each transaction is attended by its own peculiarities and it is incumbent upon petitioner to address them in point. Petitioner has not established that the COA's findings and conclusions fall short of required quantum of proof.

Finally, petitioner's failure to seasonably file a Petition for Review before the COA of SAO Decision No. 2013-001 which affirmed the NDs affixing petitioner's liability, rendered the same final and executory. Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to

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[45] *Id.* at 307-308. (Emphasis and italics in the original)

[46] *Id.* at 308.

correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land.[47]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The assailed Decision dated 19 October 2016 and the Resolution dated 29 January 2020 of the respondent Commission on Audit are **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.,* concur.

THIRD DIVISION

[G.R. No. 206077. July 15, 2020]

HELEN P. DENILA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, CITY GOVERNMENT OF DAVAO, BRGY. 74-A MATINA CROSSING FEDERATION, INC., represented by its PRESIDENT, LOLITA P. TANO, MATINA BALUSONG NEIGHBORHOOD ASSOCIATION, INC., represented by its PRESIDENT, FE I. BETIOS, ST. PAUL NEIGHBORHOOD ASSOCIATION, INC., represented by its PRESIDENT, ESTRELLA E. NAMATA, ST. BENEDICT XVI NEIGHBORHOOD ASSOCIATION, INC., represented by its PRESIDENT, MELCHOR LECIONAN, SHALOM NEIGHBORHOOD ASSOCIATION, INC., represented by its PRESIDENT, ROMEO PACHO, ALEJANDRO**

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[47] *Roy III v. Herbosa*, 800 Phil. 459, 527 (2016).

ALONZO, JR., MARITES ALONZO-LILOC, ARACELI ALONZO-DIOLASO, ROBERTO ALONZO, EULALIA ANGELITUD, EVANGELINE BAUTISTA, SALVADOR BAUTISTA, FELIMON BILIRAN, JR., LOURDES BILIRAN, REYNALDO BILIRAN, ARSENIO BRIONES, NORMA CAL, MARILYN CAÑETE, EDGARDO COSTANTE, JOY BILL DELA CRUZ, MARJORIE DELA CRUZ, JOHN JAMES ESPINOSA, ROMAR CAÑETE, TIMOTEO[1] **C. FLORES, JEMUEL GAUDICOS, LILY LISONDRA, ERWIN PACADA, ALMA PAGALAN, LEONARDO PELOÑO, REYNALDO POLIQUIT, VIRGILIO REUYAN, JESUS REUYAN, SR., ROGELIO REUYAN, ARLAN SILVA, CARMELITA SILVA, ROMMEL SILVA, GRACE TEMONERA, ERLINDA VALENCIA, and DEL CARMEN MATINA APLAYA NEIGHBORHOOD ASSOCIATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY PURE QUESTIONS OF LAW MAY BE RAISED THEREIN. —** [T]his Court reiterates the basic procedural rule that it is not a trier of facts and that only pure questions of law may be raised in a petition for review on *certiorari* under Rule 45. Although jurisprudence has provided several exceptions to this rule, such exceptions must be alleged, substantiated and proved by the parties so that this Court may effectively evaluate and review the factual issues raised. Notably, like all other modes of appeal, the function of a Petition for Review on *Certiorari* under Rule 45 is to enable this Court to determine and correct any error of judgment committed in the exercise of jurisdiction.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL PROSPER ONLY IF GRAVE ABUSE OF DISCRETION IS ALLEGED AND PROVED TO EXIST; GRAVE ABUSE OF DISCRETION, EXPLAINED. —** [A] special civil action

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[1] Also referred to as "Tomoteo" in some parts of the *rollo*.

for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Likewise, jurisprudence is also settled in defining the phrase "grave abuse of discretion" as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. In some rare instances, the term "grave abuse" even refers to cases in which there has been a gross misapprehension of facts — but only for the limited purpose of establishing the allegation of grave abuse of discretion. Correspondingly, the term "without jurisdiction" means that the court acted with *absolute* lack of authority; while the term "excess of jurisdiction" means that the court transcended its power or acted without any statutory authority. As such, petitioner has the burden of proof to show that the act of the public respondent in issuing the impugned order (or decision, in some cases) lacked or exceeded its jurisdiction because mere abuse is not enough — it must be grave. This is done by clearly showing, to the satisfaction of the reviewing court, the presence of caprice and arbitrariness in the exercise of discretion on the part of the inferior court or tribunal.

3. **POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO DUE PROCESS; A CRITICAL COMPONENT THEREOF IS A HEARING BEFORE AN IMPARTIAL AND DISINTERESTED TRIBUNAL. —** A critical component of due process is a hearing before an impartial and disinterested tribunal. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge. Such constitutional principle is the basis of Section 1, Rule 137 of the Rules of Court.

4. **LEGAL ETHICS; JUDGES; DISQUALIFICATION OF JUDGES; TWO KINDS OF INHIBITION. —** [Section 1, Rule 137 of the Rules of Court] contemplates two (2) kinds of inhibition: (a) compulsory; and (b) voluntary. Under the *first* paragraph of the aforecited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The *second* paragraph, which embodies voluntary

inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide. It is the latter kind of inhibition which rests on the subjective ground of conscience; that is why cases under such category should be analyzed on a case-to-case basis.

5. **ID.; ID.; RAFFLE OF CASES; PURPOSE. —** Indeed, no case may be assigned without being raffled, and no judge may choose the cases assigned to him. The raffle of cases is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges. Such process assures the public that the right of the parties to be heard by an impartial and unbiased tribunal is safeguarded while also protecting judges from any suspicion of impropriety. More importantly, "[t]his Court has repeatedly and consistently demanded 'the **cold neutrality** of an impartial judge' as the **indispensable imperative of due process.** [N]o case may be assigned without being raffled, and no judge may choose the cases assigned to him. The raffle of cases is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges. Such process assures the public that the right of the parties to be heard by an impartial and unbiased tribunal is safeguarded while also protecting judges from any suspicion of impropriety. More importantly, "[t]his Court has repeatedly and consistently demanded 'the **cold neutrality** of an impartial judge' as the **indispensable imperative of due process**."

6. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CERTAIN SITUATIONS WHEN THE EXTRAORDINARY REMEDY OF *CERTIORARI* MAY BE DEEMED PROPER. —** [T]he **instances** in which *certiorari* will issue cannot be defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ. Jurisprudence recognizes **certain situations** when the extraordinary remedy of *certiorari* may be deemed proper, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and

(g) in case of urgency. Moreover, the same remedy **may be availed** of **even if the lost appeal** was occasioned by a **party's neglect** or **error** in the **choice of remedies** when: (a) public welfare and the **advancement of public policy** dictates; (b) the broader interest of justice so requires; (c) the writs issued are null and void; or (d) the **questioned order** amounts to an **oppressive exercise of judicial authority**.

7. **ID.; RULES OF PROCEDURE; LIBERAL CONSTRUCTION THEREOF, WHEN ALLOWED. —** [T]he principle of **liberal construction** of procedural rules has been allowed by this Court in the following cases: (a) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (b) where the interest of substantial justice will be served; (c) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (d) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. In addition, jurisprudence also teaches us that, aside from matters of life, liberty, honor or property which would **warrant** the **suspension** of the Rules of the **most mandatory character** and an examination and review by the appellate court of the lower courts findings of fact, the other elements that should be considered are the following: (a) the **existence** of **special** or **compelling circumstances;** (b) the **merits** of the case; (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (d) a lack of any showing that the review sought is merely frivolous and dilatory; and (e) the other party will not be unjustly prejudiced thereby.

8. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; OFFICE OF THE SOLICITOR GENERAL; PRINCIPAL LAW OFFICER AND LEGAL DEFENDER OF THE GOVERNMENT; COPIES OF ORDERS AND DECISIONS SERVED ON THE DEPUTIZED COUNSEL, ACTING AS AN AGENT OR REPRESENTATIVE OF THE SOLICITOR GENERAL, ARE NOT BINDING UNTIL THEY ARE ACTUALLY RECEIVED BY THE LATTER; CASE AT BAR. —** In this case, the records show that the RTC's March 4, 2008 Decision

was received by Davao City's Office of the **City Prosecutor** on **March 10, 2008**; while the same judgment was received by the **OSG** only on **March 27, 2008**. Technically, the State through the OSG has fifteen (15) days from its actual receipt on March 27, 2008 or **until April 11, 2008** to appeal the RTC's March 4, 2008 Decision — **not** fifteen (15) days from the deputized prosecutor's receipt on March 10, 2008 or until March 25, 2008. Suspiciously, Atty. Velasco, the RTC's Clerk of Court, **prematurely declared** the RTC's March 4, 2008 Decision **as final and executory** on **March 28, 2008** — only a day after the OSG actually received the said judgment. This obviously goes against the established jurisprudential principle that "copies of orders and decisions served on the deputized counsel, acting as an agent or representative of the Solicitor General, are not binding until they are actually received by the latter;" all in acknowledgement of the OSG's principal role as the "principal law officer and legal defender of the Government" as provided under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987. This means that the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.

9. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT OR IMMUTABILITY OF JUDGMENT; A DECISION WHICH HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE AND MAY NO LONGER BE MODIFIED IN ANY RESPECT EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW; EXCEPTIONS. —** The doctrine of finality of judgment or immutability of judgment articulates that a decision which has acquired finality becomes immutable and unalterable; it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end. Nonetheless, the immutability of judgment doctrine admits of some exceptions which are: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision rendering

its execution unjust and inequitable. Of these exceptions, the last couple of items in the enumeration (void judgments and supervening evident rendering the execution unjust and inequitable) may not be summarily performed by the court concerned because they are necessarily threshed out in another proceeding. In a procedural context, a final and executory judgment may be set aside in one of the following: (a) petition for relief from judgment under Rule 38; (b) direct action to annul and enjoin the enforcement of the judgment; and (c) direct action either by *certiorari* or by collateral attack against the challenged judgment which is void upon its face, or that the nullity of the judgment is apparent by virtue of its own recitals. This means that some exceptions to the immutability of judgment doctrine have been expanded to include the grounds of the foregoing remedies. "Void judgments," for example, encompasses the grounds enumerated under Rules 38 and 47 to include: (a) fraud; (b) accident; (c) mistake; (d) excusable negligence; (e) denial of due process; (f) extrinsic fraud; and (g) lack of jurisdiction. Likewise, supervening events which render the execution of an unjust and inequitable final judgment also allow an aggrieved party to pursue the remedy of filing a Petition for *Certiorari* against the order or *writ* of execution.

10. **ID.; COURTS; EQUITY JURISDICTION; IN RELATION TO THE CONCEPT OF EQUITY, EQUITY JURISDICTION AIMS TO PROVIDE COMPLETE JUSTICE IN CASES WHERE A COURT OF LAW IS UNABLE TO ADAPT ITS JUDGMENT TO THE SPECIAL CIRCUMSTANCES OF A CASE BECAUSE OF A RESULTING LEGAL INFLEXIBILITY WHEN THE LAW IS APPLIED TO A GIVEN SITUATION; CASE AT BAR. —** [E]quity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate. In relation to the concept of equity, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation. For equity jurisdiction to be successfully invoked, the factual antecedents of a plea for the exercise of liberality must be clear. As firmly established in the records of the case, special circumstances were indeed attendant (*i.e.* the presence of several intervenors who are actual occupants of the lots covered by the OCT's sought by petitioner

to be reconstituted and who are in danger of being deprived of their occupation). The same set of circumstances necessitates this Court to suspend the usual application of procedural rules in order to address serious allegations of injustices brought about by the complexity of the proceedings. As clarified earlier, when available records undoubtedly support the facts which are enough for this Court to pass upon the merits of a case intimately related to the one being reviewed at bench, a *pro tanto* review of such related case (especially in a *certiorari* proceeding) becomes justifiable.

11. **ID.; ID.; JURISDICTION; DEFINED; SEVERAL ASPECTS; EXPLAINED. —** Jurisdiction is the basic foundation of judicial proceedings. It is simply defined as the power and authority — conferred by the Constitution or statute — of a court to hear and decide a case. Without jurisdiction, a judgment rendered by a court is null and void and may be attacked anytime. Indeed, a void judgment is no judgment at all — it can neither be the source of any right nor the creator of any obligation; all acts performed pursuant to it and all claims emanating from it have no legal effect. In adjudication, the concept of jurisdiction has several ***aspects***, namely: (a) jurisdiction over the **subject matter**; (b) jurisdiction over the **parties**; (c) jurisdiction over the **issues** of the case; and (d) in cases involving property, jurisdiction over the ***res*** or the **thing** which is the subject of the litigation. Additionally, a court must also acquire jurisdiction over the **remedy** in order for it to exercise its powers validly and with binding effect. First, jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court. Second, jurisdiction over the parties is the power of the courts to make decisions that are binding on them and is based on due process. This is acquired through voluntary appearance, in the case of the plaintiff or petitioner, or through the coercive power of legal processes, in the case of the defendant or respondent. Third, jurisdiction over the issues pertains to a tribunal's power and authority to decide over matters which are either disputed by the parties or simply under consideration. This aspect of jurisdiction is closely tied to jurisdiction over the remedy and over the subject matter which, in turn, is generally determined in the allegations of the initiatory pleading (complaint or petition) and not the result of proof. However, unlike jurisdiction over the subject-matter,

jurisdiction over the issues may be conferred by either express or implied consent of the parties. Fourth, jurisdiction over the *res* pertains to the court's authority over the object or thing subject of the litigation as well as its power to bind the same with its judgment. Last, jurisdiction over the remedy pertains to authority of a tribunal to take cognizance and pass upon the propriety of petitioner or complainant's reliefs sought. The same aspect of jurisdiction is dependent on either the statute providing for a specific procedure for the recognition of a particular right (*i.e.* reconstitution of certificate of title, registration of title, *etc.*) or the procedure promulgated by this Court pursuant to its constitutional powers (*i.e. habeas corpus, quo warranto*, declaratory relief, *etc.*).

12. **POLITICAL LAW; STATUTES; CERTAIN STATUTES CONFER JURISDICTION, POWER OR AUTHORITY WHILE OTHERS PROVIDE FOR THE PROCEDURE BY WHICH THAT POWER OR AUTHORITY IS PROJECTED INTO JUDGMENT. —** Certain statutes confer jurisdiction, power, or authority while others provide for the **procedure** by which that power or authority is projected into judgment — the first deals with the powers of the court in the real and substantive sense while the other class with the procedure by which such powers are put into action. As in this case, **special proceedings** are creatures of statutes (or constitutional provisions in the case of extraordinary *writs* like *habeas corpus*) that **do *both* — confer jurisdiction** on specific courts **while providing for a specific procedure to be followed** in order for the resulting judgment to be valid. The reason is that a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. It is unlike ordinary civil actions in which a party called a "complainant" who seeks for either the enforcement or protection of a right or the prevention or redress of a wrong. Here, the case has one definite party, who petitions or applies for a declaration of a status, right, or particular fact, but **no definite** adverse party. As such, the trial court must have **jurisdiction** to take cognizance of such petition or application in compliance with the **specific procedure** provided by law. The **authority to proceed** is conferred by a statute which is why the **manner** of **obtaining jurisdiction** is mandatory and the same must be strictly complied with. One must be mindful that the **acquisition** of jurisdiction is not a direct result of the inherent power of courts to settle actual controversies involving

injured or conflicting rights *per se* — **it traces its source from *substantive laws* which *set or fix jurisdictional requirements* for petitioners to not only allege but also *prove* in order to vest and validate the handling tribunal's authority as well as the proceedings already conducted**. This makes jurisdiction in special proceedings primarily **dependent** on petitioner's **strict compliance** with statutory requirements which fix the authority of the court to take cognizance of the case and pass a judgment thereon. Consequently, a petitioner's noncompliance with jurisdictional requirements in a special proceedings case removes a court's authority thereby rendering the whole proceedings void.

13. **CIVIL LAW; LAND TITLES AND DEEDS; REPUBLIC ACT NO. 26, AS AMENDED; A SPECIAL LAW WHICH PROVIDES FOR A SPECIFIC PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED; STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE LAW IS NECESSARY FOR THE COURT TO ACQUIRE JURISDICTION OVER A RECONSTITUTION CASE. —** Reconstitution of title is a special proceeding. Being a special proceeding, a petition for reconstitution must allege and prove certain specific jurisdictional facts before a trial court can acquire jurisdiction. R.A. No. 26, as amended, is the special law which provides for a specific procedure for the reconstitution of Torrens certificates of title lost or destroyed; Sections 2 and 3 thereof provide how original certificates of title and transfer certificates of title shall be respectively reconstituted and from what specific sources successively enumerated therein such reconstitution shall be made. It *confers jurisdiction* upon trial courts to hear and decide petitions for judicial reconstitution; however, before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for, petitioner must observe certain special requirements and mode of procedure prescribed by the law. More importantly, substantial compliance with jurisdictional requirement is not enough because the acquisition of jurisdiction over a reconstitution case is hinged on a **strict compliance** with the requirements of the law.

14. **ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH ANY OF THE JURISDICTIONAL REQUIREMENTS FOR A**

PETITION FOR RECONSTITUTION RENDERS THE WHOLE PROCEEDINGS NULL AND VOID; LIBERAL CONSTRUCTION OF THE RULES DOES NOT APPLY TO SUBSTANTIVE REQUIREMENTS SPECIFICALLY ENUMERATED BY A STATUTE, ESPECIALLY SO IF MATTERS AFFECTING JURISDICTION ARE INVOLVED. — Conversely, noncompliance with ***all*** jurisdictional requirements in special proceedings (such as reconstitution of title) adversely affects the trial court's jurisdiction over the *subject matter* of the case and, in cases where a specific procedure is outlined by law, over the *remedy* pursued by petitioner. Failure to comply with any of the jurisdictional requirements for a petition for reconstitution renders the whole proceedings null and void. Strict observance of this rule is vital to prevent parties from exploiting reconstitution proceedings as a quick but illegal way to obtain Torrens certificates of title over parcels of land which turn out to be already covered by existing titles. Comparatively, this Court cannot even take a lenient approach in resolving reconstitution cases because **liberal construction of the Rules does not apply to *substantive requirements* specifically enumerated by a statute**, **especially so if *matters affecting jurisdiction* are involved**. In other words, the principle of liberality cannot be applied to statutory requirements as they are not technical rules of procedure which may be brushed aside by the courts to serve the higher reason of resolving the case on the merits. In special proceedings, the merits directly hinges on petitioner's compliance with statutory requirements proven in court to establish a status, right or particular fact.

15. **ID.; ID.; ID.; REQUIREMENT OF ACTUAL NOTICE TO THE OCCUPANTS AND THE OWNERS OF ADJOINING PROPERTY UNDER SECTIONS 12 AND 13 THEREOF IS MANDATORY TO VEST JURISDICTION UPON THE COURT IN A PETITION FOR RECONSTITUTION OF TITLE AND ESSENTIAL IN ORDER TO ALLOW SAID COURT TO TAKE THE CASE ON ITS MERITS. —** For the trial court *to acquire jurisdiction* over the petition for reconstitution, the *occupants* of the property *should be notified* of the petition. In other words, it is beyond cavil that the **requirement of actual notice** to the **occupants *and*** the **owners** of the adjoining property under Sections 12 and 13 of R.A. No. 26 ***is itself*** **mandatory to vest jurisdiction** upon the court in a petition for reconstitution of title and essential in order to

allow said court to take the case on its merits. Verily, noncompliance with these requirements, especially as regards the notice of hearing as provided for under Section 13 of the same law, is fatal and the trial court cannot acquire jurisdiction over the petition for reconstitution. This Court emphasizes that the purposes of the stringent and mandatory character of the legal requirement of mailing the notice to the actual occupants of property covered by the certificates of title to be reconstituted are: (a) to safeguard against spurious and unfounded land ownership claims; (b) to apprise all interested parties of the existence of such action; and (c) to give them enough time to intervene in the proceeding. At all times, clear and convincing evidence proving the jurisdictional requirements must exist before a court may order the reconstitution of a destroyed or lost title.

16. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; UNDER THIS RULE, A FINAL JUDGMENT OR DECREE ON THE MERITS BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE OF THE RIGHTS OF THE PARTIES OR THEIR PRIVIES, IN ALL LATER SUITS AND ON ALL POINTS AND MATTERS DETERMINED IN THE PREVIOUS SUIT; ELEMENTS. —** *Res judicata* is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Under this rule, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. To invoke *res judicata*, the elements that should be present are: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) the disposition of the case must be a judgment on the merits; and (d) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

17. **ID.; ID.; ID.; ID.; THREE LOOSE CATEGORIES OF FINAL AND EXECUTORY JUDGMENTS AS REGARDS THEIR EFFECTS ON SUBSEQUENT AND RELATED PROCEEDINGS; SPECIAL PROCEEDINGS ARE SAID TO BE *IN REM* AS IT BINDS THE WHOLE WORLD. —** It can be deduced in [Section 4 of Rule 39] that there are three

(3) loose categories of final and executory judgments as regards their effects on subsequent and related proceedings. Paragraph (a) of the foregoing rule is commonly known to speak of judgments *in rem*; paragraph (b) is said to refer to judgments *in personam*; and paragraph (c) is the concept understood in law as "conclusiveness of judgment." Traditionally, paragraphs (b) and (c) are both *in personam* proceedings technically pigeonholed in prior cases before this Court under the blanket of the *res judicata* proper. Here, only two (2) concepts of *res judicata* were previously recognized — (a) bar by prior judgment" as enunciated in Section 47(b), Rule 39; and (b) "conclusiveness of judgment" as embodied in Section 47(c), Rule 39. However, the concept of *res judicata* <u>also embraces *in rem* proceedings embodied in paragraph (a)</u> because "a judgment or final order against a specific thing ... is <u>**conclusive**</u> <u>upon the title to the thing</u> [or the *res*]." This means that a judgment is directed "against the thing" which, as a consequence, "binds the whole world" because persons dealing with such "thing" are bound by the disposition of the tribunal which ruled on its legal status. As a consequence, **a final and executory judgment concluding an *in rem* proceeding becomes part of the legal attributes of the thing being litigated in which all persons dealing with it are bound to respect**. Accordingly, since special proceedings pertain to a declaration of status, right or particular fact, judgments therein are said to be *in rem* as it binds the whole world. The reason for the all-encompassing reach of final *in rem* judgments is that **the "whole world" had been constructive parties** (with non-participants usually subjected to a prior order of general default) to the case the moment the jurisdictional requirement of publication was met by petitioner. Such is also the reason why **special proceedings** present a **justiciable controversy** as they treat the declaration of a thing's legal status as a claim of interest **against everyone**. Here, what is crucial is the due publication of such notice because it brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. In other words, an *in rem* proceeding is validated essentially through publication.

18. ID.; ID.; MOTIONS; AS A RULE, THE THREE-DAY NOTICE REQUIREMENT IN MOTIONS REQUIRED TO BE HEARD IS MANDATORY; NONETHELESS, WHEN THE ADVERSE PARTY HAD BEEN AFFORDED THE OPPORTUNITY TO BE HEARD, AND HAS BEEN INDEED

HEARD THROUGH THE PLEADINGS FILED IN OPPOSITION TO THE MOTION, THE PURPOSE BEHIND THE 3-DAY NOTICE REQUIREMENT IS DEEMED REALIZED. — The general rule is that the three (3)-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court is mandatory. Nonetheless, when the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the 3-day notice requirement is deemed realized. In effect, the defect was cured for the adverse party was still notified of the existence of said pleading.

19. **ID.; ID.; INTERVENTION; REQUIREMENTS TO ALLOW INTERVENTION. —** Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. However, it is not an absolute right for the statutory rules or conditions for the right of intervention must be shown. Accordingly, to allow intervention: (a) it must be shown that the movant has **legal interest** in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a **separate proceeding** or not — both requirements must concur, as the first is not more important than the second. To sum it up, the legal interest as qualifying factor must be of a direct and immediate character so that ***the intervenor will either gain or lose by the direct legal operation of the judgment***. Hence, in all cases, the allowance or disallowance of a Motion for Intervention rests on the sound discretion of the court after consideration of the appropriate circumstances.

20. **LEGAL ETHICS; ATTORNEYS; STRICTLY REQUIRED TO MAINTAIN AT ALL TIMES THE HIGHEST DEGREE OF PUBLIC CONFIDENCE IN THE FIDELITY, HONESTY, AND INTEGRITY OF THE LEGAL PROFESSION. —** This Court has been exacting in its demand for integrity and good moral character of members of the Bar for them to uphold the integrity and dignity of the legal profession at all times. Lawyers should set a good example in promoting obedience to the

Constitution and the laws. This is because a lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession. That is why the entrusted privilege to practice law carries with it correlative duties not only to the client but also to the court, to the bar, and to the public. To this end, all members of the bar are strictly required to at all times maintain the highest degree of public confidence in the fidelity, honesty, and integrity of their profession. Indeed, the law is an exacting taskmaster. Membership in the Bar, as so appropriately put, is a privilege burdened with conditions.

21. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 10.02, CANON 10 THEREOF; MANDATES THAT A LAWYER SHALL NOT KNOWINGLY MISQUOTE OR MISREPRESENT THE TEXT OF A DECISION OR AUTHORITY; MISQUOTING OR INTERCALATING PHRASES IN THE TEXT OF A COURT DECISION CONSTITUTES WILLFUL DISREGARD OF THE LAWYER'S SOLEMN DUTY TO ACT AT ALL TIMES IN A MANNER CONSISTENT WITH THE TRUTH. —** Rule 10.02, Canon 10 of the Code of Professional Responsibility mandates that a lawyer shall not knowingly misquote or misrepresent the text of a decision or authority. It is the duty of all officers of the court to cite the rulings and decisions of the Supreme Court accurately. Misquoting or intercalating phrases in the text of a court decision constitutes willful disregard of the lawyer's solemn duty to act at all times in a manner consistent with the truth.

22. **ID.; ID.; A LAWYER OWES FIDELITY TO THE CAUSE OF HIS OR HER CLIENT BUT NOT AT THE EXPENSE OF TRUTH AND THE ADMINISTRATION OF JUSTICE; IT IS UNETHICAL FOR A LAWYER TO ABUSE OR WRONGFULLY USE THE JUDICIAL PROCESS SUCH AS PROSECUTING PATENTLY FRIVOLOUS AND MERITLESS APPEALS OR INSTITUTE CLEARLY GROUNDLESS ACTIONS. —** Another important and fundamental tenet in legal ethics is that a lawyer owes fidelity to the cause of his or her client — but not at the expense of truth and the administration of justice. As officers of the court tasked with aiding this court in its dispensation of justice, lawyers

take an oath that they will not wittingly or willingly promote any groundless, false or unlawful suit, nor give aid or consent to the same. Unfounded suits only serve to disrupt rather than promote the orderly administration of justice. Moreover, an appeal is not a matter of right but a statutory privilege. Being a mere privilege, all lawyers should put in mind that an appeal cannot be abusively utilized to support or advance utterly meritless causes. Thus, it is unethical for a lawyer to abuse or wrongfully use the judicial process such as prosecuting patently frivolous and meritless appeals or institute clearly groundless actions.

23. **ID.; ID.; ID.; CANON 5 THEREOF REQUIRES THAT A LAWYER BE UPDATED IN THE LATEST LAWS AND JURISPRUDENCE; FALLING SHORT OF THIS DUTY AMOUNTS TO GROSS IGNORANCE OF THE LAW WHICH IS THE DISREGARD OF BASIC RULES AND SETTLED JURISPRUDENCE. —** Canon 5 of the Code of Professional Responsibility requires that a lawyer be updated in the latest laws and jurisprudence. There is less than full compliance with the demands of professional competence, if a member of a bar does not keep himself abreast of the trend of authoritative pronouncements. More importantly, it is imperative that they be conversant with basic legal principles. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the bar. Falling short of this duty amounts to gross ignorance of the law which is the disregard of basic rules and settled jurisprudence.

24. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CODE OF CONDUCT FOR COURT PERSONNEL; SECTION 1, CANON IV THEREOF COMMANDS COURT PERSONNEL TO PERFORM THEIR OFFICIAL DUTIES PROPERLY AND DILIGENTLY; CLERKS OF COURT, AS CHIEF ADMINISTRATIVE OFFICERS, MUST SHOW COMPETENCE, HONESTY AND PROBITY SINCE THEY ARE CHARGED WITH SAFEGUARDING THE INTEGRITY OF THE COURT AND ITS PROCEEDINGS. —** [T]his Court has long held that "[the] administration of justice is circumscribed with a heavy burden of responsibility [which] requires that everyone involved in its dispensation — from the

presiding judge to the lowliest clerk — live up to the strictest standards of competence, honesty, and integrity in the public service." As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethics, persons aspiring for public office must observe honesty, candor and faithful compliance with the law. As to clerks of court who are officers of the court, these principles place a great deal of responsibility on their shoulders being the chief administrative officers of their respective courts. As chief administrative officers, clerks of court must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings. This is consistent with Section 1, Canon IV of the Code of Conduct for Court Personnel which commands court personnel to perform their official duties properly and diligently at all times. x x x Atty. Velasco — being a member of the Bar employed by the Judiciary as Branch Clerk of Court — had been utterly remiss of his duty to be conversant with prevalent jurisprudence. The Court in ***National Power Corporation v. National Labor Relations Commission, et al.*** had already declared in an unequivocal manner that "copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, <u>are not binding until they are actually received by the latter</u>." This means that the reglementary period to file an appeal or Motion for Reconsideration begins to run against the government only upon receipt of the judgment or final order by the OSG. For issuing a Certification attesting that the March 4, 2008 Decision had become final and executory, even without any information as to the OSG's actual receipt of such judgment, Atty. Velasco ignored very nature of the Solicitor General's unequivocal mandate for the government in legal proceedings — more particularly **in all land registration and related proceedings**. Such thoughtless disregard of basic principles on service of judgments or final orders to the OSG amounts to gross ignorance of the law and is inconsistent with a Clerk of Court's duty to show competence, honesty and probity. It besmirches the Judiciary's reputation and erodes the people's faith in the justice system.

25. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; BY VIRTUE OF CANON 1 THEREOF, LAWYERS ARE REQUIRED TO BE AT THE FOREFRONT OF OBSERVING AND MAINTAINING THE

RULE OF LAW; RESPECT FOR THE LAW ENCOMPASSES FAITHFUL ADHERENCE TO THE LEGAL PROCESSES. — Canon 1 of the Code of Professional Responsibility states that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." By virtue of this Canon, lawyers should always keep in mind that, although upholding the Constitution and obeying the law is an obligation imposed on every citizen, a lawyer's responsibilities under Canon 1 mean more than just staying out of trouble with the law; as servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is included in the scope of "unlawful" conduct which, in turn, does not necessarily imply the element of criminality although the concept is broad enough to include such element. In the context of Canon 1, respect for the law encompasses faithful adherence to the legal processes.

26. **ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OF A SUPERIOR IS A GROUND THEREFOR; GRAVER RESPONSIBILITY IS IMPOSED UPON A LAWYER THAN ANY OTHER TO UPHOLD THE INTEGRITY OF THE COURTS AND TO SHOW RESPECT TO THEIR PROCESSES.—** Section 27, Rule 138 of the Rules of Court includes the "willful disobedience of any lawful order of a superior court" as one of the grounds for disbarment or suspension from the practice of law. Lawyers are called upon to obey court orders and processes and respondents deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.

27. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DEFINED; DISOBEDIENCE OF OR RESISTANCE TO A LAWFUL WRIT, PROCESS, ORDER OR JUDGMENT OF A COURT IS A GROUND FOR INDIRECT CONTEMPT. —** Section 3(b), Rule 71 of the same Rules makes "[d]isobedience of or resistance to a lawful *writ*, process, order, or judgment of a court" one of the grounds from indirect contempt. Since

"contempt of court" has been defined as a willful disregard or disobedience of a public authority, even a defiance directed against a judgment of a superior court which has not yet attained finality and is pending for review before this Court is considered contemptuous.

28. **LEGAL ETHICS; ATTORNEYS; GENERALLY, GOVERNMENT LAWYERS MAY NOT BE DISCIPLINED AS MEMBERS OF THE BAR FOR MISCONDUCT IN THE DISCHARGE OF THEIR DUTIES AS GOVERNMENT OFFICIALS, EXCEPT IF THE MISCONDUCT ALSO CONSTITUTES A VIOLATION OF THEIR OATH AS LAWYERS; CASE AT BAR. —** [T]his Court stresses that government lawyers in the discharge of their official tasks have more restrictions than lawyers in private practice. Since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. As such, government lawyers should be more sensitive to their professional obligations as their disreputable conduct is more likely to be magnified in the public eye. Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official. However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar.

APPEARANCES OF COUNSEL

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The Mindanao-davao Law Firm of Avisado & Maypa, Co. for Lolita Tano, Fe Betios, *et al.*

Osmundo P. Villanueva, Jr., for City Government of Davao.

Office of the Solicitor General for Republic of the Philippines.

D E C I S I O N

GESMUNDO, *J.*:

Compliance with jurisdictional requirements is strictly mandatory in a special proceedings case as it is the operative fact which vests a court with the power and authority to validly take cognizance and decide a case.

Preview

The case involves a Petition[2] for Review filed by Helen Perez Denila seeking to: (a) reverse and set aside the July 25, 2012 Decision[3] of the Court of Appeals (*CA*) – Special Former Twenty-Second Division in CA-G.R. SP No. 03270-MIN which granted the Republic of the Philippines' (*Republic*) petition for relief from judgment; and (b) reinstate the March 4, 2008 Decision[4] of the Regional Trial Court of Davao City, Branch 14 (*RTC*) in SP. PROC. No. 7527-2004 which ordered the reconstitution of the owner's duplicate Original Certificates of Title (*OCT*) Nos. 164, 219, 220, 301, 337, 514 and 67 originally registered in the name of Constancio S. Guzman (*Constancio*).

Antecedents

Historical Background

The dispute traces its roots back to the time when Constancio and his common-law wife Isabel Luna (*Isabel*) had several parcels of land in Davao City registered under their collective names in which they were issued the aforementioned OCTs sometime in November 1925.[5] When both Constancio and Isabel passed

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[2] *Rollo*, pp. 10-55.

[3] *Id.* at 57-96; penned by Associate Justice Edgardo A. Camello with Associate Justices Edgardo T. Lloren and Ma. Luisa Quijano Padilla, concurring.

[4] *Id.* at 107-112; penned by former Presiding Judge George E. Omelio.

[5] *Id.* at 102-103, see *Heirs of Don Constancio Guzman, Inc. v. Judge Carpio*, G.R. No. 159579, November 24, 2003 (Unsigned Resolution).

away intestate during the Second World War, they left no direct heirs and were survived by Heirs of Constancio Guzman, Inc. (*HCGI*) — a corporation whose stakeholders were children and grandchildren of Constancio's only sibling, Manuel Guzman.[6]

On June 8, 2001, HCGI filed four (4) separate Petitions for Reconstitution of Title of Lost and/or Destroyed OCT Nos. 219, 337, 67 and 164 before the RTC; and, during the initial hearing, the same court required Davao City's Register of Deeds (*RD*) to submit a report on the status of the aforementioned Certificates of Title.[7]

On July 25, 2002, Davao City's Acting Register of Deeds, Atty. Florenda Patriarca, submitted a report showing that: (a) OCT No. 337 in the name of both spouses Constancio and Isabel had already been cancelled and had been the subject of several transfers, the latest being to the Republic of the Philippines; (b) OCT No. 219 in the name of both spouses Constancio and Isabel had likewise been cancelled and had been the subject of several transfers, the latest being in favor of a certain Antonio L. Arroyo (*Arroyo*); (c) OCT No. 164 in the name of both spouses Constancio and Isabel had been the subject of several transfers and is currently registered in the name of Arroyo; (d) OCT No. 67 in the name of Constancio himself had also been cancelled and transferred several times, the latest being in the name of Madeline Marfori.[8]

On May 12, 2003, the RTC dismissed all the petitions for reconstitution as it was clear from the report of the RD that OCT Nos. 337, 219, 164 and 67 were neither mutilated, destroyed, nor lost, but were in fact cancelled as a result of both voluntary and involuntary subsequent transfers.[9]

Aggrieved, HCGI directly elevated the case to this Court *via* Petition for Review on *Certiorari*.

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

On November 24, 2003, this Court's Third Division issued a Resolution in *Heirs of Don Constancio Guzman, Inc. v. Judge Carpio (Heirs of Guzman, Inc.)*[10] denying HCGI's Petition for Review ratiocinating that: (a) there was a blatant disregard of the hierarchy of courts and that no exceptional or compelling circumstance had been cited; (b) there was no proof that the Certificates of Title intended to be reconstituted were in fact lost or destroyed; and (c) that the evidence on record reveals that OCT Nos. 337, 219, 164 and 67 were actually cancelled on account of various conveyances.

Present Reconstitution Case

On June 22, 2004, petitioner filed an "*Amended Petition for Reconstitution of Original Certificates of Titles*"[11] before the RTC seeking to direct Davao City's RD to reconstitute OCT Nos. 164, 219, 220, 301, 337, 514 and 67 alleging, among others, that:

1) The subject OCTs were originally registered in the name of Constancio and Isabel;[12]

2) A certain Bellie S. Artigas (*Artigas*) had been entitled to a 40% share in Constancio's estate and was authorized to recover, administer and dispose of all properties in the said estate pursuant to her agreement with Constancio;[13]

3) The parcels of land covered under the subject titles were sold to her by Artigas, as Constancio's attorney-in-fact, by way of a Deed of Absolute Sale;[14]

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[10] G.R. No. 159579, November 24, 2003 (Unsigned Resolution).

[11] *Rollo*, pp. 101-106.

[12] *Id.* at 103.

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

[14] *Id.* at 103.

4) She is currently in possession of the lands covered by the subject OCTs;[15]

5) She had caused a re-survey of the parcels of land covered under the subject OCTs;[16]

6) The original copies of the subject OCTs were kept inside the repositories of Davao City's RD;[17]

7) Davao City's RD issued a Certification which stated that the subject OCTs were "not available among [its] files[,] the same maybe (*sic*) mutilated or destroyed;"[18]

8) The parcels of land covered under the subject OCTs had "no co-owners, mortgagees and/or lessees" and had no corresponding certificates of title issued to other persons which had been lost or destroyed;[19]

9) The parcels of land covered under the subject OCTs had "no buildings or other structures of strong materials" which "[did] not belong to [petitioner];"[20]

10) The fruit-bearing trees and other seasonal crops existing on the parcels of land covered under the subject OCTs had also been "sold/ceded/transferred" to her;[21]

11) The parcels of land covered under the subject OCTs were free from all liens and encumbrances;[22]

12) There exists no deed or instrument affecting the parcels of land covered under the subject OCTs;[23] and

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[15] *Id.* at 101.

[16] *Id.* at 104.

[17] *Id.* at 103.

[18] *Id.*

[19] *Id.* at 104.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

13) She is willing to pay the real estate taxes on the parcels of land covered under the subject OCTs.[24]

On September 6, 2005, the Office of the Solicitor General (*OSG*) filed an Entry of Appearance and deputized Davao City's Office of the City Prosecutor to handle the reconstitution case before the RTC.[25]

Before the presentation of witnesses, the RTC issued a *Subpoena Duces Tecum* and *Ad Testificandum* directing the Land Registration Authority (*LRA*) and Davao City's RD to produce in court the certificates of title in the custody of their respective offices.[26]

During the course of the trial, petitioner presented the testimony of Myrna Fernandez (*Fernandez*), Chief of the Document and Docket Division of the LRA. Fernandez testified that petitioner's respective copies of OCT Nos. 164, 219, 301, 337 and 67 and of Decree No. 195448 pertaining to OCT No. 514 are "faithful reproduction[s]" of the "original" copies "existing in [the LRA's] records and/or volt (*sic*) section."[27] She further attested that, as record custodian, her office only keeps a record regarding the existence of the subject OCTs and that the Register of Deeds makes the cancellation of these certificates of title though they are not required to notify or communicate such fact of cancellation to the LRA.[28] Finally, she also clarified that all matters pertaining reconstitution are forwarded to the LRA's Reconstitution Division whose duty is to prepare technical reports[29] after plotting and examining the plan appearing on the technical description of the lots covered by the certificates of title sought to be reconstituted.[30]

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[24] *Id.* at 105.

[25] *Id.* at 217.

[26] *Id.* at 109-111.

[27] *Id.* at 109.

[28] *Id.*

[29] *Id.* at 122-124.

[30] *Id.*

For its part, the Republic presented the testimony of Atty. Asteria E. Cruzabra (*Atty. Cruzabra*), Davao City's then Deputy and Acting Register of Deeds who: (a) brought typewritten representations of OCT Nos. 164, 219, 2980, 220, 301 and T-514 as well as Transfer Certificate of Title (TCT) Nos. 356 and 1363; and (b) testified that the actual copies of the same certificates in her office's custody which were subjects of the *Subpoena Duces Tecum* and *Ad Testificandum* are mutilated and beyond recognition.[31] She elaborated that, due to the subject OCTs' present condition, she issued the Certification to the effect that the same certificates are "mutilated and/or destroyed."[32] Moreover, she explained that: (a) the typewritten representations of all the OCTs that she brought in open court had already been cancelled; (b) OCT No. 2980 and TCT No. 356 were derived from OCT No. 219; (c) TCT No. 1363 was derived from OCT No. 301; and (d) OCT No. T-514 brought in open court is a typewritten original document.[33] Finally, Atty. Cruzabra stated that the typewritten entries in the certificates of title she presented in open court show that the same documents had been cancelled and each had been replaced with a corresponding TCT.[34]

Reacting to the Republic's evidence, petitioner objected to the admissibility and probative value of Atty. Cruzabra's documents because the copies of the purported titles are "not in their normal forms issued by the [RD] but were merely lifted and copied [from] a local [news]paper, the stroke and style of the signature of the then [RD], Patrocinio Quitain, varies from one document to another."[35] She stressed that "[t]he discrepancies are so apparent that no less than [Atty. Cruzabra] admitted that the strokes of Patrocinio Quitain are different."[36] Finally, she

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[31] *Id.* at 110.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

pointed out that "the alleged copies of OCT[s] and CTC[s] were typewritten on cheap onion skin bonds and that they were [so] typewritten in 1972 when [photocopying] machines [were] already abundant."[37]

Regional Trial Court's Reconstitution Ruling

On March 4, 2008, the RTC – Branch 14 in SP. PROC. No. 7527-2004 through then Presiding Judge George E. Omelio (*Judge Omelio*) rendered a Decision in favor of petitioner essentially holding that: (a) the entries of cancellation at the back of the OCTs are not conclusive proof of the truth of such entries as they were not the authenticated copies of the originals;[38] (b) the testimonies of Fernandez had convinced him that the subject OCTs did exist in the LRA's office and that the same were all registered in the name of Guzman and Luna;[39] and (c) the Republic presented no proof (document or decree) as to the circumstances of the subject OCTs' cancellation.[40] The dispositive portion of such Decision reads as follows:

> **WHEREFORE**, finding the instant petition well founded, the same is hereby granted.
>
> The Registrar [*sic*] of Deeds of Davao City is hereby ordered to reconstitute the owner[']s Original Duplicate copy of Original Certificate of Titles No. **OCT No. 164, OCT No. 219, OCT No. 220, OCT No. 301, OCT No. 337, OCT No. 514 and OCT No. 67** with the approved Technical Description of said parcels of land attached with [*sic*] this petition be respectively inscribed thereto and that the titles to the said mentioned parcels of land be duly registered in the name of the original owner Constancio Guzman, and considering that the latter[,] through his attorney-in-fact Bellie S. Artigas[,] sold the same to herein petitioner (Exhs. "G" to "M"), the Register of Deeds, Davao City is further ordered to correspondingly issue Transfer

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[37] *Id.*

[38] *Id.* at 111.

[39] *Id.* at 112.

[40] *Id.*

Certificate of Titles over the subject parcels of land in the name of herein petitioner.

Cost against the petitioner.

SO ORDERED.[41]

Post-Regional Trial Court Proceedings

On March 27, 2008, the OSG received Judge Omelio's March 4, 2008 Decision.[42]

On March 28, 2008, Clerk of Court V Atty. Ray Uson Velasco (*Atty. Velasco*) of RTC, Branch 14 issued a Certification[43] stating that: (a) copies of Judge Omelio's March 4, 2008 Decision were received by petitioner's counsel and Davao City's RD (as well as the Office of the City Prosecutor)[44] on March 5, 2008 and March 10, 2008, respectively; and (b) the same Decision had become final and executory.

On March 31, 2008, an Entry of Judgment[45] was issued by Atty. Velasco pursuant to the March 28, 2008 Certification.

On April 15, 2008, Atty. Cruzabra sent a letter to LRA Administrator Benedicto B. Ulep (*LRA Administrator Ulep*) elevating Judge Omelio's March 4, 2008 Decision by way of *en consulta*.[46]

On April 18, 2008, petitioner filed an Urgent Motion for Execution claiming that, since no Motion for Reconsideration was filed by the adverse parties within the reglementary period, her motion must be granted.[47]

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[41] *Id.*

[42] *Id.* at 217.

[43] *Id.* at 114.

[44] *Id.* at 117.

[45] *Id.* at 113.

[46] *Id.* at 60.

[47] *Id.*

On April 23, 2008, Judge Omelio granted petitioner's move for urgent execution and issued a corresponding Writ of Execution.[48]

Petition for Relief from Judgment Proceedings

On May 26, 2008, the Republic through the OSG filed a Petition for Relief from Judgment with the RTC seeking to set aside the March 4, 2008 Decision.[49]

On September 3, 2008, Judge Omelio issued an Order[50] with the pertinent portions as follows:

> That is why, it would appear that the undersigned Presiding Judge seemingly rendered the subject decision with lightning speed which is not in reality.
>
> As there is already a doubt cast by these concerned sectors against the sense of impartiality and independence of the undersigned Presiding Judge he is therefore, voluntarily INHIBITING himself from further sitting in this case.
>
> Let the record of this case be transmitted to the Office of the Executive Judge of this Court for re-raffling with the exception of Branch 14.
>
> SO ORDERED.

Here, Judge Omelio directed the transmittal of the case records to the Office of the Executive Judge for re-raffle.[51] The case was eventually re-raffled to Judge Ridgway M. Tanjili (*Judge Tanjili*).[52]

On September 15, 2008, Judge Tanjili issued an Order re-setting the date and time of the hearing previously set by Judge Omelio.[53]

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[48] *Id.* at 60 and 115.

[49] *Id.* at 60.

[50] *Id.* at 296-297.

[51] *Id.* at 61.

[52] *Id.*

[53] *Id.*

On June 29, 2009, LRA Administrator Ulep issued a Resolution in Consulta No. 4581 holding that, based on his office's records, the subject OCTs sought by petitioner to be reconstituted are all previously cancelled titles making rendering Judge Omelio's March 4, 2008 Decision unregistrable.[54]

On August 12, 2009, Judge Tanjili unexpectedly inhibited himself from handling the reconstitution case.[55]

Petition for Relief Ruling

On September 3, 2009, Judge Omelio, despite the absence of any raffle and without conducting a hearing,[56] re-assumed jurisdiction over the case and issued an Order[57] denying the Republic's Petition for Relief from Judgment for having been filed sixteen (16) days beyond the reglementary period based on the observation that the Prosecutor of Davao City received a copy of the March 4, 2008 Decision on March 10, 2008 and that the OSG belatedly filed the same petition for relief only on May 9, 2008.[58] Moreover, it also pointed out that Atty. Cruzabra, being Davao City's RD, "did nothing," "made a wrong interpretation of the Rules," and elevated the March 4, 2008 Decision *via consulta* to the LRA Commissioner instead of filing an appeal with the regular courts.[59] The dispositive portion[60] reads as follows:

> Accordingly, the Petition for Relief from Judgment is hereby denied.
>
> SO ORDERED.

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[54] *Id.* at 19; see also *Peralta v. Judge Omelio*, 720 Phil. 60, 72 (2013).

[55] *Id.* at 82.

[56] *Id.* at 283.

[57] *Id.* at 116-118.

[58] *Id.* at 117-118.

[59] *Id.* at 117.

[60] *Id.* at 118.

Aggrieved by the Order, the Public Prosecutor of Davao City filed a Motion for Reconsideration from the Order of the Honorable Court Denying the Petition for Relief Filed by the Solicitor General and Inhibition of the Honorable Presiding Judge.[61]

On October 1, 2009, Judge Omelio issued an Order denying the Public Prosecutor's Motion for Reconsideration.[62]

Petition for Certiorari Proceedings in the Court of Appeals

On October 22, 2009, the Republic filed a Petition for *Certiorari* [Under Rule 65 of the Rules of Court] with Prayer for Temporary Restraining Order with the CA pointing out that Judge Omelio committed grave abuse of discretion in issuing the September 3, 2009 and October 1, 2009 Orders for: (a) being contrary to jurisprudence; and (b) denial of due process by exhibiting bias and partiality towards petitioner as he unilaterally re-assumed jurisdiction over the petition for relief case despite his previous inhibition.[63]

On March 17, 2010, the CA issued a Temporary Restraining Order *via* Resolution enjoining Judge Omelio from enforcing the RTC's March 4, 2008 Decision as well as the September 3, 2009, the October 1, 2009 and the March 4, 2010 Orders.[64]

On May 18, 2010, the CA issued a Writ of Preliminary Injunction to prevent any grave and irreparable injury to the rights of the Republic and Atty. Cruzabra pending the resolution of the Petition for *Certiorari*.[65]

Fencing Permit, Writ of Demolition, and Intervention of herein Private Respondents

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[61] *Id.* at 61.

[62] *Id.* at 61-62.

[63] *Id.* at 62.

[64] *Id.* at 21 and 63.

[65] *Id.*

On May 25, 2010, despite the pendency of the *certiorari* proceedings before the CA, Judge Omelio issued an Order (upon motion of petitioner) directing the Davao City Engineer's Office to issue a Fencing Permit over the properties covered by OCT Nos. 164, 219, 220, 301, 337, 514 and 67.[66]

On June 30, 2010, Atty. Cruzabra filed a Manifestation with the CA informing the latter of Judge Omelio's highly contumacious May 25, 2010 Order which directly violated the May 18, 2010 Writ of Preliminary Injunction.[67]

In response to Atty. Cruzabra's June 30, 2010 Manifestation, petitioner filed an *Ex-Parte* Motion for Clarification pointing out that: (a) the parcels of land subject in the instant reconstitution case are being unlawfully occupied by informal settlers; (b) the "request" for Fencing Permit is to enclose the same properties in order to prevent intrusion by unscrupulous informal settlers; (c) Judge Omelio's May 25, 2010 is not a direct violation of the injunctive *writ* issued by the CA because it cannot be considered an enforcement of the final and executory March 4, 2008 Decision of the RTC granting the petition for reconstitution.[68]

On October 5, 2010, the CA, in a Resolution and in view of petitioner's move for clarification, assented to Judge Omelio's May 25, 2010 Order for the issuance of a fencing permit as well as a Writ of Demolition.[69] Here, it opined that the issuance of a Fencing Permit would not violate or injure the rights of all parties for it is a necessary measure for preservation which would, instead, tend to "preserve and protect" the area in question from trespass and depredation by third persons.[70]

On October 8, 2010, Judge Omelio issued an Order reiterating its directive to the City Engineer's Office to issue a Fencing

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[66] *Id.*

[67] *Id.* at 63-64.

[68] *Id.* at 21 and 64.

[69] *Id.* at 65.

[70] *Id.* at 65-66.

Permit in petitioner's favor.[71] In the same Order, he also issued a Writ of Demolition for the clearing of structures erected on the properties covered by the OCTs sought to be reconstituted.[72]

On November 11, 2010, Brgy. 74-A Matina Crossing Federation, Inc. (represented by its President, Lolita P. Tano), Matina Balusong Neighborhood Association, Inc. (represented by its President, Fe I. Betios), St. Paul Neighborhood Association, Inc. (represented by its President, Estrella E. Namata), St. Benedict XVI Neighborhood Association, Inc. (represented by its President, Melchor Lecionan), and Shalom Neighborhood Association, Inc. (represented by its President, Romeo Pacho) filed a Joint Motion to Intervene with Leave of Court with Prayer for Reconsideration (with attached Joint Petition for *Certiorari*-in-Intervention) with the CA claiming that they have a legal interest in the matter in controversy because: (a) they are the actual occupants and possessors of the properties covered by the subject OCTs; (b) they were not notified of the reconstitution proceedings in the court below; (c) their intervention will not unduly delay the resolution of the case or prejudice the rights of the original parties; (d) their rights will not be fully protected in a separate proceeding; and (e) the issuance of a Fencing Permit will authorize the petition to enter the several parcels of land including those possessed by them.[73]

On November 17, 2010, Judge Omelio recalled the "special" Writ of Demolition in an Order[74] with the relevant portions reproduced as follows:

> THE Order of the Court dated OCTOBER 8, 2010 is hereby amended to the effect that the City Engineer's Office or its Building Officials, Davao City, pursuant to the Resolution of the Court of Appeals dated October 5, 2010 in Sp. Proc. No. 75-2004 is directed to issue a Fencing Permit to Applicant Helen Denila after which the latter has to perform

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[71] *Id.* at 66.

[72] *Id.*

[73] *Id.* at 66-67.

[74] *Id.* at 67 and 300-301.

the act of fencing the metes and bounds of her area subject of the instant case.

As to the special writ of demolition issued by the Court dated October 8, 2010, the same is hereby **SET ASIDE** or **RECALLED**. Petitioner may instead file a separate ordinary action to this effect if she so desire(s), but not under the instant special proceeding.

On November 26, 2010, Alejandro Alonzo, Jr., Marites Alonzo-Liloc, Araceli Alonzo-Diolaso, Roberto Alonzo, Eulalia Anglelitud, Evangeline Bautista, Salvador Bautista, Felimon Biliran, Jr., Lourdes Biliran, Reynaldo Biliran, Arsenio Briones, Norma Cal, Marilyn Cañete, Edgardo Costante, Joy Bill Dela Cruz, Marjorie Dela Cruz, John James Espinosa, Romar Cañete, Timoteo C. Flores, Jemuel Gaudicos, Lily Lisondra, Erwin Pacada, Alma Pagalan, Leonardo Peloño, Reynaldo Poliquit, Virgilio Reuyan, Jesus Reuyan, Sr., Rogeleo Reuyan, Arlan Silva, Carmelita Silva, Rommel Silva, Grace Temonera, Erlinda Valencia and Del Carmen Matina Aplaya Neighborhood Association filed a Very Urgent Omnibus Motion for: (a) leave of Court to Intervene and to Admit the Hereto Attached Petition-In-Intervention; (b) Reconsideration of the Resolution dated 05 October 2010; and (c) the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction and/or in the alternative to direct the Honorable Public Respondent Presiding Judge and Public Respondent City Government of Davao through the City Engineer's Office to defer implementation of the Order dated 08 October 2010 and issuance of the Fencing Permit in favor of private respondent Helen Denila with the CA claiming that: (a) they have a legal interest in the matter subject of the litigation and that allowing them to intervene will not unduly delay the resolution of the case for it will prevent multiplicity of suits; (b) petitioner had speciously asked for a Fencing Permit without disclosing that they are actual occupants and possessors of the real properties subject in the reconstitution case; and (c) the construction of a fence would cause them irreparable injury and injustice, especially if they were deprived of their day in court.[75]

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[75] *Id.* at 68.

On December 7, 2010, Davao City filed a Motion for Leave of Court to Intervene with the RTC stating that: (a) the Barangay Hall of Barangay 74-A, as well as the Talomo Police Station which it funded, is within the lots covered by the OCTs sought to be reconstituted and the demolition of those structures would result in the damage of these improvements; (b) one of the properties which will be affected by Judge Omelio's October 8, 2010 Order is presently registered in the Republic's name and is part of Maa Diversion Road which is a major road/highway forming part of the road network of the City; (c) the issue of fencing was never raised in the reconstitution proceedings and it was never required to file any Comment by the RTC through Judge Omelio in violation of its right to due process; and (d) it intervened in the present case for it was constrained to protect its rights and interest.[76]

On the same day, Davao City also filed its Petition for *Certiorari*-in-Intervention with Urgent Application for a Temporary Restraining Order and Writ of Preliminary Injunction with the CA seeking to participate in the *certiorari* proceedings already initiated by the Republic.[77]

On April 11, 2011, the Republic through the OSG filed its Manifestation (in lieu of Comment) with the CA stating that the intervenors should be allowed to intervene considering that they were not notified of the reconstitution proceedings *a quo*.[78]

On April 28, 2011, the CA promulgated a Resolution[79] granting all the motions to intervene and recalling its October 5, 2010 Resolution which, in turn, assented to Judge Omelio's May 25, 2010 Order for the issuance of a fencing permit. The relevant portion of the Resolution reads:

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

[77] *Id.* at 70.

[78] *Id.* at 71.

[79] *Id.* at 298-310.

Acting on the pertinent pleadings on file, the Court RESOLVES to: (1) NOTE the *Rejoinder to Intervenors-Petitioner's Reply to Respondents' Omnibus Comment/Opposition* filed by private respondent Helen P. Denila; (2) NOTE that per verification report by the Judicial Record's [*sic*] Division, the Office of the Solicitor General (OSG) has not filed its Comment to the *Joint Motion to Intervene with Leave of Court with Prayer for Reconsideration (with attached Joint Petition for Certiorari-in-Intervention)* filed by Lolita P. Tano, et al., and to the *Omnibus Motion*: *(a) for Leave of Court to Intervene and to Admit attached Petition-In-Intervention, (b) for Reconsideration of the Court's Resolution dated 5 October 2010, and (c) for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction* filed by Alejandro Alonzo, Jr., *et al*.; (3) NOTE that no compliance has been made by the OSG to the Court's 24 January 2011 directive to file a Comment to the City of Davao's *Motion for Leave to Intervene*; (4) GRANT the Joint Motion to Intervene with leave of Court filed by movants Lolita P. Tano, et al.; (5) GRANT the Motion for Leave to Intervene filed by movants Alejandro Alonzo, Jr., et al.; (6) GRANT the Motion for Leave of Court to Intervene filed by the movant City of Davao; (7) ADMIT the Petition-for-*Certiorari*-in-Intervention with Urgent Application for a Temporary Restraining Order and Writ of Preliminary Injunction filed by the City of Davao as it has already paid the docket and other lawful fees; (8) DIRECT the prospective intervenors, Lolita P. Tano, et al., and Alejandro Alonzo, Jr., et al., to pay the required docket and other lawful fees within five (5) days from notice; (9) HOLD IN ABEYANCE the admission of the Joint Petition-for-*Certiorari*-In-Intervention filed by Lolita P. Tano, et al., and the Petition-for-Intervention filed by Alejandro Alonzo, Jr., et al. pending compliance with the preceding directive; (10) RECALL the Resolution of July 13, 2010 insofar as it declared this case submitted for decision; and, (11) RECALL Our October 5, 2010 Resolution, only in so far as We assented to the issuance of the fencing permit.

SO ORDERED.[80]

Court of Appeals' Certiorari Ruling

On July 25, 2012, the CA in CA-G.R. SP No. 03270-MIN rendered a Decision[81] against petitioner ratiocinating that: (a)

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[80] *Id.* at 309-310.

[81] *Id.* at 57-96.

the Republic had seasonably filed the petition for relief since the reglementary period should be counted from the date of receipt of the OSG — not the Davao City's Office of the City Prosecutor;[82] (b) the present reconstitution case as regards OCT Nos. 219, 337, 67 and 164 cannot prosper for it is barred by *res judicata* pursuant to this Court's ruling in the case of *Heirs of Guzman, Inc*. which Judge Omelio should have taken judicial notice of;[83] (c) Judge Omelio acted with grave abuse of discretion in dismissing the Republic's petition for relief without any hearing;[84] and (d) petitioner failed to comply with the requirements of Republic Act No. 26[85] (*R.A. No. 26*) because she failed to notify the intervenors-private respondents of the present reconstitution proceedings before the RTC and her petition is not based on an existing owner's, co-owner's, mortgagee's or lessee's duplicate OCT.[86] The decretal portion[87] of the same Decision reads as follows:

ACCORDINGLY, We GRANT the petition. The assailed 4 March 2008 Decision and 3 September 2009 and 1 October 2009 Orders of the Regional Trial Court, Branch 14, in Special Proceeding Case No. 7527-2004 are **VOIDED and SET ASIDE.**

SO ORDERED.

Aggrieved by the CA's judgment in granting the Writ of *Certiorari* in favor of the Republic, petitioner moved for reconsideration.

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[82] *Id.* at 73-74.

[83] *Id.* at 74-81.

[84] *Id.* at 81-84.

[85] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed (September 25, 1946); citation omitted.

[86] *Rollo*, pp. 84-95; citing *Republic v. Spouses Sanchez*, 527 Phil. 571, 585-599 (2006); citation omitted; *Republic v. Heirs of Julio Ramos*, 627 Phil. 123, 134-136 (2010).

[87] *Id.* at 95.

On March 1, 2013, the CA issued a Resolution[88] denying petitioner's Motion for Reconsideration on the finding that the arguments raised "are merely reiterative of the same arguments or grounds already discussed and passed upon in [its] decision."[89]

Post-Court of Appeals Proceedings

On April 22, 2013, petitioner assailed the CA's July 25, 2012 Decision and March 1, 2013 Resolution through an appeal by *certiorari* under Rule 45 primarily seeking for the reinstatement of the RTC's March 4, 2008 Decision which ordered the reconstitution of OCT Nos. 164, 219, 220, 301, 337, 514 and 67 under the former's name.[90]

On October 10, 2013, Atty. Maria Theresa D. Biongan-Pescadera (*Atty. Biongan-Pescadera*), Davao City's new Register of Deeds (*RD*), caused the reconstitution of OCT Nos. 301[91] and 219[92] while the case was still pending with this Court and despite the existence of the CA's July 25, 2012 Decision.

Parties' Arguments

Petition

Petitioner faults the CA for granting the Republic's Petition for *Certiorari* and nullifying Judge Omelio's March 4, 2008 Decision as well as his September 3, 2009 and October 1, 2009 Resolutions because: (a) the certified photocopies, reconstitution reports, certifications (that all the subject OCTs were not available among their files) purportedly issued by the RD as well as testimonies of key employees of Davao City's RD office pertaining to the subject certificates of title are valid and

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[88] *Id.* at 97-100.

[89] *Id.* at 99.

[90] *Id.* at 10-55.

[91] *Id.* at 311-312.

[92] *Id.* at 314-316.

statutorily-recognized sources of reconstitution;[93] (b) the Deed of Absolute Sale between her and Artigas is enough to establish her interest over the properties subject of the reconstitution;[94] (c) she had complied with the jurisdictional requirements of notice and publication for being able to post her petition for reconstitution in the City Hall of Davao City as well as[95] the Official Gazette which serves as notice to the whole world; (d) the lack of notice to the private respondents was cured when her petition for reconstitution was published in the newspaper of general circulation;[96] (e) the intervenors-private respondents do not have a legal and valid interest over the certificates of title of the lands in question because they are informal settlers who were not occupants at the time the petition for reconstitution was filed;[97] (f) the Republic failed to file a Motion for Reconsideration — a condition *sine qua non* in the filing of a petition for *certiorari* — as the same was declared as *pro forma* by Judge Omelio;[98] (g) the CA's findings are not supported by the evidence found in the records of the case because it "dwelt so much on the allegation[s] x x x raised by the intervenors-private respondents;[99] (h) the March 4, 2008 Decision had already become immutable for having attained finality;[100] (i) *res judicata* is inapplicable in the case at hand because the court that took cognizance of the reconstitution cases pertaining to OCT Nos. 219, 337, 67 and 164 did not acquire jurisdiction over her person as a party to the case and because this Court did not rule on the merits of that case;[101] (j) Judge Omelio did not abuse

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[93] *Id.* at 24-28.

[94] *Id.* at 28.

[95] *Id.* at 30-31.

[96] *Id.* at 31-33.

[97] *Id.* at 33-35.

[98] *Id.* at 35-36.

[99] *Id.* at 36-38.

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

[101] *Id.* at 40-43.

his discretion when he revoked his inhibition and denied the Republic's Petition for Relief from Judgment because he was merely exercising the residual powers of the court that rendered judgment on the petition for reconstitution of title;[102] (k) Judge Omelio did not abuse his discretion in summarily denying the Republic's Petition for Relief from Judgment without hearing because the same pleading was filed out of time;[103] and (1) the intervenors-private respondents should have litigated their cause in a separate proceeding because the instant reconstitution case is not an adjudication of their ownership on the subject lands.[104]

Comments

The Republic, in response to petitioner's claims, contends that: (a) the Petition for Relief from Judgment was seasonably filed because it received the RTC's March 4, 2008 Decision on March 27, 2008 — not March 10, 2008 which is the date of receipt by the Public Prosecutor of Davao City;[105] (b) this Court had already held in *Republic of the Philippines v. Mendoza*,[106] that the reglementary period "should be counted from the date the Solicitor General received a copy of the decision because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General;"[107] (c) Judge Omelio no longer had jurisdiction to rule on the Republic's Petition for Relief from Judgment when he voluntarily inhibited himself from participating in the case;[108] (d) Judge Omelio abused his discretion in failing to conduct a hearing before dismissing the

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[102] *Id.* at 43-45.

[103] *Id.* at 45-48.

[104] *Id.* at 48-49.

[105] *Id.* at 222.

[106] 210 Phil. 445, 448 (1983).

[107] *Rollo*, pp. 223-224.

[108] *Id.* at 225-226, citing *Gov. Garcia v. Hon. Burgos*, 353 Phil. 740, 771 (1998).

petition for relief;[109] (e) Procedural Rules should "receive a liberal interpretation in order to promote their object and to assist the parties in obtaining a just, speedy and inexpensive determination of every action;"[110] (f) the CA did not err in holding that petitioner is barred by *res judicata* from seeking another reconstitution for OCT Nos. 219, 337, 67 and 164;[111] (g) Judge Omelio should have taken judicial notice of this Court's Resolution in *Heirs of Guzman, Inc.*;[112] (h) the CA did not err in holding that the RTC did not comply with the requirements of Sections 12 and 13 of R.A. No. 26;[113] (i) the doctrines of immutability of judgments and *res judicata* only apply to final and executory decisions — not to Judge Omelio's March 4, 2008 Decision which did not acquire jurisdiction to proceed with the reconstitution case for failure to comply with the requirements of Sections 12 and 13 of R.A. No. 26;[114] and (j) a Motion for Reconsideration need not be required in a Petition for *Certiorari* when the decision or order being assailed, such as the RTC's March 4, 2008 Decision, is a patent nullity.[115]

Intervenors-private respondents Lolita P. Tano, Fe I. Betios, Estrella E. Namata, Melchor Lecionan and Romeo Pacho also

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[109] *Id.* at 226-228, citing *Miraflor v. Hon. Carpio Morales*, 250 Phil. 487, 492 (1988).

[110] *Id.* at 228-229, citing *Funtila v. Court of Appeals*, 181 Phil. 442, 447 (1979).

[111] *Id.* at 230-234, citing *Quasha Ancheta Pena & Nolasco Law Office v. The Special Sixth Division of the Court of Appeals*, 622 Phil. 738, 749 (2009).

[112] *Id.* at 234-236, citing *Conducto v. Judge Monzon*, 353 Phil. 796, 812-815 (1998); *Lantaco, Sr. v. Judge Llamas*, 195 Phil. 325, 341 (1981).

[113] *Id.* at 236-240, citing *Republic v. Spouses Sanchez*, 527 Phil. 571, 595 (2006).

[114] *Id.* at 240-241, citing *Calalang v. Register of Deeds of Quezon City*, 284 Phil. 343, 354 (1992); *Francisco v. Judge Bautista*, 270 Phil. 503, 507 (1990); *Estoesta, Sr. v. Court of Appeals*, 258-A Phil. 779, 789-790 (1989); citation omitted.

[115] *Id.* at 241-242, citing *Marawi Marantao General Hospital, Inc. v. Court of Appeals,* 402 Phil. 356, 370-371 (2001).

filed their joint Comment[116] claiming that: (a) Sections 9 and 10 of R.A. No. 26 pertaining to the service of notices to actual occupants or possessors of lands covered by certificates of title subject in a petition for reconstitution of title were not complied with;[117] (b) *res judicata* applies to petitioner (as far as OCT Nos. 219, 337, 67 and 164 are concerned) even if she was not a party in the case of *Heirs of Guzman, Inc*. because the latter was in the same predicament as petitioner's in this previously-settled case;[118] and (c) their belatedly-pursued intervention in this case was warranted considering that they have not been served with any notice of the instant petition for reconstitution of title as required by R.A. No. 26.[119]

Intervenors-private respondents Alejandro Alonzo, Jr., Marites Alonzo-Liloc, Araceli Alonzo-Diolaso, Roberto Alonzo, Eulalia Angelitud, Evangeline Bautista, Salvador Bautista, Felimon Biliran, Jr., Lourdes Biliran, Reynaldo Biliran, Arsenio Briones, Norma Cal, Marilyn Cañete, Edgardo Costante, Joy Bill Dela Cruz, Marjorie Dela Cruz, John James Espinosa, Romar Cañete, Timoteo C. Flores, Jemuel Gaudicos, Lily Lisondra, Erwin Pacada, Alma Pagalan, Leonardo Peloño, Reynaldo Poliquit, Virgilio Reuyan, Jesus Reuyan, Sr., Rogeleo Reuyan, Arlan Silva, Carmelita Silva, Rommel Silva, Grace Temonera and Erlinda Valencia, for their part, jointly filed their "Comment/ Opposition (To Petitioner's Petition for Review on *Certiorari* Dated 19 April 2013)"[120] claiming that: (a) they are actual occupants of the lots covered in the subject OCTs sought to be reconstituted being residents therein;[121] (b) the lands that they are presently occupying are actually owned by Arroyo;[122] (c)

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[116] *Id.* at 168-175.

[117] *Id.* at 169-170.

[118] *Id.* at 170-172, citing *Sempio v. Court of Appeals*, 348 Phil. 627, 636 (1998).

[119] *Id.* at 172-174.

[120] *Id.* at 367-382.

[121] *Id.* at 368.

[122] *Id.* at 369.

the RTC, even if it has jurisdiction to entertain Petitions for Reconstitution of Title, had no authority to issue an order directing the demolition of the structures erected on the areas covered by subject OCTs;[123] (d) there was failure to faithfully comply with all jurisdictional requirements in R.A. No. 26 because the actual occupants of the lots covered by the subject OCTs were never notified of the pendency of the Petition for Reconstitution of Title before the RTC;[124] (e) they were not accorded due process when Judge Omelio issued the *Writ* of Demolition for they were never given a day in court to present their arguments;[125] and (f) they have legal interest in the outcome of the instant reconstitution of title as their rights will be adversely affected by the final verdict.[126]

The City of Davao likewise filed its Comment (Petition for Review on *Certiorari*)[127] arguing that: (a) petitioner failed to comply with the jurisdictional requirements enumerated in Section 12 of R.A. No. 26 because some areas embraced by the certificates of title sought to be reconstituted are situated within the commercial and residential districts in the city and that several government properties (Barangay Hall of Barangay 74-A situated in a lot covered by TCT No. T-2981 is located within the property described in OCT No. 514; a portion of lot under TCT No. T-131158 derived from OCT No. 377 is registered in the name of the Republic; Talomo Police Station which is part of the Davao City Police Office situated in a lot covered by TCT No. FP-1243 and registered in the name of Vicenta D. Lastima is located within the property embraced in OCT No. 514) are "glaring to the eyes;"[128] (b) posting and publication cannot cure the defects in the petition for

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[123] *Id.* at 370.

[124] *Id.* at 371-375.

[125] *Id.* at 375-378.

[126] *Id.* at 378-379.

[127] *Id.* at 205-212.

[128] *Id.* at 205-207.

reconstitution which alleged that there are no structures erected on the lands covered by certificates of title sought to be reconstituted by petitioner;[129] and (c) it has a legal and valid interest over the lands covered by the certificates of title sought to be reconstituted because, aside from having properties situated in the lands described in the subject certificates, the RTC had granted and tried to implement petitioner's motion to compel the city to issue a Fencing Permit.[130]

Atty. Cruzabra, on her part, filed a Manifestation and/or Comment[131] adopting[132] the OSG's Comment and adding that: (a) Judge Omelio proffered no valid reason in revoking his inhibition and subsequently denying summarily the Republic's Petition for Relief from Judgment;[133] (b) Judge Omelio indeed granted petitioner's motion for the issuance of a Fencing Permit on May 25, 2010 and issued an Order directing the City Engineer of Davao City to issue the same permit;[134] (c) the RTC as presided by Judge Omelio had no residual jurisdiction on account of the CA's April 28, 2011 Resolution which hindered the implementation of the former tribunal's directive against the City of Davao for the issuance of a Fencing Permit;[135] (d) petitioner failed to comply with the jurisdictional requirements under Sections 12 and 13 of R.A. No. 26 regarding the allegations of absence or presence of structures on the lands covered by certificates of title sought to be reconstituted and service of notices to actual occupants;[136] (e) Judge Omelio had already

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[129] *Id.* at 207.

[130] *Id.* at 207-209.

[131] *Id.* at 281-295.

[132] *Id.* at 282.

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

[134] *Id.* at 283-284.

[135] *Id.* at 284.

[136] *Id.* at 285-289, citing *Alabang Development Corporation v. Hon. Valenzuela*, 201 Phil. 727, 731 (1982); *The Director of Lands v. Court of Appeals*, 190 Phil. 311, 372 (1981); *Manila Railroad Company v. Moya*, 121 Phil. 1122, 1127 (1965).

been dismissed by this Court from judicial service on account of rendering the March 4, 2008 Decision;[137] and (f) despite the CA's Decision which nullified the RTC's March 4, 2008 Decision, the current Register of Deeds who replaced her upon retirement still proceeded to issue new original copies OCT Nos. 219[138] and 301.[139]

Reply

Petitioner, upon receiving the respective comments of all respondents, filed a couple of sets of Reply[140] arguing that: (a) respondents "failed to establish and prove with concrete and convincing evidence" that they were present and were occupying the properties covered by the subject OCTs "before or during the inception of the proceedings;[141] (b) Judge Omelio was justified in issuing a Fencing Permit because he had retained "general supervisory control over the process of the execution" relative to the March 4, 2008 Decision;[142] (c) the City of Davao "failed to prove" that she failed to comply with the jurisdictional requirements because the notice of hearing relative to the instant petition for reconstitution of title case was posted at the main entrance of the City Hall Building and that the structures erected on the properties under the subject OCTs have been erected after the same petition was filed before the RTC;[143] (d) this Court's ruling in *Heirs of Guzman, Inc*. does not constitute *res judicata* because the same principle was only raised during the *certiorari* proceedings before the CA and that same case was not decided on the merits and had different sets of evidence;[144]

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[137] *Id.* at 290.

[138] *Id.* at 314-316.

[139] *Id.* at 311-313.

[140] *Id.* at 248-273 and 323-346.

[141] *Id.* at 249.

[142] *Id.* at 249 and 251.

[143] *Id.* at 251-255 and 336-338.

[144] *Id.* at 255-261 and 331-336.

(e) Judge Omelio's March 4, 2008 Decision became immutable and unalterable after it attained finality;[145] (f) the OSG's recourse of seeking a relief from judgment is not the proper remedy because it was guilty of gross negligence when it failed to timely file a Motion for Reconsideration or an appeal against Judge Omelio's March 4, 2008 Decision;[146] and (g) the unilateral reversal of the voluntary inhibition was anchored on a valid reason as the lots covered by the subject OCTs turned out to be different from those previously handled by Judge Omelio when he was still engaged in the private practice of law.[147]

Issues

I

Whether the CA committed a reversible error in finding grave abuse of discretion and reversing the RTC's September 3, 2009 Order which summarily denied the Republic's petition for relief from judgment.

II

Whether the CA committed a reversible error in nullifying the RTC's March 4, 2008 Decision through the issuance of a Writ of Certiorari.

III

Whether the CA committed a reversible error in allowing the actual occupants of the lots subject in the present reconstitution of title case to participate in the certiorari proceedings.

IV

Whether this Court should impose disciplinary sanctions on Atty. Lanelyn D. Pangilinan (Atty. Pangilinan) and Atty. Maria Theresa D. Biongan-Pescadera (Atty. Biongan Pescadera) for

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[145] *Id.* at 261-263 and 338-340.

[146] *Id.* at 263-265 and 324-327.

[147] *Id.* at 266-269 and 327-331.

performing acts inconsistent with their sworn duties as Members of the Bar.

Ruling

Parameters of Review

At the outset, this Court reiterates the basic procedural rule that it is not a trier of facts and that only pure questions of law may be raised in a petition for review on *certiorari* under Rule 45.[148] Although jurisprudence has provided several exceptions to this rule,[149] such exceptions must be alleged, substantiated and proved by the parties so that this Court may effectively evaluate and review the factual issues raised.[150] Notably, like all other modes of appeal, the function of a Petition for Review on *Certiorari* under Rule 45 is to enable this Court to determine and correct any error of judgment committed in the exercise of jurisdiction.[151]

By comparison, nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist.[152] Likewise, jurisprudence is also settled in defining the phrase "grave abuse of discretion" as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.[153] In some rare instances, the term "grave abuse" even refers to

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[148] *Mangahas v. Court of Appeals*, 588 Phil. 61, 77 (2008).

[149] See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 537 (2015).

[150] *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

[151] See *Marasigan v. Fuentes*, 776 Phil. 574, 581 (2016); citation omitted.

[152] *Novateknika Land Corporation v. Philippine National Bank*, 706 Phil. 414, 423 (2013); Spouses *Bergonia v. Court of Appeals*, 680 Phil. 334, 341 (2012); citation omitted.

[153] *Republic v. Sandiganbayan*, 678 Phil. 358, 397-398 (2011); citation omitted.

cases in which there has been a gross misapprehension of facts[154] — but only for the limited purpose of establishing the allegation of grave abuse of discretion.[155] Correspondingly, the term "without jurisdiction" means that the court acted with *absolute* lack of authority; while the term "excess of jurisdiction" means that the court transcended its power or acted without any statutory authority.[156] As such, petitioner has the burden of proof to show that the act of the public respondent in issuing the impugned order (or decision, in some cases) lacked or exceeded its jurisdiction because mere abuse is not enough — it must be grave.[157] This is done by clearly showing, to the satisfaction of the reviewing court, the presence of caprice and arbitrariness in the exercise of discretion on the part of the inferior court or tribunal.[158]

In seeking to utilize the benefit from a competent court's corrective hand of *certiorari*, a petitioner must bear in mind that such procedural remedy is essentially supervisory and is specifically invoked to keep lower courts and other tribunals within the bounds of their jurisdiction.[159] A *Writ* of *Certiorari* is an extraordinary remedy which may only be availed of when there is no appeal or when there is no plain, speedy and adequate remedy in the ordinary course of law.[160] Unlike the different modes of appeal, the supervisory jurisdiction of a court over the issuance of a *Writ* of *Certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a lower court judgment — on the basis either of the law or the facts of the

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[154] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 592 (2007); citation omitted.

[155] See *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).

[156] *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 396 (2008), citing *Alafriz v. Nable*, 72 Phil. 278, 280 (1941); citation omitted.

[157] *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011).

[158] See *Olanolan v. Commission on Elections*, 494 Phil. 749, 756-757 (2005).

[159] *Cruz v. People*, 812 Phil. 166, 171 (2017).

[160] *Cunanan v. Court of Appeals*, 793 Phil. 400, 409 (2016).

case, or of the wisdom or legal soundness of the decision.[161] This is because a *Writ* of *Certiorari* is a remedy used to correct errors of jurisdiction — for which reason, it must clearly show that the public respondent had no jurisdiction to issue an order or to render a decision.[162] Viewed in a different angle, such extraordinary *writ* is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it had the authority to take cognizance of the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[163] Therefore, the remedy itself is narrow in scope.[164]

At this juncture, it now becomes important to point out that, much like reviewing the legal correctness of a CA decision in resolving a Petition for *Certiorari* under Rule 65 involving decisions and final orders of the National Labor Relations Commission, this Court will evaluate the case in the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the court *a quo*.[165] The ruling in *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*,[166] explains this concept in the following manner:

> In resolving the present Rule 45 petition, we are therefore, bound by the intrinsic limitations of a Rule 65 *certiorari* proceeding: it is an extraordinary remedy aimed solely at correcting errors of jurisdiction or acts committed without jurisdiction, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.

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[161] *China Banking Corporation v. Cebu Printing and Packaging Corporation*, 642 Phil. 308, 320 (2010).

[162] *AGG Trucking v. Yuag*, 675 Phil. 108, 120 (2011).

[163] *Ysidoro v. Hon. Leonardo-De Castro*, 681 Phil. 1, 14-15 (2012).

[164] *Spouses Dipad v. Spouses Olivan*, 691 Phil. 680, 686 (2012), citation omitted.

[165] See *Our Haus Realty Development Corporation v. Parian*, 740 Phil. 699, 709 (2014).

[166] 788 Phil. 62 (2016).

It does not address mere errors of judgement, unless the error transcends the bounds of the tribunal's jurisdiction.[167]

Accordingly, the questions that need to be answered while keeping the aforementioned parameters of review in mind are the following:

(1) Did the CA commit a reversible error in finding grave abuse of discretion on the RTC's part for issuing the September 3, 2009 Order which summarily denied the Republic's Petition for Relief from Judgment?

(2) Did the CA commit a reversible error in nullifying the RTC's March 4, 2008 Decision by issuing a *Writ* of *Certiorari*?

This Court answers in the negative for the following reasons:

On reversing and finding grave abuse of discretion on the RTC's September 3, 2009 Order which summarily denied the Republic's Petition for Relief from Judgment

I. The CA was correct in holding that Judge Omelio went beyond the bounds of his authority when he: (a) unilaterally withdrew his inhibition, (b) re-assumed jurisdiction, and (c) summarily denied the Republic's Petition for Relief from Judgment.

A critical component of due process is a hearing before an impartial and disinterested tribunal.[168] All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[169] Such constitutional principle is the basis of Section 1, Rule 137 of the Rules of Court which states:

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[167] *Id.* at 73-74.

[168] *Webb v. People*, 342 Phil. 206, 215 (1997).

[169] *People v. Hon. Ong*, 523 Phil. 347, 356 (2006); citation omitted.

Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The aforementioned rule contemplates two (2) kinds of inhibition: (a) compulsory; and (b) voluntary.[170] Under the *first* paragraph of the afore-cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned.[171] The *second* paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[172] It is the latter kind of inhibition which rests on the subjective ground of conscience; that is why cases under such category should be analyzed on a case-to-case basis.

In the case of Judge Omelio's voluntary inhibition, this Court makes it clear that a trial judge who voluntarily inhibits himself **loses jurisdiction** to hear a case.[173] However, while a judge in extremely rare instances may reconsider his previous inhibition and re-assume jurisdiction after a careful re-assessment of the

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[170] *Chin v. Court of Appeals*, 456 Phil. 440, 449 (2003).

[171] *BGen (Ret.) Ramiscal, Jr. v. Hon. Justice Hernandez*, 645 Phil. 550, 557 (2010).

[172] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 345 (2005); citation omitted.

[173] See *City Government of Butuan v. Consolidated Broadcasting System, Inc.*, 651 Phil. 37, 52 (2010); citation omitted.

circumstances of the case,[174] the better course is to disqualify himself to avoid being misunderstood and to preserve his reputation for probity and objectivity.[175]

A judge who voluntarily inhibits himself from handling a case means that he had doubts regarding his impartiality. Such recusal is commendable on his part for it preserves the integrity of the Judiciary's ability to dispense impartial justice. However, a re-assumption of jurisdiction on the part of the judge who had previously inhibited from a particular proceeding gives the public an impression that he may have acquired some form of personal interest in the outcome of the case. For reasons of preserving the public's faith in the Judiciary's capability to dispense impartial justice, the best option of a judge who made a prior voluntary inhibition is to continue the same. This is especially applicable to multi-*sala* courts such as the RTC of Davao City.[176] Section 8(a), Chapter V of A.M. No. 03-8-02-SC[177] entitled "Guidelines on the Selection of Executive Judges and Defining their Powers, Prerogatives and Duties," which also happens to govern the mechanism for assignment of cases to different branches in a multi-*sala* court, provides:

SEC. 8. *Raffle and re-assignment of cases in ordinary courts where judge is disqualified or voluntarily inhibits himself/herself from hearing case*. —

(a) Where a judge in a multiple-branch court is disqualified or voluntarily inhibits himself/herself, the records shall be returned to the Executive Judge and the latter shall cause the inclusion of the said case in the next regular raffle for re-assignment. A newly-filed case shall be assigned by raffle to the disqualified or inhibiting judge to replace the case so removed from his/her court. (citations omitted)

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[174] *Id.*

[175] *Ty v. Banco Filipino Savings and Mortgage Bank*, 467 Phil. 290, 306 (2004).

[176] See Section 14 (1), Chapter II of Batas Pambansa Bilang 129 (August 14, 1981), as amended.

[177] February 15, 2004.

Indeed, no case may be assigned without being raffled, and no judge may choose the cases assigned to him.[178] The raffle of cases is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges.[179] Such process assures the public that the right of the parties to be heard by an impartial and unbiased tribunal is safeguarded while also protecting judges from any suspicion of impropriety.[180] More importantly, "[t]his Court has repeatedly and consistently demanded 'the **cold neutrality** of an impartial judge' as the **indispensable imperative of due process**."[181]

It now becomes clear from the foregoing discussions that Judge Omelio exceeded the bounds of his authority when he bypassed the raffling process and re-assumed jurisdiction over the Republic's Petition for Relief from Judgment — both without any apparent justification. Judge Omelio's failure to heed the guidelines provided in Section 8(a) of A.M. No. 03-8-02-SC amounts to a serious transgression of due process as the litigants (most especially respondents) were deprived of the benefits of a fair and neutral resolution of their case. Worse, Judge Omelio also violated the basic tenets of due process when he denied the Republic's Petition for Relief from Judgment without conducting a hearing; thereby denying the State an opportunity to raise its concerns or objections on the re-assumption of jurisdiction as provided in Section 6, Rule 38 of the Rules of Court.[182] Due to

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[178] See Supreme Court Circular No. 7, September 23, 1974 (*per* Chief Justice Querube C. Makalintal); see also *Andres v. Judge Majaducon*, 594 Phil. 591, 601 (2008).

[179] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch I, Cebu City*, 567 Phil. 103, 123 (2008).

[180] See *Re: An Undated Letter with the Heading "Expose" of a Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities Branch I, Naga City and Clerk of Court Renato C. San Juan, MTCC Naga City*, 411 Phil. 504, 519 (2001).

[181] *Lai v. People*, 762 Phil. 434, 442 (2015).

[182] Section 6. *Proceedings after answer is filed*. — After the filing of the answer or the expiration of the period therefor, the court shall hear the

these serious jurisdictional transgressions, this Court considers him **absolutely devoid of authority** in taking action on and expeditiously denying the Republic's Petition for Relief from Judgment. Since **orders of inhibition** are **judicial in nature**,[183] **due process requirements *apply*** and the parties should at least be heard before any act or resolution may be done resulting either in the denial of any motion to inhibit or in the re-assumption of jurisdiction by a presiding magistrate; thereby making the instant case under one of those several instances where the corrective hand of *certiorari* may be utilized.

At this point, however, this Court is not yet ready to make a sweeping statement of totally prohibiting judges from re-assuming jurisdiction in a case where he had already inhibited from as there might still be some unforeseen and unpredictable instances calling for such an extraordinary measure. Nevertheless, magistrates should be guided by the rule that **a re-assumption of jurisdiction may *only* be done in a manner that does not to contravene any existing administrative issuance of this Court**.

Thus, this Court holds that the RTC's September 3, 2009 Order denying the Republic's Petition for Relief from Judgment is void for being tainted with grave abuse of discretion as a result of Judge Omelio's unauthorized re-assumption of jurisdiction.

II. The CA was correct in taking cognizance of an order denying the Petition for Relief from Judgment because

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petition and if after such hearing, it finds that the allegations thereof are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall set aside the judgment or final order or other proceeding complained of upon such terms as may be just. Thereafter the case shall stand as if such judgment, final order or other proceeding had never been rendered, issued or taken. The court shall then proceed to hear and determine the case as if a timely motion for a new trial or reconsideration had been granted by it (Section 6, Rule 38 of the RULES OF COURT).

[183] *Atty. Fernandez v. Judge Vasquez*, 669 Phil. 619, 628 (2011); citation omitted.

> *a Writ of Certiorari is a comprehensive remedy against errors of jurisdiction.*

As discussed earlier, a *Writ* of *Certiorari* may only be issued for the correction of jurisdictional errors or grave abuse of discretion amounting to lack or excess of jurisdiction.[184] Being an "inflexible"[185] remedy of "limited scope and of narrow character"[186] "designed for the correction of jurisdictional errors,"[187] it cannot substitute for a lost appeal.[188]

However, the **instances** in which *certiorari* will issue cannot be defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ.[189] Jurisprudence recognizes **certain situations** when the extraordinary remedy of *certiorari* may be deemed proper, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency.[190] Moreover, the same remedy **may be availed** of **even if the lost appeal** was occasioned by a **party's neglect** or **error** in the **choice of remedies** when: (a) public welfare and the **advancement of public policy** dictates; (b) the broader interest of justice so requires; (c) the writs issued are null and void; or (d) the **questioned order** amounts to an **oppressive exercise**

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[184] *Bugaoisan v. OWI Group Manila, Inc.*, 825 Phil. 764, 774 (2018).

[185] See *Cruz v. People*, 812 Phil. 166, 172 (2017).

[186] See *Gabriel v. Petron Corporation*, 829 Phil. 454, 460 (2018).

[187] See *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* 479 Phil. 768, 779 (2004); citations omitted.

[188] See *De los Reyes v. People*, 516 Phil. 89, 92 (2006); citation omitted.

[189] *Heirs of Spouses Reterta v. Spouses Mores and Lopez*, 671 Phil. 346, 360 (2011).

[190] *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 338 (2011).

of judicial authority.[191] Ultimately, it is better on balance that this Court look beyond procedural requirements and overcome the ordinary disinclination to exercise supervisory powers so that a void order of a lower court may be controlled to make it conformable to law and justice.[192]

Relatedly, the principle of **liberal construction** of procedural rules has been allowed by this Court in the following cases: (a) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (b) where the interest of substantial justice will be served; (c) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (d) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[193] In addition, jurisprudence also teaches us that, aside from matters of life, liberty, honor or property which would **warrant** the **suspension** of the Rules of the **most mandatory character** and an examination and review by the appellate court of the lower courts findings of fact, the other elements that should be considered are the following: (a) the **existence** of **special** or **compelling circumstances**; (b) the **merits** of the case; (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (d) a lack of any showing that the review sought is merely frivolous and dilatory; and (e) the other party will not be unjustly prejudiced thereby.[194]

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[191] *Hanjin Engineering and Construction Co. Ltd./Nam Hyum Kim v. Court of Appeals*, 521 Phil. 224, 244-245 (2006); see *Acain v. Intermediate Appellate Court*, 239 Phil. 96, 104 (1987).

[192] *Bordomeo v. Court of Appeals*, 704 Phil. 278, 296 (2013).

[193] *Abrenica v. Law Firm of Abrenica, Tungol and Tibayan,* 534 Phil. 34, 46 (2006).

[194] *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003); citation omitted.

In this case, the records show that the RTC's March 4, 2008 Decision was received by Davao City's Office of the **City Prosecutor** on **March 10, 2008**; while the same judgment was received by the **OSG** only on **March 27, 2008**. Technically, the State through the OSG has fifteen (15) days from its actual receipt on March 27, 2008 or **until April 11, 2008** to appeal the RTC's March 4, 2008 Decision — **not** fifteen (15) days from the deputized prosecutor's receipt on March 10, 2008 or until March 25, 2008. Suspiciously, Atty. Velasco, the RTC's Clerk of Court, **prematurely declared** the RTC's March 4, 2008 Decision **as final and executory** on **March 28, 2008** — only a day after the OSG actually received the said judgment.[195] This obviously goes against the established jurisprudential principle that "copies of orders and decisions served on the deputized counsel, acting as an agent or representative of the Solicitor General, are not binding until they are actually received by the latter;"[196] all in acknowledgement of the OSG's principal role as the "principal law officer and legal defender of the Government"[197] as provided under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987. This means that the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.[198]

Confoundingly, the OSG opted to file a Petition for Relief from Judgment against the RTC's March 4, 2008 Decision on May 26, 2008 — the sixtieth (60th) calendar day from receipt of such Judgment on March 27, 2008.[199] Regrettably, even if the same pleading was filed within the reglementary period to file a Petition for Relief from judgment, the OSG still pursued

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[195] *Rollo*, p. 114.

[196] *National Power Corporation v. National Labor Relations Commission*, 339 Phil. 89, 101 (1997); citation omitted.

[197] *Gonzales v. Chavez*, 282 Phil. 858, 875-876 (1992); citation omitted.

[198] *Republic of the Philippines v. Viaje*, 779 Phil. 405, 415 (2016); citations omitted.

[199] *Rollo*, p. 74.

the *wrong remedy* and effectively *lost its statutory right to appeal*. It could have ignored the prematurely-issued March 31, 2008 Entry of Judgment and, instead, filed a Motion for Reconsideration or new trial from the March 4, 2008 Decision or a notice of appeal before the lapse of April 11, 2008.[200]

Nevertheless, this Court finds the attendant circumstances strongly compelling as to warrant the suspension of the applicable mandatory rules regarding strict compliance of reglementary periods and proper modes of review. The **proceedings** for the **execution** of the March 4, 2008 Decision — pursuant to the prematurely-declared March 31, 2008 Entry of Judgment — had **already commenced *even before*** the OSG's **last day** to **file** a motion for **reconsideration** (or **new trial**) or **notice of appeal** on April 11, 2008 **had lapsed**. As such, Judge Omelio's acts of passively allowing Atty. Velasco to issue the subject Entry of Judgment prematurely and failing to take any corrective steps amounts to an oppressive exercise of judicial authority because it unnecessarily **forces the aggrieved party** (in this case, the Republic) **to participate in parallel proceedings of pursuing concurrent remedies** (of execution *and* of appeal or *certiorari,* when pursued due to grave abuse of discretion)

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[200] A Motion to Recall an Entry of Judgment is practically a useless remedy at this point as it does not have the effect of suspending the reglementary period to file an appeal. Moreover, judgments or orders become final and executory by operation of law — not by judicial declaration (*Philippine Savings Bank v. Papa*, 823 Phil. 725, 736 [2018]). The finality of a judgment becomes a fact *upon the lapse of the reglementary period* of appeal if no appeal is perfected, or no motion for reconsideration or new trial is filed (*Barrio Fiesta Restaurant v. Beronia*, 789 Phil. 520, 539 [2016]; citation omitted). Verily, the trial court need not even pronounce the finality of the order or judgment as the same becomes final by operation of law (*Franco-Cruz v. Court of Appeals*, 587 Phil. 307, 317 [2018]). In other words, an entry of judgment does not make the judgment so entered as final and executory when it is not so in truth because it **merely records** the **fact** that a judgment, order or resolution has become final and executory — it is **not** *the* ***operative act*** *that makes the judgment, order or resolution final and executory* (*Realty Sales Enterprises, Inc. v. Intermediate Appellate Court*, 254 Phil. 719, 723 [1989]).

— thereby giving rise to multiplicity of suits.[201] Participating in multiple parallel proceedings is not only vexatious;[202] it also unnecessarily wastes the time and resources of the adversely affected party. Given this observation, it now appears that Judge Omelio was indifferent to both the misapplication of rules on strictly complying with reglementary periods as well as the consequences on the part of the parties affected by the spawning of concurrent proceedings before the RTC (for execution and *writ* of demolition proceedings) and the CA (for *certiorari* proceedings). Since Judge Omelio's act — in giving due course to petitioner's *Urgent Motion for Execution* instead of dismissing it outright — appears to be in tolerance of Atty. Velasco's erroneous issuance of the March 31, 2008 Entry of Judgment, any likelihood that the OSG's Motion for Reconsideration or Notice of Appeal from the March 4, 2008 Decision might be given due course or granted is virtually *nil*.

Moreover, Judge Omelio's May 25, 2010 Order which directed the Davao City Engineer's Office to **issue** a **Fencing Permit** over the properties covered by the OCTs sought to be reconstituted, as well as the October 8, 2010 ***Writ* of Demolition** for the clearing of structures erected on the properties covered by the same OCTs **while the *certiorari* proceedings before the CA were still pending**, conclusively show that judicial authority had been exercised in an ***oppressive manner***. The situation should have called for the application of "judicial courtesy" on his part which is exercised by suspending a lower court's proceedings although there is no injunction or an order from a higher court as a matter of respect and for practical considerations.[203] And even though judicial courtesy remains the exception rather than the rule, it will apply as there is a **strong probability** that the issues before the higher court would

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[201] Public policy is firmly set against unnecessary multiplicity of suits (See *Riviera Golf Club, Inc. v. CCA Holdings, B.V.*, 760 Phil. 655, 671 [2015]; citations omitted).

[202] *Cf. Magestrado v. People*, 554 Phil. 25, 40 (2007).

[203] *Bro. Oca v. Custodio*, 814 Phil. 641, 675 (2017); citations omitted.

be rendered **moot** and **moribund** as a result of the continuation of the proceedings in the lower court.[204]

Since a substantial number of actual occupants (of the lots covered by the OCTs sought to be reconstituted) had started to file their respective pleadings-in-intervention, the RTC through Judge Omelio should have exercised a considerable amount of prudence by refraining from performing or engaging in acts which are consistent with executing a final judgment. Issuing a Fencing Permit and a demolition *writ* for existing structures are the constitutive of final acts of execution which is almost certain to inflict an irreversible damage on the parties involved and frustrate whatever action that the CA may adopt to resolve the entire pending dispute. As such, Judge Omelio should have exercised due restraint in giving due course to petitioner's pleadings which practically sought for the execution of the RTC's March 4, 2008 Decision even without an injunctive *writ* issued by the CA. His insouciant attitude in continuing to conduct proceedings incidental to execution only added to the complexity of the entire dispute, annoyingly belabored all parties into participating in several unnecessary proceedings, and made the attendant conundrums considerably burdensome for higher courts to untangle.

Hence, under these oppressive circumstances, it is fair to conclude that the CA **correctly took cognizance** of respondents' **petitions for *certiorari*** in spite of the Republic having lost its right to appeal.

On nullifying the RTC's March 4, 2008 Decision through the issuance of a Writ of Certiorari

I. The CA correctly nullified the RTC's March 4, 2008 Decision when it issued the subject Writ of Certiorari.

The doctrine of finality of judgment or immutability of judgment articulates that a decision which has acquired finality

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[204] *Sara Lee Philippines, Inc. v. Macatlang*, 750 Phil. 646, 654 (2015).

becomes immutable and unalterable; it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[205] This principle is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end.[206]

Nonetheless, the immutability of judgment doctrine admits of some exceptions which are: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[207] Of these exceptions, the last couple of items in the enumeration (void judgments and supervening evident rendering the execution unjust and inequitable) may not be summarily performed by the court concerned because they are necessarily threshed out in another proceeding.

In a procedural context, a final and executory judgment may be set aside in one of the following: (a) petition for relief from judgment under Rule 38; (b) direct action to annul and enjoin the enforcement of the judgment;[208] and (c) direct action either by *certiorari* or by collateral attack against the challenged judgment which is void upon its face, or that the nullity of the judgment is apparent by virtue of its own recitals.[209] This means

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[205] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Br. 66*, 659 Phil. 117, 123 (2011).

[206] *Mercury Drug Corporation v. Spouses Huang*, 817 Phil. 434, 445 (2017); citations omitted.

[207] *Villa v. Government Service Insurance System*, 619 Phil. 740, 750 (2009); citation omitted.

[208] Now embodied in Rule 47 of the Rules of Court which was promulgated pursuant to Section 9(2) of Batas Pambansa Blg. 129 (The Judiciary Reorganization Act of 1980).

[209] *Macabingkil v. People's Homesite & Housing Corporation*, 164 Phil. 328, 345 (1976); cited in *Arcelona v. Court of Appeals*, 345 Phil. 250, 264 (1997).

that some exceptions to the immutability of judgment doctrine have been expanded to include the grounds of the foregoing remedies. "Void judgments," for example, encompasses the grounds enumerated under Rules 38 and 47 to include: (a) fraud; (b) accident; (c) mistake; (d) excusable negligence; (e) denial of due process;[210] (f) extrinsic fraud; and (g) lack of jurisdiction. Likewise, supervening events which render the execution of an unjust and inequitable final judgment also allow an aggrieved party to pursue the remedy of filing a Petition for *Certiorari* against the order or *writ* of execution.[211]

In the case at hand, it was the RTC's September 3, 2009 Order which summarily denied the Republic's Petition for Relief from Judgment — not the March 4, 2008 Decision which granted the petition for reconstitution — that was reviewed under *certiorari*. If Section 1, Rule 65 is to be followed in its literal sense, the CA's actions would be limited to **nullifying** (or **modifying**) the RTC's September 3, 2009 Order of denial and directing the ***reinstatement*** of the **proceedings** relative to the Republic's **Petition for Relief from Judgment**.[212] Doing so would only delay the resolution of the entire dispute leading to a circuitous and protracted litigation between all parties; thereby wasting not only their time and resources but also the Judiciary's. Since the **records available** to the CA and this Court **are substantial enough** to enable it to determine whether the March 4, 2008 Decision is tainted with grave abuse of discretion, there now arises a need to apply the concept of equity jurisdiction and allow a *pro tanto* review — in a *certiorari*

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[210] See *Diona v. Balangue*, 701 Phil. 19, 31 (2013).

[211] See *BPI Employees Union-Metro Manila v. Bank of the Philippine Islands*, 673 Phil. 599, 614 (2011); see Section 1(f), Rule 41 of the Rules of Court; see also *De Ocampo v. RPN-9/Radio Philippines Network, Inc.*, 775 Phil. 169, 177 (2011).

[212] Additionally, the parties cannot also speculate that the derivative effect of annulling an order denying a petition for relief from judgment will also have the effect of granting such petition for relief because the original dismissal was summary and did not give the parties the opportunity to fully-ventilate their causes or positions.

proceeding — of all the RTC's issuances in other proceedings. This is because the March 4, 2008 Decision gave rise to the Republic's Petition for Relief from Judgment. Thus, consistent with this Court's constitutional mandate to promulgate rules which shall provide a simplified and inexpensive procedure for the speedy disposition of cases,[213] precursor proceedings and their corresponding issuances which are **intimately related** to issuances being reviewed under extraordinary and comprehensive *certiorari* proceedings may be passed upon pursuant to the concept of equity jurisdiction.

To start with, equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[214] In relation to the concept of equity, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation.[215] For equity jurisdiction to be successfully invoked, the factual antecedents of a plea for the exercise of liberality must be clear.[216]

As firmly established in the records of the case, special circumstances were indeed attendant (*i.e.* the presence of several intervenors who are actual occupants of the lots covered by the OCT's sought by petitioner to be reconstituted and who are in danger of being deprived of their occupation). The same set of circumstances necessitates this Court to suspend the usual application of procedural rules in order to address serious allegations of injustices brought about by the complexity of the proceedings. As clarified earlier, when available records undoubtedly support the facts which are enough for this Court to pass upon the merits of a case intimately related to the one

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[213] See CONSTITUTION, Art. VIII, Sec. 5, par. 5.

[214] *Reyes v. Lim*, 456 Phil. 1, 10 (2003).

[215] *Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75, 86 (2016).

[216] *Viva Shipping Lines, Inc. v. Keppel Philippines Marine, Inc.*, 781 Phil. 95, 122 (2016).

being reviewed at bench, a *pro tanto* review of such related case (especially in a *certiorari* proceeding) becomes justifiable.

Here, the CA was justified in **nullifying** the March 4, 2008 Decision in a *certiorari* proceeding. Considering the aforementioned special circumstances, a reinstatement of the proceedings relative to the Petition for Relief from Judgment will only make the dispute between the contending parties protracted and circuitous. Fittingly, this Court also deems it proper that the issue regarding the March 4, 2008 Decision's jurisdictional validity be resolved now to avoid further delay in the disposition of this case.[217] Under the present circumstances and also by reason of the adequacy of available records, the CA was justified in wielding the powers of a *cert writ* when it: (1) exercised equity jurisdiction albeit unknowingly; and (2) resolved the issue on whether to grant or deny the Petition for Relief from Judgment as if it were filed before it.

Relatedly, this Court deems it best to clarify that the CA also did not err in unknowingly or subconsciously applying the concept of equity jurisdiction ***even if*** the **grounds** for a successful Petition for Relief from Judgment **were absent** in this case. Admittedly, the records bear no evidence that Atty. Velasco's act (of prematurely entering a judgment which had not yet become final) was a result of petitioner's acts, fraudulent or otherwise. In both Rules 38 and 47, the grounds referred to here are those **which have been committed by prevailing parties** — not those which have been committed by the court or its personnel because the same may be corrected by means of an **appeal**.[218] This notwithstanding, equity jurisdiction may be exercised by the CA in a *certiorari* proceeding for it to nullify a judgment being assailed in a petition for relief because **serious**

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[217] *Cf. Orquiola v. Court of Appeals*, 435 Phil. 323, 332 (2002).

[218] See *Baclaran Marketing Corporation v. Nieva*, 809 Phil. 92, 103 (2017); *City of Dagupan v. Maramba*, 738 Phil. 71, 91 (2014); *Redeña v. Court of Appeals*, 543 Phil. 358, 368 (2007); *Agan v. Heirs of Spouses Nueva*, 463 Phil. 834, 841 (2003), see also Section 2, Rule 38 of the Rules of Court.

allegations of lack or absence of jurisdiction were raised. Failure to comply with mandatory jurisdictional requirements in a special proceedings case is one such instance.

Finally, as regards petitioner's assertion of the immutability of final judgments doctrine, this Court rejects the same as respondents raised serious allegations **affecting** the RTC's **authority** to take cognizance of the subject reconstitution case and power to render the March 4, 2008 Decision. In this instance, a re-examination as to the **jurisdictional validity** of the March 4, 2008 Decision cannot simply be barred or prevented by a simple invocation of the immutability doctrine. Once the allegations of absence of jurisdiction are proven by the party assailing it, it now becomes the burden of the other to prove presence of jurisdiction. Special proceedings cases are dependent on express statutory requirements regarding jurisdiction in order for said proceedings and judgments to be wholly valid. Thus, in the case of reconstitution of title, a petitioner has the burden to successfully substantiate with evidence all the statutorily-mandated jurisdictional requirements.

II. The CA correctly found the RTC to have exceeded its jurisdiction in granting the petition for reconstitution of title despite the failure of petitioner to comply with some jurisdictional requirements.

Jurisdiction is the basic foundation of judicial proceedings.[219] It is simply defined as the power and authority — conferred by the Constitution or statute — of a court to hear and decide a case.[220] Without jurisdiction, a judgment rendered by a court is null and void and may be attacked anytime.[221] Indeed, a void judgment is no judgment at all — it can neither be the source of any right nor the creator of any obligation; all acts performed

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[219] *People v. Mariano*, 163 Phil. 625, 629 (1976).

[220] *Bank of the Philippine Islands v. Hong*, 682 Phil. 66, 72 (2012).

[221] *Bilag v. Ay-ay*, 809 Phil. 236, 243 (2017).

pursuant to it and all claims emanating from it have no legal effect.[222]

In adjudication, the concept of jurisdiction has several ***aspects***, namely: (a) jurisdiction over the **subject matter**; (b) jurisdiction over the **parties**; (c) jurisdiction over the **issues** of the case; and (d) in cases involving property, jurisdiction over the ***res*** or the **thing** which is the subject of the litigation.[223] Additionally, a court must also acquire jurisdiction over the **remedy** in order for it to exercise its powers validly and with binding effect.[224]

First, jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court.[225] Second, jurisdiction over the parties is the power of the courts to make decisions that are binding on them and is based on due process.[226] This is acquired through voluntary appearance, in the case of the plaintiff or petitioner, or through the coercive power of legal processes, in the case of the defendant or respondent.[227] Third, jurisdiction over the issues pertains to a tribunal's power and authority to decide over matters which are either disputed by the parties or simply under consideration. This aspect of jurisdiction is closely tied to jurisdiction over the remedy and over the subject matter which, in turn, is generally determined in the allegations of the initiatory pleading (complaint or petition) and not the result of proof.[228]

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[222] *Padre v. Badillo*, 655 Phil. 52, 54 (2011).

[223] *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 464 (2013).

[224] *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 723 (2014).

[225] *United States v. Jayme*, 24 Phil. 90, 92 (1913).

[226] *People's General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018.

[227] See *Prudential Bank (now Bank of the Philippine Islands) v. Magdamit, Jr.*, 746 Phil. 649, 666 (2014).

[228] *Cf. Navaja v. De Castro, et al.*, 761 Phil. 142, 150-151 and 153 (2015).

However, unlike jurisdiction over the subject-matter, jurisdiction over the issues may be conferred by either express or implied consent of the parties.[229] Fourth, jurisdiction over the *res* pertains to the court's authority over the object or thing subject of the litigation as well as its power to bind the same with its judgment. Last, jurisdiction over the remedy pertains to authority of a tribunal to take cognizance and pass upon the propriety of petitioner or complainant's reliefs sought. The same aspect of jurisdiction is dependent on either the statute providing for a specific procedure for the recognition of a particular right (*i.e.* reconstitution of certificate of title, registration of title, *etc.*) or the procedure promulgated by this Court pursuant to its constitutional powers (*i.e. habeas corpus, quo warranto*, declaratory relief, *etc.*).

Pertinently, certain statutes confer jurisdiction, power, or authority while others provide for the **procedure** by which that power or authority is projected into judgment — the first deals with the powers of the court in the real and substantive sense while the other class with the procedure by which such powers are put into action.[230] As in this case, **special proceedings** are creatures of statutes (or constitutional provisions in the case of extraordinary *writs* like *habeas corpus*) that **do *both* — confer jurisdiction** on specific courts **while providing for a specific procedure to be followed** in order for the resulting judgment to be valid. The reason is that a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.[231] It is unlike ordinary civil actions in which a party called a "complainant" who seeks for either the enforcement or protection of a right or the prevention or redress of a wrong.[232] Here, the case has one definite party, who petitions or applies

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[229] *Bernabe v. Vergara,* 73 Phil. 676, 677 (1942).

[230] *De Jesus v. Garcia*, 125 Phil. 955, 960 (1967).

[231] Section 3(c), Rule 1 of the Rules of Court.

[232] See *Heirs of Yaptingchay v. Hon. Del Rosario*, 363 Phil. 393, 398 (1999).

for a declaration of a status, right, or particular fact, but **no definite** adverse party.[233] As such, the trial court must have **jurisdiction** to take cognizance of such petition or application in compliance with the **specific procedure** provided by law. The **authority to proceed** is conferred by a statute which is why the **manner** of **obtaining jurisdiction** is mandatory and the same must be strictly complied with.[234] One must be mindful that the **acquisition** of jurisdiction is not a direct result of the inherent power of courts to settle actual controversies involving injured or conflicting rights *per se* — **it traces its source from *substantive laws* which *set or fix jurisdictional requirements* for petitioners to not only allege but also *prove* in order to vest and validate the handling tribunal's authority as well as the proceedings already conducted**. This makes jurisdiction in special proceedings primarily **dependent** on petitioner's **strict compliance** with statutory requirements which fix the authority of the court to take cognizance of the case and pass a judgment thereon. Consequently, a petitioner's noncompliance with jurisdictional requirements in a special proceedings case removes a court's authority thereby rendering the whole proceedings void.

At this juncture, the issue that needs to be resolved is: Was petitioner able to comply with the jurisdictional requirements enumerated in R.A. No. 26?

This Court answers in the negative.

Reconstitution[235] of title is a special proceeding.[236] Being a special proceeding, a petition for reconstitution must allege

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[233] *Montañer v. Shari'a District Court, 4th Shari'a Judicial District, Marawi City*, 596 Phil. 815, 826 (2009).

[234] See *The Government of the Philippines v. Aballe*, 520 Phil. 181, 191-192 (2006).

[235] Judicial reconstitution of title under R.A. No. 26 is akin to other special proceedings which generally require not only the publication of notices but must also be served to interested parties (see Sections 1 and 2 of Rule 74; Section 3 of Rule 76; Sections 2, 3 and 4 of Rule 86; Sections 7 and 8 of Rule 89; Sections 2 and 3 of Rule 91; Section 6 of Rule 93; Sections

and prove certain specific jurisdictional facts before a trial court can acquire jurisdiction.[237] R.A. No. 26, as amended, is the special law which provides for a specific procedure for the reconstitution of Torrens certificates of title lost or destroyed; Sections 2 and 3 thereof provide how original certificates of title and transfer certificates of title shall be respectively reconstituted and from what specific sources successively enumerated therein such reconstitution shall be made.[238] It *confers jurisdiction* upon trial courts to hear and decide petitions for judicial reconstitution; however, before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for, petitioner must observe certain special requirements and mode of procedure prescribed by the law.[239] More importantly, substantial compliance with jurisdictional requirement is not enough because the acquisition of jurisdiction over a reconstitution case is hinged on a **strict compliance** with the requirements of the law.[240]

Conversely, noncompliance with ***all*** jurisdictional requirements in special proceedings (such as reconstitution of title) adversely

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4 and 5, Rule 99; Sections 3 and 5, Rule 103; Sections 2 and 4, Rule 104; Sections 3 and 4, Rule 105; Sections 3 and 4, Rule 106; Sections 4 and 6, Rule 107; Sections 4 and 5, Rule 108) as well as the presentation in evidence (preliminary marking and formal offer) of such proof of publication and service to notices of hearing to interest parties as part of mandatory jurisdictional requirements; see also Sections 9, 11 and 13 of R.A. 26. **To prove compliance with the jurisdictional requirements before the court should receive evidence in support of the petition, the petitioner is required to mark as exhibits the proof of publication and service of notice to the interested parties as well as proof of the actual publication of the notice of hearing.**

[236] See *Republic v. Hon. Mangotara*, 638 Phil. 353, 469 (2010); see also Section 22 of R.A. No. 26.

[237] See *Tahanan Development Corporation v. Court of Appeals*, 203 Phil. 652, 681 (1982).

[238] *Alipoon v. Court of Appeals*, 364 Phil. 591, 598 (1999).

[239] *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 387-388 (2001).

[240] *Republic v. De Asis, Jr.,* 715 Phil. 245, 255 (2013).

affects the trial court's jurisdiction over the *subject matter* of the case and, in cases where a specific procedure is outlined by law, over the *remedy* pursued by petitioner. Failure to comply with any of the jurisdictional requirements for a petition for reconstitution renders the whole proceedings null and void.[241] Strict observance of this rule is vital to prevent parties from exploiting reconstitution proceedings as a quick but illegal way to obtain Torrens certificates of title over parcels of land which turn out to be already covered by existing titles.[242] Comparatively, this Court cannot even take a lenient approach in resolving reconstitution cases because **liberal construction of the Rules does not apply to *substantive requirements* specifically enumerated by a statute**,[243] **especially so if *matters affecting jurisdiction* are involved**. In other words, the principle of liberality cannot be applied to statutory requirements as they are not technical rules of procedure which may be brushed aside by the courts to serve the higher reason of resolving the case on the merits. In special proceedings, the merits directly hinges on petitioner's compliance with statutory requirements proven in court to establish a status, right or particular fact.

Accordingly, in obtaining a new title in lieu of the lost or destroyed one, petitioner must be mindful of R.A. No. 26 which laid down procedures that must be **strictly followed** in view of the danger that reconstitution could be the source of anomalous titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.[244] Even in the absence of an opposition, a petition for reconstitution which does not strictly adhere to the requirements of the law will not be granted in the pretext that the same proceeding will not affect the ownership or possession of the property.[245] Hence, it is the reason

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[241] *Republic v. Camacho*, 711 Phil. 80, 93 (2013).

[242] *Republic v. Santua*, 586 Phil. 291, 300 (2008).

[243] *Cf. Castillo v. Republic*, 667 Phil. 729, 746 (2011).

[244] See *Angat v. Republic*, 609 Phil. 146, 167 (2009).

[245] See *Republic v. Mancao*, 764 Phil. 523, 524-525 (2015).

why this Court has held in numerous cases involving reconstitution of title that noncompliance with the prescribed procedure and requirements deprives the trial court of jurisdiction over the subject matter or nature of the case and, consequently, all its proceedings are rendered null and void.[246]

For the trial court *to acquire jurisdiction* over the petition for reconstitution, the *occupants* of the property *should be notified* of the petition.[247] In other words, it is beyond cavil that the **requirement of actual notice** to the **occupants *and*** the **owners** of the adjoining property under Sections 12 and 13 of R.A. No. 26 ***is itself* mandatory to vest jurisdiction** upon the court in a petition for reconstitution of title and essential in order to allow said court to take the case on its merits.[248] Verily, noncompliance with these requirements, especially as regards the notice of hearing as provided for under Section 13 of the same law, is fatal and the trial court cannot acquire jurisdiction over the petition for reconstitution.[249] This Court emphasizes that the purposes of the stringent and mandatory character of the legal requirement of mailing the notice to the actual occupants of property covered by the certificates of title to be reconstituted are: (a) to safeguard against spurious and unfounded land ownership claims; (b) to apprise all interested parties of the existence of such action; and (c) to give them enough time to intervene in the proceeding.[250] At all times, clear and convincing evidence proving the jurisdictional requirements must exist before a court may order the reconstitution of a destroyed or lost title.[251]

In this case, petitioner's allegation that the subject property was unoccupied at the time of the instant case's inception, aside

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[246] *Republic v. Susi*, 803 Phil. 348, 358 (2017).

[247] *Opriasa v. The City Government of Quezon City*, 540 Phil. 256, 266 (2006).

[248] *Republic v. Court of Appeals*, 368 Phil. 412, 424 (1999).

[249] See *Allama v. Republic*, 283 Phil. 538, 543 (1992).

[250] *Republic v. Estipular*, 391 Phil. 211, 221 (2000).

[251] *Dela Paz v. Republic*, 820 Phil. 907, 920 (2017).

from being unsubstantiated, eventually turned out to be false when a *Writ* of Demolition was sought after to execute the judgment of reconstitution. The presence of inhabited artificial and permanent structures erected on a particular land is an obvious indication of occupation or possession. To have such structures, inhabited by third persons, demolished through a court process is a clear act of recognition that the same land is indeed adversely occupied or possessed. Petitioner's act of seeking for the issuance of a *Writ* of Demolition is patently incongruous with the allegations in her petition for reconstitution of title that "there are no buildings or other structures of strong materials on the above-mentioned pieces of land which do not belong to [her]."[252] Moreover, she also failed to adduce any proof that the subject lots were actually unoccupied **at the time she filed her petition** for reconstitution of title as the records bear that the TCTs in the name of the intervenors-respondents have already been issued by the Registry of Deeds. These observations can only mean that petitioner failed to prove the jurisdictional requirement of sending notices to actual occupants and registered owners of the land covered by the certificate of title sought to be reconstituted. Therefore, the proceedings before the RTC (as presided by Judge Omelio) which resulted in the grant of the petition for reconstitution of title is void for being tainted with grave abuse of discretion as a consequence of petitioner's failure to prove all the jurisdictional requirements set in R.A. No. 26.

Besides, the Court *En Banc*'s pronouncement here is in consonance with its *dictum* in *Peralta v. Judge Omelio (Peralta)*[253] — a portion of which pertains to an administrative complaint filed by Atty. Cruzabra against Judge Omelio involving the latter's March 4, 2008 Decision and proceeds from facts identical and intimately related to the case at hand — which reads:

> Cruzabra charges respondent with ignorance of law and procedure, misconduct, bias, partiality and oppression in granting Denila's petition

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[252] *Rollo*, p. 104.

[253] 720 Phil. 60 (2013).

for reconstitution despite the previous ruling of this Court in *Heirs of Don Constancio Guzman, Inc. v. Hon. Judge Emmanuel Carpio* against the reconstitution of OCT Nos. 219, 337, 67 and 164, and the failure of Denila to comply with the jurisdictional requirements under R.A. No. 26 (indicating (1) the nature and description of the buildings and improvements not belonging to the owner of the land; and (2) the names and addresses of occupants or persons in possession of the property).

Cruzabra likewise assails respondent for revoking his previous inhibition and **denying the Republic's petition for relief from judgment without conducting a hearing** as required by Section 6, Rule 38 of the Rules of Court. The reason for similar denial of the motion for reconsideration filed by the OSG was also flimsy: the notice of hearing was addressed only to the Clerk of Court, even as the parties were all furnished with copies of the motion.

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However, we find respondent administratively liable in A.M. No. RTJ-11-2273 for gross ignorance of the law in (a) refusing to adhere to a prior ruling of this Court against the reconstitution of certain OCTs; (b) reversing his previous inhibition in Sp. Proc. No. 7527-2004; and (c) taking cognizance of Denila's motion for indirect contempt.

In granting Denila's petition for reconstitution of original and owner's duplicate copies of OCTs registered in the name of Constancio S. Guzman and Isabel Luna, respondent failed to take judicial notice of this Court's previous ruling rendered in *Heirs of Don Constancio Guzman, Inc. v. Hon. Judge Emmanuel Carpio* which involved the same OCT Nos. 219, 337, 67 and 164. The Resolution rendered by this Court's Third Division is herein reproduced:

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But more important, respondent **granted the petition for reconstitution** in Sp. Proc. 7527-2004 **despite noncompliance with the requirements under R.A. No. 26**.

The applicable provisions are Sections 2, 12 and 13 which state:

> SECTION 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

[x x x x x x x x x]

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) **the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements**; (e) **the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property**; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have

been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further be accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

In this case, the petition for reconstitution of the subject OCTs is based on Section 2(c), that is, on certified true copies of the said titles issued by a legal custodian from the LRA. However, **the amended petition and the notice of hearing failed to state the names and addresses of the occupants or persons in possession of the property and all persons who may have any interest in the property as required by Section 12**. There is also **no compliance with the required service of notice to the said occupants, possessors and all persons who may have any interest in the property**.

Records reveal that Denila indeed **failed to disclose in her amended petition for reconstitution that there are occupants and possessors in the properties** covered by the subject OCTs. Third parties, including the City Government of Davao filed motions for intervention in CA-G.R. SP 03270-MIN and manifested before the CA Cagayan de Oro City that several structures and buildings, including a *barangay* hall, a police station and a major public highway would be affected by the order for the issuance of a fencing permit and writ of demolition issued by respondent. These occupants and possessors have not been notified of the reconstitution proceedings. The March 4, 2008 decision itself shows that no notice was sent to any occupant, possessor or person who may have an interest in the properties.

The requirements prescribed by Sections 12 and 13 of R.A. No. 26 are mandatory and compliance with such requirements is jurisdictional. Notice of hearing of the petition for reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition. Compliance with the actual notice requirement is necessary for the trial court to acquire jurisdiction over the petition for reconstitution. If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void.

In *Subido v. Republic of the Philippines*, this Court ruled:

> As may be noted, Section 13 of R.A. No. 26 specifically enumerates the manner of notifying interested parties of the petition for reconstitution, namely: (a) publication in the Official Gazette; (b) posting on the main entrance of the provincial capitol building and of the municipal building of the municipality or city in which the land is situated; and (c) by registered mail or otherwise, to every person named in the notice. The notification process being mandatory, **noncompliance with publication and posting requirements would be fatal to the jurisdiction of the reconstituting trial court and invalidates the whole reconstitution proceedings**. So would failure to notify, in the manner specifically prescribed in said Section 13, interested persons of the initial hearing date. Contextually, Section 13 particularly requires that the notice of the hearing be sent to

the property occupant or other persons interested, by registered mail or otherwise. The term "otherwise" could only contemplate a notifying mode other than publication, posting, or [through] the mail. That other mode could only refer to service of notice by hand or other similar mode of delivery.

It cannot be over-emphasized that R.A. No. 26 specifically provides the **special requirements and procedures that must be followed before the court can properly act, assume and acquire jurisdiction over the petition and grant the reconstitution prayed for**. These **requirements**, as the Court has repeatedly declared, are **mandatory**. Publication of notice in the Official Gazette and the posting thereof in provincial capitol and city/municipal buildings would not be sufficient. The **service of the notice** of hearing to parties affected by the petition for reconstitution, notably **actual occupant/s** of the land, either by registered mail or hand delivery **must also be made**. In the case at bar, the "**posting** of the **notice** at the place where TCT No. 95585 is situated" is **not**, as urged by petitioner, **tantamount to compliance** with the mandatory requirement that notice by registered mail or otherwise be **sent** to the person named in the notice.

In view of what amounts to a **failure to properly notify parties affected by the petition for reconstitution** of the date of the initial hearing thereof, the appellate court correctly held that **the trial court indeed lacked jurisdiction to take cognizance of such petition**. And needless to stress, barring the application in appropriate cases of the *estoppel* principle, a judgment rendered by a court without jurisdiction to take cognizance of the case is void, ergo, without binding legal effect for any purpose.

In *Ortigas & Co. Ltd. Partnership v. Velasco*, we have held Judge Tirso Velasco's acts of proceeding with the reconstitution despite awareness of lack of compliance with the prerequisites for the acquisition of jurisdiction under R.A. No. 26, and disregarding adverse findings or evidence of high officials of LRA that militates against the reconstitution of titles, to be of serious character warranting his dismissal from the service. We also charged Judge Velasco with knowledge of this Court's pronouncement in *Alabang Development Corporation v. Valenzuela* and other precedents admonishing courts to exercise the "greatest caution" in entertaining petitions for reconstitution of allegedly lost certificates of title and taking judicial notice of innumerable litigations and controversies that have been spawned by the reckless and hasty grant of such reconstitution of

allegedly lost or destroyed titles as well as of the numerous purchasers who have been victimized by forged or fake titles or whose areas simply expanded through table surveys with the cooperation of unscrupulous officials.

Here, respondent's bad faith in disregarding the jurisdictional requirements in reconstitution proceedings is evident in his order for the issuance of a fencing permit and writ of demolition in favor of Denila. Respondent **should have been alerted by the presence of actual occupants and possessors when**, after the finality of the March 4, 2008 Decision which ordered the reconstitution of the subject OCTs, **Denila <u>moved for the issuance of a writ of demolition</u> for such belied her allegation in the amended petition that "[T]here are no buildings or other structures of strong materials on the above-mentioned pieces of land, which do not belong to the herein petitioner"** and the absence of any name and address of any occupant, possessor or person who may have an interest in the properties.

With the **failure to serve actual notice on these occupants and possessors**, Branch 14 had ***not acquired jurisdiction*** over Sp. Proc. No. 7527-2004, and therefore the March 4, 2008 **Decision rendered** by respondent is **null and void**. A **decision** of the court **without jurisdiction** is **null and void**; hence, it can never logically become final and executory. Such a judgment **may be attacked** directly or **collaterally**.

But respondent's bad faith is most evident in his reversal of his inhibition in Sp. Proc. No. 7527-2004 to act upon the petition for relief from judgment. Respondent voluntarily inhibited himself after rendition of the decision, only to resume handling the case and immediately denied the said petition for relief despite the previous order of Judge Tanjili setting the petition for hearing, and completely ignoring the jurisdictional defects of the decision raised by the OSG and Cruzabra.

x x x   x x x   x x x

WHEREFORE, premises considered, Judge **George E. Omelio**, Presiding Judge of the Regional Trial Court, Branch 14 Davao City is found **GUILTY** of **<u>Gross Ignorance of the Law</u>** and violation of Canon 3 of the New Code of Judicial Conduct and is hereby **DISMISSED FROM THE SERVICE**, with forfeiture of all his retirement benefits, except his accrued leave credits, and with perpetual disqualification for re-employment in any branch, agency or

instrumentality of the government, including government-owned or controlled corporations.

This Decision is immediately EXECUTORY.

SO ORDERED.[254] (emphases supplied; citations omitted)

In this case, the afore-cited portion in ***Peralta*** clearly shows that Judge Omelio's March 4, 2008 Decision cannot be legally revived and reinstated. It is obvious that the very reason why Judge Omelio was dismissed from the judicial service by the Court *En Banc* was precisely because he was adjudged to be grossly ignorant of the law when he took cognizance of and eventually granted the subject petition for reconstitution of the subject certificates of title filed by petitioner **despite the lack of jurisdictional requirements**. Judge Omelio even failed to verify and cite a single evidence from the records which reasonably supports petitioner's factual allegations pertaining to the jurisdictional requirement of mailing notices to actual occupants or possessors of a property subject in a reconstitution case. Clearly, the RTC's grant of reconstitution favoring petitioner in its March 4, 2008 Decision was devoid of factual basis. This is due to the basic principle that courts cannot grant a relief without first ascertaining the evidence presented in support thereof because due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court.[255] Therefore, the RTC's March 4, 2008 Decision penned by Judge Omelio is beyond salvage.

III. The RTC ignored the basic principles of res judicata in allowing the reconstitution of OCT Nos. 219, 337, 67 and 164.

Res judicata is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.[256] Under this rule, a final judgment or decree on the merits by a

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[254] *Id.* at 75-76, 91-97 and 104.

[255] See *Gaffney v. Butler*, 820 Phil. 789, 801-802 (2017); citation omitted.

[256] *Mallion v. Alcantara*, 536 Phil. 1049, 1054 (2006); citation omitted.

court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit.[257] To invoke *res judicata*, the elements that should be present are: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) the disposition of the case must be a judgment on the merits; and (d) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[258]

Corollarily, judgments and final orders constituting *res judicata* are categorized into different concepts which have distinctive effects as provided under Section 47 of Rule 39 as follows:

> 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:
>
> a) In case of a judgment or final order **against a specific thing** or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;
>
> (b) In other cases, the judgment or final order is, **with respect to the matter directly adjudged** or as to any other matter that could have been raised in relation thereto, ***conclusive*** **between the parties and their successors in interest** by title subsequent to the commencement of the action or special

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[257] *Spouses Topacio v. Banco Filipino Savings and Mortgage Bank*, 649 Phil. 331, 342 (2010); citation omitted.

[258] *Ligtas v. People*, 766 Phil. 750, 772 (2015).

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. (emphases supplied)

It can be deduced in the aforementioned provisions that there are three (3) loose categories of final and executory judgments as regards their effects on subsequent and related proceedings. Paragraph (a) of the foregoing rule is commonly known to speak of judgments *in rem*; paragraph (b) is said to refer to judgments *in personam*; and paragraph (c) is the concept understood in law as "conclusiveness of judgment."[259]

Traditionally, paragraphs (b) and (c) are both *in personam* proceedings technically pigeonholed in prior cases before this Court under the blanket of the *res judicata* proper.[260] Here, only two (2) concepts of *res judicata* were previously recognized — (a) "bar by prior judgment" as enunciated in Section 47(b), Rule 39; and (b) "conclusiveness of judgment" as embodied in Section 47(c), Rule 39.[261] However, the concept of *res judicata* also embraces *in rem* proceedings embodied in paragraph (a) because "a judgment or final order against a specific thing ... is **conclusive** upon the title to the thing [or the *res*]."[262] This means that a judgment is directed "against the thing" which,

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[259] See *Ocampo v. Domalanta*, 127 Phil. 566, 571 (1967); citation omitted.

[260] See *Spouses Antonio v. Vda. De Monje*, 646 Phil. 90, 98-100 (2010).

[261] *Government Service Insurance System v. Group Management Corporation*, 666 Phil. 277, 312 (2011).

[262] The following are some of the examples of actions *in rem*: petitions directed against the "*thing*" itself or the *res* which concerns the status of a person, like a petition for adoption, correction of entries in the birth certificate; or annulment of marriage; nullity of marriage; petition to establish illegitimate filiation; registration of land under the Torrens system; and forfeiture proceedings (*Frias v. Alcayde*, 826 Phil. 713, 730 [2018]).

as a consequence, "binds the whole world" because persons dealing with such "thing" are bound by the disposition of the tribunal which ruled on its legal status.[263] As a consequence, **a final and executory judgment concluding an *in rem* proceeding becomes part of the legal attributes of the thing being litigated in which all persons dealing with it are bound to respect**.

Accordingly, since special proceedings pertain to a declaration of status, right or particular fact, judgments therein are said to be *in rem* as it binds the whole world. The reason for the all-encompassing reach of final *in rem* judgments is that **the "whole world" had been constructive parties** (with non-participants usually subjected to a prior order of general default) to the case the moment the jurisdictional requirement of publication was met by petitioner. Such is also the reason why **special proceedings** present a **justiciable controversy** as they treat the declaration of a thing's legal status as a claim of interest **against everyone**. Here, what is crucial is the due publication of such notice because it brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.[264] In other words, an *in rem* proceeding is validated essentially through publication.[265]

As applied in this case, this Court emphasizes that proceedings for judicial reconstitution of certificates of title are proceedings *in rem*.[266] The object of such proceeding is to bar indifferently all who might be minded to make any objection against the right sought to be enforced, hence the judgment therein is binding theoretically upon the whole world.[267] Here, it is required that

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[263] *Cf. De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 725 (2014).

[264] *The Barco v. Court of Appeals*, 465 Phil. 39, 57 (2004); see also *Civil Service Commission v. Magoyag*, 775 Phil. 182, 190 (2015).

[265] *The Director of Lands v. Court of Appeals*, 342 Phil. 239, 248 (1997).

[266] See *Republic v. Castro*, 594 Phil. 124, 132 (2008).

[267] *Republic v. Court of Appeals*, 317 Phil. 653, 660 (1995); citation omitted.

the court must acquire jurisdiction over the *res* in order to render a valid judgment thereon — it is done either: (a) by seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.[268] In other words, the exercise of *in rem* jurisdiction depends on the court's exercise of exclusive custody and control over the *res*.[269] Consequently, this makes the requirement of acquiring jurisdiction over the person of petitioner in a subsequent reconstitution case even unnecessary.[270]

More importantly, it is the compliance of jurisdictional requirements (such as the service of notice to all the actual occupants of the land covered by the certificate of title sought to be reconstituted) that vests the court with jurisdiction to validly take cognizance and rule on a reconstitution case. Adequately proving all factual allegations which are part of jurisdictional requirements with preponderant evidence is mandatory for the court to successfully acquire jurisdiction over the *res* and to render its own adjudicative power effective. Once jurisdiction is validly obtained by the court and the judgment in the reconstitution case becomes final, the findings therein can no longer be opened for review.[271] Thus, it follows that a person who is not a party to a previously settled reconstitution of title case cannot seek for the same remedy without violating the principle of *res judicata*.

In the case at hand, this Court had already ruled in the case of *Heirs of Guzman, Inc.* that OCT Nos. 219, 337, 67 and 164 in the name of Constancio and Isabel cannot be reconstituted because they have already been cancelled, transferred and registered in the name of other owners; one of them being Arroyo.

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[268] *Biaco v. Philippine Countryside Rural Bank*, 544 Phil. 45, 55 (2007); citation omitted.

[269] See *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943 (1999).

[270] See *Alba v. Dela Cruz*, 17 Phil. 49, 62 (1910).

[271] See *Esso Standard Eastern, Inc. v. Lim*, 208 Phil. 394, 406 (1983).

Even if disposed by this Court through an unsigned resolution, the same ruling would still constitute an actual adjudication on the merits because the legal basis cited to support the conclusion on why there was an absence of reversible error committed in the challenged judgment signifies this Court's assent to the findings and conclusion of the lower court.[272] Though an unsigned resolution is neither reported nor doctrinal,[273] the judgment in this case is directed to the properties themselves and, thus, binds not only those who participated therein but also those who subsequently deal with the same properties involved. Obviously, the present case filed by petitioner seeking to have the certificates of same title reconstituted cannot legally prosper for the simple reason that she had already been prevented by the rule on *res judicata* from re-litigating the same matter. Therefore, Judge Omelio committed a fatal error amounting to grave abuse of discretion for ordering the reconstitution of OCT Nos. 219, 337, 67 and 164 in the name of Guzman and for disregarding the final and executory judgment regarding the legal status of these certificates of title.

IV. Judge Omelio denied the Republic's Motion for Reconsideration in utter disregard of established jurisprudence.

The general rule is that the three (3)-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court is mandatory.[274] Nonetheless, when the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the 3-day notice requirement is deemed realized.[275] In effect, the defect was cured for the

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[272] See *Agoy v. Araneta Center, Inc.*, 685 Phil. 246, 251 (2012).

[273] Section 6(c), Rule 13 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC [May 4, 2010]).

[274] *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 167 (2005).

[275] *Cabrera v. Ng*, 729 Phil. 544, 550 (2014).

adverse party was still notified of the existence of said pleading.[276]

In perfunctorily denying the Republic's motion for reconsideration, Judge Omelio pointed out by citing *Col. Alvarez v. Judge Diaz, et al. (Col. Alvarez)*.[277] that "[a] notice hearing addressed to the clerk of court and not to the parties is no notice at all."[278] However, he failed to take note of the fact in ***Col. Alvarez*** that no proof was presented that the motion was indeed received by the counsel of the adverse party (save for the testimony of the movant's counsel that he delivered the motion personally to the adverse party's counsel) which was the reason why the same pleading was considered as a mere scrap of paper. No such negative factual finding was made in the October 1, 2009 Order which denied the Republic's Motion for Reconsideration. Hence, for lack of adequate basis in ordering such denial, this Court finds that the same order is tainted with grave abuse of discretion.

Propriety of the Intervention

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[279] However, it is not an absolute right for the statutory rules or conditions for the right of intervention must be shown.[280] Accordingly, to allow intervention: (a) it must be shown that the movant has **legal interest** in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to

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[276] See *Philippine National Bank v. Judge Paneda*, 544 Phil. 565, 579 (2007).

[277] 468 Phil. 347, 363 (2004).

[278] *Rollo*, p. 121.

[279] *Ongco v. Dalisay*, 691 Phil. 462, 468 (2012); citation omitted.

[280] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537, 549 (2011).

whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a **separate proceeding** or not — both requirements must concur, as the first is not more important than the second.[281] To sum it up, the legal interest as qualifying factor must be of a direct and immediate character so that ***the intervenor will either gain or lose by the direct legal operation of the judgment***.[282] Hence, in all cases, the allowance or disallowance of a Motion for Intervention rests on the sound discretion of the court after consideration of the appropriate circumstances.[283]

Here, the previous discussions are clear that R.A. No. 26 requires petitioners in reconstitution of title cases to send notices to actual occupants of the land covered by certificates of title sought to be reconstituted. Since the City of Davao and the intervenors-private respondents are indeed actual occupants of different portions of lots covered by the subject certificates of title sought by petitioner to be reconstituted, they have a clear legal interest to protect. While reconstitution does not vest ownership because the only fact that has to be established its whether or not the original owner's duplicate copy of a certificate of title is still in existence,[284] it emboldens the person — whose name appears on the face of the certificate of title as the registered owner — to exercise acts of dominion over the land identified and described therein. Additionally, a registered owner also enjoys the benefit and comfort of not having to ward off any collateral attack on the certificate of title.[285] Such complication was confirmed by the fact that petitioner applied for and was

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[281] *Executive Secretary v. Northeast Freight Forwarders, Inc*., 600 Phil. 789, 799-800 (2009).

[282] *Virra Mall Tenants Association, Inc. v. Virra Mall Greenhills Association, Inc*., 674 Phil. 517, 525-526 (2011).

[283] *Quinto v. Commission on Elections*, 627 Phil. 193, 219 (2010); citations omitted.

[284] *Billote v. Solis*, 760 Phil. 712, 726 (2015).

[285] See *Lee Tek Sheng v. Court of Appeals*, 354 Phil. 556, 561 (1998).

issued with a *Writ* of Demolition as well as a favorable directive for the issuance of a Fencing Permit. This only bolsters all respondents' claim that their interests will not be protected in a separate proceeding. Demolition of permanent structures and perimeter fencing adversely affects the possessory rights of all occupants in an immensely onerous manner. It is an ample basis for a court handling a reconstitution of title case to implead the un-notified occupants who may be deprived of their undisturbed possession.

For these reasons, it now becomes clear that such *de jure* recognition of ownership is favorable to the registered owner because a reconstituted certificate of title has certain adverse implications against the possessory rights of actual occupants. As a consequence, these actual occupants are now forced to defend their possessory rights as they are likely to be considered as the intruders. Verily, a separate proceeding undertaken for the purpose of assailing the true ownership of the person whose name is registered on the face of the certificate of title is circuitous and only contributes to the clogging of court dockets. Hence, the CA did not commit a reversible error in allowing all respondents to intervene in the *certiorari* proceedings initiated by the Republic in seeking to have its Petition for Relief from Judgment granted.

Administrative Sanctions Against Erring Members of the Bar

This Court has been exacting in its demand for integrity and good moral character of members of the Bar for them to uphold the integrity and dignity of the legal profession at all times.[286] Lawyers should set a good example in promoting obedience to the Constitution and the laws.[287] This is because a lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the

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[286] *Sipin-Nabor v. Atty. Baterina*, 412 Phil. 419, 424 (2001).

[287] See *Garrido v. Attys. Garrido and Valencia*, 625 Phil. 347, 362 (2010).

community to the legal profession.[288] That is why the entrusted privilege to practice law carries with it correlative duties not only to the client but also to the court, to the bar, and to the public.[289] To this end, all members of the bar are strictly required to at all times maintain the highest degree of public confidence in the fidelity, honesty, and integrity of their profession.[290] Indeed, the law is an exacting taskmaster. Membership in the Bar, as so appropriately put, is a privilege burdened with conditions.[291]

Keeping in mind these general ethical guidelines, this Court proceeds to evaluate the acts of Atty. Pangilinan (one of petitioner's counsels), Atty. Velasco (RTC Davao City – Branch 14's Clerk of Court) and Atty. Biongan-Pescadera (Davao City's current Register of Deeds) which appear to be inconsistent with their sworn duties as Members of the Bar.

I. Atty. Lanelyn D. Pangilinan

Rule 10.02, Canon 10 of the Code of Professional Responsibility mandates that a lawyer shall not knowingly misquote or misrepresent the text of a decision or authority.[292] It is the duty of all officers of the court to cite the rulings and decisions of the Supreme Court accurately.[293] Misquoting or intercalating phrases in the text of a court decision constitutes willful disregard of the lawyer's solemn duty to act at all times in a manner consistent with the truth.[294]

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[288] *Santiago v. Atty. Fojas*, 318 Phil. 79, 87 (1995).

[289] *Burbe v. Atty. Magulta*, 432 Phil. 840, 851 (2002).

[290] *Ong v. Atty. Grijaldo*, 450 Phil. 1, 5 (2003); citation omitted.

[291] *Berenguer v. Carranza*, 136 Phil. 75, 76 (1969).

[292] *Commission on Elections v. Judge Noynay*, 354 Phil. 262, 273 (1998).

[293] *Allied Banking Corporation v. Court of Appeals*, 461 Phil. 517, 533 (2003); citation omitted.

[294] *Adez Realty, Incorporated v. Court of Appeals*, 289 Phil. 766, 773 (1992).

Atty. Pangilinan, in the present petition for review, cited this Court's ruling in *Republic v. Marasigan, et al. (Marasigan)*[295] which the pertinent portions reproduced *in verbatim* as follows:

> Section 23 of P.D. No. 1529 is entitled *Notice of initial hearing, publication, etc*. and provides, *inter alia*, that:
>
> > The public shall be given notice of initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.
>
> As regards publication, it specifically provides:
>
> > Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however*, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court x x x
>
> This proviso was never meant to dispense with the requirement of notice by *mailing* and by *posting*. What it simply means is that in so far as publication is concerned, there is sufficient compliance if the notice is published in the Official Gazette, although the law mandates that it be published "once in the Official Gazette and once in a newspaper of general circulation in the Philippines." However, publication in the latter alone would not suffice. This is to accord primacy to the official publication.
>
> That such proviso was never meant to dispense with the other modes of giving notice, which remain mandatory and jurisdictional, is obvious from Section 23 itself. If the intention of the law were otherwise, said section would not have stressed in detail the requirements of mailing of notices to all persons named in the petition who, per Section 15 of the Decree, include owners of adjoining properties, and occupants of the land.
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> The above view of the Court of Appeals negates one of the principal purposes of the Decree, which is clearly expressed in its exordium, namely, to strengthen the Torrens System through safeguards to prevent anomalous titling of real property. It opens wide the doors to fraud

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[295] 275 Phil. 243 (1991).

and irregularities in land registration proceedings and in proceedings for the reconstitution of certificates of title. Judicial notice may be taken of the fact that only very few have access to or could read the Official Gazette, which comes out in few copies only per issue. If publication in the Official Gazette of the notice of hearing in both proceedings would be sufficient to confer jurisdiction upon the court, owners of both unregistered and registered lands may someday painfully find out that others have certificates of title to their land because scheming parties had caused their registration, or secured reconstituted certificates of title thereto and sold the property to third parties.

The belabored argument of respondent Court of Appeals that it would be unfair to impose upon the private respondent the duty to comply with the requirement of service of notice because it was not through her fault that the original copy of the Transfer Certificate of Title was lost is unacceptable since the law does not make any exception or exemptions; besides, it is, to say the least, a ludicrous proposition. Equally ***unacceptable*** is the opinion of said Court that it was the **duty** of the **trial court** to **serve** the **required notices** and private respondent should not be prejudiced if it failed to do so. It suggests, quite unfortunately, and gives the wrong impression that mandatory requirements of notices may be dispensed with if the failure to comply with them is attributable to the court. It likewise negates the principles of responsibility, integrity, loyalty and efficiency which the Constitution directs public officials and employees to faithfully observe. We should stress here that lapses on the part of courts or their personnel cannot be made a reason or a justification for non-observance of laws. By the very nature of their functions, they should be the first to obey the laws.[296] (emphases supplied)

In advocating for petitioner's cause, Atty. Pangilinan boldly claimed that this Court held that "[u]nder Sec[tion] 13 of R.A. No. 26, the **duty** to **send notices** of the petition for reconstitution to adjoining owners and actual occupants is **imposed upon** the [**trial**] **court**"[297] instead of reflecting the real ruling which clearly enunciated that "[e]qually ***unacceptable*** is the opinion of said Court that **it was the duty of the trial court to serve the**

[296] *Id.* at 252-254.

[297] *Rollo*, p. 32.

required notices and private respondent should not be prejudiced if it failed to do so[;] [i]t suggests, quite unfortunately, and gives the wrong impression that mandatory requirements of notices may be dispensed with if the failure to comply with them is attributable to the court." Such blatant act of misquoting jurisprudence is a clear badge of some desperate effort to mislead this Court into thinking that it was the RTC's and not petitioner's duty to notify actual occupants in a reconstitution of title case. It is the height of disrespect on the part of Atty. Pangilinan to insinuate that the RTC should have taken up petitioner's cudgels in complying with the jurisdictional requirements for the latter's petition for reconstitution to prosper even when the contrary statutory principle had already been clarified by jurisprudence. More so, her act of mangling the unequivocal statements in ***Marasigan*** is intellectually dishonest and is insulting to the intelligence of the Members of this Court.

Another important and fundamental tenet in legal ethics is that a lawyer owes fidelity to the cause of his or her client — but not at the expense of truth and the administration of justice.[298] As officers of the court tasked with aiding this court in its dispensation of justice,[299] lawyers take an oath that they will not wittingly or willingly promote any groundless, false or unlawful suit, nor give aid or consent to the same.[300] Unfounded suits only serve to disrupt rather than promote the orderly administration of justice.[301] Moreover, an appeal is not a matter of right but a statutory privilege.[302] Being a mere privilege, all lawyers should put in mind that an appeal cannot be abusively utilized to support or advance utterly meritless causes. Thus, it is unethical for a lawyer to abuse or wrongfully use the judicial

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[298] *In Re: G.R. No. 157659 "Eligio P. Mallari v. Government Service Insurance System, et al.,"* 823 Phil. 164, 176 (2018).

[299] *Punzalan v. Judge Plata*, 423 Phil. 819, 833 (2001).

[300] *Paz v. Atty. Sanchez*, 533 Phil. 503, 510 (2006).

[301] *Cf. Duduaco v. Judge Laquindanum*, 504 Phil. 9, 16 (2005).

[302] See *Heirs of Arturo Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 416 (2015).

process such as prosecuting patently frivolous and meritless appeals or institute clearly groundless actions.[303]

In advancing petitioner's desire to have OCT Nos. 219, 337, 67 and 164 reconstituted in the name of both spouses Constancio and Isabel, Atty. Pangilinan greatly appears to have chosen to ignore this Court's ruling in the case of *Heirs of Guzman, Inc.* which had already considered the same certificates of title to have been validly cancelled, transferred and registered in the name of third persons. Instead of disagreeing with petitioner's intransigent stance of pursing the reconstitution of these certificates of title, she allowed herself to be used as an instrument of disruption in the administration of justice. Arguing that *res judicata* does not apply for the flimsy reason that petitioner is a stranger to the case in *Heirs of Guzman, Inc*. despite the obvious fact that the same judgment involved the **status** and **nature** of the lands covered by OCT Nos. 219, 337, 67 and 164 even treads dangerously along the border of gross ignorance of the law.[304] Atty. Pangilinan should have been totally familiar with the basic principle that "[t]he judicial reconstitution of title is a proceeding *in rem*, constituting constructive notice to the whole world."[305] To make matters worse, she argued before this Court in this manner:

> 131. It must be noticed that the case of Heirs of Constancio Guzman, v. Hon. Judge Emmanuel Carpio was primarily dismissed because of violation of the rule on hierarchy of courts, it being a direct appeal to the Supreme Court from the trial court on its Order dated May 12, 2003 dismissing the petition for reconstitution. The **merits** of the petition was **not discussed** by the Supreme Court[.][306] (emphases supplied)

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[303] *Millare v. Atty. Montero*, 316 Phil. 29, 34 (1995).

[304] See *Rollo*, pp. 40-43.

[305] *Muñoz v. Atty. Yabut, Jr.*, 665 Phil. 488, 514 (2011).

[306] *Rollo*, pp. 41-42.

Contrastingly, the following portion of this Court's ruling in *Heirs of Guzman, Inc*. is hereunder reproduced *in verbatim* as follows:

> Moreover, even if we were to decide the instant case **on the merits**, the petition would still fail. Reconstitution of certificates of title, within the meaning of RA 26, means the restoration of the instrument which is supposed to have been lost *or destroyed* in its original form and condition. Petitioner failed to prove that the certificates of title intended to be reconstituted were in fact lost or destroyed. On the contrary, the evidence on record reveals that the certificates of title were cancelled on account of various conveyances. In fact, the parcels of land involved were duly registered in the names of the present owners whose acquisition of title can be clearly traced through a series of valid and fully documented transactions.[307] (emphases supplied)

Such temerity of Atty. Pangilinan to deceive this Court into thinking that the ruling in *Heirs of Guzman, Inc*. did not tackle the merits of the prior reconstitution cases involving OCT Nos. 219, 337, 67 and 164 amounts to a betrayal of the Lawyer's Oath. Such act unbecoming of a respected member of the Bar clearly warrants administrative disciplinary sanctions.

II. Atty. Ray Uson Velasco

Canon 5 of the Code of Professional Responsibility requires that a lawyer be updated in the latest laws and jurisprudence.[308] There is less than full compliance with the demands of professional competence, if a member of a bar does not keep himself abreast of the trend of authoritative pronouncements.[309] More importantly, it is imperative that they be conversant with basic legal principles.[310] Unless they faithfully comply with such duty, they may not be able to discharge competently and

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[307] As cited in *Peralta v. Judge Omelio*, 720 Phil. 60, 88 (2013).

[308] *Spouses Williams v. Atty. Enriquez*, 518 Phil. 372, 376 (2006); citation omitted.

[309] *People v. Judge Gacott, Jr.*, 312 Phil. 603, 612 (1995).

[310] *Cerilla v. Atty. Lezama*, 819 Phil. 157, 168 (2017).

diligently their obligations as members of the bar.[311] Falling short of this duty amounts to gross ignorance of the law which is the disregard of basic rules and settled jurisprudence.[312]

Relatedly, this Court has long held that "[the] administration of justice is circumscribed with a heavy burden of responsibility [which] requires that everyone involved in its dispensation — from the presiding judge to the lowliest clerk — live up to the strictest standards of competence, honesty, and integrity in the public service."[313] As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethics, persons aspiring for public office must observe honesty, candor and faithful compliance with the law.[314] As to clerks of court who are officers of the court,[315] these principles place a great deal of responsibility on their shoulders being the chief administrative officers of their respective courts.[316] As chief administrative officers, clerks of court must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings.[317] This is consistent with Section 1, Canon IV of the Code of Conduct for Court Personnel[318] which commands court personnel to perform their official duties properly and diligently at all times.[319]

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[311] *Hernandez v. Atty. Padilla*, 688 Phil. 329, 336 (2012).

[312] See *Department of Justice v. Judge Mislang,* 791 Phil. 219, 227 (2016).

[313] *Office of the Court Administrator v. Judge Necessario*, 707 Phil. 328, 333 (2013); citation omitted.

[314] *Judge Caguioa (Ret.) v. Aucena*, 688 Phil. 1, 8 (2012).

[315] See *Radiowealth, Inc. v. Agregado*, 86 Phil. 429, 439 (1950).

[316] *Office of the Court Administrator v. Judge Reyes*, 566 Phil. 325, 334 (2008); citation omitted.

[317] *Cabanatan v. Molina*, 421 Phil. 664, 673-674 (2001).

[318] A.M. No. 03-06-13-SC (Effective June 1, 2004).

[319] *Escaño v. Manaois*, 799 Phil. 622, 635 (2016).

In this instance, this Court reproduces *in verbatim* the relevant portion of the March 28, 2008 Certification[320] issued by Atty. Velasco as follows:

CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that the DECISION issued by this Court dated March 4, 2008 in Special Proc. Case No. 7527-2004, entitled PETITION FOR JUDICIAL RECONSTITUTION OF ORIGINAL and OWNER'S DUPLICATE OF ORIGINAL CERTIFICATE OF TITLE OF THE REGISTRY OF DEEDS FOR DAVAO CITY and THE INSCRIPTION OF THE TECHNICAL DESCRIPTION THERETO; HELEN P. DENILA, Petition copies of which were received by the counsel for the petitioner on March 5, 2008 and by the Register of Deeds for the City of Davao on March 10, 2008, has now become FINAL and EXECUTORY.

This Certification is issued upon the request of the Petitioner.

Davao City, Philippines, March 28, 2008.

(signed)
ATTY. RAY USON VELASCO
Clerk of Court V

The aforementioned Certification became the basis of the March 31, 2008 Entry of Judgment[321] also issued by Atty. Velasco which, in turn, became the basis of the April 23, 2008[322] Writ of Execution[323] which he also issued pursuant to Judge Omelio's grant of petitioner's April 18, 2008 Urgent Motion for Execution. Undoubtedly, Atty. Velasco's March 28, 2008 Certification triggered the series of irregularities subsequently committed by Judge Omelio relative to the untimely and hastily conducted execution proceedings of the March 4, 2008 Decision.

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[320] *Rollo*, p. 114.

[321] *Id.* at 113.

[322] *Id.* at 60.

[323] *Id.* at 115.

Atty. Velasco — being a member of the Bar employed by the Judiciary as Branch Clerk of Court — had been utterly remiss of his duty to be conversant with prevalent jurisprudence. The Court in ***National Power Corporation v. National Labor Relations Commission, et al***.[324] had already declared in an unequivocal manner that "copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, <u>are not binding until they are actually received by the latter</u>." This means that the reglementary period to file an appeal or Motion for Reconsideration begins to run against the government only upon receipt of the judgment or final order by the OSG. For issuing a Certification attesting that the March 4, 2008 Decision had become final and executory, even without any information as to the OSG's actual receipt of such judgment, Atty. Velasco ignored very nature of the Solicitor General's unequivocal mandate for the government in legal proceedings — more particularly **in all land registration and related proceedings**.[325] Such thoughtless disregard of basic principles on service of judgments or final orders to the OSG amounts to gross ignorance of the law and is inconsistent with a Clerk of Court's duty to show competence, honesty and probity. It besmirches the Judiciary's reputation and erodes the people's faith in the justice system.

III. Atty. Maria Theresa D. Biongan— Pescadera

Canon 1 of the Code of Professional Responsibility states that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." By virtue of this Canon, lawyers should always keep in mind that, although upholding the Constitution and obeying the law is an obligation imposed on every citizen, a lawyer's responsibilities under Canon 1 mean more than just staying out of trouble with the law; as servants of the law and officers

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[324] 339 Phil. 89, 101 (1997).

[325] *Republic v. Planes*, 430 Phil. 848, 863-864 (2002); citations omitted.

of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law.[326] Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is included in the scope of "unlawful" conduct which, in turn, does not necessarily imply the element of criminality although the concept is broad enough to include such element.[327] In the context of Canon 1, respect for the law encompasses faithful adherence to the legal processes.

Concomitantly, Section 27, Rule 138 of the Rules of Court includes the "willful disobedience of any lawful order of a superior court" as one of the grounds for disbarment or suspension from the practice of law. Lawyers are called upon to obey court orders and processes and respondents deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well.[328] Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.[329] Moreover, Section 3(b), Rule 71 of the same Rules makes "[d]isobedience of or resistance to a lawful *writ*, process, order, or judgment of a court" one of the grounds from indirect contempt. Since "contempt of court" has been defined as a willful disregard or disobedience of a public authority,[330] even a defiance directed against a judgment of a superior court which has not yet attained finality and is pending for review before this Court is considered contemptuous.

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[326] *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar*, 549 Phil. 539, 542 (2007).

[327] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565 (2014); citation omitted.

[328] *Sebastian v. Atty. Bajar*, 559 Phil. 211, 224 (2007).

[329] *Bantolo v. Atty. Castillon, Sr.*, 514 Phil. 628, 633 (2005); citation omitted.

[330] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, 672 Phil. 1, 10 (2011).

Before proceeding to examine Atty. Bionang-Pescadera's official actions as Register of Deeds in relation to this case, this Court stresses that government lawyers in the discharge of their official tasks have more restrictions than lawyers in private practice.[331] Since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice.[332] As such, government lawyers should be more sensitive to their professional obligations as their disreputable conduct is more likely to be magnified in the public eye.[333]

Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official.[334] However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar.[335]

In this case, although the CA's July 25, 2012 Decision granting the Petition for *Certiorari* (as well as the RTC's September 3, 2009 Order denying the petition for relief from judgment *and* the RTC's March 4, 2008 Decision granting the Petition for Reconstitution of Title) **had not yet become final** when the OCT Nos. 301 and 219 were re-issued, the fact still remains that Atty. Biongan-Pescadera **ignored a standing judgment of a superior court**. Performing an act contrary to a decision of a superior court, even if the same has not yet attained finality, is a clear act of contempt and defiance against duly-sanctioned legal processes. Worse, her act of re-issuing some of the presently disputed certificates of title only added to the factual complexity of this case making it more burdensome for the courts in related

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[331] *Huyssen v. Atty. Gutierrez*, 520 Phil. 117, 127 (2006).

[332] *Olazo v. Justice Tinga (Ret.)*, 651 Phil. 290, 299 (2010).

[333] *Igoy v. Atty. Soriano*, 419 Phil. 346, 359 (2001); citation omitted.

[334] *Gonzales-Austria v. Judge Abaya*, 257 Phil. 645, 659 (1989); citation omitted.

[335] *Atty. Vitriolo v. Atty. Dasig*, 448 Phil. 198, 207 (2003); citation omitted.

or derivative disputes to resolve. The least that Atty. Biongan-Pescadera could have done was to maintain the *status quo* and wait for the case to become final and executory (or ultimately settled by this Court) before performing any act which would drastically affect the rights and obligations of the parties. Additionally, as to OCT No. 219, Atty. Biongan-Pescadera also ignored this Court's ruling in ***Heirs of Guzman, Inc.*** which had long attained finality and has barred by *res judicata* any future litigation affecting the same certificate of title.

Rules establishing structured legal processes command respect, especially from lawyers from both the public and the private sectors, for they are not empty rituals but part and parcel of the justice system itself. Without deference to legal processes, the administration of justice will run haywire causing confusion and instability as to the rights and obligations of the parties in all stages of litigation. Hence, Atty. Biongan-Pescadera's utter indifference to established court processes and complete disregard of the basic principle of *res judicata* are inconsistent with a government lawyer's sworn duty to "obey the laws of the land and promote respect for law and legal processes."

Conclusion

In sum, this Court reiterates that noncompliance with *all* the statutorily-mandated jurisdictional requirements in a Petition for Reconstitution of Certificate of Title renders the consequential proceedings void. For the trial court's jurisdiction in a reconstitution of title case to be validated, it must be clearly shown that petitioner had substantiated all the jurisdictional requirements with preponderant evidence. Blatantly, petitioner failed to prove the jurisdictional fact that notices were effectively sent to all occupants of the lots covered by the certificates of title sought to be reconstituted.

WHEREFORE, in view of the foregoing premises, this Court:

1) **DENIES** Helen P. Denila's Petition for Review on *Certiorari* and **AFFIRMS** the July 25, 2012 Decision of the Court of Court of Appeals – Special Former

Twenty-Second Division, in CA-G.R. SP No. 03270-MIN, for failure to establish that the latter committed a reversible error in finding grave abuse of discretion on the part of the Regional Trial Court for promulgating the March 4, 2008 Decision as well as the September 3, 2009 and October 1, 2009 Orders in Special Proceeding Case No. 7527-2004;

2) **NULLIFIES** Original Certificates of Title Nos. 219 and 301 for being irregularly issued by Atty. Maria Theresa D. Biongan-Pescadera;

3) **REFERS** the findings against Atty. Ray Uson Velasco to the Office of the Court Administrator for appropriate action; and

4) **REFERS** the findings against Atty. Lanelyn D. Pangilinan and Atty. Maria Theresa D. Biongan-Pescadera to the Integrated Bar of the Philippines for appropriate action.

The Division Clerk of Court is hereby **ORDERED** to **FURNISH** the Office of the Court Administrator and the Integrated Bar of the Philippines copies of this Decision.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206789. July 15, 2020]

TEAM PACIFIC CORPORATION, FEDERICO M. FERNANDEZ, and AURORA Q. GARCIA, *petitioners*, *vs.* **LAYLA M. PARENTE,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COURT OF APPEALS; JURISDICTION; THE COURT OF APPEALS MAY CONSIDER NEW EVIDENCE PRESENTED BY A PARTY IN A PETITION FOR *CERTIORARI.*—** The Court of Appeals is not precluded from considering the new evidence presented by petitioner Team Pacific. Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, states: SECTION 9. Jurisdiction. — The Court of Appeals shall exercise: xxx xxx *The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings*. . . . In *Spouses Marcelo v. LBC Bank*, this Court held that the Court of Appeals has the authority to consider new evidence and perform what is necessary to resolve factual issues. . . . Thus, the Court of Appeals may consider the new evidence presented by a party in a petition for *certiorari*.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; PROCEDURAL AND SUBSTANTIVE REQUISITES; EMPLOYERS MUST COMPLY WITH THE REQUIREMENTS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS FOR RETRENCHMENT TO BE LEGAL.—** Under Article 298 of the Labor Code, retrenchment is one of the authorized causes to dismiss an employee. It involves a reduction in the workforce, resorted to when the employer encounters business reverses, losses, or economic difficulties, such as “recessions, industrial depressions, or seasonal

fluctuations." This is usually done as a last recourse when other methods are found inadequate. A valid retrenchment may only be exercised after the employer has proved compliance with the procedural and substantive requisites of valid retrenchment. Absent any of these, then the dismissal is illegal. The procedural requisites for a valid retrenchment are provided for in [Article 298. (283) of] the Labor Code. . . . Thus, the employer must serve a written notice on the employee *and* the Department of Labor and Employment one month before the date of the dismissal, and pay the required amount of separation pay. Meanwhile, in *La Consolacion College of Manila v. Pascua*, this Court enumerated three substantive requisites for a valid retrenchment. . . . Thus, for a valid retrenchment, the employer must show that: (a) retrenchment was a necessary measure to prevent substantial and serious business losses; (b) it was done in good faith and not to defeat employees' rights; and (c) the employer was fair and reasonable in selecting the employees who will be retrenched.

3. **ID.; ID.; ID.; ID.; SUBSTANTIAL BUSINESS LOSSES; MERE ALLEGATIONS OF A GLOBAL ECONOMIC CRISIS ARE NOT SUFFICIENT; CASE AT BAR.—** For the first requirement, the employer must prove the "existence or imminence of substantial losses" that would warrant the retrenchment. . . . Independently audited financial statements are of high evidentiary value in terms of proving the employer's serious business losses. . . . This Court has likewise ruled that presenting the audited financial statement for the year of retrenchment may not be sufficient. The employer must prove that the losses increased or have been increasing for a period of time and the company's condition will not improve in the near future. . . . Here, the Labor Arbiter did not consider any audited financial statement or any other evidence in determining whether there were business losses. He only referred to the Termination Letter, as if its bare allegations are enough to be given full faith and credence. He merely assumed that the global economic crisis affected petitioners, and thus concluded that respondent was rightfully dismissed. Mere allegations of a global economic crisis are not sufficient.

4. **ID.; ID.; ID.; ID.; THE EMPLOYER MUST USE A FAIR AND REASONABLE CRITERIA IN CHOOSING WHOM TO RETRENCH; CASE AT BAR.—** While these documents

may suffice to show the company's business losses and compliance with notice requirements, petitioners still failed to show that the employees chosen for retrenchment were selected through fair and reasonable criteria. . . . [T]he use of fair and reasonable criteria is necessary in a retrenchment program. Failure to do so affects the employees' substantive rights to get what is their due. Petitioners failed to prove that it used fair and reasonable criteria in carrying out the retrenchment program. They likewise failed to explain why it included respondent, who had already been employed for 10 years. Clearly, petitioners did not comply with the requirements of retrenchment under law and jurisprudence.

5. **ID.; ID.; ID.; ID.; CIVIL LAW; ESTOPPEL; THE EMPLOYEE'S ACCEPTANCE OF SEPARATION PAY AND EXECUTION OF A WAIVER AND QUITCLAIM WILL NOT BE A BAR TO CONTESTING THE LEGALITY OF THE DISMISSAL; CASE AT BAR.—** This Court likewise holds that respondent was not barred by estoppel. Neither accepting separation pay nor signing a waiver and quitclaim bars the employee from contesting the legality of the dismissal. Such acts are generally taken with a grain of salt, considering that employees are usually at an economic disadvantage and are often left with no choice, since they are suddenly faced with the pressure to meet financial burdens. . . . Filing a complaint for illegal dismissal likewise negates any claim that the dismissal was voluntarily accepted. . . . In this case, the Department of Labor and Employment had advised respondent to first accept her separation pay before filing her complaint. To accept her separation pay, she had to process her clearance and sign the waivers and quitclaims. Not long after, she filed the case. Notably, respondent was dismissed when she had just given birth. Her dismissal's effectivity was set on the date she was supposed to return from her maternity leave. She was at a clear disadvantage, having found herself without a job and a source of income right at a time when finances were crucial. Thus, her acceptance of her separation pay and the execution of her waiver and quitclaim cannot be deemed as her waiving her right to file a complaint. She was not estopped from contesting the legality of her dismissal.

6. ID.; ID.; ID.; ID.; CORPORATE DIRECTORS AND OFFICERS SHALL NOT BE SOLIDARILY LIABLE WITH THE CORPORATION FOR AN EMPLOYEE'S DISMISSAL WHICH WAS NOT SHOWN TO HAVE BEEN DONE IN BAD FAITH OR WITH MALICE.— [W]e find that petitioners Garcia and Fernandez should not be solidarily liable with petitioner Team Pacific Corporation. In case of dismissals, directors and officers of corporations may only be held solidarily liable with the corporation if they acted in bad faith or with malice. . . . Here, respondent's dismissal was not shown to have been done in bad faith or with malice. The documents submitted by petitioners reveal that the company may have indeed been suffering business losses. The Regional Trial Court has even granted its Petition for Corporate Rehabilitation. While petitioners failed to show that they applied fair and reasonable criteria in selecting the employees to be entrenched, it does not mean that the dismissals were automatically done in bad faith or with malice. They may have simply failed to strictly comply or to sufficiently prove compliance with the stringent rules for a valid retrenchment. As such, bad faith or malice must still be proved. Respondent failed to present clear and convincing evidence that petitioners Garcia or Fernandez acted in bad faith or with malice. They did not breach any duty or were motivated by ill will. Absent proof, the corporation's separate and distinct personality must be respected.

APPEARANCES OF COUNSEL

Ermitaño Manzano & Associates for petitioners.
Hao Dasal Dionola & Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

All the requisites for a valid retrenchment must be present in order for a dismissal to be lawful. The employer must not only show that it incurred substantial and serious business losses, but must also prove that the retrenchment was done in good

faith and the retrenched employees were selected through fair and reasonable criteria.[1]

This Court resolves a Petition for Review on *Certiorari*[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which reversed the National Labor Relations Commission's and Labor Arbiter's rulings and found that Layla M. Parente (Parente) was illegally dismissed by Team Pacific Corporation (Team Pacific).

In February 1999, Team Pacific hired Parente as a production operator in its Hermetic Department.[5] Later, Parente was promoted to being a quality assurance calibration technician.[6]

On April 23, 2009, Parente filed for and commenced her 60-day maternity leave, which would end on June 21, 2009. She gave birth on April 27, 2009.[7]

On May 8, 2009, while on her maternity leave, Parente was asked to see Team Pacific's human resource and administrative manager, Aurora Q. Garcia (Garcia). Parente protested, saying that she was still on maternity leave and experiencing post-natal weakness, dizziness, and shakiness. However, when she was told that there were reports circulating within the plant

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[1] *La Consolacion College of Manila v. Pascua*, 828 Phil. 182, 192 (2018) [Per *J*. Leonen, Third Division].

[2] *Rollo*, pp. 13-51.

[3] *Id.* at 54-69. The October 30, 2012 Decision in CA-G.R. SP No. 116371 was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[4] *Id.* at 71-72. The March 27, 2013 Resolution in CA-G.R. SP No. 116371 was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[5] *Id.* at 54.

[6] *Id.* at 55.

[7] *Id.*

that she would be terminated from employment, Parente acceded.[8]

During their meeting on May 21, 2009, Garcia handed Parente a letter and informed her of her dismissal, effective on June 22, 2009, the day after the end of her maternity leave. She was told that she would receive her separation pay on the same date. Parente was about to ask why she was being dismissed, but Garcia interrupted her and asked her to just affix her name and signature on the space provided in the letter.[9]

The Termination Letter dated May 21, 2009 states:

> In view of the global economic crisis that started last year, management implemented survival measures such as energy saving program, forced leaves, and a compressed workweek arrangement. Starting December 2008, there has been a 30% reduction in business volume resulting to substantial losses which cannot be allowed to continue as it threatens the organization's survival.
>
> To minimize continuing losses and to ensure survival of the company, management has no alternative but to implement a retrenchment program. As such, Management, in accordance with the 30-day notice required by law, is constrained to advise that your services will be terminated effective close of business hours of June 22, 2009.
>
> You shall be paid separation pay equivalent of not just ½ month's pay as required by law, but one month's pay for every year of service, plus payment of earned but unpaid vacation and sick leave credits and pro-rated 13th Month Pay.
>
> You will receive your separation pay and other earned benefits as above-mentioned on June 22, 2009 upon execution of the necessary quit claims.
>
> We would like to thank you for your services and we wish you the best in your future endeavors.[10]

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[8] *Id.*

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

[10] *Id.* at 131.

Parente then went to the Department of Labor and Employment, where she was advised to first accept her separation pay before filing a complaint.[11] Thus, on June 8, 2009, after she had been required to process her clearance and sign several documents, Parente received her separation pay.[12]

On July 9, 2009, Parente lodged her Complaint for illegal dismissal.[13]

A copy of the Complaint and summons were served on Team Pacific, Garcia, and the company president,[14] Federico M. Fernandez (Fernandez). These were returned to the Labor Arbitration Office with the notation "Refused to Receive."[15]

Thus, a Notice of Hearing was sent to Team Pacific, Fernandez, and Garcia, informing them of the conference on September 8, 2009. None of them attended the hearing. The Labor Arbiter noted further that they did not even verify the charges against them and tried to hold the Labor Arbitration Office accountable for their failure to attend.[16] Thus, the Labor Arbiter rendered a decision only based on Parente's evidence.[17]

In a January 29, 2010 Decision,[18] the Labor Arbiter dismissed Parente's Complaint. It found her dismissal valid,[19] noting that the Termination Letter clearly stated that the retrenchment was

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[11] *Id.* at 56.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 183.

[15] *Id.* at 56-57 and 147.

[16] *Id.* at 57.

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

[18] *Id.* at 147-152. The Decision was penned by Labor Arbiter Eduardo J. Carpio.

[19] *Id.* at 150.

to prevent losses amid the global economic crisis,[20] which had led to establishment closures and layoffs.[21]

The Labor Arbiter ruled that Team Pacific complied with the Labor Code's requirements for retrenchment, as there was no showing of bad faith or malice, and Parente was duly notified one month prior to the date of her dismissal.[22] Parente was also held to be bound by the clearance certificate she signed and the separation pay she received, which was more than the amount required under the Labor Code.[23]

In its May 28, 2010 Resolution,[24] the National Labor Relations Commission affirmed the Labor Arbiter's Decision. It found that Parente's documents contradicted her claim of illegal dismissal.[25] It ruled that Parente's acts of receiving the notice of termination, processing her clearance, accepting her separation pay, and receiving her employment certificate were conclusive on her. It ruled that Parente had been estopped from suing Team Pacific, which believed that she voluntarily accepted her dismissal.[26]

On July 30, 2010, the National Labor Relations Commission also denied Parente's Motion for Reconsideration. Thus, Parente filed a Petition for *Certiorari* before the Court of Appeals.[27]

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[20] *Id.*

[21] *Id.* at 151.

[22] *Id.*

[23] *Id.* at 151-152.

[24] *Id.* at 154-160. The Resolution was penned by National Labor Relations Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioner Gregorio O. Bilog III of the National Labor Relations Commission, Quezon City, Third Division.

[25] *Id.* at 158.

[26] *Id.* at 159-160.

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

In its October 30, 2012 Decision,[28] the Court of Appeals reversed the ruling of the National Labor Relations Commission. It held that Parente was illegally dismissed.[29]

The Court of Appeals noted that Team Pacific did not submit to the Labor Arbiter's jurisdiction when it refused to receive summons and file its position paper and other documents. Thus, no evidence was found to support Team Pacific's claim of business losses to justify the dismissal.[30]

Moreover, the Court of Appeals held that Parente was not estopped from questioning her dismissal just because she accepted her separation pay.[31] It ruled that waivers and quitclaims are frowned upon, especially as to employees who may have been pressured by employers seeking to evade legal responsibilities.[32] It also noted how Parente was in no position to resist the money offered as she had just given birth, as well as the Department of Labor and Employment's advice that she accept her separation pay before filing a complaint.[33] It found that by proceeding with the illegal dismissal case, Parente showed that she did not sleep on her rights.[34] The Court of Appeals disposed:

WHEREFORE, premises considered, the Resolution dated May 28, 2010 issued by the National Labor Relations Commission as well as the Decision dated January 29, 2010 rendered by the Labor Arbiter are hereby REVERSED and SET ASIDE. In lieu thereof, a judgment adjudging private respondents liable for illegally dismissing Layla M. Parente as follows:

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[28] *Id.* at 68.

[29] *Id.* at 54-69.

[30] *Id.* at 63.

[31] *Id.* at 64.

[32] *Id.* at 65.

[33] *Id.* at 67.

[34] *Id.*

1. Ordering private respondents to REINSTATE Parente to her former position without loss of seniority rights and other privileges; and

2. Holding private respondents JOINTLY and SEVERALLY liable to PAY Parente full backwages, inclusive of allowances, and other benefits or their monetary equivalent to be computed and determined by the Labor Arbiter from the time her compensation was withheld from her up to the time of her actual reinstatement.

Let a copy of this Decision be furnished the Labor Arbiter who is directed to conduct with dispatch the computation and determination of the backwages, allowances and other benefits which are due to Parente.

SO ORDERED.[35]

Team Pacific, Fernandez, and Garcia moved for reconsideration, but the Court of Appeals denied this in its March 27, 2013 Resolution.[36] Thus, they filed this Petition[37] against Parente.

Maintaining that the dismissal was valid, petitioners assert that the labor tribunals' findings were substantiated.[38] They claim that respondent herself made admissions and submitted documents that estopped her from suing the company.[39] She allegedly admitted that the company had religiously observed the required process.[40] They add that she even obtained her clearances, received her separation pay, and executed a waiver and quitclaim without being forced to do so.[41] They also note that respondent is not a feebleminded, gullible person who could

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

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

[37] *Id.* at 17-51.

[38] *Id.* at 34.

[39] *Id.* at 35.

[40] *Id.* at 37.

[41] *Id.*

be put at a disadvantage.[42] They insist that respondent voluntarily accepted her dismissal.[43]

Petitioners further argue that respondent's dismissal was justified.[44] They maintain that the requirements of procedural and substantive due process were observed.[45]

Petitioners further assert that the company had been suffering from severe financial losses that it had to retrench employees to stay afloat.[46] The company's Audited Financial Statements from 2006 to 2009 allegedly show net losses and aggregate deficits amounting to millions of pesos.[47] They claim that its financial condition had been so distressed that it had to file a Petition for Corporate Rehabilitation.[48] Petitioners maintain that the retrenchment was done in good faith and as a last option, after trying various cost-cutting measures, including revised work schedules, forced leaves, and compressed workweek schemes, among others.[49]

Petitioners also claim that they served the written notices on the Department of Labor and Employment and all the affected employees one month prior to the retrenchment's effectivity, and paid their separation pay.[50]

Petitioners maintain that the retrenchment was within the company's management prerogative, and the wisdom and soundness of its authority may not be questioned.[51]

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[42] *Id.* at 38.

[43] *Id.* at 37.

[44] *Id.* at 38.

[45] *Id.* at 39.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.* at 40.

[50] *Id.*

[51] *Id.* at 41.

Moreover, petitioners contend that petitioners Garcia and Fernandez should not have been made solidarily liable with petitioner Team Pacific as they showed no bad faith. Likewise, they insist that the company has a separate personality from its directors, officers, and stockholders.[52]

In her Comment,[53] respondent maintains that she was illegally dismissed. She claims that petitioners failed to show substantial evidence to support the validity of the company's retrenchment program, including its compliance with the 30-day prior notice rule with the Department of Labor and Employment.[54]

Respondent points out that since petitioners did not submit to the Labor Arbiter's jurisdiction, and did not file any pleadings or evidence to support their claims, they waived their right to prove their case.[55] She contends that petitioners only presented documents before the Court of Appeals, violating due process.[56] She also argues that only questions of law may be raised in a petition for review on *certiorari*.[57]

Respondent further asserts that it is inequitable to bar her by estoppel. She points out that employees are usually in no position to resist money, especially in her case where she found herself out of work just after giving birth. She asserts that her filing of complaint proves that she did not waive her rights to question her dismissal.[58]

Respondent also maintains that her dismissal was in bad faith. She notes how this was oppressively carried out while she was still on maternity leave, made effective on the date she was

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[52] *Id.* at 42.

[53] *Id.* at 172-185.

[54] *Id.* at 174 and 179.

[55] *Id.* at 176-177.

[56] *Id.* at 177-178.

[57] *Id.* at 178.

[58] *Id.* at 180-181.

supposed to return to work.[59] Thus, she asserts that petitioners Fernandez and Garcia should be solidarily liable as her dismissal would not have been carried out without their participation.[60]

In their Reply,[61] petitioners argue that the submission of documents on appeal should be allowed to afford this Court the fullest opportunity to determine the truth behind the legal and factual issues raised.[62] They also point out that this Court reviews factual findings when they are conflicting or when the Court of Appeals manifestly overlooked relevant facts, which if properly considered, would lead to a different conclusion.[63]

In any case, petitioners maintain that the labor tribunals' findings that the company complied with the requirements for retrenchment.[64]

Petitioners add that they have submitted the following documents to this Court: (a) Audited Financial Statements for the years 2006 to 2009, showing millions in losses; (b) its April 29, 2008 Letter advising the Department of Labor and Employment of the compressed work week arrangement it would be implementing; (c) its Notice of Retrenchment dated May 8, 2009; (d) its duly accomplished Establishment Employment Report; and (e) its list of affected workers by displacements.[65]

Petitioners also point out that the Regional Trial Court of Pasig City had granted the company's Petition for Corporate Rehabilitation, stating that the financial distress was not of its own doing and no clear evidence of mismanagement or any attempt to escape its inherited liabilities was shown.[66]

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[59] *Id.* at 182.

[60] *Id.* at 183.

[61] *Id.* at 201-211.

[62] *Id.*

[63] *Id.* at 206.

[64] *Id.* at 203.

[65] *Id.* at 204.

[66] *Id.* at 205. See also *rollo*, pp. 97-109, Decision on Petition for Corporate Rehabilitation.

Finally, petitioners again insist that petitioners Garcia and Fernando should not be made solidarily liable with petitioner Team Pacific.[67]

The issues in this case are as follows:

First, whether or not petitioners Team Pacific Corporation, Federico M. Fernandez, and Aurora Q. Garcia may submit new documents and evidence in a Petition for *Certiorari* in the Court of Appeals;

Second, whether or not petitioners complied with the standards and requirements for a valid retrenchment;

Third, whether or not respondent is estopped by her acceptance of separation pay and execution of a waiver and quitclaim; and

Finally, whether or not petitioners Garcia and Fernando should be solidarily liable with petitioner Team Pacific.

This Court denies the Petition.

I

Respondent alleges that petitioners had waived their right to present evidence, and thus the documents it presented to the Court of Appeals showing its business losses should not be considered for being abusive of the right to due process.[68]

The Court of Appeals is not precluded from considering the new evidence presented by petitioner Team Pacific. Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902,[69] states:

SECTION 9. Jurisdiction. — The Court of Appeals shall exercise:

. . . .

[67] *Id.* at 208.

[68] *Id.* at 178.

[69] An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. (Emphasis supplied)

In *Spouses Marcelo v. LBC Bank*,[70] this Court held that the Court of Appeals has the authority to consider new evidence and perform what is necessary to resolve factual issues:

Spouses Marcelo fault the Court of Appeals for admitting and considering the Affidavit of Ma. Tara O. Aznar, dated 10 July 2006, and the Secretary's Certificates dated 27 June 2006 and 1 July 2005 in resolving LBC Bank's motion for reconsideration of the Court of Appeals' 16 June 2006 Decision. Spouses Marcelo contend that in a special civil action for *certiorari*, the Court of Appeals cannot admit new evidence. Spouses Marcelo further submit that the sole office of the writ of *certiorari* is the correction of errors of jurisdiction, and thus, the Court of Appeals erred in admitting the "additional evidence."

The Court is not convinced.

In *Maralit v. Philippine National Bank*, where petitioner Maralit questioned the appellate court's admission and appreciation of a belatedly submitted documentary evidence, the Court held that "[i]n a special civil action for *certiorari*, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues." . . .

. . . .

Clearly, the Court of Appeals did not err in admitting the evidence showing LBC Bank's express ratification of Milan's consolidation of the title over the subject property. Further, the Court of Appeals did not err in admitting such evidence in resolving LBC Bank's motion for reconsideration in a special civil action for *certiorari*. To rule otherwise will certainly defeat the ends of substantial justice.[71] (Citations omitted)

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[70] 663 Phil. 67 (2011) [Per *J*. Carpio, Second Division].

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

Thus, the Court of Appeals may consider the new evidence presented by a party in a petition for *certiorari*.

However, here, the Court of Appeals ruled that petitioners waived their right to present evidence, and thus, reversed the labor tribunals' rulings and found that Parente was illegally dismissed.[72] Hence, petitioners came to this Court through a Petition for Review under Rule 45 of the Rules of Court.

It is well established that a Rule 45 petition should raise only questions of law. This Court is not a trier of facts and it is not its function to weigh the evidence all over again. In *Fuji Television Network, Inc. v. Espiritu*:[73]

> When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:
>
>> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.
>
> *Career Philippines v. Serna*, citing *Montoya v. Transmed*, is instructive on the parameters of judicial review under Rule 45:
>
>> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

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[72] *Rollo*, p. 63.

[73] 749 Phil. 388 (2014) [Per *J*. Leonen, Second Division].

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct*. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[74] (Emphasis in the original, citations omitted)

Thus, when this Court reviews a decision of the Court of Appeals on a Rule 65 petition, what it determines is whether the Court of Appeals correctly ruled on whether grave abuse of discretion exists.

In this case, we find that the Court of Appeals correctly ruled that the National Labor Relations Commission and the Labor Arbiter gravely abused their discretion in finding that the retrenchment was valid.

II

Under Article 298 of the Labor Code, retrenchment is one of the authorized causes to dismiss an employee. It involves a reduction in the workforce, resorted to when the employer encounters business reverses, losses, or economic difficulties, such as "recessions, industrial depressions, or seasonal fluctuations."[75] This is usually done as a last recourse when other methods are found inadequate.[76]

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[74] *Id.* at 415-416.

[75] *La Consolacion College of Manila v. Pascua*, 828 Phil. 182, 191-192 (2018) [Per *J.* Leonen, Third Division].

[76] *Id.* at 191-192.

A valid retrenchment may only be exercised after the employer has proved compliance with the procedural and substantive requisites of valid retrenchment. Absent any of these, then the dismissal is illegal.[77]

The procedural requisites for a valid retrenchment are provided for in the Labor Code:

> ARTICLE 298. [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 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 *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)

Thus, the employer must serve a written notice on the employee *and* the Department of Labor and Employment one month before the date of the dismissal, and pay the required amount of separation pay.

Meanwhile, in *La Consolacion College of Manila v. Pascua*,[78] this Court enumerated three substantive requisites for a valid retrenchment:

> While a legitimate business option, retrenchment may only be exercised in compliance with substantive and procedural requisites.
>
> As to the substantive requisites, *an employer must first show "that the retrenchment is reasonably necessary and likely to prevent*

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[77] *Me-Shurn Corp. v. Me-Shurn Workers Union-FSM*, 489 Phil. 37, 45-47 (2005) [Per *J.* Panganiban, Third Division].

[78] 828 Phil. 182 (2018) [Per *J.* Leonen, Third Division].

business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer." Second, an employer must also show "that [it] exercises its prerogative to retrench employees *in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure*." Third, an employer must demonstrate "that [it] *used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers*."[79] (Emphasis supplied, citations omitted)

Thus, for a valid retrenchment, the employer must show that: (a) retrenchment was a necessary measure to prevent substantial and serious business losses; (b) it was done in good faith and not to defeat employees' rights; and (c) the employer was fair and reasonable in selecting the employees who will be retrenched.

For the first requirement, the employer must prove the "existence or imminence of substantial losses" that would warrant the retrenchment.[80] In *Lopez Sugar Corporation v. Federation of Free Workers*:[81]

Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. *Secondly*, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the

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[79] *Id.* at 192.

[80] *Somerville Stainless Steel Corp. v. National Labor Relations Commission*, 350 Phil. 859, 871-872 (1998) [Per *J.* Panganiban, First Division].

[81] 267 Phil. 212 (1990) [Per *J.* Feliciano, Third Division].

livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly*, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[82] (Emphasis supplied)

In this case, the Labor Arbiter based its ruling only on the documents respondents submitted, after petitioners had refused to receive summons, attend hearings, or file pleadings.[83] Nonetheless, the Labor Arbiter found that the retrenchment was valid because the Termination Letter, citing the global economic crisis as its reason, was served one month prior to respondent's dismissal.[84] The Labor Arbiter also declared that respondent was bound by her acceptance of separation pay and her execution of a waiver and quitclaim.[85]

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[82] *Id.* at 221-222.

[83] *Rollo*, p. 58, Court of Appeals Decision.

[84] *Id.* at 150-151.

[85] *Id.* at 159-160.

The National Labor Relations Commission merely affirmed this ruling, saying that respondent was estopped from questioning her dismissal.[86]

The labor tribunals' factual findings are not sufficient to rule that the retrenchment is valid. Petitioners did not prove in any way that the company incurred or is about to incur substantial business losses that would warrant retrenchment.

Independently audited financial statements are of high evidentiary value in terms of proving the employer's serious business losses. In *Manatad v. Philippine Telegraph and Telephone Corporation*:[87]

The financial statements audited by independent external auditors constitute the normal method of proving the profit and loss performance of a company as enunciated in *San Miguel Corporation v. Abella*:

> Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors failing which they can be assailed as self-serving documents.

No evidence can best attest to a company's economic status other than its financial statement. We defined the evidentiary weight accorded to audited financial statements in Asian Alcohol Corporation v. National Labor Relations Commission:

> The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up

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[86] *Id.*

[87] 571 Phil. 494 (2008) [Per *J.* Chico-Nazario, Third Division].

and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.

. . . .

That the financial statements are audited by independent auditors safeguards the same from the manipulation of the figures therein to suit the company's needs. The auditing of financial reports by independent external auditors are strictly governed by national and international standards and regulations for the accounting profession. . . .

In addition, the fact that the financial statements were audited by independent auditors settles any doubt on the authenticity of these documents for lack of signature of the person who prepared it. As reported by SGV & Co., the financial statements presented fairly, in all material aspects, the financial position of the respondent as of 30 June 1998 and 1997, and the results of its operations and its cash flows for the years ended, in conformity with the generally accepted accounting principles.[88] (Citations omitted)

This Court has likewise ruled that presenting the audited financial statement for the year of retrenchment may not be sufficient. The employer must prove that the losses increased or have been increasing for a period of time and the company's condition will not improve in the near future:

Jurisprudence requires that the necessity of retrenchment to stave off genuine and significant business losses or reverses be demonstrated by an employer's independently audited financial statements. Documents that have not been the subject of an independent audit may very well be self-serving. Moreover, it is not enough that it presents its audited financial statement for the year that retrenchment was undertaken for even as it may be incurring losses for that year,

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[88] *Id.* at 508-510.

its overall financial status may already be improving. Thus, it must "also show that its *losses increased through a period of time and that the condition of the company is not likely to improve in the near future*."[89]

There may be instances when presenting audited financial statements is not necessary,[90] but this does not dispense with the employer's burden of providing a basis for alleging that it has incurred serious business losses.

Here, the Labor Arbiter did not consider any audited financial statement or any other evidence in determining whether there were business losses. He only referred to the Termination Letter, as if its bare allegations are enough to be given full faith and credence. He merely assumed that the global economic crisis affected petitioners, and thus concluded that respondent was rightfully dismissed.

Mere allegations of a global economic crisis are not sufficient. In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*:[91]

> The reason invoked by petitioners to justify the cessation of corporate operations was alleged business losses. Yet, other than generally referring to the financial crisis in 1998 and to their supposed difficulty in obtaining an export quota, interestingly, they never presented any report on the financial operations of the corporation during the period before its shutdown. Neither did they submit any credible evidence to substantiate their allegation of business losses.
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> Basic is the rule in termination cases that the employer bears the burden of showing that the dismissal was for a just or authorized cause. Otherwise, the dismissal is deemed unjustified. Apropos this responsibility, petitioner corporation should have presented clear and

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[89] *La Consolacion College of Manila v. Pascua*, 828 Phil. 182, 191-192 (2018) [Per *J.* Leonen, Third Division].

[90] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 827 Phil. 680 (2018) [Per *J.* Bersamin, *En Banc*].

[91] 489 Phil. 37, 45-47 (2005) [Per *J.* Panganiban, Third Division].

convincing evidence of imminent economic or business reversals as a form of affirmative defense in the proceedings before the labor arbiter or, under justifiable circumstances, even on appeal with the NLRC.

However, as previously stated, in all the proceedings before the two quasi-judicial bodies and even before the CA, no evidence was submitted to show the corporation's alleged business losses. It is only now that petitioners have belatedly submitted the corporation's income tax returns from 1996 to 1999 as proof of alleged continued losses during those years.

Again, elementary is the principle barring a party from introducing fresh defenses and facts at the appellate stage. This Court has ruled that matters regarding the financial condition of a company — those that justify the closing of its business and show the losses in its operations — are questions of fact that must be proven below. Petitioners must bear the consequence of their neglect. Indeed, their unexplained failure to present convincing evidence of losses at the early stages of the case clearly belies the credibility of their present claim.[92] (Citations omitted)

Furthermore, in the proceedings before the Labor Arbiter and the National Labor Relations Commission, petitioners submitted no evidence that the retrenchment notice was served on the Department of Labor and Employment one month prior to the retrenchment. Thus, the labor tribunals' findings were unsupported by substantial evidence. They failed to consider the law's requirements in determining whether the retrenchment was valid.

Even if this Court were to consider the evidence now presented by petitioners, we still find it insufficient to render the retrenchment valid.

Petitioners submitted the following documents to prove it incurred substantial and serious business losses:

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[92] *Id.* at 45-47.

(a) Audited Financial Statements for the years 2006[93] to 2009,[94] showing the company's net losses and deficits amounting to millions;[95]

(b) Letter dated April 29, 2008 advising the Department of Labor and Employment of the compressed work week arrangement it will be implementing;[96]

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[93] *Rollo*, p. 113. The Independent Auditor's Report dated April 23, 2008 and the Financial Statements of Team Pacific for December 31, 2007 and 2006 by Certified Public Accountant Antonio S. Veloria states: I draw attention to Note 2 of the financial statements which indicates that the Company incurred net losses amounting to about ₱46.09 million and ₱270.65 million for the years ended December 31, 2007 and 2006, respectively, resulting in deficit of about ₱462.09 million and ₱435.73 million as of December 31, 2007 and 2006, respectively. Further, the Company was not able to meet its obligations as they matured. Consequently, the Company filed a petition for corporate rehabilitation with the Regional Trial Court of Pasig City on December 29, 2006. These conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of the asset carrying amounts and the amounts and classification of liabilities that might result from these uncertainties.

[94] *Id.* at 120. The Independent Auditors' Report dated April 7, 2010 and the Financial Statements of Team Pacific for December 31, 2009 by Certified Public Accountant Franklin R. Casedo states:

We draw attention to Note 2 of the financial statements which indicates that the Company incurred net losses amounting to about ₱73.81 million and ₱7.63 million for the years ended December 31, 2009 and 2008, respectively, resulting in deficit of about ₱502.57 and ₱450 million as of December 31, 2009 and 2008, respectively. Further, the Company was not able to meet its obligations as they matured. Consequently, the Company filed a petition for corporate rehabilitation, which the court approved. The success of the rehabilitation plan depends on the Company's ability to generate income and cash from operating activities to support its operations during the rehabilitation period. These conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of the asset carrying amounts and the amounts and classifications of liabilities that might result from these uncertainties.

[95] *Id.* at 110-124.

[96] *Id.* at 125-126. The Letter signed by petitioner Garcia was received on April 30, 2008 by the Department of Labor and Employment. It states:

(c) Notice of Retrenchment dated May 8, 2009, served on the Department of Labor and Employment;[97]

(d) Duly accomplished Establishment Employment Report received by the Department of Labor and Employment on May 8, 2009;[98]

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws and with principal business address at Electronics Avenue, Food Terminal Complex, Taguig City would like to inform this Honorable Office that due to Company's Rehabilitation Program which was approved recently by the Regional Trial Court of Pasig, the Company is constrained to come up with measures to ensure long-term employment of employees not to say the need to comply with the approved conditions of the court, through the implementation of a Compressed Work Week Arrangement.

We communicated this business condition to employees who will be covered by the Compressed Work Week Arrangement (Copy of Attendance Sheet attached).

[97] *Id.* at 127. The Letter dated May 8, 2009 signed by petitioner Garcia and received by the Department of Labor and Employment on the same date, states:

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws with principal business address at Electronics Ave., FTI Complex, Taguig City would like to inform this Honorable Office that because of the continuous decrease in the semiconductor business volumes beyond our control, the Corporation has suffered and continues to suffer substantial losses of business as well as continuous reduction of workdays of the whole plant up to the present thereby affecting the employees' take home pay.

Due to the foregoing reasons, the Corporation has no alternative but to implement a retrenchment program.

As such, the Corporation would like to inform your Honorable Office that the following employees (Attachment A) will be retrenched effective June 8, 2009 in accordance with the 30-day notice requirement by DOLE.

We would like to also inform this Honorable Office that the affected employees shall be paid a separation pay equivalent to not just ½ month's pay but one (1) month's pay for every year of service, plus payment for their earned but unpaid vacation leave and sick leave credits and pro-rated 13th Month Pay.

[98] *Id.* at 128.

(e) List of Affected Workers by Displacements received by the Department of Labor and Employment on May 8, 2009;[99] and

(f) The Decision granting petitioners' Petition for Corporate Rehabilitation.[100]

While these documents may suffice to show the company's business losses and compliance with notice requirements, petitioners still failed to show that the employees chosen for retrenchment were selected through fair and reasonable criteria. In *La Consolacion College of Manila*:[101]

> As early as 1987, this Court in *Asia World Publishing House, Inc. v. Ople* considered seniority, along with efficiency rating and less-preferred status, as a crucial facet of a fair and reasonable criterion for effecting retrenchment. *Emcor, Inc. v. Sienes* was categorical, a "[r]etrenchment scheme without taking seniority into account rendered the retrenchment invalid":
>
> > Records do not show any criterion adopted or used by petitioner in dismissing respondent. Respondent was terminated without considering her seniority. Retrenchment scheme without taking seniority into account rendered the retrenchment invalid. . . .
>
> In *Philippine Tuberculosis Society, Inc. v. National Labor Union*, this Court quoted with approval the following discussion by the National Labor Relations Commission:
>
> > We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. . . . In *Villena vs. NLRC*, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of

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[99] *Id.* at 204 and 129-130.

[100] *Id.* at 97-109.

[101] 828 Phil. 182 (2018) [Per *J.* Leonen, Third Division].

a retrenchment program. *According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and (b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees), 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses*.

x x x x x x x x x

Indeed, it may have made mathematical sense to dismiss the highest paid employee first. *However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due*. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. La Consolacion's pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed.[102] (Emphasis supplied)

As stated, the use of fair and reasonable criteria is necessary in a retrenchment program. Failure to do so affects the employees' substantive rights to get what is their due.

Petitioners failed to prove that it used fair and reasonable criteria in carrying out the retrenchment program. They likewise failed to explain why it included respondent, who had already been employed for 10 years. Clearly, petitioners did not comply with the requirements of retrenchment under law and jurisprudence.

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[102] *Id.* at 194-196.

III

This Court likewise holds that respondent was not barred by estoppel.

Neither accepting separation pay nor signing a waiver and quitclaim bars the employee from contesting the legality of the dismissal. Such acts are generally taken with a grain of salt, considering that employees are usually at an economic disadvantage and are often left with no choice, since they are suddenly faced with the pressure to meet financial burdens. In *American Home Assurance Company v. National Labor Relations Commission*:[103]

> The fact that private respondent signed a document of waiver and quitclaim does not bar him from pursuing the ₱50,000.00 bonus under the SERP. His receipt of the separation pay and the execution of the release documents cannot militate against him. *That acceptance of separation pay does not amount to estoppel, and the satisfaction receipt does not result in a waiver*. The law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover *nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by employees are thus commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the workers' legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity*.[104] (Emphasis supplied, citation omitted)

Filing a complaint for illegal dismissal likewise negates any claim that the dismissal was voluntarily accepted. In *Molave Tours Corporation v. National Labor Relations Commission*:[105]

> The fact that private respondent immediately filed a complaint for illegal dismissal against petitioner and repudiated his alleged

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[103] 328 Phil. 606 (1996) [Per *J.* Regalado, Second Division].

[104] *Id.* at 621-622.

[105] 320 Phil. 398 (1995) [Per *J*. Francisco, Second Division].

resignation completely negated petitioner's claim that respondent Bolocon voluntarily resigned. *By vigorously pursuing the litigation of his action against petitioner, private respondent clearly manifested that he has no intention of relinquishing his employment*, which act is wholly incompatible to petitioner's assertion that he voluntarily resigned.[106] (Emphasis supplied)

In this case, the Department of Labor and Employment had advised respondent to first accept her separation pay before filing her complaint. To accept her separation pay, she had to process her clearance and sign the waivers and quitclaims. Not long after, she filed the case.

Notably, respondent was dismissed when she had just given birth. Her dismissal's effectivity was set on the date she was supposed to return from her maternity leave. She was at a clear disadvantage, having found herself without a job and a source of income right at a time when finances were crucial.

Thus, her acceptance of her separation pay and the execution of her waiver and quitclaim cannot be deemed as her waiving her right to file a complaint. She was not estopped from contesting the legality of her dismissal.

IV

Nonetheless, we find that petitioners Garcia and Fernandez should not be solidarily liable with petitioner Team Pacific Corporation.

In case of dismissals, directors and officers of corporations may only be held solidarily liable with the corporation if they acted in bad faith or with malice. In *Mandaue Dinghow Dimsum House, Co., Inc. v. National Labor Relations Commission*:[107]

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[106] *Id.* at 405.

[107] 571 Phil. 108 (2008) [Per *J.* Nachura, Third Division].

It must be emphasized that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Because of this, the doctrine of piercing the veil of corporate fiction must be exercised with caution.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, this Court reiterated the rule that corporate directors and officers are solidarily liable with the corporation for the termination of employees done with malice or bad faith. It has been held that bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[108] (Citations omitted)

In *MAM Realty Development Corporation v. National Labor Relations Commission*:[109]

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation —

(a) vote for or assent to *patently* unlawful acts of the corporation;

(b) act in *bad faith* or with *gross negligence* in directing the corporate affairs;

(c) are guilty of *conflict of interest* to the prejudice of the corporation, its stockholders or members, and other persons.

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[108] *Id.* at 121.

[109] 314 Phil. 838 (1995) [Per *J*. Vitug, Third Diision].

2. When a director or officer has consented to the issuance of *watered stock* or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.

3. When the director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.[110] (Emphasis in the original, citations omitted)

Here, respondent's dismissal was not shown to have been done in bad faith or with malice. The documents submitted by petitioners reveal that the company may have indeed been suffering business losses. The Regional Trial Court has even granted its Petition for Corporate Rehabilitation.[111]

While petitioners failed to show that they applied fair and reasonable criteria in selecting the employees to be entrenched, it does not mean that the dismissals were automatically done in bad faith or with malice. They may have simply failed to strictly comply or to sufficiently prove compliance with the

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[110] *Id.* at 844-845.

[111] *Rollo*, pp. 125-126. The Letter signed by petitioner Garcia and received on April 2008 by the Department of Labor and Employment, states:

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws with principal business address at Electronics Avenue, Food Terminal Complex, Taguig City would like to inform this Honorable Office that due to Company's Rehabilitation Program which was approved recently by the Regional Trial Court of Pasig, the Company is constrained to come up with measures to ensure long-term employment of employees not to say the need to comply with the approved conditions of the court, through the implementation of a Compressed Work Week Arrangement.

We communicated this business condition to employees who will be covered by the Compressed Work Week arrangement (Copy of Attendance Sheet attached).

stringent rules for a valid retrenchment. As such, bad faith or malice must still be proved.

Respondent failed to present clear and convincing evidence that petitioners Garcia or Fernandez acted in bad faith or with malice. They did not breach any duty or were motivated by ill will. Absent proof, the corporation's separate and distinct personality must be respected.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' October 30, 2012 Decision and March 27, 2013 Resolution are **AFFIRMED with MODIFICATION**.

Respondent Layla M. Parente was illegally dismissed. Petitioner Team Pacific Corporation is ordered to **REINSTATE** her to her former position without loss of seniority rights and other privileges, and to **PAY HER FULL BACKWAGES**, inclusive of allowances and other benefits or their monetary equivalent. The Labor Arbiter is directed to compute these amounts, from the time compensation was withheld up to her actual reinstatement.

The Complaint against petitioners Federico M. Fernandez and Aurora Q. Garcia is **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 209462. July 15, 2020]

USUSAN DEVELOPMENT CORPORATION, represented by ATTY. ROEL A. PACIO, *petitioner*, *vs*. **REPUBLIC OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; REVIEW OF THE FACTUAL FINDINGS OF THE COURT OF APPEALS IS NOT PERMITTED; GRANT OF REVIEW OR APPEAL BY *CERTIORARI* UNDER RULE 45, LIMITATIONS. —** While petitioner has couched the issue as one involving an error in law, in reality it wants the Court to review the factual findings of the CA, which is not permitted in a Rule 45 *certiorari* Petition. x x x. As laid down by the Court in *Dimaapi, et al. v. Golden Bell Loans and Credit Corporation, et al.*, the following four **rigid** parameters limit the giving of due course and granting of review or appeal by *certiorari* under Rule 45 of the Rules: (1) Only questions of law, which must be distinctly set forth in the petition, shall be raised (Section 1, Rule 45); (2) To avoid the outright dismissal of the petition, there must be compliance with the payment of the docket and other required fees, deposit for costs, proof of proper service of the petition, the required contents of the petition, and the required documents that must accompany the petition (Sections 4 and 5, Rule 45); (3) The Court may on its own initiative deny the appeal by *certiorari* on the ground that it is without merit or is prosecuted manifestly for delay, or that the questions therein are too insubstantial to require consideration (second paragraph, Section 5, Rule 45); and (4) A review by *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted **only** where there are **special and important** considerations by reason of **substance** — "when the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court" — or **procedure** — "when the court *a quo* has so far departed from the accepted and usual

course of judicial proceedings, or so far sanctioned such departure by the lower court, as to call for an exercise of the power of supervision" (Section 6, Rule 45). x x x. [P]etitioner did not even comply with parameter 1. The singular issue raised in the Petition is not a pure question of law because its resolution requires a review of the correctness of the factual determination of the CA that the three documents which petitioner belatedly submitted to the CA are vague and inconclusive as to whether the subject lot falls within the areas in Taguig City that have been declared AnD lands of public domain.

2. **CIVIL LAW; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); THE APPLICANT FOR REGISTRATION AND CONFIRMATION OF TITLE HAS THE BURDEN TO PROVE THAT THE LAND HAS BEEN CLASSIFIED AS ALIENABLE AND DISPOSABLE LAND OF PUBLIC DOMAIN; ALIENABLE AND DISPOSABLE STATUS OF THE SUBJECT LOT, NOT PROVED. —** Petitioner anchors its application for original registration of title under Section 14 (1) and (2) of Presidential Decree No. (PD) 1529 and claims that the subject lot is an AnD land of public domain. x x x. In the present case, petitioner does not claim that the subject lot is of private ownership. On the contrary, petitioner claims that it is a land of public dominion that has been classified as AnD. Consequently, the burden to prove its AnD classification rests with petitioner. The CA found that petitioner was unable to do so. Not being a trier of facts and with no additional evidence presented by petitioner to refute the CA's factual finding in respect of the three documents that it submitted for the CA's consideration to convince the CA that the subject lot has indeed been classified as AnD land of public domain, the Court is left with no option but to deny its Petition. The failure of petitioner to prove the AnD status of the subject lot renders the review of the finding of the CA that it has not substantiated its claim that it and its predecessors-in-interest have possessed the subject lot in the character and for the duration required under Section 14 (1) of PD 1529 superfluous.

APPEARANCES OF COUNSEL

Imelda A. Herrera for petitioner.
The Solicitor General for respondent.

RESOLUTION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated March 12, 2013 and Resolution[3] dated October 1, 2013 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 94909, which granted the appeal of the Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), and reversed as well as set aside the Decision[5] dated December 7, 2009 of the Regional Trial Court, Branch 153 of Pasig City (RTC) in LRC Case No. N-11571-TG, which granted petitioner Ususan Development Corporation's (now DMCI Project Developers, Inc., petitioner) application for registration and confirmation of title of a parcel of land (Psu-244418) situated at Pusawan, Barangay Ususan, Taguig City with an area of 3,975 square meters (subject lot). The CA Resolution denied petitioner's motion for reconsideration.

The Facts

The CA Decision narrates the antecedents as follows:

> In his lifetime, Jose Carlos owned a 3,975 square meter parcel of land situated in Ususan, Taguig City. Upon his death in 1948, Jose's daughter — Maria Carlos — inherited said property and later declared the same in her name for taxation purposes and paid the realty taxes due thereon. In 1968, Maria Carlos caused the survey of the lot under a conversion plan which was approved by [the] Bureau of Lands on [December 9, 1970].

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[1] *Rollo*, pp. 9-30, excluding Annexes.

[2] *Id.* at 31-42. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring.

[3] *Id.* at 43-45.

[4] Second Division.

[5] *Rollo*, pp. 46-49. Penned by Judge Briccio C. Ygaña.

On [October 16, 1996], Maria Carlos sold subject lot to applicant-appellee Ususan Development Corporation (now DMCI Project Developers, Inc.). Wanting to have said land titled in its name, applicant-appellee filed this instant application for registration and confirmation of title before the RTC asserting that the subject realty formed part of the alienable and disposable land of the public domain as evidenced by a Certification dated [June 6, 2007] of one Ali Bari, then the Regional Technical Director of the Forest Management Service of the Department of Environment and Natural Resources (RTD-FMS-DENR) as well as the Taguig City Land Registration Case Map No. 2623 that was approved on [January 3, 1968], and as confirmed by a Decision of the Supreme Court dated [August 31, 2005] in the registration suit earlier filed by Maria Carlos over such lot. It also averred that said land, now classified as industrial, is not located within any military or naval reservations, and that the same is not tenanted or being claimed by any other persons or entity, and neither is it mortgaged or encumbered.

Applicant-appellee further averred that, along with its predecessors-in-interest, it has been in open, exclusive, continuous and notorious possession and occupation of said realty in the concept of an owner as early as [June 12, 1945]. To prove such claim, Maria Carlos' daughter, Teresita Victoria testified that her deceased mother used to own and occupy said lot openly, peacefully, exclusively and continuously since she acquired it from her father, which realty she devoted to planting rice and other crops as well as to her piggery and poultry business. In addition, the former adjacent owner Pilar Guillermo testified that everybody in their community confirmed and recognized Jose and Maria Carlos' successive ownership and possession of the subject realty. Hence, [applicant-]appellee contended that its total length of possession of such land, tacked with that of its predecessors-in-interest, add up to over sixty (60) years already.

Appellant Republic of the Philippines, through the Office of [the] Solicitor General, filed an Opposition arguing that subject property cannot be owned by a private person nor can it be registered to applicant[-appellee] as it still remained part of the public domain that belonged to the State, and thus, not subject to private ownership. It likewise asserted that the Certification of the RTD-FMS-DENR is not competent evidence to prove that such land is within the alienable and disposable land of public domain because under the present system,

it is only the Community and/or Provincial Environment and Natural Resources Offices of DENR, as the case may be that has the power to issue classification certificates, and always subject to the approval of the DENR Secretary. It further averred that neither applicant[-appellee] nor its predecessors-in-interest had satisfied the possession or occupation required by law for registration or confirmation of title to real property. In any event, it asserted that the possession of a public land, no matter how long, cannot confer upon an occupant the ownership or possessory rights over the same.

After due hearing, the [RTC] rendered the x x x Decision dated [December 7, 2009] granting the application, and ordering the issuance of a decree of registration over the subject property in the name of applicant-appellee. It ruled that applicant-appellee has shown that subject property was within the alienable and disposable lands of public domain, which it and its predecessors-in-interest have been possessing openly, exclusively, continuously and notoriously in the concept of an owner for more than sixty (60) years already.

[The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered declaring Ususan Development Corporation, now DMCI Project Developers, Inc., as the owner in fee simple of the parcel of land (Psu-244418), with an area of THREE THOUSAND NINE HUNDRED SEVENTY FIVE (3,975) square meters, more or less, located at Pusawan, Barangay Ususan, Taguig City.
>
> After the decision shall have become final and executory, let the Land Registration Administration issue the decree of registration in favor of Ususan Development Corporation, now DMCI Project Developers, Inc.
>
> SO ORDERED.[6]]

The oppositor-State appealed to [the CA] positing that [the RTC erred in granting the application for registration in the absence of competent proof that the land applied for is within the alienable and disposable land of the public domain.][7]

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[6] *Id.* at 49.

[7] *Id.* at 32-34.

Ruling of the CA

The CA in its Decision[8] dated March 12, 2013 granted the appeal of the Republic. The dispositive portion thereof states:

> **WHEREFORE**, the foregoing considered, the appeal is **GRANTED**. The Decision dated [December 7, 2009] of the Regional Trial Court, Branch 153 of Pasig City is **REVERSED** and **SET ASIDE**. The Application dated [December 11, 2008] filed by applicant-appellee is **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[9]

Petitioner filed a Motion for Reconsideration[10] (MR) with the CA, which the CA denied in its Resolution[11] dated October 1, 2013.

Hence the present Petition.

The Issue

The Petition raises this sole issue: whether the CA committed an error of law in reversing the RTC Decision granting the application for original registration of the subject lot.[12]

The Court's Ruling

The Petition lacks merit.

While petitioner has couched the issue as one involving an error in law, in reality it wants the Court to review the factual findings of the CA, which is not permitted in a Rule 45 *certiorari* Petition.

The Petition alleges that the CA reversed the RTC Decision because petitioner failed to prove that the subject lot is alienable

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[8] *Supra* note 2.

[9] *Id.* at 41.

[10] *Id.* at 51-68.

[11] *Supra* note 3.

[12] *Id.* at 14.

and disposable (AnD) land of public domain and it also failed to sufficiently prove its possession.[13] Then, petitioner proceeds to quote the CA Decision that jurisprudence required the following accompanying requirements in an application for registration: (1) the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO) certification that the land sought to be registered is AnD and a copy of the original classification approved by the Department of Environment and Natural Resources (DENR) Secretary and certified as a true copy by the legal custodian of the official records.[14] To prove the AnD status of the subject lot, petitioner attaches these three documents: (1) the CENRO or PENRO certification that the land sought to be registered is AnD as delegated to the Regional Executive Director as Annex "E"; (2) certified true copy of the original classification approved by the DENR Secretary as Annex "F"; and (3) certified true copy of the approved Land Classification Maps (LC Maps) used as basis in the issuance of the certification on the land classification status of a particular parcel of land with certification by the legal custodian of the official records as Annex "G".[15] These attached documents, however, were not adduced in and admitted by the RTC.

Petitioner insists on the admission by the Court of these documents by citing *Victoria v. Republic*[16] *(Victoria)* and *Llanes v. Republic*[17] *(Llanes)*, which was cited in *Victoria*.[18]

Unfortunately, *Victoria* and *Llanes* are not *apropos*. In *Victoria*, the Court allowed the DENR Certification which was submitted by the petitioner therein to prove the AnD status of

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[13] *Id.* at 15.

[14] *Id.* at 16.

[15] *Id.* at 16, 85-87.

[16] G.R. No. 179673, June 8, 2011, 651 SCRA 523.

[17] G.R. No. 177947, November 27, 2008, 572 SCRA 258.

[18] *Rollo*, pp. 16-17.

the land applied for registration after the Court gave the OSG the opportunity to verify the authenticity of the Certification and the OSG did not contest its authenticity. In *Llanes*, the Court allowed the consideration of the CENRO Certification although it was only presented during the appeal to the CA. In both *Victoria* and *Llanes*, there was no contrary finding that the DENR and CENRO Certifications pertained to the lots subject of registration in those cases.

In this case, the CA has rejected the very same three documents that petitioner is submitting to the Court. In its MR before the CA, petitioner made the same allegations regarding those three documents and its reliance on *Victoria*, which are averred in the Petition, to wit:

> 6. In the jurisprudence that have been cited in its decision, it has been reiterated that the accompanying requirements in an application for registration like [the] one filed by appellee are[:] "(1) the CENRO or PENRO certification that the land sought to be registered is alienable and disposable; [(2)] a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records["].
>
> 7. Appellee is now submitting all the stated requirements in the hope that it also be granted the same consideration that has been afforded in the case of *Natividad Sta. Ana Victoria vs. Republic of the Philippines*.
>
> 8. Hence the following are attached [as Annexes "B", "C" and "D" of the MR]:
>
> 8.1. the CENRO or PENRO certification that the land sought to be registered is alienable and disposable as delegated to the Regional Executive Director;
>
> 8.2. certified true copy of the original classification approved by the DENR Secretary; and
>
> 8.3. certified true copy of the approved Land Classification Maps (LC Maps) used as basis in the issuance of the certification on the land classification status of a

> particular parcel of land with certification by the legal custodian of the official records.[19]

The CA in its Resolution[20] dated October 1, 2013 made this finding in relation to the appended three documents:

> From Our Decision of [March 12, 2013], appellee filed this Motion for Reconsideration, asserting once again that subject lot is part of alienable and disposable lands of public domain and is susceptible of private ownership and registration. It appended [DENR] Administrative Order No. 2012-09 showing delegation of authority to the Community Environment and Natural Resources Officers or the Regional Executive Director, as the case may be, to issue and certify land classification; a Certification of the Director of Forestry indicating that certain lands of public domain in Taguig City were long declared as alienable and disposable by the DENR Secretary; and a Certified True Copy of Approved Land Classification Maps of subject lot. x x x
>
> After a review of the records, We find the motion without merit.
>
> x x x Verily, the DENR Administrative Order, Certification of Director of Forestry and Land Classification Maps belatedly submitted by appellee [do] not clearly show that subject lot is part [of] alienable and disposable land. With particular reference to Taguig, the map is vague and inconclusive as to the specific lots included. For one thing, it is stated therein that portions 27 and 27-A of the Taguig area are not included in the declaration. Of no doubt, this Court cannot presume that subject lot is part of portion 27-B that is included in the declaration. Certainly, in the absence of sufficient and convincing proof that such realty is alienable and disposable land of public domain, the possessor thereof (appellee) could not acquire ownership of the same, much less, have the right to seek registration of title thereto under Section 14(1) of the Property Registration Decree.[21]

Essentially, petitioner seeks a review by the Court of the foregoing factual finding of the CA *via* a Rule 45 *certiorari* petition.

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[19] *Id.* at 53.

[20] *Supra* note 3.

[21] *Id.* at 43-44.

As laid down by the Court in *Dimaapi, et al. v. Golden Bell Loans and Credit Corporation, et al.*,[22] the following four **rigid** parameters limit the giving of due course and granting of review or appeal by *certiorari* under Rule 45 of the Rules:

(1) Only questions of law, which must be distinctly set forth in the petition, shall be raised (Section 1, Rule 45);

(2) To avoid the outright dismissal of the petition, there must be compliance with the payment of the docket and other required fees, deposit for costs, proof of proper service of the petition, the required contents of the petition, and the required documents that must accompany the petition (Sections 4 and 5, Rule 45);

(3) The Court may on its own initiative deny the appeal by *certiorari* on the ground that it is without merit or is prosecuted manifestly for delay, or that the questions therein are too insubstantial to require consideration (second paragraph, Section 5, Rule 45); and

(4) A review by *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted **only** where there are **special and important** considerations by reason of **substance** — "when the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court" — or **procedure** — "when the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower court, as to call for an exercise of the power of supervision" (Section 6, Rule 45).[23]

As pointed at the outset, petitioner did not even comply with parameter 1. The singular issue raised in the Petition is not a

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[22] G.R. No. 180569, June 10, 2020 (Unsigned Resolution).

[23] *Id.* at 5.

pure question of law because its resolution requires a review of the correctness of the factual determination of the CA that the three documents which petitioner belatedly submitted to the CA are vague and inconclusive as to whether the subject lot falls within the areas in Taguig City that have been declared AnD lands of public domain.

Petitioner anchors its application for original registration of title under Section 14 (1) and (2) of Presidential Decree No. (PD) 1529[24] and claims that the subject lot is an AnD land of public domain. PD 1529, Section 14 provides:

> 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:
>
> (1) *Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.*
>
> *(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.*
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
>
> x x x x x x x x x. (Italics supplied)

In the present case, petitioner does not claim that the subject lot is of private ownership. On the contrary, petitioner claims that it is a land of public dominion that has been classified as

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[24] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES or the "Property Registration Decree," June 11, 1978.

AnD. Consequently, the burden to prove its AnD classification rests with petitioner.

The CA found that petitioner was unable to do so. Not being a trier of facts and with no additional evidence presented by petitioner to refute the CA's factual finding in respect of the three documents that it submitted for the CA's consideration to convince the CA that the subject lot has indeed been classified as AnD land of public domain, the Court is left with no option but to deny its Petition. The failure of petitioner to prove the AnD status of the subject lot renders the review of the finding of the CA that it has not substantiated its claim that it and its predecessors-in-interest have possessed the subject lot in the character and for the duration required under Section 14(1) of PD 1529 superfluous.

WHEREFORE, the Petition is **DENIED** for lack of merit. The Decision dated March 12, 2013 and Resolution dated October 1, 2013 of the Court of Appeals in CA-G.R. CV No. 94909 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 213875. July 15, 2020]

MERLINA R. DIAZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW *VIS-À-VIS* THE REVISED RULES OF CRIMINAL PROCEDURE;

SEARCH WARRANT; REQUIREMENTS OF A VALID SEARCH WARRANT. — The requirements of a valid search warrant are laid down in Article III, Section 2 of the 1987 Constitution and in Rule 126, Section 4 of the Rules Court, *viz.:* "(1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized." The absence of any of these requisites will cause the downright nullification of the search warrant.

2. **ID.; ID.; ID.; ID.; THAT THE SEARCH WARRANT SPECIFICALLY DESCRIBED THE PLACE TO BE SEARCHED, EXPLAINED; THE TEST OF WHETHER THE REQUIREMENT OF DEFINITENESS OR PARTICULARITY HAS BEEN MET IS WHETHER THE DESCRIPTION OF THE PLACE TO BE SEARCHED UNDER THE WARRANT IS SUFFICIENT AND DESCRIPTIVE ENOUGH TO PREVENT A SEARCH OF OTHER PREMISES LOCATED WITHIN THE SURROUNDING AREA OR COMMUNITY. —** "A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid, otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution." The particularity of the place described is essential in the issuance of search warrants to avoid the exercise by the enforcing officers of discretion to decide on their own where to search and whom and what to seize. "Additionally, the requisite of particularity is related to the probable cause requirement in that, at least under some circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the [court] that the described items are to be found in a particular place." Notably, it is well-entrenched in our jurisprudence that a description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community. Hence, "[a] designation that points out the place to be searched to the exclusion of all

others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness." Simply put, the test of whether the requirement of definiteness or particularity has been met is whether the description of the place to be searched under the warrant is sufficient and descriptive enough to prevent a search of other premises located within the surrounding area or community. A "place" may refer to a single building or structure, or a house or residence, such as in the case at bar.

3. **ID.; ID.; ID.; ID.; THE SEARCH WARRANT IN THIS CASE CLEARLY COMPLIED WITH THE CONSTITUTIONAL REQUIREMENT OF DEFINITENESS. —** The search warrant in the instant case clearly complied with the foregoing standard since it particularly described the place to be searched, which is petitioner's "*house at Gitna, Brgy. Cuyab, San Pedro, Laguna.*" The subject search warrant sufficiently described the place to be searched with clear indication that the same was intended to authorize a search of the entire house of petitioner, albeit confined to the area of her house, to the exclusion of the other two structures or buildings similarly located along the street of Gitna. Simply put, the constitutional requirement of definiteness has been met.

4. **ID.; ID.; ID.; ID.; ID.; THAT THE SEARCH WARRANT DID NOT INDICATE THAT THE PLACE TO BE SEARCHED CONTAINED FIVE ROOMS WHICH WERE SEPARATELY OCCUPIED BY PETITIONER AND HER SIBLING IS INCONSEQUENTIAL AND DOES NOT AFFECT THE VALIDITY OF THE WARRANT; REASONS. —** This Court finds that the omission of the warrant to (a) indicate that the place to be searched contained five rooms which were separately occupied by petitioner and her siblings; and (b) confine the search to petitioner's unit is inconsequential and, therefore, does not affect the warrant's validity for the following reasons: *First,* the units or rooms where petitioner and her siblings lived all form an integral part of the house, which, as already discussed, was sufficiently described with particularity under the warrant. The rooms inside the house, which were in fact occupied by family members of petitioner, cannot be treated separately as they form part of the house where petitioner actually resided. x x x *Second,* even assuming that

an ambiguity or inaccuracy in the interior description of the place to be searched may affect the validity of the warrant, such finding, which only emerged after the warrant was issued, has no bearing on its validity or invalidity. That the house of petitioner was composed of several units separately occupied by her siblings was discovered only after the search warrant was enforced and the search of petitioner's house was conducted by the police officers. Notably, PO2 Avila could not have known or detected the multi-unit character of petitioner's house prior to the actual search.

5. **ID.; ID.; ID.; ID.; ID.; A SEARCH WARRANT SUFFICIENTLY COMPLIES WITH THE REQUIREMENT OF PARTICULARITY AS LONG AS THE DESCRIPTION OF THE PLACE THEREIN IS AS SPECIFIC AS THE CIRCUMSTANCES WILL ORDINARILY ALLOW IT TO BE DESCRIBED; PRINCIPLE, APPLIED IN THIS CASE.** — [I]t has been held that the requirement of particularity as to the things to be seized does not require technical accuracy in the description of the property to be seized, and that a search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow it to be described. The same principle should be applied in the case at bench. It would be unreasonable to expect PO2 Avila, or an outsider such as Labrador for that matter, to have extensive knowledge of the interior set-up or floor plan of petitioner's house without, however, having apparent authority or opportunity to access the premises prior to the search. In this regard, the Court holds that the validity of the warrant must be assessed on the basis of the pieces of information made available to Judge Morga at the time PO2 Avila applied for the issuance of the search warrant which, in this case, were sufficiently supported by the sketches of Labrador, and the testimonies of PO2 Avila and Labrador, who were, in fact, personally examined by Judge Morga in the form of searching questions and answers.

APPEARANCES OF COUNSEL

Vincent A. Robles for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J*.:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the May 12, 2014 Decision[2] and August 11, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 132942. The CA dismissed the Petition for *Certiorari*[4] under Rule 65 of the Rules of Court, assailing the July 16, 2013[5] and September 20, 2013[6] Orders of Judge Francisco D. Paño of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93, which denied the Motion to Quash Search Warrant[7] and Motion for Reconsideration,[8] respectively, filed by petitioner Merlina R. Diaz in Criminal Case No. 12-8358-SPL.

Factual Antecedents

On April 27, 2012, on the basis of the application filed by and examination under oath of applicant Police Officer 2 Pio P. Avila (PO2 Avila), RTC Judge Agripino Morga, Presiding Judge of San Pablo City, Branch 32, issued Search Warrant No. 97 (12)[9] which read, in part, as follows:

> It appearing to the satisfaction of the undersigned that after examining under oath by searching questions and answers PO2 Pio

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[1] *Rollo*, pp. 10-26.

[2] CA *rollo*, pp. 88-98; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

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

[4] *Id.* at 3-14.

[5] *Id.* at 15; penned by Judge Francisco Dizon Paño.

[6] *Id.* at 16.

[7] *Id.* at 17-30.

[8] *Id.* at 99-105.

[9] *Id.* at 48.

Pievro Avila, there exists a probable cause for Violation of RA 9165 which has been committed and there is a good sufficient reason to believe that MERLY DIAZ @ Merly Palayok has possession and control of undetermined amount of Metham[pheta]mine Hydrochloride commonly known as *shabu* which [she] is keeping and concealing in [her] house at Gitna, Brgy. Cuyab, San Pedro[,] Laguna.

You are, therefore, hereby commanded to make an immediate search at anytime of the day or anytime of the night the house aforestated and thereafter seize and bring said undetermined amount of Prohibited Drugs (*shabu*) to the undersigned so that the same could be dealt with in accordance with law.

In support of PO2 Avila's application, an informant, a certain Jericho S. Labrador (Labrador), submitted to Judge Morga two sketches of the house of petitioner in Gitna, Brgy. Cuyab, San Pedro, Laguna. The first sketch[10] of Labrador depicted a floor plan of a studio-type apartment with an anteroom where the entrance gate of the property was located. The second sketch[11] depicted three buildings along Gitna, one of which was marked with a large "X" enclosed in a square that supposedly identified petitioner's house.[12]

Pursuant to the search warrant, members of the San Pedro Police Station searched the house of petitioner. Approximately nine grams of *shabu* were then found in and seized from the premises. Petitioner was immediately arrested and detained by the members of the searching team for her alleged violation of Section 11 of Republic Act No. 9165 (R.A. No. 9165), or the Comprehensive Dangerous Drugs Act of 2002.[13]

Immediately after the search and petitioner's arrest, the following information was uncovered from petitioner: (1) that the complete address of her residence is No. 972, Gitna, Brgy. Cuyab, San Pedro, Laguna; and (2) that the house located at

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[10] *Id.* at 25.

[11] *Id.* at 24.

[12] *Rollo*, pp. 13 and 117.

[13] *Id.* at 12 and 117.

No. 972, Gitna, Brgy. Cuyab, San Pedro, Laguna was divided into five separate units each occupied by petitioner and her four siblings, namely, Nomer (Leomer) R. Diaz, Edwin R. Diaz, Flordeliza R. Diaz, and Leonora Diaz Nesola (Leonora), and their respective families.[14]

Thereafter, on May 2, 2012, Inquest Proceedings were conducted by Assistant Provincial Prosecutor Clarence R. Gaite. On the same day, an Information for Violation of Section 11 of R.A. No. 9165, docketed as Criminal Case No. 12-8358-SPL, was filed before the RTC of San Pablo City, Laguna, Branch 93, against petitioner.[15]

On May 22, 2012, petitioner filed before the RTC of San Pablo City, Laguna, Branch 32, a Motion to Quash Search Warrant No. 97 (12)[16] on the ground that the same was in the nature of a general warrant which failed to describe with particularity the place to be searched. Particularly, petitioner averred in her motion that: (a) house number 972 did not appear in her home address as stated in the search warrant; and (b) the search warrant failed to distinguish petitioner's unit, which was the place intended to be searched, from the other units or rooms representing the four other households inside the house located in Gitna, Brgy. Cuyab, San Pedro, Laguna.

On May 25, 2012, the RTC of San Pablo City, Laguna, Branch 32, issued an Order[17] forwarding the motion to the RTC of San Pedro, Laguna, Branch 93, for resolution.

On March 1, 2013, the prosecution filed its objection[18] to the Motion to Quash averring that the search warrant is presumed regular unless and until petitioner presents evidence to prove otherwise.

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[14] *Id.* 13-14 and 117-118.

[15] *Id.* at 12 and 117.

[16] CA *rollo*, pp. 17-30.

[17] *Id.* at 31.

[18] *Id.* at 35.

Ruling of the Regional Trial Court

In an Order[19] dated July 16, 2013, the RTC of San Pedro, Laguna, Branch 93, denied petitioner's motion for lack of merit considering that the description of the place as stated in the search warrant was sufficient, thus:

> Acting on the Motion to Quash filed by accused through counsel, with the objection thereto by the public prosecutor, the Court resolves to deny the said motion for utter lack of merit. The Court finds the description of the place as stated in the warrant sufficient as the officer with warrant can with reasonable effort, ascertain and identify the place intended to be searched.
>
> SO ORDERED.

The Motion for Reconsideration[20] filed by petitioner was denied by the RTC in its September 20, 2013 Order.[21] Unconvinced, petitioner filed a Petition for *Certiorari*[22] before the CA.

Ruling of the Court of Appeals

Petitioner reiterated in her Petition for *Certiorari* the issues and arguments previously raised and passed upon by the RTC. Thus, in its May 12, 2014 Decision,[23] the CA dismissed the Petition and ruled that the search warrant did not partake of the nature of a general warrant as it sufficiently described with particularity the place to be searched stated therein. The CA explained that the police officers who served the warrant and conducted the search of petitioner's residence were able to identify the building where she actually resided notwithstanding the fact that the search warrant did not specifically indicate house number 972.

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[19] *Id.* at 15.

[20] *Id.* at 36-39.

[21] *Id.* at 16.

[22] *Id.* at 3-14.

[23] *Id.* at 88-98.

Petitioner sought reconsideration of the CA's May 12, 2014 Decision of the CA, which was, however, denied by the appellate court in its August 11, 2014 Resolution.[24]

Issues

Undeterred, petitioner filed the instant Petition for Review on *Certiorari*[25] raising the following assignment of errors:

A. THE COURT OF APPEALS ERRED WHEN IT RULED THAT SEARCH WARRANT NO. 97 (12) IS VALID AND [DOES] NOT CONSTITUTE A GENERAL WARRANT[.]

B. THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE ACTS OF PUBLIC RESPONDENT IN DENYING PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 97 (12) AND DENYING HER MOTION FOR RECONSIDERATION DO NOT CONSTITUTE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION[.]

C. THE COURT OF APPEALS ERRED WHEN IT DISMISSED PETITIONER'S PETITION FOR *CERTIORARI*.[26]

Plainly, the threshold issue for resolution is whether Search Warrant No. 97 (12) is a general warrant for failing to describe the place to be searched with sufficient particularity.

Our Ruling

We deny the Petition.

The requirements of a valid search warrant are laid down in Article III, Section 2 of the 1987 Constitution[27] and in Rule 126,

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

[25] *Rollo*, pp. 10-26.

[26] *Id.* at 16-17.

[27] Article III, Section 2 of the 1987 Constitution states: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after

Section 4[28] of the Rules Court, *viz.*: "(1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized."[29] The absence of any of these requisites will cause the downright nullification of the search warrant.[30]

There is no question that the search warrant was issued after judicial determination of probable cause. This Court is thus confined in determining the presence or absence of the fifth requisite element as stated above, *i.e.*, whether the subject warrant specifically described the place to be searched.

"A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid, otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution."[31] The particularity of the place described is essential in the issuance of search warrants to avoid the exercise by the enforcing officers of discretion to decide on their own where to search and whom and what to seize.[32] "Additionally,

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examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[28] Section 4. *Requisites for issuing search warrant*. - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

[29] *People v. Mamaril*, 646 Phil. 660, 671 (2010); citation omitted.

[30] *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 906 (2000).

[31] *HPS Software and Communication Corp. v. Philippine Long Distance Telephone Company (PLDT)*, 700 Phil. 534, 571 (2012); citation omitted.

[32] *People v. Francisco*, 436 Phil 383, 393 (2002).

the requisite of particularity is related to the probable cause requirement in that, at least under some circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the [court] that the described items are to be found in a particular place."[33]

Notably, it is well-entrenched in our jurisprudence that a description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community. Hence, "[a] designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness."[34]

Simply put, the test of whether the requirement of definiteness or particularity has been met is whether the description of the place to be searched under the warrant is sufficient and descriptive enough to prevent a search of other premises located within the surrounding area or community. A "place" may refer to a single building or structure, or a house or residence,[35] such as in the case at bar.

Thus, it has been held that a designation of a place to be searched as *"MASAGANA compound located at Governor's Drive, Barangay Lapidario, Trece Martires, Cavite City";*[36] *"the house of the accused Estela Tuan at Brgy. Gabriela Silang,*

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[33] *Paper Industries Corp. of the Phils. v. Asuncion*, 366 Phil. 717, 737 (1999); citation omitted.

[34] *Dimal v. People*, G.R. No. 216922, April 18, 2018; citation omitted. See also *People v. Tuan*, 642 Phil. 379, 406 (2010), and *Uy v. Bureau of Internal Revenue*, *supra* note 30, at 907-908.

[35] U.S. Federal courts consistently held that the "place" particularly described as required under the Fourth Amendment of the United States Constitution, when applied to dwellings, refers to a single living unit or residence. *United States v. Parmenter*, 7th Cir. 1982, 531 F. Supp. 975, citing *United States v. Hinton*, 7 Cir. 1955, 219 F.2d 324.

[36] *Yao, Sr. v. People*, 552 Phil. 195, 221 (2007).

Baguio City";[37] *or "premises of Felix Gumpal Compound located at Ipil Junction, Echague, Isabela"*[38] is sufficient description of the premises to be searched.

The search warrant in the instant case clearly complied with the foregoing standard since it particularly described the place to be searched, which is petitioner's *"house at Gitna, Brgy. Cuyab, San Pedro, Laguna."* The subject search warrant sufficiently described the place to be searched with clear indication that the same was intended to authorize a search of the entire house of petitioner, albeit confined to the area of her house, to the exclusion of the other two structures or buildings similarly located along the street of Gitna. Simply put, the constitutional requirement of definiteness has been met. We therefore agree with the CA when it held, *viz.*:

> In this case, although the house number of petitioner's house was not indicated in Search Warrant No. 97 (12), the description of the place to be searched was sufficient as the police officers who served the same were able, with reasonable effort, to ascertain and identify the house of petitioner at Gitna, Barangay Cuyab, San Pedro, Laguna, as stated in the search warrant. It bears emphasis that informant Jericho Labrador, when asked by Executive Judge Morga, also drew sketches where petitioner's house was located as well [as] the floor plan of her house, which were used by the searching team.[39]

This notwithstanding, petitioner argued that the warrant was issued on a mistaken belief that the house was a single dwelling unit occupied by petitioner alone. Petitioner thus insisted that the inaccurate depiction of the house's floor plan, and the consequent search of the entire premises of a supposed multiple-occupancy structure, invalidated the warrant.

In this regard, the records would confirm that the house described in the warrant was composed of and divided into five separate units or rooms each occupied by petitioner, and

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[37] *People v. Tuan*, *supra* note 34.

[38] *Dimal v. People*, *supra* note 34.

[39] CA *rollo*, p. 95.

her four siblings and their families. Petitioner explained that although the units or rooms were contiguous to each other, each unit was a complete household independent of the other and may be entered only through their respective front doors. Considering the foregoing, petitioner stressed that the central issue in the instant case is not whether the police officers who enforced the warrant can, with reasonable effort, ascertain and identify the place to be searched, but rather, whether the *description* of the place to be searched set out in the warrant was sufficient which would prevent the officers from exercising discretion.

From the foregoing, it would appear that the issue on the requirement of definiteness raised by petitioner is two-tiered — that of the place to be searched, *i.e.*, her home at No. 972, Gitna, Brgy. Cuyab, San Pedro, Laguna, and the *interior* description thereof. Petitioner persists on the lack of sufficient definiteness of the latter.

While petitioner did not deny that the place actually searched by the police officers is her home in Gitna, Brgy. Cuyab, San Pedro, Laguna, she argued, however, that it was incumbent upon PO2 Avila and Labrador to inform Judge Morga of an accurate description or floor plan of the house so as to confine the scope of the search within the unit where petitioner actually resided. Considering PO2 Avila's and Labrador's failure to provide Judge Morga a full and accurate description of the house described in the warrant, *i.e.*, that the same was partitioned into five separate units, and that there were other families living in the other units of the house, Judge Morga was led to believe that the area to be searched comprised of the whole house.

Petitioner thus argued that the coverage of the warrant was broader than appropriate considering that the search covered the whole house and was not limited to the unit actually occupied by petitioner. To petitioner's mind, this gave the police officers undue discretion in enforcing the warrant, which they allegedly did when they searched the units occupied by petitioner's siblings, namely, Leomer and Leonora.

In support of her argument, petitioner cited *People v. Estrada*[40] *(Estrada)* and *Paper Industries Corp. of the Philippines v. Asuncion*[41] *(Asuncion)*. In *Estrada*,[42] this Court invalidated the search warrant because it merely indicated the address of the compound where the place to be searched was located, without, however, pinpointing the specific house to be searched from the other buildings or structures which were also situated within the same compound. Along the same lines, this Court, in *Asuncion*,[43] characterized the search warrant as a general warrant since it authorized a search of a compound, which, however, was made up of "200 offices/building, 15 plants, 84 staff houses, 1 airstrip, 3 piers/wharves, 23 warehouses, 6 POL depots/quick service outlets and some 800 miscellaneous structures, all of which are spread out over some one hundred fifty-five hectares."

Petitioner's reliance on the said cases, however, was misplaced as the factual milieus therein are not in all fours with the case at bench. The ruling in these cases were, on one hand, premised on the fact that the subject warrants gave the police officers unbridled discretion to search *several, if not all, structures* found inside the compounds — enclosed areas of land containing clusters of structures and/or buildings — while probable cause existed in only one of the several structures located in the compounds. Clearly, the warrants in these cases gave the police officers unbridled discretion and, therefore, illegal authority to search all the structures found inside the compounds. On the other hand, the instant case involved a single structure, and, unlike in the *Estrada* and *Asuncion* cases, was readily identifiable to the police officers serving the warrant from the other structures similarly located along the street where petitioner's house was located. In other words, the description of petitioner's house was sufficient and descriptive enough to prevent a search of

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[40] 357 Phil. 377, 394-395 (1998).

[41] *Supra* note 33 at 737-738 (1999).

[42] *Supra* note 40.

[43] *Supra* note 33.

other structures located within the surrounding area or community.

What is therefore involved in this case is a singular structure containing multiple family dwellings or units therein — a fact which was discovered only after the search warrant was enforced and the search of petitioner's house was conducted by the police officers. The pith of the issue therefore lies in the validity of a warrant which appears to have authorized the search of the entire premises of a supposed multiple-occupancy structure containing several units occupied by other persons other than petitioner.

This Court finds that the omission of the warrant to (a) indicate that the place to be searched contained five rooms which were separately occupied by petitioner and her siblings; and (b) confine the search to petitioner's unit is inconsequential and, therefore, does not affect the warrant's validity for the following reasons:

First, the units or rooms where petitioner and her siblings lived all form an integral part of the house, which, as already discussed, was sufficiently described with particularity under the warrant. The rooms inside the house, which were in fact occupied by family members of petitioner, cannot be treated separately as they form part of the house where petitioner actually resided.

Prudente v. Dayrit[44] is instructive on this point, *viz.*:

Petitioner also assails the validity of the search warrant on the ground that it failed to particularly describe the place to be searched, contending that there were several rooms at the ground floor and the second floor of the PUP.

The rule is, that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended. In the case at bar, the application for search warrant and the search warrant itself described the place to be searched as the premises of the Polytechnic University of the Philippines, located at Anonas St., Sta. Mesa, Sampaloc, Manila more

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[44] 259 Phil. 541, 553 (1989); citation omitted.

particularly, the offices of the Department of Military Science and Tactics at the ground floor, and the Office of the President, Dr. Nemesio Prudente, at PUP, Second Floor and other rooms at the second floor. The designation of the places to be searched sufficiently complied with the constitutional injunction that a search warrant must particularly describe the place to be searched, even if there were several rooms at the ground floor and second floor of the PUP.

People v. Tuan[45] also teaches that the description of the place to be searched under the warrant described as the *"house of the accused Estela Tuan at Brgy. Gabriela Silang, Baguio City,"* which contained several rooms, was specific enough and, therefore, satisfied the constitutional requirement of definiteness:

In the case at bar, the address and description of the place to be searched in the Search Warrant was specific enough. There was only one house located at the stated address, which was accused-appellant's residence, consisting of a structure with two floors and composed of several rooms.[46]

Second, even assuming that an ambiguity or inaccuracy in the interior description of the place to be searched may affect the validity of the warrant,[47] such finding, which only emerged

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[45] *Supra* note 34.

[46] *Id.* at 406.

[47] In *United States v. Parmenter* (*supra* note 35), the Supreme Court of the United States held that when a building subject of a search warrant is divided into more than one occupancy unit, probable cause must exist for each unit to be searched, and the search warrant must describe the particular sub-unit or units to be searched. An exception to this rule is when the officers who applied for and executed the warrant did not know or have reason to know of the multi-unit character of the premises prior to the actual search. Thus, in the case of *Maryland v. Garrison* [480 U.S. 79 (1987)], the Supreme Court of the United States upheld the validity of the warrant that authorized the search of "the premises known as 2036 Par Avenue third floor apartment." In this case, while there were two apartments located on the third floor, the information made available to the officers who applied for the warrant indicated that the sole occupant of the third floor was a certain Lawrence McWebb, whose apartment was the subject of the search warrant applied for. Thus, despite the fact that the place to be searched under the warrant was broader

after the warrant was issued, has no bearing on its validity or invalidity.

That the house of petitioner was composed of several units separately occupied by her siblings was discovered only after the search warrant was enforced and the search of petitioner's house was conducted by the police officers. Notably, PO2 Avila could not have known or detected the multi-unit character of petitioner's house prior to the actual search.

On this point, it has been held that the requirement of particularity as to the things to be seized does not require technical accuracy in the description of the property to be seized, and that a search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow it to be described.[48] The same principle should be applied in the case at bench. It would be unreasonable to expect PO2 Avila, or an outsider such as Labrador for that matter, to have extensive knowledge of the interior set-up or floor plan of petitioner's house without, however, having apparent authority or opportunity to access the premises prior to the search.

In this regard, the Court holds that the validity of the warrant must be assessed on the basis of the pieces of information made available to Judge Morga at the time PO2 Avila applied for the issuance of the search warrant which, in this case, were sufficiently supported by the sketches of Labrador, and the testimonies of PO2 Avila and Labrador, who were, in fact, personally examined by Judge Morga in the form of searching questions and answers. Quoting Justice John Paul Stevens' opinion in *Maryland v. Garrison*:[49]

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than appropriate, and that the officers searched an apartment other than McWebb's, the Supreme Court nonetheless upheld the validity of the warrant and the resulting search conducted in the latter premises.

[48] *Philippine Long Distance Company v. Alvarez*, 728 Phil. 391, 419 (2014).

[49] *Supra* note 47.

Those items of evidence that emerge after the warrant is issued have no bearing on whether or not a warrant was validly issued. Just as a discovery of the contraband cannot validate a warrant invalid when issued, so is it equally clear that the discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant. The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and disclose, to the issuing Magistrate.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 132942, dated May 12, 2014 and August 11, 2014, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe,[*] *S.A.J.* (*Chairperson*), *Inting, Delos Santos,* and *Gaerlan, JJ.,* concur.

THIRD DIVISION

[G.R. No. 217311. July 15, 2020]

ALESON SHIPPING LINES, *petitioner, vs.* **CGU INTERNATIONAL INS. PLC. and CANDANO SHIPPING LINES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN, AS THE COURT IS NOT A TRIER OF FACTS, AND IT WILL NOT DELVE INTO FACTUAL

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[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

QUESTIONS ALREADY SETTLED BY THE LOWER COURT; THE COURT IS BOUND TO AFFIRM THE LOWER COURTS' FACTUAL FINDINGS WHERE THE PETITIONER FAILED TO ALLEGE AND DEMONSTRATE THAT THE PETITION IS AN EXCEPTION TO THE RULE. — As a rule, only questions of law may be raised in a Rule 45 petition. This Court is not a trier of facts, and it will not delve into factual questions already settled by the lower courts. While this rule admits exceptions, the party must demonstrate and prove that the petition falls under the exceptions. Here, the petition's resolution necessarily requires a re-evaluation of the lower courts' factual findings. To resolve petitioner's liability, this Court is being asked to assess and weigh the evidence. Failing to allege and demonstrate that this petition is an exception to the rule, We are bound to affirm the lower courts' factual findings.

2. **ID.; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; PART OF *RES GESTAE*; *RES GESTAE* CONTEMPLATES STATEMENTS THAT WERE VOLUNTARILY AND SPONTANEOUSLY MADE SO NEARLY CONTEMPORANEOUS AS TO BE IN THE PRESENCE OF THE TRANSACTION WHICH THEY ILLUSTRATE AND EXPLAIN, AND WERE MADE UNDER SUCH CIRCUMSTANCES AS NECESSARILY TO EXCLUDE THE IDEA OF DESIGN OR DELIBERATION; TWO CLASSES OF *RES GESTAE*; REQUISITES. —** Generally, a witness can only give a testimony with respect to matters of which he or she has personal knowledge. Testimonies which are hearsay are inadmissible as evidence. The rules, however, allow for certain exceptions. One of which is when the evidence is part of *res gestae*. Rule 130, Section 42 states: SECTION 42. Part of *res gestae*. Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of r*es gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. *Res gestae* refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." It contemplates statements that were "voluntarily and spontaneously made so

nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain, and were made under such circumstances as necessarily to exclude the idea of design or deliberation[.]" There are two (2) acts which form part of the *res gestae*: (1) in spontaneous exclamations where the *res gestae* is the startling occurrence; and (2) in verbal acts where *res gestae* is the statement accompanying the equivocal act. To be admissible under the first class of *res gestae*, the following elements must be present: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; (3) that the statements made must concern the occurrence in question and its immediately attending circumstances. Under the second class of *res gestae*, the following requisites must be present: 1) the principal act to be characterized must be equivocal; (2) the equivocal act must be material to the issue; (3) the statement must accompany the equivocal act; and (4) the statements give a legal significance to the equivocal act.

3. **ID.; ID.; ID.; ID.; ELEMENT OF SPONTANEITY; THE TEST IS WHETHER OR NOT AN ACT, DECLARATION, OR EXCLAMATION IS SO INTIMATELY INTERWOVEN OR CONNECTED WITH THE PRINCIPAL FACT OR EVENT THAT IT CHARACTERIZES AS TO BE REGARDED AS A PART OF THE TRANSACTION ITSELF, AND ALSO WHETHER IT CLEARLY NEGATIVES ANY PREMEDITATION OR PURPOSE TO MANUFACTURE TESTIMONY; AN UTTERANCE MADE, IMMEDIATELY FOLLOWING A STRONG AND STRESSFUL STIMULUS, IS PRESUMED AN HONEST AND UNCONTROLLED REACTION; EXPLAINED. —** In general, the test is whether or not an act, declaration, or exclamation is "so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony." The element of spontaneity is critical because the admissibility of *res gestae* is premised on human experience. The rule presumes that an utterance made, immediately following a strong and stressful stimulus, is an honest and uncontrolled reaction. In *People v. Cudal*, this Court explained: The spontaneity of the utterance and its logical connection with the principal event, coupled

with the fact that the utterance was made while the declarant was still "strong" and subject to the stimulus of the nervous excitement of the principal event, are deemed to preclude contrivance, deliberation, design or fabrication, and to give to the utterance an inherent guaranty of trustworthiness. The admissibility of such exclamation is based on experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him.

4. **ID.; ID.; ID.; ID.; SPONTANEITY IN THE DECLARANT'S STATEMENTS, GUIDING FACTORS. —** [T]here is no fixed rule in determining the time interval within which the statement must be made for it to be deemed spontaneous. The factual parameters of each case will require a different resolution. Nevertheless, the following factors may guide courts in determining whether there is spontaneity in the declarant's statements, to wit: (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.

5. **ID.; ID.; ID.; ID.; *RES GESTAE* CONTEMPLATES TESTIMONIAL EVIDENCE ON MATTERS NOT PERSONALLY WITNESSED BY THE WITNESS, BUT IS RELAYED TO HIM OR HER BY A DECLARANT; THE SPONTANEITY OF THE DECLARANTS' STATEMENTS WITH RESPECT TO THE COLLISION AND THE SINKING OF THE VESSEL WHICH ALMOST CLAIMED THEIR LIVES, IMMEDIATELY AFTER THE INCIDENT, SATISFY THE RULE ON *RES GESTAE*, MAKING THEIR TESTIMONIES ADMISSIBLE EVEN IF THE**

DECLARANTS WERE NOT PRESENTED IN THE WITNESS STAND. — [P]etitioner assails the admissibility of witnesses Lopez and Flores' testimony, because they did not have personal knowledge of what immediately transpired before, during, and after the collision of the vessels. It claims that this is an erroneous application of the *res gestae* rule. We disagree. *Res gestae* is one of the exceptions to the hearsay rule. It contemplates testimonial evidence on matters not personally witnessed by the witness, but is relayed to him or her by a declarant. Here, it appears that petitioner misconstrued the rule in assailing the application of *res gestae* merely on the basis that the testimonies are hearsay.The testimonies of the witnesses satisfy the requirements of the rule, in that: (1) the collision of the vessels and sinking of M/V Romeo is a startling occurrence; (2) the statements made are with respect to the collision; and (3) the statements of the declarants were made immediately after the incident. As testified to by Lopez and Flores, when the collision happened in midnight of July 14, 2002, they immediately went to the pier the following day, which was a few hours after the incident. The people they interviewed witnessed the incident. In particular, Lopez was able to interview M/V Romeo's Chief Engineer, along with the stevedores and the port's supervisors, while Flores's testimony was based on the narration of M/V Romeo's chief mate. These declarants witnessed a collision and a sinking of a vessel which almost claimed their lives. The spontaneity of their statements with respect to the incident satisfies the rule on *res gestae*, making these testimonies admissible even if the declarants were not presented in the witness stand.

6. **CIVIL LAW; COMMON CARRIERS; A VESSEL, FUNCTIONING AS A COMMON CARRIER, MAY BE HELD LIABLE FOR DAMAGES FOR THE LOSS, DESTRUCTION, OR DETERIORATION OF THE GOODS TRANSPORTED BY IT, WHERE IT FAILED TO PROVE THAT IT EXERCISED EXTRAORDINARY DILIGENCE IN THE HANDLING AND TRANSPORTATION OF THE GOODS. —** A vessel, functioning as a common carrier, may be held liable for damages under Article 1759 of the Civil Code. x x x. Further, a vessel is "bound to observe extraordinary diligence in the vigilance over the goods" it transports. *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.* explains:

Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. x x x. The high degree of diligence exacted by the law creates a presumption against common carriers when goods are lost, destroyed or deteriorated. To overcome this presumption, common carriers must prove that they exercised extraordinary diligence in the handling and transportation of the goods.

7. **ID.; ID.; RULES ON THE LIABILITY OF A COMMON CARRIER. —** In *Regional Container Lines of Singapore v. The Netherlands Insurance Co. (Philippines)*, this Court summarized the rules on the liability of a common carrier: (1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case; (2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and (3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence.

8. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; COMPLAINTS FOR DAMAGES; THE APPLICABLE LAW IN RESOLVING COMPLAINTS FOR DAMAGES WOULD DEPEND ON THE COMPLAINANT'S CAUSE OF ACTION; IF THE ACTION IS BASED ON CONTRACT OF CARRIAGE, THE CIVIL CODE PROVISIONS ON COMMON CARRIER ARE APPLICABLE; IF THE CAUSE OF ACTION IS BASED ON TORT, THE PROVISIONS OF THE CODE OF COMMERCE ON VESSEL COLLISION WOULD GOVERN. —** In cases where

cargos are lost, destroyed, or deteriorated, an action based on the contract of carriage may be filed against the shipowner of the vessel based on Civil Code provisions on common carrier. For instance, in *Eastern Shipping Lines, Inc*., this Court held a shipowner liable because as a common carrier, the shipowner failed to observe extraordinary diligence in the transportation of goods required under Article 1734. It held that based on the bills of lading issued, the shipowner received the cargo in good condition, and their arrival in bad order at their destination constitutes a presumption that the carrier was negligent. Similarly, in cases of damages resulting from maritime collision, the Civil Code provisions on common carrier are applicable if the cause of action is based on contract of carriage. In *Maritime Co. of the Philippines v. Court of Appeals*, an insurer-subrogee filed an action for damages against the shipowner based on a bill of lading. x x x. x x x [T]his Court ruled that as the subrogee, Rizal Surety has a cause of action against the Company based on the contract of carriage as evidenced by the bill of lading. Since there are specific provisions in the Civil Code regulating the liability of a common carrier, it follows that the Code of Commerce, which only applies supplementarily, need not be applied. Thus, Rizal Surety's rights are to be determined by the Civil Code and not the Code of Commerce. x x x. However, if the cause of action is based on maritime tort, the provisions of the Code of Commerce are applicable. An action based on quasi-delict resulting from maritime collision is not specifically regulated by the Civil Code, but by the Code of Commerce. Thus, if the cause of action is based on quasi-delict and not on contract, the rules provided by the Code of Commerce applies. This was clarified in *National Development Company v. Court of Appeals and Development Insurance & Surety Corporation.* x x x. In disregarding the Civil Code provisions on common carrier, this Court held that the Code of Commerce must be applied because maritime "collision falls among matters not specifically regulated by the Civil Code[.]". It appears, however, that the cause of action in this case was based on tort and not contract. x x x. [Taking into consideration the ruling of this Court in these cases, the applicable law in resolving complaints for damages would depend on the complainant's cause of action. If the action is based on contract of carriage, the Civil Code provisions on common carrier are applicable. On the other hand,

if the cause of action is based on tort, the provisions of the Code of Commerce on vessel collision would govern.

9. **MERCANTILE LAW; CODE OF COMMERCE; ARTICLES 826 AND 827 THEREOF; ACTION FOR DAMAGES BASED ON TORT RESULTING FROM MARITIME COLLISION; TO BE CLEARED OF LIABILITY FOR DAMAGES RESULTING FROM COLLISION, A VESSEL MUST SHOW THAT IT EXERCISED ORDINARY DILIGENCE OR THE DILIGENCE WHICH "AN ORDINARY PRUDENT MAN WOULD EXERCISE WITH REGARD TO HIS OWN PROPERTY"; REQUIRED ORDINARY DILIGENCE, NOT EXERCISED BY THE PETITIONER IN CASE AT BAR. —** Here, the cause of action of respondent CGU Insurance against petitioner is not based on the time charter but on tort. Petitioner is not a common carrier with respect to any of the parties. Accordingly, the applicable provisions are found in Articles 826 and 827 of the Code of Commerce. which state: ARTICLE 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after an expert appraisal. ARTICLE 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the losses and damages suffered by their cargoes. To be cleared of liability under these provisions, a vessel must show that it exercised ordinary diligence. This level of diligence is the diligence which "an ordinary prudent man would exercise with regard to his own property." Applying this standard to petitioner, this Court finds that it failed to observe the diligence by the law.

10. **ID.; ID.; ID.; ID.; ID.; PETITIONER IS LIABLE FOR DAMAGES CAUSED BY ITS VESSEL AS IT FAILED TO EXERCISE THE REQUIRED DILIGENCE; FACTUAL FINDING OF THE LOWER COURT, AFFIRMED. —** Considering the evidence and the relevant law, this Court finds no cogent reason to depart from the ruling of the lower courts. With respect to respondent Candano Shipping, this Court affirms the findings of the lower courts which held that respondent Candano Shipping exercised the required diligence as a common carrier. As established in the trial court, M/V Romeo was, in

all respects, seaworthy and with full complement of officers and crew. The testimony likewise confirmed that M/V Romeo called and requested M/V Aleson to slow down, because it had the right of way. On the other hand, petitioner must be held liable for the damages caused by its vessel, M/V Aleson. Despite petitioner's contention, this Court is not convinced that Captain Cabeltes exercised ordinary diligence in commanding M/V Aleson. Petitioner failed to show that the trial and appellate courts overlooked or misconstrued significant evidence that would alter the resolution of the case. To reiterate, findings of the trial court, especially when affirmed by the Court of Appeals, deserve great respect and are binding upon this Court. In this case, a review of the evidence and law fails to compel this Court to disregard the factual findings of the lower courts.

11. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE LOWER COURT'S APPRECIATION OF THE WITNESSES' TESTIMONY DESERVES THE HIGHEST RESPECT BECAUSE IT IS BEST EQUIPPED TO MAKE THE ASSESSMENT OF THE WITNESSES' CREDIBILITY AND DEMEANOR ON THE WITNESS STAND; ABSENT ANY SHOWING OF CLEAR MISAPPRECIATION, THE TRIAL COURT'S FINDINGS ARE GENERALLY NOT DISTURBED BY THE COURT.** — Petitioner's contention that Captain Cabeltes's testimony was twisted and misinterpreted by the lower courts fails to convince. It is a settled rule that the lower court's appreciation of the witnesses' testimony deserves the highest respect because it "is best equipped to make the assessment of the witnesses' credibility and demeanor on the witness stand[.]" Absent any showing of clear misappreciation, the trial court's findings are generally not disturbed by this Court. In any case, petitioner did not address how Captain Cabeltes's testimony was misappreciated when his clear statements on record support the finding of the lower courts.

APPEARANCES OF COUNSEL

Florido & Largo Law Offices for petitioner.
Astorga & Repol Law Office for CGU-Int'l.

DECISION

LEONEN, *J.*:

This resolves a petition for review assailing the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 95628, which held Aleson Shipping Lines, Inc. (Aleson Shipping) liable for the damages resulting from a vessel collision.

In 2002, Candano Shipping Lines, Inc. (Candano Shipping) signed a time charter agreement with Apo Cement Corporation (Apo Cement) over the former's vessel, M/V Romeo. The agreement was executed for the delivery of Apo Cement's cargo consisting of cement from Cebu to Albay.[1]

M/V Romeo was loaded with 31,250 bags of cement, equivalent to 1,250 metric tons. The cargo was insured with CGU International Insurance (CGU Insurance).[2]

On July 14, 2002, at around 12 midnight, M/V Romeo was on its way out of the pier in Apo channel when it collided with M/V Aleson Carrier 5 (M/V Aleson), which was owned by Aleson Shipping.[3] M/V Aleson's front hull hit the side of M/V Romeo.[4] As a result, a gaping hole in the mid-section of M/V Romeo caused it to instantly sink, taking with it the bags of cement worth ₱3,427,500.[5]

Apo Cement demanded payment from Candano Shipping and Aleson Shipping, but to no avail; hence, it made an insurance claim with CGU Insurance, which was granted.[6]

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[1] *Rollo*, p. 89.

[2] *Id.* at 89-90.

[3] *Id.* at 90 and 95.

[4] *Id.* at 95.

[5] *Id.* at 90.

[6] *Id.*

CGU Insurance then filed a case against Candano Shipping and Aleson Shipping before the Regional Trial Court, claiming actual damages and attorney's fees.[7]

Aleson Shipping denied liability and asserted that only Candano Shipping should be held liable because the latter's vessel, M/V Romeo, was at fault in the collision.[8] On the other hand, its officers and crew at M/V Aleson have exercised diligence and care to avoid the incident.[9]

Meanwhile, Candano Shipping maintained that M/V Romeo was seaworthy and that it exercised extraordinary diligence in the care and custody of the cargo, and in the operation of the vessel. It blamed Aleson Shipping for the incident, claiming that Aleson Shipping was careless in command of M/V Aleson Carrier 5.[10]

Further, Candano Shipping argued that the complaint should be dismissed, because CGU Insurance failed to observe the arbitration clause under the time charter.[11]

CGU Insurance's surveyor and investigator, Teodoro R. Lopez (Lopez), testified that based on his interviews with the Chief Engineer of M/V Romeo and the stevedores and supervisor of the port, M/V Aleson hit and caused an opening at the mid-section of M/V Romeo.[12]

Lopez found that the port authority instructed M/V Aleson to wait until M/V Romeo has cleared the last buoy, but M/V Aleson still proceeded to enter the pier. In an interview with the captain of Apo Cement's tug boat, Lopez likewise learned

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[7] *Id.* at 89.

[8] *Id.* at 90.

[9] *Id.*

[10] *Id.* at 91.

[11] *Id.*

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

that the Captain of M/V Romeo asked the Captain of M/V Aleson to slow down, but the latter did not heed instructions.[13]

Captain Ramil Fermin Cabeltes (Captain Cabeltes) of M/V Aleson testified for Aleson Shipping. He narrated that the sea was calm during the incident and acknowledged that the Apo channel cannot accommodate two (2) vessels at a time.[14] When M/V Aleson was about to enter the pier, he admitted that he failed to verify from the radio operator whether it can proceed to enter the pier. He merely relied on the message relayed to him by a crew that M/V Aleson must "standby for proceeding to port."[15]

Further, while Captain Cabeltes initially claimed that he did not know any vessel present at the pier, he later admitted that he knew M/V Romeo was loading cargo at that time. Moreover, when M/V Aleson was in stop position, he neither contacted nor used its horn to signal the M/V Romeo. He likewise admitted that there was still around 200 meters of space on the right side of the vessel where he can maneuver to avoid the mishap, but he did not do so, fearing that M/V Aleson will run aground.[16]

Maria Tessie Jadulco Flores (Flores), operations manager of Candano Shipping, claimed that M/V Aleson was at fault in the collision. She averred that under the rule of the Apo channel, the vessel going out of the wharf has the right of way, and vessels which are about to enter must wait until the wharf is cleared. Hence, M/V Aleson should have waited until M/V Romeo exited the pier.[17]

Flores added that due to the incident, M/V Romeo's master of the vessel died instantly. While 14 members of the crew survived, two (2) remained missing. She further narrated that

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[13] *Id.*

[14] *Id.* at 95.

[15] *Id.* at 94.

[16] *Id.*

[17] *Id.* at 95.

M/V Romeo was no longer retrieved due to the depth of the sea, while M/V Aleson remained afloat.[18]

In its Decision,[19] the Regional Trial Court found Aleson Shipping solely liable for the collision. Thus:

WHEREFORE, in view of the foregoing considerations, this Court hereby FINDS in favor of the plaintiff against the defendant ALESON, hence it hereby ORDERS defendant ALESON, to pay plaintiff the sum of Philippine Pesos: THREE MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIFTY (₱3,368,750.00) with interest at 6% percent per annum from date hereof until the finality of this decision and 12% per annum from finality of this decision until fully paid and attorney's fee of ₱50,000.00 plus cost of suit.

The complaint against Candano is hereby DISMISSED in accordance with the provision of Article 826 of the Code of Commerce. It states: "If a vessel would collide with another, through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered after expert appraisal.

Finally, the counterclaims filed by defendant Aleson against defendant Candano are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[20] (Emphasis in the original)

The trial court ruled that under Article 1733 of the New Civil Code, Aleson Shipping and Candano Shipping are bound to observe extraordinary diligence as common carriers. If there was loss, destruction, or deterioration of the goods it carries, common carriers are presumed responsible, unless they can prove that they observed extraordinary diligence.[21] Aleson Shipping

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[18] *Id.*

[19] *Id.* at 89-99. The May 17, 2010 Decision was penned by Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149.

[20] *Id.* at 98-99.

[21] *Id.* at 96, citing *Aboitiz Shipping Corporation v. New India Assurance Co., Ltd.*, 557 Phil. 679 (2007) [Per *J.* Quisumbing, Second Division].

failed to overcome this presumption. On the other hand, Candano Shipping appeared to have observed the diligence required.[22]

The trial court admitted in evidence the testimonies of Flores and Lopez which were treated as part of *res gestae*, being startling statements made immediately by persons who were near and at the place of the incident.[23] Moreover, it relied on the testimony of Captain Cabeltes, who admitted several lapses in his duty as the captain of M/V Aleson.[24]

Based on the evidence, the impact of the collision was strong, as M/V Aleson created a gaping hole on the side of M/V Romeo, causing the vessel to instantly sink after five (5) minutes. The trial court noted that Captain Cabletes of M/V Aleson failed to wait until M/V Romeo has exited from the wharf, and merely assumed that it can enter the port when he knew for a fact that there was a vessel loading at that time. Moreover, Captain Cabletes of M/V Aleson admitted that the collision could have been avoided if only he maneuvered the vessel; but he chose not to, fearing that M/V Aleson may be aground.[25]

In its Appeal, Aleson Shipping maintained that it was not at fault in the collision. It claimed that Captain Cabeltes exerted all efforts to avoid the collision, and that the trial court twisted his testimony to make Aleson Shipping liable.[26]

Further, it claimed that M/V Aleson dropped its anchor at some 3,200 meters from the pier while waiting for their turn to approach the loading berth. Captain Cabeltes could not see the loading bay from its position and, thus, relied on the instructions of the port operators, who relayed that it can already proceed

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[22] *Id.*

[23] *Id.* citing *Phoenix Construction, Inc. v. Intermediate Appellate Court*, 232 Phil. 327 (1987) [Per *J.* Feliciano, First Division].

[24] *Id.* at 99-98.

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

[26] *Id.* at 117-118.

to the loading bay.[27] It then went towards the pier at a slow speed of two (2) knots, while M/V Romeo was navigating at full speed.[28]

Aleson Shipping claimed that this version of the story is more believable, as it coincides with Lopez's testimony which confirmed that the collision site was three (3) kilometers away from the pier's last buoy. Thus, the trial court erred in its observation that M/V Aleson failed to wait until M/V Romeo has exited the last buoy.[29]

Moreover, Aleson Shipping claimed that it was M/V Romeo that failed to maneuver the vessel to avoid the collision.[30] The trial court faulted Aleson Shipping for its failure to blow its horn, but there was no need to signal M/V Romeo, since both ships have communicated with each other and have explicitly agreed to do a port-to-port passing to avoid a collision. Further, sending a sound signal would only do more harm than good, since the master's instructions to the crew will not be heard over the horn's sound.[31]

Aleson Shipping argued that the testimony of Captain Cabeltes must be given credence because of all the witnesses, only he has first-hand knowledge of what transpired before, during, and after the collision. On the other hand, Candano Shipping failed to present any of the surviving crew of M/V Romeo.[32]

Further, Aleson Shipping asserted that the trial court erred in relying on hearsay testimony and in applying the *res gestae* rule.[33] Candano Shipping's witness, Flores, was incompetent

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[27] *Id.*

[28] *Id.* at 119.

[29] *Id.* at 120.

[30] *Id.* at 121.

[31] *Id.* at 124.

[32] *Id.* at 125.

[33] *Id.*

to testify on matters regarding the collision.[34] She admitted to having no personal knowledge of the incident, and even though she was not presented as an expert witness, the trial court allowed her to inject her opinion as to who is at fault between the two (2) vessels.[35]

Similarly, Aleson Shipping claimed that the trial court erred in considering the testimony of Lopez as part of *res gestae* because, as the inspector, he only had secondary information and none of the sources of these information were present at the site of the incident.[36]

The Court of Appeals affirmed the decision of the lower court.[37] Thus:

IN VIEW OF ALL THESE, the Appeal is **DENIED**. The Decision of the lower court is **AFFIRMED**.

SO ORDERED.[38] (Emphasis in the original)

The appellate court further held that it found no strong and cogent reason to depart from the conclusions and findings of the trial court.[39] It ruled that the evidence defeats Aleson Shipping's arguments. As the records bare, the collision was due to the fault of M/V Aleson's Captain. Despite being informed that M/V Romeo was loading at the pier, M/V Aleson still proceeded to enter. Captain Cabeltes likewise failed to blow its horn to alert M/V Romeo.[40]

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[34] *Id.* at 128.

[35] *Id.* at 127-128.

[36] *Id.* at 129.

[37] *Id.* at 210-224. The May 20, 2014 Decision was penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes of the Twelfth Division of the Court of Appeals, Manila.

[38] *Id.* at 223.

[39] *Id.* at 220-223.

[40] *Id.* at 217.

Considering Captain Cabeltes' testimony, the Court of Appeals found that there is sufficient evidence to ascribe fault to Aleson Shipping. Hence, Aleson Shipping's argument assailing the testimony of Flores is irrelevant.[41]

Aleson Shipping moved for the reconsideration of the decision, but it was denied.[42]

In this Petition, petitioner argues that the lower courts erred in applying the law on common carriers in determining its liability, considering that it has no contract of carriage with respondent CGU Insurance or Apo Cement.[43]

It explains that in claiming subrogation rights, respondent CGU Insurance can only have as much rights and causes of action as Apo Cement, which springs from the contract of insurance. Thus, it cannot be sued based on contract, because it is a complete stranger to the time charter between respondent Candano Shipping and Apo Cement, as well as to the contract of insurance between respondents.[44]

Thus, petitioner claims that respondent CGU Insurance's action against it is based on maritime tort governed by the Code of Commerce.[45] It follows that there can be no presumption of negligence against petitioner. It is not a common carrier under a contract of carriage which must exercise extraordinary diligence. Moreover, the doctrine of last clear chance will not then be applicable in this case, because under Article 827 of the Code of Commerce, if both vessels may be blamed, both shall be jointly responsible for the damages.[46]

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[41] *Id.* at 219.

[42] *Id.* at 237-238. The January 29, 2015 Resolution was penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes of the Special Former Twelfth Division of the Court of Appeals, Manila.

[43] *Id.* at 15-16.

[44] *Id.* at 15.

[45] *Id.*

[46] *Id.* at 16.

Necessarily, the trial court erred in applying laws and jurisprudence on common carriers, because the cause of action in this case is based on maritime tort and not on the breach of contract of carriage.[47]

Petitioner further claims that respondent Candano Shipping was solely at fault for the collision which was due to the error and negligence of its officers and crew. On the other hand, petitioner asserts that it exercised ordinary diligence—the degree of diligence demanded from it under the Code of Commerce.[48]

When it saw M/V Romeo, M/V Aleson immediately requested for a port-to-port passing to avoid collision which the former granted.[49] Still, M/V Romeo did not change course. In its last attempt to avoid the collision, Captain Cabeltes ordered to stop M/V Aleson's engine, but to no avail.[50]

For the sake of argument that it was negligent, petitioner avers that it should be made solidarily liable with respondent Candano Shipping under Article 827 of the Code of Commerce.[51]

Further, petitioner questions the application of the *res gestae* rule to admit the testimonies of respondents' witnesses.[52]

In particular, witness Flores, who admitted to having no personal knowledge on the incident, was allowed to inject her own opinion as to who between the two (2) vessels was at fault. Petitioner claims this is against Rule 130, Section 48 of the Rules of Court, which provides that the opinion of a witness is inadmissible unless presented as an expert witness.[53]

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[47] *Id.* at 17.

[48] *Id.* at 18.

[49] *Id.*

[50] *Id.* at 19.

[51] *Id.*

[52] *Id.* at 20.

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

Moreover, it alleges that Lopez's testimony was mere hearsay. As respondents' surveyor, the information he proffered were obtained from the witnesses to the incident. Thus, these testimonies do not qualify as part of *res gestae*.[54]

Lastly, petitioner maintains that Captain Cabeltes' testimony cannot be rejected for being self-serving, considering that respondents were given the opportunity to cross-examine the witness in court.[55]

In its Comment, respondent CGU Insurance avers that the petition must be denied because it raises only questions of facts, which are not within the ambit of a Rule 45 petition. Further, findings of facts in this case must be deemed final and conclusive since the findings of the trial court are affirmed by the appellate court.[56]

Further, petitioner's claim that Captain Cabletes' testimony was misconstrued by the trial court is baseless.[57] As shown by the evidence, it was M/V Aleson that hit M/V Romeo. Petitioner claims that M/V Romeo failed to maneuver the vessel to avoid the collision. But, as the lower courts found, the front hull of M/V Aleson rammed and hit the portside section of M/V Romeo.[58]

Respondent also claims that it is not true that the collision could have been avoided if there was a port-to-port passing, considering that the Apo channel cannot accommodate two (2) vessels at a time.[59]

Further, it alleges that Captain Cabletes gave an inconsistent testimony. The trial judge, who had witnessed and observed

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[54] *Id.* at 21.

[55] *Id.* at 22.

[56] *Id.* at 255.

[57] *Id.* at 259.

[58] *Id.* at 260.

[59] *Id.*

the demeanor of Captain Cabletes, concluded that his testimony was not quite straightforward.[60]

For instance, Captain Cabletes claimed that it was his first time in the Apo channel when the incident happened, but later retracted this statement and said that he has navigated the port at least eight (8) times.[61] Further, he testified that he did not know any vessels around the area at that time, but contradicted himself by saying that he knew M/V Romeo was about to exit the channel. Lastly, he agreed during trial that a bigger vessel like M/V Romeo is harder to maneuver than a small vessel like M/V Aleson, which does not have any cargo, but again, retracted this statement later on.[62]

Apart from these inconsistent statements, it claimed that Captain Cabletes made several admissions demonstrating his and his crew's negligence. Primarily, he admitted that the radio message allegedly stating that M/V Aleson can proceed to the channel was only relayed to him by his crew, and that he did not verify this information with the channel operator.[63] His testimony further shows that the instruction from the operator is to "stand by," which, in maritime parlance, merely meant to start the engine, and not to the actual moving of the vessel.[64]

Moreover, Captain Cabletes admitted that M/V Aleson had sufficient time to maneuver the vessel to avoid the collision. He testified that from the time he knew the radio message, it had more or less 20 to 30 minutes to reach the pier.[65] Even when Captain Cabletes saw that M/V Romeo did not alter its course, he did not attempt to call the latter nor to blow the vessel's horn to warn M/V Romeo.[66] Petitioner points out that

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[60] *Id.*

[61] *Id.*

[62] *Id.* at 261.

[63] *Id.* at 261-262.

[64] *Id.* at 265-267.

[65] *Id.* at 265.

[66] *Id.* at 263.

this is against the Collision Regulations, which states that when maneuvering is authorized or required, sound blasts are required to signal their course of action to the other vessel.[67]

Lastly, petitioner argues that Captain Cabletes had the last clear chance to avoid the collision. He divulged during his testimony that he had more or less 200 meters to maneuver the vessel, but chose not to, fearing that M/V Aleson would run aground.[68]

In a separate Comment, respondent Candano Shipping points out that the petition raises purely questions of fact. While petitioner questions the applicable law, what petitioner actually seeks is the reversal of the factual findings of the trial court.[69]

Respondent Candano Shipping asserts that the decision and findings of the trial court should not be disturbed, because it is based on evidence and is in accordance with the law. Petitioner argues that respondents' evidence must be rejected for being hearsay, but in reality, it only rejects the finding of liability which is based on the testimony of its own witness.[70]

Lastly, respondent Candano Shipping argues that it is immaterial whether the lower courts erred in applying the presumption of negligence against common carriers, because it is clear from the evidence on record that only petitioner is at fault for the collision.[71]

The case raises the following issues for resolution:

First, whether or not the petition may raise questions of fact;

Second, whether or not the testimonies of respondents' witnesses are inadmissible for being hearsay; and

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[67] *Id.* at 271-272.

[68] *Id.* at 272.

[69] *Id.* at 302.

[70] *Id.* at 302-303.

[71] *Id.* at 303.

Third, whether or not there is cause of action against the petitioner. Subsumed under this are the following issues: (1) whether or not the lower courts erred in applying the civil law provisions on common carriers; and (2) whether or not the petitioner exercised the degree of diligence required.

I

As a rule, only questions of law may be raised in a Rule 45 petition. This Court is not a trier of facts, and it will not delve into factual questions already settled by the lower courts.[72] While this rule admits exceptions, the party must demonstrate and prove that the petition falls under the exceptions.[73]

Here, the petition's resolution necessarily requires a re-evaluation of the lower courts' factual findings. To resolve petitioner's liability, this Court is being asked to assess and weigh the evidence. Failing to allege and demonstrate that this petition is an exception to the rule, We are bound to affirm the lower courts' factual findings.

In any case, even if this Court proceeds to resolve the petition, it must still be denied.

II

Generally, a witness can only give a testimony with respect to matters of which he or she has personal knowledge.[74] Testimonies which are hearsay are inadmissible as evidence. The rules, however, allow for certain exceptions. One of which is when the evidence is part of *res gestae*.[75] Rule 130, Section 42 states:

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[72] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per *J.* Leonen, Second Division].

[73] *Id.* at 184.

[74] RULES OF COURT, Rule 130, Sec. 36 provides:

SECTION 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

[75] *People v. Feliciano, Jr.*, 734 Phil. 499, 527 (2014) [Per *J.* Leonen, Third Division].

SECTION 42. *Part of res gestae*. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.[76]

Res gestae refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act."[77] It contemplates statements that were "voluntarily and spontaneously made so nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain, and were made under such circumstances as necessarily to exclude the idea of design or deliberation[.]"[78]

There are two (2) acts which form part of the *res gestae*: (1) in spontaneous exclamations where the *res gestae* is the startling occurrence; and (2) in verbal acts where *res gestae* is the statement accompanying the equivocal act.[79]

To be admissible under the first class of *res gestae*, the following elements must be present: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; (3) that the statements made must concern the occurrence in question and its immediately attending circumstances.[80]

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[76] RULES OF COURT, Rule 130, Sec. 42.

[77] *People v. Feliciano, Jr.*, 734 Phil. 499, 528 (2014) [Per *J.* Leonen, Third Division], citing *People v. Salafranca y Bello*, 682 Phil. 470 (2012) [Per *J*. Bersamin, First Division].

[78] *People v. Estibal y Calungsag*, 748 Phil. 850, 868 (2014) [Per *J.* Reyes, Third Division] citing *People v. Ner*, 139 Phil. 390 (1969) [Per *J.* Concepcion, *En Banc*].

[79] *Talidano v. Falcon Maritime & Allied Services, Inc.*, 580 Phil. 256, 270 (2008) [Per *J.* Tinga, Second Division].

[80] *Ilocos Norte Electric Co. v. Court of Appeals*, 258-A Phil. 565, 576-577 (1989) [Per *J.* Paras, Second Division].

Under the second class of *res gestae*, the following requisites must be present: 1) the principal act to be characterized must be equivocal; (2) the equivocal act must be material to the issue; (3) the statement must accompany the equivocal act; and (4) the statements give a legal significance to the equivocal act.[81]

In general, the test is whether or not an act, declaration, or exclamation is "so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony."[82]

The element of spontaneity is critical because the admissibility of *res gestae* is premised on human experience. The rule presumes that an utterance made, immediately following a strong and stressful stimulus, is an honest and uncontrolled reaction. In *People v. Cudal*,[83] this Court explained:

> The spontaneity of the utterance and its logical connection with the principal event, coupled with the fact that the utterance was made while the declarant was still "strong" and subject to the stimulus of the nervous excitement of the principal event, are deemed to preclude contrivance, deliberation, design or fabrication, and to give to the utterance an inherent guaranty of trustworthiness. The admissibility of such exclamation is based on experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief

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[81] *Talidano v. Falcon Maritime & Allied Services, Inc.*, 580 Phil. 256, 271 (2008) [Per *J.* Tinga, Second Division].

[82] *People v. Feliciano, Jr.*, 734 Phil. 499, 528 (2014) [Per *J.* Leonen, Third Division].

[83] 536 Phil. 1164 (2006) [Per *J.* Carpio Morales, Third Division].

period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him.[84] (Citations omitted)

However, there is no fixed rule in determining the time interval within which the statement must be made for it to be deemed spontaneous. The factual parameters of each case will require a different resolution.[85] Nevertheless, the following factors may guide courts in determining whether there is spontaneity in the declarant's statements, to wit: (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.[86]

Here, petitioner assails the admissibility of witnesses Lopez and Flores' testimony, because they did not have personal knowledge of what immediately transpired before, during, and after the collision of the vessels.[87] It claims that this is an erroneous application of the *res gestae* rule. We disagree.

Res gestae is one of the exceptions to the hearsay rule. It contemplates testimonial evidence on matters not personally witnessed by the witness, but is relayed to him or her by a declarant.

Here, it appears that petitioner misconstrued the rule in assailing the application of *res gestae* merely on the basis that the testimonies are hearsay.

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[84] *Id.* at 1176.

[85] *People v. Nartea*, 74 Phil. 8 (1942) [Per *J*. Ozaeta, First Division].

[86] *Belbis, Jr. y Competente v. People*, 698 Phil. 706, 717-718 (2012) [Per *J*. Peralta, Third Division].

[87] *Rollo*, pp. 20-22.

The testimonies of the witnesses satisfy the requirements of the rule, in that: (1) the collision of the vessels and sinking of M/V Romeo is a startling occurrence; (2) the statements made are with respect to the collision; and (3) the statements of the declarants were made immediately after the incident.

As testified to by Lopez and Flores, when the collision happened in midnight of July 14, 2002, they immediately went to the pier the following day, which was a few hours after the incident. The people they interviewed witnessed the incident. In particular, Lopez was able to interview M/V Romeo's Chief Engineer, along with the stevedores and the port's supervisors,[88] while Flores's testimony was based on the narration of M/V Romeo's chief mate.[89]

These declarants witnessed a collision and a sinking of a vessel which almost claimed their lives. The spontaneity of their statements with respect to the incident satisfies the rule on *res gestae*, making these testimonies admissible even if the declarants were not presented in the witness stand.

In any case, even if this Court disregards the testimonies of Flores and Lopez, the remaining evidence still supports a finding of petitioners' liability.

III

A vessel, functioning as a common carrier, may be held liable for damages under Article 1759 of the Civil Code. It states:

ARTICLE 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.[90]

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[88] *Id.* at 91-92.

[89] *Id.* at 95.

[90] CIVIL CODE, Art. 1759.

Further, a vessel is "bound to observe extraordinary diligence in the vigilance over the goods" it transports.[91] *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*[92] explains:

> Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.
>
> In maritime transportation, a bill of lading is issued by a common carrier as a contract, receipt and symbol of the goods covered by it. If it has no notation of any defect or damage in the goods, it is considered as a "clean bill of lading." A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.[93] (Citations omitted)

The high degree of diligence exacted by the law creates a presumption against common carriers when goods are lost, destroyed or deteriorated. To overcome this presumption, common carriers must prove that they exercised extraordinary diligence in the handling and transportation of the goods.[94]

In *Regional Container Lines of Singapore v. The Netherlands Insurance Co. (Philippines)*,[95] this Court summarized the rules on the liability of a common carrier:

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[91] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, 601 Phil. 454, 463 (2009) [Per *J.* Tinga, Second Division].

[92] 750 Phil. 95 (2015) [Per *J.* Perez, First Division].

[93] *Id.* at 110-111.

[94] *Id.* at 112-113.

[95] 614 Phil. 485 (2009) [Per *J.* Brion, Second Division].

(1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case;

(2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and

(3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence.[96] (Citation omitted)

In cases where cargos are lost, destroyed, or deteriorated, an action based on the contract of carriage may be filed against the shipowner of the vessel based on Civil Code provisions on common carrier.

For instance, in *Eastern Shipping Lines, Inc.*, this Court held a shipowner liable because as a common carrier, the shipowner failed to observe extraordinary diligence in the transportation of goods required under Article 1734. It held that based on the bills of lading issued, the shipowner received the cargo in good condition, and their arrival in bad order at their destination constitutes a presumption that the carrier was negligent.[97]

Similarly, in cases of damages resulting from maritime collision, the Civil Code provisions on common carrier are applicable if the cause of action is based on contract of carriage.

In *Maritime Co. of the Philippines v. Court of Appeals*,[98] an insurer-subrogee filed an action for damages against the

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[96] *Id.* at 491-492 citing *Central Shipping Co., Inc. v. Insurance Company of North America*, 481 Phil. 868 (2004) [Per *J.* Panganiban, Third Division].

[97] *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, 750 Phil. 95 (2015) [Per *J.* Perez, First Division].

[98] 253 Phil. 50 (1989) [Per *J.* Narvasa, First Division].

shipowner based on a bill of lading. In this case, Acme Electrical and National Development Company and Maritime Company (the Company) executed a bill of lading for the transport of 800 packages of PVC compound loaded on the latter's vessel, SS Doña Nati. While in transit, the goods were damaged after SS Doña Nati was rammed by M/V Yasushima Maru. Rizal Surety, the insurer of the packages, paid the value of the lost goods and filed an action for damages against the Company.

The trial court dismissed the complaint and held that the case should have been filed against the owner of M/V Yasushima Maru, who was at fault in the collision. It ruled that under the Code of Commerce, the vessel at fault should be made responsible for the damage to the cargo; hence, Rizal Surety has no cause of action against the Company.[99]

Ultimately, this ruling was reversed. This Court held that Rizal Surety has a cause of action against the Company based on their contract. Further, this Court ruled that as the subrogee, Rizal Surety has a cause of action against the Company based on the contract of carriage as evidenced by the bill of lading. Since there are specific provisions in the Civil Code regulating the liability of a common carrier, it follows that the Code of Commerce, which only applies supplementarily, need not be applied. Thus, Rizal Surety's rights are to be determined by the Civil Code and not the Code of Commerce. This Court then ruled that under Article 1734 of the Civil Code, the Company is a common carrier bound to exercise extraordinary diligence in the transport of the cargo. Failing to do so, it was held responsible for the loss of goods.[100]

However, if the cause of action is based on maritime tort, the provisions of the Code of Commerce are applicable. An action based on *quasi-delict* resulting from maritime collision is not specifically regulated by the Civil Code, but by the Code

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[99] *Id.*

[100] *Id.*

of Commerce.[101] Thus, if the cause of action is based on *quasi-delict* and not on contract, the rules provided by the Code of Commerce applies.

This was clarified in *National Development Company v. Court of Appeals and Development Insurance & Surety Corporation*.[102] In this case, Development Insurance filed an action for damages against National Development Company and Maritime Company (the Company). Similarly, the insured cargo loaded on the latter's vessel SS Doña Nati were lost after the vessel was rammed by M/V Yasushima Maru. The trial and appellate courts ruled in favor of the Development Insurance. The lower courts held the Company liable under Article 827 of the Code of Commerce and concluded that both vessels are at fault.

This Court affirmed the ruling and held that the provisions of the Code of Commerce on collision applies. Specifically, under Article 827, if the collision is imputable to both vessels, the vessels are solidarily liable for the damages. In disregarding the Civil Code provisions on common carrier, this Court held that the Code of Commerce must be applied because maritime "collision falls among matters not specifically regulated by the Civil Code[.]"[103] It appears, however, that the cause of action in this case was based on tort and not contract. This Court held:

Moreover, the Court held that both the owner and agent (Naviero) should be declared jointly and severally liable, since the obligation which is the subject of the action had its origin in a tortious act and

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[101] *National Development Co. v. Court of Appeals*, 247 Phil. 560 (1988) [Per *J.* Paras, Second Division]; see *also* CIVIL CODE, Art. 1766 which provides:

ARTICLE 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.

[102] 247 Phil. 560 (1988) [Per *J.* Paras, Second Division].

[103] *Id.* at 570.

did not arise from contract. Consequently, the agent, even though he may not be the owner of the vessel, is liable to the shippers and owners of the cargo transported by it, for losses and damages occasioned to such cargo, without prejudice, however, to his rights against the owner of the ship, to the extent of the value of the vessel, its equipment, and the freight.[104] (Citations omitted)

Taking into consideration the ruling of this Court in these cases, the applicable law in resolving complaints for damages would depend on the complainant's cause of action. If the action is based on contract of carriage, the Civil Code provisions on common carrier are applicable. On the other hand, if the cause of action is based on tort, the provisions of the Code of Commerce on vessel collision would govern.

Here, the cause of action of respondent CGU Insurance against petitioner is not based on the time charter but on tort. Petitioner is not a common carrier with respect to any of the parties.

Accordingly, the applicable provisions are found in Articles 826 and 827 of the Code of Commerce, which state:

ARTICLE 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after an expert appraisal.

ARTICLE 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the losses and damages suffered by their cargoes.

To be cleared of liability under these provisions, a vessel must show that it exercised ordinary diligence.[105] This level of

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[104] *Id.* at 573.

[105] CIVIL CODE, Art. 1173 provides:

ARTICLE 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

diligence is the diligence which "an ordinary prudent man would exercise with regard to his own property."[106]

Applying this standard to petitioner, this Court finds that it failed to observe the diligence by the law. Based on the testimony of its own witness, M/V Aleson was recklessly operated. Captain Cabeltes admitted that M/V Romeo was still in the pier when M/V Aleson was about to enter the Apo channel. Despite knowledge of this information, Captain Cabeltes failed to act with caution. He himself declared that he was informed by the pier operator to standby and to not enter the wharf yet, but it still proceeded.[107]

He later recanted this statement and claimed that a message was relayed to him saying that he may enter the wharf already. Nevertheless, he confessed that he did not verify the veracity of the message. In his testimony:

Atty. Abesames:
Q. Were you the one who personally received that radio message?

Witness:
A. *Iyong duty officer.*

Q. Did you verify if that message was correct?

A. *Sinabi niya sa akin na, Sir, tumawag iyong Apo, papasok na tayo.*

Q. So you had a radio officer?

A. *Iyong in-charge na duty sa bridge. Everytime may duty ako sa bridge. Iyong ma-duty diyan, pay may tawag iyong Apo Cement na papasok, sabihin mo sa akin. Gisingin mo ako ako dahil matulog ako. Paggising sa akin, Sir, tumawag, Sir, papasok na raw tayo. Ganoon.*

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

[106] *Wildvalley Shipping Co., Ltd. v. Court of Appeals*, 396 Phil. 383, 397 (2000) [Per *J.* Buena, Second Division].

[107] *Rollo*, p. 217.

. . . .

Q. So you did not go, take the radio personally to confirm whether that radio advice was correct or not?

A. ***Everytime ganoon man kami, ilang trip na kami doon medyo matagal lang na byahe, every time ganoon sila tumatawag tapos hindi ko na kino-confirm***.[108] (Emphasis supplied)

This nonchalant attitude towards his duty demonstrates Captain Cabeltes' lack of caution in commanding M/V Aleson. Due diligence demands that Captain Cabeltes ensures that every decision he made is deliberate and calculated to guarantee the safety of M/V Aleson and nearby vessels. As the captain, he is required under the law "[t]o be on deck at the time of sighting land and to take command on entering and leaving ports[.]"[109] Instead, Captain Cabeltes slept in and waited for his crew to confirm whether they can proceed to enter. Thus, it is highly imprudent that Captain Cabeltes piloted the vessel to the pier without personally verifying if M/V Romeo had already exited.

Moreover, even if Captain Cabeltes admittedly had the chance to avoid the collision, he chose not to maneuver M/V Aleson, because he was worried that the vessel would run aground.[110] This is despite his acknowledgment that M/V Aleson was easier to maneuver than M/V Romeo because the latter was a bigger vessel and was fully loaded at that time.[111] His testimony reveals:

Q. So, most probably when you saw for the first time that there was an outgoing vessel when you were already going towards Apo wharf, more or less, you concluded that it was the M/V "Romeo"?

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[108] *Id.* at 261-262. TSN dated May 22, 2008.

[109] CODE OF COMMERCE, Article 612 (7) provides:

7. To be on deck at the time of sighting land and to take command on entering and leaving ports, canals, roadsteads, and rivers, unless there is a pilot on board discharging his duties. He shall not spend the night away from the vessel except for serious causes or by reason of official business.

[110] *Rollo*, p. 218.

[111] *Id.* at 94.

A. *Opo*, Sir.

Q. And you knew it was fully loaded. It . . . just came from loading?
A. *Opo*, Sir.

. . . .

Q. It was a lot bigger than your vessel?
A. Yes, Sir.

. . . .

Q. And as a master mariner or as the captain of the vessel or as a seafarer, you would understand and you would agree with me that a fully loaded big vessel is much harder to maneuver than a small vessel that does not carry anything?
A. *Tama po.*

. . . .

Q. Because at that time you saw it for the first time and when you made that request for a port to port passing, you knew already that given the things you see the courses of your vessel, you will meet each other?
A. Yes, Sir.

Q. That early, you knew of the danger of collision, correct?

A. Yes, Sir, *dahil* head on *kami*, *nakaganito ang mga barko namin eh*.[112] (emphasis supplied)

He likewise acknowledged that he failed to send sound signals to M/V Romeo in violation of the rules of navigation.[113]

Further, Captain Cabeltes' claim that M/V Aleson was navigating slowly is contradicted by evidence. The strong impact of the collision is evidenced by the gaping hole created by the front hull of M/V Aleson, which has caused M/V Romeo to instantly sink within five (5) minutes. Further, the impact and

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[112] *Id.* at 263-264. TSN dated May 22, 2008.

[113] *Id.* at 217.

location of the collision readily confirms that M/V Aleson was not navigating slowly as Captain Cabeltes claims.[114]

Petitioner's contention that Captain Cabeltes's testimony was twisted and misinterpreted by the lower courts fails to convince. It is a settled rule that the lower court's appreciation of the witnesses' testimony deserves the highest respect because it "is best equipped to make the assessment of the witnesses' credibility and demeanor on the witness stand[.]"[115] Absent any showing of clear misappreciation, the trial court's findings are generally not disturbed by this Court. In any case, petitioner did not address how Captain Cabeltes's testimony was misappreciated when his clear statements on record support the finding of the lower courts.

Considering the evidence and the relevant law, this Court finds no cogent reason to depart from the ruling of the lower courts. With respect to respondent Candano Shipping, this Court affirms the findings of the lower courts which held that respondent Candano Shipping exercised the required diligence as a common carrier. As established in the trial court, M/V Romeo was, in all respects, seaworthy and with full complement of officers and crew.[116] The testimony likewise confirmed that M/V Romeo called and requested M/V Aleson to slow down, because it had the right of way. On the other hand, petitioner must be held liable for the damages caused by its vessel, M/V Aleson. Despite petitioner's contention, this Court is not convinced that Captain Cabeltes exercised ordinary diligence in commanding M/V Aleson.

Petitioner failed to show that the trial and appellate courts overlooked or misconstrued significant evidence that would alter the resolution of the case. To reiterate, findings of the trial court, especially when affirmed by the Court of Appeals, deserve

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[114] *Id.* at 97.

[115] *Marcelo v. Court of Appeals*, 401 Phil. 976, 988 (2000) [Per *J.* De Leon, Jr., Second Division].

[116] *Rollo*, p. 91.

great respect and are binding upon this Court. In this case, a review of the evidence and law fails to compel this Court to disregard the factual findings of the lower courts.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CV. No. 95628 is **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 223314. July 15, 2020]

ROBE ANN B. LUSABIA, PERCIVAL CONTRERAS, NIDA ACSAYAN, FLOR ALIMONSURIN, LITO DENAGA, REGGIE VERGABERA, and SHIELA MARIE A. BARRERA, *petitioners, vs.* **SUPER K DRUG CORPORATION, KRISTINE Y. GARCELLANO and MARCO Y. GARCELLANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT; TO PROVE ABANDONMENT, THE EMPLOYER MUST SHOW THAT THE EMPLOYEE UNJUSTIFIABLY REFUSED TO REPORT FOR WORK AND DELIBERATELY INTENDED TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP, WHICH CAN BE PROVEN THROUGH THE OVERT ACTS OF THE EMPLOYEE; THE EMPLOYEES' FILING OF COMPLAINTS FOR UNDERPAYMENT OF SALARIES, NON-PAYMENT

OF LABOR BENEFITS AND ILLEGAL DEDUCTION FROM SALARIES IS AN INDICATION THAT THE EMPLOYEES HAVE A GRIEVANCE, BUT NO INTENTION TO SEVER EMPLOYMENT. — [P]etitioners did not abandon their employment. To prove abandonment, the employer must show that the employee unjustifiably refused to report for work and that the employee deliberately intended to sever the employer-employee relationship. Intent to sever the employer-employee relationship can be proven through the overt acts of an employee. The overt acts, after being considered as a whole, must clearly show the employee's objective of discontinuing his or her employment. Mere absence from work, even after a notice to return, is insufficient to prove abandonment. Records are bereft of any indication that petitioners' failure to report for work was with a clear intent to sever their employment relationship with respondent company. As a matter of fact, petitioners only filed for underpayment of their salaries, non-payment of labor benefits and illegal deduction from their salary. Their actuations only explain that they have a grievance, not that they wanted to abandon work entirely. Records also reveal that petitioners would report to work after appearing at the NLRC-SENA proceedings. Petitioners only modified the labor complaint to include illegal dismissal because they were declined entry to work. We give credence to this allegation as We found that respondent company failed to furnish return to work notices to petitioners. Taking all the facts together, We do not find that petitioner had the intention to sever employment.

2. **ID.; ID.; ID.; SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIREMENTS, NOT COMPLIED WITH; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT OR PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT, AND BACKWAGES. —** [N]o notice to explain and termination notice were given to petitioners. Respondent company and owners failed to comply with both substantive and procedural due process. Hence, petitioners were illegally dismissed, entitling them to reinstatement and payment of backwages. However, petitioners prayed for payment of separation pay in lieu of reinstatement, which We find merit considering that reinstatement would no longer serve any prudent purpose in view of the strained relations between petitioners and respondents.

3. **ID.; ID.; ID.; THE BURDEN TO PROVE PAYMENT RESTS ON THE EMPLOYER BECAUSE ALL PERTINENT PERSONNEL FILES, PAYROLLS, RECORDS, REMITTANCES AND OTHER SIMILAR DOCUMENTS ARE IN THE CUSTODY AND CONTROL THEREOF; PETITIONERS ARE ENTITLED TO SALARY DIFFERENTIALS, 13TH MONTH PAY BENEFIT, SERVICE INCENTIVE LEAVE BENEFIT, THE RELEASE OF THE DEDUCTED CASH BOND, AND ATTORNEY'S FEES. —** As to petitioner's claim of underpayment of salaries, it is settled that the burden to prove payment rests on the employer because all pertinent personnel files, payrolls, records, remittances and other similar documents are in the custody and control of the employer. To prove correctness of payment of salaries, respondent company presented payroll records from May 2009-January 2011 for Super K Drug Corporation, Roxas City Branch and March 2007 to December 2011 for New Farmers Plaza Branch. Petitioners were hired or transferred to the New Farmers Plaza branch on separate occasions within the period covered by the payroll records submitted in evidence. However, the payroll records are incomplete. x x x. In view of the foregoing, We cannot agree with private respondents that there is due payment of salaries to petitioners. In fact, We found, from the payroll records and undisputed allegations of underpayment, that petitioners were not paid their salaries pursuant to the applicable wage orders. Thus, petitioners are entitled to salary differentials as may be computed by the labor tribunals following the wage orders. Other claims for labor benefits, namely, 13th month pay benefit and service incentive leave benefit, must also be paid to petitioners for lack of proof of payment by respondent company. Failure to release the cash bond beginning 2010 amounting to ₱500.00 is undisputed. Thus, private respondents must likewise pay the same to petitioners. Anent salary deductions claimed by petitioners, We cannot uphold the same for lack of evidence. Finally, We find that petitioners are entitled to payment of attorney's fees at 10% of the monetary award pursuant to Article 111 the Labor Code of the Philippines for unlawful withholding of wages.

APPEARANCES OF COUNSEL

Arvin C. Dolendo for petitioners.
Genilo & Partners Law Office for respondents.

D E C I S I O N

CARANDANG, *J.*:

The instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated September 29, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131738 dismissing the complaint for illegal dismissal and money claims filed by Robe Ann B. Lusabia (Lusabia), Percival Contreras (Contreras), Nida Acsayan (Acsayan), Flor Alimonsurin (Alimonsurin), Lito Denaga (Denaga), Reggie Vergabera (Vergabera), and Sheila Marie A. Barrera (Barrera; collectively petitioners) against respondents Super K Drug Corporation, Kristine Y. Garcellano (Kristine) and Marco Y. Garcellano (Marco).

All seven petitioners are employees of SUPER K Drug Store owned by private respondents Kristine and Marco. They were hired by respondent company on separate occasions from 2009-2011.[2] In January 2012, petitioners received a daily wage ranging from ₱350.00 to ₱400.00. Petitioners commonly claim that they did not receive a copy of their pay slips but were forced to sign the payroll. Petitioners question the payroll because it indicates a higher amount of their wage than what they actually received. When petitioners would refuse to sign the payroll for inaccuracy of the value received, they would often be threatened by their supervisor that they would not be paid their salaries. As a result, petitioners would sign the payroll.[3]

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[1] Penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a Member of this Court); *rollo*, pp. 86-84.

[2] Alimonsurin was hired on January 31, 2007; Acsayan was hired on November 17, 2007; Vergabera was hired on August 4, 2010; Contreras was hired on August 15, 2010; Barrera was hired on January 6, 2011; Lusabia and Denaga were transferred to New Farmer's Plaza Branch in March 2011 and June 2011, respectively.

[3] *Rollo*, pp. 338-339.

Petitioners also complain of illegal deduction from their salary because they are made to shoulder the amount for every item lost at the drugstore due to theft and robberies. Their pleas for assignment of a security guard at the drugstore remained unheeded by the management.[4] ₱500.00 would likewise be deducted from their salaries as cash bond which would often released in full at the end of every year. However, beginning 2010, private respondent no longer releases the deducted cash bonds.[5] For these reasons, in January 2012, petitioners filed their labor complaint for money claims before the National Labor Relations Commission (NLRC) — Single Entry Approach (SENA).[6]

Before the conclusion of the NLRC-SENA proceedings, petitioner Lusabia was instructed to proceed to the residence of respondent-owner, Kristine. Petitioner Lusabia claims that Kristine forced her to withdraw her labor complaint. Otherwise, she will be dismissed from work.[7] Petitioners Barrera and Contreras, on another occasion, were likewise directed the same orders by Kristine. However, the three petitioners refused to withdraw their labor complaints. As a result, they were dismissed from employment and prohibited from entering the work premises. Should they force to return to work, they were threatened that criminal charges for trespassing will be filed against them.[8]

After the second hearing before the NLRC-SENA, Kristine conducted another meeting with the seven petitioners. Petitioners claim that Kristine announced willingness to pay the salary differentials but no overtime pay.[9] Petitioners then proceeded to the Trade Union Congress of the Philippines (TUCP) to seek help for filing a labor complaint with the NLRC. Petitioners

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[4] *Id.* at 340-341.

[5] *Id.* at 341.

[6] *Id.* at 342.

[7] *Id.*

[8] *Id.* at 343.

[9] *Id.*

alleged that upon knowledge by Kristine Garcellano of this development, the remaining four petitioners, namely Acsayan, Alimonsurin, Denaga, and Vergabera, were also dismissed from employment. Petitioners amended their complaint to include illegal dismissal as one of the charges against private respondent company and owners.[10]

Private respondents, on the other hand, claimed that petitioners were not prohibited from reporting to work. On February 1, 2012, petitioners no longer reported for work. Respondents claimed that it sent, by registered mail, Return to Work Notices[11] to petitioners during the pendency of the NLRC-SENA case hoping that grievances would be resolved. None of the petitioners replied to said Notices. Furthermore, no settlement was agreed upon by the parties at the NLRC-SENA, and petitioners failed to report for work.[12]

In a Decision[13] dated July 27 2012, the Labor Arbiter (LA) dismissed the complaint holding that the fact of dismissal was not established. Records showed that notices to return to work were duly sent out to petitioners. The LA held that if petitioners had been dismissed, then private respondent company would not have sent out return to work notices.[14] Petitioners did not deny the existence of the notices sent to them. They also did not explain their failure to comply with their employer's directives. In fact, petitioners' allegations of being denied entry at work were based on their self-serving statements. The supporting affidavit executed by an employee from TUCP was only based from an interview of petitioners. The affiant did not have any personal knowledge that petitioners were indeed prevented from returning to work.[15]

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[10] *Id.* at 344.

[11] *Id.* at 188-199.

[12] *Id.* at 544.

[13] *Id.* at 541-548.

[14] *Id.* at 545-546.

[15] *Id.* at 546.

Anent the money claims of petitioners, the LA denied the same. Private respondents sufficiently provided voluminous records[16] showing payment of salaries to petitioners in accordance with law. While petitioners presented affidavits of former employees of Super K Drug Store, such are hearsay and failed to repudiate the payroll documents. Records showed that petitioners were duly paid the correct wages and benefits.[17] As to the illegal deduction on the salary for lost items in the drug store, the LA also denied the same holding that there was no proof of the fact of theft and robberies at the drugstore.[18]

Petitioners appealed the foregoing Decision. On March 27, 2013, the NLRC reversed and set aside the Decision of the LA finding that petitioners did not abandon their employment.[19] Immediately filing a labor complaint is inconsistent with the logic of abandoning employment.[20] These incidents, coupled with the affidavit of the employee of TUCP, only proved that petitioners were prevented from returning to work. While notices dated February 6, 2012 and February 27, 2012 were sent out by Super K Drug store *via* registered mail, there was no proof that the same were received by petitioners. The NLRC noted that DOLE hearings and conciliatory proceedings took place on February 3,10, and 22, 2012, March 22 and 29, 2012, and April 17 and 24, 2012, where petitioners appeared.[21] Private respondent could have easily furnished petitioners the notices or the return to work orders on said dates, but did not. The NLRC found this suspicious and held that notices sent out were mere afterthoughts.[22] The NLRC also held that there was failure to observe the twin notice rule. Petitioners were illegally dismissed. Finally, the NLRC found that the SSS Employee

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[16] *Id.* at 208-334.

[17] *Id.* at 547.

[18] *Id.* at 548.

[19] *Id.* at 153-167.

[20] *Id.* at 158.

[21] *Id.* at 159.

[22] *Id.*

Static Information[23] reflected underpayment to petitioners. The LA erred in relying in the payrolls when the same were being disputed by petitioners. The SSS Employee Static Information is a true account of petitioners' salaries as the same are mandatorily reported by respondent company. Petitioners were entitled to payment of unpaid salaries, 13th month pay and commutation of service incentive leave.[24] The NLRC also found illegal deductions which are prohibited under Article 113[25] of the Labor Code of the Philippines. The NLRC ordered reinstatement of petitioners, payment of back wages, salary differentials, and labor benefits, and reimbursement of illegal deductions and unreteased cash bonds.[26]

Unsatisfied with the Decision of the NLRC, respondents filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA. On September 29, 2015, the CA reinstated the Decision of the LA.[27] The CA held that private respondent company was able to prove that petitioners were made to report back to work.[28] What is apparent is petitioners' disobedience to such directive, which is a clear indication of their intention

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[23] *Id.* at 70-76.

[24] *Id.* at 160.

[25] Art. 113. Wage deduction. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

a. In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

b. For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

c. In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

[26] *Rollo*, p. 161.

[27] *Id.* at 92-94.

[28] *Id.* at 90.

to sever employment with respondent.[29] Petitioners failed to report to their jobs and merely relied on the affidavit of the employee from TUCP which remained unsubstantiated compared to the evidentiary worth of the documents presented by Super K Drug Store.[30] Petitioners' neglect of duty can be a cause for termination of employment. The CA held that the "operative" fact which severs the ties of the employer-employee relationship is the twin notice requirement under the labor laws. However, private respondent was unable to even comply with the twin notice requirement as petitioners had already filed a labor complaint against respondent.[31] The CA denied payment of petitioners' money claims. Payrolls submitted in evidence bore petitioners' signatures and was the best evidence of acknowledgment and actual amount of salaries paid to petitioners. The SSS Employee Static Information did not show actual payment of salaries and the amount duly received by petitioners. This only showed the amount duly contributed by respondent company pursuant to SSS law. Finally, the CA did not give credence to petitioners' claim that their salaries were subject to illegal deduction. While there were photographs[32] showing the alleged robber, they did not prove that illegal deductions were made on petitioners' salaries.[33]

Petitioners filed the instant petition, claiming that they were illegally dismissed from employment.[34] They argue that abandonment of their employment could not have been inferred from their actions. Apart from manifesting at the conciliatory proceedings their willingness to return to work, they eventually filed an illegal dismissal suit. They were also not aware of the return to work notices issued by respondent company, and

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[29] *Id.* at 92.

[30] *Id.* at 91.

[31] *Id.* at 92.

[32] *Id.* at 369-370.

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

[34] *Id.* at 11-35.

respondent company even failed to prove their receipt of said notices. Petitioners claim that sending by registered mail the return to work notices pending the conciliatory proceedings was peculiar and questionable. Respondents could have personally furnished the same to petitioners during the conciliatory proceedings.[35] Absent proof of receipt of the return to work notices, it only bolsters the fact that petitioners were prevented from returning to work and unjustly dismissed from employment. The return to work notices are clearly afterthoughts in order for respondent company to be able to claim that petitioners abandoned employment.[36] Anent their salaries, the SSS Employee Static Information should have been given credence as this supports petitioners' claim that they were underpaid. The SSS Employee Static Information contravenes the regularity of the execution of the payroll. The *sinumpaang salaysay* of respondent company's former employees also support that there is underpayment and that petitioners were forced to sign the payroll even if it did not reflect the actual amount they received from the employer. Further, petitioners are entitled to payment of their commuted unused service incentive leaves and the value of the unauthorized deductions from their salaries.[37]

In their Comment,[38] respondents claim that petitioners were told to return to work. Moreover, return to work notices sent by registered mail were duly received by petitioners. They emphasize that there are registry receipts and return cards.[39] The notices sent out during conciliatory proceedings only show that respondents were willing to accept petitioners back to work. The fact that the same were sent to petitioners' postal address during the conciliation proceedings does not necessarily mean that respondents should be held liable for dismissing petitioners.[40]

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[35] *Id.* at 25.

[36] *Id.*

[37] *Id.* at 28-30.

[38] *Id.* at 603-614.

[39] *Id.* at 605.

[40] *Id.* at 608.

The SSS Employee Static Information is not sufficient evidence of underpayment. This document is only used to determine the remittances being made by the employer. The best evidence to show that petitioners received their correct wage is the payroll. Respondent company doubts petitioners' claim because if there really was a disparity in the payroll and the actual salaries received, then petitioners should have long disputed this concern as they have been in the employ of the company ranging from 1 to 4 years.[41] All other money claims of petitioners should be denied. There is no proof that petitioners' salaries were deducted.[42]

Ruling of the Court

It is settled that the employer bears the burden of proving that the employee's dismissal is for a just or authorized cause.[43] Here, respondent company and the owners argue that abandonment of employment is a valid ground to dismiss petitioners. Petitioners' abandonment is proven by their failure to respond and comply with the return to work notices sent by respondent company.

We do not agree.

Respondent company failed to prove the fact of receipt of the return to work notice dated February 6, 2012. Records show that copies of the registry return cards[44] lacked petitioners' or their authorized persons signatures, which should signify acknowledgement of receiving the mail/notices. The registered return cards were not even accompanied by a certification from the postmaster regarding the fact of receipt. We cannot presume that petitioners received the notices to return to work solely on the basis of unsigned registry return cards. Notably, We find that all notices were sent to one mailing address at "87-D 7th

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[41] *Id.* at 610-611.

[42] *Id.* at 612-613.

[43] *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423 (2017).

[44] *Rollo*, pp. 189,191,193, 195,197, 199.

Avenue Murphy Socorro, Cubao, QC,"[45] and two of the envelopes even bore markings "RTS 3-26-12"[46] and "RTS" to mean as return to sender. Respondent company did not explain the reason in sending the notices for all seven petitioners to one postal address. Neither was there proof that the notices, including those bearing the marking "RTS 3-26-12," were resent, or sent to an address different from the foregoing. Further and as observed by the NLRC, the SENA hearings and conciliatory proceedings took place on February 3,10, and 22, 2012, March 22 and 29, 2012, and April 17 and 24, 2012, where petitioners appeared. Respondent could have easily furnished petitioners the return to work notices on said dates, but did not. We are inclined to find for petitioners that they did not receive the return to work notice. Therefore, petitioners could not have violated a return to work order. Moreover, sending return to work notices during the pendency of the SENA proceedings only shows that no prior notice, written or oral, was given to petitioners. Otherwise, respondents would have submitted the same in evidence. The notices dated February 6, 2012 sent during the pendency of the SENA proceedings were an attempt of respondent company to cure the defect of its failure to order petitioners to return to work.

Consequently, petitioners did not abandon their employment. To prove abandonment, the employer must show that the employee unjustifiably refused to report for work and that the employee deliberately intended to sever the employer-employee relationship.[47] Intent to sever the employer-employee relationship can be proven through the overt acts of an employee.[48] The overt acts, after being considered as a whole, must clearly show the employee's objective of discontinuing his or her

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[45] *Id.*

[46] *Id.* at 195, 199.

[47] *Charlie Hubilla v. Hay Marketing Ltd., Co.*, 823 Phil. 358, 385-386 (2018).

[48] *Demex Rattancraft, Inc. v. Leron*, 820 Phil. 693, 703 (2017).

employment.[49] Mere absence from work, even after a notice to return, is insufficient to prove abandonment.[50]

Records are bereft of any indication that petitioners' failure to report for work was with a clear intent to sever their employment relationship with respondent company. As a matter of fact, petitioners only filed for underpayment of their salaries, non-payment of labor benefits and illegal deduction from their salary. Their actuations only explain that they have a grievance, not that they wanted to abandon work entirely. Records also reveal that petitioners would report to work after appearing at the NLRC-SENA proceedings.[51] Petitioners only modified the labor complaint to include illegal dismissal because they were declined entry to work. We give credence to this allegation as We found that respondent company failed to furnish return to work notices to petitioners. Taking all the facts together, We do not find that petitioner had the intention to sever employment. Furthermore, no notice to explain and termination notice were given to petitioners. Respondent company and owners failed to comply with both substantive and procedural due process. Hence, petitioners were illegally dismissed, entitling them to reinstatement and payment of backwages.[52] However, petitioners prayed for payment of separation pay in lieu of reinstatement,[53] which We find merit considering that reinstatement would no longer serve any prudent purpose in view of the strained relations between petitioners and respondents.[54]

As to petitioner's claim of underpayment of salaries, it is settled that the burden to prove payment rests on the employer

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[49] *Id.*

[50] *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 796 (2017).

[51] *Rollo*, p. 20.

[52] LABOR CODE OF THE PHILIPPINES, Art. 279 [renumbered as Art. 294].

[53] *Rollo*, p. 173.

[54] Azucena, C.A., *Everyone's Labor Code*, 2001 Ed., p. 306; *Hernandez v. National Labor Relations Commission*, G.R. No. 34302, August 10, 2019.

because all pertinent personnel files, payrolls, records, remittances and other similar documents are in the custody and control of the employer.[55] To prove correctness of payment of salaries, respondent company presented payroll records from May 2009-January 2011[56] for Super K Drug Corporation, Roxas City Branch and March 2007 to December 2011[57] for New Farmers Plaza Branch. Petitioners were hired or transferred to the New Farmers Plaza branch on separate occasions[58] within the period covered by the payroll records submitted in evidence. However, the payroll records are incomplete. From the facts, Denaga and Lusabia were originally assigned to the Capiz, Roxas branch, but the Roxas City payroll records only reflected payment to Denaga. The New Farmers Plaza Branch payroll records[59] mostly reflected payment of salaries to petitioners Acsayan and Alimonsurin only. The payroll period in New Farmers Plaza branch from June 2011 to December 2011[60] failed to reflect payment to some of the petitioners, when all seven of them were already working at said branch at that time. In view of the foregoing, We cannot agree with private respondents that there is due payment of salaries to petitioners. In fact, We found, from the payroll records and undisputed allegations of underpayment, that petitioners were not paid their salaries pursuant to the applicable wage orders.[61] Thus, petitioners are

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[55] *Minsola v. New City Builders, Inc.,* 824 Phil. 866, 879 (2018).

[56] *Rollo*, pp. 421-463.

[57] *Id.* at 208-334.

[58] Alimonsurin was hired on January 31, 2007; Acsayan was hired on November 17, 2007; Vergabera was hired on August 4, 2010; Contreras was hired on August 15, 2010; Barrera was hired on January 6, 2011. Lusabia and Denaga were transferred to New Farmer's Plaza Branch in March 2011 and June 2011, respectively.

[59] *Rollo*, pp. 228-32. Payroll records from March 2007- March 2011.

[60] *Id.* at 208-222.

[61] For the periods reflected in the payroll and as alleged by petitioners until they were illegally dismissed. The applicable wage orders include, (for Denaga and Lusabia) Wage Order No. RBVI-17, Wage Order No. RBVI-18, (for all seven petitioners) Wage Order No. NCR-15, Wage Order No. NCR-16.

entitled to salary differentials as may be computed by the labor tribunals following the wage orders. Other claims for labor benefits, namely, 13th month pay benefit and service incentive leave benefit, must also be paid to petitioners for lack of proof of payment by respondent company. Failure to release the cash bond beginning 2010 amounting to ₱500.00 is undisputed. Thus, private respondents must likewise pay the same to petitioners. Anent salary deductions claimed by petitioners, We cannot uphold the same for lack of evidence. Finally, We find that petitioners are entitled to payment of attorney's fees at 10% of the monetary award pursuant to Article 111 the Labor Code of the Philippines for unlawful withholding of wages.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 29, 2015 of the Court of Appeals in CA-G.R. SP No. 131738 is **REVERSED** and **SET ASIDE**. The Decision dated March 27, 2013 of the NLRC in NLRC NCR Case No. 02-03203-12 is **AFFIRMED with MODIFICATION** in that private respondents are ordered to pay petitioners, who were illegally dismissed:

1) Full backwages from the time of petitioners' respective dates of dismissal until finality of this Decision;

2) Separation pay, in lieu of reinstatement, beginning from the respective dates petitioners were employed until finality of this Decision, at the rate of one-month salary for every year of service, with a fraction of a year of at least six months to be considered as one whole year;[62]

3) Salary differentials in accordance with the applicable wage orders;

4) 13th month pay benefits and service incentive leave benefits;

5) To release the deducted cash bond beginning 2010; and

6) Attorney's fees at 10% of the monetary award.

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[62] *Rivera v. Genesis Transport Services, Inc.* 765 Phil. 544, 561 (2015).

The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioners, which respondents should pay without delay.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 223404. July 15, 2020]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **MARCIANO S. BACALLA, JR., EDUARDO M. ABACAN, ERLINDA U. LIM, FELICITO A. MADAMBA, and PEPITO M. DELGADO,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CORPORATIONS; INTERIM RULES UNDER SECURITIES REGULATIONS CODE (RA 8799); TESTS TO DETERMINE THE EXISTENCE OF INTRA-CORPORATE CONTROVERSY, EXPLAINED. —** In determining whether a case is an intracorporate controversy, We resort to a combined application of the *relationship test* and the *nature of the controversy test*. Under the *relationship test*, the existence of any of the following relations makes the conflict intra-corporate: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. For as long as *any* of these intra-corporate relationships exists between the parties, the

controversy would be characterized as intra-corporate. Meanwhile, in the *nature of controversy test*, the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.

2. **ID.; ID.; ID.; ID.; CONSIDERING THAT THE PRESENT CASE INVOLVES AN INTRA-CORPORATE CONTROVERSY, THE COURT OF APPEALS (CA) DID NOT ERR IN AFFIRMING THE DENIAL BY THE REGIONAL TRIAL COURT (RTC) OF THE PETITIONER'S BELATED FILING OF REQUESTS FOR ADMISSION BASED ON THE INTERIM RULES. —** The subject complaint specifically alleged that the corporate officers resorted to corporate layering by transferring funds accumulated through investments by the public to TGICI subsidiaries. Such allegation plainly established the relationship between the petitioner as the issuer of shares funneled to Cielo Azul, and herein respondents as court-appointed receiver and investors. Based on this relationship, respondents sought the lower court to pierce the corporate veil and declare Cielo Azul, JAMCOR Holdings, TMG Holdings, Jesus Tibayan and Gelacio as having one personality. Accordingly, We concur with the CA that petitioner cannot take refuge from the defense of being a third party. x x x As a mere conduit in the alleged fraudulent investment scheme by TGICI, Tibayan and Elacio, Cielo Azul, with TMG Holdings and JAMCOR Holdings, cannot prevent the court-appointed receiver of TGICI from accessing its corporate books and records to recover the assets which have been purportedly dissipated through illegal stock trading. Verily, the nature of the dispute raised by the respondents in their complaint is intrinsically connected with the regulation of TGICI and its subsidiaries. Considering that the present matter involves an intra-corporate dispute, the CA did not err in affirming the denial by the RTC of the petitioner's belated filing of Requests for Admissions based on Section 1, Rule 3 of the Interim Rules.

3. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION, DEFINED; ELEMENTS, CITED. —** Section 2, Rule 2 of the Rules of Court defines a "cause of action" as the act or omission by which a party violates a right of another.

The essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.

4. **ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65, EXPLAINED; THE RULE ON SPLITTING A CAUSE OF ACTION DOES NOT APPLY IN A PETITION FOR *CERTIORARI*; REASONS; THE MISAPPLICATION OF THE RULE AGAINST SPLITTING A CAUSE OF ACTION NOTWITHSTANDING, THE COURT RESOLVES TO DENY THE PRESENT PETITION FOR LACK OF MERIT. ––** [A] Writ of *Certiorari* under Section 1 of Rule 65 will issue when there is grave abuse of discretion committed by a tribunal, board or officer who in the exercise of its judicial or quasi-judicial functions, has acted without or in excess [of] its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the instance of grave abuse of discretion, the court may annul or modify the proceedings of such tribunal, board or officer, and grant such incidental reliefs as the law and justice may require. Verily, a Petition for *Certiorari* cannot be based on a cause of action. *First*, the parties involved in such petition would be the petitioner and the tribunal, board or officer who purportedly exceeded its discretion in the exercise of judicial or quasi-judicial functions. In a cause of action, the parties would be the plaintiff and the defendant who violated the right of the former which he (defendant) had the obligation to respect. *Second*, a Petition for *Certiorari* cannot arise from a violation of a right belonging to the petitioner that the tribunal, board or officer has the concomitant obligation to respect. To reiterate, a *certiorari* writ will only lie when the tribunal, board of officer commits grave abuse of discretion amounting to a lack or excess of jurisdiction. Meanwhile, the existence of a cause of action will be the basis of every ordinary civil action. *Third*, a Writ of *Certiorari* results in the annulment or modification of the proceedings. However, the violation of a right of a plaintiff or breach of obligation by the defendant would give rise to a cause of action that will provide the plaintiff with the right to file an action in court for the recovery of damages or other

relief. *Finally*, a Petition for *Certiorari*, being a special civil action, may only be availed of when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. x x x Here, the CA held that petitioner violated the subject rule and should have joined all its objections against the August 10, 2012 Order of the RTC in one Petition for *Certiorari*. x x x [T]he CA erred in applying the rule against splitting the cause of action in the assailed rulings. x x x The inaccurate application by the CA of the rule against splitting a cause of action will not negatively impact the efficacy of its July 27, 2015 Decision and March 4, 2016 Resolution. To recall, We affirmed the CA in denying the petitioner's application for a Writ of *Certiorari* because the Interim Rules apply in the proceedings below. The misapplication of the rule on splitting the cause of action was merely an innocuous mistake on the part of the CA and will not disaffirm our resolve to deny the present petition due to lack of merit.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.

Veronica Gutierez-De Vera for respondent Marciano S. Bacalla, Jr.

Carbon & Carbon Associates for respondents Eduardo M. Abacan, Erlinda U. Lim, Felicito A. Madamba & Pepito M. Delgado.

D E C I S I O N

GESMUNDO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by Bank of the Philippine Islands *(BPI)*[2] assailing the July 27, 2015 Decision[3]

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[1] *Rollo*, pp. 38-59.

[2] *Id.* at 38. Successor-in-interest of Prudential Bank and Trust Company, the original defendant in the proceedings below.

[3] *Id.* at 15-31; penned by Associate Justice Francisco P. Acosta with Associate Justices Noel G. Tijam (Ret.) and Eduardo B. Peralta, Jr., concurring.

and March 4, 2016 Resolution[4] of the Court of Appeals *(CA)* in CA-G.R. SP No. 129574. The CA affirmed the Orders dated August 10, 2012[5] and January 14, 2013[6] rendered by the Regional Trial Court, Las Piñas City, Branch 197 *(RTC)*, in Civil Case No. LP-05-0212 which refused to apply the Interim Rules of Procedure for Intra-Corporate Controversies *(Interim Rules)* and denied the Request for Admission applied for by the petitioner.

Antecedents

The present controversy originated from a Petition for Involuntary Dissolution filed against the Tibayan Group of Investment Companies, Inc. *(TGICI)* before the RTC Las Piñas City, Branch 253. On September 24, 2004, the RTC rendered a Decision[7] granting the petition and ordering the receiver, Atty. Marciano S. Bacalla, Jr. *(Atty. Bacalla)*, to proceed with the liquidation of properties. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, finding merit to the instant petition for involuntary dissolution, the same is GRANTED.

Accordingly, judgment is rendered declaring the dissolution of the hereunder-named respondent corporations pursuant to the provisions of Sections 121 and 122 of the *Corporation Code of the Philippines*:

Tibayan Group of Investment Company, Inc.

Tibayan Management Group International Holdings Co. Ltd.

TG Asset Management Corporation

MATCOR Holdings Company Ltd.

JETCOR Equity Company Ltd.

Sta. Rosa Management and Trading Corporation

Westar Royalty Management and Trading Corporation

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

[5] *Id.* at 372-378.

[6] (Not attached to the *rollo*.)

[7] *Id.* at 112-141.

Starboard Management and Trading Corporation
United Alpa Management and Trading Corporation
Global Progress Management and Trading Corporation
Athon Management and Trading Corporation
Diamond Star Management and Trading Corporation

Likewise, all claims of the petitioners herein and all other creditors shall be paid, as far as practicable, out of the assets and other properties of respondents Jesus V. Tibayan, Palmy B. Tibayan, the above-named corporations and all their officers, and directors, nominees and/or dummies.

Furthermore, **the Receiver Atty. Marciano S. Bacalla, Jr. is ordered to immediately effect the liquidation process pursuant to Section 122 of the Corporation Code and exercise any and all of the powers enumerated under Section 5, Rule 9 of the *Interim Rules Governing Intra-Corporate Controversies under RA 8799*, and such other powers as may be deemed necessary, just and equitable under the premises and/or circumstances**.

Furnish a copy of this Decision to the Securities and Exchange Commission for its information and appropriate action.

SO ORDERED.[8] (emphasis supplied)

Pursuant to his authority as receiver, Atty. Bacalla, together with TGICI investors Eduardo M. Abacan, Erlinda U. Lim, Felicito A. Madamba, Pepito M. Delgado *(collectively, respondents)* and the Federation of Investors Tulungan, Inc. *(FITI)*, instituted Civil Case No. LP-05-0212[9] for violation of Presidential Decree No. 902-A and the Interim Rules under R.A. No. 8799 *(Securities Regulation Code)* against Prudential Bank and Trust Company, JAMCOR Holdings Corp. *(JAMCOR Holdings)* and Cielo Azul Holdings Corp. *(Cielo Azul)*, among others.

The respondents alleged in their complaint that TGICI resorted to "fraudulent inducements, deceit, and misrepresentations" by representing themselves as licensed and duly authorized by the

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

[9] *Id*. at 142-241.

Securities and Exchange Commission *(SEC)* to solicit and accept deposits and investments from the general public; that the SEC found TGICI violated Section 9.1 in relation to Subsection 8.1 of R.A. No. 8799, in using multiple front and conduit corporations and issuing unregistered securities to the public;[10] that the monies and investments collected by TGICI were diverted and channeled to JAMCOR Holdings and then to Cielo Azul;[11] that Cielo Azul initially purchased 420,000 common shares of stocks of Prudential Bank at ₱700.00 per share or a total acquisition cost of ₱294 million pesos; that Cielo Azul also purchased 230,225 common shares of Prudential Bank with an acquisition cost of P161.16 million; that the shares purchased by Cielo Azul came from the proceeds of the illegal activities of TGICI.[12]

During the pre-trial conference held on September 20, 2010, herein petitioner made an oral motion to declare the respondents as non-suited on the ground that respondents and their counsel lacked Special Powers of Attorney.[13] Upon order of the trial court to submit a written motion,[14] Petitioner filed a Memorandum (In Support of Oral Motion to Declare the Federation of Investors Tulungan, Inc. and Marciano S. Bacalla, Jr. Non-Suited).[15]

The trial court denied the motion in its November 28, 2011 Order.[16] It held that Atty. Bacalla has been judicially authorized to pursue the case which was part of the execution of the September 4, 2004 Decision of the RTC. On the other hand, FITI President Eduardo M. Abacan and their counsel, Atty. De Vera, were authorized pursuant to a Board Resolution.[17]

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[10] *Id*. at 173-174.

[11] *Id*. at 179.

[12] *Id*. at 179-180.

[13] *Id*. at 75-76.

[14] *Id*. at 76.

[15] *Id*. at 307-315.

[16] *Id*. at 316-322.

[17] *Id*. at 321-322.

In the meantime, petitioner filed several Requests for Admissions[18] dated February 8, 2012 addressed to the respondents, which contain, among others, similar statements regarding their lack of Special Powers of Attorney from Cielo Azul to file the complaint, as well as lack of knowledge regarding any claims, dissolution and other proceedings involving Cielo Azul.

On August 10, 2012, the trial court issued an Order,[19] denying the Motion for Reconsideration and the requests for admission. The trial court ratiocinated as follows:

> A careful perusal of the arguments presented by all parties herein has revealed that the issues raised in the Motion for Reconsideration have already been discussed judiciously in the Order dated November 28, 2011. The Motion for Reconsideration and the subsequent pleadings filed in support thereof have not convinced this court the assailed Order dated November 28, 2011 should be reversed or modified. The Motion for Reconsideration, therefore, is hereby **DENIED**.
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> As to the issue, however, of the applicability of the Interim Rules in connection with the Requests of Admission filed by the bank defendants, this court is of the opinion that the Orders dated April 21, 2006, July 28, 2006, and February 16, 2007 stand, in deference to the Doctrine of Non-Interference or Judicial Stability, which substantially pertains to the ruling that courts of co-equal jurisdiction and coordinate jurisdiction cannot interfere with each other's orders x x x. Therefore, the Motion to Reverse and Set Aside the Orders of Hon. Salvador Timbang, Jr. is hereby **DENIED**.
>
> Accordingly, the Requests for Admission are hereby **DENIED**. Contrary to its alleged purpose of expediting the proceedings of this case, it has added controversy to the instant case that has already been passed upon and denied by the then presiding judge, Hon. Salvador Timbang, Jr. Consequently, a lot of pleadings have been filed before this court effectively delaying the proceedings in this case, and numerous motions for extension of time have polluted the

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[18] *Id*. at 334-371.

[19] *Id*. at 372-378.

records of the case. In order to indeed expedite the proceedings in this case, let the Pre-Trial Conference proceed as scheduled, and all matters for stipulations, admissions, and denials may be done during Pre-Trial Conference.

SO ORDERED.[20]

Consequently, petitioner filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 127072, to assail the November 28, 2011 and August 10, 2012 Orders of the RTC concerning the respondents' authority to file the complaint. The CA ruled partially in favor of the petitioner by holding that FITI was not suited. Petitioner appealed to this Court *via* a Petition for Review docketed as G.R. No. 217650.[21] The Court denied the said petition through a Minute Resolution dated June 17, 2015.

Aside from the above petition, petitioner also filed a Motion for Reconsideration regarding the applicability of the Interim Rules, but the trial court denied the motion in its Order promulgated on January 14, 2013.[22] Dissatisfied by the ruling, petitioner filed another Petition for *Certiorari* before the CA docketed as CA-G.R. SP No. 129574,[23] alleging that the trial court committed grave abuse of discretion in applying the Interim Rules.

CA Ruling

On July 27, 2015, the CA promulgated a Decision[24] denying the petition. The appellate court ruled that because the complaint filed by Atty. Bacalla and the TGICI investors concerned the recovery of the assets of the dissolved corporation through its

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[20] *Id*. at 377-378.

[21] Entitled *"Bank of the Philippine Islands v. The Hon. Ismael Duldulao, Marciano S. Bacalla, Jr., Federation of Investors Tulungan, Inc., Eduardo M. Abacan, Erlinda U. Lim, Felicito A. Madamba and Pepito M. Delgado."*

[22] *Rollo*, p. 78.

[23] *Id*. at 379-413.

[24] *Id*. at 73-89.

subsidiaries, the issue involved an intra-corporate dispute under Section 5 (a) of P.D. No. 902-A.[25] It also ruled that the petitioner was guilty of splitting its cause of action and that its remedy had already prescribed.[26]

The petitioner filed a Motion for Reconsideration[27] but the CA denied the same in its March 4, 2016 Resolution.[28] Hence, this Petition for review.

Issues

The petitioner submits the following grounds in support of its petition:

I

THE COURT OF APPEALS COMMITTED GRAVE, MANIFEST, AND REVERSIBLE FUNDAMENTAL ERROR IN RULING THAT THE ICC RULES GOVERN THE CASE *A QUO* DESPITE THE PATENT ABSENCE OF AN INTRA-CORPORATE CONTROVERSY AS DEFINED UNDER APPLICABLE LAW AND JURISPRUDENCE;[29]

II

THE COURT OF APPEALS COMMITTED A GRAVE, MANIFEST, AND REVERSIBLE FUNDAMENTAL ERROR IN RULING THAT BPI'S *CERTIORARI* PETITION BEFORE IT WAS FILED OUT OF TIME AND IN VIOLATION OF RULE 2, SECTIONS 3 AND 4 OF THE RULES OF COURT AGAINST SPLITTING OF CAUSE OF ACTION.[30]

Petitioner maintains that the CA failed to apply the intra-corporate relations test and the nature of the controversy test in determining whether the respondents' complaint involved an intra-corporate dispute. Under the intra-corporate relations

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[25] *Id*. at 86.

[26] *Id*. at 78-80.

[27] *Id*. at 93-109.

[28] *Id*. at 91-92.

[29] *Id*. at 46.

[30] *Id*. at 54.

test, TMG Holdings as the principal holding company and stockholder of JAMCOR, remained a distinct and separate legal personality from Cielo Azul. The present controversy involved a different issue which cannot be taken as a continuation of the Petition for Dissolution of TGICI.[31] On the other hand, under the nature of controversy test, there should be proof that the dispute is intrinsically connected with the regulation of Cielo Azul and not of TMG Holdings or JAMCOR. The respondents failed to establish in their complaint that Cielo Azul was part of TGICI or that it was a dummy or nominee of TGICI.[32]

As regards the CA ruling on the splitting of cause of action and prescription, the petitioner contends that the proscription against splitting of causes of action under Rule 2, Sections 3 and 4 does not apply in filing a Petition for *Certiorari* under Rule 65; that a *certiorari* petition does not originate from a cause of action but from the existence of grave abuse of discretion; that the issue of application of the Interim Rules was first resolved only in the August 10, 2012 Order of the RTC; and that at the time that the first Petition for *Certiorari* was filed, the issue on the applicability of the Interim Rules was still the subject of a Motion for Reconsideration.[33]

On the other hand, respondents counter that their complaint involved an intra-corporate controversy as it concerns the recovery of illegally acquired Prudential Bank shares; that the allegations in the complaint were within the purview of Sec. 5(a) of P.D. No. 902-A; that the complaint was a continuation of the dissolution of TGICI where the Interim Rules finds application;[34] and that the present petition was filed out of time and violated the proscription against splitting a cause of action because the matter should have been included in the first Petition for *Certiorari*.[35]

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[31] *Id*. at 49.

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

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

[34] *Id*. at 535-540.

[35] *Id*. at 553-554.

In sum, the Court shall resolve the following matters: (1) Does the Interim Rules on Intra-Corporate Controversies apply to the subject proceedings in the RTC; and (2) Are petitioners guilty of violating the rule against splitting the cause of action?

Ruling of the Court

We deny the petition.

I

The Interim Rules of Procedure for Intra-Corporate Controversies under R.A. No. 8799 applies to the proceedings in the RTC.

The Court notes that the petitioner does not challenge the jurisdiction of the RTC in hearing the complaint filed by the respondents. The controversy lies in whether the trial court correctly applied the Interim Rules on Intra-Corporate Controversies in its proceedings below.

The Interim Rules traces its roots from Section 5.2 of R.A. No. 8799 which transferred all cases under Sec. 5 of P.D. No. 902-A from the Securities and Exchange Commission *(SEC)* to the courts of general jurisdiction or the appropriate RTC. Under Sec. 5 of P.D. No. 902-A, the following cases were transferred to the RTC:

a) **Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission;**

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations. (emphasis supplied)

In compliance, the Court approved the Interim Rules on March 13, 2001 and took effect on April 1, 2001.[36] Section 1(a), Rule 1 of the Interim Rules restates the cases enumerated under Sec. 5 of P.D. No. 902-A with the addition of derivative suits[37] and inspection of corporate books.[38]

In the assailed Decision, the CA observed that based on the impleaded parties, allegations, and the reliefs prayed for, the complaint concerned the recovery of assets of the dissolved TGICI. It concluded that because of the fraudulent dissipation of TGICI assets caused by the officers, the matter had become an intra-corporate dispute under Sec. 5(a) of P.D. No. 902-A.[39]

Indeed, the respondents initiated their action under the Interim Rules as shown on the face of the complaint which reads: "*For: Devices or Schemes Amounting to Fraud and Misrepresentation Detrimental to the Interest of the Public Under* ***PD No. 902-A*** *and the* ***Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799*** *with Declaration of Nullity of Contracts and Specific Performance with Prayer for the Issuance of a Writ of Preliminary Injunction.*"[40] But since courts cannot rely on the caption of the complaint alone, and if the complainant wishes to invoke the court's special commercial jurisdiction, the complaint must show on its face what the claimed fraudulent corporate acts[41] are which require

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[36] See *Speed Distributing Corp. v. Court of Appeals*, 469 Phil. 739, 758 (2004).

[37] Sec. 1(a)(4), Rule 1.

[38] Sec. 1(a)(5), Rule 1.

[39] *Rollo*, pp. 80-86.

[40] *Id.* at 142.

[41] See *Guy v. Guy*, 694 Phil. 354, 373 (2012); citing *Reyes v. RTC of Makati, Br. 142*, 583 Phil. 591, 606 (2008).

the application of the Interim Rules. We expounded on this requirement in *Guy v. Guy*[42] as follows:

> x x x. In *Reyes*, we pronounced that "in cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies a bill of particulars is a prohibited pleading. It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction." This is because **fraud in intra-corporate controversies must be based on "devices and schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association," as stated under Rule 1, Section 1(a)(1) of the Interim Rules. The act of fraud or misrepresentation complained of becomes a criterion in determining whether the complaint on its face has merits, or within the jurisdiction of special commercial court, or merely a nuisance suit.** (emphasis supplied)

We perused the subject complaint and were convinced that it contained specific allegations of corporate layering, improper matched orders and other manipulative devices or schemes resorted to by the corporate officers in defrauding the stockholders and investors of TGICI.[43] Evidently, these averments meet the standard of specificity required by Section 5(a) of P.D. No. 902-A and Section 1(a)(1), Rule 1 of the Interim Rules.

However, the petitioner remained unconvinced that the Interim Rules applies. It argued that the complaint does not involve an intra-corporate controversy as it failed to satisfy the *relationship test* and the *nature of the controversy test*. It ventured that since Cielo Azul has a separate and distinct personality, there can be no relationship between the corporation and the respondents as TGICI receiver and investors.

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[42] *Id*. at 373.

[43] See paragraphs 70, 80, 87 of the Complaint (*Rollo*, pp. 170, 178-179, 182-183).

The contention is erroneous.

In determining whether a case is an intra-corporate controversy, We resort to a combined application of the *relationship test* and the *nature of the controversy test*.[44]

Under the *relationship test*, the existence of any of the following relations makes the conflict intra-corporate: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. For as long as *any* of these intra-corporate relationships exists between the parties, the controversy would be characterized as intra-corporate.[45]

Meanwhile, in the *nature of controversy test*, the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.[46]

The subject complaint specifically alleged that the corporate officers resorted to corporate layering by transferring funds accumulated through investments by the public to TGICI subsidiaries. Such allegation plainly established the relationship between the petitioner as the issuer of shares funneled to Cielo Azul, and herein respondents as court-appointed receiver and

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[44] See *Phil. Communications Satellite Corp. v. Sandiganbayan 5th Division*, 760 Phil. 893, 905 (2015).

[45] *Belo Medical Group, Inc. v. Santos*, 817 Phil. 363, 382-383 (2017), citing *Philex Mining Corporation v. Hon. Reyes*, 204 Phil. 241 (1982).

[46] *Phil. Communications Satellite Corp. v. Sandiganbayan 5th Division*, *supra* note 44 at 905, citing *Medical Plaza Makati Condominium Corporation v. Cullen*, 720 Phil. 732 (2013).

investors. Based on this relationship, respondents sought the lower court to pierce the corporate veil and declare Cielo Azul, JAMCOR Holdings, TMG Holdings, Jesus Tibayan and Gelacio as having one personality. Accordingly, We concur with the CA that petitioner cannot take refuge from the defense of being a third party. The CA fittingly explained:

> It is also undisputed that there is a right of action vested upon the Receiver of the said holding corporation as well as the investors thereof over the wholly owned subsidiary. The latter is sued in due regard to the allegations on the singular identity of the holding corporation and the wholly owned subsidiary in this case. This right of action by interested parties in the holding corporation over the subsidiary transcends the individual juridical personalities of the said corporations as ruled by the Supreme Court in *Gokongwei vs. Securities and Exchange Commission*, wherein the right of the stockholder of the parent corporation to inspect the books of the wholly owned subsidiary was upheld. x x x
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> x x x x x x x x x
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> **Accordingly, the fact that Prudential Bank (now Petitioner Bank) and the vendees who seem to be third parties do not necessarily convert this action into an ordinary civil action where only the Rules of Court applies. There are sufficient allegations of anomalies in the sale of all the corporate assets (the 630,225 shares of stocks) of the subsidiaries to the vendees with the latter's knowledge and participation and also with the knowledge of Prudential Bank. Thus, the impleading of the vendees and Prudential Bank aside from the subsidiaries and the officers of the corporation is only consequential because of Prudential Bank's and the vendees' participation in violating the investors' rights. What matters is that there is a violation of the Corporation Code and defraudation of those interested therein, *i.e.*, the investing public.**
>
> In *Spouses Abejo vs. Dela Cruz*, the Supreme Court clarified that when it affects the interests of the corporation, *i.e.*, the enforcement of rights and obligations under the Corporation Code affecting the internal or intracorporate affairs of the said Corporation, the same is an Intracorporate dispute. x x x

x x x x x x x x x

Indeed, in *Rivilla vs. Intermediate Appellate Court*, the Supreme Court citing *Abejo*, recognized the dispute as Intracorporate as when schemes were resorted to by officers of corporations to defraud investors. x x x[47] (citations omitted, emphasis supplied)

As a mere conduit in the alleged fraudulent investment scheme by TGICI, Tibayan and Elacio, Cielo Azul, with TMG Holdings and JAMCOR Holdings, cannot prevent the court-appointed receiver of TGICI from accessing its corporate books and records to recover the assets which have been purportedly dissipated through illegal stock trading. Verily, the nature of the dispute raised by the respondents in their complaint is intrinsically connected with the regulation of TGICI and its subsidiaries.

Considering that the present matter involves an intra-corporate dispute, the CA did not err in affirming the denial by the RTC of the petitioner's belated filing of Requests for Admissions based on Section 1, Rule 3[48] of the Interim Rules.

II

The rule against splitting the cause of action
does not apply in a Petition for *Certiorari*

Petitioner maintains that the CA erred in applying the rule against splitting a cause of action. Accordingly, a Petition for *Certiorari* is not based on a cause of action but rather the presence of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in rendering the assailed order.[49]

We agree with the petitioner.

Section 2, Rule 2 of the Rules of Court defines a "cause of action" as the act or omission by which **a party violates a**

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[47] *Rollo*, pp. 84-87.

[48] Section 1. *In general.* — A party can only avail of any of the modes of discovery not later than fifteen (15) days from the joinder of issues.

[49] *Rollo*, p. 55.

right of another. The essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[50]

On the other hand, a Writ of *Certiorari* under Section 1 of Rule 65 will issue when there is grave abuse of discretion committed by a tribunal, board or officer who in the exercise of its judicial or quasi-judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the instance of grave abuse of discretion, the court may annul or modify the proceedings of such tribunal, board or officer, and grant such incidental reliefs as the law and justice may require.

Verily, a Petition for *Certiorari* cannot be based on a cause of action. *First*, the parties involved in such petition would be the petitioner and the tribunal, board or officer who purportedly exceeded its discretion in the exercise of judicial or quasi-judicial functions. In a cause of action, the parties would be the plaintiff and the defendant who violated the right of the former which he (defendant) had the obligation to respect.

Second, a Petition for *Certiorari* cannot arise from a violation of a right belonging to the petitioner that the tribunal, board or officer has the concomitant obligation to respect. To reiterate, a *certiorari* writ will only lie when the tribunal, board of officer commits grave abuse of discretion amounting to a lack or excess of jurisdiction. Meanwhile, the existence of a cause of action will be the basis of every ordinary civil action.[51]

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[50] *Manila Electric Company v. Nordec Philippines*, G.R. No. 196020, April 18, 2018, 861 SCRA 515, 534; *Goyanko, Jr. v. United Coconut Planters Bank*, 703 Phil. 76, 90 (2013).

[51] RULES OF COURT, Rule 2, Sec. 1.

Third, a Writ of *Certiorari* results in the annulment or modification of the proceedings. However, the violation of a right of a plaintiff or breach of obligation by the defendant would give rise to a cause of action that will provide the plaintiff with the right to file an action in court for the recovery of damages or other relief.[52]

Finally, a Petition for *Certiorari*, being a special civil action, may only be availed of when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Meanwhile, a cause of action is the basic requirement in an ordinary civil action.

Here, the CA held that petitioner violated the subject rule and should have joined all its objections against the August 10, 2012 Order of the RTC in one Petition for *Certiorari*. The CA explained:

> Petitioner is guilty of splitting its cause of action in the filing of the instant Petition. Rule 2, Sections 3 and 4 of the 1997 Rules of Civil Procedure, provide:
>
> > Section 3. One Suit For A Single Cause of Action. — A party may not institute more than one suit for a single cause of action. (3a)
> >
> > Section 4. Splitting A Single Cause of Action; Effect of. — If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. (4a)
>
> It is undisputable that CA-G.R. 127072 is a Petition assailing the contents of the 10 August 2012 Order of the trial court on the issue of whether the plaintiffs are non-suited. The instant action on the other hand, assails the same Order, albeit this time only on the portion resolving the issue of non-applicability of the ICC and the disallowance of the Requests for Admission. Definitely, the Petitioner could have joined all its objections to the assailed Order in a single Petition for

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[52] See *ASB Realty Corp. v. Ortigas & Company Limited Partnership*, 775 Phil. 262, 283 (2015).

Certiorari, but rather elected to file two (2) Petitions thus taxing the energy and the docket of this Court. Thus, the instant action should also be dismissed based on this ground.[53]

The CA arrived at an erroneous conclusion.

Petitioner filed the first petition (CA-G.R. 127072) to question the November 28, 2011 and August 10, 2012 Orders upon the belief that the RTC committed grave abuse of discretion when it failed to declare FITI and Bacalla as not suited. On the other hand, the second petition (CA-G.R. No. 129574) now subject of the instant case, arose from the August 10, 2012 and January 14, 2013 Orders of the trial court which petitioner maintains to have been tainted with grave abuse of discretion due to the application of the Interim Rules. Clearly, the said petitions did not allege the RTC to have violated petitioner's right which may be the basis for a cause of action. Instead, petitioner alleged separate occasions of grave abuse of discretion committed by the trial court in not declaring FITI and Batalla as not suited and in applying the Interim Rules. Both petitions will give rise to an annulment or modification of the proceedings below and will not afford the petitioner with a remedy of damages against the RTC.

Moreover, a Writ of *Certiorari* may only be availed when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. For this reason, We cannot fault the petitioner for filing the second petition because the trial court only ruled on the applicability of the Interim Rules in the August 10, 2012 Order. It is settled rule that a Motion for Reconsideration is mandatory before the filing of a Petition for *Certiorari*.[54] Hence, petitioner properly moved for a reconsideration of that portion in the August 10, 2012 Order pertaining to the application of the Interim Rules before directly resorting to a Petition for *Certiorari*. Accordingly, the CA erred

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[53] *Rollo*, pp. 78-79.

[54] *Sen. De Lima v. Judge Guerrero*, 819 Phil. 616, 698 (2017); citing *Sen. Estrada v. Office of the Ombudsman*, 751 Phil. 821, 877-878 (2015).

in applying the rule against splitting the cause of action in the assailed rulings.

A final note.

The inaccurate application by the CA of the rule against splitting a cause of action will not negatively impact the efficacy of its July 27, 2015 Decision and March 4, 2016 Resolution. To recall, We affirmed the CA in denying the petitioner's application for a Writ of *Certiorari* because the Interim Rules apply in the proceedings below. The misapplication of the rule on splitting the cause of action was merely an innocuous mistake on the part of the CA and will not disaffirm our resolve to deny the present petition due to lack of merit.

WHEREFORE, the petition is **DENIED**. The assailed July 27, 2015 Decision and March 4, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 129574 are hereby **AFFIRMED**.

Costs against the petitioner.

SO ORDERED.

Leonen (Chairperson), Carandang, Zalameda, and *Delos Santos, JJ.*, concur.

THIRD DIVISION

[G.R. No. 224650. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ADOLFO A. GOYALA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A PERSON'S RIGHTS

IN A PRELIMINARY INVESTIGATION ARE SUBJECT TO THE LIMITATIONS OF PROCEDURAL LAW, AS THESE RIGHTS ARE STATUTORY, NOT CONSTITUTIONAL. — Preliminarily, it must be emphasized that, as stated in *Dichaves v. Office of the Ombudsman*: **A person's rights in a preliminary investigation are subject to the limitations of procedural law**. These rights are statutory, not constitutional. The purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty thereof." It does not call for a 'full and exhaustive display of the parties' evidence[.]' x x x It is the filing of a complaint or information in court that initiates a criminal action[,]" and carries with it all the accompanying rights of an accused.

2. **ID.; ID.; ARRAIGNMENT; SUSPENSION OF ARRAIGNMENT; WHILE THE PENDENCY OF A PETITION FOR REVIEW IS A GROUND FOR SUSPENSION OF THE ARRAIGNMENT, THE DEFERMENT OF THE ARRAIGNMENT SHOULD NOT EXCEED A PERIOD OF 60 DAYS RECKONED FROM THE FILING OF THE PETITION WITH THE REVIEWING OFFICE; AFTER THE EXPIRATION OF SAID PERIOD, THE TRIAL COURT IS BOUND TO ARRAIGN THE ACCUSED OR TO DENY THE MOTION TO DEFER ARRAIGNMENT, AS AN INDEFINITE SUSPENSION OF THE PROCEEDINGS IN THE TRIAL COURT IS NOT ALLOWED. —** In the instant case, it is undisputed that the 60-day period provided under Sec. 11(c), Rule 116 of the 2000 Revised Rules on Criminal Procedure had already lapsed. Thus, there is no longer any reason to hold in abeyance the criminal proceedings in the case for statutory rape against respondent. In *Aguinaldo v. Ventus (Aguinaldo),* the Court ruled that the 60-day limitation in Sec. 11(c), Rule 116 is not merely directory, thus: x x x. In *Samson v. Judge Daway*, the Court explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. ***It follows, therefore, that after the expiration of said period, the trial court is bound to arraign***

the accused or to deny the motion to defer arraignment. In *Diño v. Olivarez*, ***the Court held that it did not sanction an indefinite suspension of the proceedings in the trial court***. x x x. Here, it must be noted that during the pendency of the *certiorari* proceedings before the CA, the pending Motion for Reconsideration questioning the finding of probable cause was resolved against respondent in an Undated Order. This prompted respondent to appeal the prosecutor's finding of probable cause to the Department of Justice Secretary. The petition was filed on October 5, 2015. Obviously, the 60-day period had long expired and trial must proceed in due course.

3. **ID.; ID.; ID.; ID.; THE SPEEDY TRIAL ACT OF 1998 WHICH IMPOSES TIME LIMITS FROM ARRAIGNMENT TO PROMULGATION OF JUDGMENT TO ENSURE THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AGAINST VEXATIOUS PROSECUTION, CANNOT BE USED TO FURTHER EXTEND THE 60-DAY PERIOD UNDER SEC. 11(C), RULE 116. —** In an attempt to further extend the 60-day period, respondent argues that the period that had already lapsed should not be excluded because the delay that consumed the 60-day period is attributable to petitioner, following the Speedy Trial Act. This argument fails to persuade. The Speedy Trial Act finds no application in this case, as the law was passed to impose time limits from arraignment to promulgation of judgment to ensure the constitutional rights of the accused against vexatious prosecution. The exclusion of periods included therein is for the purpose of establishing whether or not there has been acceptable and excusable delay in the compliance with such time limits, and nothing more. These provisions cannot be used to further extend a period fixed by law. While the 60-day limitation is indeed a procedural rule that can be relaxed, as recognized in *Aguinaldo,* respondent has utterly failed to provide justifiable reasons to further suspend the criminal proceedings. On the contrary, the suspension has been so long that it becomes unconscionable to continue it any further.

4. **ID.; ID.; ID.; ID.; UPON THE LAPSE OF THE 60-DAY PERIOD, THE COURT IS BOUND TO ARRAIGN THE ACCUSED OR DENY THE MOTION TO DEFER ARRAIGNMENT WHETHER OR NOT THE PETITION**

BEFORE THE DEPARTMENT OF JUSTICE (DOJ) HAS BEEN RESOLVED; RATIONALE. — [R]espondent's argument that the completeness of the preliminary investigation is only achieved upon the final disposition of the DOJ of the Petition for Review does not persuade. The rules are clear and unequivocal. Upon the lapse of the 60-day period, the court is bound to arraign the accused or deny the Motion to Defer Arraignment whether or not the petition before the DOJ has been resolved. The reason behind this course of action is easy to discern. As explained in *Crespo v. Judge Mogul (Crespo)*, when an Information has been filed in court, the prosecutor would be stripped of the power to dismiss the case, *motu proprio*. Instead, the court acquires the exclusive jurisdiction to decide what to do with the case even if it is against the position of the public prosecutor or even the Secretary of Justice. The 60-day period was enacted in recognition of the power of the Secretary of Justice to review resolutions of his subordinates in criminal cases and such power was never revoked by *Crespo*. As due deference to a co-equal branch of government, the Rules allow a suspension of a criminal case to give an opportunity to the Secretary of Justice to rectify, modify, or correct any mistake or error committed by his subordinates. Be that as it may, the Rules nevertheless see it fit to limit the suspension to only 60 days. Hence, given the fact that the period has expired and regardless of the status of the appeal before the DOJ, the court has no discretion but to proceed with the arraignment. The appellate court's disquisition, therefore, must be reversed considering the intervening events that have transpired.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jaime S. Linsangan for respondent.

DECISION

GESMUNDO, *J.*:

This appeal by *certiorari* challenges the Decision[1] and Resolution[2] promulgated by the Court of Appeals *(CA)* on September 16, 2015 and May 5, 2016, respectively, in CA-G.R. SP No. 134674 whereby the appellate court reversed and set aside the Orders dated February 13, 2014[3] and March 26, 2014[4] of the Regional Trial Court, Pasig City, Branch 159 *(RTC)* in Criminal Case No. 152682. In doing so, the CA ordered the RTC to (a) hold in abeyance further proceedings in said case and remand the same to the prosecution for purposes of completing the preliminary investigation; (b) revoke the implementation of the Warrant of Arrest; and (c) continue the proceedings only after the finality of the preliminary investigation and after proper endorsement.

The Antecedents

AAA,[5] a minor, executed with the assistance of her mother a sworn statement dated June 17, 2013 before Police Inspector Ernesto A. Mones of the Pasig City Police accusing Adolfo A. Goyala, Jr., *(respondent)* of statutory rape.

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[1] *Rollo,* pp. 44-54; penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Japar B. Dimaampao and Ma. Luisa C. Quijano-Padilla (retired), concurring.

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

[3] *Id.* at 140-141; penned by Judge Rodolfo R. Bonifacio. Note that only the first two (2) pages of the February 13, 2014 Order was attached to the Petition.

[4] *Id.* at 154.

[5] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 *(Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances)*. The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 *(Special Protection of Children*

After due endorsement to the Office of the City Prosecutor of Pasig City *(OCP-Pasig City)*, the complaint was docketed as IS No. XV-14-INV-13F-02337 and assigned to Assistant City Prosecutor Pedro M. Oribe *(ACP Oribe)* as Investigating Prosecutor for preliminary investigation.[6]

Eventually, respondent executed his Counter-Affidavit on July 30, 2013. On August 16, 2013, respondent instituted a civil complaint for damages against AAA and her mother.[7]

On the strength of this civil case, respondent filed a Petition for Suspension on the Ground of Prejudicial Question before ACP Oribe. Later on, he filed a supplemental Motion to Reiterate Petition for Suspension on the Ground of Prejudicial Question.[8] This motion was denied in a Resolution dated September 30, 2013.

On November 12, 2013, ACP Oribe issued a Resolution finding probable cause against respondent and recommending the filing of an Information for Statutory Rape under Art. 266-A(d) of the Revised Penal Code, as amended by Republic Act (*R.A.*) No. 8353, also known as the *"The Anti-Rape Law of 1997,"* in relation to Section 5(a) of R.A. No. 8369, *inter alia*.[9]

On November 27, 2013, the Regional Trial Court, Criminal Case Unit received the Information for IS No. XV-14-INV-13F-02337 and docketed the same as Criminal Case No. 152682-PSG. On even date, respondent filed an Initial Urgent *Ex-Parte* Motion for Reconsideration and a Main Motion for

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Against Abuse, Exploitation and Discrimination Act); R.A. No. 8505 *(Rape Victim Assistance and Protection Act of 1998);* R.A. No. 9208 *(Anti-Trafficking in Persons Act of 2003);* R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and R.A. No. 9344 *(Juvenile Justice and Welfare Act of 2006)*.

[6] *Rollo,* p. 45.

[7] *Id*.

[8] *Id*. at 46.

[9] *Id*.

Reconsideration with Motion to Disqualify ACP Oribe before the OCP-Pasig City.[10]

On November 29, 2013, respondent filed a Motion to Suspend Proceedings and to Hold in Abeyance Issuance of Warrant of Arrest before the RTC.[11]

Meanwhile, Pasig City Prosecutor Jacinto G. Ang issued a 1st Indorsement dated 18 December 2013 forwarding the entire record of IS No. XV-14-INV-13F-02337 to the Department of Justice *(DOJ)* for further proceedings and inhibited himself from resolving the Motion for Reconsideration.[12]

On January 24, 2014, Justice Secretary Leila de Lima issued Department Order No. 173 designating Senior Assistant City Prosecutor Josefa D. Laurente *(SACP Laurente)* as Acting Prosecutor of Pasig City to resolve with finality IS No. XV-14-INV-13F-02337.[13]

Judgment of the RTC

In its February 13, 2014 Order, the RTC denied respondent's Motion to Suspend Proceedings and to Hold in Abeyance Issuance of Warrant of Arrest.[14] It reasoned that once a complaint or Information is filed in court, any disposition of the case rests in the sound discretion of the court. The determination of the case is within the trial court's exclusive jurisdiction and competence. It noted that there is a distinction between the preliminary inquiry to determine the probable cause for the issuance of a Warrant of Arrest and the preliminary investigation proper to ascertain whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing the Warrant of Arrest is made by the judge.[15]

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[10] *Id*. at 46-47.

[11] *Id*. at 47.

[12] *Id*.

[13] *Id*.

[14] *Id*.

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

The trial court is not bound to adopt the resolution of the Secretary of Justice, since it is mandated to independently evaluate or assess the merits of the case and it may agree or disagree with the recommendation of the Secretary of Justice.[16] Thus, any pending Petition for Review questioning the preliminary investigation conducted by ACP Oribe is negligible.[17]

The RTC found that there is probable cause to hold respondent for trial for the offense charged in the Information. It scrutinized the prosecutor's resolution, as well as the supporting affidavits and documentary evidence of the parties.[18]

On February 21, 2014, a Warrant of Arrest was issued.[19]

On March 3, 2014, respondent filed an Omnibus Motion[20] (1) to recall the Order for the issuance of a Warrant of Arrest until final determination of the instant Omnibus Motion; (2) to strike off the Information or to dismiss the instant case; (3) in the alternative, to reconsider and set aside the February 13, 2014 Order and to grant the Motion to Suspend Proceedings and To Hold in Abeyance Issuance of Warrant of Arrest; (4) in further alternative, to set the case for hearing for determination of probable cause for the issuance of Warrant of Arrest; and (5) in any event, to suspend issuance and/or service of any Warrant of Arrest pending final determination of the Omnibus Motion.

The same was denied in the RTC Order dated March 26, 2014.[21] Aggrieved, respondent went to the CA on *certiorari* to impugn the above-stated orders of the RTC.

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[16] *Id*. at 51.

[17] *Id*. at 141.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 143-153.

[21] *Id*. at 154.

Judgment of the CA

As stated, the CA declared void and set aside the February 13, 2014 and March 26, 2014 Orders of the RTC. It also ordered the RTC to hold in abeyance further proceedings and remand the case to the OCP-Pasig City for the purpose of resolving with finality the preliminary investigation. Likewise, it revoked the implementation of the Warrant of Arrest issued by the RTC. Lastly, it ordered the RTC to resume the proceedings in the criminal case only upon finality of the preliminary investigation and after due indorsement thereof.[22]

The CA held that respondent was deprived of his right to a full preliminary investigation preparatory to the filing of the Information against him. Thus, the proceedings before the RTC should be held in abeyance until completion of the preliminary investigation. It applied this Court's pronouncement in *Office of the Ombudsman v. Castro (Castro),*[23] where this Court allegedly held that the filing of a Motion for Reconsideration is an integral part of the preliminary investigation proper. The denial of the right to file a Motion for Reconsideration renders the preliminary investigation conducted incomplete. It also cited *Torralba v. Sandiganbayan (Torralba),*[24] where this Court purportedly declared that the incomplete preliminary investigation warrants that the proceedings be held in abeyance until completion of such.[25]

The People of the Philippines *(petitioner)*, represented by the Office of the Solicitor General *(OSG),* filed a Motion for Reconsideration, which the CA denied in its May 5, 2016 Resolution.[26] Petitioner argued in its Motion for Reconsideration that the issues in the instant controversy are already moot and

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[22] *Id*. at 54.

[23] 510 Phil. 380 (2005).

[24] 300 Phil. 25, 35 (1994).

[25] *Rollo,* pp. 48-53.

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

academic because SACP Laurente had already denied respondent's Motion for Reconsideration in an Undated Order. The CA did not give any merit to the same considering that respondent manifested that he filed, on October 5, 2015,[27] a Petition for Review before the DOJ against said Undated Order.[28]

Hence, this recourse.

The Petition

Petitioner contends that the RTC acted within its authority in denying respondent's Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of the Warrant of Arrest.

First, it argues that the CA mistakenly relied on *Torralba* and *Castro* because the facts in said cases are incongruous to the facts of the instant proceedings. In *Torralba,* the accused therein were not served copies of the final resolution of the preliminary investigation against them. They were also not apprised of a modified memorandum and special audit report which served as basis for their indictment. They only learned of the resolution against them through daily newspaper accounts which chronicled the filing of the charges. In contrast, respondent was duly provided with full information of the basis of the accusation against him for statutory rape. He was not deprived of legal processes and avenues to contest the initial findings of the OCP-Pasig City. He was able to file a Motion for Reconsideration to the November 12, 2013 Resolution of ACP Oribe. In fact, he availed himself of multiple legal avenues to evade his prosecution for statutory rape.[29] Meanwhile, in *Castro,* this Court, rather than ousting the trial court of its jurisdiction over the criminal case due to a contrary finding of the prosecutor in its reinvestigation of the case, effectively recognized and respected the assumed authority of the lower court. Accordingly,

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[27] *Id.* at 264.

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

[29] *Id.* at 22-24.

Castro cannot advance respondent's case.[30] Rather, petitioner posits that this Court's ruling in *People v. Odilao, Jr. (Odilao)*[31] is appropriate and decisive on the issue of the court's deferment of the criminal proceedings in view of a review of the findings of the preliminary investigation. This Court therein allegedly directed the trial court to proceed with the arraignment of respondent and trial on the merits on the basis of Section 11,[32] Rule 116 of the 2000 Revised Rules of Criminal Procedure *(Rules)*.[33]

Second, petitioner contends that there is no reason to enjoin the criminal prosecution of respondent because he was afforded the fundamental right to due process. It listed the numerous ways in which respondent had availed himself of the legal remedies afforded by law.[34]

Third, petitioner claims that, contrary to the CA's finding, the RTC did not commit any grave abuse of discretion when it denied respondent's Motion for Suspension of Criminal Proceedings. It points out that respondent's Petition for *Certiorari* failed to state any factual averment constituting grave abuse of discretion. It is not grave abuse of discretion for the trial

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[30] *Id*. at 25-26.

[31] 471 Phil. 623 (2004).

[32] Section 11. *Suspension of arraignment*. — Upon motion by the proper party, the arraignment shall be suspended in the following cases:

(a) The accused appears to be suffering from an unsound mental condition which effective[ly] renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

[33] *Rollo,* pp. 26-30.

[34] *Id*. at 30-33.

court judge to deny respondent's Motion to Suspend Proceedings as a finding of probable cause against him was evident from the magistrate's own determination of such facts.[35]

In his Comment,[36] respondent argues that the preliminary investigation remains incomplete because his Petition for Review assailing the Undated Order of SACP Laurente denying his Motion for Reconsideration is pending with the DOJ.[37] He rejects petitioner's discussion concerning the *Castro* and *Torralba* cases. He asserts that "[t]here was no issue of an incomplete preliminary investigation on this aspect of the [*Castro*] case and petitioner's reliance on the portion cited on page 12 of the Petition is grossly misplaced."[38] He also insists that reliance on the *Torralba* ruling is proper because it directly discusses the issue of an incomplete preliminary investigation.[39] He disparages petitioner's reliance on *Odilao* on the ground that it was decided prior to *Castro* and does not involve the issue of an incomplete preliminary investigation. For this same reason, he rejects the reliance on *Perez v. Hagonoy Rural Bank, Inc.*[40] and *Solar Team Entertainment, Inc. v. Judge How*[41] which *Odilao* cited.[42]

Respondent also rejects petitioner's invocation of Sec. 11, Rule 116 of the 2000 Revised Rules of Criminal Procedure because petitioner allegedly previously argued that the subject of the instant case is not a Petition for Review.[43] Even if the 60-day period stated in Sec. 11, Rule 116 is applicable, the

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

[36] *Id*. at 256-284.

[37] *Id*. at 271-272.

[38] *Id*. at 273.

[39] Id. at 273-275.

[40] 384 Phil. 322 (2000).

[41] 393 Phil. 172 (2000).

[42] *Rollo,* p. 275.

[43] *Id*.

lapse of such period is allegedly due to petitioner. Further, said period is applied in relation to an Information already filed in court as against a Petition for Review with the DOJ after preliminary investigation. Petitioner also argues that the proceedings before the CA is an interlocutory appeal excluded from the delay contemplated by Sec. 11, Rule 116. In support of his contention, he cites of Sections 10(a)(3 and 6)[44] and 11[45] of R.A. No. 8493, or the *"Speedy Trial Act of 1998"* as exclusions to the period stated in Sec. 11, Rule 116. He also cites Section 2[46] of Supreme Court Circular No. 38-98,[47] dated

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[44] Section 10. *Exclusions*. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

x x x x x x x x x

(3) delay resulting from interlocutory appeals;

x x x x x x x x x

(6) delay resulting from a finding of the existence of a valid prejudicial question; x x x.

[45] Section 11. Factors for Granting Continuance. — The factors, among others, which a justice or judge shall consider in determining whether to grant a continuance under subparagraph (f) of Section 10 of this Act are as follows:

(a) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(b) Whether the case taken as a whole is so novel, so unusual and so complex, due to the number of accused or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this Act.

No continuance under subparagraph (f) of Section 10 shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the public prosecutor.

[46] Sec. 2. *Time Limit for Arraignment and Pre-trial*.— The arraignment, and the pre-trial if the accused pleads not guilty to the crime charged, shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The period of the pendency of a motion to quash, or for a bill of particulars, or other causes justifying suspension of arraignment shall be excluded.

[47] Entitled "Implementing the Provisions of Republic Act No. 8493, Entitled 'An Act to Ensure a Speedy Trial of All Criminal Cases before the

August 11, 1998 *(IRR)*, which states that the period of pendency of a Motion to Quash shall be excluded. Respondent asserts that, as between R.A. No. 8493 and Sec. 11, Rule 116, the former shall prevail.[48]

Respondent contends that petitioner's assertion that he was afforded his fundamental right to due process is off-tangent because it failed to address the main issue – that he was denied his right to due process of law in the form of a complete preliminary investigation.[49] He also takes exception to petitioner's claim that the RTC did not commit grave abuse of discretion in denying his motion. He insists that the grave abuse of discretion consists in the denial of his right to due process because he was deprived of a complete preliminary investigation.[50]

Finally, respondent claims that since petitioner failed to directly contravene the third directive of the CA Decision (that the proceedings in the criminal case shall only resume upon finality of the preliminary investigation and after due indorsement thereof) in either its Motion for Reconsideration before the CA and in this petition before this Court, petitioner may no longer assail said directive in the instant appeal. Said directive has become final and irreversible. With the filing and pendency of the Petition for Review before the DOJ, there is no final resolution. As such, there is no finality of the preliminary investigation and no due indorsement thereof.[51]

Inevitably, the sole issue raised in this petition is:

Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Courts, Appropriating Funds Therefor, and for Other Purposes.'"

[48] *Rollo,* pp. 277-278.

[49] *Id*. at 280.

[50] *Id*. at 280-281.

[51] *Id*. at 281-283.

WHETHER THE PROCEEDINGS IN CRIMINAL CASE NO. 152682 SHOULD CONTINUE TO BE HELD IN ABEYANCE DESPITE THE LAPSE OF THE SIXTY (60)-DAY PERIOD PROVIDED FOR UNDER SECTION 11(C), RULE 116 OF THE 2000 REVISED RULES ON CRIMINAL PROCEDURE.

Ruling of the Court

The petition is impressed with merit.

Preliminarily, it must be emphasized that, as stated in *Dichaves v. Office of the Ombudsman*:[52]

A person's rights in a preliminary investigation are subject to the limitations of procedural law. These rights are statutory, not constitutional. The purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty thereof." It does not call for a 'full and exhaustive display of the parties' evidence[.]' x x x It is the filing of a complaint or information in court that initiates a criminal action[,]" and carries with it all the accompanying rights of an accused.[53] (citations omitted, emphasis supplied).

In the instant case, it is undisputed that the 60-day period provided under Sec. 11(c), Rule 116 of the 2000 Revised Rules on Criminal Procedure had already lapsed. Thus, there is no longer any reason to hold in abeyance the criminal proceedings in the case for statutory rape against respondent.

In *Aguinaldo v. Ventus (Aguinaldo),*[54] the Court ruled that the 60-day limitation in Sec. 11(c), Rule 116 is not merely directory, thus:

On the second issue, the Court disagrees with petitioners' contention that the provision of Section 11 (c), Rule 116 of the Rules of Court

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[52] 802 Phil. 564 (2016).

[53] *Id.* at 592-593.

[54] 755 Phil. 536 (2015).

limiting the suspension for arraignment to only sixty (60) days is merely directory; thus, the estafa case against them cannot proceed until the DOJ resolves their petition for review with finality.

In *Samson v. Judge Daway*, the Court explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. ***It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment***.

In *Diño v. Olivarez*, ***the Court held that it did not sanction an indefinite suspension of the proceedings in the trial court***. Its reliance on the reviewing authority, the Justice Secretary, to decide the appeal at the soonest possible time was anchored on the rule provided under Department Memorandum Order No. 12, dated 3 July 2000, which mandates that the period for the disposition of appeals or petitions for review shall be seventy-five (75) days.

In *Heirs of Feraren v. Court of Appeals,* the Court ruled that in a long line of decisions, it has repeatedly held that while rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. After all, rules of procedure do not exist for the convenience of the litigants, and they are not to be trifled with lightly or overlooked by the mere expedience of invoking "substantial justice." Relaxation or suspension of procedural rules, or the exemption of a case from their operation, is warranted only by compelling reasons or when the purpose of justice requires it.[55] (citations omitted, emphasis supplied)

Here, it must be noted that during the pendency of the *certiorari* proceedings before the CA, the pending Motion for Reconsideration questioning the finding of probable cause was resolved against respondent in an Undated Order. This prompted respondent to appeal the prosecutor's finding of probable cause to the Department of Justice Secretary. The petition was filed

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[55] *Rollo*, pp. 546-578.

on October 5, 2015.[56] Obviously, the 60-day period had long expired and trial must proceed in due course.

In an attempt to further extend the 60-day period, respondent argues that the period that had already lapsed should not be excluded because the delay that consumed the 60-day period is attributable to petitioner, following the Speedy Trial Act. This argument fails to persuade. The Speedy Trial Act finds no application in this case, as the law was passed to impose time limits from arraignment to promulgation of judgment to ensure the constitutional rights of the accused against vexatious prosecution. The exclusion of periods included therein is for the purpose of establishing whether or not there has been acceptable and excusable delay in the compliance with such time limits, and nothing more. These provisions cannot be used to further extend a period fixed by law. While the 60-day limitation is indeed a procedural rule that can be relaxed, as recognized in *Aguinaldo,* respondent has utterly failed to provide justifiable reasons to further suspend the criminal proceedings. On the contrary, the suspension has been so long that it becomes unconscionable to continue it any further.

Also, respondent's argument that the completeness of the preliminary investigation is only achieved upon the final disposition of the DOJ of the Petition for Review does not persuade. The rules are clear and unequivocal. Upon the lapse of the 60-day period, the court is bound to arraign the accused or deny the Motion to Defer Arraignment whether or not the petition before the DOJ has been resolved. The reason behind this course of action is easy to discern.

As explained in *Crespo v. Judge Mogul (Crespo)*,[57] when an Information has been filed in court, the prosecutor would be stripped of the power to dismiss the case, *motu proprio*. Instead,

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[56] *Id*. at 264.

[57] 235 Phil. 465 (1987).

the court acquires the exclusive jurisdiction to decide what to do with the case even if it is against the position of the public prosecutor or even the Secretary of Justice. The 60-day period was enacted in recognition of the power of the Secretary of Justice to review resolutions of his subordinates in criminal cases and such power was never revoked by *Crespo*.[58] As due deference to a co-equal branch of government, the Rules allow a suspension of a criminal case to give an opportunity to the Secretary of Justice to rectify, modify, or correct any mistake or error committed by his subordinates. Be that as it may, the Rules nevertheless see it fit to limit the suspension to only 60 days. Hence, given the fact that the period has expired and regardless of the status of the appeal before the DOJ, the court has no discretion but to proceed with the arraignment. The appellate court's disquisition, therefore, must be reversed considering the intervening events that have transpired.

Accordingly, the other arguments raised by the parties, especially by respondent, have been mooted by these events.

WHEREFORE, the Court **GRANTS** the petition; **REVERSES** and **SETS ASIDE** the Decision and Resolution promulgated on September 16, 2015 and May 5, 2016, respectively, by the Court of Appeals in CA-G.R. SP No. 134674; **REINSTATES** the February 13, 2014 and March 26, 2014 Orders of the Regional Trial Court, Pasig City, Branch 159 and **ORDERS** the RTC to continue with the proceedings in Criminal Case No. 152682 with dispatch.

SO ORDERED.

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

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[58] See *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996).

THIRD DIVISION

[G.R. No. 227411. July 15, 2020]

TERESITA DAYANDAYAN, YOLLY D. LAGUNA, CLARA "CARING" TALLE, MR. & MRS. RODRIGO RIOS, and MR. & MRS. REDEN BIGNAY, *petitioners, vs.* **SPOUSES EDUARDO P. ROJAS and ENRIQUITA A. ROJAS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; POSSESSION; TO RECOVER POSSESSION, THE OWNER MUST AVAIL OF THE PROPER JUDICIAL REMEDY.—** Essentially, the owner of real property has the right to enjoy and dispose of a thing, and to file an action against the holder and possessor of the same in order to recover it. This stems from the fact that the right to possession is an attribute of ownership. However, ownership by itself, does not grant the owner an unbridled authority to wrest possession from the lawful occupant. Rather, to recover possession, the owner must avail of the proper judicial remedy and satisfy all the conditions necessary for the chosen action to prosper. These remedies can be an *accion reivindicatoria, action publiciana*, or *accion interdictal*.

2. **ID.; ID.; ID.; REMEDIAL LAW; ACTIONS; *ACCION REIVINDICATORIA*.—** [A]n *accion reivindicatoria* is a suit to recover possession of a parcel of land as an element of ownership. It is filed before the proper Regional Trial Court. The judgment in said case determines the ownership of the property and awards possession to the lawful owner.

3. **ID.; ID.; ID.; ID.; ID.; *ACCION PUBLICIANA*; THIS ACTION IS PROPER WHEN THE DISPOSSESSION HAS LASTED FOR MORE THAN ONE YEAR.—** [A]n *accion publiciana* is a plenary action to recover the right of possession, and is brought before the proper RTC when the dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession independent of title.

4. **ID.; ID.; ID.; ID.; ID.; *ACCION INTERDICTAL*; THIS IS A SUMMARY ACTION THAT DETERMINES THE RIGHT TO PHYSICAL POSSESSION, INDEPENDENT OF OWNERSHIP.—** [A]n *accion interdictal* is a summary action that determines the right to physical possession, independent of ownership. It is cognizable by the proper Municipal or Metropolitan Trial Court.

5. **ID.; ID.; ID.; ID.; ID.; ID.; FORCIBLE ENTRY AND UNLAWFUL DETAINER, DISTINGUISHED.—** An *accion interdictal* comprises two distinct causes of action - forcible entry and unlawful detainer. They are distinguished mainly by the nature of the deforciant's entry into the property. Specifically, in forcible entry, possession is illegal at the outset, as entry was effected through force, intimidation, strategy, threats, or stealth. On the other hand, in unlawful detainer, possession is initially lawful as it stems from an express or implied contract, but subsequently becomes illegal when the deforciant withholds possession after the expiration or termination of his/her right. Both actions for forcible entry and unlawful detainer must be brought within one year from the date of actual entry on the land, or from the date of last demand, as the case may be.

6. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JURISDICTIONAL FACTS; THE FACT OF PERMISSION OR TOLERANCE IS A KEY JURISDICTIONAL ELEMENT IN ALL ACTIONS FOR UNLAWFUL DETAINER.—** In all actions for unlawful detainer, the fact of permission or tolerance serves as a key jurisdictional element. Thus, for the action to prosper, the claimant must allege and prove that: (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

7. **ID.; ID.; ID.; ID.; TOLERANCE CONNOTES PERMISSION TO POSSESS THE SUBJECT PROPERTY; SILENCE OR INACTION IS NEGLIGENCE, NOT TOLERANCE.—** [I]n

the 1968 landmark case of *Sarona, et al. v. Villegas, et al.*, "tolerance" was defined . . . . Over the years, the tenets laid down in *Sarona* have been consistently affirmed in subsequent rulings. As echoed in *Dr. Carbonilla v. Abiera, et al.* and *Javelosa* [v. Tapus], "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance." In *Javelosa*, the Court emphasized that tolerance cannot be confused with indifference or neglect to file an action in court. This doctrine was further reinforced in *Lozano v. Fernandez*, where the Court characterized "tolerance [as] more than mere passivity," and clarified that "inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case."

8. **ID.; ID.; ID.; ID.; TOLERANCE MUST BE PRESENT AT THE OUTSET OF THE POSSESSION.—** *Sarona* further impressed the rule that tolerance must be present at the outset of the possession . . . . [T]olerance must precede the deforciant's entry into the property. Notably, in *Jose v. Alfuerto, et al., Dr. Carbonilla*, and *Zacarias v. Anacay*, the Court required that tolerance or permission must be present at the outset. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer should be dismissed for being an improper remedy. Corollary thereto, in [Quijano v.] *Amante*, the Court laid the burden on the plaintiff to prove that the occupant's possession was initially lawful and further, to establish the basis of such lawful possession.

9. **ID.; ID.; ID.; ID.; CONSENT TO THE POSSESSION OF THE SUBJECT PROPERTY THROUGH OVERT ACTS MUST BE PROVEN BYA PREPONDERANCE OF EVIDENCE.—** [I]n an action for unlawful detainer, the complainant must prove through a preponderance of evidence that he/she consented to the possession of the property through positive acts. There should be supporting evidence on record that would show how and when the respondents entered the property, and who granted them permission to enter. As cautioned in *Padre v. Malabanan*, and *De Guzman-Fuerte v. Estomo,* a bare claim of tolerance will not suffice. Consequently, an action for unlawful detainer must be dismissed if the complainant fails to advert to a clear and overt act proving his/her tolerance prior to the questioned occupancy.

10. ID.; ID.; ID.; ID.; EVIDENCE; BURDEN OF PROOF; THE PLAINTIFFS IN AN ACTION FOR UNLAWFUL DETAINER MUST ESTABLISH THEIR CASE BY A PREPONDERANCE OF EVIDENCE.— [A]s the plaintiffs in the action for unlawful detainer, the respondents bore the brunt of proving all the essential requisites for their case to prosper. In doing so, they are reminded of the age-old rule that allegations are not proof. Rather, they must establish their case by a preponderance of evidence, "*i.e.* by evidence that is of greater weight, or more convincing, than that which is offered in opposition to it," which they failed to do.

APPEARANCES OF COUNSEL

Remigio C. Dayandayan for petitioners.
Cordeño Law Office for respondents.

D E C I S I O N

GAERLAN, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Teresita Dayandayan (Dayandayan), Yolly D. Laguna (Laguna), Clara Talle (Talle), Mr. and Mrs. Rodrigo Rios (Spouses Rios) and Mr. and Mrs. Reden Bignay (Spouses Bignay), praying for the reversal of the September 30, 2015 Decision[2] and the July 22, 2016 Resolution[3] of the Court of Appeals (CA) Cebu City in CA-G.R. SP No. 06815.

The Antecedents

Spouses Eduardo P. Rojas and Enriquita A. Rojas (respondents) are the lawful owners of Lot No. 635 located at Marvel Isabel,

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[1] *Rollo*, pp. 4-19.

[2] *Id.* at 87-93; penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Renato C. Francisco, concurring.

[3] *Id.* at 94-95.

Leyte, containing an area of about 435 square meters (subject property). They purchased the subject property from Generoso and Julieta Pinar (Pinar), as evidenced by a Deed of Sale[4] executed on March 9, 1997.

Allegedly, petitioners Talle and Dayandayan asked permission from respondents to construct their houses on a portion of the subject property, with the promise that they would vacate upon the respondents' demand. Out of compassion, the respondents allowed the petitioners to stay without charging any rental fees. Later, Talle's and Dayandayan's relatives, Laguna, spouses Rios, and spouses Bignay likewise stayed in the subject property.[5]

Sometime in January 2009, respondents asked the petitioners to vacate the subject property. Petitioners refused to comply.[6]

On February 8, 2009, respondents reiterated their demand for the petitioners to vacate.[7] Still, the demand remained unheeded.[8]

On April 17, 2009, the respondents filed a Complaint for Unlawful Detainer[9] against the petitioners before the Municipal Circuit Trial Court of Merida Isabel Circuit, Isabel, Leyte (MCTC).

In their Answer with Counterclaim,[10] the petitioners claimed that their houses stand on government property and are situated outside of the respondents' lot. They pointed out that Pinar's lot, which respondents acquired, only had an area of 306 square meters per Tax Declaration No. 17-0001-00593-R13.[11] They

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[4] *Id.* at 33.

[5] *Id.* at 30; 138-139.

[6] *Id.* at 30.

[7] *Id.* at 36-37.

[8] *Id.* at 31.

[9] *Id.* at 29-32.

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

[11] *Id.* at 40.

related that in 1983, Talle and her husband built a house on a foreshore area, which later became the back of the dry and wet public market of Poblacion, Isabel, Leyte. Meanwhile, in 1984, Dayandayan and her late husband built a house along the side of the pier at Poblacion.[12]

Sometime in 1990, the municipal government of Isabel, Leyte reclaimed the foreshore area where the house of Dayandayan stood. The municipal mayor caused her house to be relocated to a portion of the reclaimed area and her structure was placed near the house of Talle at the back of the public market.[13]

Ruling of the MCTC

On October 1, 2010, the MCTC rendered a Decision[14] granting the complaint for unlawful detainer.

The MCTC ruled that the respondents as the owners of the subject property are entitled to its physical possession. The MCTC noted that the respondents purchased the subject property on March 9, 1997 and have been religiously paying the property taxes and other fees relative thereto.[15]

The dispositive portion of the MCTC ruling reads:

WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of Plaintiffs-Spouses [respondents] Eduardo and Enriquita Rojas. Thereby, Defendants Teresita Dayandayan, Yolly D. Laguna, Clara "Caring" Talle, Spouses Rodrigo and Virginia Rios and Spouses Reden and Melody Bignay are hereby ordered, to wit:

1. To vacate the premises (Lot No. 635) occupied by them and to turn-over the possession thereof to plaintiffs;
2. To pay the plaintiffs, the sum of Twenty Thousand (Php 20,000.00) Pesos as Attorney's fees and

[12] *Id.* at 39.

[13] *Id.*

[14] *Id.* at 70-77; penned by Presiding Judge Leda L. Nicol.

[15] *Id.* at 75-76.

3. To reimburse the plaintiffs the litigation expenses amounting to Five Thousand (Php 5,000.00) Pesos.

SO ORDERED.[16]

Aggrieved, the petitioners filed an appeal with the RTC.

Ruling of the RTC

In a Decision[17] dated May 13, 2011, the RTC reversed the MCTC's ruling. The RTC dismissed the complaint for unlawful detainer due to lack of jurisdiction. It noted that the respondents anchored their case for unlawful detainer on their alleged tolerance of the petitioners' stay in their lot.[18] However, the respondents failed to prove the fact of tolerance. On the contrary, the records showed that the petitioners have been residing in the subject property long before the respondents purchased the same on March 9, 1997.[19] Thus, it was improbable for the petitioners to ask permission from the respondents to construct their houses sometime in 1997.[20] As such, the RTC opined that the respondents should avail of a different remedy to obtain possession of the subject property.[21]

The dispositive portion of the RTC ruling reads:

WHEREFORE, the instant appeal is GRANTED. The instant case is ordered DISMISSED for lack of jurisdiction and the assailed Decision of the MCTC Isabel-Merida dated October 1, 2010 is hereby SET ASIDE and VACATED ordering the plaintiffs-appellees [respondents] to respect the physical possession of the defendants-appellants [petitioners] over the affected portions of Lot No. 635 without prejudice to their right to avail of other remedies provided

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[16] *Id.* at 77.

[17] *Id.* at 78-83; penned by Presiding Judge Clinton C. Nuevo.

[18] *Id.* at 82.

[19] *Id.*

[20] *Id.*

[21] *Id.*

by law to recover possession of the subject property. No pronouncement as to costs.

SO ORDERED.[22]

Respondents filed a Motion for Reconsideration.

In an Order[23] dated March 26, 2012, the RTC denied the Motion for Reconsideration for lack of merit. However, the RTC clarified that the case for unlawful detainer was dismissed not due to lack of jurisdiction but rather due to lack of evidence, mainly of the alleged tolerance granted by the respondents unto the petitioners.

The decretal portion of the Order states:

WHEREFORE, premises considered, the Decision of 13 May 2011 being assailed by herein plaintiffs-appellees (on motion for reconsideration) is partially modified in that the dismissal of the instant case (on appeal to this Court) is not for lack of jurisdiction but for lack of evidence. Consequently, except for said modification the rest of the dispositive portion in the said Decision of May 13, 2011 is maintained. The instant motion for reconsideration is therefore DENIED for lack of merit.

SO ORDERED.[24]

Dissatisfied with the ruling, the respondents filed a Petition for Review under Rule 42 of the Rules of Court with the CA.

Ruling of the CA

On September 30, 2015, the CA rendered the assailed Decision[25] reversing the RTC's pronouncement. The CA noted that the respondents sufficiently alleged in their complaint all the necessary allegations that make a case for unlawful detainer based on tolerance. The respondents stated in their Joint Affidavit

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[22] *Id.* at 83.

[23] *Id.* at 84-86.

[24] *Id.* at 86.

[25] *Id.* at 87-93.

the overt acts which prove how the petitioners obtained permission from them to occupy the subject property.[26]

Moreover, the CA rejected the petitioners' claim that their houses were built on the reclaimed area, and not on the subject property. The CA held that the Commissioner's Report and Tax Declaration, among others, confirmed that the subject property has been classified as a residential land since 1979. As such, it cannot form part of the reclaimed area.[27]

Furthermore, the CA opined that even assuming that Lot No. 635 forms part of the reclaimed area, the petitioners failed to prove that their entry into the subject land preceded respondents' acquisition thereof. The declaration of the RTC that the petitioners entered the property sometime in 1990 was merely based on the latter's affidavits.[28] Overall, the CA held that the preponderance of evidence tilts in favor of the respondents.[29]

The dispositive portion of the CA ruling reads:

> WHEREFORE, the petition is hereby GRANTED. The Decision dated May 13, 2011 and Order dated March 26, 2012 of the Regional Trial Court, Branch 12, Ormoc City in Civil Case No. R-Orm-10-100121-AP are hereby SET ASIDE. The Decision dated October 1, 2010 of the Municipal Circuit Trial Court, Merida-Isabel Circuit is REINSTATED.
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> SO ORDERED.[30]

Undeterred, the petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

The Issue

The crux of the instant petition is who between the petitioners and the respondents are entitled to the possession of the subject property.

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[26] *Id.* at 90.

[27] *Id.* at 90-91.

[28] *Id.* at 91-92.

[29] *Id.* at 92.

[30] *Id.*

The petitioners claim that the respondents failed to prove the fact of tolerance.[31] They maintain that they did not have any contract, express or implied, with the respondents or with the latter's predecessors-in-interest.[32] They argue that it was impossible for the respondents to have given permission or tolerated their stay, considering that they (petitioners) had been residing in the subject property long before the respondents purchased the same in 1997.[33] Respondents' claim of tolerance was merely based on an Affidavit which was self-serving.[34] Likewise, the respondents failed to present a Joint Affidavit from the Pinar spouses stating that they had tolerated petitioners' stay on the subject property.[35]

Alternatively, the petitioners urge that should the Court find that the respondents have a cause of action, then the proper party would be the Municipality of Isabel, Leyte,[36] as it was the latter who ordered the petitioners' relocation to the subject lot.[37]

On the other hand, the respondents point out that the issue of tolerance was not raised during the proceedings before the MCTC but was belatedly raised on appeal.[38] They claim that to rule on such matter would violate their right to due process.[39] Nonetheless, the respondents assert that they sufficiently proved the fact of tolerance.

Moreover, the respondents insist that the area where the petitioners' shanties were built belong to them, and not to the

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[31] *Id.* at 15.

[32] *Id.* at 15-16.

[33] *Id.* at 13-14.

[34] *Id.* at 14.

[35] *Id.*

[36] *Id.* at 17.

[37] *Id.*

[38] *Id.* at 143.

[39] *Id.* at 144.

municipality of Isabel, Leyte.[40] The Commissioner's Report stated that the structures were located in the subject property.[41] Likewise, the Tax Declaration described the subject lot as residential even prior to the reclamation project allegedly undertaken in 1990.[42] They maintain that as the owners of the subject property, they are entitled to its possession.[43]

Lastly, the respondents aver that the petitioners failed to prove their claim that their houses have been existing on the subject property prior to the respondents' acquisition thereof.[44]

Ruling of the Court

The petition is impressed with merit.

The Owner of Real Property May Not Wrest Possession From the Lawful Occupant

Essentially, the owner of real property has the right to enjoy and dispose of a thing, and to file an action against the holder and possessor of the same in order to recover it.[45] This stems from the fact that the right to possession is an attribute of ownership. However, ownership by itself, does not grant the owner an unbridled authority to wrest possession from the lawful occupant.[46] Rather, to recover possession, the owner must avail of the proper judicial remedy and satisfy all the conditions necessary for the chosen action to prosper.[47] These remedies

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[40] *Id.* at 149-150.

[41] *Id.* at 149.

[42] *Id.*

[43] *Id.* at 150.

[44] *Id.* at 149.

[45] CIVIL CODE, Art. 428.

[46] *Eversley Childs Sanitarium v. Barbarona*, G.R. No. 195814, April 4, 2018, 860 SCRA 283, 305. (Citation omitted)

[47] *Id.*

can be an *accion reivindicatoria, accion publiciana*, or *accion interdictal*.

Particularly, an *accion reivindicatoria* is a suit to recover possession of a parcel of land as an element of ownership.[48] It is filed before the proper Regional Trial Court. The judgment in said case determines the ownership of the property and awards possession to the lawful owner.[49]

Meanwhile, an *accion publiciana* is a plenary action to recover the right of possession, and is brought before the proper RTC when the dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession independent of title.[50]

Finally, an *accion interdictal* is a summary action that determines the right to physical possession, independent of ownership. It is cognizable by the proper Municipal or Metropolitan Trial Court. An *accion interdictal* comprises two distinct causes of action — forcible entry and unlawful detainer. They are distinguished mainly by the nature of the deforciant's entry into the property. Specifically, in forcible entry, possession is illegal at the outset, as entry was effected through force, intimidation, strategy, threats, or stealth. On the other hand, in unlawful detainer, possession is initially lawful as it stems from an express or implied contract, but subsequently becomes illegal when the deforciant withholds possession after the expiration or termination of his/her right. Both actions for forcible entry and unlawful detainer must be brought within one year from the date of actual entry on the land, or from the date of last demand, as the case may be.[51]

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[48] *Heirs of Alfonso Yusingco v. Busilak*, G.R. No. 210504, January 24, 2018, 852 SCRA 631, 640. (Citation omitted)

[49] *Id.*

[50] *Suarez v. Sps. Emboy, Jr.*, 729 Phil. 315, 329-330 (2014), citing *Spouses Valdez, Jr. v. CA*, 523 Phil. 39 (2006).

[51] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018, 870 SCRA 496, 509-510, citing *Suarez v. Sps. Emboy, Jr.*, *supra* note 50.

On various occasions, the Court stressed that the owner of real property may not conveniently usurp possession from the lawful possessor through the simple expedient of filing an *accion interdictal*. This was the Court's warning in *Quijano v. Amante*,[52] *Muñoz v. CA*,[53] *and Javelosa v. Tapus*.[54]

In *Muñoz*, the Court refused to grant the owner possession notwithstanding the latter's presentation of a Torrens title. Rather, the Court ruled that to obtain possession, the owner must ventilate his claim by filing the proper action before the RTC:

If the private respondent is indeed the owner of the premises and that possession thereof was deprived from him for more than twelve years, he should present his claim before the Regional Trial Court in an *accion publiciana* or an *accion reinvindicatoria* and not before the Municipal Trial Court in a summary proceeding of unlawful detainer or forcible entry. For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment.

Although admittedly petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property *until he is lawfully ejected by a person having a better right by accion publiciana* or *accion reivindicatoria*.[55] (Citations omitted and emphasis supplied)

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[52] 745 Phil. 40 (2014).

[53] 214 Phil. 216 (1992).

[54] *Javelosa v. Tapus*, *supra*.

[55] *Supra* at 225, 227.

In the same vein, in *Javelosa*, the Court favored the possessors who have been residing in the property for 70 years over the owner who failed to prove the fact of tolerance in the unlawful detainer case. The Court cautioned that an owner cannot conveniently usurp possession of the property without availing of the proper remedy to regain possession:

> As a final note, an important caveat must be laid down. The Court's ruling should not in any way be misconstrued as coddling the occupant of the property, at the expense of the lawful owner. Rather, what this resolution seeks to impress is that even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent which, the owner would be in a better position by pursuing other more appropriate legal remedies.[56]

In the case at bar, the respondents filed an action for unlawful detainer to recover possession of the subject property. In making this choice, they bore the correlative burden to sufficiently allege and prove by a preponderance of evidence all the jurisdictional facts for such action to prosper.

In An Action for Unlawful Detainer, Tolerance or Permission Must Be Present From the Beginning of the Possession and Must Be Proven Clearly and Distinctly

In all actions for unlawful detainer, the fact of permission or tolerance serves as a key jurisdictional element. Thus, for the action to prosper, the claimant must allege and prove that:

(i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

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[56] *Javelosa v. Tapus*, *supra* note 51 at 514-515.

(ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[57]

A perusal of the Complaint filed by the respondents before the MCTC reveals that their action for unlawful detainer was premised on their tolerance of the petitioners' stay therein. As alleged in the Complaint:

x x x x x x x x x

4. That the plaintiffs are the lawful owner[s] and possessor[s] of the [subject property], having acquired the same through purchase by virtue of a *cuerpo cierto* sale from its owners Julieta Pinar and Generoso Pinar as evidenced by [a] *Deed of Sale* executed on March 9, 1997, and *Affidavit of Non-Improvement* executed on April 7, 1997 x x x;

5. That defendants Teresita Dayandayan and Clara Talle asked plaintiffs they be allowed to occupy a portion of the aforesaid parcel of land and construct their house on condition that they would vacate upon demand by plaintiffs;

6. That out of compassion, plaintiffs tolerated the aforesaid defendants to occupy on that condition, without paying any rental;

7. That in the process, said defendants Teresita Dayandayan and Clara Talle, let their respective children stay with them; thus defendants Yolly D. Laguna, daughter of Teresita Dayandayan, and Mr. & Mrs. Rodrigo Rios and Mr. & Mrs. Reden Bignay, children of Clara Talle, are occupying the house that their parents built on the portion of plaintiffs' property;

8. That on January 2009, plaintiffs verbally demanded from all defendants to vacate the premises as plaintiffs would now use their lot. However, defendants refused to vacate;

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[57] *Suarez v. Sps. Emboy, Jr.*, *supra* note 50 at 330.

x x x x x x x x x

10. That to give them another chance, on February 8, 2009, plaintiffs demanded from defendants to vacate the premises, but despite receipt of the demand letter, they refused and still refuse such valid and legal demand. x x x[58] (Emphasis supplied)

Significantly, in the 1968 landmark case of *Sarona, et al. v. Villegas, et al.*,[59] "tolerance" was defined, thus:

Professor Arturo M. Tolentino states that acts merely tolerated are "those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy." He adds that: "[t]hey are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well." And, Tolentino continues, even though "this is *continued* for a long time, no right will be acquired by prescription." Further expounding on the concept, Tolentino writes: **There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence* on the part of the possessor *can be considered mere tolerance*. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission**.[60] (Citations omitted and emphasis supplied)

In the same vein, *Sarona*[61] further impressed the rule that tolerance must be present at the outset of the possession:

A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer

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[58] *Rollo*, pp. 30-31.

[59] G.R. No. L-22984, March 27, 1968, 131 SCRA 363.

[60] *Id.* at 372-373.

[61] *Id.*

— not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: *First.* Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action *in the inferior court* is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time-bar to the suit is but in pursuance of the summary nature of the action.[62] (Citations omitted)

Over the years, the tenets laid down in *Sarona* have been consistently affirmed in subsequent rulings. As echoed in *Dr. Carbonilla v. Abiera, et al.*[63] and *Javelosa*, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance."[64] In *Javelosa*, the Court emphasized that tolerance cannot be confused with indifference or neglect to file an action in court. This doctrine was further reinforced in *Lozano v. Fernandez*,[65] where the Court characterized "tolerance [as] more than mere passivity,"[66] and clarified that "inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case."[67]

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[62] *Id.* at 373.

[63] 639 Phil. 473 (2010).

[64] *Id.* at 482.

[65] G.R. No. 212979, February 18, 2019.

[66] *Id.*

[67] *Id.*

Accordingly, in an action for unlawful detainer, the complainant must prove through a preponderance of evidence that he/she consented to the possession of the property through positive acts.[68] There should be supporting evidence on record that would show how and when the respondents entered the property, and who granted them permission to enter.[69] As cautioned in *Padre v. Malabanan*,[70] and *De Guzman-Fuerte v. Estomo,*[71] a bare claim of tolerance will not suffice.[72] Consequently, an action for unlawful detainer must be dismissed if the complainant fails to advert to a clear and overt act proving his/her tolerance prior to the questioned occupancy.[73]

Equally important, tolerance must precede the deforciant's entry into the property. Notably, in *Jose v. Alfuerto, et. al., Dr. Carbonilla*, and *Zacarias v. Anacay*,[74] the Court required that tolerance or permission must be present at the outset. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer should be dismissed for being an improper remedy.[75] Corollary thereto, in *Amante*, the Court laid the burden on the plaintiff to prove that the occupant's possession was initially lawful and further, to establish the basis of such lawful possession.[76]

Based on the foregoing tenets, it becomes all too apparent that an action for unlawful detainer fails in the absence of clear

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[68] *Id.*

[69] *De Guzman-Fuerte v. Estomo*, G.R. No. 223399, April 23, 2018, 862 SCRA 382, 399-400, citing *Ocampo v. Heirs of Bernardino Dionisio*, 744 Phil. 716, 724 (2014).

[70] 532 Phil. 714 (2006).

[71] *Supra*.

[72] *Id.* at 400.

[73] *Jose v. Alfuerto*, 699 Phil. 307, 318 (2012).

[74] 744 Phil. 201 (2014).

[75] *Jose v. Alfuerto, et al.*, *supra*.

[76] *Quijano v. Amante*, *supra* note 52 at 52.

proof of an overt act signifying permission or tolerance, coupled with evidence of how and when the occupation was effected.[77]

The Failure To Raise the Issue of Tolerance Shall Not Bar The Court From Ruling on the Matter

Strangely, the respondents bewail that the issue of tolerance was not raised before the MCTC but was belatedly asserted for the first time on appeal. According to the respondents, to consider such issue at this stage will violate the basic tenets of fair play and due process.

It must be noted at the outset that the Court rejected the same flawed argument in *Jose v. Alfuerto, et al.*:[78]

> The petitioner alleges that the respondents had never questioned before the MeTC the fact that their occupancy was by tolerance. x x x
>
> x x x x x x x x x
>
> Regardless of the defenses raised by the respondents, the petitioner was required to properly allege and prove when the respondents entered the property and that it was the petitioner or his predecessors, not any other persons, who granted the respondents permission to enter and occupy the property. Furthermore, it was not the respondents' defense that proved fatal to the case but the petitioner's contradictory statements in his amended complaint which he even reiterated in his other pleadings.
>
> Although the respondents did not use the word "tolerance" before the MeTC, they have always questioned the existence of the petitioner's tolerance. In their Answer to Amended Complaint, the respondents negated the possibility of their possession of the property under the petitioner and his lessor's tolerance when the respondents alleged to have occupied the premises even before the lessor acquired the property in 1991. They said as much in their Position Paper[.][79]

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[77] *Javelosa v. Tapus*, *supra* note 51 at 513, citing *Dr. Carbonilla v. Abiera, et al.*, *supra* note 63 at 482.

[78] *Jose v. Alfuerto, et al.*, *supra* note 73.

[79] *Id.* at 322-323.

Moreover, it is bizarre that the respondents backpedaled, suddenly alleging that the issue regarding tolerance "is a new issue, [which the] petitioners raised for the first time on appeal."[80] A simple perusal of the respondents' Complaint before the MCTC reveals that they introduced and alleged the fact of tolerance. They categorically and clearly stated "[t]hat out of compassion, [they] **tolerated** the aforesaid defendants [petitioners] to occupy on that condition, without paying any rental."[81] In view of their very own assertion, the MCTC included the matter of tolerance as among the disputed issues in the case.[82] Obviously, it was the respondents who first broached the subject of tolerance. They cannot dodge an issue which they themselves introduced.

At any rate, tolerance is a key jurisdictional fact in an action for unlawful detainer, such that the case may not be resolved without passing upon the fact of tolerance or permission.

Respondents Failed to Prove An Overt Act Signifying their Tolerance of Petitioners' Stay in the Subject Property

The respondents' action for unlawful detainer hinges on their alleged "tolerance" of the petitioners' stay in the subject property. Unfortunately however, they failed to adduce evidence to establish their claim.

To begin with, the respondents' tale of tolerance was merely based on vague, self-serving statements. They failed to prove how and when the petitioners entered the subject lot, as well as how and when the permission to occupy was purportedly given. They were unable to point to a specific overt act showing their purported acquiescence. In fact, they were conspicuously silent about the details, save for their vague assertion that the petitioners approached them for permission to construct a house,

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[80] *Rollo*, p. 143.

[81] *Id.* at 30.

[82] *Id.* at 73.

and that they "tolerated" the latter's stay.[83] Certainly, the failure to provide specific details engenders doubt on the respondents' purported claim of tolerance.

Ironically, no less than the respondents' own documents cast doubt on their purported claim of permission or tolerance. The Deed of Sale confirms that the respondents acquired the subject property on March 9, 1997, years after the petitioners had begun to reside in the area. Likewise, the Commissioner's Report noting that the houses of the petitioners are within the subject area, and the Tax Declarations classifying the property as residential, do not shed light on the circumstances of the petitioners' entry into the subject property. Relatedly, in *Sabellina v. Buray, et al.*,[84] which likewise involved an action for unlawful detainer, the Court rejected the plaintiffs' tax declarations which had no bearing whatsoever in showing how the defendants entered the property.[85]

In contrast, the petitioners' evidence affirms that they have been residing in the subject property prior to the respondents' purchase of the same. The Affidavits of petitioners Talle[86] and Dayandayan[87] indicate that they have been residing in the area since 1983 and 1984, respectively. Although they asserted that the lot was a reclaimed area, this still places them in the property prior to the respondents' acquisition thereof.

In addition, the Affidavits of disinterested persons confirm the petitioners' presence in the area prior to March 9, 1997. Salvador Sipaco[88] related that in 1990, the municipal government of Leyte undertook a reclamation project, wherein Dayandayan and Talle were called to participate in the meeting. Likewise, Rogelio Nuñez[89] confirms that the petitioners have been residing

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[83] *Id.* at 30.

[84] 768 Phil. 224 (2015).

[85] *Id.* at 237.

[86] *Rollo*, p. 64.

[87] *Id.* at 62-63.

[88] *Id.* at 65.

[89] *Id.* at 66.

in the area prior to the respondents' acquisition. This fact was further bolstered by the Certification of the Municipal Treasurer[90] which likewise places Dayandayan and Talle in the subject premises in as early as 1990.

It bears noting that the petitioners were able to establish prior possession independent of any express or implied contract with the respondents or their predecessors-in-interest. The fact that the petitioners have been staying in the subject property prior to the respondents' acquisition is essential in the resolution of the instant case. For one, this destroys the respondents' claim that the petitioners approached them for permission to construct a house. It is indeed strange asking that the petitioners would approach the respondents and ask permission to build a house, when the former have already been residing therein years prior to the latter's entry. Worse, the absence of specific details regarding how and when permission was initially granted is especially troubling considering that the petitioners have been occupying the subject property for more than 20 years.

The issue regarding the nature of the subject lot — whether it is a reclaimed area or part of Lot 635, is immaterial in resolving the matter of possession. For all intents and purposes, the evidence proves that the petitioners were in the subject area prior to the respondents' acquisition thereof. In effect, this negates respondents' contentions that the petitioners asked permission to build a house; that they (respondents) "tolerated" petitioners' stay; and that an express or implied contract to occupy the premises existed between the parties. This disavowal is important considering that said allegations served as the backbone of the respondents' action for unlawful detainer.

It cannot be gainsaid that as the plaintiffs in the action for unlawful detainer, the respondents bore the brunt of proving all the essential requisites for their case to prosper. In doing so, they are reminded of the age-old rule that allegations are not proof. Rather, they must establish their case by a preponderance of evidence, "*i.e.* by evidence that is of greater weight, or more

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[90] *Id.* at 68.

convincing, than that which is offered in opposition to it,"[91] which they failed to do.

Similar to the case at bar, in *Sabellina*, the Court rejected the complainant's general and self-serving averments of tolerance:

> This evidentiary situation only leaves us with the petitioner's affidavit. The affidavit only makes the sweeping statement that the respondents entered the subject lot with her consent and occupied it by mere tolerance.
>
> The petitioner failed to present convincing proof of her allegation of tolerance. There is no competent evidence to support her claim other than her own self-serving affidavit repeating her allegations in the complaint. **Allegations are not evidence and without evidence, bare allegations do not prove facts**.[92] (Citations omitted and emphasis supplied)

All told, the action for unlawful detainer must be dismissed due to the respondents' failure to establish the necessary averments for their action to prosper. However, the respondents are not left without a remedy in law. They may avail of other more appropriate legal remedies to obtain possession of the subject property before the proper court.

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The September 30, 2015 Decision and the July 22, 2016 Resolution of the Court of Appeals Cebu City in CA-G.R. SP No. 06815 are **REVERSED and SET ASIDE**. The Order dated March 26, 2012 of the Regional Trial Court is **REINSTATED**.

SO ORDERED.

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

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[91] *Zosima Incorporated v. Salimbagat*, 694 Phil. 636 (2012), citing RULES OF COURT, Rule 133, Section 1; *The New Testament Church of God v. CA*, 316 Phil. 330, 333 (1995); and *Republic v. Court of Appeals*, G.R. No. 84966, November 21, 1991, 204 SCRA 160, 168.

[92] *Supra* note 84 at 237-238.

FIRST DIVISION

[G.R. No. 228320. July 15, 2020]

AMERICAN EXPRESS TRANSNATIONAL (now AMERICAN INTERNATIONAL TOURS, INC.) and CARLO SEVERINO, *petitioners, vs.* **MENANDRO T. BORRE,** *respondent.*

[G.R. No. 228344. July 15, 2020]

MENANDRO T. BORRE, *petitioner, vs.* **AMERICAN EXPRESS TRANSNATIONAL (now AMERICAN INTERNATIONAL TOURS, INC.) and CARLO SEVERINO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE COURT IS NOT A TRIER OF FACTS AND WILL NOT REVIEW THE FACTUAL FINDINGS OF THE LOWER TRIBUNALS AS THESE ARE FINAL, BINDING, AND CONCLUSIVE ON THE PARTIES AND UPON THE COURT, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS, NOT PRESENT. —** [T]he determination of whether the January 30, 2013, February 8, 2013, February 11, 2013, and March 9, 2013 incidents actually transpired and the ascertainment of the details surrounding said incidents involve factual issues which would require the re-evaluation of the evidence submitted by both parties. Basic is the rule that factual issues are improper in Rule 45 petitions as only questions of law may be raised in a petition for review on *certiorari*. This Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence. While there are recognized exceptions, none of them avails in this case. Further, this rule holds especially true in this case where the Labor Arbiter, the NLRC, and the CA all had uniform factual findings. This Court is thus duty-bound to respect such consistent prior findings; it must be cautious not to substitute its own appreciation of facts to those of the trial tribunals which have

previously weighed the parties' claims and personally assessed the evidence. Verily, not only are these findings uniform, but they are also sustained by substantial evidence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL ON GROUND OF WILLFUL DISOBEDIENCE; REQUISITES TO BE VALID; ESTABLISHED. —** Jurisprudence dictates that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (a) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

3. **ID.; ID.; ID.; ID.; THE UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO PERFORM THE VERY DUTY FOR WHICH HE WAS HIRED CONSTITUTES INSUBORDINATION OR WILLFUL DISOBEDIENCE; AS BETWEEN THE SWORN STATEMENTS OF THE EMPLOYEE'S SUPERIORS AND THE BARE, GENERAL, AND SELF-SERVING DENIAL OF THE EMPLOYEE, THE FORMER SHOULD PREVAIL, ESPECIALLY WHERE THERE WAS NO ALLEGATION, MUCH LESS PROOF, THAT SAID SUPERIORS HAVE ANY ILL MOTIVE TO IMPUTE SUCH CHARGES AGAINST HIM TO CAUSE HIS DISMISSAL FROM EMPLOYMENT; DISMISSAL OF RESPONDENT, AFFIRMED. —** The fact of Borre's unjustified refusal to perform the very duty for which he was hired, constitutive of insubordination or willful disobedience, was sufficiency established by the detailed and categorical sworn statements of his supervisor, Mendoza, and AITI's Administrative Assistant, Mercado. Indeed, as between these sworn statements and Borre's bare, general, and self-serving denial, the former should prevail, especially considering that there was no allegation, much less proof, that said superiors have any ill motive to impute such charges against him to cause his dismissal from employment. Further, the twin requirements of procedural due process (notice and hearing) were undoubtedly satisfied in this case. We, therefore find no reversible error committed by the CA in affirming the Decision of the Labor

Arbiter as also affirmed by the NLRC, finding that Borre was validly dismissed.

4. **ID.; ID.; ID.; SEPARATION PAY; AN EMPLOYEE DISMISSED FOR ANY OF THE JUST CAUSES IS NOT ENTITLED TO SEPARATION PAY; SEPARATION PAY IS ONLY WARRANTED WHEN THE CAUSE OF TERMINATION IS NOT ATTRIBUTABLE TO THE EMPLOYEE'S FAULT, AND IN CASES OF ILLEGAL DISMISSAL WHERE REINSTATEMENT IS NO LONGER FEASIBLE; BY WAY OF EXCEPTION, THE COURT ALLOWS THE GRANT OF SEPARATION PAY BASED ON EQUITY AND AS A MEASURE OF SOCIAL JUSTICE, WHEN EXCEPTIONAL OR PECULIAR CIRCUMSTANCES ATTEND THE CASE. —** Generally, an employee dismissed for any of the just causes under Article 282 of the Labor Code, is not entitled to separation pay. The law is clear. Separation pay is only warranted: (1) when the cause of termination is not attributable to the employee's fault, such as those provided under Articles 283 and 284 of the Labor Code; and (2) in cases of illegal dismissal in which reinstatement is no longer feasible. *By way of exception*, however, the Court has allowed the grant of separation pay based on equity and as a measure of social justice. This exception is justified by the positive commands for the promotion of social justice and the protection of the rights of the workers replete in our Constitution. Indeed, the enhancement of their welfare is one of the primary concerns of our fundamental law. x x x. [I]t has long been settled that separation pay or financial assistance, or whatever other name it is called, shall not be granted to all employees when the cause of their dismissal is any of the grounds provided under Article 282 of the Labor Code. Relaxation of this rule, pursuant to the principle of social justice may be warranted *only when exceptional or peculiar circumstances* attend the case.

5. **ID.; ID.; ID.; ID.; AN EMPLOYEE DISMISSED FOR WILLFUL DISOBEDIENCE IS NOT ENTITLED TO A GRANT OF SEPARATION PAY; COMPASSION FOR THE POOR IS AN IMPERATIVE OF EVERY HUMANE SOCIETY BUT ONLY WHEN THE RECIPIENT IS NOT A RASCAL CLAIMING AN UNDESERVED PRIVILEGE, AS SOCIAL JUSTICE CANNOT BE PERMITTED TO BE A REFUGE OF SCOUNDRELS ANY MORE THAN CAN**

EQUITY BE AN IMPEDIMENT TO THE PUNISHMENT OF THE GUILTY. — The attendant circumstances in the instant case considered, we find that the grant of separation pay by the CA to Borre was unjustified. Foremost, the cause of the termination of his employment amounts to willful disobedience under Article 282(a) of the Labor Code. More importantly, his repeated refusal to perform the very job he was hired for manifests nothing but his utter disregard for his employment and his employer's interest. Lastly, x x x we find no exceptional or peculiar circumstance in this case that would warrant such generosity to award separation pay or financial assistance to a simply malfeasant employee. To rule otherwise, would simply be to distort the meaning of social justice. As we have explained in *PLDT*: The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty, but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character. In view thereof, not even his 8 years of service would justify entitlement to a separation pay as a measure of social justice. If his length of service alone is to be regarded as justification for moderating the penalty of dismissal, such gesture will simply become a reward for his willful disobedience.

APPEARANCES OF COUNSEL

Karla Grace Deles for AITI and Carlo Severino.

Public Attorney's Office for Menandro T. Borre.

D E C I S I O N

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

Before this Court are the consolidated cases of G.R. No. 228320 and G.R. No. 228344, both petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated November 3, 2015 and Resolution[3] dated November 15, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 137597.

In G.R. No. 228320, American Express Transnational, now Adventure International Tours, Inc. (AITI), and Carlo Severino question said CA assailed Decision insofar as it awarded separation pay to Menandro T. Borre (Borre), who was adjudged to be legally dismissed from employment on just cause.

In G.R. No. 228344, on the other hand, Borre questions the assailed CA Decision in affirming with modification, the National Labor Relations Commission (NLRC) Decision dated June 19, 2014 in dismissing his illegal dismissal complaint.

The Facts

AITI hired Borre as a probationary company driver on March 1, 2005 and was regularized on September 1, 2005. On September 13, 2011, he was occupying the position of a driver/ messenger.[4]

On March 8, 2013, AITI's Leisure Team, through its Sales and Marketing Assistant, Regine Margaret Yambao, requested for the services of a company driver for an official business somewhere in Libis, Quezon City for March 9, 2013. Borre was the driver scheduled to be on duty on said date and he, in

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[1] G.R. No. 228320, *rollo*, pp. 9-32; and G.R. No. 228344, *rollo*, pp. 22-37.

[2] Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Socorro B. Inting, concurring; G.R. No. 228344, *id.* at 41-61.

[3] *Id.* at 63-64.

[4] *Id.* at 43.

fact, confirmed his availability thereon to his immediate supervisor Efren Mendoza (Mendoza). However, when Mendoza called Borre on the phone to inform him of the Leisure Team's activity, Borre merely confirmed that he would be reporting for work but refused to drive. Borre allegedly uttered the words, "*teka, 'di ako magdrive, papasok ako pero 'di ako magdrive*." Mendoza then relayed to their superior, Marsel Bambico (Bambico), Borre's response. Bambico, in turn, responded that the company will be constrained to issue a memo for insubordination if Borre will not comply. When Mendoza apprised Borre of the management's response, Borre responded, "*[s]ige kasuhan nila ako basta 'di ako magdrive.*" This narration was attested to by Mendoza through a sworn statement dated March 13, 2013.[5]

In the recent weeks prior to the above-cited incident, Borre also unjustifiably failed to perform his duty as a driver/messenger as instructed.[6] Thus, on March 18, 2013, the management served Borre a Notice to Explain, the substantial portion of which reads:

> This notice to explain is being served in relation to the incidents reported that you refused to drive for our executives on the following dates — January 20, February 8, February 11 and 12 for the reason that you left your driver's license.
>
> On March 8, [Mendoza] called and informed you that you will be assisting the Leisure Team for their product update on Saturday, March 9, which you agreed to do. That same day at around 12:00 NN, [Mendoza] called you again and informed you that the Leisure Team was also requesting for a driver to drive them to Libis for the product update. You informed [Mendoza] that you will report for work but will not drive for the Leisure Team. This incident was escalated to Ms. [Bambico]. [Mendoza] was then advised by Ms. [Bambico] that this was not acceptable and if he refuses to drive for the Leisure Team that Saturday, an insubordination memo will be issued to him. This information was relayed to you by Efren, wherein you replied stating, "*[s]ige kasuhan na nila ako basta 'di ako magdrive.*"

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[5] *Id.* at 43-44.

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

Please submit your formal explanation on this case by using attached REPLY FORM. You are being given 5 days to reply to this notice. Failure on your part to submit this requirement within the period specified means that you are depriving yourself of the chan[c]e to be heard.[7]

In response, Borre submitted a handwritten explanation which reads:

Nais ko pong sabihin na [k]ailan ma'y hindi ko po iniiwan ang aking lisensya dahil ito po ay napakahalaga sa akin bilang driver. *Ito po ay isang napakalaking bagay para sa aking trabaho.*

Noong March 9, *[w]ala naman pong nag-inform sa akin na magdrive. Dahil kong meron po sana, ako po ay nakapagdrive noong araw na iyon.*[8]

On March 27, 2013, Borre received a Notice of Administrative Hearing set on April 5, 2013. In said Notice, Borre was also told that he was entitled to the assistance of a counsel.[9]

As scheduled, a hearing was conducted on April 5, 2013, in which Borre was in attendance.[10]

After the administrative hearing, AITI conducted further investigation to verify Borre's statements, especially with regard to his claim that there was never an instance when he failed to perform his duty as a driver on account of his failure to bring his driver's license.[11]

Further investigation, however, proved that, as per sworn statement of AITI's Administrative Assistant, Priscilla Mercado (Mercado), there were three other instances when Borre refused to drive because, according to him, he left his driver's license at home. The said sworn statement detailed the circumstances

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[7] *Id.* at 44-46.

[8] *Id.* at 46.

[9] *Id.*

[10] *Id.*

[11] *Id.*

surrounding Borre's refusal to drive on the pretext that he left his license at home on January 30, 2013, February 8, 2013, and February 11, 2013, which was personally witnessed by Mercado considering that among her duties was to coordinate the schedules of the company's executives when they have meetings outside which require the service of a driver.[12]

On May 15, 2013, Borre was dismissed from employment through a Notice of Termination, which reads:

Please be informed that management has diligently examined and considered all the documents and [t]he outcome of the proceedings related to your case and noted the following:

1. You deliberately refused to provide transportation assistance to the Leisure Team during i[t]s activity on 09 March 2013, at Libis Quezon City, despite of a *(sic)* prior instruction from you[r] superior and even uttered defiant statement, "*[s]ige kasuhan na nila ako basta di ako magdrive,*" during your telephone conversation with Mr. [Mendoza];

2. With regard to your statement during the Administrative Hearing that you were not told that a driver would be needed for the 09 March 2[0]13 activity of the Leisure team, said event pushed through, the team was compelled to utilize the services of another company's driver, Mr. William Ayade;

3. During the Administrative Hearing held on 05 April 2013 and in your written reply t[o] the Notice to Explain, you categorically stated that you would never leave your house without your license but, based on the sworn statement of Ms. Mercado, she categorically stated that, on several occasions (January 30, February 8, and 11), you refused to drive for the company executives because you left your driver's license; and

4. On 25 March 2013, Jack Mendoza called [Bambico] and informed her that you refused to go out and do messengerial work.

Given the findings cited above[,] Management has concluded that you have violated company policies specifically:

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

Insubordination or failure to comply with instructions related to one's duty (33.2, Class A Offense, Code of Discipline, Employees Handbook)

Negligence of duty/carelessness resulting in customer complaint (#2.17, Class B Offense, Code of Discipline, Employee's Handbook)

Consequently, it has been decided that your employment with the company has to be severed effective 15 June 2013. Management took into consideration your contribution to the company but unfortunately, it has been f[a]r outweighed by the seriousness of the violations you committed, your defiant behavior towards your superior and your predilection to commit dishonesty.

Please coordinate with your immediate superior and the Human Resources and Admin department for immediate turnover of you[r] duties and company[-]issued properties.

This is for your strict compliance."[13]

On May 20, 2013, Borre filed his complaint for illegal dismissal, reinstatement, damages, and attorney's fees.[14]

The Labor Arbiter Ruling

On March 20, 2014, the Labor Arbiter found Borre to be validly dismissed based on just cause. It was held that as between Borre's bare and general denial and the detailed and categorical statements of Mendoza and Mercado, the statements of the latter must prevail as it was found that these persons have no grudge against Borre or that they have ill motive against him to pin him down to cause the termination of his employment. It was also found that Borre was afforded due process in his dismissal from employment. The Labor Arbiter, disposed, thus:

WHEREFORE, a Decision is hereby rendered **DISMISSING**, the case for lack of merit.

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[13] *Id.* at 48-49.

[14] *Id.* at 49.

SO ORDERED.[15]

The NLRC Ruling

On appeal, the NLRC affirmed the Labor Arbiter's factual findings and ruling in its entirety in a June 19, 2014 Decision:

WHEREFORE, the appeal filed by complainant is hereby DENIED for lack of merit. The decision dated 20 March 2014 is AFFIRMED.

SO ORDERED.[16]

Borre's Motion for Reconsideration suffered the same fate in the NLRC's Resolution dated July 30, 2014, thus:

ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit.

No further Motions for Reconsideration shall be entertained.

SO ORDERED.[17]

Undaunted, Borre then sought refuge before the CA through a Petition for *Certiorari*[18] under Rule 65.

The CA Ruling

The CA affirmed the Labor Arbiter and the NLRC's finding that Borre was legally dismissed for gross insubordination or willful disobedience. As found by both the Labor Arbiter and the NLRC, the CA ruled that Borre's act of unjustifiably refusing to drive was an open and arrogant defiance to the management's lawful directive, constitutive of willful disobedience under Article 282(a) of the Labor Code. The CA also affirmed the Labor Arbiter and the NLRC's conclusion that procedural due process was observed in Borre's dismissal.

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[15] G.R. No. 228344, *rollo,* p. 43.

[16] *Id.* at 51.

[17] *Id.* at 54-55.

[18] G.R. No. 228344, *rollo*, pp. 65-76.

Despite finding of a just and valid cause to dismiss Borre, however, the CA opted to grant separation pay as a form of financial assistance to Borre. Citing the cases of *Toyota Motor Phils. Corp. v. Toyota Motor Phils. Corp. Workers Assoc. (TMPCWA)*[19] and *PLDT v. NLRC*,[20] the CA ruled that while Borre's act of insubordination or disobedience may be arrogant and mean, it was not serious or grave in nature nor did it reflect on his moral character. The CA also cited Borre's long years of service to justify such award. Thus, consistent with the constitutional mandate for the promotion of social justice and the protection of the laborer's rights, for the CA, Borre is entitled to a separation pay as a form of financial assistance, equivalent to one month pay for every year of service, a fraction of six months to be considered as one whole year.

The CA disposed:

WHEREFORE, in view of the foregoing premises, the NLRC Decision dated June 19, 2014 is hereby **AFFIRMED** with modification. Respondent [AITI] is ordered to **PAY** [Borre] separation pay as a form of financial assistance to be computed from the time complainant commenced employment until his termination from service.

IT IS SO ORDERED.[21]

Both parties filed separate motions for reconsideration. On one hand, AITI assailed the award of separation pay, arguing that Borre was found to be legally dismissed on a valid and just cause, hence, not entitled to such pay. On the other hand, Borre insisted that his dismissal was illegal. In its November 15, 2016 assailed Resolution, the CA denied both motions:

WHEREFORE, premises considered, the motions from both parties are hereby **DENIED** for lack of merit.

IT IS SO ORDERED.

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[19] G.R. Nos. 158798-99, October 19, 2007.

[20] G.R. No. 80609, August 23, 1988.

[21] G.R. No. 228320, *rollo*, p. 60.

Hence, the parties are now before this Court with AITI assailing the CA's award of separation pay to Borre on one hand, and Borre assailing the CA's affirmance of the finding of a valid and just cause for his dismissal on the other.

The Issues

I. Was Borre validly dismissed from employment?

II. Was the award of separation pay proper?

The Court's Ruling

I.

In arguing that he was illegally dismissed, Borre insists that AITI failed to prove that he committed the infractions imputed against him. For Borre, AITI presented no evidence to substantiate the alleged incidents of insubordination or willful disobedience.

Clearly, the determination of whether the January 30, 2013, February 8, 2013, February 11, 2013, and March 9, 2013 incidents actually transpired and the ascertainment of the details surrounding said incidents involve factual issues which would require the re-evaluation of the evidence submitted by both parties.

Basic is the rule that factual issues are improper in Rule 45 petitions as only questions of law may be raised in a petition for review on *certiorari*. This Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence.[22] While there are recognized exceptions,[23] none of them avails in this case.

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[22] *Remoticado v. Typical Construction Trading Corp.*, G.R. No. 206529, April 23, 2018.

[23] These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court

Further, this rule holds especially true in this case where the Labor Arbiter, the NLRC, and the CA all had uniform factual findings. This Court is thus duty-bound to respect such consistent prior findings; it must be cautious not to substitute its own appreciation of facts to those of the trial tribunals which have previously weighed the parties' claims and personally assessed the evidence.[24]

Verily, not only are these findings uniform, but they are also sustained by substantial evidence. Jurisprudence dictates that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (a) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[25]

The fact of Borre's unjustified refusal to perform the very duty for which he was hired, constitutive of insubordination or willful disobedience, was sufficiency established by the detailed and categorical sworn statements of his supervisor, Mendoza, and AITI's Administrative Assistant, Mercado. Indeed, as between these sworn statements and Borre's bare, general, and self-serving denial, the former should prevail, especially considering that there was no allegation, much less proof, that

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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 respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205-206).

[24] *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018.

[25] *Mamaril v. The Red System Company, Inc.*, G.R. No. 229920, July 4, 2018.

said superiors have any ill motive to impute such charges against him to cause his dismissal from employment.

Further, the twin requirements of procedural due process (notice and hearing) were undoubtedly satisfied in this case.

We, therefore find no reversible error committed by the CA in affirming the Decision of the Labor Arbiter as also affirmed by the NLRC, finding that Borre was validly dismissed.

II.

Generally, an employee dismissed for any of the just causes under Article 282 of the Labor Code,[26] is not entitled to separation pay. The law is clear. Separation pay is only warranted: (1) when the cause of termination is not attributable to the employee's fault, such as those provided under Articles 283 and 284 of the Labor Code; and (2) in cases of illegal dismissal in which reinstatement is no longer feasible. *By way of exception*, however, the Court has allowed the grant of separation pay based on equity and as a measure of social justice. This exception is justified by the positive commands for the promotion of social justice and the protection of the rights of the workers replete in our Constitution. Indeed, the enhancement of their welfare is one of the primary concerns of our fundamental law.

Decisions prior to the landmark case of *PLDT* had, however, been inconsistent in applying such exception, both with regard to the justifications considered and the amount or rate of such award. Thus, in *PLDT*, the grant of separation pay as financial assistance to employees who were terminated for just causes on grounds of equity and social justice was curbed and rationalized.[27] The Court explained that such separation pay/ financial assistance shall be allowed only in those instances where the employee was validly dismissed for causes other than serious misconduct or those whose offenses are iniquitous or reflective of some depravity in their moral character. The Court recognized the harsh realities faced by employees that forced

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[26] Now Article 297 of the Labor Code.

[27] See *Supra Multi-Services, Inc. v. Labitigan*, 792 Phil. 336 (2016).

them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. The Court also ruled that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character.

In the case of *Toyota*, the Court observed that it was clearly ruled that when the employee was terminated due to (1) serious misconduct (which is the first ground for dismissal under Article 282 of the Labor Code); or (2) acts that reflect on the moral character of the employee, the NLRC or the courts should not grant separation pay based on equity and social justice. It was, however, unclear whether the ruling likewise precludes the grant of separation pay when the employee was validly terminated from work on grounds laid down in Article 282 of the Labor Code other than serious misconduct. The Court, thus, examined the past cases wherein the grant or denial of such separation pay was at issue, and concluded that when the termination is legally justified on any of the grounds under Article 282 of the Labor Code, separation pay was not allowed "because the causes for dismissal recognized under said provision were all serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees.

This ruling was adopted and further expounded in the case of *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:[28]

> To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family grounds under Article 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the

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[28] 580 Phil. 177 (2008).

employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

Summarily, therefore, it has long been settled that separation pay or financial assistance, or whatever other name it is called,[29] shall not be granted to all employees when the cause of their dismissal is any of the grounds provided under Article 282 of the Labor Code. Relaxation of this rule, pursuant to the principle of social justice may be warranted *only when exceptional or peculiar circumstances* attend the case.

In the recent case of *Digital Telecommunications Phils., Inc. v. Ayapana*,[30] the Court awarded separation pay as a measure of social justice despite finding that the employee was validly dismissed due to willful breach of trust. The Court, while mindful of the prevailing rule established in *Toyota*, considered the dismissed employee's receipt of several commendations, awards, and promotional increases throughout his service with his employer. More importantly, the grant of such separation pay was justified by the fact that while it was clear that the employee's act constitutes a willful breach of trust and confidence, it was found that the latter was primarily actuated by zealousness to perform his job rather than any intent to misappropriate funds, a circumstance which is clearly exceptional to a case of employment termination.

Likewise, in *International School Manila v. International School Alliance of Educators*,[31] the Court also awarded separation pay to the dismissed teacher despite finding that the dismissal was valid on the ground of gross inefficiency. The Court ratiocinated that despite a finding of gross inefficiency, which constitutes a just cause for termination of employment under

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[29] *Id.*

[30] G.R. No. 195614, January 10, 2018.

[31] 726 Phil. 147 (2014).

Article 282(b) of the Labor Code,[32] it was also found that said dismissed teacher's inefficiency or her inadequacies as a teacher did not stem from a reckless disregard of the welfare of her students or of the other issues raised by the school regarding her teaching. The Court observed that "far from being tainted with bad faith, her failings appeared to have resulted from [mere] lack of necessary skills, in-depth knowledge, and expertise to teach Filipino language at the standards required of her by the School." It was noted that said teacher was first hired as a Spanish language teacher, but due to lack of available Spanish classes in subsequent years and also due to the retirement of a Filipino teacher, she was assigned to teach Filipino classes, which apparently was not her area of expertise. This peculiar circumstance, coupled with the fact that no other infraction or administrative case was imputed against her in her almost two decades of service in the School, justified the Court's award of separation pay as a measure of social justice.

In *Nissan Motors Phils., Inc. v. Angelo*,[33] despite a finding that the dismissal was legal due to causes under Article 282 of the Labor Code, the Court ruled that respondent was entitled to a separation pay as a measure of financial assistance considering the latter's length of service and his poor physical condition, which was one of the reasons why he filed leaves of absences for which he was found guilty of gross and habitual negligence.

The attendant circumstances in the instant case considered, we find that the grant of separation pay by the CA to Borre was unjustified. Foremost, the cause of the termination of his employment amounts to willful disobedience under Article 282(a) of the Labor Code. More importantly, his repeated refusal to perform the very job he was hired for manifests nothing but his utter disregard for his employment and his employer's interest. Lastly, unlike in the cases above-cited, we find no exceptional or peculiar circumstance in this case that would warrant such

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[32] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014).

[33] 637 Phil. 150 (2011).

generosity to award separation pay or financial assistance to a simply malfeasant employee. To rule otherwise, would simply be to distort the meaning of social justice. As we have explained in *PLDT*:

> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty, but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[34]

In view thereof, not even his 8 years of service would justify entitlement to a separation pay as a measure of social justice. If his length of service alone is to be regarded as justification for moderating the penalty of dismissal, such gesture will simply become a reward for his willful disobedience.[35]

WHEREFORE, the petition in G.R. No. 228320 is **GRANTED**. On the other hand, the petition in G.R. No. 228344 is **DENIED** for lack of merit. Accordingly, the Decision dated November 3, 2015 and Resolution dated November 15, 2016 of the Court of Appeals are hereby **AFFIRMED with MODIFICATION** that the award of separation pay in favor of Menandro T. Borre is **DELETED**.

SO ORDERED.

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

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[34] *Supra* note 20.

[35] See *Security Bank Savings Corporation v. Singson*, 780 Phil. 860 (2016); and *Nuez v. National Labor Relations Commission*, 309 Phil. 476 (1994).

FIRST DIVISION

[G.R. No. 228905. July 15, 2020]

BRIG. GENERAL MARCIAL A. COLLAO, JR., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army, *petitioner*, *vs.* **MOISES ALBANIA,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MODES OF EXECUTION OF JUDGMENT; EXECUTION BY MOTION IS AVAILABLE IF THE ENFORCEMENT OF THE JUDGMENT WAS SOUGHT WITHIN FIVE (5) YEARS FROM THE DATE OF ITS ENTRY, WHILE EXECUTION BY INDEPENDENT ACTION IS MANDATORY IF THE FIVE (5)-YEAR PRESCRIPTIVE PERIOD FOR EXECUTION BY MOTION HAD ALREADY ELAPSED; FOR EXECUTION BY INDEPENDENT ACTION TO PROSPER, THE SAME MUST BE FILED BEFORE IT IS BARRED BY THE STATUTE OF LIMITATIONS. —** [W]e reject petitioner's contention that it timely exercised its right relative to the March 4, 2002 MeTC Decision, well within the ten (10)-year prescriptive period to execute the same. Under Section 6, Rule 39 of the Rules of Court, a judgment creditor has two modes in enforcing the court's judgment. Execution may be either through motion or an independent action. These two modes of execution are available depending on the timing when the judgment-creditor invoked its right to enforce the court's judgment. On the one hand, execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry. On the other hand, execution by independent action is mandatory if the five (5)-year prescriptive period for execution by motion had already elapsed. However, for execution by independent action to prosper — the Rules impose another limitation — the action must be filed before it is barred by the statute of limitations which, under Article 1144 of the Civil Code, is ten (10) years from the finality of the judgment. Petitioner insists that there is no delay in its attempt to execute the MeTC Decision because it sent its military officer to the MeTC on February 22, 2012 to

inquire about the status of its case and to obtain a certificate of finality of the March 4, 2002 MeTC Decision for the purpose of implementing the same, within the ten (10)-year prescriptive period. The Court is not persuaded. To repeat, the law clearly provides that the action to execute a judgment must be *filed* before it is barred by the statute of limitations. It certainly does not mean that the judgment creditor has ten (10) full years to wait until it *sends* someone to the court to *inquire* about the status of the executory judgment.

2. **ID.; ID.; ID.; THE SERVICE OF JUDGMENT IS THE RECKONING POINT TO DETERMINE WHETHER A DECISION HAD BEEN APPEALED WITHIN THE REGLEMENTARY PERIOD OR HAS ALREADY BECOME FINAL; PETITIONER'S MOTION FOR RECONSIDERATION WAS FILED WITHIN THE REGLEMENTARY PERIOD. —** [T]he Court notes that it is rather doubtful of petitioner's claim that it was not aware of the appeal. In its petition before Us, petitioner insists that it had no knowledge of the fact that the MeTC Decision was appealed to the RTC. Yet, in its Reply before the CA, it stated that it was just waiting for the RTC to render its decision. As such, petitioner cannot claim to be "waiting for any decision from the RTC" and, at the same time, inconsistently assert to have no knowledge of Albania's appeal before the said court. x x x. Despite the foregoing, however, and fortunately for petitioner, it can take refuge in the fact that there is neither a registry return card nor proof of service attached to the records of the case to show that it was notified of the RTC Decision. Section 1, Rule 37 and Section 1, Rule 42 of the Rules of Court provide that a party has a period of fifteen (15) days from notice of the RTC Decision within which to file either a motion for reconsideration or a petition for review before the CA to assail said RTC Decision. Further, Sections 9, 10, and 13 provide that a party shall be deemed served with the judgment either personally or by registered mail. The service of judgment serves as the reckoning point to determine whether a decision had been appealed within the reglementary period or has already become final. In the present case, while the RTC insisted that it had duly sent copies of its September 26, 2003 Decision to the parties, the records, however, did not contain proof thereof. As attested to by petitioner's military officer, it was only when he went to the RTC on February 28, 2012 that petitioner was

able to obtain a copy of the RTC Decision. Thus, the RTC appropriately gave due course to petitioner's Motion for Reconsideration dated March 12, 2012 for being filed within the reglementary period.

3. **ID.; ID.; PARTIES; REPRESENTATIVES AS PARTIES; WHERE THE ACTION IS ALLOWED TO BE PROSECUTED OR DEFENDED BY A REPRESENTATIVE OR SOMEONE ACTING IN A FIDUCIARY CAPACITY, THE BENEFICIARY SHALL BE INCLUDED IN THE TITLE OF THE CASE AND SHALL BE DEEMED TO BE THE REAL PARTY-IN-INTEREST; THE COMMANDING GENERALS INITIATED THE CASE AT BAR ONLY AS REPRESENTATIVES OF THE PHILIPPINE ARMY AND NOT IN THEIR PERSONAL CAPACITIES. —** The Court is of the view, x x x that the RTC should not have dismissed the case outright. In its September 26, 2003 Decision, the RTC did not rule on the main issue of the legality of Albania's possession but focused solely on the argument that the original party-plaintiff, Brig. Gen. Cabusao, was not the real party-in-interest and that the Philippine Army should have been impleaded as a party in the suit. As such, the RTC immediately dismissed the case for lack of cause of action. [A] cursory perusal of the complaint would reveal a compliance with the requirements of the Rules. Sections 2 and 3 of the 1997 Rules of Court provide: SECTION 2. *Parties in Interest*.— x x x. SECTION 3. *Representatives as Parties.— Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest.* x x x x x x. Here, the title of the complaint states that the plaintiff is "B/Gen. Lysias Cabusao, *in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army*." Accordingly, the beneficiary in the present case, which is the Philippine Army, was actually included in the title of the case in compliance with the rule cited above. In fact, the Concession Agreement, which was cited and attached to the complaint similarly states that the lease was entered into by the Philippine Army, through its Commanding General. In the second place, as duly observed by the CA, the complaint was continuously amended to reflect the changes in the personalities and successors of the Commanding Generals of the Philippine Army. Thus, it cannot be denied that the

commanding generals initiated the instant case only as representatives of the Philippine Army and not in their personal capacities.

4. **ID.; ID.; ID.; INDISPENSABLE PARTIES; THE NON-JOINDER OF INDISPENSABLE PARTIES IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION; THE REMEDY IS THE AMENDMENT OF THE PLEADINGS AND THE INCLUSION OF THE NON-PARTY CLAIMED TO BE INDISPENSABLE; IF THE PLAINTIFF REFUSES TO IMPLEAD AN INDISPENSABLE PARTY DESPITE THE ORDER OF THE COURT, THE COURT MAY DISMISS THE COMPLAINT FOR THE PLAINTIFF'S FAILURE TO COMPLY WITH A LAWFUL COURT ORDER. —** But even assuming that the complaint failed to implead the Philippine Army, case law dictates that the remedy is not the outright dismissal of the complaint but the amendment of the pleadings and the inclusion herein of said party in the case especially since the omission herein is merely a technical defect. Settled is the rule that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy, instead, is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order. The operative act, then, that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case. This is in accordance with the proper administration of justice and the prevention of further delay and multiplicity of suits.

5. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE SENDING OF NOTICES TO VACATE, COUPLED WITH THE FILING OF THE EJECTMENT SUIT, CONSTITUTE CATEGORICAL ACTS ON THE PART OF THE LESSOR SHOWING THAT IT IS NO LONGER AMENABLE TO ANOTHER RENEWAL OF THE LEASE CONTRACT. —** Albania, in his appeal to the RTC, argued that he religiously paid monthly rentals and that the Court should have fixed the term of the lease for a longer period pursuant

to Article 1687 of the Civil Code. Unfortunately for Albania, the Court deems it proper to order his eviction. While it may be argued that an implied new lease could set in due to the fact that Albania continued to enjoy the premises after the expiration of the contract with the acquiescence of the petitioner, this required acquiescence is negated by the fact that petitioner sent Albania notices to vacate, coupled with its filing of the present ejectment suit. Such constitutes categorical acts on the part of petitioner showing that it is no longer amenable to another renewal of the lease contract.

6. **ID.; ID.; ID.; ACTION FOR UNLAWFUL DETAINER, REQUISITES TO PROSPER; PRESENT. —** Time and again, the Court has held that for an unlawful detainer suit to prosper, the plaintiff-lessor must show that: *first*, initially, the defendant-lessee legally possessed the leased premises by virtue of a subsisting lease contract; *second*, such possession eventually became illegal, either due to the latter's violation of the provisions of the said lease contract or the termination thereof; *third*, the defendant-lessee remained in possession of the leased premises, thus, effectively depriving the plaintiff-lessor enjoyment thereof; and *fourth*, there must be a demand both to pay or to comply and vacate and that the suit is brought within one (1) year from the last demand. Here, the presence of these requisites were positively found by the MeTC from the records of the present case. In view of the foregoing, the Court affirms the findings of the MeTC and orders Albania and all persons claiming rights under him to immediately vacate the subject premises.

7. **ID.; ID.; ID.; CASE REMANDED TO THE METC FOR COMPUTATION OF RENTAL ARREARAGES; LEGAL INTEREST OF 12% AND 6% *PER ANNUM*, IMPOSED. —** On the matter of unpaid rentals and other fees due to petitioner, however, the Court deems it necessary to remand the case to the MeTC for purposes of computing the same. Note that in light of prevailing jurisprudence, the rental arrearages shall earn legal interest of twelve percent (12%) *per annum*, computed from first demand on May 25, 1995 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid. Other amounts such as attorney's fees shall, likewise, earn legal interest of six percent (6%) *per annum* from the finality of the Decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jaime B. Arzadon for respondent.

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 seeking to nullify and set aside the Decision[1] dated April 28, 2015 and Resolution[2] dated November 29, 2016 of the Court of Appeals *(CA)* in CA-G.R. SP No. 134425. The assailed CA Decision and Resolution affirmed the September 26, 2003 Decision[3] and February 21, 2014 Resolution[4] of the Regional Trial Court *(RTC)* of Makati City, Branch 137, which, in turn, reversed and set aside the March 4, 2002 Decision[5] of the Metropolitan Trial Court *(MeTC)* of Makati City, Branch 65, that granted the amended complaint for unlawful detainer filed by petitioner, through the Office of the Solicitor General *(OSG)*, against respondent.

The antecedent facts are as follows.

The Commanding General of the Headquarters and Headquarters Support Group of the Philippine Army at Fort Bonifacio is in charge of the administration of all concessionaire areas inside the military reservation therein. Respondent Moises Albania is one of those concessionaires who was granted by the Post Commander with a business permit to operate, for a period

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison, concurring; *rollo*, pp. 10-19.

[2] *Id.* at 99-100.

[3] Penned by Judge Santiago Javier Ranada; *id.* at 154-157.

[4] Penned by Presiding Judge Ethel V. Mercado-Gutay; *id.* at 171-175.

[5] Penned by Judge Rommel O. Baybay; *id.* at 150-153.

of one (1) year, a Tailoring and Barber Shop within the vicinity of the Army Training Unit. By virtue of said grant, the former Post Commander Col. Joseph A. Espina, as representative of the Philippine Army, entered into a Concession Agreement with Albania on March 31, 1993. The agreement provides that the same may be revoked at any time in case of violation of its terms and conditions, of any pertinent Camp rules, or when security, public interest and/or military exigencies or necessity require.[6]

When a substantial portion of Fort Bonifacio Military Reservation was taken by the Bases Conversion Development Authority *(BCDA)*, the Philippine Army considered it imperative to relocate its displaced units to the area being occupied by Albania. Petitioner averred that through its Post Commander, it sent Albania various demand letters dated May 25, 1995, June 3, 1996, October 15, 19, and November 29, 1997 for the latter to vacate the premises but despite receipt thereof, Albania failed to leave and pay rentals.[7] Consequently, then Commanding General, Brig. Gen. Lysias Cabusao, filed a complaint[8] for unlawful detainer on May 12, 1998. Later on, when Brig. Gen. Cabusao was succeeded by Brig. Gen. Marcial A. Collao, Jr., the complaint was amended[9] to reflect such change. In his Answer, Albania averred that there was no demand letter terminating the month-to-month contract of lease and that the petitioner continuously collected monthly rentals from him indicating that there was really no need for the premises.[10]

On March 4, 2002, the MeTC of Makati City granted the complaint for unlawful detainer and ordered Albania to vacate the premises and to pay unpaid rentals in the amount of ₱18,639.72 up to October 1999, and pay ₱3,000.00 per month thereafter until such time that Moises Albania shall have finally

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[6] *Id.* at 11.

[7] *Id.*

[8] *Id.* at 138-141.

[9] *Id.* at 145-149.

[10] *Id.* at 12.

vacated the premises. It held that when the BCDA took a substantial portion of the Fort Bonifacio Military Reservation, it was imperative for the Philippine Army to relocate to the leased premises. It also found that ejecting Albania is proper in view of the expiration of the contract.[11] The MeTC disposed of the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering Moises Albania and all persons claiming rights under him to immediately vacate the subject premises and to pay unpaid rentals in the amount of ₱18,639.72 up to October 1999, and pay ₱3,000.00 per month thereafter until such time that Moises Albania shall have finally vacated the premises, and pay attorney's fees in the amount of ₱20,000.00.
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> SO ORDERED.[12]

On September 26, 2003, the RTC reversed the MeTC Decision and dismissed, without prejudice, the complaint for failure of petitioner to comply with the mandatory requirement of impleading the Philippine Army as a party to the case. It ruled that petitioner is not the real party-in-interest as it is the Philippine Army, and not Brig. Gen. Cabusao, which stands to be benefited or injured by whatever judgment is rendered under Section 2 Rule 3 of the Rules of Court. Since petitioner Brig. Gen. Cabusao alleged in his complaint that he was the administrator of all concessionaires inside the military reservation, he is deemed by law as a representative and should have included the beneficiary, the Philippine Army, in the title of the case.[13]

Almost a decade after, or on February 22, 2012, petitioner, through its military officer, Capt. Renato Macasieb, inquired about the status of the case. In a sworn statement, said military officer revealed that he went to the MeTC, Branch 65, to retrieve the records of the case, but was told that the same could not be located. A few days later, on February 28, 2012, he was informed

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[11] *Id.*

[12] *Id.* at 153.

[13] *Id.* at 13-14.

that the files were already at the RTC, Branch 137. Thus, he immediately went to said court and was able to obtain the September 26, 2003 RTC Decision indicating his receipt on the back of the last page of the case records.[14] It was observed that while said decision was rendered in 2003, no registry return cards as proof of service on the parties were attached to the records.[15] Consequently, petitioner, through the OSG, filed a Motion for Reconsideration[16] dated March 12, 2012 assailing the RTC's finding that it is not the real-party-in interest. According to petitioner, Section 3, Rule 3 of the Rules of Court is inapplicable for being inconsistent with Section 1, Rule 70 of the Rules of Court, the prescribed rules governing unlawful detainer cases. Accordingly, the commanding general has the requisite personality to institute the action since the Philippine Army can only act through its agents or officers.[17]

In a Resolution dated February 21, 2014, the RTC declared that copies of its September 26, 2003 Decision were sent to the respective counsels of the parties by way of registered mail albeit the absence of the return cards from the records. It, nevertheless, maintained that its subject Decision may no longer be disturbed as it had already attained finality. On the real party-in-interest issue, the trial court held that when the complaint for unlawful detainer was filed, the same was bereft of any statement or supporting document that then Brig. Gen. Cabusao was filing it for and on behalf of the real party-in-interest, the Philippine Army.[18]

In its Decision dated April 28, 2015, the CA upheld the denial of petitioner's Motion for Reconsideration essentially on the ground of laches. It maintained that while there may be an absence of proof that petitioner was duly notified of the September 26,

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[14] *Id.* at 158.

[15] *Id.* at 14.

[16] *Id.* at 159-168.

[17] *Id.*

[18] *Id.* at 14-15.

2003 RTC Decision, petitioner waited for the year 2012, or an entire period of ten (10) years from the March 4, 2002 MeTC Decision, to take any further steps in connection with the unlawful detainer case it, itself, had filed. This unreasonable delay constitutes laches and must rightfully operate against petitioner.[19]

When the appellate court denied petitioner's motion for reconsideration in its Resolution dated November 29, 2016, petitioner, through the OSG, filed the instant petition invoking the following arguments:

I.

THE PRINCIPLE OF LACHES IS INAPPLICABLE IN THE INSTANT CASE.

II.

THE SEPTEMBER 26, 2003 RTC DECISION IS NOT YET FINAL AND EXECUTORY.

III.

THE PHILIPPINE ARMY'S COMMANDING GENERAL OF THE HEADQUARTERS AND HEADQUARTERS SUPPORT GROUP, BEING THE ADMINISTRATOR OF FORT BONIFACIO MILITARY RESERVATION, HAS THE LEGAL PERSONALITY TO INSTITUTE THE UNLAWFUL DETAINER FOR THE PHILIPPINE ARMY.

IV.

THE UNLAWFUL DETAINER CASE COULD NOT HAVE BEEN DISMISSED BY THE RTC WITHOUT PREJUDICE.[20]

Petitioner, through the OSG, posits that there is no room for the application of laches because it asserted its right in connection with the March 4, 2002 MeTC Decision within the ten (10)-year prescriptive period under Article 1144(3) of the Civil Code, as amended. Also, Section 6, Rule 39 of the Rules of Court is explicit that, assuming that the decision has become final and

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[19] *Id.* at 16-19.

[20] *Id.* at 63.

executory, the right to enforce a judgment prescribes ten (10) years counted from the date said decision becomes final. Thus, when its commissioned military officer went to the MeTC on February 22, 2012 to secure a certified true copy of its March 4, 2002 Decision, or a certificate of finality and entry of judgment to implement the same, it was still within the ten (10)-year period allowed, assuming that it had become final and executory. Hence, no delay is attributable to petitioner.

Petitioner also argues that not all of the elements of laches are present in the instant case. *First*, it repeated that there is no delay on its part in asserting its rights within the ten (10)-year period. *Second*, respondent Albania does not stand to suffer any injury or prejudice if the courts below had granted petitioner's cause. Albania's possessory right to the subject property has long expired. Further, petitioner points out that the doctrine of laches does not lie against the government when it sues as a sovereign or asserts governmental rights such as in the instant case where it seeks to recover a land forming part of a military reservation.

Petitioner also asserted that the September 26, 2003 RTC Decision should not be deemed final and executory. Case records reveal that there is neither a registry return card nor a copy of the unclaimed letter, together with the certified or sworn copy of the notice given by the postmaster to the addressee. Thus, in the absence of proof of service on petitioner of the September 26, 2003 RTC Decision, said decision cannot be deemed final and the fifteen (15)-day period within which to file either a motion for reconsideration or petition for review should not be deemed to have lapsed. To rule otherwise would deprive petitioner an opportunity to appeal said judgment.

As for the issue of whether the petitioner was a real party-in-interest, it argues that while the complaint was filed in the name of the then Commanding General of the Philippine Army, without including the Philippine Army in the title of the action, the RTC should not have automatically dismissed the complaint on the basis of Section 3, Rule 3 of the Rules of Court. On the contrary, the applicable provisions are found under Rule 70 of

the Rules of Court on forcible entry and unlawful detainer, Section 1 of which provides that the legal representative of the owner-lessor is one of the persons authorized to institute proceedings without impleading their principal. But at any rate, it can be inferred from the pleadings that the action was filed on behalf of the Philippine Army as shown by the continuous amendments of the complaint to reflect the changing personalities and successors of the commanding generals.

Finally, petitioner alleged that contrary to the rulings of the RTC and the CA, the dismissal of its complaint for unlawful detainer could not have been without prejudice, which would discharge the rule under Section 1(g), Rule 41 of the Rules of Court that no appeal may be taken from an order dismissing an action without prejudice. According to petitioner, the complaint could no longer be re-filed as the one (1)-year reglementary period for filing the same from last demand on respondent Albania on May 25, 1995, June 3, 1996, October 15 and 19, 1997, and November 19, 1997 to vacate the property had prescribed already.

Prefatorily, We reject petitioner's contention that it timely exercised its right relative to the March 4, 2002 MeTC Decision, well within the ten (10)-year prescriptive period to execute the same. Under Section 6,[21] Rule 39 of the Rules of Court, a judgment creditor has two modes in enforcing the court's judgment. Execution may be either through motion or an independent action. These two modes of execution are available depending on the timing when the judgment-creditor invoked its right to enforce the court's judgment. On the one hand, execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry. On the other hand, execution by independent action

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[21] Section 6. *Execution by motion or by independent action*. — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

is mandatory if the five (5)-year prescriptive period for execution by motion had already elapsed. However, for execution by independent action to prosper — the Rules impose another limitation — the action must be filed before it is barred by the statute of limitations which, under Article 1144[22] of the Civil Code, is ten (10) years from the finality of the judgment.[23]

Petitioner insists that there is no delay in its attempt to execute the MeTC Decision because it sent its military officer to the MeTC on February 22, 2012 to inquire about the status of its case and to obtain a certificate of finality of the March 4, 2002 MeTC Decision for the purpose of implementing the same, within the ten (10)-year prescriptive period. The Court is not persuaded. To repeat, the law clearly provides that the action to execute a judgment must be *filed* before it is barred by the statute of limitations. It certainly does not mean that the judgment creditor has ten (10) full years to wait until it *sends* someone to the court to *inquire* about the status of the executory judgment.

It must be noted that petitioner's assertion that it had no idea that Albania appealed before the RTC does not support its claims of diligence. To illustrate, petitioner contends that it had no knowledge of the appeal. Thus, as far as it was concerned, petitioner only had to move for the execution of the MeTC Decision in order to eject Albania from the property it claimed to have needed so urgently. Curiously, however, petitioner neither moved for the same nor explained the reason for its failure. In the meantime, Albania went on to fully and intentionally occupy the subject premises. In fact, Albania had already passed away in 2009, a piece of information that the OSG only discovered when the Court, through its April 26, 2017 Resolution, ordered it to inquire whether Albania was still occupying the property.

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[22] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment. (n)

[23] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, 740 Phil. 502, 519 (2014).

At this juncture, the Court notes that it is rather doubtful of petitioner's claim that it was not aware of the appeal. In its petition before Us, petitioner insists that it had no knowledge of the fact that the MeTC Decision was appealed to the RTC. Yet, in its Reply before the CA, it stated that it was just waiting for the RTC to render its decision. As such, petitioner cannot claim to be "waiting for any decision from the RTC" and, at the same time, inconsistently assert to have no knowledge of Albania's appeal before the said court. Its Reply states:

> 5. In addition, ***the proceedings insofar as petitioner is concerned was already completed as the Philippine Army was just awaiting for the receipt of any decision from the Regional Trial Court (RTC)***, but no copy of the same was sent to it. It was only upon the instance and request of the commissioned military officer that a copy of the said RTC decision was furnished petitioner.[24]

Despite the foregoing, however, and fortunately for petitioner, it can take refuge in the fact that there is neither a registry return card nor proof of service attached to the records of the case to show that it was notified of the RTC Decision. Section 1, Rule 37[25] and Section 1, Rule 42[26] of the Rules of Court

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[24] *Rollo*, p. 18. (Emphasis ours)

[25] Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

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

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

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

[26] Section 1, Rule 42 of the Rules of Court provides:

provide that a party has a period of fifteen (15) days from notice of the RTC Decision within which to file either a motion for reconsideration or a petition for review before the CA to assail said RTC Decision. Further, Sections 9,[27] 10,[28] and 13[29] provide that a party shall be deemed served with the judgment either

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Section 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)

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

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

[29] Section 13. *Proof of Service*. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (10a)

personally or by registered mail. The service of judgment serves as the reckoning point to determine whether a decision had been appealed within the reglementary period or has already become final.[30] In the present case, while the RTC insisted that it had duly sent copies of its September 26, 2003 Decision to the parties, the records, however, did not contain proof thereof. As attested to by petitioner's military officer, it was only when he went to the RTC on February 28, 2012 that petitioner was able to obtain a copy of the RTC Decision. Thus, the RTC appropriately gave due course to petitioner's Motion for Reconsideration dated March 12, 2012 for being filed within the reglementary period.

The Court is of the view, however, that the RTC should not have dismissed the case outright. In its September 26, 2003 Decision, the RTC did not rule on the main issue of the legality of Albania's possession but focused solely on the argument that the original party-plaintiff, Brig. Gen. Cabusao, was not the real party-in-interest and that the Philippine Army should have been impleaded as a party in the suit. As such, the RTC immediately dismissed the case for lack of cause of action.

In the first place, a cursory perusal of the complaint would reveal a compliance with the requirements of the Rules. Sections 2 and 3 of the 1997 Rules of Court provides:

SECTION 2. *Parties in Interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

SECTION 3. *Representatives as Parties*. — *Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest*. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules.

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[30] *Mindanao Terminal and Brokerage Service, Inc. v. CA*, 693 Phil. 25, 37 (2012).

An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (3a)

Here, the title of the complaint states that the plaintiff is "B/Gen. Lysias Cabusao, *in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army*." Accordingly, the beneficiary in the present case, which is the Philippine Army, was actually included in the title of the case in compliance with the rule cited above. In fact, the Concession Agreement, which was cited and attached to the complaint similarly states that the lease was entered into by the Philippine Army, through its Commanding General. In the second place, as duly observed by the CA, the complaint was continuously amended to reflect the changes in the personalities and successors of the Commanding Generals of the Philippine Army. Thus, it cannot be denied that the commanding generals initiated the instant case only as representatives of the Philippine Army and not in their personal capacities.

But even assuming that the complaint failed to implead the Philippine Army, case law dictates that the remedy is not the outright dismissal of the complaint but the amendment of the pleadings[31] and the inclusion of said party in the case especially since the omission herein is merely a technical defect.[32] Settled

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[31] Section 5, Rule 10 of the Rules of Court provides:

Section 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[32] *Pacaña-Contreras, et al. v. Rovila Water Supply, Inc., et al.*, 722 Phil. 460, 483 (2013).

is the rule that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy, instead, is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.[33] If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order. The operative act, then, that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case.[34] This is in accordance with the proper administration of justice and the prevention of further delay and multiplicity of suits.

It is in line with this mandate of delay prevention and speedy disposition of cases that the Court shall finally resolve the principal issue raised in the complaint that was filed way back in 1998. The rationale is that forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved. It does not admit of a delay in the determination thereof. It is a "time procedure" designed to remedy the situation. Procedural technicality is, therefore, obviated and reliance thereon to stay eviction from the property should not be tolerated.[35]

To recall, the MeTC ordered Albania and all persons claiming rights under him to immediately vacate the subject premises, to pay petitioner unpaid rentals in the amount of ₱18,639.72 up to October 1999, and ₱3,000.00 per month thereafter until such time that Albania finally vacates the premises, and to pay attorney's fees in the amount of ₱20,000.00. The trial court ratiocinated that the one (1)-year lease period had already expired

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[33] *Heirs of Dinglasan v. Ayala Corp.*, G.R. No. 204378, August 5, 2019.

[34] *Pacaña-Contreras, et al. v. Rovila Water Supply, Inc., et al., supra* note 32.

[35] *Ocampo v. Vda. de Fernandez*, 552 Phil. 166, 189-190 (2007).

and that petitioner sent notices to Albania demanding that the latter vacate the premises as it was not renewing the lease in view of the former's need to relocate displaced units therein.

Albania, in his appeal to the RTC, argued that he religiously paid monthly rentals and that the Court should have fixed the term of the lease for a longer period pursuant to Article 1687[36] of the Civil Code. Unfortunately for Albania, the Court deems it proper to order his eviction. While it may be argued that an implied new lease could set in due to the fact that Albania continued to enjoy the premises after the expiration of the contract with the acquiescence of the petitioner,[37] this required acquiescence is negated by the fact that petitioner sent Albania notices to vacate, coupled with its filing of the present ejectment suit. Such constitutes categorical acts on the part of petitioner showing that it is no longer amenable to another renewal of the lease contract.[38]

Time and again, the Court has held that for an unlawful detainer suit to prosper, the plaintiff-lessor must show that: *first*, initially, the defendant-lessee legally possessed the leased premises by virtue of a subsisting lease contract; *second*, such possession eventually became illegal, either due to the latter's violation

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[36] Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. (1581a)

[37] 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.

[38] *Yuki, Jr. v. Co*, 621 Phil. 194, 210 (2009).

of the provisions of the said lease contract or the termination thereof; *third*, the defendant-lessee remained in possession of the leased premises, thus, effectively depriving the plaintiff-lessor enjoyment thereof; and *fourth*, there must be a demand both to pay or to comply and vacate and that the suit is brought within one (1) year from the last demand.[39] Here, the presence of these requisites were positively found by the MeTC from the records of the present case.

In view of the foregoing, the Court affirms the findings of the MeTC and orders Albania and all persons claiming rights under him to immediately vacate the subject premises. On the matter of unpaid rentals and other fees due to petitioner, however, the Court deems it necessary to remand the case to the MeTC for purposes of computing the same. Note that in light of prevailing jurisprudence, the rental arrearages shall earn legal interest of twelve percent (12%) *per annum*, computed from first demand on May 25, 1995 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid. Other amounts such as attorney's fees shall, likewise, earn legal interest of six percent (6%) *per annum* from the finality of the Decision until fully paid.[40]

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated April 28, 2015 and the Resolution dated November 29, 2016 of the Court of Appeals in CA-G.R. SP No. 134425 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated March 4, 2002 of the Metropolitan Trial Court *(MeTC)* of Makati City, Branch 65, is hereby **REINSTATED** with **MODIFICATION** in that the case is remanded back to the MeTC for purposes of computing the amount of rental arrearages due to petitioner Brig. General Marcial A. Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, as legal representative of the Philippine Army, which shall earn legal

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[39] *Zaragoza v. Iloilo Santos Truckers, Inc.*, 811 Phil. 834, 841 (2017).

[40] *Id.* at 843, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

interest of twelve percent (12%) *per annum*, computed from first demand on May 25, 1995 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction. The attorney's fees awarded in favor of petitioner shall also earn legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 229013. July 15, 2020]

INTERCONTINENTAL BROADCASTING CORPORATION, *petitioner*, *vs.* **ANGELINO B. GUERRERO,** *respondent*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN TERMINATION CASES, THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW BY SUBSTANTIAL EVIDENCE THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE. —** In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal. For this purpose, the employer must present substantial evidence to prove the legality of the employee's dismissal. Substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Here, we concur in the Court of Appeals' finding that petitioner failed

to establish by substantial evidence that respondent was validly dismissed.

2. **ID.; ID.; ID.; JUST CAUSES FOR TERMINATION; TO BE A VALID GROUND FOR DISMISSAL, NEGLECT OF DUTY MUST BE BOTH GROSS AND HABITUAL; TO CONSTITUTE A VALID CAUSE FOR DISMISSAL, THE EMPLOYEE'S MISCONDUCT MUST BE SERIOUS, AND THE ACT OR CONDUCT MUST HAVE BEEN PERFORMED WITH WRONGFUL INTENT; CHARGE OF GROSS NEGLIGENCE OR SERIOUS MISCONDUCT IN THE PERFORMANCE OF DUTIES, NOT ESTABLISHED. —** To be a valid ground for dismissal, neglect of duty **must be both gross and habitual**. Gross negligence implies want of or failure to exercise slight care or diligence in the performance of one's duties. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time. As for misconduct, it 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 of judgment**." To constitute a valid cause for dismissal under Article 297 of the Labor Code, the employee's misconduct **must be serious**, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant. Further, it is required that the act or conduct must have been **performed with wrongful intent**. As stated, petitioner failed to establish by substantial evidence that respondent committed gross negligence or serious misconduct in the performance of his duties.

3. **ID.; ID.; ID.; ID.; SERIOUS MISCONDUCT AND WILLFUL DISOBEDIENCE OF AN EMPLOYER'S LAWFUL ORDER MAY ONLY BE APPRECIATED WHEN THE EMPLOYEE'S TRANSGRESSION OF A RULE, DUTY OR DIRECTIVE HAS BEEN THE PRODUCT OF WRONGFUL INTENT OR OF A WRONGFUL AND PERVERSE ATTITUDE, BUT NOT WHEN THE SAME TRANSGRESSION RESULTS FROM SIMPLE NEGLIGENCE OR MERE ERROR IN JUDGMENT; A FINDING OF SERIOUS MISCONDUCT IS INCOMPATIBLE WITH THE CHARGE OF NEGLIGENCE, AS THE LATTER REQUIRES LACK OF WRONGFUL INTENT. —** Respondent was not shown

to have willfully or wrongfully intended to cause harm to his employer when he made mistakes in superimposing logos during commercial breaks. In ***Bookmedia Press, Inc. v. Sinajon and Abenir***, the Court stressed the requirement of *willfulness* or *wrongful intent* in the appreciation of gross or serious misconduct as just cause for termination, *viz.*: Hence, **serious misconduct** and willful disobedience of an employer's lawful order **may only be appreciated** when the employee's transgression of a rule, duty or directive has been **the product of "*wrongful intent*" or of a "*wrongful and perverse attitude*,"** but not when the same transgression results from simple negligence or "*mere error in judgment*." *The requirement of willfulness or wrongful intent underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal*. This petitioner failed to prove. As the Court of Appeals aptly found, petitioner failed to show that respondent has become unfit to continue working for IBC 13 as TOC Technician. At any rate, in ***CMP Federal Security Agency, Inc. v. Reyes, Sr.***, the Court ruled that a finding of serious misconduct is incompatible with the charge of negligence which, by definition, requires lack of wrongful intent.

4. **ID.; ID.; ID.; ID.; THE EMPLOYER'S INDIFFERENCE TO THE ALLEGED SERIOUS LAPSES COMMITTED BY THE EMPLOYEE FOR SUCH A LONG PERIOD OF TIME AND THE ABSENCE OF ANY SANCTION IMPOSED ON THE EMPLOYEE, NEGATES THE EXISTENCE OF SUCH SERIOUS LAPSES. —** Petitioner failed to prove that respondent's lapses were serious. Respondent's first listed lapse in his added task of logos superimposition happened on April 16, 2012. Yet, petitioner allowed respondent to continue with this additional task for **over two (2) months** more before he was required to explain the alleged lapses he committed not on April 16, 2012 but on July 1, 4, and 8, 2012. Even then petitioner still continued to entrust respondent the additional task of logos superimposition for **another nine (9) months** before it finally initiated a formal administrative charge against him on April 29, 2013. Clearly, petitioner's indifference for such a long period of time and the absence of any sanction imposed on respondent in the meantime strongly negates the existence of the so-called serious lapses imputed on respondent, let alone, gross negligence or gross misconduct.

5. ID.; ID.; ID.; ID.; **FRAUD AND DISHONESTY CAN ONLY BE USED TO JUSTIFY THE DISMISSAL OF AN EMPLOYEE WHEN THE LATTER COMMITS A DISHONEST ACT THAT REFLECTS A DISPOSITION TO DECEIVE, DEFRAUD, AND BETRAY HIS EMPLOYER.—** The following facts are undisputed: On November 11, 2012, he punched in at 10 o'clock in the morning, the start of his shift. But shortly after, he got informed his shift had been changed from time in at 10 o'clock in the morning to time in at 6 o'clock in the morning. He also found out that his co-employee Leo Baterna already took over his new work shift schedule. So he decided to just go on leave but on that day only. Respondent, though, denied he erased his 10 o'clock punch in. He claimed he no longer punched out and just informed the guard on duty he was going on leave. But even if respondent had indeed erased the entry of his time-in, the erasure correctly reflected the fact that he did not render service on November 11, 2012. How can this be fraud or tampering or falsification? Fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud, and betray his employer. This is not the case here.

6. ID.; ID.; ID.; **IMPOSITION OF THE ULTIMATE PENALTY OF DISMISSAL FROM SERVICE IS TOO HARSH A PENALTY WHERE THE EMPLOYEE'S INFRACTIONS DO NOT CONSTITUTE GROSS NEGLIGENCE OR SERIOUS MISCONDUCT; EVEN WHERE A WORKER HAS COMMITTED AN INFRACTION, A PENALTY LESS PUNITIVE MAY SUFFICE, WHATEVER MISSTEPS MAY BE COMMITTED BY LABOR OUGHT NOT TO BE VISITED WITH A CONSEQUENCE SO SEVERE. —** While we recognize that respondent committed infractions as an employee when he made mistakes in superimposing logos and reported late for work on November 12, 2012, the ultimate penalty of dismissal from service is too harsh a penalty considering that these infractions do not constitute gross negligence or serious misconduct. Too, we have to consider that respondent has been employed with petitioner for twenty-seven (27) long years, without any record of previous infraction or misbehavior. Thus, we agree with the Court of Appeals that a suspension of six (6) months would suffice. In ***Philippine Long Distance Company***

v. Teves, the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his or her livelihood, thus: **Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.** This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.

7. **ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND FULL BACKWAGES COMPUTED FROM THE TIME OF HIS DISMISSAL UP TO THE TIME OF HIS ACTUAL REINSTATEMENT; AWARD OF ATTORNEY'S FEES AND IMPOSITION OF SIX PERCENT (6%) LEGAL INTEREST PER ANNUM ON MONETARY AWARDS, PROPER.—** [R]espondent's dismissal from employment was illegal for which he is rightfully entitled to reinstatement without loss of seniority rights and full backwages computed from the time of his dismissal up to the time of his actual reinstatement. His suspension for six (6) months should be deducted from the computation of his backwages. We also affirm the grant of attorney's fees since respondent was compelled to litigate to protect his interest. As for damages, we agree with the Court of Appeals that the same cannot be granted to respondent as no evidence was adduced to prove bad faith on the part of petitioner. [W]e impose legal interest on the total monetary awards due to respondent at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Gaston D. Taquio for respondent.

DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 136709:

1. Decision[1] dated July 19, 2016 finding respondent to have been illegally dismissed by petitioner; and
2. Resolution[2] dated November 24, 2016 denying petitioner's motion for reconsideration.

The Facts

On September 10, 1986, petitioner Intercontinental Broadcasting Corporation (IBC 13) hired respondent Angelino B. Guerrero as Technician in its Technical Operation Center (TOC).[3] His duties, among others, included monitoring the TOC equipment adjustment to attain the standard broadcast signal quality, sending audio/video signal to the transmitter, and reporting to the TOC Supervisor any malfunction of the equipment under their control.[4]

In 2009, IBC 13's switcher equipment for logos superimposition developed technical problems. To remedy the situation, the management transferred this task (superimposition of logos) to the TOC. It became an additional, nay, temporary task of the TOC personnel on top of their primary tasks. TOC Supervisor Arthur Guda and the Engineering Department agreed that should there be a conflict between the regular functions of the TOC

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrences of Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 28-42.

[2] *Rollo*, p. 53.

[3] *Rollo*, p. 194.

[4] CA Decision, pp. 1-2.

personnel and their additional task, their regular TOC functions shall prevail.[5]

On July 10, 2012, Guda issued a memorandum to respondent directing him to explain why he should not be reprimanded for negligence of duty in the following instances: (1) on July 1, 2012, at 10:58:46 p.m., the icons of IBC, AKTV, and SPG logo were seen on-air during the commercial gap of Cooltura; (2) the same incident happened on July 4, 2012 while respondent was seen sleeping on duty; and (3) on July 8, 2012, the icons were not superimposed during Gap 14 of the Wimbledon program while respondent was again seen sleeping on duty.[6]

In his Reply[7] dated July 11, 2012, respondent invoked his "right to remain silent, as provided by law."

After nine (9) months, or on April 15, 2013, a Formal Charge was served on respondent for: (1) gross negligence of duty and/or gross misconduct committed on April 16, 2012 and on various days of July 2012 where he did the opposite of what was required of him during commercial breaks (either he wrongly superimposed logos or wrongly omitted it altogether);[8] (2) sleeping while on duty; (3) insubordination; (4) failure to report for work and tampering his Daily Time Record (DTR) on November 11, 2012; and (5) reporting late for work on November 12, 2012 resulting in late network sign-on.[9]

On April 29, 2013, respondent submitted his Affidavit in response to the charges against him.[10] He explained that the switchers, not the TOC personnel, had skills in the task of logos superimposition. Although the task was temporarily assigned to the TOC personnel on top of their regular tasks, he still did

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[5] *Rollo*, p. 248.

[6] CA Decision, p. 2.

[7] *Id.*

[8] LA Decision, *rollo*, p. 202.

[9] *Rollo*, pp. 243-245.

[10] CA Decision, p. 4.

his best to perform all these tasks. He was, however, not provided with the sequence guide and commercial cue sheets to enable him to determine when to superimpose logos and when not to superimpose them.[11]

At any rate, if he truly committed lapses in performing this new task, the same should have been reflected on the switcher's logbook and the Daily Discrepancy Report. But these records did not reflect anything against him except one (1) count of erroneous logos superimposition. He was made aware of his so-called lapses for the first time only when the Formal Charge was served on him.[12]

Respondent denied tampering his DTR on November 11, 2012. His original work schedule for that day was from 10 o'clock in the morning to 6 o'clock in the evening. He was not informed of any change in his work shift hours. But when he punched in at 10 o'clock in the morning on November 11, 2012, he got informed only then that his work shift hours had been changed by management to 6 o'clock in the morning until 2 o'clock in the afternoon. He also learned that his co-employee Leo Baterna already took over his new "6 to 2" shift. As he learned of these changes only on the very same day they were supposed to take effect, he decided to just go on leave on that day. He no longer punched out and informed the guard on duty he was going on leave. The next day, on November 12, 2012, he reported late for work.[13] He denied all the other charges against him.

After clarificatory hearings, IBC 13's Administrative Committee (ADCOM) issued a Formal Report on August 2, 2013 recommending respondent's termination from employment on the following grounds, *viz.*:[14]

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

[12] *Rollo*, p. 197.

[13] *Id.*

[14] *Id.* at 245.

1) gross negligence and gross misconduct for his lapses in accomplishing the additional tasks of superimposition and no superimposition of logos;

2) gross negligence and gross misconduct for reporting late on November 11 and 12, 2012;

3) breach of confidence for sleeping while on duty;

4) tampering with his DTR which falls within the offense of falsification of company records and reporting false information under Section 6 of IBC's procedures, and is analogous to the just causes to terminate an employee under Article 282 of the Labor Code.[15]

Petitioner approved the ADCOM's recommendation and terminated respondent's employment.

Respondent thus sued for illegal dismissal, unpaid wages, damages, and attorney's fees.[16] He argued that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross misconduct in the performance of his duties.[17] Too, his termination due to his alleged lapses was unwarranted, if not too harsh a penalty considering his dedicated service for twenty-seven (27) years.

On the other hand, petitioner maintained that respondent's dismissal was valid based on the findings contained in the ADCOM's Formal Report.

The Ruling of the Labor Arbiter

By Decision[18] dated December 6, 2013, Labor Arbiter Remedios L.P. Marcos dismissed the complaint. She adopted the Formal Report of petitioner's ADCOM finding respondent guilty of gross negligence and/or gross misconduct for his supposed repeated mistakes in superimposing logos during

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[15] CA Decision, p. 9.

[16] *Rollo*, p. 193.

[17] CA Decision, p. 5.

[18] Penned by Labor Arbiter Remedios L.P. Marcos, *rollo*, pp. 193-205.

commercial gaps. The labor arbiter noted that even on this ground alone, respondent's dismissal was already justified. As it was though, there was another ground which warranted respondent's dismissal, *i.e.*, tampering his DTR. As for the other charges, the labor arbiter found them inconsequential considering that the maximum penalty therefor was only suspension.[19]

The Ruling of the NLRC

On respondent's appeal, the NLRC affirmed under Decision[20] dated April 16, 2014. Respondent's motion for reconsideration was denied under Resolution[21] dated June 10, 2014.

The Ruling of the Court of Appeals

Undaunted, respondent further sought affirmative relief from the Court of Appeals which under its assailed Decision[22] dated July 19, 2016, nullified the NLRC's dispositions. It found that there was no substantial evidence to prove that respondent was validly dismissed from employment.[23]

The Court of Appeals noted that petitioner failed to show such pattern of negligence indicating that respondent was incapable of performing his responsibilities.[24] As for serious misconduct, there was no clear showing either that respondent acted with bad faith or malice in the performance of his assigned tasks.[25] The Court of Appeals also emphasized that notwithstanding respondent's lapses in April and July 2012, petitioner still allowed

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[19] *Rollo*, p. 204.

[20] Penned by Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena, *rollo*, pp. 239-257.

[21] *Rollo*, pp. 274-276.

[22] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 28-42.

[23] CA Decision, p. 8.

[24] CA Decision, p. 10.

[25] *Id.* at 11.

him to continue performing the additional task of superimposing logos for several months more until he got formally charged on April 29, 2013. The fact that petitioner did not impose any sanction on respondent for any infraction or offense simply goes to show that petitioner did not consider respondent's lapses, if at all, equivalent to gross negligence or gross misconduct.

On respondent's failure to sign in on time on November 11 and 12, 2012, he admitted he was late on November 12, 2012. He, however, had a valid justification for failing to sign in on time the day before, November 11, 2012: petitioner did not priorly inform him of the change in his work shift hours.[26]

On the alleged tampering of respondent's DTR, petitioner pointed out that respondent erased his time-in on November 11, 2012. Respondent denied this. In any event, had respondent himself erased his initial time entry, it was only to correctly reflect the fact that he did not render service on November 11, 2012. Surely, there is no tampering to speak of when an entry in one's DTR was erased to reflect the truth that the employee did not report for work on that particular day.[27]

Lastly, on petitioner's statement that respondent breached the confidence reposed upon him as an IBC 13 employee when he failed to superimpose an icon on July 4, 2012 (because he was allegedly sleeping while on duty), the same was a bare allegation devoid of any probative value.[28]

In sum, the Court of Appeals found that even if respondent's lapses and infractions were taken as a whole, the same still did not fall under the just causes of termination provided under Art. 282 (now Art. 297) of the Labor Code.[29] Given the facts and circumstances proven, and in consideration of respondent's

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[26] *Id.*

[27] *Id.* at 12.

[28] *Id.*

[29] CA Decision, p. 10.

twenty-seven (27) years of service, a suspension of six (6) months was sufficient and commensurate penalty for respondent's infractions.

Having been illegally dismissed, respondent was thus entitled to full backwages (not including the period of his six-month suspension) and reinstatement. For failure to prove bad faith on the part of petitioner, respondent was not entitled to moral damages. But since respondent was forced to litigate to protect his interest, he was awarded attorney's fees equivalent to ten percent (10%) of the total monetary award. The Court of Appeals ruled:

> ***WHEREFORE***, the instant Petition is ***GRANTED***. The Decision dated April 16, 2014 and Resolution dated June 10, 2014 issued by public respondent National Labor Relations Commission in NLRC LAC Case No. 01-000416-14 (NLRC NCR Case No. 08-11880-13) are hereby ***REVERSED*** and ***SET ASIDE***.
>
> Private respondent Intercontinental Broadcasting Corporation is hereby ordered to reinstate Angelino B. Guerrero without loss of seniority rights and to pay backwages from the time of his dismissal up to the time he is reinstated, less the period of suspension of six (6) months, plus 10% attorney's fees.
>
> ***SO ORDERED***.[30]

Petitioner's motion for reconsideration was denied under Resolution[31] dated November 24, 2016.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and set aside the assailed dispositions of the Court of Appeals. Petitioner asserts that respondent's infractions constituted just causes for termination under Art. 282 (now Art. 297) of the Labor Code. In this regard, petitioner essentially echoes the findings of the labor arbiter and the NLRC.[32]

Respondent ripostes that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross

[30] *Id.* at 14.

[31] *Rollo*, p. 53.

[32] *Id.* at 14-20.

misconduct in the performance of his duties. His termination was not justified considering that his primary function was that of a TOC Technician and not the task of superimposing logos, relative to which he was charged with gross negligence and gross misconduct.[33]

Issue

Did the Court of Appeals commit reversible error in finding respondent to have been illegally dismissed from employment?

Ruling

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal. For this purpose, the employer must present substantial evidence to prove the legality of the employee's dismissal.[34] Substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[35] Here, we concur in the Court of Appeals' finding that petitioner failed to establish by substantial evidence that respondent was validly dismissed.

Article 297 (formerly 282) of the Labor Code enumerates the just causes for termination, *viz.*:

> Art. 297. Termination by employer. — An employee may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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[33] *Id.* at 348-353.

[34] *Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, July 3, 2019.

[35] *Id.*

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Petitioner terminated respondent's employment based on the following grounds:[36]

1) gross negligence and gross misconduct for his lapses in accomplishing the additional tasks of superimposition and no superimposition of logos;

2) gross negligence and gross misconduct for reporting late on November 11 and 12, 2012;

3) breach of confidence for sleeping while on duty;

4) tampering with his DTR which falls within the offense of falsification of company records and reporting false information under Section 6 of IBC's procedures, and is analogous to the just causes to terminate an employee under Article 282 of the Labor Code.[37]

To be a valid ground for dismissal, neglect of duty **must be both gross and habitual**. Gross negligence implies want of or failure to exercise slight care or diligence in the performance of one's duties.[38] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[39] Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time.[40]

As for misconduct, it is defined as "the transgression of some established and definite rule of action, a forbidden act, a

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[36] *Rollo*, p. 245.

[37] CA Decision, p. 9.

[38] *Publico v. Hospital Managers, Inc.*, 797 Phil. 356, 367 (2016); *Eastern Overseas Employment Center v. Bea*, 512 Phil. 749, 758 (2005).

[39] *Eastern Overseas Employment Center v. Bea*, 512 Phil. 749, 758 (2005).

[40] *CMP Federal Security Agency, Inc. v. Reyes, Sr.*, G.R. No. 223082, June 26, 2019.

dereliction of duty, **willful in character, and implies wrongful intent and not mere error of judgment**."[41] To constitute a valid cause for dismissal under Article 297 of the Labor Code, the employee's misconduct **must be serious**, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant. Further, it is required that the act or conduct must have been **performed with wrongful intent**.[42]

As stated, petitioner failed to establish by substantial evidence that respondent committed gross negligence or serious misconduct in the performance of his duties.

One. It was not shown that respondent failed to exercise slight care or diligence and had deliberate or thoughtless disregard of consequences in the performance of his duties. In fact, none of the so-called lapses pertain to his primary tasks as TOC Technician.[43] True, respondent still owed the additional task assigned him (logos superimposition) the same fidelity expected of him in the discharge of his primary duties. But we note the undisputed fact that respondent was performing his primary duties at the same time, albeit the latter task should have been assigned to someone else. More, respondent admitted he had limited skill in logos superimposition since it was not really a part of his job description when he got hired and it was only meant to be a temporary assignment. Under these circumstances, respondent's lapses, if at all, appear more of his limited capacity for an additional technical task for which he was not skilled or trained. In this sense, his lapses did not equate to gross negligence.[44]

Two. Respondent was not shown to have willfully or wrongfully intended to cause harm to his employer when he made mistakes in superimposing logos during commercial breaks.

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[41] *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019, citing *Ha Yuan Restaurant v. NLRC*, 516 Phil. 124 (2006).

[42] *Imasen Philippine Manufacturing Corporation v. Alcon and Papa*, 746 Phil. 172, 181 (2014).

[43] CA Decision, p. 10.

[44] *Id.*

In ***Bookmedia Press, Inc. v. Sinajon and Abenir***,[45] the Court stressed the requirement of *willfulness* or *wrongful intent* in the appreciation of gross or serious misconduct as just cause for termination, *viz.*:

> Hence, **serious misconduct** and willful disobedience of an employer's lawful order **may only be appreciated** when the employee's transgression of a rule, duty or directive has been **the product of "*wrongful intent*" or of a "*wrongful and perverse attitude*,"** but not when the same transgression results from simple negligence or "*mere error in judgment*." (emphasis supplied)

The requirement of willfulness or wrongful intent underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal.[46] This petitioner failed to prove. As the Court of Appeals aptly found, petitioner failed to show that respondent has become unfit to continue working for IBC 13 as TOC Technician.[47]

At any rate, in ***CMP Federal Security Agency, Inc. v. Reyes, Sr.***,[48] the Court ruled that a finding of serious misconduct is incompatible with the charge of negligence which, by definition, requires lack of wrongful intent.

Three. Petitioner failed to prove that respondent's lapses were serious. Respondent's first listed lapse in his added task of logos superimposition happened on April 16, 2012.[49] Yet, petitioner allowed respondent to continue with this additional task for **over two (2) months** more before he was required to explain the alleged lapses he committed not on April 16, 2012 but on July 1, 4, and 8, 2012. Even then petitioner still continued to entrust respondent the additional task of logos superimposition for **another nine (9) months** before it finally initiated a formal

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[45] *Supra*, note 41.

[46] *Id.*

[47] CA Decision, p. 11.

[48] *Supra*, note 40.

[49] CA Decision, p. 3.

administrative charge against him on April 29, 2013.[50] Clearly, petitioner's indifference for such a long period of time and the absence of any sanction imposed on respondent in the meantime strongly negates the existence of the so-called serious lapses imputed on respondent, let alone, gross negligence or gross misconduct.

As for reporting late on November 12, 2012, respondent himself admitted the same. But as to his failure to sign in on time on November 11, 2012, he had a valid excuse. He was not informed that his work shift schedule starting that day had been changed from 10 o'clock in the morning to 6 o'clock in the morning as time in. TOC Supervisor Arthur Guda himself admitted he only contacted respondent's co-employee regarding respondent's change of schedule but respondent himself was not informed.[51] Thus, respondent cannot be guilty of gross negligence or gross misconduct just because he reported late for work on November 11, 2012, not due to his fault but due to petitioner's failure to give him notice of the change in his work shift schedule. And for the single time that he reported late for work on November 12, 2012, without more, respondent cannot be held liable for gross negligence or gross misconduct either.

The next question: was respondent deemed to have tampered or falsified his DTR when he erased the entry of his time-in on November 11, 2012?

The answer is NO.

The following facts are undisputed: On November 11, 2012, he punched in at 10 o'clock in the morning, the start of his shift. But shortly after, he got informed his shift had been changed from time in at 10 o'clock in the morning to time in at 6 o'clock in the morning. He also found out that his co-employee Leo Baterna already took over his new work shift schedule. So he decided to just go on leave but on that day only.

Respondent, though, denied he erased his 10 o'clock punch in. He claimed he no longer punched out and just informed the

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[50] *Id.*

[51] LA Decision, p. 5; *rollo*, p. 197.

guard on duty he was going on leave. But even if respondent had indeed erased the entry of his time-in, the erasure correctly reflected the fact that he did not render service on November 11, 2012.[52] How can this be fraud or tampering or falsification? Fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud, and betray his employer.[53] This is not the case here.

Finally, for allegedly sleeping while on duty, we quote with approval the finding of the Court of Appeals' disquisition on the matter, *viz.*:

> x x x suffice that loss of confidence as a just cause for termination is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. In order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.
>
> Aside from a sweeping statement that respondent "breached the confidence reposed in him as an IBC-13 employee," when he failed to superimpose an icon on July 4, 2012 because he was sleeping while on duty, no other evidence was presented by petitioner to justify his termination based on loss of confidence.[54]

In sum, the Court of Appeals did not commit reversible error when it nullified the dispositions of the labor tribunals. Its factual findings conformed with the evidence on record, and its ruling, with law and jurisprudence.[55]

While we recognize that respondent committed infractions as an employee when he made mistakes in superimposing logos and reported late for work on November 12, 2012, the ultimate

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[52] CA Decision, p. 12.

[53] *Supra*, note 41.

[54] CA Decision, p. 12.

[55] *Foodbev International v. Ferrer*, G.R. No. 206795, September 16, 2019.

penalty of dismissal from service is too harsh a penalty considering that these infractions do not constitute gross negligence or serious misconduct. Too, we have to consider that respondent has been employed with petitioner for twenty-seven (27) long years, without any record of previous infraction or misbehavior. Thus, we agree with the Court of Appeals that a suspension of six (6) months would suffice.

In ***Philippine Long Distance Company v. Teves***,[56] the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his or her livelihood, thus:

> **Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.** This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner. (Emphasis supplied)

Verily, therefore, respondent's dismissal from employment was illegal for which he is rightfully entitled to reinstatement without loss of seniority rights and full backwages computed from the time of his dismissal up to the time of his actual reinstatement.[57] His suspension for six (6) months should be deducted from the computation of his backwages.[58]

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[56] 649 Phil. 39 (2010); as cited in *Universal Robina Sugar Milling Corp. v. Ablay*, 783 Phil. 512, 523 (2016); also cited in *Foodbev International v. Ferrer, Id.*

[57] Art. 294 of the Labor Code provides that "An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

[58] See *Manila Broadcasting Co. v. National Labor Relations Commission*, 355 Phil. 910, 922 (1998).

We also affirm the grant of attorney's fees since respondent was compelled to litigate to protect his interest.[59] As for damages, we agree with the Court of Appeals that the same cannot be granted to respondent as no evidence was adduced to prove bad faith on the part of petitioner.

Finally, we impose legal interest on the total monetary awards due to respondent at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

ACCORDINGLY, the petition is **DENIED**. The Decision dated July 19, 2016 and Resolution dated November 24, 2016 of the Court of Appeals in CA-G.R. SP No. 136709 are **AFFIRMED** with **MODIFICATION**.

Respondent Angelino B. Guerrero is declared to have been illegally dismissed. Petitioner Intercontinental Broadcasting Corporation is ordered to immediately **reinstate and/or restore** Angelino B. Guerrero to his former position as Technician without loss of seniority rights and to **pay** him the following amounts:

1. Full backwages computed from the time of his dismissal up to the time of his actual reinstatement less his suspension of six (6) months;
2. Attorney's fees of ten percent (10%) of the total award; and
3. Legal interest of six percent (6%) *per annum* on the total monetary awards from finality of this Decision until fully paid.

In light of the fact that this case has long pended for over seven (7) years, the labor arbiter is **ORDERED** upon finality of this Decision, to execute the same, with utmost dispatch and without further delay.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

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[59] See *Tangga-an v. Philippine Transmarine Carriers, Inc., et al.,* 706 Phil. 339, 352 (2013).

FIRST DIVISION

[G.R. No. 229055. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **ELIZABETH NYAMBURA RUNANA and MA. GRACE LACSON *y* NAVARRO**, *accused*, **MA. GRACE LACSON *y* NAVARRO**, *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL TRANSPORTATION OF PROHIBITED DRUGS; AN ATTEMPT TO TRANSPORT PROHIBITED DRUGS IS METED THE SAME PENALTY PRESCRIBED IN THE COMMISSION THEREOF. —** In illegal transportation of prohibited drugs, the essential element is the movement of the dangerous drug from one place to another. As explained by the Court in *People v. Asislo*: The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another. As defined in the case of *People v. Mariacos*, "transport" means "to carry or convey from one place to another." There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. Yet, even in the absence of actual conveyance, an attempt to transport prohibited drugs is meted the same penalty prescribed for the commission thereof under Section 26 of R.A. 9165. x x x Under the Revised Penal Code, the attempted phase of a felony occurs 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.
2. **ID.; ID.; CHAIN OF CUSTODY PROCEDURE. —** [T]o sustain a conviction on illegal transportation of prohibited drugs, the

prosecution must also prove the identity of the *corpus delicti* of the crime. To maintain the integrity and evidentiary value of the seized prohibited drug, the apprehending officers must ensure that the chain of custody in handling the same is not compromised. The procedure therefor is specifically outlined in Section 21, Article II of R.A. 9165 and the corresponding provisions in its IRR. Under Section 21, Article II of R.A. 9165, prior to its amendment by R.A. 10640 in 2014, the apprehending team shall, among others, "x x x 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 each from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." Thereafter, and "[w]ithin twenty-four (24) hours [after seizure of the prohibited drug], the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination." The forensic laboratory examiner shall then issue a certification of the forensic laboratory examination results, which shall be done under oath, within 24 hours after the receipt of the subject item/s.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal[1] from the Decision[2] dated March 12, 2015 of the Court of Appeals, Fourth Division (CA), in CA-G.R.

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[1] Notice of Appeal dated April 10, 2015, CA *rollo*, pp. 255-257.

[2] *Rollo*, pp. 2-16; CA *rollo*, pp. 235-250. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting.

CR HC No. 06465, which upheld the Decision[3] dated October 24, 2013 of the Regional Trial Court, Manila, Branch 35 (RTC) in Criminal Case No. 11-284733, finding accused Elizabeth Nyambura Runana *a.k.a.* "Liz" (Runana) and accused-appellant Ma. Grace Lacson *y* Navarro *a.k.a.* "Gina" (Lacson) guilty of violating Section 5, in relation to Section 26, Article II of Republic Act No. (R.A.) 9165 or the "Comprehensive Dangerous Drugs Act of 2002."

Facts

Lacson and Runana were charged with violating **Section 5, in relation to Section 26, Article II of R.A. 9165** under the following Information:

> "That on or about June 29, 2011, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other on the controlled delivery operations, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly bring, transport, deliver or give away the following:
>
> One (1) big brown Fendi trolley bag with markings EXH. "A" 29 June 2011 RLA and with signature containing two (2) vacuum-sealed transparent plastic wrapped with aluminum foil containing white crystalline substance with the following markings and gross weights:
>
> EXH. "A-1" one two three three point nine (1233.9) grams
> EXH. "A-2" one two three nine point five (1239.5) grams
> or a total of TWO FOUR SEVEN THREE POINT FOUR **(2,473.4) grams**
>
> One (1) black Ngoom trolley bag with markings EXH. "B" 29 June 2011 RLA and with signature containing two (2) vacuum-sealed transparent plastic wrapped with aluminum foil containing white crystalline substance with the following markings and gross weights:

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[3] CA *rollo*, pp. 38-63. Penned by Judge Maria Bernardita J. Santos.

EXH. "B-1" one zero three two point eight (1032.8) grams
EXH. "B-2" one zero three three point nine (1033.9) grams
or a total of TWO ZERO SIX SIX POINT SEVEN
(2,066.7) grams

or a grand total gross weight of FOUR FIVE FOUR ZERO POINT ONE (4,540.1) grams of white crystalline substance commonly known as *Shabu* containing Methamphetamine Hydrochloride a dangerous drug.

CONTRARY TO LAW."[4]

When Runana and Lacson were arraigned on August 2, 2011 both pleaded not guilty to the charge.[5] Trial on the merits then ensued.

Version of the Prosecution

The version of the prosecution, as culled from the CA Decision is as follows:

Runana and Lacson were indicted following their arrest during an entrapment operation undertaken by the Philippine Drug Enforcement Agency (PDEA) on June 29, 2011.

The entrapment operation was undertaken following a tip from a regular confidential informant. On June 20, 2011 said confidential informant came to the PDEA office to report to her handler, Intelligence Officer 2 Ramcom Alarde (IO2 Alarde), that she had been recruited by a certain "Gina" as a drug courier who would travel to Malaysia as a tourist to bring luggage containing illegal drugs. She was also instructed by "Gina" to recruit another person to do the same. IO2 Alarde relayed this information to his team leader, who instructed him to report whatever would be discussed with "Gina."[6]

On June 23, 2011, the confidential informant contacted "Gina" and informed the latter that she had already recruited a male

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[4] *Rollo*, pp. 2-3.

[5] *Id.* at 3.

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

individual who was likewise willing to travel with a similar luggage. On June 27, 2011, "Gina" contacted the confidential informant and instructed the latter to bring the new recruit for instructions.

Suspecting a possible drug operation, PDEA Director Joeffrey Tacio (PDEA Dir. Tacio) formed a team that would assist IO2 Alarde. During the briefing held in the evening of June 28, 2011, the confidential informant advised the team that she had already been booked to fly to Malaysia in the evening of June 29, 2011, and that the other recruit, IO2 Alarde, was ordered to be on stand-by and would leave for Malaysia only when the confidential informant has already arrived in Malaysia. The team, then, discussed the entrapment operation. It was agreed that IO2 Alarde would join the confidential informant in meeting "Gina." The team also agreed that once IO2 Alarde was able to verify the contents of the luggage, he would place a missed call to his team leader as a signal for the team to proceed to their location.[7]

In the morning of June 29, 2011, IO2 Alarde and the confidential informant met with "Gina" at Greenwich in Robinsons Mall, Malate, Manila. The three of them roamed around the mall for a while before proceeding to Hostel 1632 located at Adriatico Street, Malate, Manila. They went to Room 429 where "Gina" was billeted. There, they discussed the planned trip to Malaysia. "Gina" assured IO2 Alarde that the trip would not be dangerous as they had done it several times before.[8]

At around 5:30 p.m., "Gina" left the room to fetch a person who had the luggage that would be transported. She returned with a Fendi trolley bag, followed by an African-looking woman, later identified as Runana, who was carrying a black Ngoom trolley bag/back pack. IO2 Alarde asked and was permitted to check the bags. While "Gina" and Runana were talking to the confidential informant, IO2 Alarde discreetly pierced the side

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[7] *Id.* at 4.

[8] *Id.*

of the bag with a pen and inspected what was inside. He discovered white crystalline substance contained in a plastic bag that was wrapped in aluminum foil. IO2 Alarde closed the bag and discreetly placed a missed call to his team leader using a cellular phone he had hidden in his pants. After less than a minute, someone knocked on the door and IO2 Alarde let the PDEA operatives in.[9]

IO2 Alarde continued to inspect the bags and ripped off the sides thereof with a cutter. The PDEA team discovered two vacuum-sealed transparent plastic bags that were wrapped in aluminum foil and containing white crystalline substance in each bag. While still in Room 429, IO2 Alarde marked the Fendi trolley bag, the Ngoom bag, and a total of four vacuum-sealed transparent plastic bags wrapped in aluminum foil with the date of the operation and his initials — "RLA." The marking of the seized items was done in the presence of an elected official, Barangay Chairman Benjamin Lawan (Lawan), a representative from the media, Cecile Villarosa (Villarosa) of DZBB, GMA, and a representative from the Department of Justice (DOJ), Senior Prosecutor Theodore Villanueva (Villanueva), along with PDEA Dir. Tacio and PDEA agents. IO2 Alarde also prepared an Inventory of Seized Evidence and an Inventory of Seized Non-Drug Evidence thereat. Both inventories were prepared in the presence of and signed by Lawan, Villarosa, and Villanueva. Pictures of the seized items and the entrapment operation were also taken.[10]

Lawan, Villarosa, and Villanueva were summoned by the PDEA team to the hostel in view of the entrapment operation. They arrived separately between 7:00 p.m. and 8:00 p.m.

Upon the team's return to the PDEA office, IO2 Alarde prepared the request for laboratory examination. The request was signed by PDEA Dir. Tacio and personally delivered by IO2 Alarde to Chemist Ariane Arcos (Chemist Arcos) of the

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

[10] *Id.*

Laboratory Service of PDEA, who, in turn, issued an Acknowledgement Receipt for the items subject of the request. Pursuant to the said request, Chemist Arcos examined the contents of the four vacuum-sealed transparent plastic bags wrapped in aluminum foil. The contents turned out to be positive for Methamphetamine Hydrochloride which is a dangerous drug.[11]

Later on, IO2 Alarde found out that "Gina" was in fact Lacson, the person who he had been communicating with two years ago as part of his investigation on an African drug syndicate operating in Malaysia and Thailand. He did not immediately recognize her because she looked different from her pictures on Facebook.[12]

IO2 Alarde testified as to the foregoing events during trial, and his testimony was corroborated by Lawan, Villarosa, and Villanueva. Chemist Arcos' testimony, on the other hand, was dispensed with upon stipulation of the parties.[13]

Version of the Defense

On the other hand, the version of the defense, as culled from the CA Decision, is as follows:

Runana claimed that she was a Sales Executive Manager back in Kenya. She came to the Philippines sometime in June 2011 due to heartbreak after her fiancé failed to show up at their wedding ceremony on June 12, 2011. She stayed at Hostel 1632 and was billeted in Room 434.[14] On June 29, 2011, as she was returning to her room after having lunch, she met a Filipina in the elevator who complimented her hair. The latter introduced herself as Gina Lacson. They talked for a while and agreed to have a few drinks in Runana's room. While drinking, Lacson excused herself to fetch her boyfriend. Fifteen minutes later, someone knocked on the door. Runana saw Lacson through

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

[12] *Id.* at 3.

[13] *Id.* at 6.

[14] *Id.* at 7.

the peephole. However, when Runana opened the door, two men suddenly entered the room, pointed guns at Runana and ordered her to sit on one of the beds. Lacson, on the other hand, did not enter the room. The men allegedly took Runana's jewelry and cellular phone, and ordered her to be quiet. About 20 minutes later, another man arrived. Thereafter, Runana was taken to another room, about four doors away. There, she saw Lacson and other persons. Runana was ordered to sit on the far end of one of the beds.[15] On the other bed were two bags with aluminum foils on top. One of the men informed her that they were PDEA agents and that she was being arrested for drugs. Said agent told her that he would help her cause if she would be silent about what happened in her room earlier. The agents assured her that she would be able to catch her scheduled flight back to Kenya that night. However, she was taken to the PDEA office and was detained there for two days.[16]

During the trial, Runana presented her wedding invitation, receipt from the caterer, and photos with her fiancé.[17] Her sister, Alice, also testified on the alleged reason for Runana's trip and that it was her who recommended visiting the Philippines to Runana.[18]

On the other hand, only Lacson testified for her defense. She claimed that she was supposed to meet up with her Portuguese boyfriend at the Robinsons Mall on June 29, 2011. She had just arrived from Tarlac that morning and only brought her handbag and passport with her. While waiting for her boyfriend to arrive from Cebu, she booked a room at Hostel 1632. At around 11:00 a.m., while on her way to her room, Room 429, she met Runana in the elevator. Lacson complimented Runana's hair and they talked for a while. Runana invited Lacson for a drink in her room. She agreed but went to check her room first. Lacson

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[15] *Id.*

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

[17] Records, pp. 203-208.

[18] *Rollo*, p. 8.

then proceeded to Runana's room, Room 434. There, Runana offered her a drink which she refused. Instead, she decided to get from her room the pizza she had bought earlier. As she was opening the door of her room, three men suddenly grabbed her and pushed her inside the room. Inside, there were four other men and three women. They asked Lacson where "the foreigner" was. She remembered Runana whom she had just met. Thus, she led the men to Runana's room and knocked on the door. When Runana opened the door, two of the men entered the room, while one of them brought her back to her room. Inside her room, Lacson saw two pieces of luggage on the bed and several persons observing the luggage and searching the room. The persons inside the room took pictures of the items on the bed and later brought in Runana to take pictures of them as well.[19]

The Ruling of the RTC

On October 24, 2013, the RTC rendered a Decision finding both Runana and Lacson guilty beyond reasonable doubt of the crime charged. The dispositive portion of the RTC Decision reads:

> WHEREFORE, finding both accused **ELIZABETH NYAMBURA RUNANA @ "LIZ" and MA. GRACE LACSON *y* NAVARRO @ "GINA"** guilty beyond reasonable doubt for violation of Section 5 in relation to Section 26, Art. II of Republic Act 9165, they are both sentenced to suffer the penalty of life imprisonment without eligibility for parole, and each of them ordered to pay a fine in the amount of ₱2,000,000.00 and to pay the costs.
>
> Per records, the Court after taking the sample specimens of the drug-object evidence, ordered the destruction or disposition of the four (4) vacuum heat sealed transparent plastic sachets wrapped with aluminum foil pursuant to Section 21, par. 4 of RA 9165 (records, pages 153-154).
>
> As regards the sample specimens, the same are likewise forfeited in favor of the State and ordered destroyed pursuant to existing Rules after fifteen (15) days from date of the promulgation of this case, if no appeal is taken.

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[19] *Id.* at 8-9.

SO ORDERED.[20]

The RTC declared as more credible the testimonies of the prosecution witnesses. It further declared that all the elements of Section 5, Article II of R.A. 9165 in relation to the attempt to deliver, distribute and transport any dangerous drugs were duly proved by the prosecution. The RTC also held that conspiracy may be inferred from the acts of the accused as they clearly had knowledge of the illegal drugs neatly concealed in the two pieces of luggage. Finally, the RTC held that there is compliance with the procedure in the custody and disposition of confiscated prohibited drugs as mandated under Section 21 of R.A. 9165 and its Implementing Rules and Regulations (IRR), and the integrity and evidentiary value of the evidence seized have been properly preserved.

Aggrieved, Runana and Lacson appealed separately before the CA.[21]

The Ruling of the CA

In a Decision dated March 12, 2015, the CA denied their respective appeals and affirmed the RTC Decision. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, the instant appeal is **DENIED**. The assailed *Decision* dated October 24, 2013, of the RTC, Branch 35, City of Manila, in Criminal Case No. 11-284733 is **AFFIRMED** *in toto*.
>
> **SO ORDERED**.[22]

The CA upheld the validity of the entrapment operation and the resulting arrest of Runana and Lacson, as well as the seizure of the prohibited drugs. Likewise, the CA gave more credence to the testimony of IO2 Alarde and further held that the

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[20] CA *rollo*, p. 62. Emphasis in the original.

[21] *Id.* at 64-65; Notice of Appeal dated October 30, 2013 and Notice of Appeal dated November 8, 2013.

[22] *Rollo*, p. 16. Emphasis in the original.

prosecution thoroughly established the chain of custody in the instant case.

The CA Decision became final and executory with respect to Runana on August 31, 2015,[23] and a partial entry of judgment was made on July 20, 2016.[24]

On the other hand, Lacson appealed the CA Decision before this Court.[25] Both Lacson and the prosecution adopted the briefs they filed before the CA.[26]

Issue

The issue before the Court is whether the CA erred in finding Lacson guilty beyond reasonable doubt for violation of Section 5, in relation to Section 26, Article II of R.A. 9165.

The Court's Ruling

Lacson, together with Runana, was charged with violation of Section 5, in relation to Section 26, Article II of R.A. 9165, or conspiracy to transport or deliver prohibited drugs. The pertinent provision of Section 5 under which Lacson was indicted, reads as follows:

> **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.

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[23] CA *rollo*, p. 283; CA Resolution dated July 20, 2016.

[24] *Id.* at 285-286; Partial Entry of Judgment dated July 20, 2016.

[25] *Supra* note 1.

[26] Brief for Accused-Appellant Ma. Grace Lacson dated July 9, 2014, CA *rollo*, pp. 137-151; and Consolidated Brief for the Plaintiff-Appellee dated November 7, 2014, *id.* at 194-211.

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On the other hand, Section 26, in relation to the transportation of dangerous drugs, provides:

Section 26. *Attempt or Conspiracy*. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x x x x x x

In illegal transportation of prohibited drugs, the essential element is the movement of the dangerous drug from one place to another.[27] As explained by the Court in *People v. Asislo*:[28]

The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another. As defined in the case of *People v. Mariacos*, "transport" means "to carry or convey from one place to another."

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[29]

Yet, even in the absence of actual conveyance, an attempt to transport prohibited drugs is meted the same penalty prescribed for the commission thereof under Section 26 of R.A. 9165.

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[27] *People v. Asislo*, G.R. No. 206224, January 18, 2016, 781 SCRA 131, 146.

[28] *Id.*

[29] *Id.* at 146-147. Citations omitted.

In the present case, the prosecution's evidence clearly shows that Lacson intended to transport the seized prohibited drugs. Based on the information gathered by IO2 Alarde, Lacson planned to transport the seized prohibited drugs to Malaysia through the use of drug couriers in the person of the confidential informant and IO2 Alarde. To recall, the entrapment operation was put into motion following the recruitment of the confidential informant and IO2 Alarde as supposed drug courier, and after there had been confirmation that the confidential informant is already scheduled to fly to Malaysia, to be followed by IO2 Alarde. Said purpose or intention to transport prohibited drugs was confirmed by the incidents and circumstances attending the entrapment operation that led to the arrest of Lacson— *i.e.*, the confidential informant and IO2 Alarde were summoned to be given instructions regarding the transportation of certain luggage to Malaysia; the confidential informant and IO2 Alarde were brought by Lacson to Room 429 of Hostel 1632; Lacson and Runana entered the same room while lugging the seized Fendi and Ngoom trolley bags; and, the prohibited drugs were discovered to be neatly concealed in the lining of each bag.[30]

At that point, the crime of transportation of prohibited drugs is already at its attempted stage. Under the Revised Penal Code, the attempted phase of a felony occurs 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.[31] Again, under Section 26 of R.A. 9165, even an attempt to transport prohibited drugs is already penalized by the same penalty prescribed for the commission thereof.

However, to sustain a conviction on illegal transportation of prohibited drugs, the prosecution must also prove the identity of the *corpus delicti* of the crime. To maintain the integrity and evidentiary value of the seized prohibited drug, the apprehending officers must ensure that the chain of custody in

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[30] *Supra* note 2.

[31] Art. 6, REVISED PENAL CODE.

handling the same is not compromised. The procedure therefor is specifically outlined in Section 21, Article II of R.A. 9165 and the corresponding provisions in its IRR.

Under Section 21, Article II of R.A. 9165, prior to its amendment by R.A. 10640 in 2014, the apprehending team shall, among others, "x x x 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 each from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."[32] Thereafter, and "[w]ithin twenty-four (24) hours [after seizure of the prohibited drug], the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination."[33] The forensic laboratory examiner shall then issue a certification of the forensic laboratory examination results, which shall be done under oath, within 24 hours after the receipt of the subject item/s.[34]

As testified to by IO2 Alarde,[35] and corroborated by Lawan,[36] Villarosa,[37] and Villanueva,[38] the marking of the seized prohibited drugs and other seized items, the preparation of the inventories, and the taking of the photographs, were made immediately after seizure of the prohibited drugs, inside Room 429 of Hostel 1632, and in the presence of both accused and the three insulating witnesses.

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[32] Sec. 21(1), R.A. 9165.

[33] Sec. 21(2), R.A. 9165.

[34] Sec. 21(3), R.A. 9165.

[35] Transcript of Stenographic Notes (TSN) dated June 14, 2012 and June 22, 2012.

[36] TSN dated October 16, 2012.

[37] TSN dated August 23, 2012.

[38] *Id.*

The records even bear out that IO2 Alarde completely removed the concealed prohibited drugs from the lining of each luggage in the presence of the witnesses. As testified to by Villanueva:

x x x x x x x x x

Q: When you arrived and seeing two bags, what was the condition of the two bags?

A: They were just place[d] on top of the bed and they told me that they are waiting for representatives before they could conduct more examination/inspection on the bags.

Fiscal

Q: Tell us Mr. Witness whether the bags were already opened or still closed?

A: At the time we arrived inside the room, they were not yet fully opened, Your Honor. They fully opened it in my presence and in the presence of the barangay official and media representative, Your Honor.

Q: What do you mean when you said they were not yet fully opened?

A: Upon inspection when we were already present that was the time they fully opened the luggages and made some cutting on the interiors to further reveal the contents of the luggages.[39]

The records of the case also show that the seized prohibited drugs were turned over to Chemist Arcos on the same day of the entrapment operation, and within 24 hours from seizure.[40] Chemist Arcos also finished the Final Chemistry Report on 0200H of June 30, 2011, and within 24 hours from the receipt of the request on 2305H of June 29, 2011.[41]

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

[40] *Supra* note 35; records, p. 117, Request for Laboratory Examination dated June 29, 2011.

[41] *Id.* at 118-119; Final Chemistry Report No. PDEA-DD011-249 dated June 30, 2011 and Chemistry Report No. PDEA-DTO11-230 to 231 dated June 30, 2011.

The apprehending team in this case, through ample preparation, was able to comply with the requirements of Section 21, Article II of R.A. 9165, which, to stress, ensures that the *corpus delicti* remains untampered. Lacson's uncorroborated defense of denial simply pales against the overwhelming evidence of the prosecution.

Of late, a slew of drugs cases has been decided by the Court in favor of the accused due to unwarranted lapses in the observance of the requirements under Section 21, Article II of R.A. 9165, particularly on the chain of custody of the seized prohibited drugs. Law enforcement agencies must perforce be reminded of the purpose and importance of the said provision, *viz.*:

> Compliance with the chain of custody requirement provided by Section 21, therefore, **ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia** in four (4) respects: *first*, the nature of the substances or items seized; *second*, the quantity (*e.g.*, weight) of the substances or items seized; *third*, the relation of the substances or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement **forecloses opportunities for planting, contaminating, or tampering of evidence in any manner**.[42]

It should be stressed that compliance with the requirements of Section 21 is crucial in the prosecution of drugs cases for if substantial gaps in the chain of custody of the seized prohibited drugs are proven, this will cast serious doubts on the authenticity of the evidence presented in court and entitle the accused to an acquittal.[43]

Not even the amendment of R.A. 9165 through R.A. 10640,[44] with the reduction on the number of insulating witnesses and

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[42] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 569. Emphasis supplied.

[43] *People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 834.

[44] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21

introduction of the "saving clause"[45] which was previously found only in the IRR, diminish the mandatory language of Section 21. As explained by the Court in *People v. Fayo*:[46]

To recall, prior to the amendment of Section 21 of RA 9165 under RA 10640 in 2014, the following witnesses were required to witness the inventory and photographing procedures: (1) the accused or his/her representative or counsel, (2) an elected public official, (3) a representative from the media, and (4) a representative from the Department of Justice (DOJ).

OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on July 15, 2014.

[45] Sec. 21 of R.A. 9165, as amended by R.A. 10640 reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, **That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**. (Emphasis supplied)

[46] G.R. No. 239887, October 2, 2019.

However, in order to prevent the dismissal of drug cases due to the failure of law enforces to follow the stringent requirements of Section 21, Congress saw fit to reduce the required witnesses to: (1) the accused or his/her representative or counsel, (2) an elected public official, and (3) a representative from the NPS or the media.

Therefore, in passing [R.A.] 10640, Congress, in the exercise of its legislative power, *deliberately decided to retain* the mandatory requirement of securing a representative of the NPS or media as witnesses. To simply do away with the said requirement without any justifiable reason would be to unduly supplant the legislative intent of [R.A.] 9165, as amended by [R.A.] 10640.

The authorities cannot now bemoan that the securing of the presence of a representative of the NPS or media as witnesses is too strict a rule because, with the passage of [R.A.] 10640, the strict requirement on the presence of witnesses was already made less stringent and cumbersome in order to aid the police in complying with Section 21.[47]

On the contrary, given the less stringent requirements of the amendatory Section 21, there should be a higher expectation of compliance. This is especially true in cases of buy-bust or entrapment operations where law enforcement officers dedicate valuable time, resources and efforts to ensure success.

As exemplified in this case, which is decided prior to R.A. 10640, the apprehending officers were able to meet the requirements mandated by law in spite of them having barely 24 hours to plan the entrapment operation. **Particularly commendable is the fact that they ensured the presence of the three insulating witnesses who witnessed the marking of the seized prohibited drugs and other seized items, the preparation of the corresponding inventories, and the taking of the photographs. Noteworthy also is the fact that the marking, preparation of the inventory, and taking of the photographs of the seized drugs and items took place immediately after the arrest and seizure**. Thereafter, the seized prohibited drugs were turned over by IO2 Alarde to Chemist Arcos within 24 hours, and the latter came up with her report within 24 hours after receipt of the request. Without question, therefore, ***<u>all the links in the</u>***

[47] *Id.* Citations omitted.

chain of custody in this case were duly established which leaves no doubt as to the integrity and evidentiary value of the seized prohibited drugs which were later on presented before the trial court.

This case is therefore an exemplar of how strict compliance with the requirements of Section 21, Article II of R.A. 9165 can easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other.

Full compliance with the requirements of Section 21 was also demonstrated in the following recent cases involving buy-bust operations: *People v. Angeles*,[48] *People v. Baradi*,[49] *People v. Camiñas*,[50] *People v. Macaspac*,[51] *People v. Gutierrez*,[52] *People v. De Dios*,[53] and *People v. Maylon y Alvero*,[54] to name a few.

In *People v. Maylon*,[55] the Court even noted that the buy-bust team had already secured the presence of the required witnesses even before they implemented the buy-bust operation. This is further affirmation that in buy-bust operations, the law enforcement agencies are afforded sufficient time and opportunity to comply with the mandatory requirements of Section 21, especially with respect to securing the attendance of the insulating witnesses.

Even so, in *People v. Noah*,[56] a case which does not involve a buy-bust operation, but where the accused was apprehended inside

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[48] G.R. No. 229099, February 27, 2019.

[49] G.R. No. 238522, October 1, 2018.

[50] G.R. No. 241017, January 7, 2019.

[51] G.R. No. 246165, November 28, 2019.

[52] G.R. No. 236304, November 5, 2018.

[53] G.R. No. 243664, January 22, 2020.

[54] G.R. No. 240664, March 11, 2019.

[55] *Id.*

[56] G.R. No. 228880, March 6, 2019.

the airport upon her arrival from Ethiopia to Manila after the customs examiners discovered prohibited drugs concealed in her luggage, the Court found that the chain of custody was observed.

The foregoing cases, the instant case included, make it abundantly clear that the requirements on the chain of custody of seized prohibited drugs outlined in Section 21, Article II of R.A. 9165, can be observed with relative ease. The Court thus enjoins law enforcement agencies, the prosecutorial services, as well as the courts, to observe strict compliance with these mandatory requirements. Exceptions therefrom should be limited and allowed only under justified and meritorious cases, and when the integrity and evidentiary value of the seized prohibited drugs are preserved. It should always be remembered that what is at stake here is no less than the Constitution which secures the life and liberty of individuals by recognizing the accused's right to be presumed innocent — a Constitutional right that should never be made subservient to expediency and convenience of prosecution.

In light of the foregoing, the Court affirms the conviction of Lacson for an attempt to illegally transport prohibited drugs.

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated March 12, 2015 of the Court of Appeals, Fourth Division in CA-G.R. CR-HC No. 06465, is hereby **AFFIRMED**.

SO ORDERED.

Reyes, Jr., Lazaro-Javier, Zalameda,[*] and *Lopez, JJ.*, concur.

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[*] Designated additional Member per Raffle dated March 16, 2020.

FIRST DIVISION

[G.R. No. 229877. July 15, 2020]

FILCON READY MIXED, INC. and GILBERT S. VERGARA, *petitioners*, *vs.* **UCPB GENERAL INSURANCE COMPANY, INC.**, *respondent.*

SYLLABUS

1. **CIVIL LAW; PRESCRIPTION OF ACTIONS; SUBROGATION ONLY ALLOWS THE INSURER, AS THE NEW CREDITOR WHO ASSUMES *IPSO JURE* THE OLD CREDITOR'S RIGHTS WITHOUT THE NEED OF ANY CONTRACT, TO GO AFTER THE DEBTOR, BUT NO NEW OBLIGATION IS CREATED BETWEEN THE DEBTOR AND THE INSURER; THE INSURER, AS THE NEW CREDITOR, REMAINS BOUND BY THE LIMITATIONS OF THE OLD CREDITOR'S CLAIMS AGAINST THE DEBTOR, WHICH INCLUDES THE ASPECT OF PRESCRIPTION; THE INDEMNIFICATION OF THE INSURED BY THE INSURER ONLY ALLOWS IT TO BE SUBROGATED TO THE FORMER'S RIGHTS, BUT IT DOES NOT CREATE A NEW RECKONING POINT FOR THE CAUSE OF ACTION THAT THE INSURED ORIGINALLY HAS AGAINST THE WRONGDOER. —** [I]t is noted that in the recent case of ***Henson, Jr. v. UCPB General Insurance Co., Inc.***, the Court overturned ***Vector*** and held that subrogation under Article 2207 of the Civil Code only allows the insurer, as the new creditor who assumes *ipso jure* the old creditor's rights without the need of any contract, to go after the debtor. But this does not mean that a new obligation is created between the debtor and the insurer. The insurer, as the new creditor, remains bound by the limitations of the old creditor's claims against the debtor, which includes, among others, the aspect of prescription. Hence, the debtor's right to invoke the defense of prescription cannot be circumvented by the mere expedient of successive payments of certain insurers that purport to create new obligations when, in fact, what remains subsisting is only the original obligation, *viz.*: x x x The Court must heretofore abandon the ruling in

Vector that an insurer may file an action against the tortfeasor within ten (10) years from the time the insurer indemnifies the insured. Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer. To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer. Be that as it may, it should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. x x x

2. **ID.; ID.; SUBROGATION *VIS-À-VIS* PRESCRIPTION OF ACTIONS BASED ON QUASI-DELICTS; APPLICATION OF THE COURT'S RULING IN THE CASE OF *VECTOR SHIPPING CORP., ET AL. V. AMERICAN HOME ASSURANCE COMPANY, ET AL.*, 713 PHIL. 198 [2013] *VIS-À-VIS* THE PRESCRIPTIVE PERIOD IN CASES WHERE THE INSURER IS SUBROGATED TO THE RIGHTS OF THE INSURED AGAINST THE WRONGDOER BASED ON A *QUASI-DELICT*, GUIDELINES; RESPONDENT HAS FOUR (4) YEARS FROM THE TIME THE TORT IS COMMITTED AGAINST THE INSURED WITHIN WHICH TO FILE ITS ACTION FOR SUM OF MONEY AGAINST THE PETITIONERS. —** In ***Henson***, the Court came up with **guidelines** relative to the application of ***Vector*** and its Decision *vis-à-vis* the prescriptive period in cases where the insurer is subrogated to the rights of the insured against the wrongdoer **based on a *quasi-delict***, thus: 1. For actions of such nature that **have already been filed and are currently pending** before the courts at the time of the finality of this Decision, the *rules on prescription prevailing at the time the action is filed* would apply. Particularly: *(a)* For cases that were filed by the subrogee-insurer **during** the applicability of the *Vector* ruling (*i.e.*, from *Vector*'s finality on August 15, 2013 up until the finality of this Decision), the prescriptive

period is ten (10) years from the time of payment by the insurer to the insured, which gave rise to an obligation created by law. **Rationale**: Since the *Vector* doctrine was the prevailing rule at this time, issues of prescription must be resolved under *Vector*'s parameters. *(b)* For cases that were filed by the subrogee-insurer **prior** to the applicability of the *Vector* ruling (*i.e.*, before August 15, 2013), the prescriptive period is four (4) years from the time the tort is committed against the insured by the wrongdoer. **Rationale**: The *Vector* doctrine, which espoused unique rules on legal subrogation and prescription as aforedescribed, was not yet a binding precedent at this time; hence, issues of prescription must be resolved under the rules prevailing before *Vector*, which, incidentally, are the basic principles of legal subrogation *vis-à-vis* prescription of actions based on *quasi-delicts*. 2. For actions of such nature that have **not yet** been filed at the time of the finality of this Decision: (a) For cases where the tort was committed and the consequent loss/injury against the insured occurred **prior** to the finality of **this Decision**, the subrogee-insurer is given a period not exceeding four (4) years from the time of the finality of this Decision to file the action against the wrongdoer; ***provided***, that in all instances, the total period to file such case shall not exceed ten (10) years from the time the insurer is subrogated to the rights of the insured. **Rationale**: The erroneous reckoning and running of the period of prescription pursuant to the *Vector* doctrine should not be taken against any and all persons relying thereon because the same were based on the then-prevailing interpretation and construction of the Court. Hence, subrogees-insurers, who are, effectively, only now notified of the abandonment of *Vector*, must be given the benefit of the present doctrine on subrogation as ruled in this Decision. However, the benefit of the additional period (*i.e.*, not exceeding four [4] years) under this Decision must not result in the insured being given a total of more than ten (10) years from the time the insurer is subrogated to the rights of the insured (*i.e.*, the old prescriptive period in *Vector*); otherwise, the insurer would be able to unduly propagate its right to file the case beyond the ten (10)-year period accorded by *Vector* to the prejudice of the wrongdoer. *(b)* For cases where the tort was committed and the consequent loss/injury against the insured occurred only **upon or after** the finality of **this Decision**, the *Vector* doctrine would hold no application. The prescriptive period is four (4) years from the time the tort is

committed against the insured by the wrongdoer. **Rationale**: Since the cause of action for *quasi-delict* and the consequent subrogation of the insurer would arise after due notice of *Vector*'s abandonment, all persons would now be bound by the present doctrine on subrogation as ruled in this Decision. We apply here paragraph 1 (b). Since the action was filed on February 1, 2012, prior to Vector, the applicable prescriptive period is four (4) years pursuant to Article 1146 of the Civil Code. Respondent, therefore, had four (4) years from November 16, 2007 when the vehicular mishap took place or until November 16, 2011 within which to file its action for sum of money against Vergara and his employer Filcon.

3. **ID.; ID.; ID.; PETITIONERS' RECEIPT OF THE RESPONDENT'S DEMAND LETTER INTERRUPTS THE FOUR (4)-YEAR PRESCRIPTIVE PERIOD WITHIN WHICH TO FILE THE ACTION FOR SUM OF MONEY.** — Within the four (4)-year prescriptive period, or on September 1, 2011, respondent sent petitioners a demand letter of even date. The latter never denied receipt thereof. Pursuant to Article 1155 of the Civil Code, respondent's demand letter and petitioners' receipt thereof had the effect of interrupting the four (4)-year prescriptive period and gave respondent a whole fresh period of four (4) years from petitioners' receipt of the demand letter within which to file the action for sum of money. Records show that respondent filed the action just within five (5) months from September 1, 2011, the date when it sent the demand letter to petitioners, who, as stated, never denied receipt thereof. The Court of Appeals, thus, correctly reversed the dispositions of both MeTC and RTC and in lieu thereof, properly ruled that complaint was filed within the prescriptive period of four (4) years.

APPEARANCES OF COUNSEL

Aderis M. Dela Cruz for petitioners.

Jerome B. Aragones for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 140921, entitled *"UCPB General Insurance Company, Inc. v. Filcon Ready Mixed, Inc. and Gilbert S. Vergara"*:

1. Decision[2] dated September 30, 2016, which reversed the trial court's ruling and held that respondent's action for sum of money had not prescribed; and

2. Resolution[3] dated February 1, 2017, denying petitioners' motion for reconsideration.

Antecedents

Marco P. Gutang is the registered owner of a Honda Civic with plate number ZDR-835. The vehicle was insured with respondent UCPB General Insurance Company, Inc. (UCPB) with Policy No. QCT07MD-MNP 586570 covering the period April 17, 2007 to April 17, 2008. On November 16, 2007, the car figured in a vehicular accident in Quezon City involving three (3) other vehicles: a Toyota Revo, a Mitsubishi Adventure and a cement mixer bearing Plate Number UCK-750 owned by petitioner Filcon Ready Mixed, Inc. and driven by petitioner Gilbert S. Vergara.[4]

Based on the Traffic Accident Investigation Report, Vergara left the cement mixer with its engine running at the uphill portion of Boni Serrano Extension. It moved backward and hit the front

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[1] *Rollo*, pp. 3-27.

[2] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 35-45.

[3] *Rollo*, pp. 47-49.

[4] *Id.* at 35.

portion of the Mitsubishi Adventure parked behind it. This car, in turn, hit the front portion of the insured vehicle. The rear portion of the insured vehicle rammed into the Toyota Revo parked behind it.[5]

By Complaint dated February 1, 2012, respondent essentially averred that the proximate cause of the accident was Vergara's gross negligence and lack of precaution. As a consequence, the insured vehicle got damaged. Gutang brought the car to Honda Cars Pasig City for repair. As Gutang's insurer, respondent paid the total cost of repairs in the amount of ₱195,409.50 to Honda. Thereafter, Gutang executed a document captioned "Release and Discharge" which effectively assigned to respondent all his claims against petitioners.[6]

By virtue of this legal subrogation, respondent sent a demand letter dated September 1, 2011 to petitioners, but the latter simply ignored it. Hence, respondent was constrained to file the present action for sum of money before the Metropolitan Trial Court (MeTC)—Branch 62, Makati City.[7]

Petitioners, on the other hand, interposed extinctive prescription as an affirmative defense. They claimed that under Article 1146 of the Civil Code, actions based on quasi-delict prescribes in four (4) years. Too, the complaint failed to state a cause of action as respondent failed to attach thereto proof of payment to Gutang and to show any privity between Gutang and BPI Rental which was named as the payee in the undated and unnotarized Release and Discharge.[8]

The Trial Court's Ruling

By Decision[9] dated August 16, 2013, the trial court dismissed the complaint on ground of prescription. Since the accident

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[5] *Id.* at 35-36.

[6] *Id.* at 36.

[7] *Id.*

[8] *Id.*

[9] Copy of the MeTC Decision not attached to the Petition; *rollo*, p. 36.

happened on November 16, 2007, the claim should have been filed only until November 16, 2011. Here, the claim was filed on February 1, 2012 or more than two (2) months late.

The Regional Trial Court's (RTC's) Ruling

On appeal, the RTC affirmed, *viz.*:[10]

WHEREFORE, viewed in the light of the foregoing considerations, this Court finds no cogent reason to reverse, modify or set aside the decision of the court *a quo* as the same is supported by the evidence and law.

Accordingly, the decision of the court *a quo* dated August 16, 2013 is hereby ordered AFFIRMED *IN TOTO*.

SO ORDERED.

Respondent moved for reconsideration which was denied in Resolution[11] dated June 1, 2015.

The Proceedings Before the Court of Appeals

Respondent alleged that the RTC ignored the fact that its subrogation to the rights of Gutang was by virtue of an express provision of law under Articles 2207[12] and 1144 (2)[13] of the

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[10] Copy of the RTC Decision not attached to the Petition; *rollo*, p. 37.

[11] Copy of the RTC Resolution not attached to the Petition; *rollo*, p. 37.

[12] **Art. 2207.** If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

[13] **Art. 1144.** The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment. (n)

Civil Code stating that an obligation created by law must be brought within ten (10) years from the time the cause of action accrued.[14]

The Court of Appeals' Ruling

By Decision[15] dated September 30, 2016, the Court of Appeals reversed. It found that respondent successfully proved it was subrogated to the rights of its assured, Marco Gutang. Evidence showed that the repairs on the insured vehicle were undertaken by Honda Cars Pasig pursuant to Letters of Authority dated December 7, 2007 and January 8, 2008 issued by respondent. On February 6, 2008, per Service Invoice Nos. 0468927 and 0468928, the insured vehicle was released to Gutang. The following day, Honda sent respondent a Statement of Account which reflected the cost of parts and repairs of the insured vehicle amounting to ₱195,409.50. On March 6, 2008, respondent issued a Motor Claims Requisition Voucher for this amount with notation "release to payee."[16]

Respondent's payment to Gutang operates as an equitable assignment to the former all the remedies that the latter may have against petitioners whose negligence caused the damage on the former's insured vehicle.[17]

As for prescription, it held that following the pronouncement of this Court in ***Vector Shipping Corp., et al. v. American Home Assurance Company, et al.***,[18] since respondent's cause of action was anchored on legal subrogation, an obligation created by law, the same must be brought within ten (10) years from the time the right of action accrued. Considering that respondent

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[14] *Rollo*, p. 37.

[15] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 35-45.

[16] *Id.* at 39.

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

[18] 713 Phil. 198 (2013).

indemnified Gutang on February 6, 2008, the action will prescribe on February 6, 2018. Hence, the filing of respondent's complaint on February 1, 2012 was well within the ten-year prescriptive period.[19]

By Resolution[20] dated February 1, 2017, the Court of Appeals denied petitioners' motion for reconsideration.

The Present Petition

Petitioners now seek affirmative relief and pray that the assailed dispositions of the Court of Appeals be reversed and the trial court's ruling declaring respondent's action for sum of money to have already prescribed, be reinstated.

Petitioners argue in the main that respondent's cause of action is based on quasi-delict since the cause of action stemmed from the alleged gross negligence of Vergara which led to the vehicular mishap on November 16, 2007. Thus, the prescriptive period within which to file the action is four (4) years from the accrual of cause of action or until November 16, 2011. Since respondent filed the action only on February 1, 2012, the action had already prescribed.

In subrogation, the rights to which the subrogee (respondent) succeeds are the same as, but not greater than those of the person (Gutang) whom he substituted. In effect, since Gutang's cause of action is based on quasi-delict which prescribes in four (4) years, when respondent stepped into Gutang's shoes, it can only initiate the action for sum of money also within the same four-year period. Failure to do so will render the action prescribed as in this case.[21]

On the other hand, respondent basically riposted that petitioners' cause of action is based on legal subrogation and not one based on quasi-delict because subrogation under Article 2207

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

[20] *Id.* at 47-49.

[21] *Id.* at 3-31.

of the Civil Code gives rise to a cause of action created by law. Its cause of action, too, had not prescribed pursuant to this Court's ruling in ***Vector*** which decreed that subrogation of an insurer to the rights of the insured is by virtue of an express provision of law which provides for a prescriptive period of ten (10) years from the time the cause of action arose within which to file an action.[22]

Issue

Is respondent's action for money claims against petitioners barred by prescription?

Ruling

We **DENY** the petition.

At the outset, it is noted that in the recent case of ***Henson, Jr. v. UCPB General Insurance Co., Inc.***,[23] the Court overturned ***Vector*** and held that subrogation under Article 2207 of the Civil Code only allows the insurer, as the new creditor who assumes *ipso jure* the old creditor's rights without the need of any contract, to go after the debtor. But this does not mean that a new obligation is created between the debtor and the insurer. The insurer, as the new creditor, remains bound by the limitations of the old creditor's claims against the debtor, which includes, among others, the aspect of prescription. Hence, the debtor's right to invoke the defense of prescription cannot be circumvented by the mere expedient of successive payments of certain insurers that purport to create new obligations when, in fact, what remains subsisting is only the original obligation, *viz.*:

> *x x x* The Court must heretofore abandon the ruling in *Vector* that an insurer may file an action against the tortfeasor within ten (10) years from the time the insurer indemnifies the insured. Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action

[22] *Id.* at 56-70.

[23] G.R. No. 223134, August 14, 2019.

against the wrongdoer. To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.

Be that as it may, it should, however, be clarified that this Court's abandonment of the *Vector* doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. *x x x*

In ***Henson***,the Court came up with **guidelines** relative to the application of ***Vector*** and its Decision *vis-à-vis* the prescriptive period in cases where the insurer is subrogated to the rights of the insured against the wrongdoer **based on a *quasi-delict***, thus:

1. For actions of such nature that **have already been filed and are currently pending** before the courts at the time of the finality of this Decision, the *rules on prescription prevailing at the time the action is filed* would apply. Particularly:

(a) For cases that were filed by the subrogee-insurer **during** the applicability of the *Vector* ruling (*i.e.*, from *Vector*'s finality on August 15, 2013 up until the finality of this Decision),the prescriptive period is ten (10) years from the time of payment by the insurer to the insured, which gave rise to an obligation created by law.

Rationale: Since the *Vector* doctrine was the prevailing rule at this time, issues of prescription must be resolved under *Vector*'s parameters.

(b) For cases that were filed by the subrogee-insurer **prior** to the applicability of the *Vector* ruling (*i.e.*, before August 15, 2013), the prescriptive period is four (4) years from the time the tort is committed against the insured by the wrongdoer.

Rationale:The *Vector* doctrine, which espoused unique rules on legal subrogation and prescription as aforedescribed, was not yet a binding precedent at this time; hence, issues of prescription must be

resolved under the rules prevailing before *Vector*, which, incidentally, are the basic principles of legal subrogation *vis-à-vis* prescription of actions based on *quasi-delicts*.

2. For actions of such nature that have **not yet** been filed at the time of the finality of this Decision:

(a) For cases where the tort was committed and the consequent loss/injury against the insured occurred **prior** to the finality of **this Decision**,the subrogee-insurer is given a period not exceeding four (4) years from the time of the finality of this Decision to file the action against the wrongdoer; ***provided***,that in all instances, the total period to file such case shall not exceed ten (10) years from the time the insurer is subrogated to the rights of the insured.

Rationale:The erroneous reckoning and running of the period of prescription pursuant to the *Vector* doctrine should not be taken against any and all persons relying thereon because the same were based on the then-prevailing interpretation and construction of the Court. Hence, subrogees-insurers, who are, effectively, only now notified of the abandonment of *Vector*, must be given the benefit of the present doctrine on subrogation as ruled in this Decision.

However, the benefit of the additional period (*i.e.*, not exceeding four [4] years) under this Decision must not result in the insured being given a total of more than ten (10) years from the time the insurer is subrogated to the rights of the insured (*i.e.*, the old prescriptive period in *Vector*); otherwise, the insurer would be able to unduly propagate its right to file the case beyond the ten (10)-year period accorded by *Vector* to the prejudice of the wrongdoer.

(b) For cases where the tort was committed and the consequent loss/injury against the insured occurred only **upon or after** the finality of **this Decision**,the *Vector* doctrine would hold no application. The prescriptive period is four (4) years from the time the tort is committed against the insured by the wrongdoer.

Rationale:Since the cause of action for *quasi-delict* and the consequent subrogation of the insurer would arise after due notice of *Vector*'s abandonment, all persons would now be bound by the present doctrine on subrogation as ruled in this Decision.

We apply here paragraph 1 (b).Since the action was filed on February 1, 2012, prior to ***Vector***, the applicable prescriptive

period is four (4) years pursuant to Article 1146 of the Civil Code.[24] Respondent, therefore, had four (4) years from November 16, 2007 when the vehicular mishap took place or until November 16, 2011 within which to file its action for sum of money against Vergara and his employer Filcon.

Within the four (4)-year prescriptive period, or on September 1, 2011, respondent sent petitioners a demand letter of even date. The latter never denied receipt thereof. Pursuant to Article 1155 of the Civil Code, respondent's demand letter and petitioners' receipt thereof had the effect of interrupting the four (4) year prescriptive period and gave respondent a whole fresh period of four (4) years from petitioners' receipt of the demand letter within which to file the action for sum of money. Records show that respondent filed the action just within five (5) months from September 1, 2011, the date when it sent the demand letter to petitioners, who, as stated, never denied receipt thereof.

The Court of Appeals, thus, correctly reversed the dispositions of both MeTC and RTC and in lieu thereof, properly ruled that complaint was filed within the prescriptive period of four (4) years.

ACCORDINGLY,the petition is **DENIED**. The Decision dated September 30, 2016 and Resolution dated February 1, 2017 of the Court of Appeals in CA-G.R. SP No. 140921 are **AFFIRMED**.The case is **REMANDED** to the trial court for further proceedings.

SO ORDERED.

Peralta, C.J., Caguioa, Reyes, Jr., and *Lopez, JJ.*, concur.

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[24] **Article 1146.** The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;

(2) Upon a *quasi-delict*;

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year.

SECOND DIVISION

[G.R. No. 230981. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **XXX**,[*] *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS. —** The elements of Qualified Rape are as follows: (1) sexual congress; (2) with a woman; (3) done by force, threat, or intimidation and without consent; (4) the victim is under 18 years of age at the time of rape; and (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim. The actual force, threat, or intimidation that is an element of rape under Article 266-A, paragraph (1)(a) is no longer required to be present because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A RAPE VICTIM'S TESTIMONY IS ENTITLED TO GREATER WEIGHT WHEN SHE ACCUSES A CLOSE RELATIVE OF HAVING RAPED HER. —** [I]n resolving rape cases, the primary consideration is almost always given to the credibility of AAA's testimony.

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[*] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

When the latter's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. In fact, as in here, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.

3. **ID.; ID.; ID.; THE VICTIM'S CONDUCT AFTER THE SEXUAL MOLESTATION AND HER INABILITY TO REPORT THE INCIDENT ARE ALSO NOT ENOUGH TO DISCREDIT HER; VICTIMS OF A CRIME AS HEINOUS AS RAPE CANNOT BE EXPECTED TO ACT WITHIN REASON OR IN ACCORDANCE WITH SOCIETY'S EXPECTATIONS. —** [I]t comes as no surprise that a person accused of serious crime like rape will tend to escape liability by shifting the blame on the victim. Nevertheless, settled is the rule that the accused-appellant's defense of denial cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. The victim's conduct after the sexual molestation and her inability to report the incident are also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unfair and unreasonable to demand a standard of rational reaction to an irrational experience, especially from a 12-year-old victim.

4. **ID.; ID.; ID.; A YOUNG GIRL'S REVELATION THAT SHE HAD BEEN RAPED COUPLED WITH HER VOLUNTARY SUBMISSION TO MEDICAL EXAMINATION AND WILLINGNESS TO UNDERGO PUBLIC TRIAL WHERE SHE COULD BE COMPELLED TO GIVE OUT THE DETAILS OF AN ASSAULT ON HER DIGNITY CANNOT BE SO EASILY DISMISSED AS A MERE CONCOCTION. —** [T]he result of the Living Case Report of AAA shows the presence of hymenal lacerations at five and nine o'clock positions, which is consistent with the statement that accused-appellant inserted his penis into her vagina. At this point, a young girl's revelation that she had been raped coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give

out the details of an assault on her dignity cannot be so easily dismissed as a mere concoction.

5. **CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST, ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. 7610); SEXUAL ABUSE; ELEMENTS. —** The elements of sexual abuse under Section 5, Article III of RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

6. **ID.; ID.; ID.; PROPER DESIGNATION OF LIABALITY FOR ACTS CONSTITUTING SEXUAL ASSAULT UNDER R.A. 7610. —** Withal, a change in the nomenclature of the offense charged against accused-appellant is in order. In *People v. Tulagan* (*Tulagan*), the Court prescribes the guidelines in the proper designation or nomenclature of acts constituting sexual assault and the penalty to be imposed depending on the age of the victim, *viz.*: Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A (2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*. **Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. x x x** In line with the pronouncement in *Tulagan*, the rulings of the lower

courts should be modified by convicting accused-appellant of the offense of Lascivious Conduct under Section 5(b) of RA 7610.

7. **ID.; ID.; ID.; PROPER IMPOSABLE PENALTY. —** The penalty to be imposed for Lascivious Conduct is *reclusion temporal* in its medium period to *reclusion perpetua*. The prosecution established herein AAA's minority and her relationship with accused-appellant. The proper penalty to be imposed is the maximum which, in this case, is *reclusion perpetua*, there being no mitigating circumstance to offset the aggravating circumstance present. There is no need also to qualify the sentence to *reclusion perpetua* with the phrase "without eligibility for parole" since under Administrative Matter No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

8. **ID.; ID.; ID.; CIVIL LIABILITY OF THE ACCUSED. —** Likewise, Section 31(f) of RA 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of ₱15,000.00. As to the damages, accused-appellant is ordered to pay the victim civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each.

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.*:

The case tells the story of a child snatched from the cradle of innocence by the bestiality of his own step-father whom she fondly called as Papa XXX. The controversy lies in the forthright and positive testimony of the victim regarding the sexual abuse she suffered in the hands of her step-father as against the latter's defense that it is incredible that he would rape the victim, while his own children are in the house.

For the Court's consideration is the appeal[1] of the Decision[2] dated October 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01331-MIN which affirmed *in toto* the Joint Decision[3] dated July 4, 2014 of Branch 22, Regional Trial Court (RTC), [redacted] finding XXX (accused-appellant) guilty beyond reasonable doubt of the crime of Rape under Article 266-A, in relation to Article 266-B of the Revised Penal Code (RPC), as amended; and for violating Section 5(b) of Republic Act No. (RA) 7610, otherwise known as the "Special Protection of Children against Abuse, Exploitation and Discrimination Act."

The Antecedents

Accused-appellant was indicted in an Information in Criminal Case No. 2011-440[4] for the rape of his step-daughter, AAA committed as follows:

> That sometime in the year 2010, and on dates subsequent and prior thereto, at [redacted] Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, having moral ascendancy over the herein victim, being the common-law husband of her mother, did then and there, willfully, unlawfully and feloniously commit a series of acts of sexual abuse upon one [AAA], a 12-year old minor, by sodomizing her by inserting his penis into said victim's anus, and on several occasions by inserting his penis into her vagina, which acts of said accused debase, degrade and demean the intrinsic worth and dignity of said child, [AAA], as a human being, to the damage and prejudice of said victim.
>
> CONTRARY TO and in violation of Section 5(b) of Republic Act No. 7610 (CHILD ABUSE).[5]

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[1] See Notice of Appeal dated November 11, 2016, *rollo*, pp. 17-18.

[2] *Id.* at 3-16; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring.

[3] CA *rollo*, pp. 35-45; penned by Presiding Judge Richard D. Mordeno.

[4] Records, pp. 3-4.

[5] *Id.* at 3.

Additionally, in Criminal Case No. 2011-441,[6] accused-appellant was indicted for child abuse, *viz.*:

That sometime in the month of February, 2011 or prior thereto, [redacted] Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force and intimidation and having moral ascendancy over the herein victim, being the common-law husband of her mother, did then and there, willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a 12-year-old minor, against her will and consent, to the damage and prejudice of said victim.

CONTRARY TO and in violation of Article 266-A, in relation to Article 266-B of the Revised Penal Code, as amended by R.A. 8353.[7]

On January 20, 2012, accused-appellant, upon his arraignment, entered his pleas of not guilty to both charges.[8]

The prosecution presented the following as its witnesses: (1) AAA, the victim; (2) Dra. Julieta Sittie Salma A. Masorong (Dr. Masorong); (3) Police Officer I Marie Regie A. Pinonia (PO1 Pinonia); and (4) Psychologist Myrna D. Villanueva (Villanueva).

The prosecution established the following:

AAA was born on May 19, 1998. After the separation of her parents, her mother lived with accused-appellant in [redacted], Misamis Oriental. One day, when she was about 12 years old, her mother went out to sell rice cakes, and left her and her half-siblings with the accused-appellant in their house. The accused-appellant then took AAA inside a room, removed her short pants, and went on top of her. Accused-appellant inserted his penis into her vagina and made a push and pull motion. The following day, accused-appellant molested AAA once more

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[6] *Id.* at 31.

[7] *Id.*

[8] See Order dated January 20, 2012, *id.* at 55.

by forcing her to suck his penis. AAA did not tell her mother about her ordeal as the accused-appellant threatened to kill her.[9]

Accused-appellant sexually molested AAA anew when she was 13 years old. One time, AAA went to the accused-appellant's room to ask his help regarding her exam when he suddenly forced her to lie on her stomach and lifted her skirt. Accused-appellant removed his own pants and brief, inserted his penis to her anus, and performed a push and pull motion. In yet another incident at the pigpen near their house, accused-appellant called AAA and directed her to sit on his lap. Accused-appellant removed his pants and "picked" her vagina.[10]

One day, when AAA arrived home late after buying salt, the accused-appellant scolded her, punched her, and hit her with a coconut grater. The next morning, AAA jumped out from the window and ran away from home. She came across the *barangay* captain who brought her to the police station where she executed an affidavit depicting her ordeal in the hands of the accused-appellant. The medical examination conducted by Dr. Masorong showed that the AAA's hymen had old and healed lacerations at five and nine o'clock positions. Meanwhile, Villanueva, a psychologist, found that AAA was suffering from an anxiety disorder and had symptoms of a sexually abused person.[11]

For his part, the accused-appellant denied AAA's allegations. He alleged that prior to the filing of the charges against him, he beat AAA because she stole a wall clock, a battery operated radio, and a sum of money from their neighbors. The neighbors did not file a complaint against her because she was still a minor, but they advised him to discipline her. AAA's mother, BBB, corroborated his testimony. According to BBB, her daughter hated the accused-appellant because he would scold and hit her whenever she steal things. BBB, likewise, clarified that

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[9] *Rollo*, p. 5.

[10] *Id.*

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

there was no time that AAA was left alone in the house because the accused-appellant's mother, CCC, would always be there to watch her children.[12]

Lastly, CCC testified that in 2010 and 2011, she was living with her son and his family to take care of her grandchildren, including AAA. She did not witness the accused-appellant commit the charges imputed to him.[13]

The Ruling of the RTC

After trial, the RTC found that the prosecution successfully discharged the burden of proof in the two charges. It observed that AAA was clear and steadfast in relating the material points of the incidents. Moreover, the Living Case Report[14] of Dr. Masorong showed that she suffered hymenal lacerations at five and nine o'clock positions.[15] It thus relied on the credible and positive declaration of AAA as against the denial of the accused-appellant. The dispositive portion of the Joint Decision reads:

WHEREFORE, the foregoing premises considered judgment is hereby rendered finding the accused [XXX];

1). *GUILTY* beyond reasonable doubt of the crime of CHILD ABUSE as defined and penalized under Section 5(b), Article III, Republic Act No. 7610 in F.C. Criminal Case No. 2011-440 and he is hereby sentenced to suffer the indeterminate sentence of *Fourteen (14) years, Eight (8) months and One (1) day of reclusion temporal, as minimum, to Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal, as maximum*. He is also ordered to pay "AAA" the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages. Pursuant to prevailing jurisprudence, the accused is also ordered to pay the amount of Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

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[12] *Id.* at 6.

[13] *Id.*

[14] Exhibit "E", Index of Exhibits, p. 9.

[15] Exhibit "E-4", Index of Exhibits, *id.*

2). *GUILTY* beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, Par. 1 of the Revised Penal Code in F.C. Criminal Case No. 2011-441 and he is hereby sentenced to suffer the imprisonment of *reclusion perpetua*, without eligibility for parole. He is also ordered to pay "AAA" ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.

The accused is likewise ordered to pay "AAA" interest at the legal rate of six percent (6%) per annum in all the amounts of damages awarded, reckoned from the date of finality of this decision until fully paid.

SO ORDERED.[16]

The Ruling of the CA

In the Decision[17] dated October 27, 2016, the CA affirmed the RTC's ruling. It held:

From the foregoing, the elements of rape have been established without iota of doubt. In the case at bar, the appellant had carnal knowledge of the private complainant with the use of force, threat, intimidation and by means of abuse of authority. This was supported by private complainant's testimony, the foregoing affidavit and corroborated by the medical and psychological reports. Her minority was substantiated by her birth certificate showing that she was born on 19 May 1998 and admitted by the defense during the pre-trial conference.

WHEREFORE, the appeal is DENIED. The 4 July 2014 Joint Decision of the Regional Trial Court of Branch 22 in Criminal Cases No. 2011-440 for violation of R.A. No. 7610 and No. 2011-441 for Rape is hereby AFFIRMED.

SO ORDERED.[18]

Before the Court, accused-appellant manifested that he would no longer file a Supplemental Brief as he had exhaustively

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[16] CA *rollo*, pp. 44-45.

[17] *Rollo*, pp. 3-16.

[18] *Id.* at 15.

discussed the arguments for his acquittal in his Appellant's Brief.[19] The Office of the Solicitor General manifested in like manner that the Appellee's Brief filed before the CA already discussed its arguments; hence, there is no necessity to file a Supplemental Brief.[20]

By and large, accused-appellant invoked the same arguments he raised before the CA in assailing his conviction. He alleged, among others, that AAA's version of the facts was highly doubtful insisting that a rapist would do his dastardly act surreptitiously to avoid being caught. Even if lust is no respecter of time and place, he maintained that no father would openly have carnal knowledge with someone in the presence of his children.[21] Accused-appellant averred too that the victim had all the chance to report the alleged sexual abuse to her mother or to the authorities. She was already 12 years old when the purported incident happened and, therefore, she could already report the incident.[22]

The appeal has no merit.

The Ruling of the Court

Rape can be committed in two ways.

Paragraph 1 of Article 266-A of the RPC refers to rape through sexual intercourse, otherwise known as organ rape or penile rape. The central element of this kind of rape is carnal knowledge, which must be proven beyond reasonable doubt.[23] The law states:

Article 266-A. *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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[19] *Id.* at 28-29.

[20] *Id.* at 23-25.

[21] CA *rollo*, p. 31.

[22] *Id.*

[23] *People v. Moya*, G.R. No. 228260, June 10, 2019, citing *People v. Soria*, 698 Phil. 676, 689 (2012).

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Paragraph 2 of Section 266-A refers to rape by sexual assault. It is known as instrument or object rape or gender-free rape and must be attended by any of the circumstances enumerated above.[24] Thus:

ART. 266-A. *Rape, When and How Committed.* — x x x

x x x x x x x x x

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or oral orifice of another person.

Accused-appellant is guilty of Qualified Rape in Criminal Case No. 2011-441.

In Criminal Case No. 2011-441, accused-appellant must be convicted of Qualified Rape under Article 266-B of the RPC since the Information alleged, and was admitted,[25] that AAA was a 12-year-old minor and that accused-appellant was the live-in partner or the common-law spouse of her mother.[26] The elements of Qualified Rape are as follows: (1) sexual congress; (2) with a woman; (3) done by force, threat, or intimidation and without consent; (4) the victim is under 18 years of age at

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[24] *Id.*, citing *People v. Abulon*, 557 Phil. 428, 454 (2007) and *People v. Soria*, 698 Phil. 676, 687 (2012).

[25] See Pre-Trial Order dated February 6, 2012, records, pp. 62-64.

[26] *People v. Vañas*, G.R. No. 225511, March 20, 2019.

the time of rape; and (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim. The actual force, threat, or intimidation that is an element of rape under Article 266-A, paragraph (1) (a) is no longer required to be present because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[27]

In Criminal Case No. 2011-441, the prosecution established that accused-appellant had carnal knowledge of AAA employing force and intimidation, and by means of abuse of authority. AAA testified that sometime in February 2011, accused-appellant inserted his penis into her vagina and threatened to kill her after committing the crime. She narrated her harrowing experience in the hands of her step-father, in this wise:

[PROS. BONOAN: (To: Witness)]

x x x x x x x x x

Q. What is the work of your mother BBB?

A. She is a "puto" vendor.

Q. How about your step father, what is his work?

A. He worked in the farm.

Q. Do you call him Papa or Uncle?

A. Papa.

x x x x x x x x x

Q. You filed a case against [XXX], why is it that you filed a case against him?

A. Because he abused me.

Q. Where did it happen?

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[27] *People v. CCC*, G.R. No. 228822, June 19, 2019, citing *People v. Palanay*, 805 Phil. 116, 123 (2017) and *People v. Pacayra*, 810 Phil. 275, 288 (2017).

A. At our house.

Q. When you say he abused you, what did he do to you?

RECORDS:

Witness is wiping her eyes and start to sob.

PROS. BONOAN: (To: Witness)

Q. Did it happen in your house in ██████?

A. At ███████████.

Q. Where was your mother at that time?

A. She was selling puto.

Q. Who was left in the house?

A. The four of us. My two half siblings and stepfather.

Q. What was your stepfather doing when your mother was selling puto?

A. He abused me.

Q. What do you mean he abused you?

RECORDS:

Witness is nodding her head.

PROS. BONOAN: (To: Witness)

Q. Where did he take you?

A. In our room.

Q. Once inside the room, what did he do?

A. He then abused me by removing my short pants.

Q. After removing your short pants, what else did he do?

A. He removed his pants.

Q. After that what happened?

A. He went on top of me.

Q. What did he do when he was on top of you?

A. He made a push and pull motion.

Q. Was it painful?

A. Yes.

Q. Why?

A. Because he molested me.

Q. Did he insert part of his body to your body?

A. Yes.

Q. What part [of] his body did he use?

A. He inserted his penis into my vagina.

Q. How old are you when the incident happened for the first time?

A. Twelve years old.

Q. Was that the only time he inserted his penis into your vagina?

A. Also on the following day.

Q. Where did it happen?

A. In our room.

Q. Again he did the same thing?

A. He made me sucked his penis.

Q. What else did he do to you?

A. He let me sucked his penis into my mouth.

Q. What happened after that?

A. Nothing happened.

Q. Did you tell your mother?

A: No.

Q. Why?

A. I was afraid to tell my mother because he might kill me.

Q. Did the Accused threaten you or your mother?

A. Yes.[28] (Emphasis supplied.)

Faced with such serious accusation, accused-appellant raised the defense of denial and faulted AAA for her failure to report the alleged sexual abuse to her mother or the authorities. He argued that AAA was already 12 years old at the time of the supposed incident and she can decide on her own and report it. What is more, he claimed that AAA harbors ill-feelings towards him for disciplining her for her misdemeanors.

The Court is not persuaded.

First, in resolving rape cases, the primary consideration is almost always given to the credibility of AAA's testimony. When the latter's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. In fact, as in here, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.[29]

Second, it comes as no surprise that a person accused of serious crime like rape will tend to escape liability by shifting the blame on the victim. Nevertheless, settled is the rule that the accused-appellant's defense of denial cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[30] The victim's conduct after the sexual molestation and her inability to report the incident are also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unfair and unreasonable to demand a standard of rational reaction to an irrational experience,

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[28] TSN, May 3, 2012, pp. 7-9.

[29] *People v. BBB*, G.R. No. 232071, July 10, 2019 citing *People v. Galagati*, 788 Phil. 670, 684-685 (2016).

[30] *People v. Moya*, *supra* note 23.

especially from a 12-year-old victim.[31] The CA correctly observed:

> We are likewise not persuaded with the appellant's allegation that had he sexually abused and raped the private complainant, she would have reported the incident to her mother or to the authorities and would have distanced herself from him instead of seeking his help regarding her studies.
>
> Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience. Let it be underscored that these cases involve victims of tender years, and with their simple, unsophisticated minds, they must not have fully understood and realized at first the repercussions of the contemptible nature of the acts committed against them. This Court has repeatedly stated that **no standard form of behavior could be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult**.
>
> Considering that private complainant practically grew up with the appellant and even called him "Papa XXX" since she was about six (6) years old, We find it difficult to believe that she (barely 13 years old when she executed her Affidavit and 15 years old when she testified in court) would fabricate a tale of defilement where the perpetrator is her step-father and let the public know about it unless she was motivated by a genuine desire to obtain redress for the wrong done to her. Granting that she had ill-will against her step-rather for having received beatings from him, the said reason is not enough to accuse him of an offense so grave as charged, if untrue.[32] (Emphasis supplied.)

Third, the result of the Living Case Report[33] of AAA shows the presence of hymenal lacerations at five and nine o'clock positions, which is consistent with the statement that accused-appellant inserted his penis into her vagina. At this point, a

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[31] *Pendoy v. Court of Appeals*, G.R. No. 228223, June 10, 2019 citing *People v. Biala*, 773 Phil. 464, 482 (2015).

[32] *Rollo*, pp. 10-11.

[33] Exhibit "E", Index of Exhibits, p. 9.

young girl's revelation that she had been raped coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity cannot be so easily dismissed as a mere concoction.[34]

Finally, for committing the crime of qualified rape, the accused-appellant should have been meted out the death penalty were it not for the proscription in RA 9346.[35] In lieu of the death penalty, he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole.[36] The awards of civil indemnity, moral damages, and exemplary damages are proper, but the amounts must be modified to ₱100,000.00 each in line with prevailing jurisprudence.[37]

Accused-appellant is guilty of Lascivious Conduct in Criminal Case No. 2011-440.

In the same manner, in Criminal Case No. 2011-440, the Court does not find any reason to reverse the factual findings of the RTC as affirmed by the CA.

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[34] *People v. Moya*, *supra* note 23, citing *People v. Tuballas*, 811 Phil. 201, 217 (2017).

[35] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[36] *People v. Vañas*, *supra* note 26. Sections 2 and 3 of RA 9346 state:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SECTION 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[37] *People v. Vañas*, *supra* note 26, citing *People v. Jugueta*, 783 Phil. 806, 848 (2016).

The elements of sexual abuse under Section 5, Article III of RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[38]

"Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. On the other hand, "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.[39]

In the present case, the evidence established the accused-appellant's insertion of his penis into AAA's anus and later his finger into her vagina. As duly found by the RTC, AAA was able to recall in a clear and straightforward manner how accused-appellant sexually abused her, thus:

[PROS. BONOAN: (To: Witness)]

Q. Was that the only time he abused you or there were other times that he abused you?

A. When I was thirteen.

Q. Where did it happen, when you said that he abused you?

A. Still in our room.

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[38] *People v. Moya*, *supra* note 23, citing *People v. Villacampa*, G.R. No. 216057, January 8, 2018, 850 SCRA 75, 90-91.

[39] *People v. XXX*, G.R. No. 235662, July 24, 2019, citing Section 32 of RA 7610, Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

Q. In that house in [redacted]?

A. Yes.

Q. And your mother was not there?

A. Yes.

Q. What did he do to you?

A. I came from the bathroom and I went upstair and asked Papa [XXX] to help me with my examination.

Q. After asking him to help you in your examination, what happened next?

A. He let me lie on my stomach and lift my skirt.

Q. After lifting your skirt, what happened next?

A. He removed his short pants.

Q. What happened after that?

A. Then he removed his brief and went on top of me.

Q. You were facing each other?

A. No.

Q. The Accused was at your back?

A. Yes.

Q. What did he do?

A. He made a push and pull motion.

Q. What happened after that?

A. Then he let me go to school.

Q. When he was on your back, did he insert part of his body?

A. Yes.

Q. What is that?

A. His penis.

Q. Where did he insert it?

A. Into my anus.

Q. You said that you are thirteen years old at that time. Was there another incident that happened to you?

A. Yes.

Q. Where did it happen?

A. At the pig pen.

Q. Where is that pig pen located?

A. Near our house.

Q. What did he do to you?

A. I just came from washing the dishes.

Q. What happened after you washed the dishes?

A. I sat near the coop.

Q. What happened after that?

A. He called me and let me sat on his lap.

Q. What happened after that?

A. He removed his short pants and he picked me.

Q. What part of your body did he pick?

A. My vagina.[40] (Emphasis supplied.)

From the foregoing, it is readily apparent that accused-appellant sexually abused his own step-daughter by lifting her skirt, pulling down his own shorts and brief, inserting his penis into her anus, and then "picking" her vagina. Notably, AAA was a minor, being only 13 years old at that time. During her testimony, she revealed that she did not disclose her ordeal to anyone, including her mother, because she was afraid of accused-appellant who was then making threats on her. Indubitably, accused-appellant succeeded in coercing AAA to engage in lascivious conduct. Not only did he scare her with his threats should she disclose his bestiality, he even used his moral ascendancy as her step-father. As mentioned earlier, it is doctrinal

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[40] TSN, May 3, 2012, pp. 9-11.

that moral influence or ascendancy takes the place of violence and intimidation.[41]

Withal, a change in the nomenclature of the offense charged against accused-appellant is in order. In *People v. Tulagan*[42] *(Tulagan)*, the Court prescribes the guidelines in the proper designation or nomenclature of acts constituting sexual assault and the penalty to be imposed depending on the age of the victim, *viz.*:

> Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A (2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.
>
> **Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC.** It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*.[43] (Emphasis supplied; italics in the original.)

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[41] *People v. BBB*, G.R. No. 232071, July 10, 2019.

[42] G.R. No. 277363, March 12, 2019.

[43] *Id.* Citation omitted.

In line with the pronouncement in *Tulagan*, the rulings of the lower courts should be modified by convicting accused-appellant of the offense of Lascivious Conduct under Section 5(b) of RA 7610. The penalty to be imposed for Lascivious Conduct is *reclusion temporal* in its medium period to *reclusion perpetua*. The prosecution established herein AAA's minority and her relationship with accused-appellant. The proper penalty to be imposed is the maximum which, in this case, is *reclusion perpetua*, there being no mitigating circumstance to offset the aggravating circumstance present.[44] There is no need also to qualify the sentence to *reclusion perpetua* with the phrase "without eligibility for parole" since under Administrative Matter No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.[45]

Likewise, Section 31(f) of RA 7610[46] imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of ₱15,000.00.[47] As to the damages, accused-appellant is ordered to pay the victim civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01331-MIN is **AFFIRMED** with **MODIFICATIONS**.

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[44] *People v. Moya, supra* note 23. See also *People v. XXX*, G.R. No. 242207, July 3, 2019.

[45] *Id.*

[46] SECTION 31. *Common Penal Provisions.* —

x x x x x x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[47] *People v. XXX*, *supra* note 39, citing *People v. Caoili*, 815 Phil. 839, 896-897 (2017).

1). In Criminal Case No. 2011-440, accused-appellant XXX is guilty beyond reasonable doubt of the offense of **LASCIVIOUS CONDUCT** under Section 5 (b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua* and to pay a **FINE** of ₱15,000.00. He is further required to **PAY** AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

2). In Criminal Case No. 2011-441, accused-appellant XXX is guilty beyond reasonable doubt of the crime of **QUALIFIED RAPE** under Article 266-A, in relation to Article 266-B, of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is ordered to **PAY** AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All monetary awards are subject to an interest of 6% *per annum* awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Delos Santos, and *Gaerlan,*[**] *JJ.*, concur.

[**] Designated as additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 232053. July 15, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **ANNABELLE ONTUCA *y* PELEÑO (MOTHER AND GUARDIAN OF HER MINOR CHILD, ZSANINE KIMBERLY JARIOL *y* ONTUCA),** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9048, AS AMENDED BY REPUBLIC ACT NO. 10172; CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERRORS IN THE CIVIL REGISTRY; THE LOCAL CIVIL REGISTRARS OR THE CONSUL GENERAL ARE AUTHORIZED TO MAKE CHANGES IN THE FIRST NAME OR NICKNAME, IN THE DAY AND MONTH IN THE DATE OF BIRTH, AS WELL AS IN THE RECORDED SEX OF A PERSON, WHEN IT IS PATENTLY CLEAR THAT THERE WAS A TYPOGRAPHICAL ERROR OR MISTAKE IN THE ENTRY IN THE CIVIL REGISTRY, WITHOUT NEED OF A JUDICIAL ORDER; RULE 108 OF THE RULES OF COURT GOVERNS THE SUBSTANTIAL CORRECTIONS IN THE ENTRY IN THE CIVIL REGISTRY. —** Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors affecting the civil status, citizenship, and nationality of a person. The proceedings may either be summary, if the correction pertains to clerical mistakes, or adversary, if it involves substantial errors. The petition must be filed before the RTC, which sets a hearing and directs the publication of its order in a newspaper of general circulation. The RTC may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar. In 2001, RA No. 9048 was enacted, amending Rule 108. Under the law, the local civil registrars, or the Consul General, as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. This law provided an administrative recourse for the correction of clerical or typographical errors,

essentially leaving substantial corrections to Rule 108. In 2012, RA No. 10172, amended RA No. 9048, expanding the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry.

2. **ID.; ID.; ID.; ID.; CLERICAL OR TYPOGRAPHICAL ERROR OR MISTAKE DISTINGUISHED FROM SUBSTANTIAL CHANGE OR CORRECTION. —** Ordinarily, the term "*substantial*" means consisting of or relating to substance, or something that is important or essential. In relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought. Thus, changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person, are substantial in character. On the other hand, Section 2(3) of RA No. 9048, as amended, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records.

3. **ID.; ID.; ID.; ID.; THE CORRECTION OF A PERSON'S MISSPELLED FIRST AND MIDDLE NAME INVOLVES A MERE CLERICAL ERROR, AS THE SAME WILL NEITHER AFFECT NOR PREJUDICE HIS OR HER SUBSTANTIAL RIGHTS. —** In *Republic v. Mercadera*, we ruled that the correction of petitioner's misspelled first name from "*MARILYN*" to "*MERLYN*" involves a mere clerical error. In *Yu v. Republic* it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely o the righting of a clerical error." x x x. Guided by this principle, the correction of Annabelle's middle name from "*PALIÑO*" to "*PELEÑO*" involves clerical or typographical error. It merely rectified the erroneous spelling through the substitution of the letters "*A*" and "*I*" in "*PALIÑO*" with the letter "*E,*" so it will read as

"*PELEÑO*." To be sure, Annabelle's Unified Multi-Purpose ID shows that her middle name is spelled as "*PELEÑO*." Similarly, the error in Annabelle's first name is clerical that will neither affect nor prejudice her substantial rights. Annabelle's postal ID and passport satisfactorily show that her first name is "*ANNABELLE*" and not "*MARY ANNABELLE*." Verily, by referring to Annabelle's existing records, or documents, the innocuous errors in her first name and middle name may be corrected under RA No. 9048, as amended.

4. **ID.; ID.; ID.; ID.; R.A. NO. 9048, AS AMENDED, IS NOT LIMITED TO CASES IN WHICH THE ERRONEOUS ENTRIES IN THE BIRTH CERTIFICATE SOUGHT TO BE CORRECTED PERTAIN TO THE OWNER OF THE BIRTH CERTIFICATE, AS ANY PERSON OF LEGAL AGE, HAVING DIRECT AND PERSONAL INTEREST IN THE CORRECTION OF A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY IN THE CIVIL REGISTER, MAY FILE THE PETITION. —** [A]nnabelle may file the petition to correct her personal information in the birth certificate of her child. The application of RA No. 9048, as amended, is not limited to cases in which the erroneous entries in the birth certificate sought to be corrected pertain to the owner of the birth certificate. Rule 3 of the Implementing Rules and Regulations of RA No. 9048, as amended, provides: Rule 3. Who may file the petition. — Any person of legal age, having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register, may file the petition. **A person is considered to have direct and personal interest when he is the owner of the record, or the owner's spouse, children, parents, brothers, sisters, grandparents, guardian, or any other person duly authorized by law or by the owner of the document sought to be corrected**: Provided, however, That when a person is a minor or physically or mentally incapacitated, the petition may be filed on his behalf by his spouse, or any of his children, parents, brothers, sisters, grandparents, guardians, or persons duly authorized by law.

5. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; THE CORRECTION OF ENTRIES IN THE CIVIL REGISTER PERTAINING TO CITIZENSHIP,**

LEGITIMACY OF PATERNITY OR FILIATION, OR LEGITIMACY OF MARRIAGE INVOLVES SUBSTANTIAL ALTERATIONS WHICH MAY BE CORRECTED, AND THE TRUE FACTS ESTABLISHED BY FILING A PETITION FOR CANCELLATION AND/OR CORRECTION OF THE ENTRIES BEFORE THE REGIONAL TRIAL COURT; THE CORRECTION OF THE DATE AND PLACE OF THE PARENT'S MARRIAGE TO "NOT MARRIED" MUST BE FILED BEFORE THE REGIONAL TRIAL COURT, AS THE SAME ARE SUBSTANTIAL WHICH WILL ALTER THE CHILD'S STATUS FROM LEGITIMATE TO ILLEGITIMATE. — [T]he correction of the date and place of the parent's marriage from "*May 25, 1999 at Occ. Mindoro*" to "*NOT MARRIED*" is substantial since it will alter the child's status from legitimate to illegitimate. To be sure, the correction of entries in the civil register pertaining to citizenship, legitimacy of paternity or filiation, or legitimacy of marriage involves substantial alterations, which may be corrected, and the true facts established, provide the parties aggrieved by the error to avail themselves of the appropriate adversary proceedings. Here, Annabelle correctly filed a petition for cancellation and/or correction of the entries before the RTC under Rule 108.

6. **ID.; ID.; ID.; THE CIVIL REGISTRAR AND ALL PERSONS WHO HAVE OR CLAIM TO HAVE ANY INTEREST THAT WOULD BE AFFECTED, MUST BE IMPLEADED IN THE PETITION FOR A SUBSTANTIAL CORRECTION OF AN ENTRY IN THE CIVIL REGISTRY; THE PETITION FOR THE CORRECTION OF PETITIONER'S CIVIL STATUS IN HER DAUGHTER'S BIRTH CERTIFICATE FROM "MARRIED" TO "SINGLE," AND THE DATE AND PLACE OF MARRIAGE TO "NO MARRIAGE," MUST IMPLEAD ALL INDISPENSABLE PARTIES. —** [W]e find that Annabelle failed to observe the required procedures under Sections 3, 4 and 5 of Rule 108 x x x. The rules require two sets of notices to potential oppositors — one given to persons named in the petition and another served to persons who are not named in the petition, but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have, or claim to have any

interest that would be affected. In *Labayo-Rowe v. Republic of the Philippines*, a case which involves the correction of petitioner's civil status in her daughter's birth certificate from "married" to "single," and the date and place of marriage to "no marriage," we emphasized the necessity of impleading indispensable parties, thus: x x x Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented.** The truth is best ascertained under an adversary system of justice.

7. ID.; ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURAL REQUIREMENTS RENDERS THE PROCEEDINGS FOR THE CORRECTION OF SUBSTANTIAL ERRORS, VOID; IMPLEADING AND NOTIFYING ONLY THE CIVIL REGISTRAR AND THE PUBLICATION OF THE PETITION ARE NOT SUFFICIENT COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS; INSTANCES WHEN THE SUBSEQUENT PUBLICATION OF A NOTICE OF HEARING MAY CURE THE FAILURE TO IMPLEAD AND NOTIFY THE AFFECTED OR INTERESTED PARTIES; NOT PRESENT. — [T]he phrase *"and all persons who have or claim any interest which would be affected thereby"* in the title of the petition and the publication of the petition are not sufficient notice to all interested parties. In *Ramon Corpus Tan v. Office of the Local Civil Registrar of the City of Manila*, we ruled that impleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements. Nonetheless, there are instances when the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out. None of these exceptions, however, are present in this case. There was no earnest effort on the part of Annabelle to bring

to court the OSG, the child's father, and siblings, if any, and other parties who may have an interest in the petition. Also, these indispensable parties are not the ones who initiated the proceedings, and Annabelle cannot possibly claim that she was not aware, actually or presumptively, as to the existence or whereabouts of these interested parties. Lastly, it does not appear that the indispensable parties were inadvertently and unintentionally left out when Annabelle filed the petition. In sum, the failure to strictly comply with the requirements under Rule 108 renders the proceedings void for the correction of substantial errors.

8. **ID.; ID.; ID.; RA NO. 9048, AS AMENDED, DID NOT DIVEST THE TRIAL COURTS OF JURISDICTION OVER PETITIONS FOR CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERRORS IN A BIRTH CERTIFICATE, AS THE LOCAL CIVIL REGISTRARS' ADMINISTRATIVE AUTHORITY TO CHANGE OR CORRECT SIMILAR ERRORS IS ONLY PRIMARY BUT NOT EXCLUSIVE. —** We, however, sustain the correction of Annabelle's first name and middle name under Rule 108. Ideally, Annabelle should have filed the petition for correction with the local civil registrar under RA No. 9048, as amended, and only when the petition is denied can the RTC take cognizance of the case. In any case, RA No. 9048, as amended, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. To be sure, the local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive. The regular courts maintain the authority to make judicial corrections of entries in the civil registry.

9. **ID.; ID.; ID.; THE COURT ALLOWS THE FILING OF A SINGLE PETITION UNDER RULE 108 OF THE RULES OF COURT FOR THE CORRECTIONS OF BOTH CLERICAL OR TYPOGRAPHICAL AND SUBSTANTIAL ERRONEOUS ENTRIES IN THE CIVIL RECORDS, RATHER THAN TWO SEPARATE PETITIONS BEFORE THE REGIONAL TRIAL COURT AND THE LOCAL CIVIL REGISTRAR, IN ORDER TO AVOID MULTIPLICITY OF SUITS AND FURTHER LITIGATION BETWEEN THE PARTIES, WHICH IS OFFENSIVE TO THE ORDERLY ADMINISTRATION OF JUSTICE. —** [T]he doctrine of

primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity. Thus, in *Rep. of the Phils. v. Gallo*, we held that in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. In this case, Annabelle had presented testimonial and documentary evidence, which the RTC had evaluated and found sufficient. To require her to file a new petition with the local civil registrar and start the process all over again would not be in keeping with the purpose of RA No. 9048, that is, to give people an option to have the erroneous entries in their civil records corrected through an administrative proceeding that is less expensive and more expeditious. Consequently, it will be more prudent and judicious for Annabelle, and other persons similarly situated, to allow the filing of a single petition under Rule 108, rather than two separate petitions before the RTC and the local civil registrar. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Orlando J. Ocampo for respondent.

D E C I S I O N

LOPEZ, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated November 15, 2016 of the Regional Trial Court (RTC)[2] in Special Proceedings No. 15-66 which granted the correction of the mother's civil status, first name, and middle name in the birth certificate of her child under Rule 108 of the Rules of Court.

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[1] *Rollo*, pp. 31-32; penned by Judge Aida Estrella Macapagal.

[2] Regional Trial Court, Branch 195, Parañaque City.

ANTECEDENTS

Annabelle Ontuca *y* Peleño gave birth to her daughter on August 14, 2000. Corazon Carabeo, a registered midwife, assisted Annabelle in giving birth to Zsanine. After Zsanine was born, Carabeo volunteered herself to register Zsanine's birth with the Parañaque Civil Registrar. Annabelle thus provided Carabeo with the necessary details.

After several days, the midwife delivered the birth certificate to Annabelle. Annabelle was, however, dismayed to see the erroneous entries in the certificate, to wit: (a) Entry No. 6 — the name "*Mary*" was added in her first name while her middle name was misspelled as "*Paliño*"; (b) Entry No. 18 — in the date and place of marriage, "*May 25, 1999 at Occ. Mindoro*" was indicated despite the fact that Annabelle was not married with the father of her child; and, (c) Entry No. 20 — Annabelle appeared as the informant who signed and accomplished the form, instead of the midwife.

To correct these entries, Annabelle filed a Petition under Rule 108[3] of the Rules of Court before the RTC that was docketed as Special Proceedings No. 15-66. In her petition, Annabelle prayed that the name "*Mary Annabelle Peleño Ontuca*" be corrected by removing "*Mary*" and changing "*Paliño*" to "*Peleño*"; and that the date and place of marriage of parents be changed from "*May 25, 1999 at Occ. Mindoro*" to "*NOT MARRIED*."

The RTC then set the case for hearing and ordered Annabelle to furnish a copy of the petition to the Office of the Solicitor General (OSG), the National Statistics Office, and the Local Civil Registrar. After trial, on November 15, 2016, the RTC granted the petition, thus:

> After a careful evaluation of the evidence of petitioner's testimonial and documentary evidence, the petition is hereby ordered **GRANTED**.

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[3] Cancellation or Correction of Entries in the Civil Registry.

WHEREFORE, the Local Civil Registrar of Parañaque City is hereby ordered the following entries in the birth certificate of Zsanine Kimberly Jariol *y* Ontuca be corrected as follows:

1.) The name of petitioner appearing as "MARY ANNABELE *[sic]*" in entry no. 6 be changed to **"ANNABELLE"** and the middle name of petitioner be spelled as **PELEÑO**, also in Entry No. 6; and

2.) From married to **NOT MARRIED**, in entry No. 18.

The Local Civil Registrar of Parañaque City is hereby ordered to furnish the Civil Registrar of the Philippines—National Statistics Office of the corrected birth certificate of **ZSANINE KIMBERLY JARIOL *Y* ONTUCA**.

SO ORDERED.[4]

The OSG moved for a reconsideration,[5] arguing that the RTC has no jurisdiction to correct Annabelle's first name and middle name under Rule 108 because the errors are clerical that can be corrected through administrative proceedings under Republic Act (RA) No. 9048, as amended. On the other hand, the change in the date and place of marriage of the child's parents is substantial, hence, Annabelle should have impleaded the OSG and all other persons who have a claim or any interest in the proceedings. The RTC denied the motion.[6] Hence, this petition.[7]

RULING

The petition is partly meritorious.

The issues hinge on the RTC's jurisdiction to order the correction of Annabelle's first name from "*MARY ANNABELLE*" to "*ANNABELLE*" and her middle name from "*PALIÑO*" to "*PELEÑO*" and to change her civil status from married to "*NOT MARRIED*" under the provisions of Rule 108 of the Rules of Court. Thus, we find it necessary to determine the scope of the

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[4] *Rollo*, p. 32.

[5] *Id.* at 33-42.

[6] *Id.* at 29-30.

[7] *Id.* at 13-14.

rule, and the nature of the errors that Annabelle seeks to correct in the birth certificate of her child.

Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors affecting the civil status, citizenship, and nationality of a person. The proceedings may either be summary, if the correction pertains to clerical mistakes, or adversary, if it involves substantial errors. The petition must be filed before the RTC, which sets a hearing and directs the publication of its order in a newspaper of general circulation. The RTC may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.[8]

In 2001, RA No. 9048 was enacted, amending Rule 108. Under the law, the local civil registrars, or the Consul General, as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving substantial corrections to Rule 108.[9]

In 2012, RA No. 10172, amended RA No. 9048, expanding the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry.[10]

Applying these laws, we now determine whether the correction of Annabelle's first name and surname is substantial or clerical.

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[8] *Rep. of the Phils. v. Gallo*, 823 Phil. 1090, 1108 (2018).

[9] *Rep. of the Phils. v. Tipay*, 826 Phil. 88, 96-97 (2018).

[10] Section 1 of RA No. 9048, as amended by RA No. 10172, reads:

SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* — **No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the**

Ordinarily, the term "*substantial*" means consisting of or relating to substance, or something that is important or essential.[11] In relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought. Thus, changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person, are substantial in character.

On the other hand, Section 2 (3) of RA No. 9048, as amended, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records.

In *Republic v. Mercadera*,[12] we ruled that the correction of petitioner's misspelled first name from "*MARILYN*" to "*MERLYN*" involves a mere clerical error. It cited several cases as basis, *viz.*:

> Indeed, there are decided cases involving mistakes similar to Mercadera's case which recognize the same a harmless error. In *Yu v. Republic* it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely to the righting of a clerical error." In *Labayo-Rowe v. Republic*, it was held that the change of petitioner's name from "Beatriz Labayo/Beatriz Labayu" to "Emperatriz Labayo" was a mere innocuous alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters "ch" for the letter "d," so that what appears as "Midael" as given name would read "Michael." In the

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entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis Supplied.)

[11] Merriam-Webster Dictionary.

[12] 652 Phil. 195 (2010).

latter case, this Court, with the agreement of the Solicitor General, ruled that the error was plainly clerical, such that, "changing the name of the child from 'Midael C. Mazon' to 'Michael C. Mazon' cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme (*tugma*) and tone (*tono, tunog, himig*)."[13] (Citation omitted.)

Guided by this principle, the correction of Annabelle's middle name from "*PALIÑO*" to "*PELEÑO*" involves clerical or typographical error. It merely rectified the erroneous spelling through the substitution of the letters "*A*" and "*I*" in "*PALIÑO*" with the letter "*E,*" so it will read as "*PELEÑO*." To be sure, Annabelle's Unified Multi-Purpose ID[14] shows that her middle name is spelled as "*PELEÑO*."

Similarly, the error in Annabelle's first name is clerical that will neither affect nor prejudice her substantial rights. Annabelle's postal ID[15] and passport[16] satisfactorily show that her first name is "*ANNABELLE*" and not "*MARY ANNABELLE*." Verily, by referring to Annabelle's existing records, or documents, the innocuous errors in her first name and middle name may be corrected under RA No. 9048, as amended.

Furthermore, Annabelle may file the petition to correct her personal information in the birth certificate of her child. The application of RA No. 9048, as amended, is not limited to cases in which the erroneous entries in the birth certificate sought to be corrected pertain to the owner of the birth certificate. Rule 3 of the Implementing Rules and Regulations of RA No. 9048, as amended, provides:

Rule 3. Who may file the petition. — Any person of legal age, having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register, may file the petition. **A person is considered**

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[13] *Id.* at 212.

[14] *Rollo*, p. 53.

[15] *Id.* at 52.

[16] *Id.* at 54.

to have direct and personal interest when he is the owner of the record, or the owner's spouse, children, parents, brothers, sisters, grandparents, guardian, or any other person duly authorized by law or by the owner of the document sought to be corrected: Provided, however, That when a person is a minor or physically or mentally incapacitated, the petition may be filed on his behalf by his spouse, or any of his children, parents, brothers, sisters, grandparents, guardians, or persons duly authorized by law. (Emphasis ours.)

Meanwhile, the correction of the date and place of the parent's marriage from "*May 25, 1999 at Occ. Mindoro*" to "*NOT MARRIED*" is substantial since it will alter the child's status from legitimate to illegitimate. To be sure, the correction of entries in the civil register pertaining to citizenship, legitimacy of paternity or filiation, or legitimacy of marriage involves substantial alterations, which may be corrected, and the true facts established, provide the parties aggrieved by the error to avail themselves of the appropriate adversary proceedings.[17] Here, Annabelle correctly filed a petition for cancellation and/or correction of the entries before the RTC under Rule 108. Nevertheless, we find that Annabelle failed to observe the required procedures under Sections 3, 4 and 5 of Rule 108, to wit:

SEC. 3. Parties. — When cancellation or correction of an entry in the civil register is sought, **the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties** to the proceeding.

SEC. 4. Notice and publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable **notice thereof to be given to the persons named in the petition**. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. Opposition. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, **within fifteen (15) days from notice of the petition**,

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[17] *Onde v. The Office of the Local Civil Registrar of Las Piñas City*, 742 Phil. 691, 696 (2014).

or from the last date of publication of such notice, file his opposition thereto. (Emphases supplied.)

The rules require two sets of notices to potential oppositors — one given to persons named in the petition and another served to persons who are not named in the petition, but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have, or claim to have any interest that would be affected.[18] In *Labayo-Rowe v. Republic of the Philippines*,[19] a case which involves the correction of petitioner's civil status in her daughter's birth certificate from "married" to "single," and the date and place of marriage to "no marriage," we emphasized the necessity of impleading indispensable parties, thus:

> x x x Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented.** The truth is best ascertained under an adversary system of justice.
>
> **The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from "legitimate" to "illegitimate."** Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules "shall not diminish, increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes

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[18] *Almojuela v. Rep. of the Phils.*, 793 Phil. 780, 789-790 (2016).

[19] 250 Phil. 300 (1988).

or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, without observing the proper proceedings as earlier mentioned, said rule would thereby become an unconstitutional exercise which would tend to increase or modify substantive rights. x x x[20] (Emphases supplied.)

Also, the phrase *"and all persons who have or claim any interest which would be affected thereby"* in the title of the petition and the publication of the petition are not sufficient notice to all interested parties. In *Ramon Corpus Tan v. Office of the Local Civil Registrar of the City of Manila*,[21] we ruled that impleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements.

Nonetheless, there are instances when the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out.[22]

None of these exceptions, however, are present in this case. There was no earnest effort on the part of Annabelle to bring to court the OSG, the child's father, and siblings, if any, and other parties who may have an interest in the petition. Also, these indispensable parties are not the ones who initiated the proceedings, and Annabelle cannot possibly claim that she was not aware, actually or presumptively, as to the existence or whereabouts of these interested parties. Lastly, it does not appear

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[20] *Id.* at 308-309.

[21] G.R. No. 211435, April 10, 2019 citing *Republic of the Philippines v. Lugsanay Uy*, 716 Phil. 254, 266 (2013).

[22] *Id.*

that the indispensable parties were inadvertently and unintentionally left out when Annabelle filed the petition.[23] In sum, the failure to strictly comply with the requirements under Rule 108 renders the proceedings void for the correction of substantial errors.[24]

We, however, sustain the correction of Annabelle's first name and middle name under Rule 108. Ideally, Annabelle should have filed the petition for correction with the local civil registrar under RA No. 9048, as amended, and only when the petition is denied can the RTC take cognizance of the case.[25] In any case, RA No. 9048, as amended, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. To be sure, the local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive.[26] The regular courts maintain the authority to make judicial corrections of entries in the civil registry.

Moreover, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity.[27]

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[23] See *Rep. of the Phils. v. Coseteng-Magpayo*, 656 Phil. 550 (2011).

[24] *Almojuela v. Rep. of the Phils., supra* note 18, at 789.

[25] *Rep. of the Phils. v. Gallo*, 823 Phil. 1090, 1111 (2018), citing *Republic v. Sali*, 808 Phil. 343 (2017).

[26] It is worth noting that the deliberations on RA No. 9048 did not mention that petitions for correction of clerical errors can no longer be filed with the regular courts, though the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law. (*Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac*, Adm. Matter No. 06-7-414-RTC, October 19, 2007.)

[27] 823 Phil. 1090 (2018), we held that for reasons of equity, in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. Thus, we allowed that the corrections of clerical errors sought by the petitioner, such as his first name from "Michael" to "Michelle"; her biological sex from "male" to "female"; the entry of her middle name as "Soriano"; middle name of her mother as "Angangan"; middle name of

Thus, in *Rep. of the Phils. v. Gallo*,[28] we held that in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches.

In this case, Annabelle had presented testimonial and documentary evidence, which the RTC had evaluated and found sufficient. To require her to file a new petition with the local civil registrar and start the process all over again would not be in keeping with the purpose of RA No. 9048, that is, to give people an option to have the erroneous entries in their civil records corrected through an administrative proceeding that is less expensive and more expeditious. Consequently, it will be more prudent and judicious for Annabelle, and other persons similarly situated, to allow the filing of a single petition under Rule 108, rather than two separate petitions before the RTC and the local civil registrar. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Regional Trial Court's Decision dated November 15, 2016 in Special Proceedings No. 15-66 is **AFFIRMED** with respect to the correction of Entry No. 6 pertaining to Annabelle Ontuca *y* Peleño's first name and middle name in the birth certificate of her child Zsanine Kimberly Jariol *y* Ontuca. On the other hand, the correction of Entry No. 18 referring to the date and place of marriage of the child's parents is **SET ASIDE**.

SO ORDERED.

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

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her father as "Balingao"; and, the date of her parents' marriage as "May 23, 1981," despite the filing of a petition under Rule 108, considering the failure of the Office of the Solicitor General to raise the doctrine of primary jurisdiction at the first instance.

[28] *Id.*

THIRD DIVISION

[G.R. No. 234157. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JOHN PAUL LOPEZ *y* MAYAO,** *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9208 (ANTI-TRAFFICKING IN PERSONS ACT OF 2003); QUALIFIED TRAFFICKING IN PERSONS AGAINST A CHILD; ELEMENTS. —** The crime of qualified trafficking in persons against a child is penalized under Section 4(e) in relation to Sections 3(b) and 6(a) of R.A. No. 9208. x x x Based on the foregoing, the elements of the crime of trafficking in persons are the following: 1. The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;" 2. The *means* used which may include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and 3. The purpose of trafficking which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. The crime is then qualified when the trafficked person is a child below 18 years of age or one over 18 but is unable to fully take care or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

2. **ID.; ID.; ID.; ID.; EVEN WITHOUT THE PERPETRATOR'S USE OF COERCIVE, ABUSIVE, OR DECEPTIVE MEANS, A MINOR'S CONSENT IS NOT GIVEN OUT OF HIS OR HER OWN FREE WILL. —** Notably, it was held in *People v. Villanueva* that a conviction for qualified trafficking in persons may stand even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208. If

the person trafficked is a child, we may do away with discussions on whether or not the second element was actually proven. It has been recognized that even without the perpetrator's use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE INHERENTLY WEAK, SELF-SERVING, AND UNDESERVING OF WEIGHT IN LAW. —** Lopez' bare defense of denial was unsubstantiated by clear and convincing evidence and cannot prevail over the victims' categorical and consistently positive identification which is not accompanied by ill motive. An affirmative testimony is stronger than a negative testimony especially when the former comes from a credible witness. The defenses of alibi and denial, if unsubstantiated by clear and convincing evidence, are inherently weak, self-serving, and undeserving of weight in law.

4. **ID.; ID.; ID.; ASSESSMENT THEREON LIES WITHIN THE PROVINCE AND COMPETENCE OF TRIAL COURTS; CASE AT BAR. —** This Court also cannot give credence to Lopez' defense that BBB's testimony was allegedly impelled by her ill motive against him. The assessment of the credibility of witnesses lies within the province and competence of trial courts. A trial court judge is in the best position to weigh the testimonies of witnesses in the light of the declarant's demeanor, conduct, and attitude during trial, and is therefore placed in a more competent position to discriminate between truth and falsehood. Absent any such finding by the trial court or evidence to show that BBB was biased and actuated by improper motive, her testimony should be given full faith and credit.

APPEARANCES OF COUNSEL

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

DECISION

GAERLAN, *J.*:

This is an appeal from the Decision[1] dated March 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07114 which affirmed with modification the Decision[2] dated September 24, 2014 of the Regional Trial Court (RTC) of Marikina City, Branch 192, in Criminal Case Nos. 2011-13349-MK to 2011-13355-MK, finding accused-appellant John Paul "Apple" Lopez *y* Mayao (Lopez) guilty beyond reasonable doubt for two counts of qualified trafficking in persons under Section 4(e) in relation to Section 6 (a) of Republic Act (R.A.) No. 9208.[3]

Antecedents

On October 4, 2011, seven Informations were filed charging Lopez with seven counts of qualified trafficking in persons against minor children AAA and BBB.[4] The accusatory portions of the Informations read:

CRIMINAL CASE NO. 2011-13349-MK

That on or about the 11th day of September 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **AAA**, a 14-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

[2] CA *rollo*, pp. 50-59; penned by Judge Geraldine C. Fiel-Macaraig.

[3] Anti-Trafficking in Persons Act of 2003.

[4] Supreme Court Administrative Circular No. 83-15 dated September 15, 2017.

CRIMINAL CASE NO. 2011-13350-MK

That on or about the 3rd day of September 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **AAA**, a 14-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. 2011-13351-MK

That on or about the 8th day of August 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **AAA**, a 14-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. 2011-13352-MK

That on or about the 3rd day of August 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **AAA**, a 14-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. 2011-13353-MK

That on or about the 8th day of June 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **AAA**, a 14-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage

of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. 2011-13354-MK

That on or about the 9th day of September 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **BBB**, a 13-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. 2011-13355-MK

That on or about the 30th day of August 2011 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, maintain or hire for a fee, **BBB**, a 13-year old minor, to engage in prostitution and/or sexual exploitation by taking advantage of her vulnerability and thereupon facilitating her to have sexual intercourse with a male customer in exchange for money, in violation of the abovementioned law.

CONTRARY TO LAW.[5]

Lopez pleaded not guilty to the offenses charged during his arraignment on October 11, 2011. The case proceeded to pre-trial and, thereafter, to joint trial on the merits.[6]

During trial, AAA's direct testimony was stricken off the record[7] for her repeated failure to appear for cross-examination despite due notice. The RTC, in its Decision, therefore **dismissed the cases involving AAA** (Criminal Case Nos. 2011-13349-

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[5] *Id.* at 50-52.

[6] *Id.* at 52.

[7] *Id.*

MK to 13353-MK), **leaving only the cases of BBB** (Criminal Cases Nos. 2011-13354-MK to 13355-MK) as the subject of the instant appeal.

Evidence for the Prosecution

The prosecution presented the testimonies of AAA, BBB, CCC (BBB's mother), Police Officer 3 Mark Dennis Sanchez (PO3 Sanchez), and Dr. Bonnie Chua (Dr. Chua), the EPD Crime Laboratory Medico-Legal Officer.

BBB testified that she was born on February 25, 1998. She was introduced to Lopez by her distant cousin, Ate Rose. She and AAA "stowed away" from home at the time and stayed at Lopez' house in Calumpang, Marikina City, upon the latter's invitation.[8]

On the evening of August 30, 2011, Lopez brought BBB to the McDonald's restaurant beside the Marikina Sports Center. BBB saw Lopez approach a man and speak with him. After their conversation, the man called a taxi. Lopez told BBB to board it and go with the man.[9]

The taxi brought BBB and the man to the Grand Polo Motel in Masinag, Antipolo City. When they were inside the motel room, BBB was surprised when the man told her they were going to have sex. She initially resisted but the man told her that he had already given her payment to Lopez. Eventually, they had sex and, thereafter, left the motel and went their separate ways. When BBB arrived at Lopez' house, he handed her ₱1,000.00 without saying anything, and then hurriedly left.[10]

On September 9, 2011, Lopez and BBB were again at the same McDonald's restaurant. Lopez told BBB that she would again have sex with another man. BBB told him that she did not want to do it anymore, but he said that it would be a wasted opportunity to make money *(sayang daw po iyon)*. BBB saw

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[8] *Id*. at 52-53.

[9] *Id*. at 53.

[10] *Id*.

Lopez meet with another man who handed him some money. BBB eventually agreed to what Lopez wanted her to do and boarded a taxi with the man to the Grand Polo Motel and had sex. After parting ways, BBB returned to Lopez' house and where he, again, gave her ₱1,000.00.[11]

BBB was eventually found by her mother, CCC, in a bar at Fernando Avenue, Barangay Calumpang, Marikina City. After CCC came to know of the sexual incidents after talking to BBB, she promptly reported it to the Barangay Office; AAA was also present at the time. BBB's mother was summoned to the barangay office to discuss the incidents.[12]

PO3 Sanchez, an officer from the Police Community Precinct in Calumpang, Marikina City, testified that at around 3:00 a.m. on September 12, 2011, he received a phone call from the Women's Desk regarding a complaint for trafficking or *pambubugaw* against Lopez. He and his fellow police officer, PO1 Jayson Mones, as well as some barangay tanods, accompanied AAA, BBB, and their parents to Lopez' residence. When they arrived, AAA and BBB positively identified Lopez and the latter was arrested.[13]

Dr. Chua testified that he received a Request for Genital Examination, dated September 12, 2011, from the Marikina City Police Station. He conducted the examination of AAA and BBB and prepared the Initial Medico-Legal Report and Final Medico-Legal Report No. R-092-11E for BBB which both resulted in the following conclusion — *clear evidence of penetrative trauma/force to the hymen*.[14]

Evidence for the Defense

The defense presented Lopez testimony as its sole evidence. He denied all the allegations against him.

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[11] *Id.*

[12] *Id.* at 54.

[13] *Id.*

[14] *Id.* at 54-55.

Lopez alleged that he had just transferred to his residence in Calumpang, Marikina City, around the month of August 2011. He resided in a boarding house with his boyfriend, his boyfriend's older brother Kuya Marlon, and the latter's girlfriend. He worked as a waiter, earning between ₱500.00 to ₱1,000.00 a day depending on customers' tips. He also earned extra income of ₱150.00 to ₱300.00 per month as a make-up artist. His boyfriend, Aris Aguila (Aris), worked in a family-owned welding shop.[15]

Lopez admitted that he knew BBB because they used to be neighbors at Barangay Sto. Niño, Marikina City. He also admitted that he knew AAA because their mothers were friends. However, he denied that the girls stayed in his house in Calumpang, Marikina City, on August 30, 2011.[16]

He further claimed that BBB lied, having an ill motive against Lopez because she was the ex-girlfriend of Lopez' current boyfriend, Aris. Lopez also denied bringing BBB to McDonald's on August 30, 2011 and September 9, 2011, and making her go with men to the Grand Polo Motel to have sex for a fee. Lopez denied giving BBB ₱1,000.00 or any money at all. He even said that it would not have been possible to communicate with her because he did not have a cellphone back then.[17]

The RTC Ruling

In its Decision,[18] dated September 24, 2014, the RTC convicted Lopez for two counts of qualified trafficking in persons against BBB. The dispositive portion reads:

> **WHEREFORE**, in Criminal Case No. 2011-13354-MK, the court finds the accused, JOHN PAUL LOPEZ y MAYAO *a.k.a*. "APPLE," **GUILTY BEYOND REASONABLE DOUBT** of Qualified Trafficking in Persons under Section 4(e) in relation to Section 6(a) of Republic Act [No.] 9208. The accused is hereby sentenced to suffer

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[15] *Id*. at 38.

[16] *Id*.

[17] *Id*.

[18] CA *rollo*, pp. 50-59.

the penalty of LIFE IMPRISONMENT and PAY a FINE of Two Million Pesos (Php2,000,000.00). The accused is also ORDERED to [pay] moral damages in the amount of Five Hundred Thousand Pesos (Php500,000.00), and exemplary damages in the amount of One Hundred Thousand Pesos (Php100,000.00).

In Criminal Case No. 2011-13355-MK, the court finds the accused, JOHN PAUL LOPEZ y MAYAO *a.k.a.* "APPLE," **GUILTY BEYOND REASONABLE DOUBT** of Qualified Trafficking in Persons under Section 4(e) in relation to Section 6(a) of Republic Act [No.] 9208. The accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and PAY a FINE of Two Million Pesos (Php2,000,000.00). The accused is also ORDERED to pay moral damages in the amount of Five Hundred Thousand Pesos (Php500,000.00), and exemplary damages in the amount of One Hundred Thousand Pesos (Php100,000.00).

In Criminal Case Nos. 2011-13349-MK, 2011-13350-MK, 2011-13351-MK, 2011-13352-MK, 2011-13353-MK, the accused is hereby **ACQUITTED**, for insufficiency of evidence.

SO ORDERED.[19]

The RTC found BBB's testimony credible and convincing, being unmoved and unshaken by the rigid cross-examination of the prosecution. It held that apart from Lopez' bare claim that his boyfriend was BBB's former boyfriend, he failed to attribute or prove any ill motive on the part of BBB to testify falsely against him. Consequently, Lopez' inherently weak defense of denial could not prevail over BBB's affirmative testimony.

The CA Ruling

In its Decision[20] dated March 30, 2017, the CA affirmed the RTC Ruling with modification by imposing legal interest on the monetary award of damages:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated September 24, 2014 of the Regional Trial Court, Branch 192, Marikina City, in Criminal Case

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[19] *Id.* at 59.

[20] *Rollo*, pp. 2-20.

Nos. 2011-13354-MK and 2011-13355-MK, is AFFIRMED with modification in that a six percent (6%) per annum interest is imposed on the monetary awards for damages from finality of this Decision until full satisfaction thereof.

SO ORDERED.[21]

The CA affirmed that BBB clearly and credibly testified that Lopez gave her money to have sex with men on two occasions. It likewise disregarded Lopez' additional argument that BBB voluntarily boarded the taxi and went with the men because Section 3(a) of R.A. No. 9208 is explicit that the crime of trafficking in persons can exist even with the victim's consent or knowledge.

The Petition

Lopez timely filed a Notice of Appeal.[22] In a Resolution[23] dated November 27, 2017, the Court ordered the elevation of the records and directed the parties to file supplemental briefs. Both parties, thereafter, manifested that they would no longer file supplemental briefs having exhaustively argued their issues in their respective appeal briefs.[24]

In his appeal, Lopez claims that: (1) the prosecution failed to prove his guilt beyond reasonable doubt; (2) the court gravely erred in giving full credence to BBB's testimony who had an ill motive to testify; and (3) the prosecution failed to prove that BBB is a minor.[25]

Issue

Whether or not the CA erred in affirming the conviction of Lopez for two counts of qualified trafficking in persons.

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[21] *Id.* at 19.

[22] *Id.* at 21-22.

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

[24] *Id.* at 31-32; *id.* at 36-37.

[25] CA *rollo*, p. 39.

The Ruling of the Court

The petition is denied. We affirm the CA ruling convicting Lopez of two counts of qualified trafficking in persons.

The crime of qualified trafficking in persons against a child is penalized under Section 4(e) in relation to Sections 3(b) and 6(a) of R.A. No. 9208:

Section 4. *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography; x x x

Section 6. *Qualified Trafficking in Persons.* — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

Section 3. *Definition of Terms.* — As used in this Act:

x x x x x x x x x

(b) *Child* — refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

Based on the foregoing, the elements of the crime of trafficking in persons are the following:

1. The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

2. The *means* used which may include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and

3. The purpose of trafficking which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced

labor or services, slavery, servitude or the removal or sale of organs.[26] (Underscoring supplied)

The crime is then qualified when the trafficked person is a child below 18 years of age or one over 18 but is unable to fully take care or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

In this case, We affirm the CA and RTC Decisions that all the elements of qualified trafficking in persons required under R.A. No. 9208 were established.

The testimony of BBB quoted below shows that Lopez was responsible for recruiting her and facilitating her transportation to engage in prostitution and sexual exploitation with the promise of financial gain:

PROS. SUBONG, JR.:

Q- Okay, what did he tell you as to where you were supposed to go?

A- None, sir, he just told me "*aalis kami*."

Q- Okay, and when you were already at McDonald's, you said that you saw [Lopez] talking to somebody. Is that a male person or female?

A- Male person, sir.

Q- And what McDonald's are you referring to?

A- McDonald's near the Sport's [*sic*] Center, sir.

Q- Okay. So, after you saw [Lopez] talking to that man at McDonald's, what happened next?

A- That guy called a taxi and made me board that taxi and brought me to Masinag, sir.

Q- In what particular place in Masinag?

A- Grand Polo, sir.

Q- Okay, what place is that, Grand Polo?

A- Motel, sir.

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[26] *People v. Hirang*, 803 Phil. 277, 289 (2017), citing *People v. Casio*, 749 Phil. 472-473 (2014).

x x x x x x x x x

Q- So, after you reached Grand Polo, what happened?
A- "*Ano po, kinausap po ako ng lalaki. Nagulat po ako sa gagawin po namin. Ayaw ko po talaga kaya lang pinilit niya po ako. Sabi po noong lalake binigay na po iyong bayad kay Apple.*"

THE COURT:
Just quote the answer of the witness.

PROS. SUBONG, JR.:
Q- Do you know who Apple was [*sic*]?
A- That person, sir. (The witness at this juncture is pointing to a male person, who when asked to identify himself answered: John Paul Lopez)

Q- Okay. So, what happened after that?
A- *Nag-ano po kami, nag-sex po.*

Q- And when you say you had sex, what happened? You can tell the Court what happened? What did you understand with the word had sex? What did you do?
A- "*Nag-ano po, nag-sex po. Iyon lang po ang ginawa namin.*"

THE COURT:
Okay, just quote the answer.

PROS. SUBONG, JR.:
Q- Do you still remember how long you stayed in Grand Polo during that time?
A- *Sandali lang po. Pagkatapos po naming mag-ano umalis na po kami.*

Q- And then where did you go? After you left Grand Polo, where did you go?
A- We went our separate ways, sir.

Q- Where did you separate?
A- When we went out, I went directly to his house. (Witness is pointing to [Lopez])

PROS. SUBONG, JR.:
I think the witness stated the name, [Lopez].

THE COURT:
Yes, she stated the name of John Paul.

PROS. SUBONG, JR.:
Q- Okay, were you able to reach the place of [Lopez]?
A- Yes, sir.

Q- And so, after you got there, what happened?
A- *Pagdating namin sa kanila. Wala na po. Kasi po umalis din po siya noon eh*. (Witness is pointing to the accused) *Naiwan lang po akong mag-isa*.

Q- Do you know why [Lopez] . . . I will withdraw. Do you know what participation [Lopez] had in connection with that incident when you had sex with this male person?
A- I don't know, sir.

Q- And in return for this sexual act, what did you receive, if any? Or what did you get in return?
A- Money, sir.

Q- And how much would that be?
A- ₱1,000.00 pesos, sir.

Q- Who gave you that money?

A- [Lopez], sir.

x x x x x x x x x

PROS. SUBONG, JR.:

Q- What happened on September 9, 2011?

A- *Sinabi niya po uli't (sic) sa akin na ganun daw po uli ang gagawin. Sabi ko, ayaw ko po. Tapos sabi niya, sayang daw po iyon. Eh, noong sinabi niya po sa akin iyon may kasama na po siyang lalake noon.*

PROS. SUBONG, JR.:
May we just have it quoted, your Honor?

THE COURT:
Just quote the answer.

PROS. SUBONG, JR.:
Q- Okay. What was it that you were supposed to do again?
A- *Makipag-sex po uli sa lalake.*

Q- And you said that the man was already there when you were talking?
A- Yes, sir.

Q- Where were you then?
A- Sport's [*sic*] Center, sir.

Q- Where in Sport's [*sic*] Center?
A- In McDonald's near the Sport's [*sic*] Center again, sir.

Q- Okay, and did you eventually agree to what [Lopez] wanted you to do?
A- No, sir.

Q- Okay, what was it that [Lopez] wanted you to do again?
A- *Makipag-sex po doon sa lalake, tapos babayaran daw po. Iyon po ang sabi niya sa akin.*

THE COURT:
Just quote the answer.

PROS. SUBONG, JR.:
Q- Did you actually have sex with that man?
A- Yes, sir.

Q- Okay, from McDonald's, where did you go?
A- Masinag, Grand Polo.

Q- How did you go there?
A- We rode a taxi, sir.

Q- How about John Paul?
A- He was not there.

Q- So he was left in McDonald's?
A- Witness is nodding.

Q- When you reached Grand Polo, what did you do there?
A- *Nag-sex po.*

Q- After you had sex with that man, what happened?
A- We separated and I went home to his house, sir.

Q- Whose house are you referring to?
A- [Lopez], sir.

Q- Okay, you said a while ago that[,] that man paid money to [Lopez]. Do you know how much was paid by that man?
A- *Hindi po. Pangalawang beses din, Isang Libo (₱1,000.00) din po ang ibinigay ni [Lopez].*[27]

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[27] *Rollo*, pp. 11-15.

Based on the foregoing, the first element of qualified trafficking is established, that Lopez recruited BBB into prostitution and the sexual trade. Lopez facilitated BBB's involvement in the sexual incidents on August 30, 2011 and September 9, 2011. He brought her to McDonald's to meet the male clients on both dates and instructed her to board the taxi and to go with them to the Grand Polo Motel to have sex. Lopez himself negotiated with the male clients to finalize the deal and accepted their payments.[28]

The second element is also established, that the means used by Lopez involved taking advantage of BBB's vulnerability and enticing her with payments and benefits. In both the August 30, 2011 and September 9, 2011 incidents, Lopez took advantage of BBB's vulnerable state as a minor who had stowed away, and paid her ₱1,000.00 for each sexual incident.[29]

Notably, it was held in *People v. Villanueva*[30] that a conviction for qualified trafficking in persons may stand even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208. If the person trafficked is a child, we may do away with discussions on whether or not the second element was actually proven. It has been recognized that even without the perpetrator's use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.[31]

The third element is present since the purpose of the trafficking was for BBB's prostitution and sexual exploitation. It was clear BBB went with the male client, upon Lopez' instruction, to the Grand Polo Motel to have sex.[32]

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[28] *Id*. at 15.

[29] *Id*.

[30] 795 Phil. 349 (2016).

[31] *Id*. at 360.

[32] *Rollo*, pp. 11-15.

With all the elements established, the CA correctly affirmed Lopez' conviction for two counts of qualified trafficking in persons. This conviction stands based on the testimonies and positive identification by the victims of minor age. This is further corroborated by the testimonies of other prosecution witnesses and documentary evidence.

Lopez' bare defense of denial was unsubstantiated by clear and convincing evidence and cannot prevail over the victims' categorical and consistently positive identification which is not accompanied by ill motive.[33] An affirmative testimony is stronger than a negative testimony especially when the former comes from a credible witness. The defenses of alibi and denial, if unsubstantiated by clear and convincing evidence, are inherently weak, self-serving, and undeserving of weight in law.[34]

This Court also cannot give credence to Lopez' defense that BBB's testimony was allegedly impelled by her ill motive against him. The assessment of the credibility of witnesses lies within the province and competence of trial courts. A trial court judge is in the best position to weigh the testimonies of witnesses in the light of the declarant's demeanor, conduct, and attitude during trial, and is therefore placed in a more competent position to discriminate between truth and falsehood.[35] Absent any such finding by the trial court or evidence to show that BBB was biased and actuated by improper motive, her testimony should be given full faith and credit.[36]

Thus, this Court finds no reason to overturn the judgment of conviction rendered by the RTC, and affirmed by the CA.

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[33] *People v. Bandojo, Jr.*, G.R. No. 234161, October 17, 2018, 884 SCRA 84, 103-104.

[34] *People v. Baniega*, 427 Phil. 405, 418 (2002).

[35] *People v. Soriano*, 600 Phil. 668, 676 (2009); *People v. Escote*, 475 Phil. 268, 274-275 (2004).

[36] *People v. Baniega*, *supra*; *People v. Soriano*, *id.* at 676-677; *People v. Hirang*, *supra* note 26 at 290.

WHEREFORE, this Court **ADOPTS and AFFIRMS** the factual findings and conclusions of law in the Court of Appeals Decision, dated 30 March 2017 in CA-G.R. CR-HC No. 07114. Accused-appellant John Paul Lopez *y* Mayao is found **GUILTY** beyond reasonable doubt of two (2) counts of qualified trafficking in persons, punished under Section 4(e) in relation to Section 6(a) of Republic Act No. 9208 and, for each count, is sentenced to suffer the penalty of life imprisonment and pay a fine of ₱2,000,000.00. Furthermore, for each count, he is **ORDERED** to pay BBB moral damages in the amount of ₱500,000.00, and exemplary damages in the amount of ₱100,000.00.

All damages awarded shall earn interest at the rate of 6% *per annum* from the time of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 234445. July 15, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,** *respondent*.

SYLLABUS

1. **TAXATION; REVENUE MEMORANDUM ORDER NO. 53-98; PROVISIONS THEREOF DO NOT APPLY TO APPLICATIONS FOR TAX REFUND OR CREDIT. —** [T]he Court pronounced in *Commissioner of Internal Revenue v. Team Sual Corp.,* that inasmuch as RMO 53-98 enumerates the

documentary requirements during an audit investigation, its provisions do not apply to applications for tax refund or credit.

2. **ID.; 1997 NATIONAL INTERNAL REVENUE CODE; SECTION 112(C) THEREOF ACCORDS THE ONE CLAIMING FOR TAX REFUND OR CREDIT SUFFICIENT LATITUDE TO DETERMINE THE COMPLETENESS OF HIS SUBMISSION FOR THE PURPOSE OF ASCERTAINING THE DATE OF COMPLETION FROM WHICH THE 120-DAY PERIOD SHALL BE RECKONED. —** [I]n *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, the Court emphasized that the law accords the claimant sufficient latitude to determine the completeness of his submission for the purpose of ascertaining the date of completion from which the 120-day period shall be reckoned. He "enjoys relative freedom to submit such evidence to prove his claim" because, in the first place, he bears the burden of proving his entitlement to a tax refund or credit.

3. **ID.; REVENUE MEMORANDUM CIRCULAR NO. 42-03; EXPLICITLY EMPOWERS THE TAX AUTHORITIES TO REQUEST FOR ADDITIONAL DOCUMENTS THAT WILL AID THEM IN VERIFYING THE CLAIM FOR TAX REFUND OR CREDIT. —** RMC 49-03 explicitly empowers the tax authorities to request for additional documents that will aid them in verifying the claim. If its supporting documents were incomplete, the BIR was duty-bound to notify DKS of its deficiencies and require them to make further submissions, as necessary.

4. **ID.; REVENUE REGULATIONS NO. 16-05 (CONSOLIDATED VAT REGULATIONS OF 2005); REQUISITES FOR ENTITLEMENT TO TAX REFUND OR CREDIT OF EXCESS INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES. —** Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales

were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."

5. **ID.; 1997 NATIONAL INTERNAL REVENUE CODE; SECTION 108(B)(2) THEREOF; CONDITIONS FOR ZERO-RATING OF SALES OF SERVICES. —** Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2) of the Tax Code if the following conditions are met: *First*, the seller is VAT-registered. *Second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed." *Third*, services are "paid for in acceptable foreign currency and accounted in accordance with [BSP] rules and regulations."

6. **ID.; ID.; ID.; TWO COMPONENTS OF NON-RESIDENT FOREIGN CORPORATION (NRFC) STATUS. —** For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.

7. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT OF THE COURT OF TAX APPEALS ARE ACCORDED UTMOST RESPECT, IF NOT FINALITY, BECAUSE OF ITS EXPERTISE ON TAX MATTERS; CASE AT BAR. —** The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Salvador Llanillo & Bernardo for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) the Decision[2] dated March 30, 2017 and the Resolution[3] dated September 18, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 1244 and 1345. In the assailed issuances, the CTA *En Banc* affirmed the Decision[4] dated July 7, 2014 of the CTA Second Division (CTA Division) in CTA Case No. 8443 which partially granted Deutsche Knowledge Services Pte. Ltd. (DKS)'s application for refund or issuance of tax credit certificate (TCC).

The Antecedents

DKS is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore.[5] The branch is licensed to operate as a regional operating headquarters (ROHQ)[6] in the Philippines that provides

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[1] *Rollo*, pp. 10-25.

[2] *Id.* at 34-71; penned by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario, concurring and dissenting; and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring.

[3] *Id.* at 76-79.

[4] *Id.* at 127-149; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Caesar A. Casanova, concurring; and Amelia R. Cotangco-Manalastas, on leave.

[5] *Id.* at 127.

[6] Book III, Section 2(3) of Executive Order No. (EO) 226, otherwise known as the Omnibus Investments Code of 1987, as amended by Republic

the following services to DKS's foreign affiliates/related parties, its clients (foreign affiliates-clients): "general administration and planning; business planning and coordination; sourcing/ procurement of raw materials and components; training and personnel management; logistic services; product development; technical support and maintenance; data processing and communication; and business development" (qualifying services).[7]

By virtue of several Intra-Group Services Agreements (service agreements), DKS rendered qualifying services to its foreign affiliates-clients,[8] from which it generated service revenues.

DKS is a value-added tax (VAT)-registered enterprise.[9] On October 21, 2011, DKS filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Regular Audit Division an Application for Tax Refund/Credit (BIR Form No. 1914) and a letter claim for refund, supported by the relevant documents (hereinafter collectively referred to as "administrative claim"). DKS declared that its sales of services to 34[10] foreign affiliates-clients are

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Act No. (RA) 8756, defines a Regional Operating Headquarters (ROHQ) as "a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets." Book III, Chapter II, Article 58 requires all ROHQs to secure a license from the "Securities and Exchange Commission (SEC), upon the favorable recommendation of the Board of Investments [BOI]."

[7] *Id.* at 127-128. Book III, Chapter II, Article 59(b)(1) enumerates the "qualifying services" ROHQs are allowed to render. The law explicitly provides that "ROHQs are prohibited from offering qualifying services to entities other than their affiliates, branches or subsidiaries, as declared in their registration with the Securities and Exchange Commission nor shall they be allowed to directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company."

[8] *Id.* at 128.

[9] *Id.* at 127.

[10] *Id.* at 141-142. According to the Court of Tax Appeals Second Division (CTA Division), DKS alleged to have rendered services to the following foreign affiliates-clients: (1) Deutsche Bank Aktiengesellschaft, Inlandsbank,

zero-rated sales for VAT purposes. Thus, it sought to refund an amount of ₱33,868,101.19, representing unutilized input VAT attributable to zero-rated sales incurred during the first quarter of 2010.[11]

Alleging that the CIR had not acted upon their administrative claim, DKS filed a petition for review before the CTA on March 19, 2012 (judicial claim).

In its Answer, the CIR, represented by the Office of the Solicitor General, refuted DKS's entitlement to a tax refund or credit as follows: *First*, DKS failed to submit the documents necessary to support its claim. *Second*, its claim is subject to administrative routine investigation and examination by the BIR. *Third*, it also failed to prove that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro and other acceptable foreign currency in accordance with the rules and regulations

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(2) Deutsche Bank Aktiengesellschaft, Filiale Amsterdam, (3) Deutsche Bank, Sociedad Española, (4) Deutsche Bank Aktiengesellschaft, Filiale Zurich, (5) Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office, (6) Deutsche Bank Aktiengesellschaft, Filiale Singapur, (7) Deutsche Bank Aktiengesellschaft, Filiale Karachi, (8) Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt, (9) Deutsche Bank Aktiengesellschaft, Filiale Seoul, (10) Deutsche Bank Aktiengesellschaft, Filiale New York, (11) Deutsche Bank Aktiengesellschaft, Filiale London, (12) Deutsche Bank Aktiengesellschaft, Filiale Tokyo, (13) Deutsche Bank Aktiengesellschaft, Filiale Paris, (14) Deutsche Bank Aktiengesellschaft, Filiale Prag, (15) Deutsche Bank Luxembourg S.A., (16) Deutsche Securities, Inc., (17) Deutsche Bank (China) Co. Ltd., Beijing Branch, (18) Deutsche Bank (China) Co. Ltd., Guangzhou Branch, (19) Deutsche Bank (China) Co. Ltd., Shanghai Branch, (20) DWS Holding & Service GmbH, (21) RREEF Management GmbH, (22) DB Hedgeworks, LLC, (23) Deutsche Bank Real Estate (Japan) Y.K., (24) Deutsche Bank Securities, Inc., (25) Deutsche Asia Pacific Holdings Pte. Ltd., (26) PT. Deutsche Securities Indonesia, (27) Deutsche Group Services Pty. Limited, (28) Deutsche Bank PBC Spolka Akcyjna, (29) Deutsche Bank Trust Company Americas, (30) DB Services New Jersey, Inc. (31) Deutsche Bank National Trust Company, (32) DB Finance, Inc. (33) DB International (Asia) Limited, and (34) DBOI Global Services Private Limited.

[11] *Id.* at 128.

of the Bangko Sentral ng Pilipinas (BSP). *Finally*, the filing of its judicial claim was premature.[12]

During the proceedings, DKS presented the following evidence to prove that its foreign affiliates-clients are non-resident foreign corporations doing business outside the Philippines (NRFCs): (1) SEC Certifications of Non-Registration of Company; (2) Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation; (3) Service Agreements;[13] and foreign business registration printouts retrieved from the AMInet database.

The CTA Division Ruling

In the Decision[14] dated July 7, 2014, the CTA Division partially granted DKS's claim. At the onset, the CTA Division resolved that both DKS's administrative and judicial claims were timely filed.[15] On the substantive aspect, it reduced DKS's claim to ₱14,882,227.02 computed as follows:

Input VAT claimed for refund		₱33,868,101.19
Less: Disallowances		
Unamortized Input VAT on Capital Goods exceeding ₱1 million	₱719,723.72	
Input VAT on Capital Goods exceeding ₱1 million without supporting documents	514,698.21	
Input VAT on purchases of services and goods other than capital goods	11,556,290.62	12,790,712.55
Valid Input VAT		₱21,077,388.64
Less: Output VAT		713,041.78
Valid Excess Input VAT		₱20,364,346.86

[12] *Id.* at 128-132.

[13] *Id.* at 142.

[14] *Id.* at 127-149.

[15] *Id.* at 135-137.

Multiply by: Portion pertaining to duly-established zero-rated sales[16]	73.0798%
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	₱14,882,227.02[17]

The CTA Division found as follows:

First, DKS initially claimed for refund total input VAT from current transactions amounting to ₱33,868,101.19,[18] purportedly from the purchases of capital goods, domestic purchases of services and goods other than capital goods, and services rendered by non-residents. However, it did not properly support its input VAT claims in accordance with prevailing VAT invoicing and substantiation requirements. This resulted in the disallowance of input VAT amounting to ₱12,790,712.55,[19] reducing the amount of valid excess input VAT subject to refund to ₱20,364,346.86.[20]

Second, DKS reported zero-rated sales amounting to ₱858,315,870.09 in its VAT return.[21] However, "[t]o be considered as [an NRFC], each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/ partnership and certificate/articles of foreign incorporation/ association."[22] Based on the evidence presented, out of 34 entities it claimed to be foreign, DKS established the NRFC status of

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[16] ₱627,255,650.48 is 73.0798% of total reported zero-rated sales amounting to ₱858,315,870.09. The percentage has been rounded off to four decimal places.

[17] *Rollo*, pp. 147-148.

[18] *Id.* at 145.

[19] *Id.* at 147.

[20] "Valid excess input VAT" is the difference between Valid input VAT amounting to ₱21,077,388.64 and Output VAT amounting to ₱713,041.78. *Id.* at 147-148.

[21] *Id.* at 145.

[22] *Id.* at 143.

only 15 foreign affiliates-clients. Thus, only sales to these 15 entities (₱627,255,650.48), which comprised 73.0798%[23] of the total zero-rated sales declared (₱858,315,870.09), was proven to be derived from foreign affiliates-clients. Concomitantly, only input VAT to the extent of ₱14,882,227.02[24] may be granted as a refund or credit or 73.0798% of the above-mentioned validated excess input VAT amounting to ₱20,364,346.86.

From this Decision, the CIR filed a Motion for Reconsideration (MR). On the other hand, DKS filed an Omnibus Motion for Partial Reconsideration and to Re-open Trial to Present Supplemental Evidence (omnibus motion). The CTA Division denied[25] the CIR's MR, but allowed DKS to present additional evidence, despite the CIR's opposition.[26] Ultimately, the CTA Division still denied DKS's motion for partial reconsideration.

Aggrieved, the CIR and DKS filed petitions for review on *certiorari* before the CTA *En Banc* docketed as CTA EB Nos. 1244 and 1345, respectively.

The CTA En Banc Ruling

In its assailed Decision, the court *a quo* partially granted the CIR's petition but denied for lack of merit that of DKS. It mainly echoed the CTA Division's rulings on evidentiary matters, *viz.*:

We agree with the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the [SEC] and certificate/articles of foreign incorporation/association. Parenthetically, it must be emphasized that notwithstanding the

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[23] See *supra* note 16.

[24] *Rollo*, p. 148.

[25] See the Resolution dated October 13, 2014 of the CTA Division, *id.* at 92-101.

[26] The CTA Division denied the Commissioner of Internal Revenue (CIR)'s Motion for Partial Reconsideration in its Resolution dated October 13, 2014, *id.* at 38.

presentation of the said documents, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc*.

The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines, while the said certificate/articles of incorporation/association will prove that the recipient is indeed foreign.[27]

However, after further evaluation, the CTA *En Banc* found that DKS established the NRFC status of only 11 foreign affiliates-clients, as opposed to the CTA Division's findings of 15 entities. The court *a quo* excluded four[28] entities because these entities' NRFC status could not have been established by mere printouts from DKS's own database, *viz.*:

x x x [The] foreign business registration print-outs retrieved from the AMInet database (Exhibits "P-1" to "P-33"), which is a database set up by Deutsche Bank Global (the head office of Deutsche Knowledge in Germany) x x x are self-serving and can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.[29]

Resultantly, this reduced DKS's claim to ₱14,527,282.57 because only 71.3368%[30] (not 73.0798% as found by the CTA Division) of its reported sales were valid zero-rated sales, *viz.*:

Valid Excess Input VAT, as found by the CTA Division	₱20,364,346.86

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[27] *Id.* at 54-55. Emphasis omitted; italics in the original.

[28] *Id.* at 60. Deutsche Bank (China) Co. Ltd., Beijing Branch; Deutsche Bank (China) Co. Ltd., Shanghai Branch; Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt; and DB International (Asia) Limited.

[29] *Id.* at 56-57.

[30] ₱612,295.462.42 is 71.3668% of total reported zero-rated sales amounting to ₱858,315,870.09. The percentage has been rounded off to four decimal places.

Multiply by: Potion pertaining to duly-established zero-rated sales[31]	71.3368%
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	₱14,527,282.57[32]

Both parties moved for reconsideration, but the CTA EB denied them. Hence, the CIR filed the present petition.

Issue

The sole issue for the Court's resolution is whether DKS is entitled to a tax refund/credit amounting to ₱14,527,282.57.

The Court's Ruling

The petition is unmeritorious.

The CIR insists that DKS is not entitled to a tax refund/credit because: *First*, its judicial claim was filed prematurely.[33] And *second*, it failed to prove that its clients are foreign corporations doing business outside the Philippines. Being a procedural matter, the Court shall first resolve the former then proceed to the substantive matters.

Timeliness of DKS's Judicial Claim

Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) gives the CIR 120 days from the date of submission of complete documents (date of completion) supporting the application for credit or refund excess input VAT attributable to zero-rated sales to resolve the administrative claim. If it remains unresolved after this period, the law allows the taxpayer to appeal the unacted claims to the CTA within

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[31] *Id.*

[32] From the CTA Division's computation, the CTA *En Banc* only modified the "Portion pertaining to duly-established zero-rated sales" from 73.0798% to 71.3368%. This resulted in the decrease of "Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts" from ₱14,882,227.02 to ₱14,527,282.57.

[33] *Rollo*, p. 18.

30 days from the expiration of the 120-day period (120 and 30-day periods).[34]

Stated differently, the date of completion commences the CIR's 120-day period to resolve the claim. In turn, the expiration of the 120-day period triggers the running of the 30-day period to appeal an unacted claim.

The CIR argues that Revenue Memorandum Order No. (RMO) 53-98 provides a list of documents that the taxpayer must submit to substantiate his claim for tax refund or credit. It points out that, when DKS filed its administrative claim, it failed to submit the complete documents. Thus, the 120 and 30-day periods did not begin to run.

This contention directly contravenes law, applicable tax regulations, and jurisprudence.

First, the Court pronounced in *Commissioner of Internal Revenue v. Team Sual Corp.*,[35] that inasmuch as RMO 53-98 enumerates the documentary requirements during an audit investigation, its provisions do not apply to applications for tax refund or credit.[36]

Second, in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[37] the Court emphasized that the law accords the claimant sufficient latitude to determine the completeness of his submission for the purpose of ascertaining the date of

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[34] Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) provides, "x x x [i]n 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." Also see *Procter and Gamble Asia Pte. Ltd. v. Commissioner of Internal Revenue*, 785 Phil. 817 (2016).

[35] 739 Phil. 215 (2014).

[36] *Id.* at 227.

[37] 774 Phil. 473 (2015).

completion from which the 120-day period shall be reckoned.[38] He "enjoys relative freedom to submit such evidence to prove his claim" because, in the first place, he bears the burden of proving his entitlement to a tax refund or credit.[39]

This benefit, a component of the claimant's fundamental right to due process,[40] allows him: (a) to declare that he had already submitted complete supporting documents upon filing his claim and that he no longer intends to make additional submissions thereafter; or (b) to further substantiate his application within 30 days after filing, as allowed by Revenue Memorandum Circular No. (RMC) 49-03.[41]

To counterbalance the claimant's liberty to do so, he may be required by the tax authorities in the course of their evaluation, to submit additional documents for the proper evaluation thereof. In which case, the CIR shall duly notify the claimant of his request from which the claimant has 30 days to comply.

Notably, both parties are given the occasion to determine the completeness of documents supporting a claim for tax refund or credit. However, the Court must differentiate between these two functions.

On the one hand, the claimant has the prerogative to determine whether he had completed his submissions upon filing or within 30 days thereafter. This procedural determination of completeness is aimed at ascertaining the date of completion from which the 120-day period shall commence.

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[38] *Id.* at 493.

[39] *Id.* at 493-494.

[40] *Id.* at 494.

[41] Pursuant to Revenue Memorandum Circular No. (RMC) 49-03 [Subject: *Amending Answer to Question Number 17 of RMC No. 42-03*, August 15, 2003], "[f]or pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days."

In contrast, whether the claimant's submissions "are actually complete as required by law — is for the CIR and the courts to determine."[42] The CIR and courts' subsequent evaluation of the documents is a substantive determination of completeness, for the purpose of ascertaining the claimant's entitlement to the tax refund or credit sought.

Clearly, the CIR has no authority to unilaterally determine the completeness of these documents and dictate the running of the 120-day period to resolve the claim, as he attempts to do so in the present case. To sanction this would be giving the tax authorities "unbridled power to indefinitely delay the administrative claim" and in turn "prevent the filing of a judicial claim with the CTA."[43]

Third, as discussed above, RMC 49-03 explicitly empowers the tax authorities to request for additional documents that will aid them in verifying the claim. If its supporting documents were incomplete, the BIR was duty-bound to notify DKS of its deficiencies and require them to make further submissions, as necessary.[44]

The tax authorities had the full opportunity to opine on the issue of documentary completeness while DKS's claim was pending before them. However, there was no action on the claim on the administrative level. The first instance the BIR served a formal response to the claimant, alleging documentary deficiencies, was already in the CIR's Answer filed before the CTA on May 11, 2012. In other words, it took the BIR 203 days[45] to show concern on the matter, only to ask the court to deny the claim based on a mere procedural issue that they themselves could have addressed on the administrative level.

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[42] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 494.

[43] *Id.* at 488.

[44] See *Commissioner of Internal Revenue v. Team Sual Corp.*, *supra* note 35 at 229.

[45] DKS filed their administrative claim on October 21, 2011, *rollo*, p. 36.

Its belated response to the present claim only brings to light that the BIR had been remiss in their duties to duly notify the claimant to submit additional documentary requirements and to timely resolve their claim. The CIR cannot now fault DKS for proceeding to court for the appropriate remedial action on the claim they ignored.

Parenthetically, the Court reiterates that the above analysis involving the determination of the completeness of documents supporting a claim for tax refund or credit applies only to claims filed prior to June 11, 2014.[46] At present, RMC 54-14[47] requires the taxpayer to attach the following to his claim upon filing thereof: (a) complete supporting documents, as enumerated in the issuance, and (b) a statement under oath attesting that the documents submitted are in fact complete. The guidelines now ensure that the date of completion coincides with the date of filing of the claim.

This new issuance cannot be made to apply to the present case, which involves a claim filed in 2011, due to the rule on non-retroactivity of rulings.[48]

Requisites for the Entitlement to Tax Refund or Credit of Excess input VAT Attribute to Zero-rated Sales

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112[49] of the Tax Code, a claimant's

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[46] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 496.

[47] Clarifying Issues Relative to the Application for Value-Added Tax (VAT) Refund/Credit, Revenue Memorandum Circular No. 054-14, [June 11, 2014].

[48] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 496-497, citing Section 246 of the Tax Code.

[49] SECTION 112. *Refunds or Tax Credits of Input Tax*. —

entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax,

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(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.

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(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 Subsections (A) hereof. [73]

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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.

x x x x x x x x x

to the extent that such input tax has not been applied against the output tax."[50]

The second requisite for the claimant's entitlement to a tax refund or credit of excess input VAT is at issue in the present case.

Conditions for Zero-rating of Sales of Services

Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%. Thus, while these sales will not mathematically yield output VAT, the input VAT arising therefrom[51] is nonetheless creditable or refundable, as the case may be.[52]

Sales of "other services,"[53] such as those qualifying services[54] rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2)[55] of the Tax Code if the

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[50] *Silicon Phils. v. Commissioner of Internal Revenue*, 654 Phil. 492, 504 (2011).

[51] Section 110(A)(3), Tax Code.

[52] Section 110(B), Tax Code cf. Sections 4-108-5 (a), 4.110-6, 4.110-7(b), RR 16-05.

[53] Services other than those mentioned in Section 108(B)(1) of the Tax Code, *viz.*: "*Processing, manufacturing or repacking goods* for other persons doing business outside the Philippines which goods are subsequently exported x x x" (Italics supplied.)

[54] See *supra* note 7.

[55] SECTION 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. — x x x

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT–registered persons shall be subject to zero percent (0%) rate x x x (2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

x x x x x x x x x

following conditions are met: *First*, the seller is VAT-registered. *Second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed." *Third*, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."[56]

With regard to these conditions, it is no longer disputed that DKS is VAT-registered and that it received payments for its qualifying services in acceptable foreign currency and accounted for as required by applicable BSP rules. What remains in contention is whether or not DKS's foreign affiliates-clients are NRFCs doing business outside the Philippines.

Proof of NRFC Status

For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.[57]

Such proof must be especially required from ROHQs such as DKS. That the law[58] expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities

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[56] Also see *Commissioner of Internal Revenue v. American Express International, Inc.*, 500 Phil. 586, 606 (2005); *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 541 Phil. 119, 131 (2007).

[57] See *Accenture, Inc. v. Commissioner of Internal Revenue*, 690 Phil. 679, 690-691 (2012); *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, 805 Phil. 464, 482-483 (2017).

[58] See *supra* note 6.

and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/ Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.[59]

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters.[60] Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.[61]

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations.[62] On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are

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[59] *Rollo*, p. 58.

[60] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375, 397 (2015). Citations omitted.

[61] *Rep. of the Phils. v. Team (Phils.) Energy Corp.*, 750 Phil. 700, 717 (2015), citing *Sea-Land Service, Inc. v. Court of Appeals*, 409 Phil. 508, 514 (2001). Also see *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 346-347 (2018).

[62] See *Accenture, Inc. v. Commissioner of Internal Revenue*, *supra* note 57 at 697.

prima facie evidence that their clients are not engaged in trade or business in the Philippines.

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue*[63] and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*.[64] In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.

WHEREFORE, the petition is **DENIED**. The Decision dated March 30, 2017 and the Resolution dated September 18, 2017 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1244 and 1345 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Delos Santos, and *Gaerlan*,[*] *JJ.*, concur.

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[63] 690 Phil. 679 (2012).

[64] 805 Phil. 464 (2017).

[*] Designated as additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 237697. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **EMMA LEOCADIO *y* SALAZAR and SHERRYL LEOCADIO *y* SALAZAR**, *accused-appellants*.

SYLLABUS

1. **CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); TRAFFICKING IN PERSONS, DEFINED. —**Pertinent provisions of R.A. No. 9208, being the law that defines the crime of Trafficking in Persons, read as follows: Section 3. Definition of Terms. – As used in this Act: (a) Trafficking in Persons –– refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.
2. **ID.; ID.; ID.; ELEMENTS THAT MUST BE ESTABLISHED FOR SUCCESSFUL PROSECUTION OF TRAFFICKING IN PERSONS, REITERATED; ACCUSED-APPELLANTS PERFORMED ALL THE ELEMENTS OF THE CRIME. ––** [I]n *People of the Philippines v. Nancy Lasaca Ramirez*, this Court enumerated the elements that must be established to successfully prosecute the crime: The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus: (1) The act of "recruitment,

transportation, transfer or [harboring], or receipt of persons with or without the victim's consent or knowledge, within or across national borders." (2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." In this case, the prosecution has successfully established all the elements of trafficking in persons. x x x [A]ccused-appellants recruited the victims to work in Angeles, Pampanga. They used the means of taking advantage of the vulnerability of the victims, although this is not material as the victims were all minors, except for BBB. Lastly, their purpose for trafficking was prostitution or sexual exploitation. Based on the definition of trafficking in persons and the enumeration of acts of trafficking in persons, accused-appellants performed all the elements in the commission of the offense**.**

3. **ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; HAVING BEEN ESTABLISHED THAT ELEVEN (11) OF THE VICTIMS WERE MINORS, THE OFFENSE BECOMES QUALIFIED. —** [T]he evidence of the prosecution clearly established that all the twelve (12) victims were minors, except BBB. According to the definition laid down in Section 3(b) of R.A. No. 9208, a child refers to a person below eighteen (18) years of age. Considering that eleven (11) of the victims were minors, the offense becomes qualified as the persons being trafficked were children. In addition, if the crime was committed in large scale as it was committed against three (3) or more persons, individually or as a group, it is also qualified. In the case at bar, records show that it was committed against twelve (12) individuals, hence, it is qualified.

4. **ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY. —** [T]he courts *a quo* correctly sentenced accused-appellants to suffer the penalty of life imprisonment and to pay a fine of Two Million Pesos (₱2,000,000.00). In addition, the CA is correct in ordering accused-appellants to pay the amount of One Hundred Thousand Pesos (₱100,000.00) as exemplary damages, in reference to

prevailing jurisprudence, considering that the crime of Trafficking in Persons was aggravated, being committed in large scale. However, this Court must make an adjustment with regard to the amount of moral damages. x x x It is true that the victims in this case were minors. They undoubtedly suffered mental anguish, fright and serious anxiety, being put in a compromising situation that happened in this case, and to be trafficked to be a prostitute and to be sexually exploited. Nevertheless, they were not placed in the actual situation of doing cybersex, except for BBB, but her past experience of actually being sexually exploited is not the subject of the present case. x x x Thus, this Court deems it proper that the award of One Hundred Thousand Pesos (₱100,000.00) as moral damages be given, taking into consideration the factual differences of the present case from previous jurisprudence[.] x x x Likewise, this Court finds it appropriate to impose on all monetary awards due to the victims legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

5. **ID.; ID.; CONSPIRACY EXISTS WHERE TWO OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY AND DECIDE TO COMMIT IT; TOTALITY OF CIRCUMSTANCES IN THIS CASE LEADS TO THE CONCLUSION THAT THERE WAS A CONCERTED ACTION BETWEEN ACCUSED-APPELLANTS WITH THE OBJECTIVE OF TRAFFICKING THE MINORS FOR THE PURPOSE OF SEXUAL EXPLOITATION.** –– Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. Based from the totality of the circumstances of the instant case, conspiracy exists. Accused-appellants performed overt acts for the accomplishment of a common purpose of recruiting and transporting the victims to Angeles, Pampanga to perform indecent acts, particularly cybersex. It was established from the testimonies of the witnesses that accused-appellants, together and, at times, individually, recruited them to work in an internet café in Angeles, Pampanga. To be specific, in the case of CCC, it was Sherryl who told her that, “I will bring

you to Manila and work in an internet café to dance strip wearing only bra and panty." Further, all the victims who became witnesses clearly established that accused-appellants were the ones who gave them instructions and bought their tickets in going to Manila. The evidence shows that the chain of circumstances necessarily leads to the conclusion that there was a concerted action between accused-appellants with the objective of trafficking the minors for the purpose of pornography or sexual exploitation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

On appeal is the June 29, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 02220 which affirmed with modifications the September 24, 2015 Decision[2] of the Regional Trial Court *(RTC)*, Branch 20, Cebu City in Criminal Case No. CBU-93590, finding accused-appellants Emma Leocadio *y* Salazar and Sherryl Leocadio *y* Salazar guilty beyond reasonable doubt of Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and penalized under Section 10 (a) and (c) of Republic Act (*R.A.*) No. 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*.

In an Information[3] dated August 25, 2011, accused-appellants were charged with Qualified Trafficking in Persons under Section 6(a) and (c), in relation to Sections 4(a) and 3, and

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[1] *Rollo*, pp. 4-31. Penned by Associate Justice Marilyn B. Lagura-Yap, with the concurrence of Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi.

[2] CA *rollo*, pp. 39-61. Penned by Presiding Judge Bienvenido R. Saniel, Jr.

[3] Records, pp. 1-2.

penalized under Section 10 (a) and (c) of R.A. No. 9208, committed as follows:

That on or about the 5th day of August 2011, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, recruit, transport, transfer, harbor, provide or receive a person for the purpose of prostitution, pornography, or sexual exploitation, [JJJ],[4] 16 years old, [KKK], 17 years old, [CCC], 15 years old, [AAA], 17 years old, [DDD], 16 years old, [BBB], 18 years old, [GGG], 13 years old, [HHH], 15 years old, [FFF], 15 years old, [III], 16 years old, [LLL], 17 years old and [MMM], 17 years old, that is by recruiting them from Bohol and transport them to Cebu on their way to Angeles, Pampanga to work in an internet café for purposes of [cybersex] by means of taking advantage of their vulnerability and/or giving payments or benefits to achieve the consent of the person having control over the said trafficked persons, by offering them work in an internet café in Angeles, Pampanga and/ or giving their parents or the person having custody[,] money or other benefits. With the qualifying circumstances of being committed in large scale as more than three (3) persons were trafficked and that the trafficked persons are minors.

CONTRARY TO LAW.[5]

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[4] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[5] Records, p. 1.

In their arraignment, accused-appellants pleaded not guilty[6] to the charge. During the trial of the case, they were detained at the Cebu City Jail.

The prosecution presented six (6) witnesses, namely: CCC, DDD, AAA, BBB, Edna Regudo and Police Officer 2 *(PO2)* Jessie Carel. The defense, for its part, presented accused-appellants and Annabel Tampus.[7]

Version of the Prosecution

Sometime in the first week of August 2011, a group of girls were invited to work in an internet café in Angeles, Pampanga. The group was composed of twelve (12) girls who were all minors except for one, BBB, who was eighteen (18) years old. These minors were from Jagoliao and Nasingin, separate island *barangays* of the Municipality of Getafe, Bohol. Four (4) of the victims were presented as witnesses for the prosecution, namely: CCC, DDD, AAA and BBB. The respective recruitments of the girls were done under different circumstances as four (4) of them were from Jagoliao and eight (8) came from Nasingin. Witnesses CCC and BBB were from Jagoliao, while AAA and BBB came from Nasingin.

In the case of CCC, she was recruited by accused-appellants in Jagoliao. It was Sherryl who told her that, "I will bring you to Manila and work in an internet café to dance strip wearing only bra and panty."[8] Thereafter, Emma talked to her mother about the work and gave her mother the amount of Two Thousand Pesos (₱2,000.00) to be deducted from CCC's salary. On the other hand, in the case of DDD and AAA, they were approached in Nasingin by Ella Leocadio and a certain woman, respectively, inviting them to work and to go to the house of Annabel to list their names there. Once they were at the house of Annabel, they were able to meet accused-appellants. Emma then looked

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[6] *Id.* at 86 and 87.

[7] CA *rollo*, p. 39.

[8] TSN, April 12, 2012, p. 8.

at them from head to foot and instructed them to fetch their mothers so she could talk to them. DDD and AAA then told Emma that they did not know how to use the computer to which Emma assured them not to worry because Sherryl would teach them. At the time they were already in Cebu, Emma told them over lunch about their work in the internet café: they should abide with what the foreigner instructed them to do. Should the foreigner ask them to undress, they should follow without worrying because the foreigner was just in the internet and in another country.[9]

With regard to BBB, she previously worked in the said internet café owned by Richard Leocadio, Emma's son, and Janice Delosa in Pampanga from April 2010 to December 2010. During the subject incident in this case, she was working in a *carinderia* in Lapu-Lapu City for only three (3) days when she was fetched by their neighbor Prescilla Leocadio Abellar, accompanied by her grandmother. She was told to go home because her father was sick. However, it was disclosed by Ella that her father was not actually sick and it was only meant to deceive her for her to go home since Ella was instructed by Emma to get her as Richard wanted BBB to go back to Pampanga to work for him. During the time that BBB was already in Jagoliao, she was approached by Sherryl who recruited her to work in Pampanga. At first, she did not agree to Sherryl's offer but in a few days, she made known her intention to go back to Pampanga. Her decision was prompted by the loan obtained from Emma, and charged to her, which was used for the expenses of Ella and her grandmother in fetching her in Lapu-Lapu City from Bohol and back.[10]

CCC and BBB corroborated the fact that they traveled from Jagoliao to Nasingin onboard a pump boat to fetch ten (10) other female minors, together with accused-appellants. Emma was the one who paid for their fares and, according to CCC and BBB, their fares were deductible from their salaries. When

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[9] CA *rollo*, pp. 40-44.

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

they arrived in Pier 1 of Cebu City from Getafe, Bohol, they went to the house of Emma's friend and ate there. Thereafter, they were brought to a ticketing counter by accused-appellants, together with the two (2) other female minors. They waited while accused-appellants bought their tickets for the Super Ferry bound for Manila. After that, they went back to the house of Emma's friend while Emma took another set of female minors by 3's and 4's to the ticketing booth. Further, they were made to group by 5's with each group having a member with a cellphone to contact them. Emma asked if they have somewhere to stay the night in, and for the both of them and their group, they stayed at CCC's aunt's house in Pasil. They were given a budget of Five Hundred Pesos (₱500.00) for their meals and were instructed to meet at Pier 4 the following day.[11]

For the circumstances surrounding DDD, she was seventeen (17) years old and a resident of Nasingin, Getafe, Bohol. On August 1, 2011, Ella approached her and her companions and asked whether they would like to work in an internet café in Angeles, Pampanga. In the evening of August 2, 2011, DDD, together with FFF and HHH, went to the store of Anna, Emma's niece, and had their names listed. The following day, GGG told them to go to the house of Annabel because accused-appellants were waiting for them and would evaluate them whether they would qualify to work in the internet café. At about 2:00 p.m., DDD went there with GGG and FFF. When they arrived, Emma looked at them from head to foot. They were subsequently told by Emma that they were qualified and were advised to call their mothers. When DDD's mother arrived in the house of Annabel, Emma gave her One Thousand Pesos (₱1,000.00), to be deducted from her salary. At first, DDD understood that the work being offered to her was to look after an internet café.[12] It was only later on, when they were in Cebu City, that she found out about their real job in Pampanga which was to strip dance in front of a foreigner and abide if asked to undress.

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[11] *Id.* at 40 and 45.

[12] *Id.* at 41.

AAA, on the other hand, was also seventeen (17) years old and a resident of Nasingin, Getafe, Bohol. She quit school and worked as a housemaid and as a babysitter in Cebu City and Lapu-Lapu City. She subsequently returned to her hometown and worked for her aunt. At one time, while she was talking with her cousin, together with other girls, a certain woman inquired whether they wanted to work in Manila as internet attendants. Afterwards, they were asked to go to the house of Annabel. At the time they were already at Annabel's house, AAA was instructed to fetch her mother. She went home to tell her mother. Her mother went to the said house of Annabel where Emma and her mother had a conversation. She learned later that her mother did not receive the One Thousand Pesos (₱1,000.00) as promised by Emma. Before they left for Cebu City, she received the said amount from Emma which she then gave to her mother.[13]

Meanwhile, DDD and AAA also corroborated on the incident which occurred in Cebu City. On August 5, 2011, they met at Pier 4, together with Emma who gave them their respective tickets. They noticed that the tickets given to them stated that they were all of legal ages when, in fact, they were not. When they tried boarding the ship, they were denied entry and prevented from proceeding by the person to whom they gave their tickets. AAA saw a man approach Emma and asked her if she was indeed Emma. After the incident, they were brought to the police station. There, they were made to sit and photographed. They were also asked of their ages. An investigation was conducted where they were interviewed one by one. Thereafter, the policemen brought them to the Department of Social Welfare and Development *(DSWD)*. All the girls properly identified accused-appellants in court.[14]

PO2 Carel corroborated the events on the day of the incident. On August 5, 2011, he was assigned at the 701st Maritime Police Station, CPA Compound, Port Area, Pier 6, Cebu City. On that

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[13] *Id.* at 43-44.

[14] *Id.* at 42-44.

day, he received a telephone call from the security guard of Supercat Terminal Office, Pier 4, Port Area, Cebu City. The security guard was asking for their assistance. He then informed his team and they immediately went to the Supercat Terminal. He was with Senior Police Officer 2 Francisco Elopre, the team leader, and PO3 Florito Banilad. They arrived at the Supercat Terminal at about 6:15 p.m. There, the security guard informed them about two (2) women who were herding minors inside the terminal. When PO2 Carel looked around, he saw a group of girls, about fifteen (15) minors, who looked suspicious and innocent. Upon seeing them, the police officers approached accused-appellants, and identified themselves as members of the Maritime Police. They asked accused-appellants whether they have in their possession documents required in the travel of the minors, *i.e.*, parent's consent or authority from the Department of Labor and Employment. Accused-appellants were not able to present them. For that reason, they were placed under arrest for violation of R.A. No. 9208. Immediately thereafter, the police authorities read the Miranda Rights to them and were subsequently brought to the police station, together with the minors. At the police station, the police officers asked the girls for their tickets for documentation and noticed that there were erasures on the tickets, particularly regarding their ages. Further, as a standard operating procedure, the incident was entered in the blotter report.[15]

In addition, Regudo, a social worker of the DSWD, testified that on August 5, 2011, fifteen (15) girls were referred by the Maritime Police of Cebu City for protective custody and temporary shelter to their office. Out of the fifteen (15) girls, eleven (11) admitted to being minors. Out of the eleven (11) girls who admitted that they were minors, only nine (9) were able to secure documents of birth, while the two (2) other girls did not have records of birth from the National Statistics Office. Regudo further testified that she was able to conduct in-take interview with six (6) of the victims.[16]

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

[16] *Id.* at 47-48.

Version of the Defense

Emma is a native of Jagoliao, Getafe, Bohol. In 1980, she went to Manila to find work. She met her husband, Conrado Leocadio, and got married in 1982. They then resided in Tandang Sora, Quezon City and were blessed with seven (7) children, namely: Richard, Ronald, Aiza, Lea, Sherryl, May and Christian. In 1996, Emma and her family went back to her hometown in Jagoliao, Getafe, Bohol. She constructed a house at said place where she and her family stayed for two (2) years or until 1998. Eventually, they returned to Manila and established a junkshop business to support their family. However, the junkshop business was stopped when she got separated from her husband in 2000. After her separation, she opened a small store in her house in Tandang Sora, Quezon City to support her children living with her.[17]

Sometime in July 2011, Emma took a vacation in Jagoliao, Getafe, Bohol, together with her daughter, Sherryl. Her primary purpose was to secure four (4) housemaids; two (2) for her, to be the *yaya* of her child with her live-in partner, and the other two (2) for her son Richard. During the vacation, Emma went to see her sister and relatives. She also managed to visit her niece, Annabel, in Nasingin, Getafe, Bohol, on the first week of August 2011. During their conversation, three (3) women, namely: SSS, QQQ and RRR, who are relatives of the husband of Annabel, appeared purposely to request Emma to be the escort of their children in going to Manila, whose aunts would meet them once they arrive thereat. After a while, three (3) more persons arrived: OOO, PPP and NNN. They came with their children whom they introduced to Emma. NNN is the mother of EEE, and RRR is the mother of AAA. Emma was, at first, hesitant to accompany the children because she did not have the money for their fares and food. However, the parents had an agreement with Emma that they would provide for the fares and allowances of their children.[18]

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[17] *Id.* at 52.

[18] *Id.*

Upon their return to Manila, Emma and her daughter Sherryl, and four (4) hired helpers, took a pump boat from Jagoliao on their way to the wharf of Getafe, Bohol, and had to pass by Nasingin to pick up the children of their relatives who would accompany them in going back to Manila. Surprisingly, she saw other young girls accompanying the children of her relatives who also boarded the pump boat to go with them to Manila. The said young girls were friends of the children of her relatives who were enticed to work with them.[19]

Meanwhile, Sherryl confirmed that she accompanied her mother at the latter's request. It was her second trip to Getafe, Bohol. They stayed at her half-sister Ella's house. For their subsistence, they depended on the income of their store. She added that they have no internet café business. Except for III, who is her niece, being the daughter of Ella, she did not know the other fourteen (14) girls.[20]

At the port of Getafe, Bohol, accused-appellants, together with the other girls, boarded a motorized *banca* and landed at Pier 1, Cebu City. It was agreed upon by the group that Emma would take charge in buying their tickets and they would be texted where to meet thereafter. Emma shouldered the fare of the four (4) girls that would be their helpers and the other remaining girls contributed their own money for the fare. The group eventually separated. Accused-appellants rested in a hotel, while the fifteen (15) girls took shelter at their relatives' houses in Pasil, Cebu City.[21]

In the afternoon of August 5, 2011, accused-appellants and the other fifteen (15) girls met at the Supercat Terminal, Cebu City, to board the vessel on their way to Manila. While inside the Supercat Terminal, some male persons not in uniform approached them and asked for their tickets. They were brought to another place, allegedly to check on their tickets. After an

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[19] *Id.*

[20] *Id.* at 50-51.

[21] *Id.* at 52.

hour, they were brought to the police station at the waterfront and were detained. They were told that the parents of the minors need to appear so that they could get out of the police station. Accused-appellants claimed that they were not arrested and were not even asked why they were travelling with the minors. Due to this, Sherryl called Ella in Jagoliao, Getafe, Bohol, to inform the latter of the situation. The next day, August 6, 2011, the parents of the minor children arrived at the police station. However, they were not allowed to talk to their children and their presence was completely ignored.

RTC Ruling

After trial, the RTC handed a guilty verdict on accused-appellants for Qualified Trafficking in Persons. The dispositive portion of the September 24, 2015 Decision states:

> WHEREFORE, upon all foregoing considerations, the court finds accused EMMA LEOCADIO and SHERRYL LEOCADIO GUILTY beyond reasonable doubt of the crime of qualified trafficking in persons in violation of Section 4 in relation to Section 6 of Republic Act No. 9208, and hereby sentences each of them to life imprisonment. Each accused is also ordered to pay fine in the amount of Two Million Pesos (Php2,000,000.00).
>
> SO ORDERED.[22]

CA Ruling

On appeal, the CA affirmed the RTC Decision with modifications. The CA agreed with the findings of the trial court that accused-appellants committed qualified trafficking, considering that the trafficked persons were children, done in large scale as the trafficking was committed against three or more persons. They recruited, transported, transferred and harbored at least three minors for sexual exploitation purposes, particularly cybersex. The appellate court was of the opinion that even if the parents gave their consent for accused-appellants to bring their daughters to Pampanga to work in an internet café for cybersex, it does not negate the offense. Trafficking

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[22] *Id.* at 61.

is still committed by means of taking advantage of the vulnerability of the trafficked person. In this case, poverty rendered the minors vulnerable to trafficking. The CA also ruled on the issue of conspiracy between accused-appellants. For the appellate court, conspiracy exists as accused-appellants performed overt acts for the accomplishment of a common purpose: to recruit and transport the minors to Pampanga to perform indecent acts on the internet. Further, the CA added the award of moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00) and exemplary damages of One Hundred Thousand Pesos (₱100,000.00). Lastly, the appellate court ruled that accused-appellants shall not be eligible for parole, pursuant to Section 3 of R.A. No. 9346.[23]

Before us, the People and accused-appellants manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, accused-appellants maintain their innocence for violation of R.A. No. 9208 and claimed that they did not recruit the minors. On the contrary, the parents of the girls were the ones who approached them to bring their daughters to Manila to find work. Lastly, they argued that there was no conspiracy between accused-appellants in the commission of the crime charged.

Our Ruling

We find the appeal bereft of merit.

Contrary to the contentions of accused-appellants, the prosecution was able to sufficiently establish the commission of the crime. Pertinent provisions of R.A. No. 9208, being the law that defines the crime of Trafficking in Persons, read as follows:

Section 3. Definition of Terms. — As used in this Act:

(a) Trafficking in Persons — refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's

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[23] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.

(b) Child — refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

Further, in *People of the Philippines v. Nancy Lasaca Ramirez,*[24] this Court enumerated the elements that must be established to successfully prosecute the crime:

The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus:

(1) The act of "recruitment, transportation, transfer or [harboring], or receipt of persons with or without the victim's consent or knowledge, within or across national borders."

(2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and

(3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

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[24] G.R. No. 217978, January 30, 2019.

In this case, the prosecution has successfully established all the elements of trafficking in persons.

As regards the first element, all the four (4) girls, namely: CCC, DDD, AAA and BBB, categorically testified that accused-appellants recruited them to work in an internet café in Angeles, Pampanga. It is apparent from the testimonies of CCC and DDD that they referred to Emma as "*Tiya Babing*" and to Sherryl as "*Ate Carla*." Witnesses CCC, DDD and AAA were consistent in their narration on how they were recruited which all involved giving a payment in advance to be deducted from their salaries. The testimony of CCC provides:

Q: Were you told how long will you work in Pampanga?
A: Tiya Babing said that it would depend on me.

Q: Depend on what?
A: It would depend on when will I go home.

Q: What will you do to get your salary?
A: I do not know.

Q: After that [CCC], after you were given permission by your parents to work in Pampanga, do you know if Tiya Babing and Ate Carla gave money to your mother and father?
A: Yes.

Q: How much?
A: ₱2,000.00 (two thousand pesos).

Q: What was that ₱2,000.00 for?
A: Used to buy some of my things.

Q: Was that for full?
A: No, deductible from my salary.[25]

Meanwhile, the testimony of DDD contains the following:

Q: After looking at you, what did Babing say?
A: She said we could qualify to watch at the internet café.

Q: After saying that what happened?
A: She told us to call our mother.

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[25] TSN, April 12, 2012, p. 13.

Q: Did you call your mother?
A: Yes.

Q: What happened after you called your mother?
A: She gave us ₱1,000.00.

x x x x x x x x x

Q: Earlier you said that Babing gave you ₱1,000.00 what was that for free?
A: No.

Q: Who will pay for that?
A: To be deducted from our salary.

Q: Who said that?
A: Carla and Babing that was August 3.[26]

For AAA, her testimony is consistent with the testimonies of CCC and DDD, thus:

Q: Where will you stay [in] Pampanga?
A: In the place of Emma.

Q: When Emma told you about this information, what else transpired in the house of Annabel?
A: She had our parents called.

Q: What did you do?
A: I called my mother.

x x x x x x x x x

Q: Who asked you to call your parents?
A: It was Emma, your Honor.

x x x x x x x x x

Q: Do you know the reason why, if you know?
A: Yes.

Q: What was the reason?
A: To give an advance money.

Q: [Was] your mother able to get money?

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[26] TSN, May 17, 2012, pp. 13-16.

x x x x x x x x x

Q: Did you call your mother and told her that there was a requirement of advance money?
A: Yes, your Honor.

Q: How much money was required as advance money?
A: ₱1,000.00 (one thousand pesos), your Honor.

x x x x x x x x x

Q: When you say advance, who will give the money?
A: Emma.

Q: Was your mother able to get advance money from Emma?
A: Yes.

Q: How much?
A: ₱1,000.00 (one thousand pesos).

Q: If you know, who will pay for this advance money?
A: From my salary.[27]

In the case of BBB, she was previously employed by Richard, Emma's son, and Janice in Pampanga, from April 2010 to December 2010, and was asked to go back to work. She made her decision to go back to work because of a loan obtained from Emma which was also to be deducted from her salary. Aside from the act of recruiting, accused-appellants were caught transporting, transferring and harboring the victims from their hometown in Getafe, Bohol, onboard a pump boat, to Cebu City on August 4, 2011.

On the second element, it is apparent from this case that no threat, force or coercion was employed by accused-appellants in the trafficking of the victims. However, they took advantage of the vulnerability of the victims to secure the consent of their parents. They are vulnerable in the sense that they are underprivileged and it is apparent from their testimonies that they needed to earn money. In the case of CCC, both her parents

[27] TSN, August 7, 2012, pp. 11-13.

are fishermen and she has seven (7) siblings.[28] For DDD, her father works as a repairman of *banca*, her mother is a housewife, and she is 2nd among five (5) siblings.[29] AAA, meanwhile, testified that she is an out-of-school youth, her father is a fisherman, her mother is a housewife, and she has seven (7) siblings.[30] On the other hand, BBB is just an elementary graduate because her parents cannot afford to send her to school as her father is a fisherman and her mother is a housewife.[31] Considering that the victims came from poverty-stricken families, it renders the victims vulnerable to trafficking. Trafficking in persons can still be committed even if the victim gives consent.

In the case of *Antonio Planteras, Jr. v. People of the Philippines*,[32] the Court ruled that:

Knowledge or consent of the minor is not a defense under Republic Act No. 9208. The victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.

Anent the third element, in the present case, it has been proven that the purpose of trafficking is for prostitution or sexual exploitation. Section 3 (c) and 3 (f) of R.A. No. 9208 define the meaning of prostitution and sexual exploitation, respectively:

Section 3. Definition of Terms. — As used in this Act:

x x x x x x x x x

(c) Prostitution — refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or

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[28] TSN, April 12, 2012, p. 7.

[29] TSN, May 17, 2012, p. 6.

[30] TSN, August 7, 2012, pp. 5-6.

[31] TSN, October 2, 2012, pp. 7-8.

[32] G.R. No. 238889, October 3, 2018 (citations omitted).

lascivious conduct in exchange for money, profit or any other consideration.

x x x x x x x x x

(f) Sexual Exploitation — refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability.

Prostitution and sexual exploitation are present in this case. CCC and DDD clearly and consistently testified that they were told that they would work in an internet café to undress and perform obscene acts. Apparent from the testimonies of the victims, some of them know Emma as "*Tiya Babing*" and Sherryl as "*Ate Carla*." The testimonies of the victims provide the following:

Direct Testimony of CCC:

Q: Why are you here in Cebu City?
A: To apply for work in Manila.

Q: What work is that?
A: To work at an internet café and to dance strip wearing bra and panty only.

Q: Who told you about your work?
A: It was Ate Carla.

Q: When you say Ate Carla are you referring to the accused in this case?
A: Yes, because it was Ate Carla who told me that there is work.

Q: Can you tell the court what exactly Ate Carla told you about the work?
A: She said, Day, "I will bring you to Manila and work in an internet café to dance strip wearing only bra and panty."

Q: Where exactly in Manila you will work?
A: What I remember is Pampanga.[33]

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[33] TSN, April 12, 2012, pp. 7-8.

Direct testimony of DDD:

Q: When you reached the house of her cousin, what happened next?
A: We took lunch.

Q: Who provided the food?
A: Carla and Babing.

Q: While eating lunch did you talk about something?
A: Yes.

Q: Can you tell the court what did you talk about?
A: Babing told us that we would abide what the foreigner would say.

Q: Where was that foreigner?
A: In the internet.

Q: Did she say something what would the foreigner might say?
A: Yes.

Q: What?
A: She said that if the foreigner would command us to undress we would undress.[34]

On the other hand, BBB testified that she worked previously for Emma's son, Richard. During the time when she was employed by Richard, she was made to undress facing the camera and to dance in front of it. In the present case, she was again recruited to work for Richard in Pampanga. Thus, her direct testimony contained the following:

Q: You mentioned that you worked in the internet, what was your work there?
A: Entertained customers.

Q: Where is this internet place that you mentioned?
A: In Pampanga.

x x x x x x x x x

Q: How long did you work there?
A: Eight (8) months.

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[34] TSN, May 17, 2012, pp. 21-22.

Q: When did you start and when did you end?
A: I started working in the internet in Pampanga on April 10, 2010, and I stopped working on December 10, 2010.

Q: Earlier, [BBB,] you mentioned that you entertained customers. Can you be specific how do you entertain customers in your internet work place?

x x x x x x x x x

Q: Can you be specific of how you entertained customers?
A: I would ask for their names.

Q: And then?
A: Then they would ask me for a show.

x x x x x x x x x

Q: What do you mean by that asking you for a show?
A: They would like me to undress, your honor.

x x x x x x x x x

Q: After undressing yourself what else do you do?
A: We dance, your honor.

Q: Also in front of the camera?
A: Yes, your honor.

x x x x x x x x x

Q: Who manages the work place, [BBB]?
A: Janice and Richard.

Q: You mentioned a certain Richard, do you know the complete name?
A: Leocadio.

x x x x x x x x x

Q: So what was your work in that [*carinderia*] in Lapulapu City?
A: House helper.

Q: How long did you work there?
A: Three (3) days.

Q: Why only three (3) days, what happened?
A: Because my grandmother together with a neighbor fetched me there.

Q: Can you tell the court the name of your lola?
A: Trinidad Abaño.

Q: You also mentioned of a neighbor. Do you know the name of this neighbor?
A: Prescila Leocadio Abellar.

x x x x x x x x x

Q: You said that they fetched you there, what happened at that time?
A: According to Tia Ella, my father wants me to go home because he is sick.

x x x x x x x x x

Q: So, what happened after you left your employer's place?
A: Tia Ella told me that it was just a joke when she said that my father was sick.

x x x x x x x x x

Q: So, what did you do upon hearing that?
A: I wanted to go back to my boss, but she said that she wants me to go to Manila.

x x x x x x x x x

Q: So, who would want you to go to Manila?
A: From what she told me, she said that *Kuya* Richard wants me to go back to Manila to work.

x x x x x x x x x

Q: When you arrived in Jagoliao what happened there?
A: I saw *Ate* Carla at the videoke bar.

Q: Is this *Ate* Carla the accused in this case?
A: Yes, ma'am.

Q: What did *Ate* Carla say to you?
A: She asked me where I am going. Am I going to Richard or to her *Tatay*?

Q: What do you mean by "*asa kuno ko*"? What do you mean by that?
A: Where would I work.

Q: This *Kuya* Richard how is he related to this *Ate* Carla?
A: Brother and sister.

x x x x x x x x x

Q: What happened next after *Ate* Carla asked you that?
A: I did not decide immediately,

Q: So when did you decide [BBB]?
A: Only on August 3.

Q: Whom did you tell your decision?
A: *Ate* Carla.

x x x x x x x x x

Q: Do you know a certain Babing?
A: Yes, ma'am.

Q: How do you know her?
A: She went to our house.

Q: When you say "amoa," what do you mean? Your house or place in Bohol?
A: In our place.

x x x x x x x x x

Q: What did she do there?
A: She was there for a vacation.

Q: By the way, who if you know, sent Ella to fetch you from your work place in Lapulapu?
A: Tia Babing.

Q: Why were you able to say that?
A: Because Tia Ella told me.

Q: What did she say?
A: That I would go with them to Manila.

Q: Who said that you should go with them to Manila?
A: Tia Ella.

Q: Who told Tia Ella.
A: Tia Babing.[35]

[35] TSN, October 2, 2012, pp. 8-41.

Based from the said declarations of the witnesses, they were recruited by accused-appellants to perform lewd acts, indecent shows and pornography in the internet.

The fact that there were no actual indecent shows that were performed by the victims, except for BBB, is immaterial. It is not necessary that the victims have performed or are performing the act of prostitution or sexual exploitation at the time when the perpetrators were apprehended. The material fact in the crime charged is that the purpose of the perpetrators is to engage the victims in the said act of prostitution or sexual exploitation.

In sum, accused-appellants recruited the victims to work in Angeles, Pampanga. They used the means of taking advantage of the vulnerability of the victims, although this is not material as the victims were all minors, except for BBB. Lastly, their purpose for trafficking was prostitution or sexual exploitation. Based on the definition of trafficking in persons and the enumeration of acts of trafficking in persons, accused-appellants performed all the elements in the commission of the offense.

Meanwhile, Section 6 of R.A. No. 9208 provides:

Section 6. Qualified Trafficking in Persons. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

In the present case, the evidence of the prosecution clearly established that all the twelve (12) victims were minors, except for BBB. According to the definition laid down in Section 3 (b) of R.A. No. 9208, a child refers to a person below eighteen (18) years of age. Considering that eleven (11) of the victims were minors, the offense becomes qualified as the persons being trafficked were children. In addition, if the crime was committed

in large scale as it was committed against three (3) or more persons, individually or as a group, it is also qualified. In the case at bar, records show that it was committed against twelve (12) individuals, hence, it is qualified.

On the other issue presented by accused-appellants, they are claiming that conspiracy in the commission of the crime was not proven. They argued that Sherryl only accompanied her mother Emma in having a vacation in Getafe, Bohol and she had no part in the alleged recruitment.

We are not persuaded.

In *People v. Lababo*,[36] citing *Bahilidad v. People*,[37] the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co[-]conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co[-]conspirators. Hence, the mere presence of an accused at

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[36] G.R. No. 234651, June 6, 2018, 865 SCRA 609.

[37] 629 Phil. 567 (2010).

the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[38]

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[39]

Based from the totality of the circumstances of the instant case, conspiracy exists. Accused-appellants performed overt acts for the accomplishment of a common purpose of recruiting and transporting the victims to Angeles, Pampanga to perform indecent acts, particularly cybersex. It was established from the testimonies of the witnesses that accused-appellants, together and, at times, individually, recruited them to work in an internet café in Angeles, Pampanga. To be specific, in the case of CCC, it was Sherryl who told her that, "I will bring you to Manila and work in an internet café to dance strip wearing only bra and panty."[40] Further, all the victims who became witnesses clearly established that accused-appellants were the ones who gave them instructions and bought their tickets in going to Manila.

The evidence shows that the chain of circumstances necessarily leads to the conclusion that there was a concerted action between accused-appellants with the objective of trafficking the minors for the purpose of pornography or sexual exploitation.

With regard to the proper penalty to be imposed, Section 10 (c) of R.A. No. 9208 provides that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than Two Million Pesos (₱2,000,000.00) but not more than Five Million Pesos (₱5,000,000.00). Thus,

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[38] *People v. Lababo, supra* note 36, at 628.

[39] *People v. Peralta*, 435 Phil. 743, 764 (2002).

[40] TSN, April 12, 2012, p. 8.

the courts *a quo* correctly sentenced accused-appellants to suffer the penalty of life imprisonment and to pay a fine of Two Million Pesos (₱2,000,000.00).

In addition, the CA is correct in ordering accused-appellants to pay the amount of One Hundred Thousand Pesos (₱100,000.00) as exemplary damages, in reference to prevailing jurisprudence,[41] considering that the crime of Trafficking in Persons was aggravated, being committed in large scale. However, this Court must make an adjustment with regard to the amount of moral damages. In *People v. Casio*,[42] it was held that:

> The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse. To be trafficked as a prostitute without one's consent and to be sexually violated four to five times a day by different strangers is horrendous and atrocious.

It is true that the victims in this case were minors. They undoubtedly suffered mental anguish, fright and serious anxiety, being put in a compromising situation that happened in this case, and to be trafficked to be a prostitute and to be sexually exploited. Nevertheless, they were not placed in the actual situation of doing cybersex, except for BBB, but her past experience of actually being sexually exploited is not the subject of the present case. Unlike in *Casio*, the victims in that particular case were already subjected to the actual prostitution and sexual exploitation. Although it does not affect the consummation of the offense of qualified trafficking in persons, it makes a difference in the award of moral damages. Thus, this Court deems it proper that the award of One Hundred Thousand Pesos (₱100,000.00) as moral damages be given, taking into consideration the factual differences of the present case from previous jurisprudence, like the case of *Casio*. Likewise, this Court finds it appropriate to impose on all monetary awards

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[41] *People v. Casio*, 749 Phil. 458, 484 (2014).

[42] *Id.* at 482.

due to the victims legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.[43]

Finally, the Court finds that the phrase "shall not be eligible for parole under Act No. 4103 (Indeterminate Sentence Law) in accordance with Section 3 of Republic Act No. 9346" need not be appended to qualify accused-appellants' prison term of life imprisonment, in line with the instructions given by the Court in A.M. No. 15-08-02-SC[44] and, hence, must be deleted. Likewise, parole is extended only to those convicted of divisible penalties. Accordingly, the dispositive portion of this Decision should simply state that accused-appellants are sentenced to suffer the penalty of life imprisonment without any qualification.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The June 29, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 02220 is hereby **AFFIRMED** with **MODIFICATIONS**. Accused-appellants Emma Leocadio *y* Salazar and Sherryl Leocadio *y* Salazar are found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons under Section 6 (a) and (c), in relation to Sections 4 (a) and 3, and penalized under Section 10 (a) and (c) of Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons

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[43] *People v. Jugueta*, 783 Phil. 806, 854 (2016).

[44] Section II of A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties) states:

x x x x x x x x x

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

Act of 2003." Accused-appellants are sentenced to suffer the penalty of life imprisonment, and each of them is ordered to pay a fine of Two Million Pesos (₱2,000,000.00).

Accused-appellants are ordered to pay each of the private complainants:

1. ₱100,000.00 as moral damages; and
2. ₱100,000.00 as exemplary damages,

with interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 240692. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IMELDA GARCIA *y* TORDEDO and NOEL E. OLEDAN,** *accused,* **NOEL E. OLEDAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFIED TRAFFICKING IN PERSONS (REPUBLIC ACT NO. 9208), AS AMENDED; SECTION 4(a) IN RELATION TO SECTION 6(a) THEREOF; TRAFFICKING IN PERSONS, DEFINED; ELEMENTS; ESTABLISHED. —** Section 3(a) of RA 9208, as amended, defines "Trafficking in Persons" as follows: '[it] refers to the recruitment, obtaining, hiring, providing, transportation, transfer,

maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. In the present case, Oledan was charged and convicted by the RTC of Qualified Trafficking in Persons under Section 4(e) of RA 9208, as amended; while the CA convicted him under Section 4(a) of the same law, both in relation to Section 6(a) of RA 9208, as amended. Section 4(a) and (e) of RA 9208, as amended, reads: SEC. 4. Acts of Trafficking in Persons. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation; xxxx (e) To maintain or hire a person to engage in prostitution or pornography; x x x This, notwithstanding, Oledan's conviction must be sustained as the prosecution was able to establish his guilt beyond reasonable doubt under Section 4(a) of RA 9208.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSIGNMENT OF PROBATIVE VALUE TO WITNESSES' TESTIMONIES WILL NOT BE DISTURBED EXCEPT WHEN SIGNIFICANT MATTERS WERE OVERLOOKED, BECAUSE IT HAS THE OPPORTUNITY TO OBSERVE THE DEMEANOR OF THE WITNESSES ON THE STAND, AND ITS FINDINGS ACQUIRE EVEN GREATER WEIGHT ONCE AFFIRMED ON APPEAL. —** It must be added that even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will. The trafficked victim's testimony that she had been sexually exploited is material to the cause of the prosecution. In this case, AAA's testimony was corroborated by the

testimonies of the persons who were part of the entrapment operation. The rule that is applicable in the present case is that the trial court's assignment of probative value to witnesses' testimonies will not be disturbed except when significant matters were overlooked, because it has the opportunity to observe the demeanor of the witness on the stand. The trial courts findings acquire even greater weight once affirmed on appeal. In light of the foregoing, the Court finds no reason to depart from the factual findings of the RTC, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. As aforesaid the RTC was in the best position to assess and determine the credibility of the witnesses. Thus, due deference should be accorded to it.

3. **CRIMINAL LAW; QUALIFIED TRAFFICKING IN PERSONS (REPUBLIC ACT NO. 9208), AS AMENDED; SECTION 4 (a) IN RELATION TO SECTION 6 (a) THEREOF; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PROPER IMPOSABLE PENALTY; CIVIL LIABILITY OF ACCUSED-APPELLANT. —** x x x [O]ledan's conviction for Qualified Trafficking in Persons under Section 4(a) of RA 9208 in relation to Section 6(a) of the same law must be upheld. Anent the proper penalty to be imposed, Section 10(g) of RA 9208, as amended, states that any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the CA correctly sentenced Oledan to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00. The damages awarded by the CA are likewise upheld for being consistent with the prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

DECISION

INTING, *J*.:

Before the Court is an ordinary appeal[1] filed by Noel E. Oledan (Oledan) assailing the Decision[2] dated August 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07688 which affirmed with modifications the Decision[3] dated August 29, 2014 of Branch 11, Regional Trial Court (RTC), Laoag City convicting Oledan, in Criminal Case No. 14370, of Qualified Trafficking in Persons defined and penalized under Section 4(e)[4] in relation to Section 6(a)[5] of Republic Act No. (RA) 9208, as amended,[6] otherwise known as the "Anti-Trafficking in Persons Act of 2003."

The accusatory portion of the Information[7] dated January 27, 2010 charging Oledan, in Criminal Case No. 14370, of the offense of Qualified Trafficking in Persons, reads:

That on or about the 12th day of December 2009 in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, NOEL E. OLEDAN *alias* "Tita Welcome" and by means of fraud, deception, taking advantage of the vulnerability

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[1] See Notice of Appeal dated September 25, 2017, *rollo*, pp. 22-23.

[2] *Id*. at 2-21; penned by Associate Justice Edwin D. Sorongon with Associate Justices Ramon R. Garcia and Victoria Isabel A. Paredes, concurring.

[3] CA *rollo*, pp. 70-191; penned by Judge Perla B. Querubin.

[4] Section 4(e) of Republic Act No. (RA) 9208 provides:

SECTION 4. *Acts of Trafficking in Persons*.— x x x

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography[.]

[5] Section 6(a) of RA 9208 provides:

SECTION 6. *Qualified Trafficking in Persons.* — The following are considered as qualified trafficking:

(a) When the trafficked person is a child[.]

[6] As amended by Republic Act No. (RA) 10364.

[7] CA *rollo*, pp. 24-25.

of the private complainants, and the giving of payments or benefits to maintain or hire a person to engage in prostitution or pornography, did then and there, willfully, unlawfully and feloniously and knowingly recruit and hired [AAA][8], and thereafter, did then and there, willfully, unlawfully and feloniously received monetary consideration and transacting and employing scheme and designed to engage [AAA], for sexual intercourse and prostitution, and in fact engaged in prostitution, in return for money and profit.

That the crime was attended by the qualifying circumstances of minority — private complainants [AAA] was only seventeen years old during the commission of the crime.

CONTRARY TO LAW.[9]

The prosecution established the following:

AAA was born on March 3, 1994. On September 16, 2009, one *alias* Tita Butz a neighbor of then 15-year-old AAA in Pasay City, introduced AAA to Oledan. Oledan offered AAA a work at Saigon Disco located in Laoag City where she would drink liquor and be "bar fined" by customers. Oledan explained to AAA that "bar fine" meant that she would have sexual intercourse with the bar customers. AAA felt nervous, but accepted the offer because she wanted to help her mother. Oledan also told AAA that her earnings would depend on how many liquors she could consume and the number of times that she

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[8] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and "for Other Purposes;" RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[9] CA *Rollo*, p. 24.

would be "bar fined." Knowing that AAA was only 15 years old, Oledan asked if she knew any person of legal age who has a Certificate of Live Birth which they could use. As instructed, AAA furnished Oledan with the Certificate of Live Birth of one Darlene B. Fernandez.[10]

At around 7 p.m. of the same day, without the consent and permission of her mother, BBB, AAA met Oledan outside a drug store in Pasay City. She and Oledan went to a bus station in Cubao, Quezon City. At the bus station, AAA met a certain Bea, who was also working at Saigon Disco. The three of them boarded a bus bound for Laoag City.[11]

Upon arriving in Laoag City the following morning, Oledan brought them to Saigon Disco, Oledan introduced AAA to Imelda Garcia (Garcia) as the floor manager. Thereafter, Oledan and AAA went to the house of Mommy Beth and Mommy Tess, the owners of Saigon Disco. Mommy Beth and Mommy Tess gave AAA an advanced payment of ₱1,000.00 so she could buy new things, clothes, and make-up.[12]

AAA started to work at Saigon Disco on September 17, 2009 at around 6 p.m. That night, AAA was "tabled"—she had to drink liquor and entertain customers. She was also "bar fined". The customer paid her ₱2,500.00 for the bar fine, which was given to either Oledan or Garcia.[13]

AAA continued working at Saigon Disco almost daily for three months. Some of her co-workers were also minors. In that period: AAA was managed by Oledan, Garcia, and one Tita Grace; AAA was "bar fined" eight times by customers provided by either Oledan or Garcia; Oledan, ordered AAA to dance wearing shorts and bra, with a warning that she would incur a penalty of ₱500.00 if she refused; AAA was not allowed

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[10] *Rollo*, p. 5.

[11] *Id*. at 6.

[12] *Id*.

[13] *Id*.

to leave Saigon Disco; and AAA was not given a regular salary except for advanced payments that she asked from the owners of Saigon Disco.[14]

On September 19, 2009, BBB, who was greatly worried about her daughter's absence, went to the house of one of AAA's friends; BBB inquired of the whereabouts of AAA. Tita Butz, who overheard the conversation between BBB and her daughter, told BBB that Oledan brought AAA to Laoag City to work as a servant in a restaurant. Tita Butz then gave the contact number of Oledan. BBB called the number and was able to talk to AAA. AAA assured BBB that she was just working in a restaurant in Laoag City. AAA informed BBB that Oledan was also from their neighborhood in Pasay City.[15]

Sometime in November 2009, BBB received a phone call from AAA, who was crying and begging BBB to fetch her from Saigon Disco in Laoag City. She told BBB that she could not go home by herself as she had many debts. With this predicament, BBB then inquired in her neighborhood about Oledan's identity. She later found out that Oledan was a bar manager. One of AAA's friends suggested to BBB that AAA was possibly being held by a syndicate. This information impelled BBB to file a report with the Violence Against Women and Children Division of the National Bureau of Investigation (NBI) on December 1, 2009. She also sought the help of the International Justice Mission (IJM). BBB revealed that IJM helped her in the past when AAA was once sexually molested by a neighbor.[16]

When the IJM-Manila Office obtained the relevant information from BBB, it sent its investigator Randy Ramos (Ramos) to Laoag City on December 9, 2009. Ramos conducted an initial surveillance of Saigon Disco. He confirmed that he saw AAA at Saigon Disco on the aforesaid date working as a Guest Relations Officer (GRO); and that Oledan and Garcia were the

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[14] *Id*.

[15] *Id*. at 7.

[16] *Id*.

floor managers at Saigon Disco who asked customers to "table" the GROs. The following day, Ramos went to NBI-Laoag Office to endorse BBB's report. NBI Executive Officer Hilario C. Manding (Agent Manding) was tasked to handle the case.

With the case handled by the NBI, the following transpired:

For two (2) successive nights, particularly of December 10 and 11, 2009, Ramos and NBI confidential agent Manuel Villanueva (Agent Villanueva) pretended to be customers of, and conducted further surveillance, on Saigon Disco. They were able to establish that [AAA] was indeed a GRO thereat, and that she was "*bar fined*" twice for a fee of ₱2,500.00 each. Based thereon, the NBI planned an entrapment operation. NBI asset Cortez and Ramos were designated as poseur-customers while Agent Manding, Agent Villanueva, [BBB], Mrs. Mary Joan Pasigui, City Social Welfare Officer of Laoag (Officer Pasigui) and other NBI agents constituted as back-up. Agent Manding furnished the marked money comprising of two (2) ₱1,000.00 bills and a ₱500.00 bill bearing his initials "*HM*" and date "*12/12/09.*"

On December 12, 2009, at around 9:35 o'clock in the evening, Cortez and Ramos went to Saigon Disco using a motorcycle. Initially, they went inside, and Ramos saw AAA dancing on the stage. At around 9:45 o'clock in the evening, the back-up team arrived and parked their vehicle on the road fronting Saigon Disco's open porch. In the meantime, Cortez and Ramos went out, and as planned, occupied a table in the open porch of Saigon Disco where the back-up team could visibly see them. Ramos ordered two (2) bottles of beer for himself and Cortez. Shortly thereafter, appellant Garcia approached Cortez and Ramos and asked them whether they want to "*table*" girls. After Ramos described [AAA], appellant Garcia brought her out to Cortez and Ramos. [AAA] sat beside Cortez, drank ladies' drink and talked to them. Upon appellant Garcia's return to their table, Cortez asked her whether he could "*bar fine*" [AAA] to which appellant Garcia replied in the affirmative. Appellant Garcia told Cortez that the "*bar fine*" is at ₱2,500.00. Appellant Garcia then called [AAA] twice and talked to her. The second time [AAA] went out, she already changed her clothes. Moments later, appellant Garcia returned to their table and sat at the arm of the long chair therein. Then Cortez stood up and handed the marked money to appellant Garcia which the latter received.

At this juncture. Agent Manding and the other NBI operatives rushed to the scene, arrested appellant Garcia for child trafficking and child prostitution and informed her of her constitutional rights. Thereafter, all the GROs working at Saigon Disco were turned over to Officer Pasigui and brought to the NBI-Laoag Office for interview and records processing. x x x[17]

For his part, Oledan denied recruiting AAA as the latter was only introduced to him by a certain Tita Butz. He asserted the following:

He was a floor manager at Saigon Disco, in Laoag City, owned by Elizabeth Dizon (Dizon) and Tess Victor. His duties at the club include being a receptionist, taking charge of the work permits of the GROs, and monitoring their activities.[18]

Sometime in August 2009, he went home to Pasay City when a former co-worker at Saigon Disco named Mayang, introduced him to Tita Butz. Tita Butz had women looking for employment. However, Oledan told Mayang that he had no authority to approve applicants; thus she had to talk to Dizon herself. On September 15, 2009, when Oledan was again in Pasay City, Tita Butz and AAA met with him. At that time, AAA introduced herself as "Darlene." Later in the evening of the same day, while waiting to catch a ride going to Cubao, Quezon City, he saw Tita Butz and AAA waiting for him. Tita Butz told Oledan that she had already talked to Dizon and the latter provided money for AAA's fare. Oledan then went to Laoag City with AAA and a certain Bea.[19]

In Laoag City, Oledan went to Dizon's house with AAA. There, they oriented AAA of her work. Oledan tried to secure a copy of AAA's Certificate of Live Birth, but he was not able to do so; when AAA filled up application for that purpose, she used the name "Darlene Hernandez," born in October 1980. As it turned out, no Certificate of Live Birth with those details

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[17] *Id.* at 8-9.

[18] *Id.* at 9.

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

was registered with the Local Civil Registry. When Oledan confronted AAA of her misrepresentation, AAA told her that she had been using the name "Darlene Hernandez" since the time of her previous work. AAA also admitted that she was only 16 years old. At that point, Oledan told AAA that minors were not allowed to work at Saigon Disco. Oledan and Garcia advised AAA to go home. They brought AAA to Dizon's house and informed Dizon of AAA's identity. However, they still allowed AAA to work at Saigon Disco, but as a waitress.[20]

On December 9, 2009, AAA left Saigon Disco at around 9 p.m. to go home. However, at around 11:30 p.m., AAA came back to Saigon Disco because she had no money, and had to wait for the money that her mother would send her.[21]

Ruling of the RTC

In the Decision dated August 29, 2014, the RTC convicted Oledan of Qualified Trafficking in Persons. The RTC ruled that Oledan through fraud and deception, taking advantage of AAA's vulnerability who was then a minor, and giving her payments to get her to engage in prostitution, recruited, maintained, and harbored her in exchange for money and profit.

The *fallo* of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 14314, accused IMELDA GARCIA *alias* "SALVE" is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime charged against her. She is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of TWO MILLION (₱2,000,000.00) PESOS. Further, she is hereby ordered to pay minor complainant [AAA] the amount of One Hundred Thousand Pesos (₱100,000.00) as moral-damages;

2. In Criminal Case No. 14315, accused IMELDA GARCIA *alias* "SALVE" is hereby ACQUITTED of the crime charged against her;

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[20] *Id*. at 10.

[21] *Id*.

3. In Criminal Case No. 14369, accused NOEL E. OLEDAN *alias* "TITA WELCOME" is hereby ACQUITTED of the crime charged against him; and

4. In Criminal Case No. 14370, accused NOEL E. OLEDAN *alias* "TITA WELCOME" is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime charged against him. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of TWO MILLION (₱2,000,000.00) PESOS. Further, he is hereby ordered to pay minor complainant [AAA] the amount of One Hundred Thousand Pesos (₱100.000.00) as moral damages.

SO ORDERED.[22]

Oledan filed an appeal to the CA. He argued that the prosecution failed to prove the elements of the offense charged beyond reasonable doubt.

Ruling of the CA

In the assailed Decision,[23] the CA affirmed the RTC with modifications. Notably, the CA sustained Oledan's conviction albeit under Section 4(a)[24] of RA 9208, as amended. It held that Oledan performed all the elements in the commission of the offense of Qualified Trafficking of Persons as provided under RA 9208, as amended. It did not give merit to the alleged contradictory and irreconcilable statements of the prosecution witnesses, declaring that they merely refer to minor details and do not deal with the elements of the offense charged. It also upheld the validity of the entrapment operation, emphasizing the rule that "*in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused,*

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[22] CA *Rollo*, pp. 190-191. Italics and underscoring omitted.

[23] *Rollo*, pp. 2-21.

[24] Section 4 of RA 9208 provides:

Section 4. *Acts of Trafficking in Persons*. — x x x

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.]

and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct."[25] The CA pointed out that:

xxx [I]t was established during trial that appellant Oledan had been recruiting and deploying young girls for customers in sex trade. Trapped in Saigon Disco, no less than the victim, [AAA] asked the help of her own mother [BBB], who in turn, sought the aid of the IJM and the NBI-Manila. Ramos, IJM's investigator, went to Saigon Disco and placed it under surveillance, precisely becausc of these reported illicit activities. When Ramos confirmed that JJJ was indeed being "*bar fined*" thereat, he coordinated with the NBI-Laoag and personally endorsed [BBB's] report. Another surveillance was conducted by Ramos together with Agent Villanueva and again confirmed the earlier report. On the day of the entrapment operation, appellant Garcia actually offered girls to the poseur-customers and she brought out [AAA] to them after the latter danced on stage. Clearly, there was a valid entrapment operation in this case and there could be no instigation by officers, as barred by law, to speak of.[26]

The CA disposed of the case in this wise:

WHEREFORE, premises considered, the Appeals are DISMISSED. The August 29, 2014 Decision of the Regional Trial Court of Laoag City, Branch 11, convicting accused-appellants Imelda Garcia *y* Tordedo also known as Salve" and Noel E. Oledan also known as "Tita Welcome" of Qualified Trafficking in Persons in *Criminal Case Nos. 14314* and *14370* is AFFIRMED with the following MODIFICATIONS: (1) the amount of moral damages is hereby increased from ₱100,000.00 to ₱500,000.00; and (2) exemplary damages is hereby awarded in the amount of ₱100,000,00. Said moral and exemplary damages are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

SO ORDERED.[27]

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[25] *Rollo*, p. 18, citing *People v. Hirang*, 803 Phil. 277, 291 (2017), further citing *People v. Bartolome*, 703 Phil. 148, 161 (2013).

[26] *Id*. at 19.

[27] *Id*. at 20.

Hence, this appeal.

The sole issue in the present case is whether Oledan's guilt was proven beyond reasonable doubt.

The Court's Ruling

The appeal is without merit.

Section 3(a) of RA 9208, as amended, defines "Trafficking in Persons" as follows: [it] refers to the recruitment, obtaining, hiring, providing, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

In the present case, Oledan was charged and convicted by the RTC of Qualified Trafficking in Persons under Section 4(e) of RA 9208, as amended; while the CA convicted him under Section 4(a) of the same law, both in relation to Section 6(a) of RA 9208, as amended. Section 4(a) and (e) of RA 9208, as amended, reads:

SEC. 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography;

x x x x x x x x x

This, notwithstanding, Oledan's conviction must be sustained as the prosecution was able to establish his guilt beyond reasonable doubt under Section 4(a) of RA 9208.

Oledan mainly contends that he had nothing to do with AAA's recruitment as the latter was just introduced to him by Tita Butz. However, as correctly ruled by the courts *a quo*, Oledan is guilty beyond reasonable doubt of Qualified Trafficking in Persons since the prosecution, through the consistent, direct, unequivocal, and thus, credible testimonies of its witnesses, had clearly established the existence of the elements thereof as evinced by the following: (a) Oledan was able to recruit AAA, a minor; (b) Oledan was even the one who transported AAA to Laoag City and brought her to Saigon Disco; (c) Oledan recruited AAA for the purpose of engaging her to perform illicit work, *i.e.*, as a GRO at Saigon Disco and perform lewd acts thereat and with customers even outside the establishment; and (d) AAA worked as a GRO at Saigon Disco for about three months. The Court further concurs with the following findings of the CA that show that Oledan did maintain AAA to engage in prostitution; thus:

> With respect to appellant Oledan, it was duly established by proof beyond reasonable doubt that he recruited, transported, and provided [AAA] to numerous customers on different occasions at Saigon Disco in exchange for money under the pretext of a "*bar fine*," by taking advantage of her vulnerability, sometime in September until December of 2009. With respect to appellant Garcia, while she may not have anything to do with [AAA's] recruitment, it was equally proved that she maintained, provided and hired her to engage in prostitution activities at Saigon Disco. It was indubitably established that both appellants managed all the GROs at Saigon Disco, provided for their customers and received the "*bar fine*" for the services rendered by the said GROs including those of [AAA]. It must be emphasized that [AAA's] testimony with regard to the payment of a "*bar fine*" particularly in the amount of ₱2,500.00, which necessarily included the rendering of sexual services to customers, was evidently established

and confirmed in the entrapment operation conducted by the NBI with the assistance of the IJM on December 12, 2009. x x x.[28]

It must be added that even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.[29] The trafficked victim's testimony that she had been sexually exploited is material to the cause of the prosecution.[30] In this case, AAA's testimony was corroborated by the testimonies of the persons who were part of the entrapment operation.

The rule that is applicable in the present case is that the trial court's assignment of probative value to witnesses' testimonies will not be disturbed except when significant matters were overlooked, because it has the opportunity to observe the demeanor of the witness on the stand.[31] The trial courts findings acquire even greater weight once affirmed on appeal.[32]

In light of the foregoing, the Court finds no reason to depart from the factual findings of the RTC, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. As aforesaid the RTC was in the best position to assess and determine the credibility of the witnesses. Thus, due deference should be accorded to it. Hence, Oledan's conviction for Qualified Trafficking in Persons under Section 4(a) of RA 9208 in relation to Section 6(a) of the same law must be upheld.

Anent the proper penalty to be imposed, Section 10(c) of RA 9208, as amended, states that any person found guilty of

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[28] *Id*. at 15-16.

[29] *People v. Mora*, G.R. No. 242682, July 1, 2019, citing *People v. Casio*, 749 Phil. 458, 475-476 (2014).

[30] *Santiago, Jr. v. People*, G.R. No. 213760, July 1, 2019, citing *People v. Rodriguez*, 818 Phil. 625, 638 (2017).

[31] *People v. Dela Rosa*, G.R. No. 227880, November 6, 2019, citing *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017).

[32] *Id*., citing *People v. Diu*, 708 Phil. 218, 232 (2013).

qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the CA correctly sentenced Oledan to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00. The damages awarded by the CA are likewise upheld for being consistent with the prevailing jurisprudence.[33]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated August 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07688 is **AFFIRMED**. As such, accused-appellant Noel E. Oledan is found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4(a) in relation to Section 6(a) of Republic Act No. 9208, as amended, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. He is likewise ordered to pay the victim, AAA, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest at the rate of 6% *per annum* from the finality of this Decision until full payment.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Delos Santos,* and *Gaerlan,*[*] *JJ.,* concur.

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[33] *Arambulo v. People*, G.R. No. 241834, July 24, 2019.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 243633. July 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HELENMIE P. ABUEVA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE FINDING OF THE REGIONAL TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, IS BINDING AND CONCLUSIVE UPON THE COURT, EXCEPT WHEN THE LOWER COURTS OVERLOOKED SOME SIGNIFICANT FACTS AND CIRCUMSTANCES WHICH, IF CONSIDERED IN THEIR TRUE LIGHT, COMPEL THE EXONERATION OF THE ACCUSED. —** The appeal is impressed with merit. Abueva is acquitted based on reasonable doubt. While generally, the findings of the RTC, as affirmed by the CA, are binding and conclusive upon this Court, a careful examination of the records of the case reveals that the lower courts overlooked some significant facts and circumstances which, if considered in their true light, compels Abueva's exoneration.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE PROSECUTION HAS THE BURDEN TO ESTABLISH THE INTEGRITY OF THE DANGEROUS DRUG, THIS BEING THE *CORPUS DELICTI* OF THE CASE, WHICH PRESUPPOSES THAT AN UNBROKEN CHAIN OF CUSTODY OVER THE SUBJECT ILLEGAL DRUG, FROM THE TIME OF ITS CONFISCATION UNTIL ITS PRESENTATION IN COURT, IS CLEARLY AND SUFFICIENTLY ESTABLISHED. —** It is axiomatic that to secure the conviction of Abueva, all the elements of the crime charged against her must be proven. And among the fundamental principles to which undivided fealty is given is that, in a criminal prosecution for violation of Section 5, Article II of R.A. No. 9165, as amended, the State is mandated to prove that the illegal transaction did in fact take place; and there is no stronger or better proof of this fact than the presentation in court of the actual and tangible seized drug itself mentioned in the inventory, and as attested to by the so-called insulating

witnesses named in the law itself. Hence, it is the prosecution's burden to establish the integrity of the dangerous drug, this being the *corpus delicti* of the case. This presupposes that an unbroken chain of custody over the subject illegal drug, from the time of its confiscation until its presentation in court, must be clearly and sufficiently established.

3. **ID.; ID.; SECTION 21 OF R.A. NO. 9165; THE BURDEN OF PROVING STRICT COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF THE LAW AND PROVIDING A SUFFICIENT EXPLANATION IN CASE OF ANY DEVIATION FROM THE SAID RULE, RESTS UPON THE PROSECUTION, AND SUCH BURDEN OF PROOF NEVER SHIFTS. —** x x x [T]he Court finds that the apprehending authorities failed to comply with the requirements laid down under Section 21 of R.A. No. 9165 when they conducted the supposed buy-bust operation. It is without question that the burden of (1) proving strict compliance with Section 21 of R.A. No. 9165; and (2) providing a sufficient explanation in case of any deviation from the said rule rests upon the prosecution, and such burden of proof never shifts.

4. **ID.; ID.; ID.; REQUIRED WITNESSES; WITHOUT THE INSULATING PRESENCE OF THE REQUIRED WITNESSES DURING THE SEIZURE AND MARKING OF THE DANGEROUS DRUG, THE EVILS OF SWITCHING, "PLANTING" OR CONTAMINATION OF THE EVIDENCE REAR THEIR UGLY HEADS AS TO NEGATE THE INTEGRITY AND CREDIBILITY OF SUCH SEIZURE AND OF THE *CORPUS DELICTI*. —** [S]PO2 Españo testified that he "marked the drug evidence at the place of arrest in the presence of the accused and other operatives." Needless to say, **none** of the required witnesses was present at the time of arrest of Abueva and the seizure of the drugs. The Court emphasizes that without the insulating presence of the required witnesses during the seizure and marking of the dangerous drug, the evils of switching, "planting" or contamination of the evidence rear their ugly heads as to negate the integrity and credibility of such seizure and of the *corpus delicti*.

5. **ID.; ID.; ID.; ID.; MANDATORY REQUIREMENTS OF THE LAW, NOT COMPLIED WITH WHERE AN ELECTED PUBLIC OFFICIAL WAS NOT PRESENT TO WITNESS**

THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE ALLEGED SEIZED ITEMS; MERE STATEMENT THAT EFFORT TO LOCATE AN ELECTED PUBLIC OFFICIAL "PROVED TO BE FUTILE," WITHOUT EXPLANATION FROM THE ARRESTING POLICE OFFICERS AS TO WHY THE EFFORT TO LOCATE AN ELECTED PUBLIC OFFICIAL "PROVED TO BE FUTILE", CANNOT BE CONSIDERED AN ACCEPTABLE EXCUSE FOR NON-OBSERVANCE WITH THE MANDATORY REQUIREMENTS OF THE LAW. — [I]t is beyond dispute that there was no elected public official who witnessed the marking, the inventory, and the photographing of the alleged seized evidence. The RTC itself acknowledged "the failure of the arresting officer to strictly comply with the mandate of [Section] 21[,] [Article] II of R.A. No. 9165, in that no witness from the DOJ and an elected public official were present during the inventory." To recapitulate, under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, aside from the accused or his/her representative or counsel, an elected public official, and a representative of the NPS *or* the media should be there to witness the physical inventory of the alleged seized items and photographing of the same. Here, although there was a media representative in attendance during the inventory at the SAID-SOTG, an elected public official was not present. This is a clear and utter failure to comply with the mandatory requirement of the law. And, the mere fact that the buy-bust team's leader tried to contact a representative from the DOJ and the *Barangay* Chairman while the *barangay tanods* tried to locate an elected public official when they were at the *barangay* hall is not the earnest effort that is contemplated by the law. While it is true that the buy-bust operatives "contacted [a] representative from the DOJ and the *Barangay* Chairman while the *barangay tanods* tried to locate an elected public official, but both efforts proved to be futile," such cannot be considered compliance with the abovementioned rule that non-observance of rules under Section 21, Article II of R.A. No. 9165 shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers. Suffice to say that the said statement does not proffer any explanation as to why the effort to locate a *barangay* official "proved to be futile." Such hollow excuse that is not even supported by even a semblance of elucidation cannot be accepted by the Court.

6. **ID.; ID.; ID.; ID.; THE PRACTICE OF POLICE OPERATIVES OF NOT BRINGING TO THE INTENDED PLACE OF ARREST THE THREE REQUIRED WITNESSES, WHEN THEY COULD EASILY DO SO, AND "CALLING THEM IN" TO THE PLACE OF INVENTORY TO WITNESS THE INVENTORY AND PHOTOGRAPHING OF THE DRUGS ONLY AFTER THE BUY-BUST OPERATION HAD ALREADY BEEN FINISHED, DOES NOT ACHIEVE THE PURPOSE OF THE LAW IN HAVING THESE WITNESSES PRESENT TO PREVENT OR INSULATE AGAINST THE PLANTING OF DRUGS. —** [I]t is worthy to note that the police officers only decided to contact the mandatory witnesses when they were already at the *barangay* hall. Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

7. **ID.; ID.; ID.; THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUG SPECIMEN CAN BE DONE AT THE PLACE OF SEIZURE, AT THE NEAREST POLICE STATION, OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, WHICHEVER IS PRACTICABLE; NOT COMPLIED WITH; THE MEDIA REPRESENTATIVE IS MERELY A WITNESS TO THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUG SPECIMENS, AND, THUS, HAS NO AUTHORITY TO DICTATE WHERE THE SAME SHOULD TAKE PLACE. —** [I]t is also an admitted fact that the inventory and photographing of the allegedly seized drug specimen were undertaken at the SAID-SOTG and not at the place of the seizure. Again, R.A. No. 9165 restrictively enumerates the places where the inventory and photographing of the seized drug specimen can be done: (1) at the place of seizure; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. Based on the facts as narrated by the prosecution, SPO2 Españo marked the seized item at the scene of the arrest. Thereafter, the team proceeded to the *barangay* hall of San Isidro **without** any explanation for such

transfer. Then, the prosecution merely stated that after waiting for 30 minutes, they decided to go to their office at SAID-SOTG since the media representative was already there. Verily, the prosecution did not provide a justifiable reason as to why they decided to relocate to the *barangay* hall. Not one convincing excuse for non-compliance was put forth by the prosecution neither was there any allegation or indication that there were other people in the buy-bust area which could pose a threat or substantially affect the success of their operation. What's more, the bare statement that the prosecution opted to take things to their office at SAID-SOTG after 30 minutes of waiting and since the media representative was already there deserves scant consideration. In *People v. Fayo*, the Court held that an elected public official is merely a witness to the inventory and photographing of the seized drug specimens. He/she does not have the authority to prevail and dictate upon the apprehending team as to where the inventory and photographing should take place. The same holds true in this case. The media representative is only a witness to the required procedures in Section 21, Article II of R.A. No. 9165, as amended, and, thus, had no say in the location of the inventory and photography. The authorities should have secured his presence (and of an elected public official) beforehand and at the place of operation, and not as an afterthought. The Court emphasizes that while it is laudable that police officers exert earnest effort in catching drug pushers, they must always be advised to do so within the bounds of the law as it adversely affects the trustworthiness of the incrimination of the accused.

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

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

The sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never be sacrificed for the sheer sake of convenience and expediency.

In any law-abiding democracy, this cannot and should not be allowed, at least not while this Court sits.[1]

Before us is an appeal[2] from the May 16, 2018 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09188 finding accused-appellant Helenmie P. Abueva[4] (Abueva) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165.[5]

The Facts

On July 13, 2015, Abueva was charged in an Information which reads:

> That on or about the 9th day of July 2015, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) small heat-sealed transparent plastic sachet marked as "FE 07/09/15" containing 0.09 gram of white crystalline substance to [*poseur*-buyer] SPO1 Fercival S. Españo, which content of said sachet when tested was found positive for Methamphetamine hydrochloride (*shabu*), a dangerous drug.[6]

The case was docketed as Criminal Case No. 15-0854. Abueva was arraigned on July 28, 2015 and she pleaded not guilty; whence, trial ensued.[7]

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[1] *People v. Dagdag*, G.R. No. 225503, June 26, 2019.

[2] See Notice of Appeal dated May 29, 2018; CA *rollo*, pp. 123-125.

[3] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Renato C. Francisco, concurring; *id.* at 101-122.

[4] Also referred to as "Helenmie P. Abueva *y* Puzon" in some parts of the records.

[5] Comprehensive Dangerous Drugs Act of 2002.

[6] CA *rollo*, p. 55.

[7] *Id.*

The collective testimonies of the prosecution witnesses sought to prove the following occurrences:

On July 9, 2015, at around 8:00 p.m., a male informant went to the Station Anti-Illegal Drugs–Special Operation Task Group (SAID-SOTG) in Parañaque City and reported that a certain *alias* "Inday" – later identified as Abueva – was engaged in illegal drug activity in *Purok* 1, Silverio Compound, *Barangay* San Isidro, Parañaque City. Acting on this information, Police Senior Inspector Paulo Paquito Tampol (PSI Tampol) organized a buy-bust team composed of eight members, among whom were Senior Police Inspector 2 Fercival Españo (SPO2 Españo) to act as the *poseur*-buyer and PO3 Sherwin Somera (PO3 Somera) was his backup.[8] The team then made their way to Silverio Compound, *Barangay* San Isidro, Parañaque City and arrived there at around 8:40 p.m.[9] SPO2 Españo, along with the informant, then walked to an alley where they saw a young male bystander whom the informant asked: "*Si Inday nandiyan ba? Kasama ko 'yung dati kong boss*."[10] Upon hearing this, the young man went inside a nearby house, and after a few minutes, Abueva came out.[11] The informant then introduced SPO2 Españo as his former employer who wanted to buy *shabu* worth ₱300.00.[12] SPO2 Españo gave the marked three pieces of ₱100.00 bills to Abueva and the latter said "*Sandali lang, hintayin n'yo ako d'yan*."[13] Abueva went back inside the house and came right back, and handed to SPO2 Españo one small heat-sealed transparent plastic sachet containing white crystalline substance.[14] Thereafter, SPO2 Españo lit a cigarette to signal his backup, PO3 Somera and the rest of the buy-bust team that the transaction was already consummated. Abueva was then apprehended and informed of her Constitutional rights. SPO2 Españo then marked

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[8] *Id.* at 103.

[9] *Id.* at 56.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 57.

[13] *Id.*

[14] *Id.*

the seized drug right at the place of arrest in the presence of Abueva and the other operatives.[15] The buy-bust team initially proceeded to the *barangay* hall of San Isidro where the team leader tried calling a representative from the DOJ and the *Barangay* Chairman while the *barangay tanods* tried to locate an elected public official, but both efforts proved futile.[16] Thus, after 30 minutes of waiting in vain, the police officers brought Abueva to their office at SAID-SOTG where the inventory and photography were conducted and witnessed by Abueva herself and a media representative named Steve Tameta.[17] Afterwards, SPO2 Españo and PO3 Somera transported the confiscated item to the Philippine National Police (PNP) Crime Laboratory in Makati City where it was personally received by PSI Rendielyn Sahagun (PSI Sahagun).[18] Subsequently, PSI Sahagun issued a laboratory report confirming the presence of methamphetamine hydrochloride or *shabu* in the submitted specimen.[19]

On the other hand, Abueva denied the allegations. According to Abueva, she was in her home preparing the bed of her children when several male persons suddenly entered her house and searched the same, but found nothing. She was then dragged out of her house and brought to a *kubo* where she was forced to sign on a blank paper. Abueva claimed that she was merely framed.[20]

The Ruling of the Trial Court

On October 18, 2016, the Regional Trial Court (RTC) of Parañaque City, Branch 259 rendered its Decision[21] finding Abueva guilty as charged. The RTC held that the prosecution was able to sufficiently establish all the elements of illegal sale of dangerous drugs and that the *corpus delicti* was properly identified and preserved. Thus, the decretal portion of the RTC Decision states:

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[15] *Id.*

[16] *Id.* at 59.

[17] *Id.* at 57.

[18] *Id.*

[19] *Id.* at 109.

[20] *Id.* at 120.

[21] Penned by Presiding Judge Danilo V. Suarez; *id.* at 55-65.

WHEREFORE, premises considered[,] the Court finds accused [HELENMIE P. ABUEVA] @ "Inday" in Criminal Case No. 15-0854 for violation of [Section]5, Art[.] II of R.A. No. 9165 for sale of methamphetamine hydrochloride weighing 0.09 gram, GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php 1,000,000.00.

x x x x x x x x x

SO ORDERED.[22]

The Ruling of the CA

In the herein assailed Decision, the CA concurred with the RTC that the prosecution was able to substantiate with proof beyond reasonable doubt the guilt of Abueva for violation of Section 5, Article II of R.A. No. 9165. Moreover, the CA declared that the apprehending officers substantially complied with the required procedure on the custody and control of the seized drug and that the prosecution was able to show that the buy-bust team exerted effort to secure the attendance of a DOJ representative and an elected public official during the inventory and taking of photos. The CA, thus, ruled:

WHEREFORE, the appeal is DISMISSED. The *Decision* dated October 18, 2016 of the RTC of Parañaque City, Branch 259 finding accused-appellant [Helenmie P. Abueva] guilty beyond reasonable doubt of violation of Section 5, Article II of [R.A. No.] 9165, and sentencing her to suffer the penalty of life imprisonment and to pay the fine of one million pesos (₱1,000,000.00) is hereby AFFIRMED.

SO ORDERED.[23]

Hence, this appeal.

In a Resolution[24] dated February 11, 2019, the Court required the parties to file their respective supplemental briefs, if they so desire. Both parties, however, manifested that they will no

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[22] *Id.* at 65.

[23] *Id.* at 120-121.

[24] *Rollo*, pp. 29-30.

longer file the said pleading as they had already exhaustively discussed their position in their respective Briefs filed before the CA.[25]

The Court's Ruling

The appeal is impressed with merit. Abueva is acquitted based on reasonable doubt.

While generally, the findings of the RTC, as affirmed by the CA, are binding and conclusive upon this Court, a careful examination of the records of the case reveals that the lower courts overlooked some significant facts and circumstances which, if considered in their true light, compels Abueva's exoneration.

It is axiomatic that to secure the conviction of Abueva, all the elements of the crime charged against her must be proven. And among the fundamental principles to which undivided fealty is given is that, in a criminal prosecution for violation of Section 5, Article II of R.A. No. 9165, as amended, the State is mandated to prove that the illegal transaction did in fact take place; and there is no stronger or better proof of this fact than the presentation in court of the actual and tangible seized drug itself mentioned in the inventory, and as attested to by the so-called insulating witnesses named in the law itself. Hence, it is the prosecution's burden to establish the integrity of the dangerous drug, this being the *corpus delicti* of the case.[26] This presupposes that an unbroken chain of custody over the subject illegal drug, from the time of its confiscation until its presentation in court, must be clearly and sufficiently established.[27]

Section 21(1), Article II of R.A. No. 9165 states:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

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[25] *Id.* at 32-42.

[26] *People v. Vistro*, G.R. No. 225744, March 6, 2019.

[27] *People v. Tumangong*, G.R. No. 227015, November 26, 2018.

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 [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.][28]

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, a representative from the media and the [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items.[29]

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[28] *People v. Addin*, G.R. No. 223682, October 9, 2019.

[29] *People v. Magalong*, G.R. No. 231838, March 4, 2019.

On July 15, 2014, R.A. No. 10640[30] was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

> (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 [(NPS)] or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.[31]

Applying the foregoing discussion to the case at bench, the Court finds that the apprehending authorities failed to comply with the requirements laid down under Section 21 of R.A. No. 9165 when they conducted the supposed buy-bust operation. It is without question that the burden of (1) proving strict compliance with Section 21 of R.A. No. 9165; and (2) providing a sufficient explanation in case of any deviation from the said rule rests upon the prosecution, and such burden of proof never shifts.[32]

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[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2004.

[31] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[32] *People v. Dagdag, supra* note 1.

First, SPO2 Españo testified that he "marked the drug evidence at the place of arrest in the presence of the accused and other operatives."[33] Needless to say, **none** of the required witnesses was present at the time of arrest of Abueva and the seizure of the drugs. The Court emphasizes that without the insulating presence of the required witnesses during the seizure and marking of the dangerous drug, the evils of switching, "planting" or contamination of the evidence rear their ugly heads as to negate the integrity and credibility of such seizure and of the *corpus delicti*.[34]

Second, it is beyond dispute that there was no elected public official who witnessed the marking, the inventory, and the photographing of the alleged seized evidence. The RTC itself acknowledged "the failure of the arresting officer to strictly comply with the mandate of [Section] 21[,] [Article] II of R.A. No. 9165, in that no witness from the DOJ and an elected public official were present during the inventory."[35] To recapitulate, under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, aside from the accused or his/her representative or counsel, an elected public official, and a representative of the NPS *or* the media should be there to witness the physical inventory of the alleged seized items and photographing of the same.

Here, although there was a media representative in attendance during the inventory at the SAID-SOTG, an elected public official was not present. This is a clear and utter failure to comply with the mandatory requirement of the law. And, the mere fact that the buy-bust team's leader tried to contact a representative from the DOJ and the *Barangay* Chairman while the *barangay tanods* tried to locate an elected public official when they were at the *barangay* hall is not the earnest effort that is contemplated by the law.[36] While it is true that the buy-bust operatives

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[33] CA *rollo*, p. 57.

[34] *People v. Cabezudo*, G.R. No. 232357, November 28, 2018.

[35] CA *rollo*, p. 62.

[36] *People v. Retada*, G.R. No. 239331, July 10, 2019. See also *People v. Fulinara*, G.R. No. 237975, June 19, 2019.

"contacted [a] representative from the DOJ and the *Barangay* Chairman while the *barangay tanods* tried to locate an elected public official, but both efforts proved to be futile,"[37] such cannot be considered compliance with the abovementioned rule that non-observance of rules under Section 21, Article II of R.A. No. 9165 shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers. Suffice to say that the said statement does not proffer any explanation as to why the effort to locate a *barangay* official "proved to be futile." Such hollow excuse that is not even supported by even a semblance of elucidation cannot be accepted by the Court.

In *People v. Rasos, Jr.,*[38] the Court stressed that:

> To simply dismiss the mandatory requirement of the presence of elected public officials as witnesses to buy-bust operations as a trivial and excusable requirement would be to negate the clear legislative intent of Section 21 of RA 9165, as amended.
>
> To recall, prior to the amendment of Section 21 of RA 9165 under RA 10640 in 2014, the following witnesses were required to witness buy-bust operations: (1) the accused or his/her representative or counsel, (2) an elected public official, (3) a representative from the media, and (4) a representative from the [DOJ].
>
> However, in order to prevent the dismissal of drug cases due to the failure of law enforcers to follow the stringent requirements of Section 21, Congress saw fit to reduce the required witnesses to: (1) the accused or his/her representative or counsel, (2) an elected public official, and (3) a representative from the NPS *or* the media.
>
> Therefore, in passing RA 10640, Congress, in the exercise of its legislative power, *deliberately decided to retain* the mandatory requirement of securing elected public officials as witnesses. To simply do away with the said requirement without any justifiable reason would be to unduly supplant the legislative intent of RA 9165, as amended by RA 10640.

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[37] *Rollo*, p. 59.

[38] G.R. No. 243639, September 18, 2019.

The authorities cannot now bemoan that the securing of elected public officials as witnesses is too strict a rule because, with the passage of RA 10640, the strict requirement on the presence of witnesses was already made less stringent and cumbersome in order to aid the police in complying with Section 21.

Moreover, it is worthy to note that the police officers only decided to contact the mandatory witnesses when they were already at the *barangay* hall. Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.[39]

Third, it is also an admitted fact that the inventory and photographing of the allegedly seized drug specimen were undertaken at the SAID-SOTG and not at the place of the seizure. Again, R.A. No. 9165 restrictively enumerates the places where the inventory and photographing of the seized drug specimen can be done: (1) at the place of seizure; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. Based on the facts as narrated by the prosecution, SPO2 Españo marked the seized item at the scene of the arrest. Thereafter, the team proceeded to the *barangay* hall of San Isidro **without** any explanation for such transfer. Then, the prosecution merely stated that after waiting for 30 minutes, they decided to go to their office at SAID-SOTG since the media representative was already there.

Verily, the prosecution did not provide a justifiable reason as to why they decided to relocate to the *barangay* hall. Not one convincing excuse for non-compliance was put forth by the prosecution neither was there any allegation or indication

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[39] *People v. Cabezudo, supra* note 34, citing *People v. Tomawis,* G.R. No. 228890, April 18, 2018.

that there were other people in the buy-bust area which could pose a threat or substantially affect the success of their operation. What's more, the bare statement that the prosecution opted to take things to their office at SAID-SOTG after 30 minutes of waiting and since the media representative was already there deserves scant consideration. In *People v. Fayo*,[40] the Court held that an elected public official is merely a witness to the inventory and photographing of the seized drug specimens. He/she does not have the authority to prevail and dictate upon the apprehending team as to where the inventory and photographing should take place. The same holds true in this case. The media representative is only a witness to the required procedures in Section 21, Article II of R.A. No. 9165, as amended, and, thus, had no say in the location of the inventory and photography. The authorities should have secured his presence (and of an elected public official) beforehand and at the place of operation, and not as an afterthought.

The Court emphasizes that while it is laudable that police officers exert earnest effort in catching drug pushers, they must always be advised to do so within the bounds of the law as it adversely affects the trustworthiness of the incrimination of the accused.[41]

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated May 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09188 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Helenmie P. Abueva is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate

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[40] G.R. No. 239887, October 2, 2019.

[41] *People v. Cabezudo*, *supra* note 34.

implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 243896. July 15, 2020]

ARACELI REBURIANO, *petitioner*, *vs.* **AUGUSTUS "JOJIT" DE VERA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JUDGMENT; THE RESTITUTION OF THE MONEY RECEIVED AS DOWN PAYMENT FOR THE SALE OF A PROPERTY THAT DID NOT PUSH THROUGH, IS A SUBJECT MATTER BEYOND THE JURISDICTION OF THE MUNICIPAL TRIAL COURT (MTC) TO RESOLVE AND A RELIEF MORE THAN WHAT THE SAME MAY AWARD IN AN EJECTMENT CASE. —** [I]t must be pointed out that neither of the parties assailed the validity of the Amended Decision dated July 27, 2006 of the MTC, particularly the fifth instruction in said Amended Decision. The fifth instruction of the MTC states: (e) Ordering the plaintiff to pay to Ruth de Vera and/or the defendant, by way of refund, the sum of $20,000 less the total sum cumulatively due the plaintiff as reasonable compensation for defendant's use and occupancy of the premises as per (b) above. A careful analysis of this instruction reveals that it is not one of the permissible reliefs in an ejectment case

enumerated in Section 17, Rule 70 of the Rules. The instruction pertained to the restitution of the money Reburiano received from Ruth as down payment for the sale of the subject property that did not push through, a subject matter beyond the jurisdiction of the MTC to resolve and a relief more than what the MTC may award in an ejectment case.

2. **ID.; ID.; ID.; ID.; A JUDGMENT OF A COURT UPON A SUBJECT WITHIN ITS GENERAL JURISDICTION, WHICH IS NOT BEFORE IT BY ANY STATEMENT OR CLAIM OF THE PARTIES, AND IS FOREIGN TO THE ISSUES SUBMITTED FOR ITS DETERMINATION, IS A NULLITY, AS NO ERROR WHICH WAS NOT ASSIGNED AND ARGUED MAY BE CONSIDERED UNLESS SUCH ERROR IS CLOSELY RELATED TO OR DEPENDENT ON AN ASSIGNED ERROR OR IT AFFECTS THE JURISDICTION OVER THE SUBJECT MATTER ON THE VALIDITY OF THE JUDGMENT; EXCEPTIONS; THE COURT IS ACCORDED A BROAD DISCRETIONARY POWER TO WAIVE THE LACK OF PROPER ASSIGNMENT OF ERRORS AND TO CONSIDER ERRORS NOT ASSIGNED, INCLUDING THOSE AFFECTING JURISDICTION OVER THE SUBJECT MATTER, IF SUCH ISSUES ARE INDISPENSABLE OR NECESSARY TO THE JUST AND FINAL RESOLUTION OF THE PLEADED ISSUES, OR TO THE DETERMINATION OF THE RIGHTS AND LIABILITIES OF THE PARTIES. —** As a rule, a judgment of a court upon a subject within its general jurisdiction, which is not before it by any statement or claim of the parties, and is foreign to the issues submitted for its determination, is a nullity. No error which was not assigned and argued may be considered unless such error is closely related to or dependent on an assigned error or it affects the jurisdiction over the subject matter on the validity of the judgment. We have settled that the courts have ample authority to rule on matters not raised by the parties in their pleadings if such issues are indispensable or necessary to the just and final resolution of the pleaded issues. In *Insular Life Assurance Co., Ltd. Employees' Association v. Insular Life Assurance Co., Ltd.*, it was explained that: x x x. x x x. x x x [I]n **those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the**

issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them. In this case, the resolution of the propriety of the reliefs awarded by the MTC in a related ejectment case, which appears to not be among the permissible reliefs the MTC may award, is indispensable and crucial to the determination of the rights and liabilities of Reburiano and Jojit. Thus, the Court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, including those affecting jurisdiction over the subject matter.

3. **ID.; ID.; ID.; ID.; IN EJECTMENT CASES, THE RELIEFS THAT MAY BE GRANTED TO THE PLAINTIFF IN THE JUDGMENT ARE LIMITED ONLY TO THE RESTITUTION OF THE PREMISES, THE SUM JUSTLY DUE AS ARREARS OF RENT OR AS A REASONABLE COMPENSATION FOR THE OCCUPATION AND USE OF THE PREMISES, ATTORNEY'S FEES, AND COSTS; THE MONETARY AWARD IN EJECTMENT CASES IS LIMITED TO LOSSES INCURRED FOR THE USE AND OCCUPATION OF THE PROPERTY. —** Under Section 17, Rule 70 of the Rules, if after the trial, the MTC finds that the allegations of the complaint for ejectment are true, the reliefs that may be granted to the plaintiff in the judgment are limited only to the following: (1) restitution of the premises; (2) the sum justly due as arrears of rent or as a reasonable compensation for the occupation and use of the premises; (3) attorney's fees; and (4) costs. Any monetary award beyond what is permissible under the Rules is beyond the jurisdiction of the MTC. Former Chief Justice Moran described the nature of damages that may be recovered in an ejectment case as follows: But what is the character of these damages? Since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, its uses and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, **plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property**, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of the property, and he cannot be declared as such in an action for

forcible entry and detainer. Damages to property may be recovered only by the owner in an ordinary action. This description is instructive in determining the nature of monetary award that may be granted and remains applicable in the present rules governing ejectment cases and limits the monetary award in ejectment cases to losses incurred for the use and occupation of the property.

4. **ID.; ID.; ID.; ID.; THE MTC CANNOT ARROGATE UNTO ITSELF THE AUTHORITY TO IMPLEMENT THE RESCISSION OF THE PURCHASE AGREEMENT BETWEEN THE PARTIES BY ORDERING THE RETURN OF THE DOWNPAYMENT FOR THE PURCHASE OF THE PROPERTY LESS REASONABLE COMPENSATION FOR THE USE AND OCCUPATION THEREOF BECAUSE IN EJECTMENT CASES, THE MTC MAY RESOLVE MATTERS WHICH PERTAIN ONLY TO THE ACTUAL PHYSICAL POSSESSION OF THE SUBJECT PROPERTY. —** [S]ection 17, Rule 70 of the Rules is silent with regard to the restitution of money received as down payment for the sale of the subject property as it only mentions restitution of the premises. A monetary claim other than those specifically enumerated in Section 17, Rule 70 of the Rules is not recoverable in an ejectment case. The MTC cannot arrogate unto itself the authority to implement the rescission of the purchase agreement by ordering the return of the US$20,000.00 less reasonable compensation for the use and occupation of the property. This is because the subject matter that may be resolved by the MTC in an ejectment case pertains only to the actual physical possession of the subject property. It does not include the propriety and subsequent implementation of an undertaking to rescind the purchase agreement between the parties. Neither can be considered a monetary award for loss incurred for the use and occupation of the property. Thus, in Civil Case No. 880-AF(04), the MTC committed a grave error in implementing the rescission of the purchase agreement by ordering the return of the US$20,000.00 less reasonable compensation for the use and occupation of the property.

5. **ID.; CIVIL PROCEDURE; JUDGMENTS; GROUNDS FOR ANNULMENT OF JUDGMENT; A FINAL AND EXECUTORY JUDGMENT MAY STILL BE SET ASIDE IF, UPON MERE INSPECTION THEREOF, ITS PATENT NULLITY CAN BE SHOWN FOR HAVING BEEN ISSUED WITHOUT JURISDICTION. —** The grounds for annulment

of judgment are: (1) extrinsic fraud; (2) lack of jurisdiction; and (3) denial of due process. Lack of jurisdiction, as a ground for annulment of judgment, refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It is settled that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction. It is the Court's duty to correct the glaring error committed by the MTC that was not raised by any of the parties. The MTC went beyond its jurisdiction in ordering the restitution of the US$20,000.00 down payment received from Ruth as consideration for the purchase of the property less reasonable compensation for her use of the same. Applying the discretionary power of the Court, We deem it proper to declare the pertinent portion of the Amended Decision of the MTC dated July 27, 2006 beyond the jurisdiction of the MTC and void.

6. **ID.; ID.; ID.; WHERE THERE IS WANT OF JURISDICTION OVER A SUBJECT MATTER, THE JUDGMENT IS RENDERED NULL AND VOID, AND A VOID JUDGMENT IS IN LEGAL EFFECT NO JUDGMENT, BY WHICH NO RIGHTS ARE DIVESTED, FROM WHICH NO RIGHT CAN BE OBTAINED, WHICH NEITHER BINDS NOR BARS ANY ONE, AND UNDER WHICH ALL ACTS PERFORMED AND ALL CLAIMS FLOWING OUT ARE VOID; A PARTIALLY VOID DECISION OF THE MTC CANNOT BE THE BASIS FOR THE ISSUANCE OF THE WRIT OF EXECUTION, NOTICE OF LEVY UPON JUDGMENT AND CERTIFICATE OF SALE. —** [I]n the interest of judicial economy, the complaint filed before the RTC may be treated as an action for annulment of judgment rather than for quieting of title. This will avoid multiplicity of actions and save the litigants and the Court their resources. Section 10, Rule 47 of the Rules requires that an action to annul a judgment or final order of an MTC shall be filed in the RTC having jurisdiction over the former. In *Sebastian v. Spouses Cruz,* We held that: x x x [T]he prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence,

it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*. Considering that the Amended Decision of the MTC is partially void, it cannot be the basis for the issuance of the Writ of Execution, Notice of Levy Upon Judgment and Certificate of Sale. The Writ of Execution, which stemmed from the partially void judgment of the MTC and gave rise to the sale of the property in an auction, is likewise partially void insofar as it enforces the rescission of the purchase agreement by awarding the sum of US$20,000.00 less the reasonable compensation for Jojit's use and occupancy of the subject property. Hence, the Register of Deeds of Rizal is ordered to cancel the Notice of Levy Upon Real Property and the Certificate of Sale annotated on TCT No. 540832.

7. **ID.; ID.; ID.; ANNULMENT OF JUDGMENT; A COMPLAINT FOR QUIETING OF TITLE FILED TO ASSAIL THE PARTIALLY VOID JUDGMENT OF THE MTC SHALL BE CONSIDERED A PETITION FOR ANNULMENT OF JUDGMENT IN THE INTEREST OF JUSTICE AND EQUITY. —** While it was erroneous for Reburiano to file a complaint for quieting of title instead of a petition for annulment of judgment, her intention in filing the complaint is clear. Reburiano's purpose is to question the partially void judgment of the MTC. In the interest of justice and equity, and in keeping with the policy of the State to promote speedy and impartial justice and unclog court dockets, the complaint for quieting of title Reburiano filed with the intention of assailing the partially void judgment of the MTC shall be considered a petition for annulment of judgment pursuant to Rule 47 of the Rules. Rather than duplicating the efforts of the parties and the court in trying the issues together in another action, the Court hereby resolves the issues raised and awards what rightfully belongs to each party in the interest of judicial economy.

8. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JUDGMENT; RETURN OF THE DOWN PAYMENT FOR THE SALE OF SUBJECT PROPERTY LESS COMPENSATION FOR THE USE AND OCCUPATION OF PROPERTY, WARRANTED. —** Article 22 of the Civil Code provides: Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter

without just or legal ground, shall return the same to him. Pursuant to the principle of unjust enrichment, the amount of US$20,000.00, which constitutes the undisputed amount Reburiano received from Ruth as down payment for the sale of the subject property worth US$60,000.00 that did not materialize, should be returned to Ruth in exchange for the subject property. Although the parties did not enter into a lease agreement, a forced lease was created. Thus, the occupant, Jojit, is still liable to pay rent to the property owner, Reburiano, as a result of the forced lease created by the former's use and occupation of the latter's property. Accordingly, Jojit should be made liable for damages in the form of rent or reasonable compensation equivalent to ₱10,000.00 per month for the occupation of the property from January 17, 2004, the date he and Ruth reneged on their obligation to vacate the property despite their agreement to rescind the purchase agreement, up to November 10, 2006, the date when Jojit and Ruth allegedly abandoned the premises. Considering that Reburiano had already received a down payment of US$20,000.00, the reasonable rent shall be deducted from the amount that Reburiano shall return to Jojit in exchange for the subject property. Therefore, the Court shall implement the restitution of the US$20,000.00 less reasonable rent for the use and occupation of the property, and ownership of the subject property between the parties.

APPEARANCES OF COUNSEL

Pablo B. Francisco for petitioner.
Rene Antonio Cirio for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules), assailing the Decision[2] dated July 13, 2018 and the Resolution[3] dated

[1] *Rollo*, pp. 3-15.

[2] Penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Manuel M. Barrios and Jhosep Y. Lopez, concurring; *id.* at 20-29.

[3] *Id.* at 46-47.

November 23, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 108629 filed by petitioner Araceli Reburiano (Reburiano).

The Antecedents

The petition involves a parcel of land covered by Transfer Certificate of Title No. 540832 (TCT)[4] located in Marick Subdivision, Barangay Sto. Domingo, Cainta, Rizal with an area of 240 square meters (sqm). The subject property is registered under the name of Rodolfo F. Padilla, married to Araceli R. Padilla (Reburiano).[5]

Reburiano sold the subject property for US$60,000.00 to Ruth De Vera (Ruth), mother of respondent Augustus "Jojit" De Vera (Jojit) who occupied the premises. The purchase price was payable in installments for a period of three years from July 1, 2000.[6]

As of November 9, 2003, or more than three years from July 1, 2000, Ruth had only paid the sum of US$29,935.00, or less than half the purchase price of the property. On January 17, 2004, the parties agreed to rescind the sale due to Ruth's failure to timely pay the full purchase price. Reburiano agreed to refund Ruth her installment payments in the sum of US$20,000.00, with US$12,500.00 as down payment and the balance of US$7,500.00 payable monthly. In return, Ruth agreed to vacate the property upon tender of the down payment.[7] Upon execution of the agreement, Reburiano tendered the down payment of US$12,000.00. However, Ruth reneged on her obligation to vacate the property and Jojit continued to occupy the property with the consent of Ruth.[8]

As the demand to vacate the premises fell on deaf ears, Reburiano filed a Complaint for Unlawful Detainer against Jojit

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[4] CA *rollo*, p. 87.

[5] *Id.*

[6] *Rollo*, p. 49.

[7] *Id.* at 49, 54.

[8] *Id.* at 50-51.

before the Municipal Trial Court (MTC) of Cainta, Rizal docketed as Civil Case No. 880-AF (04).

On July 27, 2006, the MTC rendered its Amended Decision,[9] the dispositive portion of which states:

Wherefore, judgment is hereby rendered, as follows:

(a) Ordering the defendant, and all persons claiming interests under him, to vacate the premises in question and restore the possession thereof to the plaintiff;

(b) Ordering the defendant to pay the plaintiff reasonable compensation for his use and occupation of the premises at the rate of ₱10,000.00 a month from January 17, 2004 up to the time he finally vacates the property;

(c) Ordering the defendant to pay plaintiff the sum of ₱25,000.00, as and for attorney's fees;

(d) Ordering the defendant to pay the costs of suit; and

(e) Ordering the plaintiff to pay to Ruth de Vera and/or the defendant, by way of refund, the sum of $20,000 less the total sum cumulatively due the plaintiff as reasonable compensation for defendant's use and occupancy of the premises as per (b) above.

Should payment of the net amount due the plaintiff under (e) above be made in the United States of America, the peso-dollar closing rate under the Philippine Dealing System as at the date of payment should be used as basis in converting the total peso amount of reasonable compensation to U.S. dollars, and both the plaintiff and Ruth de Vera are hereby directed to jointly file with this Court a Manifestation that payment of the same had been made.

Finally, since the above judgment has been rendered based on the principle of mutual restitution in cases of rescission under the Civil Code, eviction of the defendant from the premises and restoration of possession thereof to plaintiff pursuant to (a) above shall only take place after all the other dispositions in the dispositive portion of the decision ("b" to "e" above) have been duly satisfied.

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[9] Penned by Presiding Judge Teresito A. Andoy; *id.* at 48-57.

SO ORDERED.[10] (Underscoring in the original)

The MTC accorded due weight and consideration to the agreement between Reburiano and Ruth to rescind the purchase agreement.[11]

On August 30, 2006, Reburiano deposited with the MTC US$13,500.00 or US$6,500.00 less than the money judgment of US$20,000.00 due to Ruth. The deduction pertains to the reasonable compensation for the use and occupancy of the property from January 2004 to August 2006.[12]

Augustus filed a Motion for Issuance of a Writ of Execution. The MTC issued a Writ of Execution[13] dated September 5, 2008 with the following instructions to the sheriff:

NOW, THEREFORE, for and in consideration of the foregoing premises, you are hereby commanded to effect the execution of this Court's aforequoted judgment and/or decision: that of the goods and chattels of plaintiff at the above-given address and elsewhere, you cause to be made the sum of $20,000.00 less the total sum cumulatively due to plaintiff as reasonable compensation for defendant's use and occupancy of the premises as per [b] above [.] together with your fees for the service of this writ, all in Philippine currency, which Defendant JOJIT DE VERA recovered in this Court on July 27, 2006 against herein plaintiff with respect to letter [e] of the dispositive portion of the Amended Decision and that you render the same to said defendant Jojit De Vera aside from your fees thereon;

In case sufficient properties of said plaintiff cannot be found to satisfy the amount of the writ and your fees hereon, you are hereby ordered to levy upon the real estate of said plaintiff and sell the same in the manner provided for by law for the satisfaction of the said balance of such amount and your fees hereon. Make a return of this writ unto this Court within sixty [60] days from receipt, indicating your action thereon.[14] (Emphasis and underscoring in the original)

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[10] *Id.* at 56-57.

[11] *Id.* at 56.

[12] *Id.* at 58.

[13] *Id.* at 61-63.

[14] *Id.* at 62-63.

On September 25, 2008, Sheriff Rolando Palmares (Sheriff Palmares) of the Regional Trial Court (RTC) of Antipolo City sent a letter to Reburiano entitled "Demand to Comply Judgment"[15] asking her to pay the money judgment of US$20,000.00, as follows:

YOU ARE HEREBY NOTIFIED that by virtue of the Writ of Execution dated September 5, 2008, issued by HON. TERESITO A. ANDOY, Presiding Judge, Municipal Trial Court of Cainta, Rizal in the above-entitled case, undersigned Sheriff is hereby ordering you to pay within three (3) days Ruth de Vera and/or the defendant by way of refund, the sum of $20,000.00 less the total sum cumulatively due you as reasonable compensation for defendant's use and occupancy of the subject premises.

YOU ARE FURTHER NOTIFIED that based on the computations made by this court officer, you are entitled to a total of ₱340,000.00 reasonable monthly rentals for the use by the defendant of the subject property computed at ₱10,000/month from January 17, 2004 until it was allegedly abandoned by the defendant on November 10, 2006; the amount of ₱25,000.00 as and for attorney's fees and the amount ₱2,000 as costs of suit or a total amount of ₱367,000.00. Payment of the net amount due you shall be based on the peso-dollar closing rate under the Philippine Dealing System. x x x[16]

On November 6, 2008, Sheriff Palmares caused the annotation of a Notice of Levy Upon Real Property on TCT No. 540832 as a result of the alleged failure of Reburiano to settle her judgment debt of US$20,000.00.[17]

On March 26, 2009, Reburiano filed a Motion to Annul and Lift Levy on the Property Covered by TCT No. 540832 and to Cancel Auction Sale.[18]

On May 15, 2009, Sheriff Palmares proceeded to sell at public auction the property covered by TCT No. 540832. Jojit emerged

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[15] *Id.* at 64; CA *rollo*, p. 134.

[16] *Id.*

[17] *Rollo*, p. 8.

[18] *Id.* at 102-103.

as the highest bidder and tendered the sum of US$20,000.00 for the price of the levied property. No money changed hands during the auction sale because Sheriff Palmares considered the alleged judgment debt of US$20,000.00 of Reburiano as the consideration of the sale.[19] The Certificate of Sale[20] was approved by Judge·Wilfredo G. Oca of the MTC, Cainta, and was annotated at the back of TCT No. 520832 on June 8, 2009. Sheriff Palmares even issued a Final Certificate of Final Sale dated June 10, 2010.[21] Thereafter, Augustus filed an *Ex-Parte* Motion to Cancel TCT No. 540832. However, the motion was denied by the MTC.[22]

Reburiano, represented by Reynaldo Parada, her attorney-in-fact, instituted before the RTC a Complaint for Quieting of Title with Damages[23] against Jojit docketed as Civil Case No. 09-8948. Reburiano prayed *inter alia* that: (1) the Notice of Levy Upon Real Property and the subsequent Certificate of Sale be declared null and void; (2) the corresponding annotation at the back of TCT No. 540832 be canceled; and (3) Ruth and Jojit be held jointly and severally liable to pay ₱300,000.00 as moral damages and ₱30,000.00 as attorney's fees.[24]

Reburiano claimed that the Notice of Levy Upon Real Property was erroneously annotated on the title covering the subject property. She insisted that she exerted efforts to comply with the Amended Decision[25] yet the MTC refused to accept her judicial deposit. She claimed that the subject property was unlawfully sold at a public auction where Jojit was declared the highest bidder. Thus, the annotated Notice of Levy Upon

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[19] *Id.* at 8.

[20] *Id.* at 65-66.

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

[22] *Id.* at 89.

[23] CA *rollo*, pp. 92-95.

[24] *Id.* at 94.

[25] *Rollo*, pp. 48-57.

Real Property and the Certificate of Sale constituted a cloud on her title.[26]

On the contrary, Jojit maintained that he was the absolute owner of the subject property. He argued that the Complaint for Quieting of Title should be dismissed because Reburiano did not comply with her obligation under the Amended Decision to return the US$20,000.00 she received from Ruth. He insisted that the Notice of Levy Upon Real Property and the Certificate of Sale were brought about by Reburiano's refusal to abide by the Amended Decision of the MTC. As the winning bidder at the auction sale, he averred that the Notice of Levy Upon Real Property and Certificate of Sale were validly issued.[27]

Ruling of the Regional Trial Court

On January 27, 2016, the RTC rendered its Decision,[28] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the complaint for quieting of title is ordered **DISMISSED** for lack of cause of action.
>
> SO ORDERED.[29] (Emphasis in the original)

In dismissing the complaint, the RTC ruled that Reburiano cannot validly maintain an action for quieting of title because she no longer possessed any legal or equitable title to or interest over the subject property. The RTC explained that because she failed to redeem the foreclosed property within the one-year period, she lost whatever right she had over the property. The RTC also found that Reburiano failed to show that the notice of levy and the certificate of sale are invalid or inoperative. She did not put into issue the validity of the levy on execution

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[26] *Id.* at 22.

[27] *Id.* at 22-23.

[28] Penned by Presiding Judge Ma. Consejo Gengos-Ignalaga; CA *rollo*, pp. 40-46.

[29] *Id.* at 46.

and the certificate of sale. Thus, the RTC concluded that even the second requisite for an action to quiet title is also absent.[30]

Ruling of the Court of Appeals

In a Decision[31] dated July 13, 2018, the CA denied the appeal of Reburiano, finding no reversible error in the ruling of the RTC.[32]

In affirming the Decision of the RTC, the CA held that Reburiano failed to establish her legal or equitable title over the subject property as she ceased to be its owner after it was levied and sold at a public auction. The CA noted that: (1) Reburiano took no issue with the Amended Decision as she did not appeal the same; (2) she never tendered payment despite her receipt of the demand to comply with the Amended Decision; (3) she failed to pay despite the lapse of two years from the time the Amended Decision was rendered and subsequent receipt of the notice of public sale; (4) she filed a Motion to Deduct the Sum of ₱657,000.00 from the US$20,000.00 due under the Amended Decision only on August 18, 2009 or three years following its rendition and months after the subject property was sold at a public auction to Jojit; and (5) she made a judicial deposit of US$20,000.00 before the MTC only on June 25, 2015 or almost nine years after the Amended Decision was promulgated and five years after the issuance of the Certificate of Sale.[33]

The CA also found no merit in the contention of Reburiano that she was not informed of the exact amount to be paid to Jojit. For the CA, the Demand to Comply Judgment[34] reflected a detailed computation of the specific amount that she must

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[30] *Id.*

[31] *Supra* note 2.

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

[33] *Id.* at 27-28.

[34] *Id.* at 64.

pay Jojit.[35] The CA concluded that because Reburiano did not exercise her right to redeem the subject property within one year, Jojit became the absolute owner thereof. Thus, she failed to establish that the deed, claim, encumbrance, or proceeding claimed to be casting cloud on her title was invalid or inoperative.[36]

In a Resolution[37] dated November 23, 2018, the CA denied the Motion for Reconsideration[38] of Reburiano.[39]

In the present petition,[40] Reburiano raised the lone error, to wit:

AN EXECUTION IS VOID IF IT IS IN EXCESS OF AND BEYOND THE ORIGINAL JUDGMENT OR AWARD. SO, THE MTC, THE RTC AND THE COURT OF APPEALS COMMITTED GRAVE ERROR IN REFUSING TO VOID THE SALE IN EXECUTION OF PETITIONER'S PROPERTY NOTWITHSTANDING THAT THE SHERIFF SOLD SAID PROPERTY FOR AN AMOUNT MORE THAN THE MONEY JUDGMENT DECREED BY THE MTC DECISION.[41]

Reburiano argued that the allegedly void execution sale of the subject property conferred no right to Jojit. She also maintains that she did not lose her right over the property and that she was always willing to pay the money judgment against her at the proper amount.[42]

In the Comment[43] Jojit filed, he reiterated that Reburiano failed to offer any clear and convincing evidence rebutting the

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

[36] *Id.* at 24.

[37] *Supra* note 3.

[38] *Rollo*, pp. 30-36.

[39] *Id.* at 47.

[40] *Id.* at 3-11.

[41] *Id.* at 9.

[42] *Id.* at 10.

[43] *Id.* at 108-112.

presumption of regularity in the performance of Sheriff Palmares' official function.[44]

Issue

The issue to be resolved is whether a judgment of the MTC in an ejectment case that enforces the rescission of a purchase agreement by awarding the sum of US$20,000.00 less the reasonable compensation for Jojit's use and occupancy of the subject property is partially void for not being among the permissible reliefs in an ejectment case as enumerated in Section 17, Rule 70 of the Rules.

Ruling of the Court

The Amended Decision of the MTC dated July 27, 2006 is partially void.

At the outset, it must be pointed out that neither of the parties assailed the validity of the Amended Decision dated July 27, 2006 of the MTC, particularly the fifth instruction in said Amended Decision. The fifth instruction of the MTC states:

> (e) Ordering the plaintiff to pay to Ruth de Vera and/or the defendant, by way of refund, the sum of $20,000 less the total sum cumulatively due the plaintiff as reasonable compensation for defendant's use and occupancy of the premises as per (b) above.[45]

A careful analysis of this instruction reveals that it is not one of the permissible reliefs in an ejectment case enumerated in Section 17, Rule 70 of the Rules. The instruction pertained to the restitution of the money Reburiano received from Ruth as down payment for the sale of the subject property that did not push through, a subject matter beyond the jurisdiction of the MTC to resolve and a relief more than what the MTC may award in an ejectment case.

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[44] *Id.* at 111.

[45] *Id.* at 57.

Section 8, Rule 51 of the Rules provides:

> Section 8. *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.[46]

As a rule, a judgment of a court upon a subject within its general jurisdiction, which is not before it by any statement or claim of the parties, and is foreign to the issues submitted for its determination, is a nullity.[47] No error which was not assigned and argued may be considered unless such error is closely related to or dependent on an assigned error or it affects the jurisdiction over the subject matter on the validity of the judgment.[48] We have settled that the courts have ample authority to rule on matters not raised by the parties in their pleadings if such issues are indispensable or necessary to the just and final resolution of the pleaded issues.[49] In *Insular Life Assurance Co., Ltd. Employees' Association v. Insular Life Assurance Co., Ltd.*,[50] it was explained that:

> The Supreme Court has ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal **if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case**. This Court, thus, has the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors

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[46] RULES OF COURT, Rule 51, Sec. 8.

[47] *Lam v. Chua*, 469 Phil. 852, 863-864 (2004).

[48] *Multi-Realty Development Corp. v. Makati Tuscany Condominium Corp.*, 524 Phil. 318, 335-336 (2006).

[49] *Hi-Tone Marketing Corp. v. Baikal Realty Corp.*, 480 Phil. 545 (2004).

[50] 166 Phil. 505, 518-519 (1977).

refer to matters upon which the determination of the questions raised by the errors properly assigned depend.

The same also applies to issues not specifically raised by the parties. The Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination. Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in **those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them**.[51] (Citations omitted; emphasis supplied)

In this case, the resolution of the propriety of the reliefs awarded by the MTC in a related ejectment case, which appears to not be among the permissible reliefs the MTC may award, is indispensable and crucial to the determination of the rights and liabilities of Reburiano and Jojit. Thus, the Court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, including those affecting jurisdiction over the subject matter.

Under Section 17, Rule 70 of the Rules, if after the trial, the MTC finds that the allegations of the complaint for ejectment are true, the reliefs that may be granted to the plaintiff in the judgment are limited only to the following: (1) restitution of the premises; (2) the sum justly due as arrears of rent or as a reasonable compensation for the occupation and use of the premises; (3) attorney's fees; and (4) costs.[52] Any monetary award beyond what is permissible under the Rules is beyond the jurisdiction of the MTC.

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[51] *Id.*

[52] RULES OF COURT, Rule 70, Sec. 17.

Former Chief Justice Moran described the nature of damages that may be recovered in an ejectment case as follows:

> But what is the character of these damages? Since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, its uses and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, **plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property**, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of the property, and he cannot be declared as such in an action for forcible entry and detainer. Damages to property may be recovered only by the owner in an ordinary action.[53] (Emphasis supplied)

This description is instructive in determining the nature of monetary award that may be granted and remains applicable in the present rules governing ejectment cases and limits the monetary award in ejectment cases to losses incurred for the use and occupation of the property.

Noticeably, Section 17, Rule 70 of the Rules is silent with regard to the restitution of money received as down payment for the sale of the subject property as it only mentions restitution of the premises. A monetary claim other than those specifically enumerated in Section 17, Rule 70 of the Rules is not recoverable in an ejectment case. The MTC cannot arrogate unto itself the authority to implement the rescission of the purchase agreement by ordering the return of the US$20,000.00 less reasonable compensation for the use and occupation of the property. This is because the subject matter that may be resolved by the MTC in an ejectment case pertains only to the actual physical possession of the subject property. It does not include the propriety and subsequent implementation of an undertaking to

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[53] 2 Moran, *Comments on the Rules of Court*, 1957 ed., p. 301, cited in *Reyes v. Court of Appeals*, 148 Phil. 135, 146 (1971).

rescind the purchase agreement between the parties. Neither can be considered a monetary award for loss incurred for the use and occupation of the property. Thus, in Civil Case No. 880-AF (04), the MTC committed a grave error in implementing the rescission of the purchase agreement by ordering the return of the US$20,000.00 less reasonable compensation for the use and occupation of the property.

The grounds for annulment of judgment are: (1) extrinsic fraud;[54] (2) lack of jurisdiction;[55] and (3) denial of due process.[56] Lack of jurisdiction, as a ground for annulment of judgment, refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It is settled that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction.[57]

It is the Court's duty to correct the glaring error committed by the MTC that was not raised by any of the parties. The MTC went beyond its jurisdiction in ordering the restitution of the US$20,000.00 down payment received from Ruth as consideration for the purchase of the property less reasonable compensation for her use of the same. Applying the discretionary power of the Court, We deem it proper to declare the pertinent portion of the Amended Decision of the MTC dated July 27, 2006 beyond the jurisdiction of the MTC and void.

Nonetheless, in the interest of judicial economy, the complaint filed before the RTC may be treated as an action for annulment of judgment rather than for quieting of title. This will avoid multiplicity of actions and save the litigants and the Court their resources. Section 10, Rule 47 of the Rules requires that an action to annul a judgment or final order of an MTC shall be filed in the RTC having jurisdiction over the former.

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[54] RULES OF COURT, Rule 47, Sec. 2.

[55] *Id.*

[56] *Diona v. Balangue*, 701 Phil. 19, 30-31 (2013).

[57] *Id.*

In *Sebastian v. Spouses Cruz*,[58] We held that:

> x x x [T]he prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.[59] (Italics in the original)

Considering that the Amended Decision of the MTC is partially void, it cannot be the basis for the issuance of the Writ of Execution, Notice of Levy Upon Judgment and Certificate of Sale. The Writ of Execution, which stemmed from the partially void judgment of the MTC and gave rise to the sale of the property in an auction, is likewise partially void insofar as it enforces the rescission of the purchase agreement by awarding the sum of US$20,000.00 less the reasonable compensation for Jojit's use and occupancy of the subject property. Hence, the Register of Deeds of Rizal is ordered to cancel the Notice of Levy Upon Real Property and the Certificate of Sale annotated on TCT No. 540832.

While it was erroneous for Reburiano to file a complaint for quieting of title instead of a petition for annulment of judgment, her intention in filing the complaint is clear. Reburiano's purpose is to question the partially void judgment of the MTC. In the interest of justice and equity, and in keeping with the policy of the State to promote speedy and impartial justice and unclog court dockets, the complaint for quieting of title Reburiano filed with the intention of assailing the partially void judgment of the MTC shall be considered a petition for annulment of judgment pursuant to Rule 47 of the Rules. Rather than duplicating the efforts of the parties and the court in trying the issues together in another action, the Court hereby resolves

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[58] 807 Phil. 738, 743 (2017).

[59] *Id.*

the issues raised and awards what rightfully belongs to each party in the interest of judicial economy.

Article 22 of the Civil Code provides:

> Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Pursuant to the principle of unjust enrichment, the amount of US$20,000.00, which constitutes the undisputed amount Reburiano received from Ruth as down payment for the sale of the subject property worth US$60,000.00 that did not materialize, should be returned to Ruth in exchange for the subject property. Although the parties did not enter into a lease agreement, a forced lease was created. Thus, the occupant, Jojit, is still liable to pay rent to the property owner, Reburiano, as a result of the forced lease created by the former's use and occupation of the latter's property.[60]

Accordingly, Jojit should be made liable for damages in the form of rent or reasonable compensation equivalent to ₱10,000.00 per month for the occupation of the property from January 17, 2004, the date he and Ruth reneged on their obligation to vacate the property despite their agreement to rescind the purchase agreement,[61] up to November 10, 2006, the date when Jojit and Ruth allegedly abandoned the premises.[62] Considering that Reburiano had already received a down payment of US$20,000.00, the reasonable rent shall be deducted from the amount that Reburiano shall return to Jojit in exchange for the subject property. Therefore, the Court shall implement the restitution of the US$20,000.00 less reasonable rent for the use and occupation of the property, and ownership of the subject property between the parties.

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[60] *Muller v. Philippine National Bank*, G.R. No. 215922, October 1, 2018.

[61] CA *rollo*, p. 82.

[62] *Id.* at 85.

WHEREFORE, the Decision dated July 13, 2018 and the Resolution dated November 23, 2018 of the Court of Appeals in CA-G.R. CV No. 108629 are **SET ASIDE**.

Ruth De Vera, as represented by respondent Augustus "Jojit" De Vera, is **ORDERED** to pay reasonable rent in arrears for the use and occupation of the property covered by Transfer Certificate of Title No. 540832 in the amount of ₱10,000.00 per month from January 17, 2004 to November 10, 2006. This amount shall be deducted from the US$20,000.00 petitioner Araceli Reburiano shall **RETURN** to respondent Augustus "Jojit" De Vera. In turn, respondent Augustus "Jojit" De Vera is **ORDERED** to return the ownership of the property covered by Transfer Certificate of Title No. 540832 to petitioner Araceli Reburiano.

The Amended Decision dated July 27, 2006 of the Municipal Trial Court of Cainta, Rizal docketed as Civil Case No. 880-AF(04) is **DECLARED** partially **NULL** and **VOID** for lack of jurisdiction. Accordingly, the Writ of Execution, Notice of Levy Upon Judgment, and Certificate of Sale on Transfer Certificate of Title No. 540832 are **DECLARED NULL** and **VOID**. The Register of Deeds of Rizal is **ORDERED** to cancel the Notice of Levy Upon Real Property and the Certificate of Sale annotated on Transfer Certificate of Title No. 540832.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 244154. July 15, 2020]

ZUELLIG-PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE (CIR),** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (TAX CODE); PERIOD TO FILE JUDICIAL CLAIM FOR REFUND OF CREDITABLE INPUT TAXES; RECKONING POINT OF THE 120-DAY PERIOD WITHIN WHICH TO FILE JUDICIAL CLAIM FOR REFUND, ELABORATED; RULING IN *PILIPINAS TOTAL GAS* RESOLVING THE QUESTION: "*WHEN SHOULD THE SUBMISSION OF DOCUMENTS BE DEEMED COMPLETED FOR PURPOSES OF DETERMINING THE RUNNING OF THE 120-DAY PERIOD?*", REITERATED.** — As may be gleaned from [Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code)], the CIR has a period of 120 days ***from the date of submission of complete documents*** within which to evaluate an administrative claim for tax credit or refund of creditable input taxes (**120-day period**). If the CIR denies the administrative claim, or if it remains unacted upon the expiration of the said period — which is essentially considered a "denial due to inaction," **the taxpayer may, within thirty (30) days from such denial or expiration, avail of the further remedy of filing a judicial claim before the CTA.** In this relation, the BIR issued RMC No. 49-2003 which provides for the procedure in instances where there are pending administrative claims for refund but with incomplete documents. The circular states that the taxing authority shall require the further submission of the needed supporting documents through a notice-request, which should then be complied with by the taxpayer within thirty (30) days from receipt thereof[.] x x x The x x x rules were further refined by the Court in *Pilipinas Total Gas*, which resolved the question of: "In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present*

law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?" Confronted with this question, the Court then ruled that the reckoning point of the 120-day period would depend on the following circumstances: *(a)* If the taxing authority does not make any notice requesting for additional documents or if the taxpayer manifests that he no longer wishes to submit any additional documents, the 120-day period begins from the date the administrative claim was made as it would be assumed that at that point, the taxpayer had already submitted complete documents in support of its claim; or *(b)* **If the taxing authority requests for additional documents, the 120-day period begins from the time the taxpayer submits the complete documents sufficient to support his claim.** In this scenario, **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.**

2\. **ID.; ID.; ID.; ID.; ID.; THERE IS NO REQUIREMENT IN THE LAW THAT THE TAXING AUTHORITY'S REQUEST FOR ADDITIONAL DOCUMENTS BE MADE IN SPECIFIC FORM; THE STATEMENT IN *PILIPINAS TOTAL GAS* THAT "SUCH NOTICE BY WAY OF WRITTEN REQUEST IS REQUIRED BY THE CIR TO BE SENT" WAS NOT INTENDED TO FOIST ANY JUDICIAL DOCTRINE ANENT THE REQUEST'S REQUIRED FORM. — [T]here is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form.** While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials. To be sure, while the Court in *Pilipinas Total Gas* did state that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer]," the said statement was not intended to foist any judicial doctrine anent the request's required form. The seeming requirement that the request for additional documents must be "written" only appears

in a singular sentence of the Court's entire Decision. In fact, the word "written" only appears twice in *Pilipinas Total Gas*[.] x x x In contrast, it must be pointed out that the initial portions of the Court's ruling in *Pilipinas Total Gas* did not even qualify that the request must be in written form. As held in the same case, what is "**essential**" is that there must be "**a request from the tax collection authority to produce the complete documents**" given to the taxpayer-claimant[.] x x x Thus, the statement that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer]" was only an innocuous statement of the Court which was not meant to create any doctrine on the request's required form. This is confirmed by the fact that in *Pilipinas Total Gas*, there was even no request — whether verbal or written — given by the BIR to the taxpayer.

3. **ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT *PILIPINAS TOTAL GAS* IS NOT SQUARELY APPLICABLE IN THIS CASE, IT IS NOT THE PROPER BASIS TO DETERMINE WHETHER THE VERBAL COMMUNICATIONS MADE BY HEREIN RESPONDENT TO PETITIONER ARE INSUFFICIENT TO DETERMINE THE RECKONING POINT OF THE 120-DAY PERIOD. —** *Pilipinas Total Gas* is not squarely applicable to the case at bar. To be sure, the core of the controversy in *Pilipinas Total Gas* only lies in the supposed prematurity of the taxpayer's judicial claim for refund, considering that the latter allegedly failed to submit complete documents in support thereof at the time the claim was filed; hence, the 120-day period for the BIR to decide the claim had not yet begun to run. The Court held that the 120-day period should be reckoned from the time the taxpayer had deemed itself to have submitted the complete documents in support of its administrative claim, without prejudice to the BIR's request for additional documents which did not obtain in this case; thus, with the 120 days having lapsed therefrom, the taxpayer may then, within thirty (30) days, accordingly, file its judicial claim for refund, as was done by the taxpayer in *Pilipinas Total Gas*. x x x Unlike in this case, the Court in *Pilipinas Total Gas* was not confronted with the issue of whether or not requests for documents should be in any particular form, for the purpose of determining the reckoning point of the 120-day period. In fact, as earlier mentioned, in *Pilipinas Total Gas*, there was no request — whether verbal or written — given by the BIR to the taxpayer. Thus, in view of the foregoing, *Pilipinas Total*

Gas is not the proper basis to construe that all subsequent verbal communications made by the BIR to Zuellig-PH (or any taxpayer for that matter) are insufficient for the purpose of determining the reckoning point of the 120-day period.

4. **ID.; ID.; ID.; ID.; THE 120-DAY PERIOD IN THIS CASE SHOULD BE RECKONED FROM THE APRIL 29, 2014 LETTER OF PETITIONER WHEREIN IT STATED THAT IT HAD ALREADY SUBMITTED THE COMPLETE DOCUMENTS IN SUPPORT OF ITS CLAIM; AS RESPONDENT FAILED TO ACT WITHIN SUCH PERIOD, PETITIONER HAD UNTIL SEPTEMBER 26, 2014 TO FILE ITS JUDICIAL CLAIM; THUS, ITS PETITION WAS TIMELY FILED ON SEPTEMBER 25, 2014. —** [R]ecords show that Zuellig-PH duly complied with the BIR officials' written and verbal requests for additional documents through its letters dated July 5, 2011, May 8, 2012, July 25, 2012, December 6, 2012, September 11, 2013, and April 29, 20 14, with the last letter indicating that it had "already submitted the complete documents in support of [its] application for refund of excess and unutilized input VAT for the four (4) quarters of TY 2010 in the amount of Php39,931,971.21." Notably, **all of these verbal requests for additional documents and Zuellig-PH's corresponding submissions in response thereto were well-documented and all confirmed by the BIR**; hence, there is no danger of losing track of when to reckon the 120-day period. As held in *Pilipinas Total Gas,* it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. **As herein applied, the 120-day period should therefore be reckoned from the April 29, 2014 letter of Zuellig-PH wherein it stated that it had already submitted the complete documents in support of its refund claim. In turn, the BIR had 120 days from such time (or until August 27, 2014) to act on Zuellig-PH's administrative claim for refund.** Since it was established that the BIR failed to act within such period, Zuellig-PH had thirty (30) days, or until September 26, 2014, to file its judicial claim. **Thus, its Petition for Review was timely filed on September 25, 2014.**

5. **ID.; ID.; ID.; ID.; THIS DISQUISITION FINDS APPLICATION ONLY TO THOSE CLAIMS FOR REFUND MADE PRIOR TO JUNE 11, 2014 OR THE DATE WHEN RMC NO. 54-2014**

WAS ISSUED; THE PREVAILING RULE NOW IS THAT ALL COMPLETE DOCUMENTS ARE TO BE SUBMITTED UPON THE FILING OF THE TAX PAYER'S ADMINISTRATIVE CLAIM FOR REFUND. — [T]he Court clarifies that the above disquisition only finds application to those claims for refund made ***prior to*** June 11, 2014 (*i.e.*, the date that RMC No. 54-2014 was issued). Under this new circular, **the taxpayer is now required to submit complete documents *upon its filing of an administrative claim for VAT refund/tax credit,*** as no other documents shall be accepted thereafter. For this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. Thus, under the auspices of RMC No. 54-2014, there is no more need to delineate between verbal or written requests for additional documents because the submission thereof is not anymore allowed. To reiterate, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.

APPEARANCES OF COUNSEL

Salvador Llanillo & Bernardo for petitioner.
BIR Litigation Division for respondent.

D E C I S I O N

PERLAS-BERNABE, *J*.:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated January 21, 2019 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA *EB* No. 1656, which upheld the CTA-Second Division's dismissal of petitioner Zuellig-

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[1] *Rollo*, pp. 12-48.

[2] *Id*. at 54-68. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring, and Associate Justice Catherine T. Manahan, dissenting.

Pharma Asia Pacific Ltd. Phils. ROHQ (Zuellig-PH)'s claim for refund or issuance of a tax credit certificate amounting to ₱39,931,971.21, representing its excess and unutilized input value-added tax (VAT) for calendar year (CY) 2010.

The Facts

Zuellig-PH is a regional operating headquarters (ROHQ) of Zuellig-Pharma Asia Pacific Ltd. (Zuellig-HK), a foreign corporation duly organized and existing under the laws of Hong Kong.[3]

For CY 2010, Zuellig-PH filed its Quarterly VAT Returns (BIR Form No. 2550-Q) on April 22, 2010,[4] July 21, 2010,[5] October 20, 2010,[6] and January 20, 2011,[7] respectively. On February 15, 2011, Zuellig-PH filed its amended Quarterly VAT Returns for all four (4) quarters of CY 2010.[8] On **February 17, 2011**, it filed an **administrative claim for refund**[9] with attached Application for Tax Credits/Refunds[10] (BIR Form No. 1914) of its excess and unutilized input VAT for CY 2010 amounting to a total of ₱39,931,971.21 with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 49.[11]

Zuellig-PH then received Letter of Authority (LOA) No. eLA201000037096[12] dated March 3, 2011 from the BIR. In

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[3] *Id*. at 55.

[4] CTA Division *rollo*, pp. 151-154.

[5] *Id*. at 159-161.

[6] *Id*. at 165-170.

[7] *Id*. at 174-179.

[8] *Id*. at 181, 185, 188, and 191-192. It appears from the records that Zuellig-PH further amended its Quarterly VAT Returns for the 4th Quarter on February 16, 2011 (see *id*. at 16 and 194-195).

[9] See letter dated February 17, 2011 of Zuellig-PH; *id*. at 59.

[10] *Id*. at 60.

[11] See *rollo*, p. 56.

[12] CTA Division *rollo*, p. 570.

the said LOA, the BIR authorized Revenue Officer (RO) Joaquin Tinio (RO Tinio) and Group Supervisor Socrates Regala to examine Zuellig-PH's book of accounts and other accounting records for VAT for CY 2010.[13]

In a **letter**[14] **dated June 29, 2011**, the BIR requested Zuellig-PH to present its records and submit supporting documents in relation to its administrative claim for refund.[15] In response thereto, Zuellig-PH submitted the requested documents to the BIR on **July 5, 2011**.[16]

According to Zuellig-PH, the BIR made further **verbal requests for submission of documents** from 2012 until 2014, to which the former acceded. **Consequently, Zuellig-PH made submissions on May 8, 2012,**[17] **July 25, 2012,**[18] **December 6, 2012,**[19] **and September 11, 2013,**[20] **all of which were received by RO Tinio.** On February 4, 2014, Zuellig-PH's claim was forwarded to the BIR Assessment Service and assigned to RO William P. Manzanares, Jr. (RO Manzanares).[21]

Due to the inordinate delay in the processing of its refund claim, Zuellig-PH sent a letter[22] on March 5, 2014 to then Commissioner Kim S. Jacinto-Henares, requesting that its

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[13] See *rollo*, p. 56.

[14] CTA Division *rollo*, p. 252.

[15] See *rollo*, p. 56.

[16] See letter dated July 1, 2011 of Zuellig-PH; CTA Division *rollo*, p. 571.

[17] See letter (with attachments) dated May 7, 2012 of Zuellig-PH; *id*. at 572-588.

[18] See letter dated July 25, 2012 of Zuellig-PH; *id*. at 593.

[19] See letter (with attachments) dated December 6, 2012 of Zuellig-PH; *id*. at 594-597.

[20] See letter (with attachment) dated September 11, 2013 of Zuellig-PH; *id*. at 598-600.

[21] See letter dated March 12, 2014 of Deputy Commissioner Operations Group Nelson M. Aspe; *id*. at 610.

[22] See Letter dated March 4, 2014; *id*. at 608-609.

application for refund be resolved at the soonest possible time. Deputy Commissioner Nelson M. Aspe (Deputy Commissioner Aspe) replied to Zuellig-PH in a letter[23] dated March 12, 2014, stressing that applications for refund were processed by the Assessment Service on a "first-in-first-out" basis. Nevertheless, **Deputy Commissioner Aspe assured Zuellig-PH that "[the BIR] shall exert all the necessary efforts to ensure the timely processing of [its] VAT refund claim within the 120-day period under [Section] 112 (D) of the Tax Code, as amended, provided [that] all the required documents have been submitted."**[24]

Thereafter, **RO Manzanares requested Zuellig-PH to resubmit certain documents, to which the latter complied as evidenced by a letter[25] dated April 29, 2014**. The aforesaid letter was **stamped received by the Assessment Service on the same date**.[26] In the same letter, Zuellig-PH manifested that it had "***already submitted the complete documents in support of [its] application (for refund of excess and unutilized input VAT (for the four (4) quarters of TY 2010 in the amount of Php39,931,971.21***."[27] Consequently, it averred that the BIR should act on its application for VAT refund "within 120 days from the date of submission x x x in accordance with Section [112(C)], National Internal Revenue Code of 1997."[28]

When the BIR failed to act on the administrative claim for refund within 120 days from receipt of Zuellig-PH's last correspondence on April 29, 2014 (the 120th day being August 27, 2014), Zuellig-PH filed a Petition for Review[29] before the CTA-

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[23] *Id.* at 610.

[24] *Id.*; emphasis supplied.

[25] *Id.* at 611.

[26] *Id.*

[27] *Id.*; emphasis and underscoring supplied.

[28] *Id.*

[29] Dated September 25, 2014. *Id.* at 14-23.

Second Division on September 25, 2014, docketed as CTA Case No. 8899.[30]

For its part, the BIR argued that the CTA did not acquire jurisdiction over the case, considering that Zuellig-PH's judicial claim for refund was **belatedly filed**. In particular, the BIR pointed out that since Zuellig-PH filed its administrative claim for refund on February 17, 2011, the RDO had until June 11, 2011[31] to act on the claim. When the RDO failed to do so, Zuellig-PH should have filed a judicial claim with the CTA within thirty (30) days therefrom, or until July 11, 2011.[32] Since Zuellig-PH filed its judicial claim only on September 25, 2014, which was clearly long after the lapse of the 30-day period, the claim was already belatedly filed. In any event, it argued that Zuellig-PH was not able to discharge its burden of proving its entitlement to its claim for refund.[33]

The CTA-Second Division Ruling

In a Decision[34] dated March 9, 2017, the CTA-Second Division denied Zuellig-PH's Petition for Review for being **filed out of time**.

It held that the 120-day period within which the BIR should act on the administrative claim for refund must be reckoned from the date when Zuellig-PH **submitted the requested documents on <u>July 5, 2011</u>, which was in response to the BIR's <u>written</u> request for such dated June 29, 2011.** In this regard, **the CTA-Second Division disregarded the subsequent**

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[30] See *rollo*, p. 57.

[31] This appears to be an oversight since 120 days from February 17, 2011 is June 17 (not 11), 2011.

[32] Based on footnote 31, this should be July 17, 2011.

[33] See portions in the Answer (To the Petition for Review dated September 25, 2014) dated November 13, 2014; CTA Division *rollo*, pp. 77-81.

[34] *Id*. at 722-749. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova, concurring, and Associate Justice Catherine T. Manahan, dissenting.

verbal requests for written documents made by the BIR to Zuellig-PH, considering that, as per the case of *Pilipinas Total Gas, Inc. v. CIR* (*Pilipinas Total Gas*),[35] **the notice for additional documents should be in writing**; hence, the 120-day period for the BIR to act on the refund claim was reckoned from June 29, 2011, and upon the lapse thereof, Zuellig-PH had thirty (30) days to file its judicial claim for refund, or on December 2, 2011. However, since Zuellig-PH filed the Petition for Review only on September 25, 2014, the same was filed out of time.[36]

Aggrieved, Zuellig-PH moved for reconsideration.[37] It argued that the BIR was estopped from questioning the jurisdiction of the CTA given the subsequent representations of Deputy Commissioner Aspe (albeit verbal) regarding the continued processing of its VAT refund claim which took place even beyond July 5, 2011 (*i.e.*, the date which the CTA-Division construed as the reckoning point of the 120-day period for the BIR to act on Zuellig-PH's administrative claim for refund).[38]

In a Resolution[39] dated May 9, 2017, Zuellig-PH's motion for reconsideration was denied. Unperturbed, it then elevated[40] the matter to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[41] dated January 21, 2019, the CTA *En Banc* affirmed the CTA-Second Division. It agreed with the latter's application of the ruling in *Pilipinas Total Gas* to Zuellig-PH's

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[35] 774 Phil. 473 (2015).

[36] See CTA Division *rollo*, p. 747.

[37] See motion for reconsideration (Re: Decision dated March 9, 2017) dated March 27, 2017; *id.* at 755-775.

[38] See *id.* at 766-769.

[39] *Id.* at 785-795.

[40] CTA *En Banc rollo*, pp. 20-47.

[41] *Rollo*, pp. 54-68.

case, and further held that the government cannot be estopped by the mistakes of its agents.[42]

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not Zuellig-PH's judicial claim for refund was filed out of time.

The Court's Ruling

The petition is meritorious.

Section 112 (C) of the National Internal Revenue Code of 1997 (Tax Code)[43] provides for the period within which to file a claim for refund of creditable input tax:

> **SEC. 112. Refunds or Tax Credits of Input Tax. —**
>
> (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**.
>
> 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**. (Emphases and underscoring supplied)

As may be gleaned from the above provision, the CIR has a period of 120 days ***from the date of submission of complete documents*** within which to evaluate an administrative claim for tax credit or refund of creditable input taxes (**120-day period**).

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[42] See *id*. at 62-67.

[43] Republic Act No. (RA) 8424 as amended up to RA 9337 (July 1, 2005).

If the CIR denies the administrative claim, or if it remains unacted upon the expiration of the said period — which is essentially considered a "denial due to inaction," **the taxpayer may, within thirty (30) days from such denial or expiration, avail of the further remedy of filing a judicial claim before the CTA**.[44]

In this relation, the BIR issued RMC No. 49-2003[45] which provides for the procedure in instances where there are pending administrative claims for refund but with incomplete documents. The circular states that the taxing authority shall require the further submission of the needed supporting documents through a notice-request, which should then be complied with by the taxpayer within thirty (30) days from receipt thereof:

Q-18: For pending claims with <u>incomplete documents</u>, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and <u>what is the period required to process such claims</u>?

A-18: For pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.

For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.

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[44] See *Pilipinas Total Gas*, *supra* note 35, at 487.

[45] Entitled "AMENDING ANSWER TO QUESTION NUMBER 17 OF REVENUE MEMORANDUM CIRCULAR NO. 42-2003 AND PROVIDING ADDITIONAL GUIDELINES ON ISSUES RELATIVE TO THE PROCESSING OF CLAIMS FOR VALUE-ADDED TAX (VAT) CREDIT/ REFUND, INCLUDING THOSE FILED WITH THE TAX AND REVENUE GROUP, ONE STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE (OSS-DOF) BY DIRECT EXPORTERS," issued on August 15, 2003.

> For current and future claims for tax credit/refund, **the same shall be processed within one hundred twenty (120) days from receipt of the complete documents**. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **within thirty (30) days from <u>request</u> of the investigating/processing office**, which shall be construed as within the one hundred twenty [(120)-day] period. (Emphases and underscoring supplied)

The foregoing rules were further refined by the Court in *Pilipinas Total Gas*, which resolved the question of: "In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*"[46]

Confronted with this question, the Court then ruled that the reckoning point of the 120-day period would depend on the following circumstances:

(*a*) If the taxing authority does not make any notice requesting for additional documents or if the taxpayer manifests that he no longer wishes to submit any additional documents, the 120-day period begins from the date the administrative claim was made as it would be assumed that at that point, the taxpayer had already submitted complete documents in support of its claim;[47] or

(*b*) **<u>If the taxing authority requests for additional documents, the 120-day period begins from the time the taxpayer submits the complete documents sufficient to support his claim</u>.** In this scenario, **it is the taxpayer who ultimately determines when complete documents have been submitted for the**

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[46] *Supra* note 35, at 488 (italics in the original).

[47] See *id*. at 495.

purpose of commencing and continuing the running of the 120-day period.[48]

Notably, there is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must <u>always and absolutely</u> be made in written form. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.

To be sure, while the Court in *Pilipinas Total Gas* did state that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer],"[49] the said statement was not intended to foist any judicial doctrine anent the request's required form. The seeming requirement that the request for additional documents must be "written" only appears in a singular sentence of the Court's entire Decision. In fact, the word "written" only appears twice in *Pilipinas Total Gas*, the pertinent portion of which is hereby reproduced as follows:

> Second, the CIR sent **no written notice** informing Total Gas that the documents were incomplete or required it to submit additional documents. **As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas.** Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.[50]

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[48] See *id*. at 493.

[49] *Id*. at 502.

[50] *Id*. at 503; emphases supplied.

In contrast, it must be pointed out that the initial portions of the Court's ruling in *Pilipinas Total Gas* did not even qualify that the request must be in written form. As held in the same case, what is "**essential**" is that there must be "**a request from the tax collection authority to produce the complete documents**" given to the taxpayer-claimant:

> Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential**.[51]

Thus, the statement that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer]" was only an innocuous statement of the Court which was not meant to create any doctrine on the request's required form. This is confirmed by the fact that in *Pilipinas Total Gas*, there was even no request — whether verbal or written — given by the BIR to the taxpayer.

In any event, *Pilipinas Total Gas* is not squarely applicable to the case at bar. To be sure, the core of the controversy in *Pilipinas Total Gas* only lies in the supposed prematurity of the taxpayer's judicial claim for refund, considering that the latter allegedly failed to submit complete documents in support thereof at the time the claim was filed; hence, the 120-day period for the BIR to decide the claim had not yet begun to run.[52] The Court held that the 120-day period should be reckoned from the time the taxpayer had deemed itself to have submitted the complete documents in support of its administrative claim, without prejudice to the BIR's request for additional documents which did not obtain in this case; thus, with the 120 days having

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[51] *Id*. at 494; emphasis and underscoring supplied.

[52] See *id*. at 502-505.

lapsed therefrom, the taxpayer may then, within thirty (30) days, accordingly, file its judicial claim for refund, as was done by the taxpayer in *Pilipinas Total Gas*. To this end, the Court had summarized its disposition as follows:

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.[53]

Unlike in this case, the Court in *Pilipinas Total Gas* was not confronted with the issue of whether or not requests for documents should be in any particular form, for the purpose of determining the reckoning point of the 120-day period. In fact, as earlier mentioned, in *Pilipinas Total Gas*, there was no request — whether verbal or written — given by the BIR to the taxpayer. Thus, in view of the foregoing, *Pilipinas Total Gas* is not the proper basis to construe that all subsequent verbal communications made by the BIR to Zuellig-PH (or any taxpayer for that matter) are insufficient for the purpose of determining the reckoning point of the 120-day period.

In this case, records show that Zuellig-PH duly complied with the BIR officials' written and verbal requests for additional documents through its letters dated July 5, 2011,[54] May 8, 2012,[55] July 25, 2012,[56] December 6, 2012,[57] September

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[53] *Id*. at 495.

[54] CTA Division *rollo*, p. 571.

[55] *Id*. at 572-588.

[56] *Id*. at 593.

[57] *Id*. at 594-597.

11, 2013,[58] and April 29, 2014,[59] with the last letter indicating that it had "already submitted the complete documents in support of [its] application for refund of excess and unutilized input VAT for the four (4) quarters of TY 2010 in the amount of Php39,931,971.21."[60] Notably, **all of these verbal requests for additional documents and Zuellig-PH's corresponding submissions in response thereto were well-documented and all confirmed by the BIR**; hence, there is no danger of losing track of when to reckon the 120-day period. As held in *Pilipinas Total Gas*, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. **As herein applied, the 120-day period should therefore be reckoned from the April 29, 2014 letter of Zuellig-PH wherein it stated that it had already submitted the complete documents in support of its refund claim. In turn, the BIR had 120 days from such time (or until August 27, 2014) to act on Zuellig-PH's administrative claim for refund.** Since it was established that the BIR failed to act within such period, Zuellig-PH had thirty (30) days, or until September 26, 2014, to file its judicial claim. **Thus, its Petition for Review was timely filed on September 25, 2014.**

At this juncture, it is well to point out that it was the BIR's own officials who led Zuellig-PH to believe that the numerous verbal requests for documents they made were all regular and above-board, and that the taxpayer's compliance therewith would result in the timely processing of its administrative claim. Were it not for the BIR's own representations, then Zuellig-PH could have filed its judicial claim for refund sooner. Thus, Zuellig-PH cannot be faulted for merely acting in accord with the representations of the BIR itself. Indeed, while the Court recognizes the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation (as

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[58] *Id*. at 598-600.

[59] *Id*. at 611.

[60] *Id*.

taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents), this principle does not apply if it would work injustice against an innocent party,[61] such as Zuellig-PH in this case. Hence, all things considered, the Court holds that the CTA erred in dismissing Zuellig-PH's judicial claim for refund. Since the CTA-Second Division had already conducted a trial on the merits but instead chose to dismiss Zuellig-PH's claim on the aforementioned ground, the Court finds it proper to remand the case to it for a resolution on the merits with utmost dispatch.

As a final note, the Court clarifies that the above disquisition only finds application to those claims for refund made ***prior to*** June 11, 2014 (*i.e.*, the date that RMC No. 54-2014 was issued).[62]

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[61] See *CIR v. Petron Corporation*, 685 Phil. 119 (2012), citing *Pilipinas Shell Petroleum Corporation v. CIR*, 565 Phil. 613 (2007). See also *CIR v. San Miguel Corporation*, 804 Phil. 293 (2017) and *China Banking Corporation v. CIR*, 753 Phil. 58 (2015).

[62] Item II. Filing and Processing of Administrative Claims of RMC No. 54-2014 (entitled "CLARIFYING ISSUES RELATIVE TO THE APPLICATION FOR VALUE ADDED TAX (VAT) REFUND/CREDIT UNDER SECTION 112 OF THE TAX CODE, AS AMENDED" issued on June 11, 2014) reads:

The application for VAT refund/tax credit must be **accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that **the said documents are the only documents which the taxpayer will present to support the claim**. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and **no other documents shall be accepted/required from the taxpayer in the course of its evaluation**. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant. (Emphases and underscoring supplied)

Under this new circular, **the taxpayer is now required to submit complete documents *upon its filing of an administrative claim for VAT refund/tax credit***, as no other documents shall be accepted thereafter. For this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. Thus, under the auspices of RMC No. 54-2014, there is no more need to delineate between verbal or written requests for additional documents because the submission thereof is not anymore allowed. To reiterate, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.[63]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 21, 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA *EB* No. 1656 (CTA Case No. 8899) is hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the CTA-Second Division for its resolution on the merits, in accordance with this Decision.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Gaerlan*,[*] *JJ.*, concur.

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[63] This same reminder was issued by the Court in *Pilipinas Total Gas* (*supra* note 35, at 496):

It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that [(see block quotation in footnote 62)]:

x x x x x x x x x

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 247816. July 15, 2020]

SPOUSES DIONISIO DUADUA SR. and CONSOLATRIZ DE PERALTA DUADUA, substituted by their heirs GLICERIA DUADUA TOMBOC, DIONISIO P. DUADUA, JR., BIENVENIDO P. DUADUA, PAUL P. DUADUA, SAMUEL P. DUADUA, and MOISES P. DUADUA, *petitioners*, *vs.* **R.T. DINO DEVELOPMENT CORPORATION represented by its President ROLANDO T. DINO, Spouses ESTEBAN FERNANDEZ, JR. and ROSE FERNANDEZ, and the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS represented by ENGR. TOMAS D. RODRIGUEZ as the Officer-in-Charge-District Engineer of Sultan Kudarat Engineering District, Isulan, Sultan Kudarat,** *respondents*.

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; SECTION 119 THEREOF; THE HOMESTEADER AND HIS OR HER HEIRS HAS THE RIGHT TO REPURCHASE THE LAND AWARDED HIM OR HER, PROVIDED THAT THE SAME BE EXERCISED WITHIN FIVE (5) YEARS FROM CONVEYANCE; THE HOMESTEADERS' ACQUISITION OF ANOTHER LAND AFTER THE HOMESTEAD GRANT DOES NOT BAR THEM OR THEIR HEIRS FROM EXERCISING THEIR RIGHT TO REPURCHASE UNDER THE LAW. —** The homestead land here was awarded to Spouses Duadua under the Public Land Act. x x x. [S]ection 119 of the Public Land Act gives the homesteader and his or her heirs the right to repurchase the land awarded him or her. The only condition is that the right to repurchase be exercised within five (5) years from conveyance. Spouses Duadua complied with this condition when on July 28, 1999, or just a little over three (3) years from conveyance on May 14, 1996, they gave notice to R.T. Dino of their intention to repurchase the land. That Spouses Duadua had allegedly acquired another property in the meantime does not preclude

them or their heirs from exercising their right to repurchase. This is not a disqualifying factor under the Public Land Act.

2. **ID.; ID.; ID.; ID.; THE HOMESTEAD GRANT WAS NEVER INTENDED TO BE USED TO SERVE THE BUSINESS INTEREST OF CORPORATIONS OR OTHER ARTIFICIAL PERSONS, BUT THE SAME WAS MEANT TO UPLIFT THE LIVES OF SMALL PEOPLE BY WAY OF SOCIAL JUSTICE; AS BETWEEN THE BUSINESS INTEREST OF A CORPORATION AND THE WELL-BEING AND SOCIAL AMELIORATION OF THE HOMESTEADERS, THE LATTER PREVAILS. —** When the law grants a homestead holder of the right to repurchase the land awarded him or her, the State intends that the holder and his or her family keep the land as their home and their source of livelihood at the same time. The State recognizes not only the social and economic value of this small piece of land to the beneficiaries but in fact demands of them to give utmost importance to this grant that is meant precisely to give them quality life, to uphold their dignity, and to even out the gross inequalities in our society. If this is what sentimental value means for the Court of Appeals, so must it be. For sure, having this in petitioners' heart does not in any way disqualify them from exercising their right to repurchase under the law. In any case, the plain intent of Section 119 of the Public Land Act is to give the homesteader or patentee every chance to preserve and keep in the family the land that the State has gratuitously given him or her as a reward for his or her labor in cleaning, developing, and cultivating it. x x x. Be that as it may, the homestead grant was never intended to be used to serve the business interest of corporations or other artificial persons. They were meant to uplift the lives of small people like petitioners and their deceased parents by way of social justice. Between the business interest of R.T. Dino and the well-being and social amelioration of petitioners as the real beneficiaries of the Homestead Law, the latter prevails. Thus, in ***Rural Bank of Davao City, Inc. v. The Honorable Court of Appeals, et al.***, we emphasized that the conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the factors of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when

the citizen lives permanently in his own home, with a sense of its protection and durability.

3. **ID.; ID.; ID.; ID.; PETITIONERS ARE ALLOWED TO REPURCHASE THE HOMESTEAD LAND UPON PAYMENT TO THE RESPONDENT OF THE AMOUNT ACTUALLY PAID TO THE LATTER BY THE PETITIONERS' PARENTS.—** As for the repurchase price, petitioners insist they must only pay P200,000.00 as this is the purchase price reflected in their parents' deed of sale with R.T. Dino. The company, however, asserts that should petitioners be allowed to repurchase the land, they ought to pay at least P1,100,000.00, the supposed amount they actually paid to petitioners' parents or P3,000,000.00, the mortgage loan on the land which the company incurred from Spouses Fernandez. We rule that the purchase price which petitioners ought to pay back to R.T. Dino is P1,100,000.00 the actual purchase price paid by R.T. Dino and received by Spouses Duadua. As noted by the Court of Appeals in its original Decision dated August 30, 2018, R.T. Dino offered in evidence receipts to prove this amount, receipt of which Spouses Duadua did not deny. Indeed, for petitioners now to insist paying back the lesser amount of P200,000.00 would result in *their unjust enrichment*. On this score, both the trial court and the Court of Appeals properly directed R.T. Dino to pay additional capital gains and documentary stamp taxes for the difference between the amount reflected on the deed of sale and the actual price it paid on the land, including surcharges, interest, and penalties. Notably, this directive has long become final and executory as R.T. Dino did not seek its reconsideration nor appeal therefrom. With respect to the mortgage amount of P3,000,000.00, the same is exclusively between R.T. Dino and Spouses Fernandez. Neither petitioners nor their deceased parents were privies to this contract. Hence, there is no rhyme or reason for R.T. Dino to demand from them its payment.

CAGUIOA, *J.*, *concurring opinion*:

1. **CIVIL LAW; LAND REGISTRATION; THE PUBLIC LAND ACT OR COMMONWEALTH ACT NO. 141; HOMESTEAD PATENT; REPUBLIC ACT NO. 11231, OTHERWISE KNOWN AS THE AGRICULTURAL FREE PATENT REFORM ACT, LIFTED ALL RESTRICTIONS ON THE**

ACQUISITIONS, ENCUMBRANCES OR DISPOSITIONS OF ALL LANDS COVERED BY HOMESTEAD PATENTS; APPLIES RETROACTIVELY; EFFECT THEREOF. — R.A. 11231 lifted the prohibition against the encumbrance or alienation of lands acquired under free patent, except if the same is in favor of the government or any of its branches, within five years from the issuance of the patent or grant. It also removed the condition for repurchase, where the applicant, his widow, or legal heirs can repurchase a land acquired under the free patent provisions within five years from the date of transfer or sale. Finally, it did away with the limitation that except for solely commercial, industrial, educational, religious, charitable, or right of way purposes, and upon approval of the patentee and the Secretary of Department of Environment and Natural Resources, corporations, associations, or partnerships are forbidden from acquiring any property right, title or interest on free patent. As it stands, the discarding of these circumscriptions left the agricultural free patent a title in fee simple, free of any restriction on its encumbrance or alienation. Further, since the repeal also applies retroactively, any prior defective disposition not included under the right of redemption in Section 119 is effectively cured, and any restrictions on the acquisitions, encumbrances, or dispositions concerning agricultural free patents issued prior to the enactment of R.A. 11231 are deemed lifted. Prospectively, therefore, for *all* instances, from the date of promulgation of R.A. 11231, all lands covered by homestead patents are free from any and all encumbrances and conditions. This easing of restriction, among others, was predicted to have a crucial impact on the viability and tradability of the country's farm lands, since the lifted restrictions cover an estimated 2.6 million parcels or 10% of all titled parcels in the Philippines. This is also seen to invite anew potential land investments in the largely agricultural regions, and jumpstart income productivity of rural lands. On this score, however, it must be said that this repeal, although seen on the one hand as an advantageous liberalization for patentees in that they are now able to trade or sell their lands without the disincentive of the C.A. 141 restrictions, this is essentially an unmistakable unravelling and abandonment of the underlying safeguards of homesteads, and a ceding of any and all securities previously afforded to small farm owners who, otherwise and as in now the case, left vulnerable once more to the prospect of landlessness.

2. **ID.; ID.; ID.; ID.; R.A. 11231 HAD WRITTEN OFF THE PROTECTION BY RESTRICTION AFFORDED TO HOMESTEADERS UNDER COMMONWEALTH ACT 141. —** The jurisprudential history has consistently supported the wisdom of the State's foremost concern in preserving lands for agricultural use, and maintaining these lands in the hands of patentees who will develop these lands for agronomic purposes. The arch of interpreting and applying C.A. 141 has always leaned towards the goal of distributing and, in cases, redistributing the homesteads to qualified patent applicants, to serve the ends of uplifting communities through fair land use. The protection by restriction under C.A. 141 gave smaller landholders counterweight against mounting economic burdens under the sheer pressure of which their financial structures tended to collapse. This overarching inclusionary principle sought to ensure that homesteaders previously at the fringes of land ownership are invited into the framework of socio-economic invulnerability that owning and cultivating a piece of land, however modest, secures. This is the spirit of the C.A. 141 that the sweeping repeal of R.A. 11231 has written off.

3. **ID.; ID.; ID.; ID.; ALTHOUGH R.A. 11231 PROVIDES FOR RETROACTIVE EFFECT TO THE LIFTING OF RESTRICTIONS, IT NEVERTHELESS PRESERVED AND HONORED THE HOMESTEADER'S RIGHT OF REDEMPTION PURSUANT TO SECTION 119 OF C.A. 141, UNDER THE QUALIFYING CLAUSE OF SECTION 4 OF R.A. NO. 11231, AND EXERCISED PRIOR TO THE EFFECTIVITY THEREOF. —** The lone exception from the blanket repeal by R.A. 11231 is the one which operates in favor of petitioners' right to repurchase. For although R.A. 11231 provides for retroactive effect to the lifting of restrictions, it nevertheless specially preserved and honored rights of redemption under Section 119 of C.A. 141, under the qualifying clause under Section 4 thereof, and exercised prior to R.A. 11231. As applied to petitioners' case, therefore, since they sought to exercise in good faith their right to repurchase the subject land pursuant to Section 119 in 1999, or nearly two decades prior to the effectivity of R.A. 11231, petitioners, under the qualifying clause of Section 4, R.A. 11231, are not barred from exercising the same. Still, a more farsighted question needs to be asked, in consideration of all the other patentees who may wish to

convey their homesteads in accordance with R.A. 11231. For demonstrably, the protective backbone of C.A. 141 rises and falls on the very proscriptions that R.A. 11231 removed. R.A. 11231 has taken out the safeguards that have been designed to preserve more humble landholders, often debt-strapped fanners, against the persistent hardships of low farm incomes, poor rural development, food insecurity, and abject poverty that strains many vulnerable communities belonging to the country's agricultural sector. Certainly, the professed wisdom of the repeal is to drum up economic stimulus. One must ask, though, in whose favor this new freedom may ultimately play out, and at what cost and for whose expense such liberalization has truly come.

APPEARANCES OF COUNSEL

Rutillo B. Pasok for petitioners.
Tagaloguin & Tagaloguin Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the Amended Decision[2] dated May 10, 2019 of the Court of Appeals in CA-G.R. CV No. 04404-MIN, which granted respondent R.T. Dino Development Corporation's (R.T. Dino) motion for reconsideration and ultimately dismissed petitioners' complaint.

Antecedents

Spouses Dionisio and Consolatriz Duadua (Spouses Duadua) were granted a parcel of land under Homestead Patent No. V-24359

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[1] *Rollo*, pp. 6-48.

[2] Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justice Loida S. Posadas-Kahulugan and Associate Justice Florencio M. Mamauag, Jr., *id.* at 65-68.

covering a 49,889 square meter parcel of land located in Tacurong, Sultan Kudarat. On January 25, 1954, they were issued Original Certificate of Title (OCT) No. (V-2866) P-2220.[3]

On May 14, 1996, Spouses Duadua sold the land to respondent R.T. Dino Development Corporation for ₱200,000.00 in whose name Transfer Certificate of Title (TCT) No. 34211 was subsequently issued.[4]

On July 28, 1999, Spouses Duadua informed R.T. Dino of their intent to exercise their right to repurchase pursuant to Commonwealth Act 141, otherwise known as the Public Land Act. R.T. Dino declined. Thus, Spouses Duadua sued R.T. Dino to compel the latter to accept their offer of repurchase.[5]

In its answer, R.T. Dino argued that Spouses Duadua should not be allowed to repurchase the land because their real intent was not to retain the property within the family as provided under the Public Land Act, but to dispose of the same for a bigger profit coming from the Department of Public Works and Highways (DPWH) which had been offering compensation for the lots situated in the area. In any case, Spouses Duadua cannot repurchase the land for ₱200,000.00 only. While the deed of sale reflected a purchase price of ₱200,000.00 only, it actually paid Spouses Duadua ₱1,100,000.00, Besides, the land had already been mortgaged to Spouses Esteban Fernandez, Jr. and Rose Fernandez to secure its ₱3,000,000.00 loan. If Spouses Duadua truly desired to repurchase the land, they should pay it ₱3,000,000.00.[6]

The complaint was later amended to implead Spouses Fernandez and the DPWH as party defendants.[7]

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[3] *Id.* at 55.

[4] *Id.*

[5] *Id.*

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

[7] *Id.* at 56.

Ruling of the Regional Trial Court

After due proceedings, the Regional Trial Court, Branch 20, Tacurong City, by Judgment dated September 26, 2012, dismissed the complaint, *viz.*:

Wherefore, upon all the foregoing considerations, judgment is hereby rendered:

1. Dismissing the complaint as well as the counterclaim interposed by R.T. Dino Development Corporation and the cross claim and counterclaim by (S)pouses Dr. Esteban Fernandez, Jr. and Roselyn Fernandez for lack of merit;

2. Declaring the mortgage over Lot 643, Buluan Pls-73 between R.T. Dino Development Corporation and Dr. Esteban Fernandez, Jr. void;

3. Ordering R.T. Dino Development Corporation to pay additional capital gains and documentary stamp taxes based on the difference between ₱1,100,000.00 and ₱200,000.00 and to show compliance hereof within thirty (30) days from finality of judgment.

No costs.

IT IS SO ORDERED.[8]

The trial court held that Spouses Duadua were not land destitutes as to entitle them to homestead patent under the Public Land Act since they owned another parcel of land other than subject land. If they were allowed to repurchase subject land, they would altogether own more than five (5) hectares, which is above the retention limit under Republic Act 6657 (RA 6657) otherwise known as the Comprehensive Agrarian Reform Law of 1988 (CARL). In any event, Spouses Duadua failed to prove that the purpose of the proposed repurchase was for their home and cultivation.[9]

In its Order dated June 21, 2013, the trial court granted the respective Motions for Substitution dated October 15, 2012

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[8] *Id.* at 56-57.

[9] *Id.* at 56.

and December 22, 2012 filed by petitioners heirs Gliceria Duadua Tomboc, Dionisio P. Duadua, Jr., Bienvenido P. Duadua, Paul P. Duadua, Samuel P. Duadua, and Moises P. Duadua.[10]

In yet another Order dated September 3, 2015, the trial court denied petitioners' subsequent motion for reconsideration of the Judgment dated September 26, 2012.[11]

Ruling of the Court of Appeals

On petitioners' appeal, the Court of Appeals reversed under its Decision[12] dated August 30, 2018, *viz.*:

> **ACCORDINGLY**, the instant appeal is **GRANTED**. The Judgment dated September 26, 2012 of the Regional Trial Court, Branch 20, Tacurong City in Civil Case No. 562 is **SET ASIDE**. R.T. Dino Development Corporation is ordered to allow the heirs of spouses Dionisio and Consolatriz Duadua to repurchase the homestead lot identified as Lot No. 643, Buluan, Pls 73 covered by TCT No. 34211.
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> Further, R.T. Dino Development Corporation is ordered to pay additional capital gains and documentary stamp taxes, including the corresponding surcharge and interest, based on the difference between Php1,100,000.00 and Php200,000.00. In consequence thereto, R.T. Dino Development Corporation must show compliance hereof within thirty (30) days from finality of this Decision.
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> SO ORDERED.[13]

The Court of Appeals held that the Public Land Act expressly gives the homesteader or his or her heirs the right to repurchase the homestead land within five (5) years from conveyance. It noted that R.T. Dino failed to prove its allegation that the repurchase sought was only for profit. It did not even present

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[10] *Id.* at 57.

[11] *Id.*

[12] Penned by Associate Justice Tita Marilyn Payoyo-Villordon and concurred in by Associate Justice Romulo V. Borja and Associate Justice Oscar V. Badelles, *id.* at 54-63.

[13] *Id.* at 62-63.

the purported offer of compensation from the DPWH. Assuming there was really such an offer, only 6,750 square meters out of the 49,889 square meters shall be affected by the government's proposed project. This meant that should Spouses Duadua decide at all to sell to DPWH, the profit, if any, would be very negligible. The fact, too, that Spouses Duadua had acquired another land after the homestead grant did not disqualify them from exercising their right to repurchase under the law. There is nothing in the Public Land Act which proscribes homesteaders from exercising their right to repurchase on this ground. More, the trial court erred when it applied the five (5) hectare retention limit under RA 6657 considering that said law does not apply to homestead lands granted prior to its enactment.[14]

Through its assailed Amended Decision[15] dated May 10, 2019, however, the Court of Appeals granted R.T. Dino's motion for reconsideration[16] and dismissed petitioners' appeal, *viz.*:

WHEREFORE, in view of the foregoing, R.T. Dino Development Corporation's Motion for Reconsideration is hereby GRANTED. The Decision of this Court dated August 30, 2018 is hereby REVERSED and SET ASIDE and a new one be entered DISMISSING the appeal by the Spouses Dionisio, Sr. and Consolatriz de Peralta Duadua as substituted by their heirs. The Decision dated September 26, 2012 of the Regional Trial Court, 12th Judicial Region, Branch 20, Tacurong City in Civil Case No. 562 for Repurchase under Section 119 of Commonwealth Act No. 141, as Amended with Damages and Attorney's Fees, Injunction with Prayer for Issuance of a Writ of Temporary Restraining Order, is hereby REINSTATED and AFFIRMED.

SO ORDERED.[17]

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

[15] Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justice Loida S. Posadas-Kahulugan and Associate Justice Florencio M. Mamauag, Jr., *supra* note 2.

[16] *Id.* at 75-79.

[17] *Id.* at 67.

This time, the Court of Appeals held that petitioners' purpose in seeking to repurchase the land is only for sentimental reasons which does not fall within the purpose, spirit, and meaning of the Public Land Act, that is, to preserve and keep in the family of the homesteader the portion of public land granted by the State. Too, Spouses Duadua were allegedly no longer land destitutes. Petitioners themselves admitted that they are no longer staying on the land and have already found residence in another barangay.[18]

The Present Petition

Petitioners now seek affirmative relief from the Court and pray that the Amended Decision dated May 10, 2019 of the Court of Appeals be reversed and set aside.[19]

Petitioners assert that during their lifetime, their parents, Spouses Duadua, had no other lot aside from that one untitled lot located in San Emmanuel, Tacurong City. There is no law or jurisprudence which supports the Court of Appeals' conclusion that their parents were disqualified to repurchase the land because they were eventually able to also acquire an untitled lot.[20] What law and jurisprudence support is that Spouses Duadua, and they, as their parents' heirs, have the right to repurchase the homestead land.[21] There was even no showing that aside from this land, they own another parcel of land.[22]

Should they be allowed to repurchase the land, the price should be ₱200,000.00 as reflected in the deed of sale that their parents executed with R.T. Dino.[23] Also, contrary to R.T. Dino's claim, they should not be held liable for the ₱3,000,000.00 mortgage the former received from Spouses Fernandez.[24]

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[18] *Id.* at 67.

[19] *Supra* note 1.

[20] *Id.* at 24.

[21] *Id.* at 28-32.

[22] *Id.* at 33.

[23] *Id.* at 38.

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

In their Comment[25] dated October 21, 2019, respondents aver that the arguments raised by petitioners are mere rehash of the issues already raised before and ruled upon by the Court of Appeals.

Issues

1. Did the Court of Appeals err when it held that petitioners and their deceased parents had lost their right to repurchase the homestead land?

2. In the event that petitioners are allowed to repurchase the land, how much should they pay R.T. Dino?

Ruling

The homestead land here was awarded to Spouses Duadua under the Public Land Act. Section 119 states:

Section 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

As expressly ordained, in case of conveyance, the homesteader and his or her legal heirs may repurchase the land within five (5) years from conveyance.

Here, Spouses Duadua was granted subject the homestead land in the 1950s. They subsequently conveyed the land to R.T. Dino on May 14, 1996. Three (3) years later, they notified R.T. Dino of their intention to repurchase it.

Verily, Spouses Duadua invoked their right to repurchase within the prescribed five (5) year period. R.T. Dino, however, declined. The trial court sustained R.T. Dino's refusal on ground that: (a) Spouses Duadua had acquired another parcel of land in another barangay which supposedly removed them from the coverage of the Public Land Act; (b) allowing them to repurchase the land would have the effect of giving them more than the

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[25] *Id.* at 142-145.

five (5) hectares altogether, hence, beyond the retention limit under the CARL; and (c) they failed to show that the purpose of the intended repurchase was for home and cultivation.

The Court of Appeals, in its assailed Amended Decision dated May 10, 2019, affirmed on ground that: (a) petitioners have already found another residence in another barangay; (b) neither Spouses Duadua nor petitioners resided in nor cultivated the land; and (c) they seek to repurchase the land merely for sentimental reasons.

We grant the petition.

As cited, Section 119 of the Public Land Act gives the homesteader and his or her heirs the right to repurchase the land awarded him or her. The only condition is that the right to repurchase be exercised within five (5) years from conveyance. Spouses Duadua complied with this condition when on July 28, 1999, or just a little over three (3) years from conveyance on May 14, 1996, they gave notice to R.T. Dino of their intention to repurchase the land.

That Spouses Duadua had allegedly acquired another property in the meantime does not preclude them or their heirs from exercising their right to repurchase. This is not a disqualifying factor under the Public Land Act. In its original Decision dated August 30, 2018, the Court of Appeals itself aptly held, *viz.*:

> x x x Evidently, the law, itself, allows applicants to be granted a homestead lot so long as they do not own more than 24 hectares of land. Thus, the mere fact that (S)pouses Duadua were able to acquire another lot after they were granted a homestead cannot be a valid basis for the denial of their right to repurchase the subject lot. Moreover, if this Court would follow the ratiocination of the RTC, it would, in effect, mean that grantees are proscribed to progress in themselves by denying them of the property previously granted to them if they happen to acquire another property in (the meantime). Such interpretation is not only illogical, but also contrary to the purpose of CA 141, which is to alleviate the situation of the poor.[26]

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[26] *Id.* at 61.

In any event, the records are bereft of any document showing that aside from the homestead land, Spouses Duadua had actually acquired another property in their name. The only property mentioned in the records is their residence situated in another barangay, which itself was not shown to truly belong to them.[27] Suffice it to state that Consolatriz Duadua herself testified before the trial court that she and her husband had not acquired any other properties aside from the homestead land.[28] Respondent was unable to disprove this testimony.

At any rate, when Spouses Duadua sold the homestead land to R.T. Dino, they had to find another place to live in. This does not and should not at all bar them from exercising their right to repurchase under the law.

As for petitioners, there is also no showing that they own another piece of land apart from the homestead land. In fact, in their motion for reconsideration and motion to substitute heirs, petitioners attached certifications from the Office of the City Assessor of Tacurong City that they had no lands registered in their names.[29]

We now address the so-called "sentimental value" of the homestead land being harped upon by the Court of Appeals as unacceptable reason to allow Spouses Duadua to repurchase the land.

When the law grants a homestead holder of the right to repurchase the land awarded him or her, the State intends that the holder and his or her family keep the land as their home and their source of livelihood at the same time. The State recognizes not only the social and economic value of this small piece of land to the beneficiaries but in fact demands of them to give utmost importance to this grant that is meant precisely to give them quality life, to uphold their dignity, and to even out the gross inequalities in our society. If this is what sentimental

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[27] *Id.* at 67.

[28] *Id.* at 21.

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

value means for the Court of Appeals, so must it be. For sure, having this in petitioners' heart does not in any way disqualify them from exercising their right to repurchase under the law.

In any case, the plain intent of Section 119 of the Public Land Act is to give the homesteader or patentee every chance to preserve and keep in the family the land that the State has gratuitously given him or her as a reward for his or her labor in cleaning, developing, and cultivating it.[30] For the Court of Appeals then to peremptorily conclude that preserving and keeping the land in the family is not what petitioners had in mind is unfounded, if not totally speculative. At any rate, there is a sharp contradiction when on one hand, the Court of Appeals said petitioners' intention to repurchase was only impelled by sentimental reasons, and on the other hand, that petitioners were not impelled by any intention to preserve and keep the property in the family.

Be that as it may, the homestead grant was never intended to be used to serve the business interest of corporations or other artificial persons. They were meant to uplift the lives of small people like petitioners and their deceased parents by way of social justice. Between the business interest of R.T. Dino and the well-being and social amelioration of petitioners as the real beneficiaries of the Homestead Law, the latter prevails.

Thus, in ***Rural Bank of Davao City, Inc. v. The Honorable Court of Appeals, et al.***,[31] we emphasized that the conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the factors of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability.

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[30] *Development Bank of the Philippines v. Gagarani, et al.*, 587 Phil. 323, 328-329 (2008).

[31] 217 Phil. 554, 564-565 (1993), citing *Jocson vs. Soriano*, 45 Phil. 375, 378-79 (1923).

As for the repurchase price, petitioners insist they must only pay ₱200,000.00 as this is the purchase price reflected in their parents' deed of sale with R.T. Dino. The company, however, asserts that should petitioners be allowed to repurchase the land, they ought to pay at least ₱1,100,000.00, the supposed amount they actually paid to petitioners' parents or ₱3,000,000.00, the mortgage loan on the land which the company incurred from Spouses Fernandez.

We rule that the purchase price which petitioners ought to pay back to R.T. Dino is ₱1,100,000.00 the actual purchase price paid by R.T. Dino and received by Spouses Duadua. As noted by the Court of Appeals in its original Decision dated August 30, 2018, R.T. Dino offered in evidence receipts to prove this amount, receipt of which Spouses Duadua did not deny.[32] Indeed, for petitioners now to insist paying back the lesser amount of ₱200,000.00 would result in *their unjust enrichment*.

On this score, both the trial court and the Court of Appeals properly directed R.T. Dino to pay additional capital gains and documentary stamp taxes for the difference between the amount reflected on the deed of sale and the actual price it paid on the land, including surcharges, interest, and penalties. Notably, this directive has long become final and executory as R.T. Dino did not seek its reconsideration nor appeal therefrom.

With respect to the mortgage amount of ₱3,000,000.00, the same is exclusively between R.T. Dino and Spouses Fernandez. Neither petitioners nor their deceased parents were privies to this contract. Hence, there is no rhyme or reason for R.T. Dino to demand from them its payment.

All told, the Court of Appeals committed reversible error when it rendered its Amended Decision dated May 10, 2019.

ACCORDINGLY, the petition is **GRANTED**. The Amended Decision dated May 10, 2019 of the Court of Appeals in CA-G.R. CV No. 04404-MIN, is **REVERSED and SET ASIDE**.

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[32] *Id.* at 62.

Petitioners Heirs of Spouses Dionisio, Sr. and Consolatriz Duadua are declared to be rightfully entitled to repurchase the land covered by Original Certificate of Title (OCT) No. (V-2866) P-2220 (now TCT No. T-34211) from R.T. Dino Development Corporation. R.T. Dino Development Corporation is required to reconvey the land to petitioners Heirs of Spouses Dionisio, Sr. and Consolatriz Duadua upon payment by the latter of ₱1,100,000.00.

Further, R.T. Dino Development Corporation is ordered to pay the Bureau of Internal Revenue additional capital gains and documentary stamp taxes, including surcharge, interest, and penalties, based on the difference between ₱1,100,000.00 and ₱200,000.00. For this purpose, R.T. Dino Development Corporation must submit its compliance within thirty (30) days from finality of this Decision.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, Jr., and *Lopez, JJ.*, concur.

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in granting the petition, and upholding the petitioners' right to repurchase the land first granted to them *via* a homestead patent, with such right to repurchase being anchored on Section 119[1] of Commonwealth Act No. 141 (C.A. 141).[2]

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[1] Section 119, C.A. 141 states:

SECTION 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

[2] Otherwise known as THE PUBLIC LAND ACT OF 1936.

Rightly, since petitioners herein sold the subject parcel of land to respondent R.T. Dino Development Corporation in 1996, and thereafter expressed their desire to repurchase the same a little over three years after, the petitioners have complied with the sole condition under Section 119 that said repurchase be made within five years from date of conveyance.

However, I wish to broaden the context of the present petition by situating the same in the larger conversation that involves the recent pivotal and retroactive repeal by Republic Act No. 11231 (R.A. 11231), or the "Agricultural Free Patent Reform Act of 2019" of the former restrictions put in place by C.A. 141. R.A. 11231 expressly lifted all encumbrances and conditions from conveyance of homestead property, including the general right to repurchase as previously imposed under C.A. 141. The right to repurchase herein sought to be exercised by the petitioners is, therefore, but a vestige of the homestead structure that has undoubtedly come undone.

Most on point are Sections 3 and 4 of R.A. 11231 which provide:

> **Section 3.** Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, **shall not be subject to restrictions imposed under Sections 118, 119 and 121 thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions. Agricultural free patent shall now be considered as title in fee simple and shall not be subject to any restriction on encumbrance or alienation.** (Emphasis supplied.)
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> **Section 4.** This Act shall have retroactive effect and any restriction regarding acquisitions, encumbrances, conveyances, transfers, or dispositions imposed on agricultural free patents issued under Section 44 of Commonwealth Act No. 141, as amended, before the effectivity of this Act shall be removed and are hereby immediately lifted: ***Provided*****, That nothing in this Act shall affect the right of redemption under Section 119 of Commonwealth Act No. 141, as amended, for transactions made in good faith prior to the effectivity of this Act.** (Emphasis supplied.)

R.A. 11231 lifted the prohibition against the encumbrance or alienation of lands acquired under free patent, except if the

same is in favor of the government or any of its branches, within five years from the issuance of the patent or grant.[3] It also removed the condition for repurchase, where the applicant, his widow, or legal heirs can repurchase a land acquired under the free patent provisions within five years from the date of transfer or sale.[4] Finally, it did away with the limitation that except for solely commercial, industrial, educational, religious, charitable, or right of way purposes, and upon approval of the patentee and the Secretary of Department of Environment and Natural Resources, corporations, associations, or partnerships are forbidden from acquiring any property right, title or interest on free patent.

As it stands, the discarding of these circumscriptions left the agricultural free patent a title in fee simple, free of any restriction on its encumbrance or alienation. Further, since the repeal also applies retroactively, any prior defective disposition not included under the right of redemption in Section 119 is effectively cured, and any restrictions on the acquisitions, encumbrances, or dispositions concerning agricultural free patents issued prior to the enactment of R.A. 11231 are deemed lifted.

Prospectively, therefore, for *all* instances, from the date of promulgation of R.A. 11231, all lands covered by homestead patents are free from any and all encumbrances and conditions.

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[3] Section 118, C.A. 141 provides:

SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

[4] *Supra* note 1.

This easing of restriction, among others, was predicted to have a crucial impact on the viability and tradability of the country's farm lands, since the lifted restrictions cover an estimated 2.6 million parcels or 10% of all titled parcels in the Philippines.[5] This is also seen to invite anew potential land investments in the largely agricultural regions, and jumpstart income productivity of rural lands.[6]

On this score, however, it must be said that this repeal, although seen on the one hand as an advantageous liberalization for patentees in that they are now able to trade or sell their lands without the disincentive of the C.A. 141 restrictions, this is essentially an unmistakable unravelling and abandonment of the underlying safeguards of homesteads, and a ceding of any and all securities previously afforded to small farm owners who, otherwise and as is now the case, left vulnerable once more to the prospect of landlessness.

To recall, the Court has not been remiss in making salient the animating principle for homestead grants under C.A. 141, chief of which is the State's interest to ensure that underprivileged patentees are not easily divested of ownership over the lands they cultivated, and that they are provided the legal scaffolding to maintain financial independence in the face of shifting economic tides. In the case of *Heirs of Bajenting v. Bañez*:[7]

> As elucidated by this Court, the object of the provisions of Act 141, as amended, granting rights and privileges to patentees or homesteaders is to provide a house for each citizen where his family may settle and live beyond the reach of financial misfortune and to inculcate in the individuals the feelings of independence which are essential

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[5] Mari Chrys Pablo, *Making Agricultural Land More Bankable and Tradable*, The Asia Foundation, Coalitions for Change (CfC) Reform Story No. 13, citing Department of Environment and Natural Resources' estimate data (1986 to 2017); available at https://asiafoundation.org/wpcontent/uploads/2020/02/Philippines_CFCMaking-Agricultural-Land-More-Bankable-and-Tradeable.pdf

[6] *Id.*

[7] G.R. No. 166190, September 20, 2006, 502 SCRA 531.

to the maintenance of free institution. The State is called upon to ensure that the citizen shall not be divested of needs for support, and reclined to pauperism. The Court, likewise, emphasized that the purpose of such law is conservation of a family home in keeping with the policy of the State to foster families as the factors of society, and thus promote public welfare. The sentiment of patriotism and independence, the spirit of citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own house with a sense of its protection and durability. **It is intended to promote the spread of small land ownership and the preservation of public land grants in the names of the underprivileged for whose benefits they are specially intended and whose welfare is a special concern of the State.** The law is intended to commence ownership of lands acquired as homestead by the patentee or homesteader or his heirs.[8]

From the initial point of granting the homestead, the intent of preserving the patentee's ownership of the same is provided in no uncertain terms. Section 118 prohibits the sale or encumbrance of the homestead within five years from the issuance of the patent, unless in favor of the Government, or the offering of the same homestead for the satisfaction of any debt within the same period. The Court has steadily held that this prohibition is mandatory, and any alienation in violation thereof is considered *void ab initio*[9] as was pronounced in the case of *Arsenal v. Intermediate Appellate Court*, to wit:

The above provisions of law are clear and explicit. A contract which purports of alienate, transfer, convey or encumber any homestead within the prohibitory period of five years from the date of the issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory.[10]

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[8] *Id.* at 552-553. Emphasis supplied.

[9] *Arsenal v. Intermediate Appellate Court*, G.R. No. 66696, July 14, 1986, 143 SCRA 40, 54.

[10] *Id.* at 49, citing *De Los Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405.

The enforcement of this proscription is so strict, in fact, that any such alienation in favor of even the homesteader's own descendant is void, as in the case of *Gayapanao v. Intermediate Appellate Court*.[11] Here, the Court cautioned against the dangers of possible circumventions of this five-year ban:

It is dangerous precedent to allow the sale of a homestead during the five-year prohibition to anyone, even to the homesteader's own son or daughter. As aptly put by the petitioners, a clever homesteader who wants to circumvent the ban may simply sell the lot to his descendant and the latter after registering the same in his name would sell it to a third person. This way, public policy would not be subserved.

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x x x To hold valid the sale at bar would be to throw the door open to schemes and subterfuges which would defeat the law prohibiting the alienation of homestead within five (5) years from the issuance of the patent.[12]

More specifically with respect to the patentee's right to restore himself into ownership of the homestead, this Court explained in *Simeon v. Peña*[13] that C.A. 141 was configured in such a way that the homesteader or patentee gets every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor over it, and grant him the financial security in keeping with the noblest of public policies,[14] to wit:

"These homestead laws "x x x were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation [x x x] It [referring to Sec. 119] aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him."[15]

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[11] G.R. No. 68109, July 17, 1991, 199 SCRA 309.

[12] *Id.* at 314.

[13] G.R. No. L-29049, December 29, 1970, 36 SCRA 610.

[14] See also *Heirs of Bajenting v. Bañez, supra* note 7.

[15] *Simeon v. Peña, supra* note 13 at 618.

The Court has further held that the patentee's right to repurchase is jealously guarded, so that the same may not be waived,[16] and must be upheld even if the land sought to be repurchased has, since the disposition, been reclassified into a commercial zone.[17] The Court likewise held that the five-year period for redemption under Section 119 must prevail over other statutes that provide for a shorter redemption period, in order to favor more opportunities for restoration of the homestead to the patentee after a conveyance.[18] In the 1952 case of *Paras, Sr. v. Court of Appeals*,[19] this Court ruled that, in favor of obtaining a longer period for the patentee to be able to repurchase, the five-year period within which a homesteader or his widow or heirs may repurchase a homestead sold at public auction or foreclosure sale begins not at the date of the sale when merely a certificate is issued by the sheriff or other official, but rather on the day after the expiration of the period of repurchase.[20]

So carefully considered is the consistency of the right to repurchase *vis-à-vis* the underpinning policy of affording landholdings to many small owners that this Court even denied the right to repurchase when the same was motivated by a reason not in keeping with the homestead law policy. The case of *Capistrano v. Limcuando*[21] elucidates:

> However, it is important to stress that the ultimate objective of the law is **"to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace**

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[16] See *Rural Bank of Davao City, Inc. v. Court of Appeals*, G.R. No. 83992, January 27, 1993, 217 SCRA 554, 565.

[17] See *Spouses Alcuitas v. Villanueva*, G.R. No. 207964, September 16, 2015, 771 SCRA 1, 10-11.

[18] *Simeon v. Peña, supra* note 14 at 618.

[19] G.R. No. L-4091, May 28, 1952, 91 SCRA 389.

[20] *Id.* at 394-395. See also *Belisario v. Intermediate Appellate Court*, G.R. No. 73503, August 30, 1988, 165 SCRA 101 and *Philippine National Bank v. De Los Reyes*, G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

[21] G.R. No. 152413, February 13, 2009, 579 SCRA 176.

and order." Our prevailing jurisprudence requires that the motive of the patentee, his widow, or legal heirs in the exercise of their right to repurchase a land acquired through patent or grant must be consistent with the noble intent of the Public Land Act. We held in a number of cases that the right to repurchase of a patentee should fail if his underlying cause is contrary to everything that the Public Land Act stands for.[22]

To be sure, the five-year ban on alienation admits of a sole exception: the alienation is in favor of the Government or any of its branches, units or institutions. This exception created a mechanism where the State could recover by sale in its favor lands it had granted as homesteads so that it could turn around and redistribute these repurchased land to other patent applicants, and is rooted in the constitutionally enshrined regalian doctrine, as the Court ratiocinated in *Unciano v. Gorospe*:[23]

> The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found in the aforequoted provision. Rather, it is embodied in the regalian doctrine enshrined in the Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant. It is then that the land is segregated from the mass of public domain, converting it into private property.[24]

The jurisprudential history has consistently supported the wisdom of the State's foremost concern in preserving lands for agricultural use, and maintaining these lands in the hands of patentees who will develop these lands for agronomic purposes. The arch of interpreting and applying C.A. 141 has always leaned towards the goal of distributing and, in cases, redistributing

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[22] *Id.* at 188. Emphasis supplied.

[23] G.R. No. 221869, August 14, 2019.

[24] *Id*

the homesteads to qualified patent applicants, to serve the ends of uplifting communities through fair land use. The protection by restriction under C.A. 141 gave smaller landholders counterweight against mounting economic burdens under the sheer pressure of which their financial structures tended to collapse. This overarching inclusionary principle sought to ensure that homesteaders previously at the fringes of land ownership are invited into the framework of socio-economic invulnerability that owning and cultivating a piece of land, however modest, secures.

This is the spirit of the C.A. 141 that the sweeping repeal of R.A. 11231 has written off.

The lone exception from the blanket repeal by R.A. 11231 is the one which operates in favor of petitioners' right to repurchase. For although R.A. 11231 provides for retroactive effect to the lifting of restrictions, it nevertheless specially preserved and honored rights of redemption under Section 119 of C.A. 141, under the qualifying clause under Section 4 thereof, and exercised prior to R.A. 11231. As applied to petitioners' case, therefore, since they sought to exercise in good faith their right to repurchase the subject land pursuant to Section 119 in 1999, or nearly two decades prior to the effectivity of R.A. 11231, petitioners, under the qualifying clause of Section 4, R.A. 11231, are not barred from exercising the same.

Still, a more farsighted question needs to be asked, in consideration of all the other patentees who may wish to convey their homesteads in accordance with R.A. 11231. For demonstrably, the protective backbone of C.A. 141 rises and falls on the very proscriptions that R.A. 11231 removed. R.A. 11231 has taken out the safeguards that have been designed to preserve more humble landholders, often debt-strapped farmers, against the persistent hardships of low farm incomes, poor rural development, food insecurity, and abject poverty that strains many vulnerable communities belonging to the country's agricultural sector. Certainly, the professed wisdom of the repeal is to drum up economic stimulus. One must ask, though, in whose favor this new freedom may ultimately play out, and at what cost and for whose expense such liberalization has truly come.

SECOND DIVISION

[G.R. No. 248033. July 15, 2020]

PROVINCIAL GOVERNMENT OF CAVITE and PROVINCIAL TREASURER OF CAVITE, *petitioners, vs.* **CQM MANAGEMENT, INC., [as successor-in-interest of the Philippine Investment One (SPV-AMC), INC.],** *respondent.*

SYLLABUS

1. **TAXATION; LOCAL GOVERNMENT CODE (R.A. 7160); REAL PROPERTY TAX; LIABILITY FOR TAXES RESTS ON THE OWNER OR BENEFICIAL USER OF THE PROPERTY AT THE TIME THE TAX ACCRUES; PRINCIPLE, APPLIED. ––** In *National Power Corp. v. Province of Quezon, et al.,* the Court explained that the liability for taxes generally rests on the owner of the real property at the time the tax accrues as a necessary repercussion of exclusive dominion. However, personal liability for real property taxes may also expressly rest on the entity with the beneficial use of the real property. In either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. Here, as correctly pointed out by the CA, respondent was not yet the owner or entity with the actual or beneficial use of the building which was previously owned by Maxon (Maxon property) and the building which was previously owned by Ultimate (Ultimate property) during the years for which petitioners sought to collect real property taxes. Specifically, petitioners sought to collect from respondent real property taxes due on the Maxon property for the years 2000-2013 and on the Ultimate property for the years 1997-2013. However, respondent became the owner of the Maxon property and the Ultimate property only in March 2014, and August 2014, respectively. To impose the real property taxes on respondent, which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust.

2. **ID.; ID.; ID.; ID.; STIPULATION IN THE DEED OF ASSIGNMENT OR CONTRACTUAL ASSUMPTION OF OBLIGATION TO PAY REAL PROPERTY TAX, BY ITSELF, IS INSUFFICIENT TO MAKE ONE LIABLE FOR TAXES. —** Not even a stipulation in the Deed of Assignment that PI One, is selling, assigning and conveying in favor of respondent all rights, titles, obligations, benefits and interests in the Maxon Property will make respondent liable for the real property tax over the Maxon property. In *National Power Corp. v. Province of Quezon, et al.,* relying on the Court's pronouncement in *Testate Estate of Concordia T. Lim v. City of Manila*, the Court ruled that contractual assumption of the obligation to pay real property tax, by itself, is insufficient to make one liable for taxes. The contractual assumption of tax liability must be supplemented by an interest that the party assuming the liability had on the property; the person from whom payment is sought must have also acquired the beneficial use of the property taxed. In other words, he must have the use and possession of the property taxed. Given the foregoing, petitioners cannot conduct a tax delinquency sale of the Maxon and Ultimate properties which are now owned by respondent. To do so would effectively make respondent liable for the payment of real property taxes due on the Maxon property for the years 2000-2013 and on the Ultimate properties for the years 1997-2013 when it did not yet own or had actual or beneficial use of the properties. As the Court has discussed above, such is not only contrary to law, but is also unjust.

3. **ID.; THE SPECIAL ECONOMIC ZONE ACT OF 1995 (R.A. 7916), AS AMENDED BY R.A. 8748; PRIOR CONCURRENCE OF THE LOCAL GOVERNMENT UNIT IS NOT REQUIRED BEFORE RESPONDENT CAN AVAIL ITSELF OF THE EXEMPTION UNDER THE LAW; HAVING BEEN REGISTERED WITH THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), RESPONDENT IS EXEMPT FROM THE PAYMENT OF NATIONAL AND LOCAL TAXES INCLUDING REAL PROPERTY TAX ON THE SUBJECT PROPERTIES. —** As correctly ruled by the CA, there is nothing in Section 24 which requires prior concurrence from the local government unit before respondent can avail itself of the exemption provided under the law. In fact, under Section 35 of RA No. 7916, the only requirement

for business enterprises within a designated ECOZONE to avail themselves of all incentives and benefits provided for under RA 7916 is to register with the PEZA. This requirement was satisfied by respondent. Respondent's Registration and Lease Agreements with the PEZA which were cited by the CA in its Decision dated May 23, 2018 indicate that respondent was registered as an Ecozone Facilities Enterprise. x x x Significantly, in response to queries made by registered economic zone enterprises as to whether they are exempted from securing LGU Permits and from payment of local taxes, fees, licenses, *etc*., the PEZA issued Memorandum Circular No. 2004-024 which provides in part that "PEZA-registered economic zone enterprises availing of the 5% [gross income tax] incentive are exempted from payment of all national and *local* taxes, except real property tax on land owned by developers." In this case, there is nothing to indicate that respondent is a developer. Thus, considering RA 7916, as amended, its IRR, and Memorandum Circular No. 2004-024, it is evident that save for the payment of 5% gross income tax, respondent is exempt from the payment of national and local taxes including real property tax on the Maxon and Ultimate Properties.

4. **ID.; R.A. 7160; REAL PROPERTY TAX; UNPAID REAL PROPERTY TAXES CAN ONLY BE COLLECTED WITHIN FIVE (5) YEARS FROM THE DATE THEY BECOME DUE. —** Lastly, as correctly ruled by the CA, the collection of some of the unpaid real property taxes sought by petitioner already prescribed. Section 270 of RA 7160 provides that "[t]he basic real property tax x x x shall be collected within five (5) years from the date they become due," and that "[n]o action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period." Unfortunately, as discussed by the RTC and the CA, petitioners failed to collect the accrued real property taxes which date from as early as 1997.

APPEARANCES OF COUNSEL

Provincial Legal Office for petitioners.
AVB & Associates Law Office for respondent.

DECISION

INTING, *J*.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 23, 2018 and the Resolution[3] dated June 20, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107654. The CA affirmed the Decision[4] dated February 19, 2016 and the Resolution dated July 7, 2016 of Branch 65, Regional Trial Court (RTC), Makati City that enjoined the Provincial Government of Cavite and the Provincial Treasurer of Cavite from conducting a tax delinquency sale of the real properties of CQM Management, Inc.

The Facts

On November 25, 2014, CQM Management, Inc. (respondent) filed a petition for injunction with prayer for temporary restraining order and preliminary injunction against the Provincial Government of Cavite and the Provincial Treasurer of Cavite (collectively, petitioners), Maxon Systems Philippines, Inc., (Maxon), and Ultimate Electronic Components, Inc. (Ultimate) in connection with Maxon's and Ultimate's unpaid real property taxes and the impending tax delinquency sale of their properties.[5]

On December 1, 2004, Philippine Investment One (SPV-AMC) Inc. (PI One), a domestic corporation organized as a Special Purpose Vehicle by virtue of The Special Purpose Vehicle (SPV) Act of 2002 or the Republic Act No. (RA) 9182, acquired from Rizal Commercial Banking Corporation (RCBC), through a Deed

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[1] *Rollo*, pp. 8-27.

[2] *Id.* at 30-44; penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Ricardo R. Rosario and Ronaldo Roberto B. Martin, concurring.

[3] *Id.* at 28-29.

[4] *Id.* at 45-52; penned by Judge Edgardo M. Caldona.

[5] *Id.* at 45, 48-49.

of Assignment of even date, two non-performing loans—that of Maxon (Maxon loan) and Ultimate (Ultimate loan). The Maxon loan was secured by a real estate mortgage over a building (Maxon property), located at the Main Avenue, Philippine Economic Zone Authority (PEZA), Rosario, Cavite, containing an area of 17,466 square meters (sq.m.), and declared for tax purposes under Tax Declaration No. (TD) 17-009-01506. As of October 25, 2013, the outstanding obligation of Maxon to PI One stood at ₱30,000,000.00.[6]

On the other hand, the Ultimate loan was also secured by a real estate mortgage over a factory building (Ultimate property), likewise located at the PEZA, Rosario, Cavite, containing an area of 3,000 sq. m., and declared for tax purposes under TD 17-0009-03191. As of February 7, 2014, the outstanding loan obligation of Ultimate to PI One stood at ₱10,500,000.00.[7]

Thus, PI One tried to collect the obligations of Maxon and Ultimate, but the two companies failed to pay their obligation to PI One. Consequently, PI One filed petitions to foreclose the real estate mortgage of both Maxon and Ultimate. Subsequently, auction sales were conducted on the Maxon and Ultimate properties. The Maxon property was sold to PI One as the highest bidder; while the Ultimate property was sold to respondent. Subsequently, PI One sold all of of its rights over the Maxon property to respondent through a Deed of Assignment dated March 31, 2014. Thus, respondent became the new owner of both the Maxon and Ultimate properties.[8]

The problem arose when respondent started and tried to consolidate its tax declarations over the two properties after the lapse of the redemption periods. From the records of the Provincial Treasurer of Cavite, Maxon and Ultimate have unpaid real property taxes in the following amounts: (1) Maxon — ₱15,888,089.09 (for the years 2000-2013); and (2) Ultimate

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[6] *Id.* at 47.

[7] *Id.*

[8] *Id.* at 47-48.

— ₱6,238,407.76 (for the years 1997-2013). Because of the unpaid real property taxes, respondent could not obtain the necessary tax clearance from petitioners in order to transfer the TDs over the Maxon and Ultimate properties under its name. Worse, the Provincial Treasurer of Cavite issued a tax assessment and a warrant of levy against Maxon and Ultimate after having declared the properties as delinquent. It also set the same for public auction on December 10, 2014, in order to satisfy the unpaid real property taxes assessed against them. However, the scheduled auction did not push through as the RTC issued a timely preliminary writ of injunction enjoining the prospective sale.[9]

The RTC Ruling

On February 19, 2016, the RTC rendered its Decision[10] in favor of respondent. The RTC ruled that respondent is not liable for the real property tax over its properties as it is exempt under Section 24[11] of RA 7916,[12] as amended by RA 8748, as well as on equity consideration arising from laches and estoppel. It ruled that the Maxon and Ultimate properties which are located in a special economic zone under the PEZA in Cavite are exempt from any local or national tax, save for a 5% tax on their gross income. Thus, the RTC made permanent the writ of injunction which it earlier issued.[13]

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[9] *Id.* at 48.

[10] *Id.* at 45-52.

[11] Section 24 of Republic Act No. (RA) 7916 provides:

SEC. 24. *Exemption from National and Local Taxes*. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

[12] The Special Economic Zone Act of 1995.

[13] *Rollo*, pp. 50-52.

Petitioners filed a motion for reconsideration, but the RTC denied it in its Resolution dated July 7, 2016.[14]

The CA Ruling

In its Decision[15] dated May 23, 2018, the CA denied the petition.

The CA ruled that respondent was neither the owner nor the entity with the actual or beneficial use or possession of the pieces of real property for which real property taxes for the taxable years 2000-2013 (Maxon property) and 1997-2013 (Ultimate property) were sought by petitioner. It explained that respondent became the owner of the Ultimate property only upon the expiration of the three-month redemption period which was in August, 2014. Respondent also became the absolute owner of Maxon only when PI One assigned its right over the realty following the expiration of the three-month redemption period in March, 2014. Thus, it would be incongruous to impose a legal obligation upon respondent to pay the accrued realty taxes of the properties considering that respondent was not in possession thereof. Further, inasmuch as respondent was not the owner nor did it have actual or beneficial use or possession of the subject properties at the time of accrual of the taxes sought to be collected, its right to file a protest under the Local Government Code was contrary to petitioners' perception, non-existent.[16]

The CA also ruled that the properties involved were exempt from real estate taxation pursuant to Section 24 of RA 7916, as amended. Moreover, the provisions of RA 7916 were mute as to any requirement of prior concurrence from the local government unit involved before respondent can avail itself of the tax exemption provided under the law. Instead,

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[14] *Id.* at 34.

[15] *Id.* at 30-44.

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

Section 35[17] of RA 7916 required business enterprises within a designated ecozone to register with PEZA in order to avail themselves of the incentives and benefits under RA 7916. Such requirement was demonstrated by respondent's Registration and Lease Agreements with PEZA.[18]

The CA further ruled that some of the unpaid realty taxes sought to be collected by the Provincial Government of Cavite already prescribed and can no longer be collected under Section 270 of RA 7160, also known as the Local Government Code, which provides that the basic real property tax shall be collected within five years from the date they become due and that no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. Here, Maxon had been delinquent in the payment of its realty tax since 2000, while Ultimate failed to pay realty taxes since as early as 1997. Petitioners failed to offer any plausible reason for their failure to collect the accrued real property taxes.[19]

The CA furthermore ruled that petitioners are barred by laches and estoppel, substantial justice, and fair play from collecting the real property taxes due on the properties previously owned by Maxon and Ultimate.[20]

Lastly, the CA ruled that respondent sufficiently established its right to the issuance of a permanent injunction against petitioners. It explained that as the new owner, respondent had a clear right over the properties and that there was a clear violation of such right in the threatened auction sale of the properties by the Provincial Treasurer of Cavite for the unpaid realty taxes

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[17] Section 35 of RA 7916 provides:

SECTION 35. *Registration of Business Enterprises*.— Business enterprises within a designated ECOZONE shall register with the PEZA to avail of all incentives and benefits provided for in this Act.

[18] *Rollo*, pp. 40-41.

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

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

thereon. Moreover, irreparable damage would be caused to respondent if the auction sale of the properties will proceed.[21]

Hence, the petition.

The Courts Ruling

The Court denies the petition for failure of petitioners to show that the CA committed any reversible error in dismissing its appeal.

The CA is correct in denying petitioners' appeal and in effect, affirming the ruling of the RTC which permanently enjoined petitioners from conducting tax delinquency sale over respondent's properties which are located at the PEZA, Rosario, Cavite.

In *National Power Corp. v. Province of Quezon, et al.*,[22] the Court explained that the liability for taxes generally rests on the owner of the real property at the time the tax accrues as a necessary repercussion of exclusive dominion.[23] However, personal liability for real property taxes may also expressly rest on the entity with the beneficial use of the real property.[24] In either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.[25]

Here, as correctly pointed out by the CA, respondent was not yet the owner or entity with the actual or beneficial use of

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[21] *Id.* at 43-44.

[22] 610 Phil. 456 (2009).

[23] *Id.* at 467, citing *City of Baguio v. Busuego*, 188 Phil. 218, 223-224 (1980) and *Meralco v. Barlis*, 477 Phil. 12, 37 (2004).

[24] *Id.*, citing *Republic of the Philippines v. City of Kidapawan*, 513 Phil. 440, 452 (2005), citing Vitug and Acosta, *Tax Law and Jurisprudence* (2000 ed.), p. 490.

[25] *Id.* at 467-468, citing *Testate Estate of Concordia T. Lim v. City of Manila*, 261 Phil. 602, 607 (1990).

the building which was previously owned by Maxon (Maxon property) and the building which was previously owned by Ultimate (Ultimate property) during the years for which petitioners sought to collect real property taxes. Specifically, petitioners sought to collect from respondent real property taxes due on the Maxon property for the years 2000-2013 and on the Ultimate property for the years 1997-2013. However, respondent became the owner of the Maxon property and the Ultimate property only in March 2014, and August 2014, respectively. To impose the real property taxes on respondent, which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust.[26]

Not even a stipulation in the Deed of Assignment that PI One. is selling, assigning and conveying in favor of respondent all rights, titles, obligations, benefits and interests in the Maxon Property will make respondent liable for the real property tax over the Maxon property. In *National Power Corp. v. Province of Quezon, et al.*,[27] relying on the Court's pronouncement in *Testate Estate of Concordia T. Lim v. City of Manila*,[28] the Court ruled that contractual assumption of the obligation to pay real property tax, by itself, is insufficient to make one liable for taxes.[29] The contractual assumption of tax liability must be supplemented by an interest that the party assuming the liability had on the property; the person from whom payment is sought must have also acquired the beneficial use of the property taxed.[30] In other words, he must have the use and possession of the property.[31]

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[26] *Id.*

[27] *National Power Commission v. Province of Quezon, supra* note 22. See also *National Power Corp. v. Province of Quezon, et al.*, 624 Phil. 738 (2010).

[28] 261 Phil. 602 (1990).

[29] *National Power Commission v. Province of Quezon, supra* note 22 at 471; See also *National Power Corp. v. Province of Quezon, et al., supra* note 27 at 745.

[30] *Id.*

[31] *Id.*

Given the foregoing, petitioners cannot conduct a tax delinquency sale of the Maxon and Ultimate properties which are now owned by respondent. To do so would effectively make respondent liable for the payment of real property taxes due on the Maxon property for the years 2000-2013 and on the Ultimate properties for the years 1997-2013 when it did not yet own or had actual or beneficial use of the properties. As the Court has discussed above, such is not only contrary to law, but is also unjust.

Parenthetically, respondent is exempt from paying real property taxes over the Maxon and Ultimate properties from the time it had acquired ownership and/or actual or beneficial use of the properties pursuant to Section 24 of RA 7916, as amended by RA 8748, to wit:

> SEC. 24. *Exemption from National and Local Taxes*. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

As correctly ruled by the CA, there is nothing in Section 24 which requires prior concurrence from the local government unit before respondent can avail itself of the exemption provided under the law. In fact, under Section 35 of RA No. 7916, the only requirement for business enterprises within a designated ECOZONE to avail themselves of all incentives and benefits provided for under RA 7916 is to register with the PEZA. This requirement was satisified by respondent.

Respondent's Registration and Lease Agreements with the PEZA which were cited by the CA in its Decision dated May 23, 2018 indicate that respondent was registered as an Ecozone

Facilities Enterprise.[32] Section 2, Rule XVI, Part VII of the Implementing Rules and Regulations (IRR) of RA 7916 provides for the incentives of an Ecozone Facilities Enterprise, to wit:

> SECTION 2. *ECOZONE Facilities, Utilities and Tourism Enterprises*. — ECOZONE Facilities, Utilities and Tourism Enterprises shall be entitled to the following incentives:
>
> *a.* *Exemption from national and local taxes and lieu thereof payment of a special tax rate of jive percent (5%) on gross income in accordance with Section 1(A) of Rule XIV and Rule XX of these Rules*;
>
> b. Additional Deduction for Training Expenses — The same incentives as provided for under Section 1(B) of Rule XIV of these Rules shall also apply to ECOZONE Facilities, Utilities and Tourism Enterprises;
>
> c. Incentives provided under R.A. 6957 as amended by R.A. 7718, otherwise known as the Build Operate and Transfer Law, subject to such conditions as may be prescribed by the Board; and
>
> d. Other incentives available under the Code, as may be determined by the Board subject to the conditions provided under Sections 3 and 5 of Rule XIII of these Rules. (Italics supplied.)

Significantly, in response to queries made by registered economic zone enterprises as to whether they are exempted from securing LGU Permits and from payment of local taxes, fees, licenses, *etc*., the PEZA issued Memorandum Circular No. 2004-024 which provides in part that "PEZA-registered economic zone enterprises availing of the 5% [gross income tax] incentive are exempted from payment of all national and *local* taxes, except real property tax on land owned by developers."

In this case, there is nothing to indicate that respondent is a developer. Thus, considering RA 7916, as amended, its IRR,

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[32] *Rollo*, p. 41.

and Memorandum Circular No. 2004-024, it is evident that save for the payment of 5% gross income tax, respondent is exempt from the payment of national and local taxes including real property tax on the Maxon and Ultimate Properties.

Lastly, as correctly ruled by the CA, the collection of some of the unpaid real property taxes sought by petitioner already prescribed. Section 270 of RA 7160 provides that "[t]he basic real property tax x x x shall be collected within five (5) years from the date they become due," and that "[n]o action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period." Unfortunately, as discussed by the RTC and the CA, petitioners failed to collect the accrued real property taxes which date from as early as 1997.

WHEREFORE, the Petition is **DENIED**. The Decision dated May 23, 2018 and the Resolution dated June 20, 2019 of the Court of Appeals in CA-G.R. CV No. 107654 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Delos Santos*, and *Gaerlan*,* *JJ.*, concur.

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* Designated as additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[A.C. No. 8559. July 27, 2020]

SUSANA G. DE GUZMAN, *complainant*, *vs.* **ATTYS. FEDERICO T. VENZON and GLENN B. PALUBON,** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; A NOTARIZED DOCUMENT IS, BY LAW, ENTITLED TO FULL FAITH AND CREDIT UPON ITS FACE; THUS, A NOTARY PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF NOTARIAL DUTIES; OTHERWISE, THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF A NOTARIZED DOCUMENT WOULD BE UNDERMINED. —** It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined." To this end, the 2004 Rules on Notarial Practice (2004 Notarial Rules) impose on duly-commissioned notaries public the duty and obligation of ensuring the sanctity of notarized documents by, *inter alia*: (*a*) performing a notarial act only if the person involved as signatory to the document or instrument is in his/her personal presence at the time of notarization; and (*b*) requiring the person having said document or instrument notarized to produce a competent evidence of identity to ensure that he/she is indeed the one who executed the same. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

2. **ID.; ID.; ID.; A BREACH OF THE 2004 NOTARIAL RULES CONSTITUTES A VIOLATION OF CANON 1 AND RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER WHO IS FOUND TO BE REMISS IN HIS FUNCTIONS AS A NOTARY PUBLIC IS CONSIDERED TO HAVE VIOLATED HIS OATH AS A LAWYER, AS HE DOES NOT ONLY FAIL TO FULFILL HIS SOLEMN OATH OF UPHOLDING AND OBEYING THE LAW AND ITS LEGAL PROCESSES, BUT HE ALSO COMMITS AN ACT OF FALSEHOOD AND ENGAGES IN AN UNLAWFUL, DISHONEST, AND DECEITFUL CONDUCT. —** [A]tty. Venzon himself admitted that on the date alluded to by complainant, he indeed notarized a document denominated as a *Sinumpaang Salaysay* which was brought to him by an elderly couple, and that he no longer required the presentation of any competent evidence of their identities due to their age. As a lawyer commissioned as a notary public, Atty. Venzon was mandated to exercise the function of his office and must have observed with utmost care the basic formalities of his office and requisites in the performance of his duties. When Atty. Venzon affixed his signature and notarial seal on the *Sinumpaang Salaysay*, he certified that the party purportedly executing the same, *i.e*., herein complainant, personally appeared before him, and attested to the truth and veracity of its contents- even if it appears that it was not complainant who had the document notarized before him. Verily, such conduct on Atty. Venzon's part was fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that the courts and the public accord on notarized documents. Hence, it is only proper that Atty. Venzon be held administratively liable therefor. In this regard, it is well to point out that in the realm of legal ethics, a breach of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR) – particularly, Canon 1 and Rule 1.01 thereof – considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well. He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.

3. **ID.; ID.; ID.; ID.; PENALTIES OF IMMEDIATE REVOCATION OF THE NOTARIAL COMMISSION,**

DISQUALIFICATION FROM BEING COMMISSIONED AS NOTARY PUBLIC FOR A PERIOD OF TWO (2) YEARS, AND SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS, IMPOSED UPON A NOTARY PUBLIC WHO NOTARIZES DOCUMENTS WITHOUT THE PRESENCE OF THE EXECUTING PARTIES.— As Atty. Venzon's administrative liability has been established by the required threshold of evidence, the Court now determines the appropriate penalty to be imposed on him. In the cases of *Malvar v. Baleros, Ko v. Uy-Lampasa, Ocampo-Ingcoco v. Yrreverre, Jr.,* therein respondent lawyers-notaries public were all found guilty of notarizing documents without the presence of the executing parties, and thus, were uniformly meted with the penalties of immediate revocation of their notarial commissions, disqualification from being commissioned as notaries public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months. Guided by the foregoing pronouncements, the Court hereby metes the same penalties to Atty. Venzon, as correctly recommended by the IBP Board of Governors.

APPEARANCES OF COUNSEL

Leah Christine F. Jimenez for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the administrative Complaint/ Petition[1] dated December 16, 2009 filed by complainant Susana G. De Guzman (complainant) seeking the disbarment of respondents Atty. Federico T. Venzon (Atty. Venzon) and Atty. Glenn B. Palubon (Atty. Palubon; collectively, respondents).

The Facts

The complainant alleged that she was the registered owner in fee simple of a 13,225-square meter parcel of land located

[1] *Rollo*, pp. 1-4.

at Bulualto, San Miguel, Bulacan, covered by TCT EP No. 674420[2] (subject land). On November 17, 2005, Atty. Venzon notarized a *Sinumpaang Salaysay*[3] purportedly executed by complainant waiving her rights over the subject land. Using said document, the siblings Hernando L. Santos and Imelda Santos-Garma (Santos Siblings), through the assistance of Atty. Palubon, instituted DARAB Case. No. DCN R-03-02-2288'05 for the cancellation of complainant's title to the subject land (DARAB Case), which was eventually resolved against complainant, thus, resulting in the loss of her land. Aggrieved, complainant filed the instant Complaint/Petition against respondent. Verily, complainants ascribe malpractice on the part of respondents, in that: (*a*) Atty. Venzon notarized the *Sinumpaang Salaysay* without requiring any competent evidence of identity from the affiants; and (*b*) Atty. Palubon knowingly used the fraudulent document in the DARAB Case, thereby causing the loss of her propriety interests over her own land.[4]

In defense, Atty. Venzon recalled that on the date alluded to by complainant, an elderly couple appeared before him to have a *Sinumpaang Salaysay* notarized, and that he no longer required any competent evidence of identity considering their ages. Nonetheless, he maintained that his act of notarization was done according to law and in good faith.[5] For his part, Atty. Palubon denied being the Santos Siblings' counsel on record in the DARAB Case, averring that he only began representing the Santos Siblings when complainant filed a criminal case against them in connection with the purportedly falsified *Sinumpaang Salaysay*.[6] Further, both respondents similarly pointed out that

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

[3] *Id.* at 7.

[4] See *id.* at 1-4 and 178-179.

[5] See Atty. Venzon's Comment dated June 7, 2010; *id.* at 31-41. See also *id.* at 179.

[6] See Atty. Palubon's Comment dated June 4, 2010; *id.* at 65-70. See also *id.* at 179.

the DARAB Case was resolved not solely on the basis of the *Sinumpaang Salaysay*, but on other evidence on record as well.[7]

The IBP's Report and Recommendation

In a Report and Recommendation[8] dated June 11, 2013 the Integrated Bar of the Philippines (IBP) Investigating Commissioner recommended that Atty. Venzon be suspended as a notary public for a period of six (6) months, while the complaint be dismissed as against Atty. Palubon.[9]

The IBP Investigating Commissioner found that Atty. Venzon committed various irregularities in notarizing the *Sinumpaang Salaysay*, such as: (*a*) simply executing a Jurat and not an Acknowledgement, considering that the document involved a transfer of real rights over a property; and (*b*) not requiring any competent evidence of identity from those who appeared before him to have the said document notarized. As such, he must be held administratively liable therefor.[10]

On the other hand, the IBP Investigating Commissioner found no substantial evidence to hold Atty. Palubon administratively liable, as the evidence on record patently shows that he was not the Santos Siblings' counsel of record in the DARAB Case they instituted against complainant. Neither was complainant able to show that Atty. Palubon was any way involved in such case. Hence, it was recommended that the administrative complaint be dismissed as against him.[11]

In a Resolution[12] dated August 8, 2014, the IBP Board of Governors adopted and approved the Report and Recommendation

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[7] See *id.* at 180.

[8] *Id.* at 178-187. Penned by IBP Investigating Commissioner Mario V. Andres.

[9] See *id.* at 186-187.

[10] See *id.* at 181-185.

[11] See *id.* at 185-186.

[12] See Notice of Resolution in Resolution No. XXI-2014-384 signed by National Secretary Nasser A. Marohomsalic; *id.* at 177, including dorsal portion.

of the IBP Investigating Commissioner. However, upon complainant's motion for reconsideration,[13] the IBP Board of Governors issued another Resolution[14] dated June 6, 2015 recommending that the following penalties be meted on Atty. Venzon: (*a*) the immediate revocation of his notarial commission, if presently commissioned; (*b*) disqualification from being commissioned as a notary public for a period of two (2) years; and (*c*) suspension from the practice of law for a period of six (6) months. Aggrieved, Atty. Venzon moved for reconsideration but the same was denied by the IBP Board of Governors in a Resolution[15] dated October 28, 2017. As per the case records, no petition for review has been filed as of the present time.[16]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondents should be held administratively liable.

The Court's Ruling

The Court concurs with the findings and recommendations of the IBP to impose administrative liability on Atty. Venzon and to dismiss the complaint as against Atty. Palubon.

It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of notarial duties; otherwise,

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[13] Dated March 2, 2015; *id.* at 188-191.

[14] See Notice of Resolution in Resolution No. XXI-2015-464; *id.* at 217-218.

[15] See Notice of Resolution signed by National Secretary Patricia-Ann T. Prodigalidad; *id.* at 251.

[16] See Report for Agenda dated February 20, 2020 signed by Assistant Bar Confidant Amor P. Entila; *id.* at 248.

the public's confidence in the integrity of a notarized document would be undermined."[17] To this end, the 2004 Rules on Notarial Practice (2004 Notarial Rules) impose on duly-commissioned notaries public the duty and obligation of ensuring the sanctity of notarized documents by, *inter alia*: (*a*) performing a notarial act only if the person involved as signatory to the document or instrument is in his/her personal presence at the time of notarization;[18] and (*b*) requiring the person having said document or instrument notarized to produce a competent evidence of identity to ensure that he/she is indeed the one who executed the same.[19] The purpose of these requirements is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[20]

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[17] *Triol v. Atty. Agcaoili*, A.C. No. 12011, June 26, 2018, citing *Vda. de Miller v. Miranda*, 772 Phil. 449, 455 (2015).

[18] Section 2 (b), Rule IV of the 2004 Notarial Rules reads:

Section 2. *Prohibitions*. — x x x

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

[19] See Section 12, Rule II of the 2004 Notarial Rules, which reads:

Section 12. Competent Evidence of Identity. — The phrase "competent evidence of identity" refers to the identification of an individual based on:

a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[20] *Triol v. Atty. Agcaoili, supra.*

In this case, Atty. Venzon himself admitted that on the date alluded to by complainant, he indeed notarized a document denominated as a *Sinumpaang Salaysay* which was brought to him by an elderly couple, and that he no longer required the presentation of any competent evidence of their identities due to their age.[21] As a lawyer commissioned as a notary public, Atty. Venzon was mandated to exercise the function of his office and must have observed with utmost care the basic formalities of his office and requisites in the performance of his duties.[22] When Atty. Venzon affixed his signature and notarial seal on the *Sinumpaang Salaysay*, he certified that the party purportedly executing the same, *i.e.*, herein complainant, personally appeared before him, and attested to the truth and veracity of its contents — even if it appears that it was not complainant who had the document notarized before him. Verily, such conduct on Atty. Venzon's part was fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that the courts and the public accord on notarized documents.[23] Hence, it is only proper that Atty. Venzon be held administratively liable therefor.

In this regard, it is well to point out that in the realm of legal ethics, a breach of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR) — particularly, Canon 1 and Rule 1.01[24] thereof — considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well. He does not only fail to fulfill his solemn oath

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[21] See Atty. Venzon's Comment dated June 7, 2010; *id.* at 31-41. See also *id.* at 179.

[22] See *Ferguson v. Atty. Ramos*, 808 Phil. 777 (2017).

[23] See *id.*

[24] Canon 1 and Rule 1.01 of the CPR respectively reads:

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

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

of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.[25]

As Atty. Venzon's administrative liability has been established by the required threshold of evidence, the Court now determines the appropriate penalty to be imposed on him. In the cases of *Malvar v. Baleros*,[26] *Ko v. Uy-Lampasa*,[27] *Ocampo-Ingcoco v. Yrreverre, Jr.*,[28] therein respondent lawyers-notaries public were all found guilty of notarizing documents without the presence of the executing parties, and thus, were uniformly meted with the penalties of immediate revocation of their notarial commissions, disqualification from being commissioned as notaries public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months. Guided by the foregoing pronouncements, the Court hereby metes the same penalties to Atty. Venzon, as correctly recommended by the IBP Board of Governors.

Finally, suffice it to say that the IBP correctly dismissed the complaint as against Atty. Palubon for lack of evidence.

WHEREFORE, the Court finds respondent Atty. Federico T. Venzon **GUILTY** of violating the 2004 Rules on Notarial Practice, and Canon 1 and Rule 1.01 of the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for six (6) months; **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years; and **REVOKES** his incumbent commission as a notary public, if any; and, further, he is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

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[25] *Triol v. Atty. Agcaoili, supra.*

[26] 807 Phil. 16 (2017).

[27] See A.C. No. 11584, March 6, 2019.

[28] 458 Phil. 803 (2003).

The suspension in the practice of law, the prohibition from being commissioned as notary public, and the revocation of his notarial commission, if any, shall take effect immediately upon receipt of this Decision by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all courts in the country.

Finally, the instant administrative complaint is **DISMISSED** as against Atty. Glenn B. Palubon for insufficiency of evidence.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Baltazar-Padilla, JJ.*, concur.

SECOND DIVISION

[A.M. No. 2017-11-SC. July 27, 2020]

RE: EMPLOYEES INCURRING HABITUAL TARDINESS AND UNDERTIME IN THE FIRST SEMESTER OF 2017

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT OFFICIALS AND EMPLOYEES ARE AT ALL TIMES BEHOOVED TO

STRICTLY OBSERVE OFFICIAL TIME. —The Constitution provides that public office is a public trust. Hence, public officials and employees must see to it that they follow the Civil Service Law and Rules. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. The Supreme Court has consistently emphasized in Administrative Circular No. 1-99 the need for Court officials and employees to "strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible." In Administrative Circular No. 2-99, *We* stressed that "Absenteeism and tardiness, even if such do not qualify as 'habitual' or 'frequent' under the CSC Memorandum Circular No. 4, Series of 1991, shall be dealt with severely x x x."

2. **ID.; ID.; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CLASSIFICATION OF OFFENSES; GRAVE OFFENSES; FREQUENT UNAUTHORIZED ABSENCES (HABITUAL ABSENTEEISM); PENALTY. —** Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) provides for the classification of offenses. Administrative offenses with corresponding penalties are classified into grave, less grave, and light, depending on their gravity or depravity and effects on the government service. Section 50(B)(5), Rule 10 of the 2017 RACCS categorizes Frequent Unauthorized Absences (Habitual Absenteeism) as a grave offense and shall be punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

3. **ID.; ID.; ID.; ID.; LIGHT OFFENSES; HABITUAL TARDINESS; PENALTY. —** [U]nder Section 50(F), Rule 10 of the 2017 RACCS, Habitual Tardiness is considered as a light offense. It is penalized as follows: a. First Offense – Reprimand; b. Second Offense – Suspension for one (1) to thirty (30) days; and c. Third Offense – Dismissal from the service.

4. **ID.; ID.; ID.; ID.; LESS GRAVE OFFENSES; SIMPLE MISCONDUCT; PENALTY. —** Under Section 50 (D)(2), Rule

10 of the 2017 RACCS, simple misconduct is categorized as a less grave offense. Less grave offenses are punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

5. **ID.; ID.; ID.; GRANTS THE DISCIPLINING AUTHORITY THE DISCRETION TO CONSIDER MITIGATING AND AGGRAVATING CIRCUMSTANCES IN THE IMPOSITION OF THE PROPER PENALTY. —** Section 53 of the RACCS grants the disciplining authority the discretion to consider mitigating and aggravating circumstances in the imposition of the proper penalty.

D E C I S I O N

DELOS SANTOS, *J.*:

Pending action of the Court is the Memorandum[1] dated 10 January 2018 of Atty. Eden T. Candelaria (Atty. Candelaria), Deputy Clerk of Court and Chief Administrative Officer of the Office of Administrative Services (OAS), recommending the imposition of administrative penalties against three (3) Court employees who had been habitually tardy in reporting for work in violation of Civil Service Commission (CSC) Memorandum Circular (MC) No. 4, series of 1991 (Policy on Absenteeism and Tardiness), and CSC MC No. 17, series of 2010 (Policy on Half Day Absence), and against one (1) employee who had incurred several undertime which is in violation of CSC MC No. 16, series of 2010 (Policy on Undertime).

The Facts

Atty. Candelaria, on her Memorandum[2] dated 10 January 2018, gave the following account of the facts that spawned the filing of the present administrative case:

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[1] *Rollo*, pp. 1-6.

[2] *Id.*

On 8 August 2017, the Leave Division of the OAS, referred to Atty. Simeon V. Brigola, Jr. (Atty. Brigola, Jr.), Chief of Complaints and Investigation Division (CID), of the same office, the list of Court employees who incurred habitual tardiness for the first semester of 2017. The report by the Leave Division showed that three (3) employees had been habitually tardy in reporting for work which is in violation of CSC MC No. 04, series of 1991, and CSC MC No. 17, series of 2010.[3]

The concerned Court employees who incurred habitual tardiness for the first semester of 2017 are the following:[4]

Names	Number of Times Tardy					
	Jan	Feb	Mar	Apr	May	June
1. Ms. Jhunine Ann T. Gamolo Utility Worker II Publication Division Public Information Office	10	11			11	12
2. Ms. Genevieve Victoria Maria B. Zuñiga Court Stenographer IV Office of DCA Adecoa-Delorino Office of the Court Administrator		10	14		10	
3. Ms. Nicole Angela Regina C. Benbinuto Former Judicial Staff Assistant II Academic Affairs Office Philippine Judicial Academy		11	10		11	12

On 9 August 2017, the Leave Division referred to Atty. Brigola, Jr., the list of undertimes for the first semester of 2017 incurred by one (1) Court employee which is in violation of CSC MC No. 16, series of 2010.[5] The report contained the following notations:

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[3] *Id.* at 1.

[4] *Id.* at 2.

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

Names	Number of Undertime					
	Jan	Feb	Mar	Apr	May	June
1. Ms. Ivy B. Silva Accountant III Accounting Division Fiscal Management and Budget Office	5	7	10	4	3	10

In a resignation letter[6] dated 27 June 2017 and addressed to Honorable Justice Adolfo S. Azcuna, Ms. Nicole Angela Regina C. Benbinuto (Ms. Benbinuto), explained that she was resigning due to unforeseen illness.

Except for Ms. Benbinuto, the other concerned employees were subsequently directed to explain in writing why no administrative disciplinary action/s should be taken against them for habitual tardiness and for violation of the policy on undertime during the period covered.[7]

Stated hereunder were the respective explanations made by the subject employees which the OAS summarized as follows:[8]

A. Employee with previous record of habitual tardiness:

1. Ms. Jhunine Ann T. Gamolo (Ms. Gamolo) was previously reported to have been habitually tardy in reporting for office during the second semester of 2016. The case was docketed as A.M. No. 2017-02-SC (Re: Employees Incurring Habitual Tardiness in the 2nd Semester of 2016), and is now pending before the Court, *En Banc* for its consideration.

   In her Letter[9] dated 17 August 2017, Ms. Gamolo explained that she is a single mother, and during the period covered,

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[6] *Id*. at 19.

[7] *Id*. at 12-17.

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

[9] *Id*. at 7.

she had a hard time taking care of her child because she was not able to find someone to look after her child until March 2017. Her parents are also working while her cousins are attending their respective classes thrice a week. Aside from that predicament, she also suffered from abdominal cramps, migraine, and pelvic pain due to the abnormality of her menstruation. She was also diagnosed with Polycystic Ovarian Syndrome around July 2017. She attached her Ultrasonographic Report[10] for the aforesaid diagnosis. Ms. Gamolo said that she is truly sorry for not monitoring her late arrivals in the office and she is aware that this will create an unpleasant attention to her work and would greatly affect her colleagues in the office. She thereby promised to work hard and to have plans to ensure that such action will never happen again. Moreover, she will give herself plenty of time to avoid getting late again.

B. Employees incurring habitual tardiness and violation on the policy on undertime for the first time:

1. Ms. Genevieve V.M. B. Zuñiga (Ms. Zuñiga) in her Letter[11] dated 14 August 2017, explained that during the months she incurred habitual tardiness, she was awaiting the results of the 2016 Bar Examinations. She was in an unhealthy mental state due to anxiety and depression. Her fairly current status as a single mother of three (3) children placed her in deep emotional anxiety and depression coupled with the stress coming from the continued verbal abuse of her husband who could not accept her decision to separate. With having to face the consequences of her difficult decision, she continued to go through the expected routines and obligations as calmly and efficiently as she can to cope and to care for the needs of her children. Unfortunately, in this period, she was burdened with the uncertainty and struggle of her circumstances.

[10] *Id.* at 8.

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

Nonetheless, with the directive that Ms. Zuñiga received, this brought her immediate attention to the consequence of her human failings, and the inability to cope with grief and pain. At present, she is starting to channel all the strength to put herself together because she has found the hope to do so for her family and work. Thus, she prays for understanding and appreciates the reminder given to her to comply with the rules as well as the conduct expected from a Court employee. She assured that the same infraction will not happen again.

2. Ms. Ivy B. Silva (Ms. Silva) in her Letter[12] dated 22 August 2017, expressed at the outset her apology for violating the policy on undertime during the first semester of 2017. She asked for apology for what happened, and admitted that there is no good excuse for such behavior.

Ms. Silva averred that during the first week of March 2017, despite the fact that she was not feeling well, she was able to report for work and finished some reports but decided to go home early. The same thing happened on March 22 to 24 of 2017. As for the last week of March, she also went home early because her part-time nanny also left their house to attend to some personal matters.

Furthermore, during the month of June 2017, her youngest son started his occupational therapy for his communication disorder. Most of her undertime were incurred so she could catch up with the feedback of her son's teacher and follow up on his son's therapy at home. She has been with the Court for 13 years already and this is her first offense. Thus, she requested for consideration and understanding on her predicament and assures to try her best not to commit the same infraction in the future.

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[12] *Id.* at 11.

Recommendation of the Office of Administrative Services (OAS)

On 10 January 2018, Atty. Candelaria addressed a Memorandum[13] to Atty. Felipa B. Anama, Clerk of Court, a pertinent portion of which reads:

> The Court said that, "*By being habitually tardy, these employees have fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and* ***tardiness*** *are impermissible*."
>
> While the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) now classifies "habitual tardiness in reporting for duty" as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense, the penalty for habitual tardiness as light offense will be applied in this case in view of the absence of proof that such tardiness qualified as habitual has caused prejudice to the operations of the office. The 2017 RACCS was promulgated only on July 3, 2017 and took effect on August 17, 2017, thus, the Revised Rules on Administrative Cases in the Civil Service (RRACCS) will still be applied to the offense incurred.
>
> Section 46(F)(4), Rule 10 thereof which considers habitual tardiness a light offense is penalized as follows: **First offense** – reprimand; **Second offense** — suspension for one (1) to thirty (30) days; and **Third offense** — dismissal from the service.[14]

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[13] *Id*. at 1-6.

[14] *Id*. at 4-5. (Citation omitted)

The OAS concluded that the concerned employees had incurred habitual tardiness and violated the policy on undertime. Their justifications were unacceptable. Thus, it recommended that appropriate penalties shall be imposed against them as follows:

a) **Ms. Jhunine Ann T. Gamolo**, for having been found habitually tardy for the second time, be **SUSPENDED for five (5) days without pay**, with a warning that a repetition of the same offense shall be dealt with more severely;

b) **Ms. Genevieve Victoria Maria B. Zuñiga**, for having been found habitually tardy for the first time, be **REPRIMANDED** with the same warning that a repetition of the same offense shall be dealt with more severely;

c) In lieu of the penalty of reprimand on **Ms. Nicole Angela Regina C. Benbinuto** who already resigned from office on July 1, 2017 prior to the report of the Leave Division, OAS, the record of her first offense of habitual tardiness be **ATTACHED** to her 201 File for future reference; and

d) **Ms. Ivy B. Silva** be held liable for simple misconduct for violating the Policy on Undertime, and be **SUSPENDED for five (5) days without pay**, after considering mitigating circumstances of 13 years of service in the Supreme Court, acknowledgement of her infraction and feeling of remorse. She is hereby warned that a repetition of the same offense shall be dealt with more severely.[15]

The case was forwarded to this Court for final action.

Our Ruling

We adopt the evaluation of the OAS.

The Constitution provides that public office is a public trust.[16] Hence, public officials and employees must see to it that they follow the Civil Service Law and Rules. Inherent in this mandate is the observance of prescribed office hours and the efficient

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[15] *Id*. at 6.

[16] Section 1, Article XI of the 1987 Constitution.

use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary.[17] Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time.[18]

The Supreme Court has consistently emphasized in Administrative Circular No. 1-99[19] the need for Court officials and employees to "strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible." In Administrative Circular No. 2-99,[20] *We* stressed that "Absenteeism and tardiness, even if such do not qualify as 'habitual' or 'frequent' under the CSC Memorandum Circular No. 4, Series of 1991, shall be dealt with severely x x x."

There is no question that the concerned employees, Ms. Gamolo and Ms. Zuñiga incurred habitual tardiness. In fact, this is evident in their explanation letters in compliance with the directive that they should explain as to why they should not be subjected to an administrative disciplinary action for habitual tardiness. Nevertheless, their respective justification and/or explanation fall under the following categories: (1) illness or poor health, (2) moral obligation to family, and (3) domestic concerns. *We*, however, cannot countenance such infraction as it seriously compromises efficiency and hampers public service.

Likewise, in *Basco v. Gregorio*,[21] this Court held:

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[17] Administrative Circular No. 2-99, "Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness," dated January 15, 1999.

[18] Administrative Circular No. 1-99, Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees, dated 15 January 1999.

[19] *Id*.

[20] *Supra* note 17.

[21] 315 Phil. 681 (1995).

The exacting standards of ethics and morality imposed upon court employees and judges are reflective of the premium placed on the image of the court of justice, and that image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat. It thus becomes the imperative and sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the court's good name and standing as true temples of justice. Circumscribed with the heavy burden of responsibility, their conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Indeed, every employee of the Judiciary should be an example of integrity, probity, uprightness, honesty and diligence. x x x[22]

Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) provides for the classification of offenses. Administrative offenses with corresponding penalties are classified into grave, less grave, and light, depending on their gravity or depravity and effects on the government service. Section 50 (B)(5), Rule 10 of the 2017 RACCS categorizes Frequent Unauthorized Absences (Habitual Absenteeism) as a grave offense and shall be punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

On the other hand, under Section 50(F), Rule 10 of the 2017 RACCS, Habitual Tardiness is considered as a light offense. It is penalized as follows:

a. First Offense – Reprimand;

b. Second Offense – Suspension for one (1) to thirty (30) days; and

c. Third Offense – Dismissal from the service.

In the imposition of penalty for Ms. Gamolo, it is worthy to note that the present case is already her second offense. The first offense is docketed as A.M. No. 2017-02-SC (Re: Employees

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[22] *Id*. at 687-688. (Citations omitted)

Incurring Habitual Tardiness in the 2nd Semester of 2016).[23] Thus, her penalty falls squarely under Section 50(F)(4), Rule 10 of the 2017 RACCS. As clearly provided by the aforementioned rule, a suspension for one (1) to thirty (30) days shall be imposed.

On the other hand, Ms. Zuñiga was found to be habitually tardy. Under Section 50(F), Rule 10 of the 2017 RACCS, considering that this is her first offense as an employee of the High Court, a penalty of reprimand is appropriate. However, it is stressed that a repetition of the same offense shall be dealt with more severely in accordance with the 2017 RACCS.

In the case of Ms. Benbinuto, *We* find that there is no need to rule as to her penalty due to her resignation prior to the report of the Leave Division. As we recall, she resigned from office on July 1, 2017, prior to the report of the Leave Division.[24] Nevertheless, this Court adopts the recommendation of the OAS to attach her record of habitual tardiness in her 201 File for future reference.

As to Ms. Silva, she admitted violating the Policy on Undertime as provided by CSC MC No. 16, series of 2010. Based on the record for the first semester of 2017, she incurred undertime as follows: 5 times in January; 7 times in February; 10 times in March; 4 times in April; 3 times in May; and 10 times in June.[25] This without a doubt makes her liable for simple misconduct.

Under Section 50 (D)(2), Rule 10 of the 2017 RACCS, simple misconduct is categorized as a less grave offense. Less grave offenses are punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Nevertheless, Section 53 of the RACCS grants the disciplining authority the discretion to consider mitigating and aggravating circumstances in the imposition of the proper penalty. Section 53 provides:

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[23] *Rollo*, p. 3.

[24] *Id*. at 19.

[25] *Id*. at 23-30.

Section 53. Mitigating and Aggravating Circumstances. Except for offenses punishable by dismissal from the service, the following may be appreciated as either mitigating or aggravating circumstances in the determination of the penalties to be imposed:

a. Physical illness;

b. Malice;

c. Time and place of offense;

d. Taking undue advantage of official position;

e. Taking undue advantage of subordinate;

f. Undue disclosure of confidential information;

g. Use of government property in the commission of the offense;

h. Habituality;

i. Offense is committed during office hours and within the premises of the office of building;

j. Employment of fraudulent means to commit or conceal the offense;

k. First offense;

l. Education;

m. Length of service; or

n. Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the respondent, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice, may take and consider these circumstances *motu proprio.*

While this Court notes the hardship of working as a single mother or of being separated from marriage while being left to take care of the needs of growing children, the same is not a valid excuse to do away with one's responsibility as a government employee. At any rate, the Civil Service Law also provides for flexible time schedule to those who are into such situation upon proper application and approval by the concerned authority.

WHEREFORE, as recommended by Atty. Eden T. Candelaria, we find the concerned Supreme Court employees administratively liable for incurring habitual tardiness and undertime, and are penalized as follows:

1. **Ms. Jhunine Ann T. Gamolo**, for having been found habitually tardy for the second time, be **SUSPENDED for five (5) days without pay**, with a warning that a repetition of the same offense shall be dealt with more severely;

2. **Ms. Genevieve Victoria Maria B. Zuñiga**, for having been found habitually tardy for the first time, be **REPRIMANDED** with the same warning that a repetition of the same offense shall be dealt with more severely;

3. In lieu of the penalty of reprimand on **Ms. Nicole Angela Regina C. Benbinuto** who already resigned from office on 1 July 2017, prior to the report of the Leave Division of the OAS, the record of her first offense of habitual tardiness be **ATTACHED** to her 201 File for future reference; and

4. **Ms. Ivy B. Silva** is liable for simple misconduct for violating the Policy on Undertime, and **SUSPENDED for five (5) days without pay,** after considering mitigating circumstances of 13 years of service in the Supreme Court, acknowledgment of her infraction and feeling of remorse. She is hereby warned that a repetition of the same offense shall be dealt with more severely.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Baltazar-Padilla, JJ.*, concur.

SECOND DIVISION

[G.R. No. 202379. July 27, 2020]

SPC POWER CORPORATION, JOCELYN O. CAPULE, and ALFREDO S. BALLESTEROS, *petitioners*, *vs.* **GERARDO A. SANTOS,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; COURT'S JURISDICTION IS LIMITED TO REVIEWING ERRORS OF LAW. —** [T]he Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. It must be emphasized that the Court is not a trier of facts, and this applies with greater force in labor cases.

2. **ID.; EVIDENCE; CREDIBILITY; AS A RULE, FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY, LIKE THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION, WHICH HAVE ACQUIRED EXPERTISE IN THE PARTICULAR FIELD OF ITS ENDEAVOR, ARE ACCORDED GREAT WEIGHT ON APPEAL; AN EXCEPTION IS WHEN THE FACTUAL FINDINGS OF THE QUASI-JUDICIAL AGENCIES CONCERNED ARE CONFLICTING OR CONTRARY WITH THOSE OF THE COURT OF APPEALS. —** It is well-settled that findings of fact of an administrative agency, like the LA and the NLRC, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. The Court has consistently ruled that the factual findings and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as long as they are supported by substantial evidence. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. However, the rule, is not absolute and admits of certain well recognized exceptions. Thus, when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case, the Court may make an independent factual determination based on the evidence of the parties.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE LABOR CODE PROTECTS THE EMPLOYEE'S SECURITY OF TENURE BY MANDATING THAT REGULAR EMPLOYEES SHALL ONLY BE TERMINATED FOR JUST OR AUTHORIZED CAUSES. —** Article 294 of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. Here, it cannot be denied that the respondent is a regular employee of the petitioners; thus, he is entitled to a security of tenure. The bone of contention here is whether his dismissal was lawful or that the petitioners complied with the due process of law.

4. **REMEDIAL LAW; EVIDENCE; IN DISMISSAL CASES, THE BURDEN IS ON THE EMPLOYER TO PROVE, WITH SUBSTANTIAL EVIDENCE, THAT THE TERMINATION WAS FOR A VALID OR AUTHORIZED CAUSE UNDER THE LABOR CODE; DISMISSED EMPLOYEES ARE NOT REQUIRED TO PROVE THEIR INNOCENCE OF THE EMPLOYER'S ACCUSATIONS AGAINST THEM. —** It bears stressing that in termination cases, the onus of proving the validity of dismissal lies with the employer. The quantum of proof which the employer must discharge is *substantial evidence* or that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. In the absence of a clear, valid, and legal cause for the termination of employment, the law considers the dismissal illegal and the burden is on the employer to prove that the termination was for a valid or authorized cause under the Labor Code. Also, it is not incumbent upon dismissed employees to prove their innocence of the employer's accusations against them. In other words, they have no mandatory duty to forward evidence to prove that they did not commit any misfeasance or malfeasance in the office.

5. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUBSTANTIVE AND PROCEDURAL DUE PROCESS MUST BE**

COMPLIED WITH BY THE EMPLOYER BEFORE AN EMPLOYEE MAY BE TERMINATED; SUBSTANTIAL DUE PROCESS AND PROCEDURAL DUE PROCESS, DEFINED. — It is already doctrinal that an employee may only be dismissed for just or authorized causes. Thus, the legality of dismissal of an employee hinges on: (a) the legality of the act of dismissal; that is dismissal on the grounds provided for under the Labor Code and (b) the legality in the manner of dismissal. Hence, before the employer may terminate the services of the employee he must comply with the substantive and procedural aspects of due process. Clearly, in order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both *substantive and the procedural requirements thereof. Substantive due process* refers to the intrinsic validity of a law that interferes with the rights of a person to his property. In labor cases, it refers to the grounds/basis of terminating an employee. On the other hand, procedural due process means compliance with the procedures or steps prescribed by the law. This refers to the employer's act of affording the employee to explain his/her side through the two notices required by the law (notice to explain and notice to terminate).

6. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PAYMENT THEREOF IS PROPER WHEN THE DISMISSED EMPLOYEE WAS FORCED TO LITIGATE TO PROTECT HIS/HER RIGHT AND INTEREST. —** [C]onsidering that the respondent was forced to litigate to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8) of the Civil Code. The Court finds that payment of attorney's fees is warranted in an amount equivalent to 10% of the total amount to be recovered by the respondent.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.

D E C I S I O N

INTING, ***J.*:**

Before the Court is a Petition for Review on *Certiorari* (With Application for a Temporary Restraining Order and/or Writ of

Preliminary Injunction)[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated July 28, 2011 and the Resolution[3] dated June 8, 2012 of the Court of Appeals (CA), Cebu City in CA-G.R. SP No. 05401 which reversed and set aside the Decision[4] dated April 30, 2010 of the National Labor Relations Commission (NLRC), Cebu City in NLRC VAC-06-000758-2009/RAB Case No. VII-07-1769-2008.

The Antecedents

Gerardo A. Santos (respondent) was hired by SPC Power Corporation (SPC) in 1997. He was assigned as a stock keeper in SPC's Warehouse Department. In 2002, the petitioners offered him the position of security officer, but respondent was hesitant to accept the position because he had no background or training as a security officer. The job was offered three times to him; on the third time, respondent accepted the position.[5]

In 2005, SPC gave respondent a regular appointment as security officer. However, SPC neither informed nor gave him a job description to guide him in his duties. Such being the case, his tasks were unrelated to his job as security officer, like being a personal aide of Raul Estrelloso (Estrelloso), his immediate supervisor. SPC also ordered him to conduct activities designed to prevent employees from forming a union.[6]

Sometime in 2006 and 2007, SPC ordered respondent and other employees of SPC to engage in activities that would undermine the 2007 certification election. They did as instructed,

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[1] *Rollo*, Vol. 1, pp. 3-140.

[2] *Id.* at 147-160; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon Paul L. Hernando (now member of the Court) and Gabriel T. Ingles, concurring.

[3] *Id.* at 162-163.

[4] *Rollo*, Vol. 2, pp. 681-697; penned by Commissioner Julie C. Rendoque with the concurrence of Presiding Commissioner Violeta Ortiz-Bantug while Commissioner Aurelio D. Menzon, took no part.

[5] *Rollo*, Vol. 1, p. 148.

[6] *Id.*

but still failed to prevent the employees from forming a union. Soon after the union was formed, the respondent noticed a change of treatment from SPC against him and the other personnel who actively participated in preventing the formation of a union. True enough, SPC took an action against Estrelloso by asking the latter to take a leave of absence. Subsequently, Estrelloso's close aides, including the respondent, were served notices to show cause why they should not be terminated from their employment. Later on, SPC asked Estrelloso to resign from the company.[7]

Meanwhile, SPC began to seek favorable dialogue with the newly formed union. In order to make it appear that they were not involved in union busting activities, SPC took steps to get rid of the respondent and his group.

Alfredo S. Ballesteros (Ballesteros), Senior Vice President for Finance and Administrator of SPC, issued to respondent a show cause letter[8] dated January 15, 2008. In no time, Ballesteros placed respondent under preventive suspension for 30 days effective January 16, 2008. On January 17, 2008, respondent submitted his written explanation. In a letter[9] dated January 28, 2008, SPC directed the respondent to attend a formal investigation and hearing. On January 31, 2008, a formal hearing was conducted. In a letter[10] dated February 12, 2008, SPC extended the respondent's preventive suspension from February 14, 2008 to March 13, 2008. On March 12, 2008, the respondent requested additional time to submit supporting documents to answer the allegations hurled against him. SPC granted respondent's request. Thus, his preventive suspension was further extended from March 14, 2008 to March 31, 2008. Thereafter, respondent's preventive suspension was subjected to series of extensions: (1) from April 1 to April 30, 2008;[11] (2) from May 1 to May 15,

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[7] *Id.* at 148-149.

[8] *Rollo*, Vol. 1, pp. 233-235.

[9] *Id.* at 241.

[10] *Id.* at 242.

[11] *Id.* at 246.

2008;[12] and (3) from May 16 to May 31, 2008.[13] Eventually, in a Notice of Dismissal[14] dated May 30, 2008, signed by Jimmy Balisacan, Vice President for Finance, and Jocelyn O. Capule (Capule), Senior Manager for Human Resources, SPC informed the respondent of their decision to terminate the latter's services. Consequently, the respondent filed a Complaint[15] for illegal dismissal, separation pay, unpaid salaries, moral and exemplary damages, and attorney's fees against SPC, Ballesteros and Capule (collectively, petitioners).

For their part, the petitioners argued: (1) that the respondent was validly dismissed due to several infractions he caused while still engaged as the company's security officer; (2) that due to the gravity of the charges against him, he was immediately placed under preventive suspension pending investigation; and (3) that after being found guilty of the charges hurled against him, the respondent was terminated from services.

The Ruling of the Labor Arbiter (LA)

On April 1, 2009, the LA ruled in favor of the respondent.[16] He found that the respondent was not afforded the procedural due process because the Uniform Code of Conduct was not observed in the initiation of the termination proceedings. He likewise ruled that the petitioners miserably failed to prove the substantive aspect of termination. According to the LA, the respondent's termination was not based on just or authorized cause. He found the petitioners' accusations against the respondent baseless and unsubstantiated. The dispositive portion of the Decision reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the respondents guilty of illegally dismissing

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[12] *Id.* at 247.

[13] *Id.* at 248.

[14] *Id.* at 253-260.

[15] *Id.* at 408.

[16] *Rollo*, Vol. 2, pp. 517-530; penned by Labor Arbiter Jose Gutierrez.

the complainant from his employment. Respondents are therefore, directed to jointly and severally pay complainant the following:

I. Separation Pay	------------------	₱156,000.00
II. Backwages	----------------	145,500.00
III. 30-day Salary (Preventive suspension)		13,000.00
	Total	₱314,500.00

The amount of ₱3,050,000.00 as MORAL DAMAGES and of ₱3,050,000.00 an EXEMPLARY DAMAGES, plus ₱641,450.00 ten (10%) percent attorney's fees or the total aggregate amount of PESOS: SEVEN MILLION FIFTY FIVE THOUSAND NINE HUNDRED FIFTY & 00/100 (7,055,950.00).

SO ORDERED.[17]

Undaunted, the petitioners appealed to the NLRC.

The Ruling of the NLRC

On April 30, 2010, the NLRC promulgated the Decision[18] reversing the LA's ratiocination. It ruled that the respondent's dismissal was for just causes. The NLRC found that the respondent failed to perform his duty in accordance with the standards expected of him as a security officer. It further stated that the respondent failed to prevent or at least to investigate several incidents which affected the property and security of the company such as stolen grounding cluster cables, pilfered/lost good lumber, missing/pilfered coal mill part, unaccounted stolen copper wire, ignored and disregarded security measures, unresolved murders inside the complex, and habitual neglect/gross incompetence. It ruled that with the gravity and seriousness of respondent's infractions, the petitioners were justified in terminating his services.[19] It disposed the case as follows:

WHEREFORE, PREMISES CONSIDERED, this appeal is given due course. The decision of the Labor Arbiter is hereby REVERSED

[17] *Id.* at 531.

[18] *Id.* at 681-697.

[19] *Id.* at 694.

and VACATED and a new one entered declaring complainant to have been VALIDLY DISMISSED.

SO ORDERED.[20]

Subsequently, the respondent moved for reconsideration,[21] but the NLRC denied it.[22] Aggrieved, he filed a Petition for *Certiorari*[23] under Rule 65 of the Rules of Court before the CA.

The Ruling of the CA

On July 28, 2011, the CA issued the assailed Decision granting the petition and reversing the NLRC's ruling, to wit:

WHEREORE, finding the petition to be impressed with merit, the same is hereby GRANTED. The challenged NLRC's Decision and Resolution dated April 30, 2010 and June 29, 2010 are hereby ANNULLED and SET ASIDE. Accordingly, the Labor Arbiter's Decision dated April 1, 2009 is REINSTATED with MODIFICATIONS such that the award of moral damages and exemplary damages are reduced to ₱50,000.00 and ₱25,000.00 respectively. Private respondents are likewise ordered to pay attorney's fees in the amount of ten (10%) of the total monetary award due to the petitioner. In all other respects, the April 1, 2009 decision of the Labor Arbiter STANDS.

SO ORDERED.[24]

The CA found that the substantive aspect of due process in respondent's dismissal was not observed. It emphasized that the respondent was not negligent in his duties as the petitioners' security officer. It clarified that the alleged incidents, like the loss of company properties and the crimes committed inside the company premises, cannot be attributed to the respondent as there was no single piece of evidence that he committed the

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[20] *Id.* at 697.

[21] *Id.* at 698-705.

[22] *Id.* at 768-769.

[23] *Id.* at 773-806.

[24] *Rollo*, Vol. 1, pp. 159-160.

lapses. On the contrary, as it pointed out that the lapses were committed by the petitioners' security guards and negligent employees. It noted that the petitioners did not even file criminal charges for theft, pilferage or murder against the respondent, if indeed, the latter was responsible for the incidents.

Likewise, the CA stressed that it is highly suspicious that the alleged varied infractions of the respondent spanning over two years were lumped together and raised for the first time to bring about the latter's termination. It concluded that the respondent was terminated because of his failure to prevent the employees from forming a labor union.

The petitioners then filed a Motion for Reconsideration, which the CA denied in its assailed Resolution dated June 8, 2012.

Undeterred, the petitioners filed the instant petition before the Court raising the following grounds, to wit:

I. The [CA] erred in finding that the admitted and incontrovertible actions and/or omissions of respondent that prompted his dismissal are not attributable to him.[25]

II. The [CA] palpably erred in ruling that respondent was dismissed as a result of the union busting activities allegedly pursued by [SPC].[26]

III. The [LA] and the [CA] erred in ruling that respondent's 30-day preventive suspension was invalid.[27]

IV. The [CA] erred in holding petitioners Ballesteros and Capule personally liable for respondent's claims.[28]

V. The [CA] committed grave and reversible errors in ruling that the dismissal of the respondent was without just cause despite the existence of clear and indisputable evidence and respondent's own incriminating admissions.[29]

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

[26] *Id.* at 88.

[27] *Id.* at 97.

[28] *Id.* at 100.

[29] *Id.* at 102.

VI. The [CA] erred in ruling that SPC is liable to pay respondent backwages and separation pay despite respondent's valid dismissal.[30]

[VII.] The [CA] erred in ruling that the respondent is entitled to moral and exemplary damages, and attorney's fees without any basis in fact and in law.[31]

The basic contention of the petitioners is that the respondent was validly dismissed after he was afforded the substantive and procedural aspects of due process. They argue: (1) that the respondent was grossly incompetent and negligent as a security officer; (2) that such incompetence resulted in the consummation of theft, pilferage, and murder inside the company's premises; (3) that the respondent was not terminated as a result of union busting, but rather as a result of his negligence as security officer; (4) that the respondent's preventive suspension is not illegal as it is part of employer's prerogative during an investigation; (5) that the respondent already admitted that his negligence resulted in the alleged incidents; and (6) that they should not be held liable to pay backwages, separation pay, damages, and attorney's fees as they acted within the bounds of the law in dismissing him.

In his Comment[32] dated September 19, 2012, the respondent counters that he was dismissed as a scapegoat of the petitioners' union busting activities. He asseverates: (1) that there was no shade of proof of the alleged just causes *i.e.*, gross and habitual neglect of duty, serious misconduct, willful disobedience, and violation of the company's Uniform Code of Conduct for his termination; (2) that he cannot be faulted for the alleged incidents that happened in the company *i.e.*, stolen grounding cables, pilfered/lost good lumber, missing/pilfered coal mill part, unaccounted stolen copper wire, and unsolved murders inside the company premises; (3) that it is questionable why it took so long for the petitioners to address his alleged shortcomings; (4) that there are documents evidencing the petitioners' union busting activity; (5) that he was not afforded the procedural due process

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[30] *Id.* at 124.

[31] *Id.* at 132.

[32] *Rollo*, Vol. 3, pp. 1132-1163.

of law when he was terminated as the company's Uniform Code of Conduct was not strictly complied with in the initiation of the termination proceedings; and (6) that since he was illegally dismissed from his job he is entitled to backwages, separation pay, moral damages, exemplary damages, and attorney's fees.

Our Ruling

The petition is without merit.

In a nutshell, the main issue in this case is whether respondent's dismissal is legal.

At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. It must be emphasized that the Court is not a trier of facts, and this applies with greater force in labor cases.[33] It is well-settled that findings of fact of an administrative agency, like the LA and the NLRC, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. The Court has consistently ruled that the factual findings and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as long as they are supported by substantial evidence.[34] Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.[35] However, the rule, is not absolute and admits of certain well recognized exceptions. Thus, when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals,[36] as in the present case, the

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[33] *Doctor, et al. v. NII Enterprises, et al.,* 821 Phil. 251, 264 (2017).

[34] See *Peckson v. Robinsons Supermarket Corp., et al.*, 713 Phil. 471, 486 (2013), citing *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

[35] *Id.*

[36] *Marlow Navigation Philippines, Inc., et al. v. Heirs of Ricardo S. Ganal, et al.*, 810 Phil. 956, 961 (2017), citing *General Milling Corporation v. Viajar*, 702 Phil. 532, 540 (2013).

Court may make an independent factual determination based on the evidence of the parties.[37]

Article 294[38] of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[39] Here, it cannot be denied that the respondent is a regular employee of the petitioners; thus, he is entitled to a security of tenure. The bone of contention here is whether his dismissal was lawful or that the petitioners complied with the due process of law.

It bears stressing that in termination cases, the *onus* of proving the validity of dismissal lies with the employer.[40] The quantum of proof which the employer must discharge is *substantial evidence* or that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[41] In the absence of a clear, valid, and legal cause for the termination of employment, the law considers the dismissal illegal and the burden is on the employer to prove that the termination was for a valid or authorized cause under the Labor Code. Also, it is not incumbent upon dismissed employees to prove their innocence of the employer's accusations against them.[42] In other words,

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[37] *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 454 (2009), citing *Cadiz v. Court of Appeals*, 510 Phil. 721, 728 (2005).

[38] Formerly Article 279.

[39] *Venzon, et al. v. Zameco II Electric Cooperative, Inc., et al.*, 799 Phil. 342, 364 (2016).

[40] *University of Manila v. Pinera*, G.R. No. 227550, August 14, 2019.

[41] *Id.*

[42] See *Garcia v. NLRC*, 351 Phil. 960, 972 (1998); *Skippers United Pacific, Inc. v. Maguad*, 530 Phil. 367, 387 (2006).

they have no mandatory duty to forward evidence to prove that they did not commit any misfeasance or malfeasance in the office.

It is already doctrinal that an employee may only be dismissed for just or authorized causes.[43] Thus, the legality of dismissal of an employee hinges on: (a) the legality of the act of dismissal; that is dismissal on the grounds provided for under the Labor Code and (b) the legality in the manner of dismissal.[44] Hence, before the employer may terminate the services of the employee he must comply with the substantive and procedural aspects of due process. Clearly, in order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both *substantive and the procedural requirements* thereof. *Substantive due process* refers to the intrinsic validity of a law that interferes with the rights of a person to his property.[45] In labor cases, it refers to the grounds/basis of terminating an employee. On the other hand, *procedural due process* means compliance with the procedures or steps prescribed by the law.[46] This refers to the employer's act of affording the employee to explain his/her side through the two notices required by the law (notice to explain and notice to terminate).

Here, while the LA was correct in his observation that the petitioners' Uniform Code of Conduct was not strictly complied with in the initiation of the termination proceedings and in the eventual termination of the respondent, the Court nonetheless agrees with the CA's findings that the procedural aspect of due process was observed. The petitioners sent a Show Cause Letter[47] dated January 15, 2008 to the respondent informing

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[43] *Cruz v. National Labor Relations Commission*, 381 Phil. 775, 789 (2000), citing *Shoemart, Inc. v. NLRC*, 257 Phil. 396, 402 (1989).

[44] *Id.*

[45] *Republic of the Phils. v. Sandiganbayan*, 461 Phil. 598, 609 (2008).

[46] *Id.*

[47] *Rollo*, Vol. 1, pp. 233-235.

the latter of the charges leveled against him. On January 17, 2008, the respondent submitted his written explanation. On January 28, 2008 the petitioners directed the respondent to attend a meeting.[48] On January 31, 2008, a formal hearing was conducted. Then, in a Letter[49] dated February 12, 2008, the petitioners extended the respondent's preventive suspension from February 14, 2008 to March 13, 2008.

The respondent's preventive suspension was subjected to a series of extensions: (1) from April 1 to April 30, 2008;[50] (2) from May 1 to May 15, 2008;[51] and (3) from May 16 to May 31, 2008.[52]

Finally, in a Letter[53] dated May 30, 2008, the petitioners notified the respondent of their decision to terminate the latter's services which prompted him to file a complaint for illegal dismissal, separation pay, unpaid salaries, moral and exemplary damages, and attorney's fees against the petitioners. Evidently, the procedural aspect of due process was complied with by the petitioners. The respondent was notified of the reasons of his preventive suspension and his eventual termination from services. While being investigated, the respondent was likewise heard in a meeting conducted by the petitioners.

However, after judiciously reviewing the records of the case at bench and the pieces of evidence presented by the parties, the Court finds that the petitioners failed to afford the respondent of the substantive aspect of due process in terminating the latter's services. The Court agrees with the CA's disquisition that the respondent was illegally dismissed as the termination was not based on any just or authorized causes alleged in the petitioners'

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[48] *Id.* at 241.

[49] *Id.* at 242.

[50] *Id.* at 246.

[51] *Id.* at 247.

[52] *Id.* at 248.

[53] *Id.* at 253-260.

petition using as basis the respondent's alleged admission of his incompetence in discharging his duty as security officer. Without any valid ground for terminating the respondent, his dismissal is considered illegal under the eyes of the law.

A careful scrutiny of the records would show that the petitioners dismissed the respondent based on the following grounds: (a) gross and habitual neglect of duty; (b) serious misconduct; (c) willful disobedience; and (d) violation of the company's Uniform Code of Conduct. All of the grounds are premised on his alleged failure to prevent, investigate, and resolve the issues on the stolen grounding cables, pilfered good lumber, missing coal mill part, stolen copper wire, and unsolved murders inside the company premises. The foundation of the enumerated grounds for his dismissal is his alleged incompetence as security officer. The respondent was basically thrown every charge in the book. Apparently, this is a fault-finding mission if not a fishing expedition on petitioners' part to get rid of the respondent. The wholesale accusation made it difficult for the respondent to rebut the charges, but more difficult on the petitioners' part to prove each and every ground for terminating the services of the former.

It is worth noting that not a shade of evidence can be gleaned supporting the petitioners' allegations that the respondent is incompetent as a security officer for his alleged failure to prevent, investigate, and resolve the issues on the stolen grounding cables, pilfered good lumber, missing coal mill part, stolen copper wire, and unsolved murders inside the company premises.

Records show that the respondent did not admit neglecting his duty. What he admitted was the fact that he had no background, knowledge, skills, or training to qualify for the position of security officer when the position was offered to him. Factual evidence shows that it was only when the petitioners offered the position for the third time that the respondent accepted the job despite the fact that he does not possess any knowledge about the basics of a security officer. Likewise, he was not given a job description when he assumed his position in the company. Be that as it may, the petitioners regularized the

respondent as a security officer based on his excellent performance as such. If he really was incompetent, the respondent should not have been regularized. If he really committed infractions within two years of service, the respondent should have been investigated and notified immediately of any violation of their Uniform Code of Conduct. But within two years, instead of being investigated, the respondent was even regularized from his job, and the petitioners emphasized that the regularization was a result of his excellent performance in the company.

Moreover, the charges hurled against the respondent allegedly happened between 2005 to 2007; thus, it is questionable if not quite surprising why the charges were acted upon by the petitioners only on January 15, 2008. The petitioners accused the respondent of stealing cluster cable between November 2005 to February 2007, pilfering good lumber during an unspecified period of time, stealing coal mill part in July 2007 and copper wires since 2005, and failing to investigate murders on two occasions in 2007. The petitioners even dredged up past transgressions of the respondent way back in 1994 and 1998 before he became a security officer. The incidents were lumped together and were raised to eventually terminate the respondent. Not a single explanation was offered by the petitioners why for a period of two years respondent was not investigated and charged to answer for each transgression. Not a single affidavit or statement of a witness was presented by the petitioners to corroborate their allegations that the respondent has direct participation in the malfeasance and misfeasance. Neither was the respondent directly charged with theft, pilferage or murder. Logically, if the petitioners' allegations were true they could have criminally charged the respondent for him to answer for the criminal acts. However, there was none. The Court is of the view that the alleged lapses were committed by the company's security guards and negligent employees and not by the respondent as a security officer. There is no shadow of proof that respondent should be held accountable for the incidents which brought about his eventual termination from service. In fine, there is no evidence to support the finding of the existence of just cause to terminate the respondent's employment.

Another damning evidence against the legality of the respondent's dismissal is the fact that only the members of respondent's group who tried to prevent the formation of the union were investigated. Admittedly, the members of the respondent's group were the active participants in the union busting efforts. The timing of respondent's termination is likewise another circumstance which supports the fact that the respondent was terminated for failure to prevent the formation of the union. The pieces of evidence reveal that he was investigated and eventually terminated immediately after the formation of the union. When the respondent failed to grant the petitioners' wish to obviate the formation of the union, he was investigated and several charges were lumped together and hurled against him which eventually resulted in his dismissal from service. All of respondent's actions became suspect to the company and he was investigated for a wide-ranging number of unrelated charges immediately after the union won the certification election. The respondent consistently averred that he cannot be held accountable for the lost company properties and especially the murders inside the company premises as there are employees or proper authorities who can directly answer for the incidents. In fact, it is highly suspicious why the property custodian of the enumerated company properties and the security guards, who were on duty at the time of the commission of the alleged murders, were not investigated by the company. Only the respondents' group were isolated, targeted, and subjected to different charges.

Furthermore, there is no categorical denial on petitioners' part of the union busting efforts. They merely contended that the issue on union busting is irrelevant to the issue on illegal dismissal. The Court cannot subscribe to petitioners' argument. The respondent's premise that a deeper and malevolent reason behind his dismissal is more believable and reasonable version. The petitioners cannot categorically deny the union busting effort because it is supported by two pieces of evidence. One, in a letter[54] dated September 1, 2006, Antonio T. Corpuz, the company's Senior Vice President and Chief Operating Officer,

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[54] *Id.* at 288.

and Ballesteros informed the company's executive committee that the best way to sway the employees to vote for "NO" in the certification election is to monetize the unused leave credits of the employees. The move is clearly to prevent the formation of the union. And two, the letter was accompanied by an attachment[55] detailing the activities conducted by the petitioners to prevent the formation of a labor union. The document reveals the different activities done by the petitioners to counter the moves of the union in the years 2000 and 2006 which include, but not limited to, hiring of a lawyer to delay the election, convening the managers, and convincing their subordinates to vote for "NO" in union formation and monetization of the unused sick leave benefits. Evidently, the union busting efforts were substantiated by pieces of evidence. The Court is persuaded by the findings of the LA and the CA that the respondent was terminated not based on just or authorized cause because the timing of the investigation and his dismissal happened after the management lost in the certification election. Obviously, it does not need a sharp mind to logically conclude that the respondent was terminated because he failed to successfully prevent the formation of the union.

In view of the findings, the Court is convinced that the respondent, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the petitioners to comply with the substantive aspect of due process. Respondent was dismissed not based on the grounds as provided by law.

Thus, the Court sustains the CA's declaration that the respondent be reinstated, if possible, and that he must be paid full backwages. Likewise, the CA is correct in reducing the award of moral and exemplary damages for being exorbitant and excessive. The Court is aware that there may be instances where reinstatement is not a viable remedy or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement, or where

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[55] *Id.* at 289-294.

the employee decides not to be reinstated. In those situations, the employer will instead be ordered to pay separation pay.[56] Thus, the Court finds it appropriate to remand the case to the NLRC for execution and determination of whether or not any of the foregoing instances obtain so as to render reinstatement nonviable, and hence, instead order the petitioners to pay respondent separation pay as may be deemed appropriate.

Lastly, considering that the respondent was forced to litigate to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8) of the Civil Code.[57] The Court finds that payment of attorney's fees is warranted in an amount equivalent to 10% of the total amount to be recovered by the respondent.

WHEREFORE, the petition is **DENIED**. The Decision dated July 28, 2011 and the Resolution dated June 8, 2012 of the Court of Appeals, Cebu City in CA-G.R. SP No. 05401 are **AFFIRMED** *in toto*. The case is hereby **REMANDED** to the National Labor Relations Commission, Cebu City for execution proceedings in accordance with the Decision.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo,[*] *Delos Santos,* and *Baltazar-Padilla, JJ.*, concur.

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[56] *F.F. Cruz & Co., Inc. v. Galandez*, G.R. No. 236496, July 8, 2019.

[57] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

[*] Designated additional Member per Raffle dated June 22, 2020 in lieu of Associate Justice Ramon Paul L. Hernando.

SECOND DIVISION

[G.R. No. 248264. July 27, 2020]

FREDIEROSE TAMBOA *y* LADAY, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; A FINAL AND EXECUTORY JUDGMENT CAN NO LONGER BE MODIFIED EVEN BY THE HIGHEST COURT OF THE LAND; EXCEPTIONS THERETO, ENUMERATED; ALL OF THE EXCEPTIONS OBTAIN IN THIS CASE. —** At the outset, it bears stressing that, as a rule, "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, "[the] 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 the suspension of the rules, [and] (e) a lack of any showing that the review sought is merely frivolous and dilatory x x x," all of which obtain in the instant case.

2. **ID.; ID.; APPEALS; FAILURE TO FILE APPELLANT'S BRIEF ON TIME IS A GROUND FOR DISMISSAL; BEING MERELY A STATUTORY PRIVILEGE, APPEAL MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW. —** In appeals of criminal cases before the CA, the appellant's failure to timely file his or her brief is a ground for the dismissal of an appeal. This is authorized by Section 8, Rule 124 of the Rules[.] x x x Notably, the dismissal of an appeal based on the foregoing provisions is in accord with the well-settled principle that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost." Compliance with procedural

rules is mandatory, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."

3. **ID.; ID.; ID.; ID.; ID.; WHERE THE INTEREST OF SUBSTANTIAL JUSTICE SO REQUIRES, STRICT APPLICATION OF THE RULES OF PROCEDURE MAY BE RELAXED. ––** [I]t should be observed that "if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. "Indeed, case law instructs that "[i]t is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice." "What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities." "Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."

4. **ID.; ID.; ID.; ID.; ID.; IN VIEW OF THE OSTENSIBLE MERIT OF THE APPEAL OWING TO THE ALLEGED LAPSES OF THE ARRESTING OFFICERS AND THE NEGLIGENCE OF PETITIONER'S COUNSEL, THE COURT DEEMS IT PROPER TO RELAX THE TECHNICAL RULES OF PROCEDURE; THE COURT RECALLED THE ENTRY OF JUDGMENT MADE IN THIS CASE AND REMANDED THE CASE TO THE COURT OF APPEALS FOR RESOLUTION OF THE APPEAL ON ITS MERITS. ––** In this case, it appears that the appeal interposed by petitioner before the CA has ostensible merit owing to the alleged lapses of the arresting officers in duly complying with the chain of custody rule. While the Court

cannot fault the CA for upholding procedural rules and acknowledges its adherence thereto, We cannot countenance the incarceration of an accused without the underlying conviction being thoroughly reviewed on account of the negligence of counsel. At the very least, if the CA would eventually find that petitioner's appeal should be denied and her conviction must be affirmed, it should be based on a full consideration of the merits of her appeal and not for reasons anchored on technicalities. Hence, the Court deems it proper to relax the technical rules of procedure in order to afford petitioner the fullest opportunity to establish the merits of her appeal. Accordingly, the Entry of Judgment made in this case should be recalled and the case be remanded to the CA for resolution of the appeal on its merits. Petitioner is given a non-extendible period of thirty (30) days upon receipt of this Decision to file her appellant's brief with the CA.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated February 7, 2019[2] and July 8, 2019[3] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09062 which denied the motion of petitioner Fredierose Tamboa *y* Laday (petitioner) to recall entry of judgment and to reinstate her appeal seeking review of the Judgment[4] dated January 24, 2017 of the

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[1] Dated August 23, 2019. *Rollo*, pp. 13-25.

[2] *Id.* at 29-31. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Mario V. Lopez (now a member of this Court) and Ronaldo Roberto B. Martin, concurring.

[3] *Id.* at 34-35.

[4] *Id.* at 94-103. Penned by Executive Judge Gemma P. Bucayu-Madrid.

Regional Trial Court of Sanchez Mira, Cagayan, Branch 12 (RTC) in Criminal Case No. 3712-S-15, finding her guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from an Information[6] filed before the RTC charging petitioner with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that in the morning of June 10, 2015, acting on information received from a confidential informant, members of the Philippine National Police (PNP) stationed in Claveria, Cagayan successfully conducted a buy-bust operation against petitioner at an area fronting the Iglesia ni Cristo Church in Centro Uno, Claveria, Cagayan, during which, a heat-sealed plastic sachet containing 0.137 gram of white crystalline substance was recovered from the latter's possession. The police officers then brought petitioner to the Claveria Police Station, where they marked, inventoried,[7] and photographed[8] the seized item. Thereafter, the item was forwarded to the PNP Crime Laboratory at the Regional Command 2, Camp Adduru, Tuguegarao City, Cagayan, and after examination, its contents tested positive for methamphetamine hydrochloride or *shabu*,[9] a dangerous drug.[10]

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[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] See records, pp. 1-2.

[7] See Receipt/Inventory of Property/ies Seized dated June 11, 2015; *id.* at 12.

[8] See *id.* at 9.

[9] See Chemistry Report No. D-68-2015 dated June 11, 2015; *id.* at 11.

[10] See *rollo*, pp. 94-97.

In defense, petitioner denied the accusations against her, claiming instead that, at the time of the alleged incident, she was riding her motorcycle near Centro Uno, Claveria, Cagayan when a tricycle with three (3) men on board hit her vehicle, causing her to fall on the ground. The men then arrested her without just cause and falsely made it appear that she was peddling illegal drugs.[11]

In a Judgment[12] dated January 24, 2017, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[13] Giving credence to the testimonies of the prosecution witnesses, the RTC ruled that all the elements of the alleged crime had been sufficiently established, as it was shown that during a legitimate buy-bust operation conducted by police operatives, petitioner was caught *in flagrante delicto* selling a plastic sachet containing 0.137 gram of *shabu* to a poseur-buyer in exchange for the amount of ₱500.00. Meanwhile, it found petitioner's defenses of denial and frame-up untenable for lack of evidence.[14]

Aggrieved, petitioner appealed[15] to the Court of Appeals (CA).

In a Resolution[16] dated February 15, 2018, the CA **dismissed** the appeal for failure to file an appellant's brief pursuant to Section 8,[17] Rule 124 of the Rules of Court (Rules). The CA

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[11] See *id.* at 97-99.

[12] *Id.* at 94-103.

[13] *Id.* at 103.

[14] See *id.* at 99-103.

[15] See Notice of Appeal dated January 26, 2017; CA *rollo*, pp. 11-12.

[16] *Rollo*, pp. 56-58.

[17] Section 8. *Dismissal of appeal for abandonment or failure to prosecute*. — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, **dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule**, except where the appellant is represented by a counsel *de officio*.

xxx xxx xxx (Emphasis supplied)

found that, despite the grant of several motions for extension of time to file the said pleading, petitioner still failed to file the same.

On March 15, 2018, the RTC Decision became final and executory, and in a Resolution[18] dated August 3, 2018, the CA ordered the issuance of an Entry of Judgment.[19]

On October 25, 2018, the Public Attorney's Office — Special and Appealed Cases Service, on behalf of petitioner, filed an *Entry of Appearance with Motion to Recall the Entry of Judgment and Reinstate the Accused-Appellant's Appeal*.[20] Petitioner prayed for the relaxation of procedural rules and for her appeal to be reinstated and given due course, explaining that the failure to file an appellant's brief was due to the gross negligence of her previous counsel, Atty. Amelito A. Ruiz (Atty. Ruiz), who unjustifiably failed to file the said pleading despite repeatedly moving for extension of time to do so.

In a Resolution[21] dated February 7, 2019, the CA **denied** the motion for lack of merit, holding that there was no persuasive reason to liberally apply the procedural rules on appeal. Undaunted, petitioner moved for reconsideration,[22] which was denied in a Resolution[23] dated July 8, 2019.

Hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed petitioner's appeal based on procedural grounds.

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[18] See Notice of Resolution dated August 3, 2018; *rollo*, p. 66.

[19] *Id.* at 67.

[20] *Id.* at 68-73.

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

[22] See motion for reconsideration dated March 7, 2019; *id.* at 82-88.

[23] *Id.* at 34-35.

The Court's Ruling

The petition is meritorious.

At the outset, it bears stressing that, as a rule, "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, "[the] 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 the suspension of the rules, [and] *(e)* a lack of any showing that the review sought is merely frivolous and dilatory x x x,"[24] all of which obtain in the instant case.

Guided by the foregoing considerations, the Court finds it proper to recall the Entry of Judgment dated March 15, 2018 and reinstate petitioner's appeal, as will be explained hereunder.

In appeals of criminal cases before the CA, the appellant's failure to timely file his or her brief is a ground for the dismissal of an appeal. This is authorized by Section 8, Rule 124 of the Rules, which states:

> Section 8. *Dismissal of appeal for abandonment or failure to prosecute*. — The Court of Appeals may, upon motion of the appellee or ***motu proprio*** and with notice to the appellant in either case, **dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule**, except where the appellant is represented by a counsel *de officio*.
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> x x x x x x x x x (Emphases and underscoring supplied)

Similarly, Section 1, Rule 50 of the Rules provides:

> 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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[24] *Barnes v. Padilla*, 482 Phil. 903, 915 (2004).

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(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[.]

x x x x x x x x x (Emphases and underscoring supplied)

Notably, the dismissal of an appeal based on the foregoing provisions is in accord with the well-settled principle that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost."[25] Compliance with procedural rules is mandatory, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[26]

Nevertheless, it should be observed that "if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction."[27] Indeed, case law instructs that "[i]t is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more

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[25] *Manila Mining Corporation v. Amor*, 758 Phil. 268 (2015), citing *Philux v. NLRC*, 586 Phil. 19, 26 (2008).

[26] *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, 700 Phil. 575, 581 (2012).

[27] *Curammeng v. People*, 799 Phil. 575, 581 (2016), citing *CMTC International Marketing Corporation v. Bhagis International Trading Corporation, id.* at 582.

delay, if not miscarriage of justice."[28] "What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities."[29] "Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."[30]

In this case, it appears that the appeal interposed by petitioner before the CA has ostensible merit owing to the alleged lapses of the arresting officers in duly complying with the chain of custody rule.[31] While the Court cannot fault the CA for upholding procedural rules and acknowledges its adherence thereto, We cannot countenance the incarceration of an accused without the underlying conviction being thoroughly reviewed on account of the negligence of counsel. At the very least, if the CA would eventually find that petitioner's appeal should be denied and her conviction must be affirmed, it should be based on a full consideration of the merits of her appeal and not for reasons anchored on technicalities. Hence, the Court deems it proper to relax the technical rules of procedure in order to afford petitioner the fullest opportunity to establish the merits of her appeal. Accordingly, the Entry of Judgment made in this case should be recalled and the case be remanded to the CA for resolution of the appeal on its merits. Petitioner is given a non-extendible period of thirty (30) days upon receipt of this Decision to file her appellant's brief with the CA.[32]

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[28] *Heirs of Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014), citing *Aguam v. CA*, 388 Phil. 587, 594 (2000).

[29] *Id.* at 582.

[30] *Curammeng v. People, supra* note 27, at 582-583, citing *City of Dagupan v. Maramba*, 738 Phil. 71, 87 (2014).

[31] See Petition, *rollo*, p. 21.

[32] In accordance with Section 3, Rule 124 of the Rules of Court which reads:

Finally, the Court cannot turn a blind eye to the apparent negligence of Atty. Ruiz, who, as narrated earlier, failed to file the required appellant's brief despite repeatedly moving for extension of time to do so. Such unjustified omission led to petitioner's conviction becoming final and executory without appellate review and must be dealt with accordingly. Therefore, in accordance with Section 13,[33] Rule 139-B of the Rules, the Court finds it proper to furnish the Office of the Bar Confidant a copy of this Decision for the initiation of appropriate disciplinary proceedings against Atty. Ruiz.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated February 7, 2019 and July 8, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09062 are hereby **REVERSED** and **SET ASIDE**, and the Entry of Judgment dated March 15, 2018 is **RECALLED**. The case is **REMANDED** to the CA for resolution of the appeal on its merits. Petitioner is **DIRECTED** to file her appellant's brief therewith within a non-extendible period of thirty (30) days from receipt of this Decision.

Section 3. *When brief for appellant to be filed*. — **Within thirty (30) days** from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee. (Emphasis and underscoring supplied)

[33] In accordance with Section 13 of Rule 139-B of the Rules of Court which reads:

Section 13. *Investigation of Complaints*. — In proceedings initiated by the Supreme Court, or in other proceedings when the interest of justice so requires, the **Supreme Court may refer the case for investigation to the Office of the Bar Confidant**, or to any officer of the Supreme Court or judge of a lower court, in which case the investigation shall proceed in the same manner provided in Sections 6 to 11 hereof, save that the review of the report of investigation shall be conducted directly by the Supreme Court. The complaint may also be referred to the IBP for investigation, report, and recommendation. (As amended by Bar Matter No. 1645, approved on October 13, 2015) (Emphasis and underscoring supplied)

Let a copy of this Decision be furnished the Office of the Bar Confidant for the initiation of appropriate disciplinary proceedings against Atty. Amelito A. Ruiz.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Gaerlan,*[*] *JJ.*, concur.

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[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

INDEX

INDEX

ACTIONS

Accion interdictal — An *accion interdictal* comprises two distinct causes of action, forcible entry and unlawful detainer; they are distinguished mainly by the nature of the deforciant's entry into the property; in forcible entry, possession is illegal at the outset, as entry was effected through force, intimidation, strategy, threats, or stealth; on the other hand, in unlawful detainer, possession is initially lawful as it stems from an express or implied contract, but subsequently becomes illegal when the deforciant withholds possession after the expiration or termination of his/her right; both actions for forcible entry and unlawful detainer must be brought within one year from the date of actual entry on the land, or from the date of last demand, as the case may be. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

— An *accion interdictal* is a summary action that determines the right to physical possession, independent of ownership; it is cognizable by the proper Municipal or Metropolitan Trial Court. (*Id.*)

Accion publiciana — An *accion publiciana* is a plenary action to recover the right of possession, and is brought before the proper RTC when the dispossession has lasted for more than one year; it is an ordinary civil proceeding to determine the better right of possession independent of title. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

Accion reivindicatoria — An *accion reivindicatoria* is a suit to recover possession of a parcel of land as an element of ownership; it is filed before the proper Regional Trial Court; the judgment in said case determines the ownership of the property and awards possession to the lawful owner. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

Breach of contract of carriage — In cases of damages resulting from maritime collision, the Civil Code provisions on common carrier are applicable if the cause of action is based on contract of carriage. (Aleson Shipping Lines *vs*. CGU International Ins. Plc., *et al*., G.R. No. 217311, July 15, 2020) p. 540

Cause of action — Section 2, Rule 2 of the Rules of Court defines a "cause of action" as the act or omission by which a party violates a right of another; the essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. (Bank of the Philippine Islands *vs.* Bacalla, Jr., *et al.,* G.R. No. 223404, July 15, 2020) p. 590

Moot and academic case — A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve; it can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. (Express Telecommunications Co., Inc. (EXTELCOM) *vs.* AZ Communications, Inc., G.R. No. 196902, July 13, 2020) p. 44

— In *Ilusorio v. Baguio Country Club Corporation*, this Court discussed that while one issue in the case became moot, the case should not be automatically dismissed if there are other issues raised that need resolving; however, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial; when a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process. (*Id.*)

— *Moldex* also enumerated other instances when this Court may rule on moot cases: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review; none of these exceptions are present in this case. (*Id.*)

— *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*: a case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use; in such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. (*Id.*)

— Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion; this rule stems from this Court's judicial power, which is limited to settling actual cases and controversies involving legally demandable and enforceable rights. (*Id.*)

ALIBI AND DENIAL

Defenses of — The defenses of alibi and denial, if unsubstantiated by clear and convincing evidence, are inherently weak, self-serving, and undeserving of weight in law. (People *vs.* Lopez, G.R. No. 234157, July 15, 2020) p. 782

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3(e) — Elements of violation of Section 3(e) of R.A. No. 3019, which are: *(a)* the accused must be a public officer discharging administrative, judicial or official functions; *(b)* he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and *(c)* his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the

discharge of his functions. (Coloma, Jr. *vs.* People, *et al.*, G.R. No. 233152, July 13, 2020) p. 124

— There are two ways by which Section 3(e) of R.A. No. 3019 may be violated, that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference. (*Id.*)

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Qualified trafficking — According to the definition laid down in Section 3 (b) of R.A. No. 9208, a child refers to a person below eighteen (18) years of age; considering that eleven (11) of the victims were minors, the offense becomes qualified as the persons being trafficked were children; if the crime was committed in large scale as it was committed against three (3) or more persons, individually or as a group, it is also qualified. (People *vs.* Leocadio, *et al.*, G.R. No. 237697, July 15, 2020) p. 819

— It was held in *People v. Villanueva* that a conviction for qualified trafficking in persons may stand even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208; if the person trafficked is a child, we may do away with discussions on whether or not the second element was actually proven; it has been recognized that even without the perpetrator's use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will. (People *vs.* Lopez, G.R. No. 234157, July 15, 2020) p. 782

— Section 3(a) of R.A. No. 9208, as amended, defines "Trafficking in Persons" as follows: it refers to the recruitment, obtaining, hiring, providing, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of

force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. (People *vs.* Oledan, G.R. No. 240692, July 15, 2020) p. 848

— The elements of the crime of trafficking in persons are the following: 1. The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; 2. The *means* used which may include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and 3. The purpose of trafficking which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs; the crime is then qualified when the trafficked person is a child below 18 years of age or one over 18 but is unable to fully take care or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition. (People *vs.* Lopez, G.R. No. 234157, July 15, 2020) p. 782

Trafficking in persons — In *People of the Philippines v. Nancy Lasaca Ramirez*, this Court enumerated the elements that must be established to successfully prosecute the crime: the elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus: (1) the act of "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;" (2) the means used which

include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) the purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." (People *vs.* Leocadio, *et al.*, G.R. No. 237697, July 15, 2020) p. 819

— R.A. No. 9208, being the law that defines the crime of Trafficking in Persons, read as follows: Section 3. Definition of Terms, as used in this Act: (a) Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. (*Id.*)

— The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph. (*Id.*)

APPEALS

Appeal from the decisions of the Court of Tax Appeals — The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

(Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020) p. 799

Appeal in criminal cases — In so disposing, the Court considers, as is true in all appeals from conviction of crimes, any fact or circumstance in the accused-appellant's favor regardless of whether such fact or circumstance was raised as a defense or assigned as an error and despite the similar pronouncement of guilt by both the trial court and the appellate court; every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether the findings adverse to the accused should be upheld or struck down in his favor. (People *vs.* Lopez, G.R. No. 247974, July 13, 2020) p. 302

Dismissal of appeal — In appeals of criminal cases before the CA, the appellant's failure to timely file his or her brief is a ground for the dismissal of an appeal; this is authorized by Section 8, Rule 124 of the Rules; the dismissal of an appeal based on the foregoing provisions is in accord with the well-settled principle that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law." (Tamboa *vs.* People, G.R. No. 248264, July 27, 2020) p. 1002

Factual findings of administrative or quasi-judicial agencies — It is well-settled that findings of fact of an administrative agency, like the LA and the NLRC, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal; the Court has consistently ruled that the factual findings and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as long as they are supported by substantial evidence. (SPC Power Corporation, *et al. vs.* Santos, G.R. No. 202379, July 27, 2020) p. 983

— The general rule is that factual findings of administrative or *quasi*-judicial bodies, which include labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

Factual findings of the Commission on Audit — It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce. (Abpi *vs.* Commission on Audit, G.R. No. 252367, July 14, 2020) p. 362

Factual findings of the Construction Industry Arbitration Commission (CIAC) — In *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*, the Court held that factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral

Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process; We find that none of the above-mentioned circumstances exists in this case. (Department of Public Works and Highways *vs.* Italian-Thai Development Public Company, Ltd., *et al.,* G.R. No. 235853, July 13, 2020) p. 204

— Section 1, Rule 45 of the Revised Rules of Court expressly states that a petition for review on *certiorari* under this Rule shall raise only pure a question of law, which must be distinctly set forth; this Rule is complemented by Section 19 of the Construction Industry Arbitration Law which states that CIAC arbitral awards may only be assailed on pure questions of law: SEC. 19. Finality of Awards. -The arbitral award shall be binding upon the parties. It shall be final and unappealable except on questions of law which shall be appealable to the Supreme Court. (*Id.*)

— The court is duty-bound to uphold the integrity of the arbitration process and ensure that the parties do not undermine the process they voluntarily engaged themselves in, unless the party claiming for exception shows that any of the exceptional circumstances exists. (*Id.*)

— The court will not permit the parties to relitigate before it the issues of facts previously presented and argued before the arbitral tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the arbitral tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion, such as where it was shown that the party was deprived of a fair opportunity to present its position before the arbitral tribunal or that the award was obtained through fraud or corruption of arbitrators. (*Id.*)

— The factual findings of the CIAC, which possesses the required expertise in the field of construction arbitration, are final and conclusive and are not reviewable by the

Court on appeal, as the Court is duty-bound to ensure that an appeal does not undermine the integrity of arbitration or the process which the parties voluntarily elected to engage in, or conveniently set aside the conclusions made by the arbitral tribunal. (*Id.*)

Factual findings of the Court of Appeals — As laid down by the Court in *Dimaapi, et al. v. Golden Bell Loans and Credit Corporation, et al.*, the following four rigid parameters limit the giving of due course and granting of review or appeal by *certiorari* under Rule 45 of the Rules: (1) only questions of law, which must be distinctly set forth in the petition, shall be raised (Section 1, Rule 45); (2) to avoid the outright dismissal of the petition, there must be compliance with the payment of the docket and other required fees, deposit for costs, proof of proper service of the petition, the required contents of the petition, and the required documents that must accompany the petition (Sections 4 and 5, Rule 45); (3) the Court may on its own initiative deny the appeal by *certiorari* on the ground that it is without merit or is prosecuted manifestly for delay, or that the questions therein are too insubstantial to require consideration (second paragraph, Section 5, Rule 45); and (4) a review by *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important considerations by reason of substance "when the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court" or procedure "when the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower court, as to call for an exercise of the power of supervision" (Section 6, Rule 45). (Ususan Development Corporation, represented by Atty. Roel A. Pacio *vs.* Republic, G.R. No. 209462, July 15, 2020) p. 512

Factual findings of the Regional Trial Courts — While generally, the findings of the RTC, as affirmed by the CA, are binding and conclusive upon this Court, a careful examination of the records of the case reveals that the lower courts overlooked some significant facts and circumstances which, if considered in their true light, compels Abueva's exoneration. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

Petition for review on certiorari to the Supreme Court under Rule 45 — As a rule, only questions of law may be raised in a Rule 45 petition; this Court is not a trier of facts, and it will not delve into factual questions already settled by the lower courts; while this rule admits exceptions, the party must demonstrate and prove that the petition falls under the exceptions. (Aleson Shipping Lines *vs.* CGU International Ins. Plc., *et al.*, G.R. No. 217311, July 15, 2020) p. 540

— Basic is the rule that factual issues are improper in Rule 45 petitions as only questions of law may be raised in a petition for review on *certiorari*; this Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence. (American Express Transnational (now American International Tours, Inc.), *et al. vs.* Borre, G.R. No. 228320, July 15, 2020) p. 651

— In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65; Rule 45 limits the review to questions of law; in ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. (The Heirs of Reynaldo A. Andag, namely Veneranda B. Andag*, et al. vs.* DMC Construction Equipment Resources Inc., *et al.,* G.R. No. 244361, July 13, 2020)

— In cases of appeals from the Sandiganbayan, like this one, only questions of law and not questions of fact may

be raised; and, absent any showing that they come under the established exceptions, the Sandiganbayan's findings on the aforesaid matters remain conclusive and binding to the Court. (Coloma, Jr. *vs.* People, *et al.*, G.R. No. 233152, July 13, 2020) p. 124

— It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly; while it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case. (Philippine Navy Golf Club, Inc., *et al. vs.* Abaya, *et al.*, G.R. No. 235619, July 13, 2020) p. 186

— Labor cases are elevated to this Court through Rule 45 petitions, following Rule 65 petitions decided by the Court of Appeals on rulings made by the National Labor Relations Commission; from this, two (2) chief considerations become apparent: (1) the general injunction that Rule 45 petitions are limited to questions of law; and (2) that the more basic underlying issue is the National Labor Relations Commission's potential grave abuse of its discretion; in labor disputes then, this Court may only resolve the matter of whether the Court of Appeals erred in determining "the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission." (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

— The Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law; it must be emphasized that the Court is not a trier of facts, and this applies with greater force in labor cases. (SPC Power Corporation, *et al. vs.* Santos, G.R. No. 202379, July 27, 2020) p. 983

— The petition must perforce be denied on this basis because "*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, this Court, being a non-trier of facts, will not disturb the factual

findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin," which was not the case here. (Naag, Jr., *et al. vs.* People, G.R. No. 228638, July 13, 2020) p. 115

— This Court reiterates the basic procedural rule that it is not a trier of facts and that only pure questions of law may be raised in a petition for review on *certiorari* under Rule 45; although jurisprudence has provided several exceptions to this rule, such exceptions must be alleged, substantiated and proved by the parties so that this Court may effectively evaluate and review the factual issues raised. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court; the Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. (Pioneer Insurance & Surety Corporation *vs.* Tan also known as Carmen S.F. Gatmaytan and/or Unknown Owner/Proprietor of Save More Drug doing business under the name and style of Save More Drug, G.R. No. 239989, July 13, 2020) p. 222

Points of law, issues, theories and arguments — Giving due course to issues which were not ventilated before the trial court strips off the reviewing court of jurisdiction to decide a question not put forth as an issue; thus, any judgment rendered thereon is extrajudicial and invalid; except, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. (Pioneer Insurance & Surety Corporation *vs.* Tan also known as Carmen S.F. Gatmaytan and/or Unknown Owner/Proprietor of Save More Drug doing business under the name and style of Save More Drug, G.R. No. 239989, July 13, 2020) p. 222

— The prohibition on shifting the theory of the case on appeal was explained by the Court in this manner: the settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal; a party cannot, on appeal, change fundamentally the nature of the issue in the case; when a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party; not only that such principle finds its legal footing on equity, but also on law. (*Id.*)

ATTORNEYS

Attorney-client relationship — The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith; the highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

Attorney's fees — Canon 20 of the CPR requires that attorney's fees must be fair and reasonable; Rule 20.1 of the CPR enumerates criteria to be considered in assessing the proper amount of compensation that a lawyer should receive: Rule 20.01, a lawyer shall be guided by the following factors in determining his fees: (a) The time spent and the extent of the services rendered or required; (b) The novelty and difficulty of the question involved; (c) The importance of the subject matter; (d) The skill demanded; (e) The probability of losing other employment as a result of acceptance of the proffered case; (f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs; (g) The amount involved in the controversy and the benefits resulting to the client from the service; (h) The contingency or certainty of compensation; (i) The character of the employment, whether occasional or established; and (j)

The professional standing of the lawyer. (Salazar *vs.* Duran, A.C. No. 7035, July 13, 2020) p. 1

Commingling of funds — Violation of the Code which mandates lawyers to keep the "funds of each client separate and apart from his own and those of others kept by him." (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

Disbarment — Disbarment should be imposed in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstance; "the appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

Duties — Another important and fundamental tenet in legal ethics is that a lawyer owes fidelity to the cause of his or her client but not at the expense of truth and the administration of justice; as officers of the court tasked with aiding this court in its dispensation of justice, lawyers take an oath that they will not wittingly or willingly promote any groundless, false or unlawful suit, nor give aid or consent to the same. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— As a member of the bar, he/she must maintain the integrity and dignity of the legal profession by refraining from committing acts which might diminish in any degree the confidence of the public in the fidelity, honesty and integrity of the profession; he/she is thus expected to preserve the trust and confidence reposed upon him/her by his/her clients, his/her profession, the courts and the public. (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

— As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith; the measure of good

faith which an attorney is required to exercise in his dealings with his client is a much higher standard that is required in business dealings where the parties trade at arm's length; business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. (*Id.*)

— Canon 5 of the Code of Professional Responsibility requires that a lawyer be updated in the latest laws and jurisprudence; there is less than full compliance with the demands of professional competence, if a member of a bar does not keep himself abreast of the trend of authoritative pronouncements. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— In all his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy; every lawyer is enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts and to his clients. (Salazar *vs.* Duran, A.C. No. 7035, July 13, 2020) p. 1

— Lawyers should set a good example in promoting obedience to the Constitution and the laws; this is because a lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Influence peddling — Canon 7 of the CPR mandating that a "lawyer shall at all times uphold the integrity and dignity of the legal profession," as well as of Rule 15.06 proscribing a lawyer from stating or implying "that he is able to influence any public official, tribunal or legislative body." (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

Knowingly misquoting or misrepresenting the text of a decision — Rule 10.02, Canon 10 of the Code of Professional Responsibility mandates that a lawyer shall not knowingly misquote or misrepresent the text of a decision or authority; it is the duty of all officers of the court to cite the rulings and decisions of the Supreme Court accurately; misquoting or intercalating phrases in the text of a court decision constitutes willful disregard of the lawyer's solemn duty to act at all times in a manner consistent with the truth. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Liability of — A lawyer shall be administratively liable for withholding the true facts of the case with intent to mislead the court; penalty of reprimand imposed upon the respondent for breach of his duties as a lawyer under the lawyer's oath and Canon 10, Rule 1.01 of the Code of Professional Responsibility. (Salazar *vs.* Duran, A.C. No. 7035, July 13, 2020) p. 1

— A lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official; if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— A lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. (Ko *vs.* Maduramente, *et al.,* A.C. No. 11118, July 14, 2020) p. 331

— It is well to point out that in the realm of legal ethics, a breach of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR) particularly, Canon 1 and Rule 1.01 thereof considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered

to have violated his oath as a lawyer as well. (De Guzman *vs.* Venzon, *et al*., A.C. No. 8559, July 27, 2020) p. 960

Presumption of innocence — Lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove his allegations by preponderant evidence. (Salazar *vs.* Duran, A.C. No. 7035, July 13, 2020) p. 1

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Substantial correction — Failure to strictly comply with the procedural requirements renders the proceedings for the correction of substantial errors, void; impleading and notifying only the civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements; instances when the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties. (Republic *vs.* Ontuca (Mother and Guardian of her Minor Child, Zsanine Kimberly Jariol), G.R. No. 232053, July 15, 2020) p. 765

— The Civil Registrar and all persons who have or claim to have any interest that would be affected, must be impleaded in the petition for a substantial correction of an entry in the civil registry; the petition for the correction of petitioner's civil status in her daughter's birth certificate from "married" to "single," and the date and place of marriage to "no marriage," must implead all indispensable parties. (*Id.*)

— The correction of entries in the Civil Register pertaining to citizenship, legitimacy of paternity or filiation, or legitimacy of marriage involves substantial alterations which may be corrected, and the true facts established by filing a petition for cancellation and or correction of the entries before the regional trial court; the correction of the date and place of the parent's marriage to "not married" must be filed before the regional trial court,

as the same are substantial which will alter the child's status from legitimate to illegitimate. (*Id.*)

— The correction of the date and place of the parent's marriage from "*May 25, 1999 at Occ. Mindoro*" to "*NOT MARRIED*" is substantial since it will alter the child's status from legitimate to illegitimate; the correction of entries in the civil register pertaining to citizenship, legitimacy of paternity or filiation, or legitimacy of marriage involves substantial alterations, which may be corrected, and the true facts established, provide the parties aggrieved by the error to avail themselves of the appropriate adversary proceedings. (*Id.*)

CERTIORARI

Petition for — Jurisprudence recognizes certain situations when the extraordinary remedy of *certiorari* may be deemed proper, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency; moreover, the same remedy may be availed of even if the lost appeal was occasioned by a party's neglect or error in the choice of remedies when: (a) public welfare and the advancement of public policy dictates; (b) the broader interest of justice so requires; (c) the writs issued are null and void; or (d) the questioned order amounts to an oppressive exercise of judicial authority. (Denila *vs*. Republic, *et al*., G.R. No. 206077, July 15, 2020) p. 380

Petition for certiorari under Rule 64 — As explained in *Binga Hydroelectric Plant, Inc. v. Commission on Audit*: We have said previously that the belated filing of a petition for *certiorari* under Rule 64 is fatal; procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the

resolution of rival claims and in the administration of justice. (Abpi *vs.* Commission on Audit, G.R. No. 252367, July 14, 2020) p. 362

— *Certiorari* petition filed under Rule 64 of the Rules of Court must be verified and accompanied by a certification against forum-shopping; attached to the Petition for *Certiorari* is a Manifestation by undersigned counsel of petitioner to the effect that the Verification and Certification against Forum-Shopping is a mere photocopy and undertakes to submit the original within three (3) days upon receipt. (*Id.*)

— Grave abuse of discretion on the part of the Commission on Audit (COA) implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility, which must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law; grave abuse of discretion, not committed by the COA when it denied the petition for review and sustained the notices of disallowances. (*Id.*)

— Not all errors of the Commission on Audit is reviewable by the Court, as the Court's review is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. (*Id.*)

— Section 3, Rule 64 of the Rules of Court provides that the petition shall be filed within thirty (30) days from

notice of the judgment or final order or resolution sought to be reviewed; the filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period; if the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (*Id.*)

Writ of — Writ of *Certiorari* under Section 1 of Rule 65 will issue when there is grave abuse of discretion committed by a tribunal, board or officer who in the exercise of its judicial or quasi-judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; in the instance of grave abuse of discretion, the court may annul or modify the proceedings of such tribunal, board or officer, and grant such incidental reliefs as the law and justice may require. (Bank of the Philippine Islands *vs.* Bacalla, Jr., *et al.,* G.R. No. 223404, July 15, 2020) p. 590

CODE OF COMMERCE

Application of — Article 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after an expert appraisal; Article 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the losses and damages suffered by their cargoes; to be cleared of liability under these provisions, a vessel must show that it exercised ordinary diligence. (Aleson Shipping Lines *vs*. CGU International Ins. Plc., *et al*., G.R. No. 217311, July 15, 2020) p. 540

CODE OF CONDUCT FOR COURT PERSONNEL

Application of — This Court has long held that "the administration of justice is circumscribed with a heavy

burden of responsibility which requires that everyone involved in its dispensation from the presiding judge to the lowliest clerk live up to the strictest standards of competence, honesty, and integrity in the public service"; as the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethics, persons aspiring for public office must observe honesty, candor and faithful compliance with the law. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Disbarment — Section 27, Rule 138 of the Rules of Court includes the "willful disobedience of any lawful order of a superior court" as one of the grounds for disbarment or suspension from the practice of law; lawyers are called upon to obey court orders and processes and respondents' deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Duties — Canon 1 of the Code of Professional Responsibility states that "a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes"; by virtue of this Canon, lawyers should always keep in mind that, although upholding the Constitution and obeying the law is an obligation imposed on every citizen, a lawyer's responsibilities under Canon 1 mean more than just staying out of trouble with the law; as servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

COMMON CARRIERS

Liability of — Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them; subject to certain exceptions

enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods; the extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. (Aleson Shipping Lines *vs.* CGU International Ins. Plc., *et al.*, G.R. No. 217311, July 15, 2020) p. 540

— In cases where cargos are lost, destroyed, or deteriorated, an action based on the contract of carriage may be filed against the shipowner of the vessel based on Civil Code provisions on common carrier. (*Id.*)

— In *Eastern Shipping Lines, Inc.*, this Court held a shipowner liable because as a common carrier, the shipowner failed to observe extraordinary diligence in the transportation of goods required under Article 1734; it held that based on the bills of lading issued, the shipowner received the cargo in good condition, and their arrival in bad order at their destination constitutes a presumption that the carrier was negligent. (*Id.*)

— In *Regional Container Lines of Singapore v. The Netherlands Insurance Co. (Philippines)*, this Court summarized the rules on the liability of a common carrier: (1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case; (2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and (3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence. (*Id.*)

— The high degree of diligence exacted by the law creates a presumption against common carriers when goods are lost, destroyed or deteriorated; to overcome this presumption, common carriers must prove that they exercised extraordinary diligence in the handling and transportation of the goods. (*Id.*)

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Expropriation — As elucidated in *Apo Fruits Corporation v. Landbank of the Phils.*: We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken; we ruled in this case that: If property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. (Land Bank of the Philippines *vs.* Heirs of Leoncio Barrameda, G.R. No. 221216, July 13, 2020) p. 89

— Just compensation carries the invariable definition of being the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government; as a modifier to the word compensation, "just" means that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample. (*Id.*)

— The delay in the payment of just compensation is a forbearance of money; thus, is entitled to earn interest; the difference in the amount between the initial payment made by the government and final amount of just compensation as adjudged by the court, should earn legal

interest as a forbearance of money; the amount of just compensation due to the respondents for their expropriated property computed pursuant to A.O. No. 01-10, shall earn interest at the rate of 12% per annum from July 1, 2009 until June 30, 2013, and, thereafter, at the rate of 6% until November 19, 2013. (*Id.*)

— The rule is that the payment of just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first; payment of just compensation should be reckoned from the date of taking when such preceded the filing of the complaint for expropriation; in exceptional circumstances, payment of just compensation may be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the actual taking of the properties occurred earlier. (*Id.*)

— The unpaid landowners whose claims were covered under P.D. No. 27 and E.O. No. 228 and revalued under R.A. No. 6657 or R.A. No. 9700, are no longer allowed to avail of the 6% incremental interest under A.O. No. 13-94 and its amendatory orders, as the updated values under A.O. No. 01-10, which took effect on July 1, 2009, answer for the inequity that the unpaid landowners suffered on account of the delay in the payment of just compensation. (*Id.*)

— When property owners are deprived of their lands without being properly compensated at the time of taking, interest on just compensation is due for the purpose of compensating the property owners for the income that they would have otherwise made. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second,

the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. (People *vs.* Lopez, G.R. No. 247974, July 13, 2020) p. 302

— In arriving at this certainty, the very nature of prohibited drugs, they being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime; to establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link of the chain of custody from the moment the drug is seized up to its presentation in court as evidence. (*Id.*)

— It is immaterial whether the allegation was for *shabu* or *ephedrine,* since both are dangerous drugs; the purpose of the laboratory examination is to confirm that the seized items are indeed dangerous drugs; the police officers cannot be expected to conclude with certainty whether the suspected dangerous drugs are *shabu* or *ephedrine* just by visual inspection. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

— It is without question that the burden of (1) proving strict compliance with Section 21 of R.A. No. 9165; and (2) providing a sufficient explanation in case of any deviation from the said rule rests upon the prosecution, and such burden of proof never shifts. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

— R.A. No. 9165 restrictively enumerates the places where the inventory and photographing of the seized drug specimen can be done: (1) at the place of seizure; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. (*Id.*)

— Strict adherence with Section 21 of R.A. No. 9165 is the rule, as anything less than this would automatically be a deviation from the chain of custody rule that would

only pass judicial muster in the most exacting of standards following the twin requirements of existence of justifiable reasons, and preservation of the integrity and evidentiary value of the seized items. (People *vs.* Lopez, G.R. No. 247974, July 13, 2020) p. 302

— The Court emphasizes that without the insulating presence of the required witnesses during the seizure and marking of the dangerous drug, the evils of switching, "planting" or contamination of the evidence rear their ugly heads as to negate the integrity and credibility of such seizure and of the *corpus delicti*. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

— The Court, in *Aranas v. People*, declared that: To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. (People *vs.* Pis-An, G.R. No. 242692, July 13, 2020) p. 235

— The prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused; the prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item; 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.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

— Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do

so and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

.— To maintain the integrity and evidentiary value of the seized prohibited drug, the apprehending officers must ensure that the chain of custody in handling the same is not compromised; the procedure therefor is specifically outlined in Section 21, Article II of R.A. No. 9165 and the corresponding provisions in its IRR. (People *vs.* Lacson, G.R. No. 229055, July 15, 2020) p. 709

— Under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, aside from the accused or his/her representative or counsel, an elected public official, and a representative of the NPS *or* the media should be there to witness the physical inventory of the alleged seized items and photographing of the same. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

Illegal possession of prohibited drugs — For the charge of illegal possession of a dangerous drug to prosper, it must be proven that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. (People *vs.* Pis-An, G.R. No. 242692, July 13, 2020) p. 235

Illegal sale of prohibited drugs — Among the fundamental principles to which undivided fealty is given is that, in a criminal prosecution for violation of Section 5, Article II of R.A. No. 9165, as amended, the State is mandated to prove that the illegal transaction did in fact take place; and there is no stronger or better proof of this fact than the presentation in court of the actual and tangible seized drug itself mentioned in the inventory, and as attested to by the so-called insulating witnesses named

in the law itself. (People *vs.* Abueva, G.R. No. 243633, July 15, 2020) p. 864

— In *People v. Manlangit*, citing *Quinicot v. People*, the Court pronounced: settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation; there is no textbook method of conducting buy-bust operations; the Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers; a prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. (People *vs.* Lopez, G.R. No. 247974, July 13, 2020) p. 302

— In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor; what is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drug seized as evidence. (*Id.*)

— The commission of the offense of illegal sale of dangerous drugs requires the consummation of the illegal sale which is statutorily defined as "any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration"; in apprehensions pursuant to a buy-bust operation, delivery of the illegal drug to the poseur-buyer and the receipt by the seller of the marked money completes the illegal transaction. (*Id.*)

— To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

Illegal transportation of prohibited drugs — In illegal transportation of prohibited drugs, the essential element is the movement of the dangerous drug from one place to another; as explained by the Court in *People v. Asislo*: the essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another; as defined in the case of *People v. Mariacos*, "transport" means "to carry or convey from one place to another"; there is no definitive moment when an accused "transports" a prohibited drug. (People *vs.* Lacson, G.R. No. 229055, July 15, 2020) p. 709

Illegal use of prohibited drugs — While Section 15 penalizes a person apprehended or arrested for unlawful acts listed under Article II of R.A. No. 9165 and who is found to be positive for use of any dangerous drug, a conviction presupposes the prior conduct of an initial screening test and a subsequent confirmatory test both yielding positive results for illegal drug use; from Section 36 of R.A. No. 9165, two distinct drug tests are required: a screening test and a confirmatory test; a positive screening test must be confirmed for it to be valid in a court of law. (People *vs.* Lopez, G.R. No. 247974, July 13, 2020) p. 302

CONSPIRACY

Existence of — Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it; it can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. (People *vs.* Leocadio, *et al.*, G.R. No. 237697, July 15, 2020) p. 819

CONTEMPT

Contempt of court — Section 3(b), Rule 71 of the same Rules makes "disobedience of or resistance to a lawful *writ*,

process, order, or judgment of a court" one of the grounds from indirect contempt; since "contempt of court" has been defined as a willful disregard or disobedience of a public authority, even a defiance directed against a judgment of a superior court which has not yet attained finality and is pending for review before this Court is considered contemptuous. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

CORPORATION CODE

Section 74 — A violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties; jurisprudence cites the elements of the subject offense as follows: first, director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes; second, any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; third, if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and, fourth, where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved. (Keh, *et al. vs.* People, G.R. Nos. 217592-93, July 13, 2020) p. 76

— The underlying prosecution is for the alleged violation of Section 74 of the Corporation Code, in relation to Section 144 thereof; these provisions create the duty on the part of the corporation to keep and preserve a record of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or

trustees, along with the duty to make such record available to its stockholders or members upon written request therefore. (*Id.*)

CORPORATIONS

Directors and officers — In case of dismissals, directors and officers of corporations may only be held solidarily liable with the corporation if they acted in bad faith or with malice. (Team Pacific Corporation, *et al. vs.* Parente, G.R. No. 206789, July 15, 2020) p. 479

CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERRORS IN THE CIVIL REGISTRY (R.A. NO. 9048, AS AMENDED BY R.A. NO. 10172)

Application of — In 2001, R.A. No. 9048 was enacted, amending Rule 108; under the law, the local civil registrars, or the Consul General, as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order; this law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving substantial corrections to Rule 108; in 2012, R.A. No. 10172, amended R.A. No. 9048, expanding the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry. (Republic *vs.* Ontuca *y* Peleño (Mother and Guardian of her Minor Child, Zsanine Kimberly Jariol *y* Ontuca), G.R. No. 232053, July 15, 2020) p. 765

— R.A. No. 9048, as amended, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate, as the local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive. (*Id.*)

— The application of R.A. No. 9048, as amended, is not limited to cases in which the erroneous entries in the birth certificate sought to be corrected pertain to the owner of the birth certificate; Rule 3 of the Implementing Rules and Regulations of R.A. No. 9048, as amended, provides: Rule 3. Who may file the petition - Any person of legal age, having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register, may file the petition; a person is considered to have direct and personal interest when he is the owner of the record, or the owner's spouse, children, parents, brothers, sisters, grandparents, guardian, or any other person duly authorized by law or by the owner of the document sought to be corrected: provided, however, that when a person is a minor or physically or mentally incapacitated, the petition may be filed on his behalf by his spouse, or any of his children, parents, brothers, sisters, grandparents, guardians, or persons duly authorized by law. (*Id.*)

— The court allows the filing of a single petition under Rule 108 of the Rules of Court for the corrections of both clerical or typographical and substantial erroneous entries in the civil records, rather than two separate petitions before the Regional Trial Court and the Local Civil Registrar, in order to avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice. (*Id.*)

Clerical or typographical error — In *Republic v. Mercadera*, we ruled that the correction of petitioner's misspelled first name from "*MARILYN*" to "*MERLYN*" involves a mere clerical error; in *Yu v. Republic* it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely to the righting of a clerical error." (Republic *vs.* Ontuca *y* Peleño (Mother and Guardian of her Minor Child, Zsanine Kimberly Jariol *y* Ontuca), G.R. No. 232053, July 15, 2020) p. 765

— Section 2(3) of R.A. No. 9048, as amended, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records. (*Id.*)

Substantial correction — The term "*substantial*" means consisting of or relating to substance, or something that is important or essential; in relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought; changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person, are substantial in character. (Republic *vs.* Ontuca *y* Peleño (Mother and Guardian of her Minor Child, Zsanine Kimberly Jariol *y* Ontuca), G.R. No. 232053, July 15, 2020) p. 765

COURT OF APPEALS (CA)

Jurisdiction — In *Spouses Marcelo v. LBC Bank*, this Court held that the Court of Appeals has the authority to consider new evidence and perform what is necessary to resolve factual issues; the Court of Appeals may consider the new evidence presented by a party in a petition for *certiorari*. (Team Pacific Corporation, *et al. vs.* Parente, G.R. No. 206789, July 15, 2020) p. 479

— Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, states: SECTION 9. Jurisdiction. - The Court of Appeals shall exercise: The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including

the power to grant and conduct new trials or further proceedings. (*Id.*)

COURT OFFICIALS AND EMPLOYEES

Dishonesty — Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity"; it involves intentionally making a false statement to deceive or commit a fraud. (Re: Allegation of Falsification Against Process Servers Maximo D. Legaspi and Desiderio S. Tesiorna, Branch 43 and Office of The Clerk of Court, Respectively, Both of the Metropolitan Trial Court, Quezon City, A.M. No. 11-7-76-MeTC, July 14, 2020) p. 352

Falsification of official documents — Falsification of an official document, as an administrative offense, is knowingly making false statements in official or public documents. (Re: Allegation of Falsification Against Process Servers Maximo D. Legaspi and Desiderio S. Tesiorna, Branch 43 and Office of The Clerk of Court, Respectively, Both of the Metropolitan Trial Court, Quezon City, A.M. No. 11-7-76-MeTC, July 14, 2020) p. 352

— Under Rule IV, Section 52 (A) (1) of the Uniform Rules in Administrative Cases in the Civil Service, dishonesty and falsification of official document are both grave offenses punishable by dismissal from government service, without prejudice to criminal or civil liability; the penalty also carries with it the cancellation of respondent's eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. (*Id.*)

Liability of — In *Villordon v. Avila*, the Court stressed that employment in the judiciary demands the highest degree of responsibility, integrity, loyalty and efficiency from its personnel; all judiciary employees are expected to conduct themselves with propriety and decorum at all times; an act that falls short of the exacting standards set for public officers, especially those in the judiciary, shall not be countenanced. (Re: Allegation of Falsification

Against Process Servers Maximo D. Legaspi and Desiderio S. Tesiorna, Branch 43 and Office of The Clerk of Court, Respectively, Both of the Metropolitan Trial Court, Quezon City, A.M. No. 11-7-76-MeTC, July 14, 2020) p. 352

— To sustain a finding of administrative culpability, only substantial evidence is required, not overwhelming or preponderant, and very much less than proof beyond reasonable doubt as required in criminal cases; substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (*Id.*)

CRIMINAL PROCEDURE

Arraignment — In *Samson v. Judge Daway*, the Court explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office; it follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment. (People *vs.* Goyala, Jr., G.R. No. 224650, July 15, 2020) p. 610

— The 60-day limitation in the suspension of arraignment is a procedural rule that can be relaxed, where a party provides justifiable reasons to further suspend the criminal proceedings; the Speedy Trial Act of 1998 which imposes time limits from arraignment to promulgation of judgment to ensure the constitutional rights of the accused against vexatious prosecution, cannot be used to further extend a period fixed by law. (*Id.*)

— Upon the lapse of the 60-day period, the court is bound to arraign the accused or deny the Motion to Defer Arraignment whether or not the petition before the DOJ has been resolved; as explained in *Crespo v. Judge Mogul (Crespo)*, when an Information has been filed in court, the prosecutor would be stripped of the power to dismiss the case, *motu proprio*; instead, the court acquires the

exclusive jurisdiction to decide what to do with the case even if it is against the position of the public prosecutor or even the Secretary of Justice; the 60-day period was enacted in recognition of the power of the Secretary of Justice to review resolutions of his subordinates in criminal cases and such power was never revoked by *Crespo*. (*Id.*)

Information — A minor variance between the Information and the evidence does not alter the nature of the offense, nor does it determine or qualify the crime or penalty, so that even if a discrepancy exists, this cannot be pleaded as a ground for acquittal; his right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

— It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information; be that as it may, the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. (Keh, *et al. vs.* People, G.R. Nos. 217592-93, July 13, 2020) p. 76

— Section 6, Rule 110 of the Revised Rules of Court only requires, among others, that it must state the acts or omissions so complained of as constitutive of the offense; the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. (*Id.*)

— Sections 4 and 5, Rule 120 of the Rules of Court, can be applied by analogy in convicting the appellant of the offenses charged, which are included in the crimes proved; under these provisions, 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. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

— The sufficiency of the allegations in the information serves the fundamental right of the accused to be informed of the nature of the charge and to enable him to suitably and adequately prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense. (Keh, *et al. vs.* People, G.R. Nos. 217592-93, July 13, 2020) p. 76

Motion to quash — C*ertiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information. (Keh, *et al. vs.* People, G.R. Nos. 217592-93, July 13, 2020) p. 76

Preliminary investigation — In *Dichaves vs. Office of the Ombudsman*: a person's rights in a preliminary investigation are subject to the limitations of procedural law; these rights are statutory, not constitutional; the purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that the respondent in a criminal complaint is probably guilty thereof." (People *vs.* Goyala, Jr., G.R. No. 224650, July 15, 2020) p. 610

DUE PROCESS

Principle of — A critical component of due process is a hearing before an impartial and disinterested tribunal; all the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge; such constitutional principle is the basis of Section 1, Rule 137 of the Rules of Court. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— The Constitution itself identifies the limitations to the awesome and near-limitless powers of the State; chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due

process of law. (Philippine Navy Golf Club, Inc., *et al. vs.* Abaya, *et al.*, G.R. No. 235619, July 13, 2020) p. 186

Procedural due process — As for the notice requirements, it is settled that for the manner of dismissal in termination proceedings to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination of his employment; the first notice apprises the employee of the specific acts or omissions for which his or her dismissal is sought, while the second informs the employee of the employer's decision to dismiss him or her. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

Substantive and procedural aspects of due process — Before the employer may terminate the services of the employee he must comply with the substantive and procedural aspects of due process; in order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both substantive and the procedural requirements thereof. (SPC Power Corporation, *et al. vs.* Santos, G.R. No. 202379, July 27, 2020) p. 983

— Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property; in labor cases, it refers to the grounds/basis of terminating an employee; on the other hand, procedural due process means compliance with the procedures or steps prescribed by the law; this refers to the employer's act of affording the employee to explain his/her side through the two notices required by the law (notice to explain and notice to terminate). (*Id.*)

EJECTMENT

Complaint for — Section 17, Rule 70 of the Rules is silent with regard to the restitution of money received as down payment for the sale of the subject property as it only mentions restitution of the premises; a monetary claim other than those specifically enumerated in Section 17,

Rule 70 of the Rules is not recoverable in an ejectment case. (Reburiano *vs.* De Vera, G.R. No. 243896, July 15, 2020) p. 880

— Under Section 17, Rule 70 of the Rules, if after the trial, the MTC finds that the allegations of the complaint for ejectment are true, the reliefs that may be granted to the plaintiff in the judgment are limited only to the following: (1) restitution of the premises; (2) the sum justly due as arrears of rent or as a reasonable compensation for the occupation and use of the premises; (3) attorney's fees; and (4) costs; any monetary award beyond what is permissible under the Rules is beyond the jurisdiction of the MTC. (*Id.*)

EMPLOYMENT, TERMINATION OF

Abandonment — Mere absence from work, even after a notice to return, is insufficient to prove abandonment; records are bereft of any indication that petitioners' failure to report for work was with a clear intent to sever their employment relationship with respondent company. (Lusabia, *et al. vs.* Super K Drug Corporation, *et al.,* G.R. No. 223314, July 15, 2020) p. 575

— To prove abandonment, the employer must show that the employee unjustifiably refused to report for work and that the employee deliberately intended to sever the employer-employee relationship; intent to sever the employer-employee relationship can be proven through the overt acts of an employee; the overt acts, after being considered as a whole, must clearly show the employee's objective of discontinuing his or her employment. (*Id.*)

Fraud and dishonesty — Fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud, and betray his employer. (Intercontinental Broadcasting Corporation *vs.* Guerrero, G.R. No. 229013, July 15, 2020) p. 689

Gross misconduct — Imposition of the ultimate penalty of dismissal from service is too harsh a penalty where the

employee's infractions do not constitute gross negligence or serious misconduct; even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. (Intercontinental Broadcasting Corporation *vs.* Guerrero, G.R. No. 229013, July 15, 2020) p. 689

— In *Bookmedia Press, Inc. v. Sinajon and Abenir*, the Court stressed the requirement of willfulness or wrongful intent in the appreciation of gross or serious misconduct as just cause for termination, *viz.*: serious misconduct and willful disobedience of an employer's lawful order may only be appreciated when the employee's transgression of a rule, duty or directive has been the product of "wrongful intent" or of a "wrongful and perverse attitude," but not when the same transgression results from simple negligence or "mere error in judgment." (*Id.*)

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement or payment of separation pay in lieu of reinstatement, and backwages. (Lusabia, *et al. vs.* Super K Drug Corporation, *et al.,* G.R. No. 223314, July 15, 2020) p. 575

— An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and full backwages computed from the time of his dismissal up to the time of his actual reinstatement; award of attorney's fees and imposition of six percent (6%) legal interest per annum on monetary awards, proper. (Intercontinental Broadcasting Corporation *vs.* Guerrero, G.R. No. 229013, July 15, 2020) p. 689

— It is settled that the burden to prove payment rests on the employer because all pertinent personnel files, payrolls, records, remittances and other similar documents are in the custody and control of the employer. (Lusabia, *et al. vs.* Super K Drug Corporation, *et al.,* G.R. No. 223314, July 15, 2020) p. 575

Just and valid cause — In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause; failure to do so would necessarily mean that the dismissal was illegal; for this purpose, the employer must present substantial evidence to prove the legality of the employee's dismissal. (Intercontinental Broadcasting Corporation *vs.* Guerrero, G.R. No. 229013, July 15, 2020) p. 689

Just or authorized cause — Article 294 of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that "in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title"; a lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. (SPC Power Corporation, *et al. vs.* Santos, G.R. No. 202379, July 27, 2020) p. 983

— In labor cases, the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer; if the employer fails to meet this burden, the conclusion is that the dismissal was unjustified and, therefore, illegal; moreover, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and defend one's self. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

— In the absence of a clear, valid, and legal cause for the termination of employment, the law considers the dismissal illegal and the burden is on the employer to prove that the termination was for a valid or authorized cause under the Labor Code; it is not incumbent upon dismissed employees to prove their innocence of the employer's

accusations against them. (SPC Power Corporation, *et al. vs.* Santos, G.R. No. 202379, July 27, 2020) p. 983

— It bears stressing that in termination cases, the onus of proving the validity of dismissal lies with the employer; the quantum of proof which the employer must discharge is substantial evidence or that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. (*Id.*)

— It is already doctrinal that an employee may only be dismissed for just or authorized causes; the legality of dismissal of an employee hinges on: (a) the legality of the act of dismissal; that is dismissal on the grounds provided for under the Labor Code and (b) the legality in the manner of dismissal. (*Id.*)

Neglect of duty — To be a valid ground for dismissal, neglect of duty must be both gross and habitual; gross negligence implies want of or failure to exercise slight care or diligence in the performance of one's duties; it evinces a thoughtless disregard of consequences without exerting any effort to avoid them; habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time. (Intercontinental Broadcasting Corporation *vs.* Guerrero, G.R. No. 229013, July 15, 2020) p. 689

Retrenchment — A valid retrenchment may only be exercised after the employer has proved compliance with the procedural and substantive requisites of valid retrenchment; absent any of these, then the dismissal is illegal; the procedural requisites for a valid retrenchment are provided for in [Article 298. [283]] of the Labor Code, the employer must serve a written notice on the employee *and* the Department of Labor and Employment one month before the date of the dismissal, and pay the required amount of separation pay. (Team Pacific Corporation, *et al. vs.* Parente, G.R. No. 206789, July 15, 2020) p. 479

— In *La Consolacion College of Manila v. Pascua*, this Court enumerated three substantive requisites for a valid retrenchment, thus, for a valid retrenchment, the employer must show that: (a) retrenchment was a necessary measure to prevent substantial and serious business losses; (b) it was done in good faith and not to defeat employees' rights; and (c) the employer was fair and reasonable in selecting the employees who will be retrenched. (*Id.*)

— Under Article 298 of the Labor Code, retrenchment is one of the authorized causes to dismiss an employee; it involves a reduction in the workforce, resorted to when the employer encounters business reverses, losses, or economic difficulties, such as "recessions, industrial depressions, or seasonal fluctuations." (*Id.*)

Separation pay — It has long been settled that separation pay or financial assistance, or whatever other name it is called, shall not be granted to all employees when the cause of their dismissal is any of the grounds provided under Article 282 of the Labor Code; relaxation of this rule, pursuant to the principle of social justice, may be warranted only when exceptional or peculiar circumstances attend the case. (American Express Transnational (now American International Tours, Inc.), *et al. vs.* Borre, G.R. No. 228320, July 15, 2020) p. 651

— Neither accepting separation pay nor signing a waiver and quitclaim bars the employee from contesting the legality of the dismissal; such acts are generally taken with a grain of salt, considering that employees are usually at an economic disadvantage and are often left with no choice, since they are suddenly faced with the pressure to meet financial burdens. (Team Pacific Corporation, *et al. vs.* Parente, G.R. No. 206789, July 15, 2020) p. 479

— Separation pay is only warranted: (1) when the cause of termination is not attributable to the employee's fault, such as those provided under Articles 283 and 284 of the Labor Code; and (2) in cases of illegal dismissal in which reinstatement is no longer feasible; by way of exception, however, the Court has allowed the grant of

separation pay based on equity and as a measure of social justice; this exception is justified by the positive commands for the promotion of social justice and the protection of the rights of the workers replete in our Constitution. (American Express Transnational (now American International Tours, Inc.), *et al. vs.* Borre, G.R. No. 228320, July 15, 2020) p. 651

Willful disobedience or insubordination — An employee dismissed for willful disobedience is not entitled to a grant of separation pay; compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege, as social justice cannot be permitted to be a refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. (American Express Transnational (now American International Tours, Inc.), *et al. vs.* Borre, G.R. No. 228320, July 15, 2020) p. 651

— Jurisprudence dictates that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (a) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. (*Id.*)

EVIDENCE

Parol evidence rule — The parol evidence rule provides that "when the terms of an agreement have been reduced into writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement." (Cuadra, *et al. vs.* San Miguel Corporation, G.R. No. 194467, July 13, 2020) p. 22

Res gestae — Generally, a witness can only give a testimony with respect to matters of which he or she has personal

knowledge; testimonies which are hearsay are inadmissible as evidence; the rules, however, allow for certain exceptions; one of which is when the evidence is part of *res gestae*. (Aleson Shipping Lines *vs.* CGU International Ins. Plc., *et al.*, G.R. No. 217311, July 15, 2020) p. 540

— In general, the test is whether or not an act, declaration, or exclamation is "so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony." (*Id.*)

— In *People v. Cudal*, this Court explained: The spontaneity of the utterance and its logical connection with the principal event, coupled with the fact that the utterance was made while the declarant was still "strong" and subject to the stimulus of the nervous excitement of the principal event, are deemed to preclude contrivance, deliberation, design or fabrication, and to give to the utterance an inherent guaranty of trustworthiness. (*Id.*)

— *Res gestae* is one of the exceptions to the hearsay rule; it contemplates testimonial evidence on matters not personally witnessed by the witness, but is relayed to him or her by a declarant. (*Id.*)

— *Res gestae* refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act"; it contemplates statements that were "voluntarily and spontaneously made so nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain and were made under such circumstances as necessarily to exclude the idea of design or deliberation." (*Id.*)

— Rule 130, Section 42 states: Section 42. Part of *res gestae*; statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*;

statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. (*Id.*)

— The following factors may guide courts in determining whether there is spontaneity in the declarant's statements, to wit: (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself. (*Id.*)

— There are two (2) acts which form part of the *res gestae*: (1) in spontaneous exclamations where the *res gestae* is the startling occurrence; and (2) in verbal acts where *res gestae* is the statement accompanying the equivocal act; to be admissible under the first class of *res gestae*, the following elements must be present: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; (3) that the statements made must concern the occurrence in question and its immediately attending circumstances; under the second class of *res gestae*, the following requisites must be present: 1) the principal act to be characterized must be equivocal; (2) the equivocal act must be material to the issue; 3) the statement must accompany the equivocal acts; and (4) the statements give a legal significance to the equivocal act. (*Id.*)

FRUSTRATED HOMICIDE

Award of damages — *People v. Jugueta* instructs that where the crime of frustrated homicide is committed, moral damages as well as civil indemnity should be awarded to the victim in the amount of ₱30,000.00 each. (Naag, Jr., *et al. vs.* People, G.R. No. 228638, July 13, 2020) p. 115

Commission of — Elements: (*1*) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (*2*) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (*3*) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code (RPC) is present. (Naag, Jr., *et al. vs.* People, G.R. No. 228638, July 13, 2020) p. 115

INSURANCE

Right of subrogation — The insurer, after satisfaction of the insurance claim of the insured, may collect payment from the third party whose negligence caused the loss. (Pioneer Insurance & Surety Corporation *vs.* Tan also known as Carmen S.F. Gatmaytan and/or Unknown Owner/Proprietor of Save More Drug doing business under the name and style of Save More Drug, G.R. No. 239989, July 13, 2020) p. 222

INTERIM RULES UNDER SECURITIES REGULATIONS CODE (R.A. NO. 8799)

Intra-corporate controversy — In determining whether a case is an intra-corporate controversy, We resort to a combined application of the *relationship test* and the *nature of the controversy test*; under the *relationship test*, the existence of any of the following relations makes the conflict intra-corporate: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves; for as long as *any* of these intra-corporate relationships exists between the parties, the controversy would be characterized as intra-corporate. (Bank of the Philippine Islands *vs.* Bacalla, Jr., *et al.,* G.R. No. 223404, July 15, 2020) p. 590

INTERVENTION

Complaint for — Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings; however, it is not an absolute right for the statutory rules or conditions for the right of intervention must be shown. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— To allow intervention: (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not; both requirements must concur, as the first is not more important than the second. (*Id.*)

— To sum it up, the legal interest as qualifying factor must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment; in all cases, the allowance or disallowance of a Motion for Intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. (*Id.*)

JUDGES

Inhibition — Section 1, Rule 137 of the Rules of Court contemplates two (2) kinds of inhibition: (a) compulsory; and (b) voluntary; under the *first* paragraph of the aforecited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned; the *second* paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide; it is the latter kind of inhibition which rests on the subjective ground of conscience; that is why cases under such category should be analyzed on

a case-to-case basis. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Raffle of cases — No case may be assigned without being raffled, and no judge may choose the cases assigned to him; the raffle of cases is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges; such process assures the public that the right of the parties to be heard by an impartial and unbiased tribunal is safeguarded while also protecting judges from any suspicion of impropriety. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

JUDGMENTS

Annulment of — A complaint for quieting of title filed to assail the partially void judgment of the MTC shall be considered a petition for annulment of judgment in the interest of justice and equity. (Reburiano *vs.* De Vera, G.R. No. 243896, July 15, 2020) p. 880

— In the interest of judicial economy, the complaint filed before the RTC may be treated as an action for annulment of judgment rather than for quieting of title; this will avoid multiplicity of actions and save the litigants and the Court their resources; Section 10, Rule 47 of the Rules requires that an action to annul a judgment or final order of an MTC shall be filed in the RTC having jurisdiction over the former. (*Id.*)

— The grounds for annulment of judgment are: (1) extrinsic fraud; (2) lack of jurisdiction; and (3) denial of due process; lack of jurisdiction, as a ground for annulment of judgment, refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. (*Id.*)

— The prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void; a void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars

any one, and under which all acts performed and all claims flowing out are void; it is not a decision in contemplation of law and, hence, it can never become executory; it also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*. (*Id.*)

Execution of — Under Section 6, Rule 39 of the Rules of Court, a judgment creditor has two modes in enforcing the court's judgment; execution may be either through motion or an independent action; these two modes of execution are available depending on the timing when the judgment-creditor invoked its right to enforce the court's judgment; on the one hand, execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry; on the other hand, execution by independent action is mandatory if the five (5)-year prescriptive period for execution by motion had already elapsed; however, for execution by independent action to prosper, the Rules impose another limitation, the action must be filed before it is barred by the statute of limitations which, under Article 1144 of the Civil Code, is ten (10) years from the finality of the judgment. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

Final and executory judgments — As a rule, "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, "the 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 the suspension of the rules, and (e) a lack of any showing that the review sought is merely frivolous and dilatory." (Tamboa *vs.* People, G.R. No. 248264, July 27, 2020) p. 1002

— It can be deduced in Section 4 of Rule 39 that there are three (3) loose categories of final and executory judgments as regards their effects on subsequent and related proceedings; paragraph (a) of the foregoing rule is commonly known to speak of judgments *in rem*; paragraph (b) is said to refer to judgments *in personam*; and paragraph (c) is the concept understood in law as "conclusiveness of judgment." (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Finality and immutability of judgments — In a procedural context, a final and executory judgment may be set aside in one of the following: (a) petition for relief from judgment under Rule 38; (b) direct action to annul and enjoin the enforcement of the judgment; and (c) direct action either by *certiorari* or by collateral attack against the challenged judgment which is void upon its face, or that the nullity of the judgment is apparent by virtue of its own recitals; this means that some exceptions to the immutability of judgment doctrine have been expanded to include the grounds of the foregoing remedies. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— The doctrine of finality of judgment or immutability of judgment articulates that a decision which has acquired finality becomes immutable and unalterable; it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. (*Id.*)

— The immutability of judgment doctrine admits of some exceptions which are: (a) the correction of clerical errors; (b) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable; of these exceptions, the last couple of items in the enumeration (void judgments and supervening evident rendering the execution unjust and inequitable) may not

be summarily performed by the court concerned because they are necessarily threshed out in another proceeding. (*Id.*)

— Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land. (Abpi *vs.* Commission on Audit, G.R. No. 252367, July 14, 2020) p. 362

Service of — Section 1, Rule 37 and Section 1, Rule 42 of the Rules of Court provide that a party has a period of fifteen (15) days from notice of the RTC Decision within which to file either a motion for reconsideration or a petition for review before the CA to assail said RTC Decision; Sections 9, 10, and 13 provide that a party shall be deemed served with the judgment either personally or by registered mail; the service of judgment serves as the reckoning point to determine whether a decision had been appealed within the reglementary period or has already become final. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

Void judgments — As a rule, a judgment of a court upon a subject within its general jurisdiction, which is not before it by any statement or claim of the parties, and is foreign to the issues submitted for its determination, is a nullity; no error which was not assigned and argued may be considered unless such error is closely related to or dependent on an assigned error or it affects the jurisdiction over the subject matter on the validity of the judgment. (Reburiano *vs.* De Vera, G.R. No. 243896, July 15, 2020) p. 880

JURISDICTION

Aspects of — In adjudication, the concept of jurisdiction has several *aspects*, namely: (a) jurisdiction over the subject matter; (b) jurisdiction over the parties; (c) jurisdiction over the issues of the case; and (d) in cases involving property, jurisdiction over the res or the thing which is the subject of the litigation; a court must also acquire jurisdiction over the remedy in order for it to exercise its powers validly and with binding effect. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Concept of — Certain statutes confer jurisdiction, power, or authority while others provide for the procedure by which that power or authority is projected into judgment the first deals with the powers of the court in the real and substantive sense while the other class with the procedure by which such powers are put into action; as in this case, special proceedings are creatures of statutes (or constitutional provisions in the case of extraordinary *writs* like *habeas corpus*) that do *both* confer jurisdiction on specific courts while providing for a specific procedure to be followed in order for the resulting judgment to be valid. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— Jurisdiction is the basic foundation of judicial proceedings; it is simply defined as the power and authority conferred by the Constitution or statute of a court to hear and decide a case; without jurisdiction, a judgment rendered by a court is null and void and may be attacked anytime; a void judgment is no judgment at all it can neither be the source of any right nor the creator of any obligation; all acts performed pursuant to it and all claims emanating from it have no legal effect. (*Id.*)

Equity of jurisdiction — Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate; in relation to the concept of equity, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to

the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

LABOR RELATIONS

Employer-employee relationship — An independent contractor "enjoys independence and freedom from the control and supervision of his principal" as opposed to an employee who is "subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished"; jurisprudence has recognized another kind of independent contractor: individuals with unique skills and talents that set them apart from ordinary employees; there is no trilateral relationship in this case because the independent contractor himself or herself performs the work for the principal; in other words, the relationship is bilateral. (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

— In *Begino v. ABS-CBN*: To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. (*Id.*)

— Mode of computing compensation is not the decisive factor in ascertaining the existence of an employer-employee relationship, for what matters is that the employee received compensation from the employer for the services that he or she rendered; disengagement in the context of an employer-employee relationship amounts to dismissal. (*Id.*)

— Petitioners were employees of the respondent, not independent contractors, as it was not shown they were hired because of their unique skills and talents, and the sheer modesty of the remuneration rendered to the

petitioners as camera operators undermines the assertion that there was something particularly unique about their status, talents, or skills. (*Id.*)

Illegal dismissal — The burden to prove that a dismissal was anchored on a just or authorized cause rests on the employer, and the failure of the employer to discharge this burden leads to no other conclusion than that a dismissal was illegal; illegally dismissed employees are entitled to reinstatement to their positions with full backwages computed from the time of dismissal up to the time of actual reinstatement; award of attorney's fees, proper. (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

Reinstatement — An employee who returns to work for the same employer is considered a new hire if prior employment was validly terminated, either voluntarily or under any of the just and authorized causes provided in the Labor Code; the reckoning point of the length of service, for purposes of security of tenure, begins on the date the employee was re-hired; however, if an employee returns to work upon an order of reinstatement, he or she is not considered a new hire; because reinstatement presupposes the illegality of the dismissal, the employee is deemed to have remained under the employ of the employer from the date of illegal dismissal to actual reinstatement. (Cuadra, *et al. vs.* San Miguel Corporation, G.R. No. 194467, July 13, 2020) p. 22

LABOR STANDARDS

Fixed-term employee — The employer must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee, as the court will invalidate fixed-term employment contracts in instances where the employer fails to show that it dealt with the employee in "more or less equal terms"; sweeping guarantees that the contract was knowingly and voluntarily agreed upon by the parties and that the employer and the employee stood on equal footing, will not suffice.

(Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

— We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely: 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter. (*Id.*)

Kinds of employees — Classifying employment, that is, whether an employee is engaged as a regular, project, seasonal, casual, or fixed-term employee, is "determined by law, regardless of any contract expressing otherwise"; Article 295 of the Labor Code identifies four (4) categories of employees, namely: (1) regular; (2) project; (3) seasonal; and (4) casual employees; *Brent School, Inc. v. Zamora* recognized another category: fixed-term employees; fixed-term employment sanctions the possibility of a purely contractual relationship between the employer and the fixed-term employee, provided that certain requisites are met. (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

Project employees — A project employee "is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee"; the "services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired." (Engineering & Construction Corporation of Asia [now First Balfour, Incorporated] *vs.* Palle, *et al.*, G.R. No. 201247, July 13, 2020) p. 60

— A project employee's work may or may not be usually necessary or desirable in the usual business or trade of the employer; the fact that a project employee's work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment. (*Id.*)

— Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure; however, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project. (*Id.*)

— In *Lopez v. Irvine Construction Corp.*, it was held that "the principal test for determining whether particular employees are properly characterized as 'project employees, as distinguished from 'regular employees,' is whether or not the 'project employees' were assigned to carry out a 'specific project or undertaking,' the duration and scope of which were specified at the time the employees were engaged for that project." (*Id.*)

— It is necessary to note that an employer has the burden to prove that the employee is indeed a project employee; "the employer must establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specific at the time of engagement." (*Id.*)

— Project employment ultimately requires the existence of a project or an undertaking which could either be: (1) a particular job within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job not within the regular business of the company; it is not enough that the employee is made aware of the duration and scope of employment at the time of engagement; to rule otherwise would be

to allow employers to easily circumvent an employee's right to security of tenure through the convenient artifice of communicating a duration or scope. (Paragele, *et al.* *vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

— Settled is the rule that "although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement; when no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees." (Engineering & Construction Corporation of Asia [now First Balfour, Incorporated] *vs.* Palle, *et al.*, G.R. No. 201247, July 13, 2020) p. 60

Regular employees — Based on Article 295[280] of the Labor Code and DOLE Department Order No. 19, series of 1993 [D.O. No. 19], an employment is generally deemed regular where: (i) the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, subject to exceptions, such as when one is a fixed, project or seasonal employee; or (ii) the employee has been engaged for at least a year, with respect to the activity he or she is hired, and the employment of such employee remains while such activity exists. (Engineering & Construction Corporation of Asia [now First Balfour, Incorporated] *vs.* Palle, *et al.*, G.R. No. 201247, July 13, 2020) p. 60

— In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer; the standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of

the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

— The employees are presumed regular employees where the employer failed to discharge its burden to prove that they were project employees; completion of a project is not a valid cause to terminate regular employees. (Engineering & Construction Corporation of Asia [now First Balfour, Incorporated] *vs.* Palle, *et al.*, G.R. No. 201247, July 13, 2020) p. 60

— Under Article 295 of the Labor Code, it is clear that the requirement of rendering "at least one (1) year of service," before an employee is deemed to have attained regular status, only applies to casual employees; an employee is regarded a casual employee if he or she was engaged to perform functions which are *not* necessary and desirable to the usual business and trade of the employer; when one is engaged to perform functions which are necessary and desirable to the usual business and trade of the employer, engagement for a year-long duration is not a controlling consideration. (Paragele, *et al. vs.* GMA Network, Inc., G.R. No. 235315, July 13, 2020) p. 140

LAND REGISTRATION

Alienable and disposable public land — In *Navy Officer's Village Association Inc. v. Republic of the Philippines,* we upheld the nullification of petitioner's title over the land situated within the AFP Officers' Village; in that case, the petitioner acquired the land after Proclamation No. 478 declared the area as part of the Veterans Rehabilitation and Medical Training Center; the land reverted to its original classification as non-alienable and non-disposable public land; in contrast, there is no existing issuance which allocated the land within the AFP Officers' Village for the construction of the golf course. (Philippine Navy Golf Club, Inc., *et al. vs.* Abaya, *et al.*, G.R. No. 235619, July 13, 2020) p. 186

— The empty land, on which the Philippine navy golf course stands, remains part of the alienable and disposable public land of the Armed Forces of the Philippines (AFP) officers' village. (*Id.*)

LAND TITLES AND DEEDS

Reconstitution — Failure to comply with any of the jurisdictional requirements for a petition for reconstitution renders the whole proceedings null and void; liberal construction of the rules does not apply to substantive requirements specifically enumerated by a statute, especially so if matters affecting jurisdiction are involved. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

— For the trial court to acquire jurisdiction over the petition for reconstitution, the occupants of the property should be notified of the petition; it is beyond cavil that the requirement of actual notice to the occupants and the owners of the adjoining property under Sections 12 and 13 of R.A. No. 26 is itself mandatory to vest jurisdiction upon the court in a petition for reconstitution of title and essential in order to allow said court to take the case on its merits. (*Id.*)

— Reconstitution of title is a special proceeding; being a special proceeding, a petition for reconstitution must allege and prove certain specific jurisdictional facts before a trial court can acquire jurisdiction; R.A. No. 26, as amended, is the special law which provides for a specific procedure for the reconstitution of Torrens certificates of title lost or destroyed; Sections 2 and 3 thereof provide how original certificates of title and transfer certificates of title shall be respectively reconstituted and from what specific sources successively enumerated therein such reconstitution shall be made. (*Id.*)

— The purposes of the stringent and mandatory character of the legal requirement of mailing the notice to the actual occupants of property covered by the certificates of title to be reconstituted are: (a) to safeguard against spurious and unfounded land ownership claims; (b) to

apprise all interested parties of the existence of such action; and (c) to give them enough time to intervene in the proceeding. (*Id.*)

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Real property tax — In *National Power Corp. v. Province of Quezon, et al.,* relying on the Court's pronouncement in *Testate Estate of Concordia T. Lim v. City of Manila*, the Court ruled that contractual assumption of the obligation to pay real property tax, by itself, is insufficient to make one liable for taxes; the contractual assumption of tax liability must be supplemented by an interest that the party assuming the liability had on the property; the person from whom payment is sought must have also acquired the beneficial use of the property taxed. (Provincial Government of Cavite, et al. *vs.* CQM Management, Inc. [as successor-in-interest of the Philippine Investment One (SPV-AMC), Inc.], G.R. No. 248033, July 15, 2020) p. 947

— *National Power Corp. v. Province of Quezon, et al.,* the Court explained that the liability for taxes generally rests on the owner of the real property at the time the tax accrues as a necessary repercussion of exclusive dominion; however, personal liability for real property taxes may also expressly rest on the entity with the beneficial use of the real property; in either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. (*Id.*)

— Section 270 of R.A. No. 7160 provides that "the basic real property tax shall be collected within five (5) years from the date they become due," and that "no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period." (*Id.*)

MIGRANT WORKERS ACT (R. A. NO. 8042)

Application of — Section 10 of R.A. No. 8042, as amended by R.A. No. 10022 provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

MOTIONS

Three-day notice rule — The general rule is that the three (3)-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court is mandatory; when the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the 3-day notice requirement is deemed realized. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

NOTARIES PUBLIC

Liability of — In the cases of *Malvar v. Baleros, Ko v. Uy-Lampasa, Ocampo-Ingcoco v. Yrreverre, Jr., t*herein respondent lawyers-notaries public were all found guilty of notarizing documents without the presence of the executing parties, and thus, were uniformly meted with the penalties of immediate revocation of their notarial commissions, disqualification from being commissioned as notaries public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months. (De Guzman *vs.* Venzon, *et al.*, A.C. No. 8559, July 27, 2020) p. 960

OFFICE OF THE SOLICITOR GENERAL

Orders and decisions — Copies of orders and decisions served on the deputized counsel, acting as an agent or representative of the Solicitor General, are not binding until they are

actually received by the latter. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

PARTIES

Indispensable parties — Settled is the rule that the non-joinder of indispensable parties is not a ground for the dismissal of an action; the remedy, instead, is to implead the non-party claimed to be indispensable; parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just; if the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

Representatives as parties — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Death compensation — Case law instructs that "the clear intent of the law is that the employer should be relieved of the obligation of directly paying his employees compensation for work-connected illness or injury on the theory that this is part of the cost of production or business activity; and that no longer would there be need for adversarial proceedings between an employer and his employee in which there were specific legal presumptions operating in favor of the employee and statutorily specified defenses available to an employer."

(The Heirs of Reynaldo A. Andag, namely Veneranda B. Andag*, et al. vs.* DMC Construction Equipment Resources Inc., *et al.,* G.R. No. 244361, July 13, 2020) p. 252

Incompetence or inefficiency — Incompetence or inefficiency as a ground for dismissal contemplates the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

Monetary awards — An illegally dismissed seafarer is entitled to the full reimbursement of his placement fee with 12% interest per annum. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

— Prevailing jurisprudence provides that in cases where the employment contract of the illegally dismissed seafarer is for less than a year, said respondent should be paid his salaries for the unexpired portion of his employment contract; this amount includes all the seafarer's monthly vacation leave pay and other bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package. (*Id.*)

POSSESSION

Right to possession — The owner of real property has the right to enjoy and dispose of a thing, and to file an action against the holder and possessor of the same in order to recover it; this stems from the fact that the right to possession is an attribute of ownership; however, ownership by itself, does not grant the owner an unbridled authority to wrest possession from the lawful occupant. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

— To recover possession, the owner must avail of the proper judicial remedy and satisfy all the conditions necessary for the chosen action to prosper; these remedies can be an *accion reivindicatoria, action publiciana*, or *accion interdictal*. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

PRESCRIPTION

Prescription of actions — Following the principles of subrogation, the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer; to be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured; the indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer. (Filcon Ready Mixed, Inc., *et al. vs.* UCPB General Insurance Company, Inc., G.R. No. 229877, July 15, 2020) p. 628

— In *Henson*, the Court came up with guidelines relative to the application of *Vector* and its Decision *vis-a-vis* the prescriptive period in cases where the insurer is subrogated to the rights of the insured against the wrongdoer based on a *quasi-delict.* (Filcon Ready Mixed, Inc., *et al. vs.* UCPB General Insurance Company, Inc., G.R. No. 229877, July 15, 2020) p. 729

— Pursuant to Article 1155 of the Civil Code, respondent's demand letter and petitioners' receipt thereof had the effect of interrupting the four (4)-year prescriptive period and gave respondent a whole fresh period of four (4) years from petitioners' receipt of the demand letter within which to file the action for sum of money. (*Id.*)

PRESUMPTIONS

Presumption of regularity in the performance of official duties — It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application of — The applicant for registration and confirmation of title has the burden to prove that the land has been classified as alienable and disposable land of public domain. (Ususan Development Corporation, represented by Atty. Roel A. Pacio *vs.* Republic, G.R. No. 209462, July 15, 2020) p. 512

PUBLIC LAND ACT (C.A. NO. 141)

Homestead grant — Section 119 of the Public Land Act gives the homesteader and his or her heirs the right to repurchase the land awarded him or her; the only condition is that the right to repurchase be exercised within five (5) years from conveyance. (Spouses Duadua Sr., substituted by their heirs Gliceria Duadua Tomboc, *et al. vs.* R.T. Dino Development Corporation represented by its President Rolando T. Dino, *et al.,* G.R. No. 247816, July 15, 2020) p. 922

— Section 119 of the Public Land Act is to give the homesteader or patentee every chance to preserve and keep in the family the land that the State has gratuitously given him or her as a reward for his or her labor in cleaning, developing, and cultivating it; the homestead grant was never intended to be used to serve the business interest of corporations or other artificial persons. (*Id.*)

— When the law grants a homestead holder of the right to repurchase the land awarded him or her, the State intends that the holder and his or her family keep the land as their home and their source of livelihood at the same time; the State recognizes not only the social and economic value of this small piece of land to the beneficiaries but in fact demands of them to give utmost importance to this grant that is meant precisely to give them quality life, to uphold their dignity, and to even out the gross inequalities in our society. (*Id.*)

QUALIFIED RAPE

Elements — The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) or is an ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or is the common-law spouse of the parent of the victim. (People *vs.* XXX, G.R. No. 230981, July 15, 2020) p. 742

QUASI-DELICT

Principle of — Case law nevertheless clarifies that a claim specifically grounded on the employer's negligence to provide a safe, healthy and workable environment for its employees is no longer a labor issue, but rather, is a case for *quasi-delict* which is under the jurisdiction of the regular courts. (The Heirs of Reynaldo A. Andag, namely Veneranda B. Andag*, et al. vs.* DMC Construction Equipment Resources Inc., *et al.,* G.R. No. 244361, July 13, 2020) p. 252

RES JUDICATA

Concept — *Res judicata* is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment; under this rule, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined

in the previous suit. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Elements — To invoke *res judicata*, the elements that should be present are: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) the disposition of the case must be a judgment on the merits; and (d) there must be as between the first and second action, identity of parties, subject matter, and causes of action. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

REVERSION

Action for — Any action for reversion to lands of public domain should be instituted before the proper courts, and any objection to the application or concession may be filed before the proper government administrative offices in observance with the doctrine of exhaustion of administrative remedies. (Philippine Navy Golf Club, Inc., *et al. vs.* Abaya, *et al*., G.R. No. 235619, July 13, 2020) p. 186

2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT (RRPC)

Appeal — Under Section 4, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC), an appeal to the Director must be filed within six (6) months after receipt of the decision appealed from; however, this must be read in conjunction with Section 3 of Rule VII of the RRPC which is emphatic that an appeal with the Commission Proper should be filed within the time remaining of the six month reglementary period. (Abpi *vs.* Commission on Audit, G.R. No. 252367, July 14, 2020) p. 362

2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS)

Application of — Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)

provides for the classification of offenses; administrative offenses with corresponding penalties are classified into grave, less grave, and light, depending on their gravity or depravity and effects on the government service; Section 50(B)(5), Rule 10 of the 2017 RACCS categorizes Frequent Unauthorized Absences (Habitual Absenteeism) as a grave offense and shall be punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. (Re: Employees Incurring Habitual Tardiness and Undertime in the First Semester of 2017, A.M. No. 2017-11-SC. July 27, 2020) p. 969

— Section 53 of the RACCS grants the disciplining authority the discretion to consider mitigating and aggravating circumstances in the imposition of the proper penalty. (*Id.*)

Habitual tardiness — Under Section 50(F), Rule 10 of the 2017 RACCS, Habitual Tardiness is considered as a light offense; it is penalized as follows: a. First Offense – Reprimand; b. Second Offense – Suspension for one (1) to thirty (30) days; and c. Third Offense – Dismissal from the service. (Re: Employees Incurring Habitual Tardiness and Undertime in the First Semester of 2017, A.M. No. 2017-11-SC. July 27, 2020) p. 969

Simple misconduct — Under Section 50 (D)(2), Rule 10 of the 2017 RACCS, simple misconduct is categorized as a less grave offense; less grave offenses are punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. (Re: Employees Incurring Habitual Tardiness and Undertime in the First Semester of 2017, A.M. No. 2017-11-SC. July 27, 2020) p. 969

2004 RULES ON NOTARIAL PRACTICE

Duties — The 2004 Rules on Notarial Practice (2004 Notarial Rules) impose on duly-commissioned notaries public the duty and obligation of ensuring the sanctity of notarized documents by, *inter alia*: (*a*) performing a notarial act only if the person involved as signatory to the document

or instrument is in his/her personal presence at the time of notarization; and (*b*) requiring the person having said document or instrument notarized to produce a competent evidence of identity to ensure that he/she is indeed the one who executed the same; the purpose of these requirements is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed. (De Guzman *vs.* Venzon, *et al*., A.C. No. 8559, July 27, 2020) p. 960

Effect of notarization — It is settled that notarization is not an empty, meaningless routinary act, but one invested with substantive public interest; notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity; a notarized document is, by law, entitled to full faith and credit upon its face. (De Guzman *vs.* Venzon, *et al*., A.C. No. 8559, July 27, 2020) p. 960

SEARCH WARRANT

Valid search warrant — "A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid, otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution"; the particularity of the place described is essential in the issuance of search warrants to avoid the exercise by the enforcing officers of discretion to decide on their own where to search and whom and what to seize. (Diaz *vs.* People, G.R. No. 213875, July 15, 2020) p. 523

— It has been held that the requirement of particularity as to the things to be seized does not require technical accuracy in the description of the property to be seized, and that a search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow it to be described. (*Id.*)

— It is well-entrenched in our jurisprudence that a description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community; a designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness. (*Id.*)

— The requirements of a valid search warrant are laid down in Article III, Section 2 of the 1987 Constitution and in Rule 126, Section 4 of the Rules Court, *viz.:* "(1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized." (*Id.*)

— The requisite of particularity is related to the probable cause requirement in that, at least under some circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the court that the described items are to be found in a particular place. (*Id.*)

— The search warrant did not indicate that the place to be searched contained five rooms which were separately occupied by petitioner and her sibling is inconsequential and does not affect the validity of the warrant. (*Id.*)

— The test of whether the requirement of definiteness or particularity has been met is whether the description of the place to be searched under the warrant is sufficient and descriptive enough to prevent a search of other premises located within the surrounding area or community; a "place" may refer to a single building or structure, or a house or residence. (*Id.*)

SPECIAL ECONOMIC ZONE ACT OF 1995 (R.A. NO. 7916), AS AMENDED BY R.A. NO. 8748

Application of — Prior concurrence of the local government unit is not required before respondent can avail itself of the exemption under the law; having been registered with the Philippine Economic Zone Authority (PEZA), respondent is exempt from the payment of national and local taxes including real property tax on the subject properties. (Provincial Government of Cavite, *et al. vs.* CQM Management, Inc. [as successor-in-interest of the Philippine Investment One (SPV-AMC), Inc.], G.R. No. 248033, July 15, 2020) p. 947

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Civil liability of the accused — Section 31(f) of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of ₱15,000.00; as to the damages, accused-appellant is ordered to pay the victim civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. (People *vs.* XXX, G.R. No. 230981, July 15, 2020) p. 742

Sexual abuse — A change in the nomenclature of the offense charged against accused-appellant is in order; in *People v. Tulaga*n, the Court prescribes the guidelines in the proper designation or nomenclature of acts constituting sexual assault and the penalty to be imposed depending on the age of the victim, *viz.*: Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape. (People *vs.* XXX, G.R. No. 230981, July 15, 2020) p. 742

— In *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to

Section 5 (b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A (2) of the RPC, as amended by R.A. No. 8353. (*Id.*)

— The elements of sexual abuse under Section 5, Article III of RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. (*Id.*)

STATE

Immunity from suit — The doctrine of state immunity is not absolute; the State may waive its cloak of immunity and the waiver may be made expressly or by implication; the doctrine may be shelved when its stubborn observance will lead to the subversion of the ends of justice. (Philippine Navy Golf Club, Inc., *et al. vs.* Abaya, *et al.*, G.R. No. 235619, July 13, 2020) p. 186

— The State may not be sued without its consent; this fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends. (*Id.*)

STATUTES

Construction — The principle of liberal construction of procedural rules has been allowed by this Court in the following cases: (a) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (b) where the interest of substantial justice will be served; (c) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (d) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying

with the procedure prescribed; in addition, jurisprudence also teaches us that, aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower courts findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances; (b) the merits of the case; (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (d) a lack of any showing that the review sought is merely frivolous and dilatory; and (e) the other party will not be unjustly prejudiced thereby. (Denila *vs.* Republic, *et al.,* G.R. No. 206077, July 15, 2020) p. 380

Procedural rules — Case law instructs that "it is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice." (Tamboa *vs.* People, G.R. No. 248264, July 27, 2020) p. 1002

— From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice; every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction; where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction. (Abpi *vs.* Commission on Audit, G.R. No. 252367, July 14, 2020) p. 362

— It should be observed that "if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. (Tamboa *vs.* People, G.R. No. 248264, July 27, 2020) p. 1002

— The Court deems it proper to relax the technical rules of procedure in order to afford petitioner the fullest opportunity to establish the merits of her appeal. (*Id.*)

TAXATION

Claim for tax credit or refund of creditable input taxes — The Court clarifies that the above disquisition only finds application to those claims for refund made prior to June 11, 2014 (*i.e.*, the date that RMC No. 54-2014 was issued); under this new circular, the taxpayer is now required to submit complete documents upon its filing of an administrative claim for VAT refund/tax credit, as no other documents shall be accepted thereafter; for this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. (Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ *vs.* Commissioner of Internal Revenue (CIR), G.R. No. 244154, July 15, 2020) p. 903

— The Court held that the 120-day period should be reckoned from the time the taxpayer had deemed itself to have submitted the complete documents in support of its administrative claim, without prejudice to the BIR's request for additional documents which did not obtain in this case; thus, with the 120 days having lapsed therefrom, the taxpayer may then, within thirty (30) days, accordingly, file its judicial claim for refund, as was done by the taxpayer in *Pilipinas Total Gas.* (*Id.*)

— There is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form; nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form; while written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials. (*Id.*)

— Under Section 112 (C) of the National Internal Revenue Code of 1997 (Tax Code), the CIR has a period of 120 days from the date of submission of complete documents within which to evaluate an administrative claim for tax credit or refund of creditable input taxes (120-day period); if the CIR denies the administrative claim, or if it remains unacted upon the expiration of the said period which is essentially considered a "denial due to inaction," the taxpayer may, within thirty (30) days from such denial or expiration, avail of the further remedy of filing a judicial claim before the CTA. (*Id.*)

National Internal Revenue Code — For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines; to be sure, there must, be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines. (Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020) p. 799

— In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, the Court emphasized that the law accords the claimant sufficient latitude to determine the completeness

of his submission for the purpose of ascertaining the date of completion from which the 120-day period shall be reckoned. (*Id.*)

Revenue Memorandum Circular No. 42-03 — RMC 49-03 explicitly empowers the tax authorities to request for additional documents that will aid them in verifying the claim; if its supporting documents were incomplete, the BIR was duty-bound to notify DKS of its deficiencies and require them to make further submissions, as necessary. (Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020) p. 799

Value added tax — Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2)53 of the Tax Code if the following conditions are met: *first*, the seller is VAT-registered; *second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed"; *third*, services are "paid for in acceptable foreign currency and accounted in accordance with BSP rules and regulations." (Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020) p. 799

— Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been

applied against the output tax." (Commissioner of Internal Revenue *vs.* Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020) p. 799

UNJUST ENRICHMENT

Principle of — Article 22 of the Civil Code provides: Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. (Reburiano *vs.* De Vera, G.R. No. 243896, July 15, 2020) p. 880

UNLAWFUL DETAINER

Action for — In all actions for unlawful detainer, the fact of permission or tolerance serves as a key jurisdictional element; for the action to prosper, the claimant must allege and prove that: (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (Dayandayan, *et al. vs.* Spouses Rojas, G.R. No. 227411, July 15, 2020) p. 628

— In an action for unlawful detainer, the complainant must prove through a preponderance of evidence that he/she consented to the possession of the property through positive acts; where there the property, and who granted them permission to enter. (*Id.*)

— In *Dr. Carbonilla v. Abiera, et al.* and *Javelosa*, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance"; in *Javelosa v. Tapus*, the Court emphasized that tolerance cannot be confused with indifference or neglect to file an action in court; this doctrine was further

reinforced in *Lozano v. Fernandez*, where the Court characterized "tolerance as more than mere passivity," and clarified that "inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case." (*Id.*)

— The Court has held that for an unlawful detainer suit to prosper, the plaintiff-lessor must show that: *first*, initially, the defendant-lessee legally possessed the leased premises by virtue of a subsisting lease contract; *second*, such possession eventually became illegal, either due to the latter's violation of the provisions of the said lease contract or the termination thereof; *third*, the defendant-lessee remained in possession of the leased premises, thus, effectively depriving the plaintiff-lessor enjoyment thereof; and *fourth*, there must be a demand both to pay or to comply and vacate and that the suit is brought within one (1) year from the last demand. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

— The restitution of the money received as downpayment for the sale of a property that did not push through, is a subject matter beyond the jurisdiction of the Municipal Trial Court (MTC) to resolve and a relief more than what the same may award in an ejectment case. (Reburiano *vs.* De Vera, G.R. No. 243896, July 15, 2020) p. 880

— The sending of notices to vacate, coupled with the filing of the ejectment suit, constitute categorical acts on the part of the lessor showing that it is no longer amenable to another renewal of the lease contract. (Brig. General Collao, Jr., in his capacity as Commanding General, Headquarters and Headquarters Support Group, Philippine Army *vs.* Albania, G.R. No. 228905, July 15, 2020) p. 669

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

Rule on — The rule on verification of a pleading is a formal, not jurisdictional, requirement; non-compliance with the verification requirement does not necessarily render the pleading fatally defective, as it is substantially complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct; certification, not signed by a duly authorized person, meanwhile, renders the petition subject to dismissal; but there are cases when this Court acts with leniency due to the presence of special circumstances or compelling reasons. (Eagle Clarc Shipping Philippines, Inc., *et al. vs.* National Labor Relations Commission (Fourth Division), *et al.*, G.R. No. 245370, July 13, 2020) p. 263

— When the counsel who signed the certification was given a special power of attorney by the client, there is substantial compliance with the rules on verification and certification against forum shopping; consistent with the Court's vow to render and dispense justice, we will not hesitate in relaxing procedural rules, if needed, so as not to unjustly deprive a litigant the chance to present his or her case on the merits. (*Id.*)

WITNESSES

Credibility of — A young girl's revelation that she had been raped coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity cannot be so easily dismissed as a mere concoction. (People *vs.* XXX, G.R. No. 230981, July 15, 2020) p. 742

— In resolving rape cases, the primary consideration is almost always given to the credibility of AAA's testimony; when the latter's testimony is credible, it may be the sole basis for the accused person's conviction since, owing

to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. (*Id.*)

— It is a settled rule that the lower court's appreciation of the witnesses' testimony deserves the highest respect because it "is best equipped to make the assessment of the witnesses' credibility and demeanor on the witness stand"; absent any showing of clear misappreciation, the trial court's findings are generally not disturbed by this Court. (Aleson Shipping Lines *vs.* CGU International Ins. PLC., *et al.*, G.R. No. 217311, July 15, 2020) p. 540

— The assessment of the credibility of witnesses lies within the province and competence of trial courts; a trial court judge is in the best position to weigh the testimonies of witnesses in the light of the declarant's demeanor, conduct, and attitude during trial, and is therefore placed in a more competent position to discriminate between truth and falsehood. (People *vs.* Lopez, G.R. No. 234157, July 15, 2020) p. 782

— The rule that is applicable in the present case is that the trial court's assignment of probative value to witnesses' testimonies will not be disturbed except when significant matters were overlooked, because it has the opportunity to observe the demeanor of the witness on the stand; the trial courts findings acquire even greater weight once affirmed on appeal; in light of the foregoing, the Court finds no reason to depart from the factual findings of the RTC, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. (People *vs.* Oledan, G.R. No. 240692, July 15, 2020) p. 848

— The victim's conduct after the sexual molestation and her inability to report the incident are also not enough to discredit her; victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. (People *vs.* XXX, G.R. No. 230981, July 15, 2020) p. 742

— This Court has ruled that "inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility; such minor inconsistencies even guarantee truthfulness and candor"; it is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants; as long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (People *vs.* Siu Ming Tat, *et al.*, G.R. No. 246577, July 13, 2020) p. 279

— Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood; this is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case. (*Id.*)

CITATION

Page

I. LOCAL CASES

Abante, Jr. *vs*. Lamadrid Bearing & Parts Corp.,
474 Phil. 414 (2004) 163
Abedes *vs*. CA, 562 Phil. 262, 276 (2007) 426
Aboitiz Shipping Corporation *vs*. New India
Assurance Co., Ltd., 557 Phil. 679 (2007).......................... 552
Abrenica *vs*. Law Firm of Abrenica, Tungol and
Tibayan, 534 Phil. 34, 46 (2006) 434
ABS-CBN Broadcasting Corporation *vs*.
Nazareno, 534 Phil. 306 (2006) 177
Abuda *vs*. L. Natividad Poultry Farms,
870 SCRA 468, July 4, 2018 161
Acain *vs*. Intermediate Appellate Court,
239 Phil. 96, 104 (1987) 434
Accenture, Inc. *vs*. Commissioner of Internal
Revenue, 690 Phil. 679, 690-691 (2012) 816-818
Acebedo Optical *vs*. National Labor Relations
Commission, 554 Phil. 524, 541 (2007) 993
Adez Realty, Incorporated *vs*. CA,
289 Phil. 766, 773 (1992) 466
Adm. Case for Dishonesty and Falsification
Against Luna, 463 Phil. 878, 889 (2003)............................ 361
Agan *vs*. Heirs of Spouses Nueva,
463 Phil. 834, 841 (2003) 442
AGG Trucking *vs*. Yuag,
675 Phil. 108, 120 (2011) 427
Agoy *vs*. Araneta Center, Inc.,
685 Phil. 246, 251 (2012) 462
Aguam *vs*. CA, 388 Phil. 587, 594 (2000) 1010
Aguinaldo *vs*. Ventus, 755 Phil. 536 (2015) 624
Alabang Development Corporation *vs*. Valenzuela,
201 Phil. 727, 731 (1982) 422
Alafriz *vs*. Nable, 72 Phil. 278, 280 (1941) 426
Alba *vs*. Dela Cruz, 17 Phil. 49, 62 (1910) 461
Alcantara *vs*. Pefianco, 441 Phil. 514 (2002)............................. 18
Aliling *vs*. Feliciano, 686 Phil. 889, 922 (2012) 184
Alipoon *vs*. CA, 364 Phil. 591, 598 (1999) 447
Allama *vs*. Republic, 283 Phil. 538, 543 (1992)...................... 449

Page

Allied Banking Corporation *vs.* CA,
461 Phil. 517, 533 (2003) 466
Almojuela *vs.* Republic, 793 Phil. 780,
789-790 (2016) 778
Alvarez *vs.* Diaz, et al., 468 Phil. 347, 363 (2004) 463
AMA Computer College-East Rizal, et al. *vs.*
Ignacio, 608 Phil. 436, 454 (2009) 994
American Home Assurance Company *vs.*
National Labor Relations Commission,
328 Phil. 606 (1996) 507
Amigable *vs.* Cuenca, 150 Phil. 422 (1972) 202
Andres *vs.* Majaducon, 594 Phil. 591, 601 (2008) 431
Ang-Abaya, et al. *vs.* Ang, 593 Phil. 530,
543-544 (2008) 85
Angat *vs.* Republic, 609 Phil. 146, 167 (2009) 448
Apo Fruits Corporation *vs.* Landbank of the
Phils., (Resolution), 647 Phil. 251, 273 (2010)........... 101-102
Arambulo *vs.* People, G.R. No. 241834,
July 24, 2019 863
Aranas *y* Dimaala *vs.* People, G.R. No. 242315,
July 3, 2019 246
Arcelona *vs.* CA, 345 Phil. 250, 264 (1997) 439
Arias *vs.* Sandiganbayan, 259 Phil. 794 (1989) 373
Arsenal *vs.* Intermediate Appellate Court,
G.R. No. 66696, July 14, 1986, 143 SCRA 40, 54 942
ASB Realty Corp. *vs.* Ortigas & Company
Limited Partnership, 775 Phil. 262, 283 (2015) 608
AZ Communications, Inc. *vs.* GLOBE Telecoms, Inc.,
et al., Court of Appeals-G.R. SP No. 105251 52-53
B.H. Berkenkotter & Co. *vs.* CA,
290-A Phil. 371 (1992) 101
Baclaran Marketing Corporation *vs.* Nieva,
809 Phil. 92, 103 (2017) 442
Bahilidad *vs.* People, 629 Phil. 567 (2010) 844
Bank of the Philippine Islands *vs.* Hong,
682 Phil. 66, 72 (2012) 443
Bantolo *vs.* Castillon, Sr., 514 Phil. 628, 633 (2005) 475
Barnes *vs.* Padilla, 482 Phil. 903, 915 (2004) 1008

Page

Barrio Fiesta Restaurant *vs.* Beronia,
789 Phil. 520, 539 (2016) 436
Basco *vs*. Gregorio, 315 Phil. 681 (1995) 978
Batistis *vs.* People, 623 Phil. 246, 255 (2009) 121
Begino *vs*. ABS-CBN, 758 Phil. 467 (2015) 163
Belbis, Jr. *y* Competente *vs.* People,
698 Phil. 706, 717-718 (2012) 564
Belisario *vs.* Intermediate Appellate Court,
G.R. No. 73503, Aug. 30, 1988, 165 SCRA 101 944
Belo Medical Group, Inc. *vs*. Santos,
817 Phil. 363, 382-383 (2017) 604
Berbano *vs*. Barcelona, 457 Phil. 331, 335-336 (2003) 343
Berenguer *vs*. Carranza, 136 Phil. 75, 76 (1969) 466
Bernabe *vs.* Vergara, 73 Phil. 676, 677 (1942) 445
Bernarte *vs*. Philippine Basketball Association,
673 Phil. 384 (2011) 163
Bernas *vs.* CA, 296-A Phil. 90, 140 (1993) 233
Biaco *vs.* Philippine Countryside Rural Bank,
544 Phil. 45, 55 (2007) 461
Bilag *vs.* Ay-ay, 809 Phil. 236, 243 (2017) 443
Billote *vs.* Solis, 760 Phil. 712, 726 (2015) 464
Binga Hydroelectric Plant, Inc. *vs.* Commission
on Audit, G.R. No. 218721, July10, 2018 373
Bookmedia Press, Inc. *vs.* Sinajon, G.R. No. 213009,
July 17, 2019 703-704
Bordomeo *vs*. CA, 704 Phil. 278, 296 (2013) 434
Boston Equity Resources, Inc. *vs*. CA,
711 Phil. 451, 464 (2013) 444
Bote *vs.* Spouses Veloso, G.R. No. 194270,
Dec. 3, 2012 232
BPI Employees Union-Metro Manila *vs.*
Bank of the Philippine Islands,
673 Phil. 599, 614 (2011) 440
Brent School, Inc. *vs*. Zamora, 260 Phil. 747 (1990) 171
Bugaoisan *vs.* OWI Group Manila, Inc.,
825 Phil. 764, 774 (2018) 433
Burbe *vs*. Magulta, 432 Phil. 840, 851 (2002) 466
Cabanatan *vs*. Molina, 421 Phil. 664, 673-674 (2001) 472
Cabrera *vs.* Ng, 729 Phil. 544, 550 (2014) 462

Page

Cadiac-Palacios *vs*. People, 601 Phil. 695-704 (2009) 136
Cadiz *vs.* CA, 510 Phil. 721, 728 (2005) 994
Caguioa (Ret.) *vs*. Aucena, 688 Phil. 1, 8 (2012) 472
Cailing *vs*. Espinosa, 103 Phil. 1165 (1958) 18
Calalang *vs.* Register of Deeds of Quezon City,
284 Phil. 343, 354 (1992) 419
Capistrano *vs.* Limcuando, G.R. No. 152413,
Feb. 13, 2009, 579 SCRA 176 944
Carandang *vs*. Dulay, 266 Phil. 862, 863-865 (1990) 38
Carbonell *vs*. Carbonell-Mendes,
762 Phil. 529, 537 (2015) 425
Carbonilla *vs.* Abiera, et al., 639 Phil. 473 (2010) 644
Castillo *vs*. Republic, 667 Phil. 729, 746 (2011) 448
Castro *vs*. People, 597 Phil. 722 (2009) 324
CE Construction Corp. *vs.* Araneta Center, Inc.,
816 Phil. 221 (2017) 219-220
Central Philippines Bandag Retreaders, Inc. *vs*.
Diasnes, 580 Phil. 177 (2008) 665
Central Shipping Co., Inc. *vs.* Insurance Company
of North America, 481 Phil. 868 (2004) 567
Cerilla *vs*. Lezama, 819 Phil. 157, 168 (2017) 471
Charlie Hubilla *vs*. Hay Marketing Ltd., Co.,
823 Phil. 358, 385-386 (2018) 586
Chavez *vs*. National Labor Relations Commission,
489 Phil. 444, 456-457 (2005) 164, 166
Chin *vs*. CA, 456 Phil. 440, 449 (2003) 429
China Banking Corporation *vs.*
Cebu Printing and Packaging Corporation,
642 Phil. 308, 320 (2010) 427
China Banking Corporation *vs.* CIR,
753 Phil. 58 (2015) 920
Chinatrust (Phils.) Commercial Bank *vs.*
Turner, 812 Phil. 1 (2017) 233
Cioco, Jr. *vs*. C.E. Construction Corporation,
481 Phil. 270, 276 (2004) 68
City Government of Butuan *vs*. Consolidated
Broadcasting System, Inc., 651 Phil. 37, 52 (2010) 429
City of Baguio *vs*. Busuego,
188 Phil. 218, 223-224 (1980) 955

Page

City of Dagupan *vs*. Maramba,
738 Phil. 71, 87, 91 (2014) 442, 1010
Civil Service Commission *vs*. Magoyag,
775 Phil. 182, 190 (2015) 460
Claudia's Kitchen, Inc. *vs*. Tanguin,
811 Phil. 784, 796 (2017) 587
CMP Federal Security Agency, Inc. *vs*. Reyes, Sr.,
G.R. No. 223082, June 26, 2019 .... 702, 704
CMTC International Marketing Corporation *vs*.
Bhagis International Trading Corporation,
700 Phil. 575, 581 (2012) 1009
Coca-Cola Bottlers Philippines, Inc. *vs*.
Commissioner of Internal Revenue,
826 Phil. 329, 346-347 (2018) 817
Coloma *vs*. Ulep, A.C. No. 5961, Feb. 13, 2019 14
Coloma, Jr. *vs*. Sandiganbayan, 744 Phil. 214 (2014) 139
COMELEC *vs*. Noynay, 354 Phil. 262, 273 (1998) 466
Commissioner of Internal Revenue *vs*.
American Express International, Inc.,
500 Phil. 586, 606 (2005) 816
Burmeister and Wain Scandinavian
Contractor Mindanao, Inc.,
541 Phil. 119, 131 (2007) 816
Petron Corporation, 685 Phil. 119 (2012) 920
San Miguel Corporation, 804 Phil. 293 (2017) 920
Team Sual Corp., 739 Phil. 215 (2014) 810
Conducto *vs*. Monzon, 353 Phil. 796, 812-815 (1998) 419
Crespo *vs*. Mogul, 235 Phil. 465 (1987) 626
Cruz *vs*. National Labor Relations Commission,
381 Phil. 775, 789 (2000) 995
Cruz *vs*. People, 812 Phil. 166, 171-172 (2017) 426, 433
Cunanan *vs*. CA, 793 Phil. 400, 409 (2016) 426
Curammeng *vs*. People,
799 Phil. 575, 581 (2016) 1009-1010
David *vs*. Macapagal-Arroyo,
522 Phil. 705, 753 (2006) 55
De Borja *vs*. Mendez, Jr., A.C. No. 11185,
July 4, 2018 350

Page

De Guzman-Fuerte *vs.* Estomo, G.R. No. 223399,
April 23, 2018, 862 SCRA 382, 399-400 645
De Jesus *vs.* Garcia, 125 Phil. 955, 960 (1967) 445
De Leon *vs.* Castelo, 654 Phil. 224, 232 (2011) 13
De Lima *vs.* Guerrero, 819 Phil. 616, 698 (2017) 609
De los Reyes *vs.* People, 516 Phil. 89, 92 (2006) 433
De Los Santos *vs.* Roman Catholic Church
of Midsayap, 94 Phil. 405 942
De Ocampo *vs.* RPN-9/Radio Philippines
Network, Inc., 775 Phil. 169, 177 (2011) 440
De Pedro *vs.* Romasan Development Corporation,
748 Phil. 706, 723, 725 (2014) 444, 460
Dela Chica *vs.* Sandiganbayan,
462 Phil. 712, 719 (2003) 86
Dela Cruz *vs.* People, 739 Phil. 578 (2014) 326
Dela Paz *vs.* Republic, 820 Phil. 907, 920 (2017) 449
Demex Rattancraft, Inc. *vs.* Leron,
820 Phil. 693, 703 (2017) 586
Department of Justice *vs.* Mislang,
791 Phil. 219, 227 (2016) 472
Department of Public Works and
Highways *vs.* Foundation Specialists, Inc.,
760 Phil. 795, 807 (2015) 219
Department of Transportation and
Communications *vs.* Spouses Abecina,
788 Phil. 645 (2016) 203
Development Bank of the Philippines *vs.*
Gagarani, et al., 587 Phil. 323, 328-329 (2008) 936
Dichaves *vs.* Office of the Ombudsman,
802 Phil. 564 (2016) 624
Digital Telecommunications Phils., Inc. *vs.*
Ayapana, G.R. No. 195614, Jan. 10, 2018 666
Dimal *vs.* People, G.R. No. 216922,
April 18, 2018 533-534
Diona *vs.* Balangue, 701 Phil. 19, 30-31 (2013) 440, 899
Distribution & Control Products, Inc. *vs.*
Santos, 813 Phil. 423 (2017) 585
Doctor, et al. *vs.* NII Enterprises, et al.,
821 Phil. 251, 264 (2017) 993

Page

Domingo *vs*. Sacdalan, A.C. No. 12475,
Mar. 26, 2019 ` 350-351
Duduaco *vs*. Laquindanum, 504 Phil. 9, 16 (2005) 469
Dumpit-Murillo *vs*. CA, 551 Phil. 725 (2007) 168
E. Ganzon, Inc. *vs*. Ando, Jr.,
806 Phil. 58, 63-64 (2017) 161-162
Eastern Overseas Employment Center *vs.*
Bea, 512 Phil. 749, 758 (2005) 702
Eastern Shipping Lines, Inc. *vs*.
BPI/MS Insurance Corp., 750 Phil. 95 (2015) 566-567
Ebuenga *vs.* Southfield Agencies, Inc.,
G.R. No. 208396, Mar. 14, 2018 663
Egger *vs.* Duran, 795 Phil. 9 (2016) 347
Escaño *vs.* Manaois, 799 Phil. 622, 635 (2016) 472
Esso Standard Eastern, Inc. *vs.* Lim,
208 Phil. 394, 406 (1983) 461
Estoesta, Sr. *vs.* CA, 258-A Phil. 779,
789-790 (1989) 419
Estrada *vs.* Office of the Ombudsman,
751 Phil. 821, 877-878 (2015) 609
Evergreen Manufacturing Corp. *vs.* Republic,
817 Phil. 1048 (2017) 101, 111
Eversley Childs Sanitarium *vs*. Barbarona,
G.R. No. 195814, April 4, 2018,
860 SCRA 283, 305 638
Evic Human Resource Management, Inc. *vs*.
Panahon, 814 Phil. 1040-1055 (2017) 275
Executive Secretary *vs.* Northeast Freight
Forwarders, Inc., 600 Phil. 789, 799-800 (2009) 464
F.F. Cruz & Co., Inc. *vs.* Galandez,
G.R. No. 236496, July 8, 2019 1001
Ferguson *vs*. Ramos, 808 Phil. 777 (2017) 967
Fernandez *vs.* Novero, Jr., 441 Phil. 506 (2002) 18
Fernandez *vs.* Vasquez, 669 Phil. 619, 628 (2011) 432
FGU Insurance Corporation *vs.*
Regional Trial Court of Makati City,
Br. 66, 659 Phil. 117, 123 (2011) 439

Page

Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. *vs*. Puente, 493 Phil. 923, 934 (2005) 68
Flight Attendants and Stewards Association of the Philippines *vs.* Philippine Airlines, Inc., 827 Phil. 680 (2018) 501
Fonacier *vs*. Sandiganbayan, 308 Phil. 693 (1994) 136
Foodbev International *vs.* Ferrer, G.R. No. 206795, Sept. 16, 2019 706
Fortune Life Insurance Company, Inc. *vs*. Commission on Audit, 752 Phil. 97, 107 (2015) 376
Francia *vs*. Abdon, 739 Phil. 299, 313 (2014) 348
Francisco *vs*. Bautista, 270 Phil. 503, 507 (1990) 419
Franco-Cruz *vs*. CA, 587 Phil. 307, 317 (2018) 436
Frias *vs*. Alcayde, 826 Phil. 713, 730 (2018) 459
Fuji Television Network, Inc. *vs.* Espiritu, 749 Phil. 388, 415, 432-433, 435 (2014) 161, 166, 169, 177-179
Funtila *vs*. CA, 181 Phil. 442, 447 (1979) 419
Gabriel *vs*. Petron Corporation, 829 Phil. 454, 460 (2018) 433
Gaffney *vs*. Butler, 820 Phil. 789, 801-802 (2017) 457
Gaisano Cagayan, Inc. *vs*. Insurance Company of North America, G.R. No. 147839, June 8, 2006 234
Garcia *vs*. Burgos, 353 Phil. 740, 771 (1998) 418
Garcia *vs*. NLRC, 351 Phil. 960, 972 (1998) 994
Garrido *vs*. Garrido and Valencia, 625 Phil. 347, 362 (2010) 465
Gayapanao *vs*. Intermediate Appellate Court, G.R. No. 68109, July 17, 1991, 199 SCRA 309 943
General Milling Corporation *vs*. Viajar, 702 Phil. 532, 540 (2013) 993
Gepulle-Garbo *vs*. Spouses Garabato, 750 Phil. 846, 854-855 (2015) 200
GMA Network, Inc. *vs.* Pabriga, 722 Phil. 161, 169-171, 181 (2013) 171-174, 177, 179-181
Gonzales *vs*. Chavez, 282 Phil. 858, 875-876 (1992) 435

Page

Gonzales-Austria *vs.* Abaya,
257 Phil. 645, 659 (1989) 476
Gonzalez *vs.* Alcaraz, 534 Phil. 471, 481-482 (2006) 11
Goyanko, Jr. *vs.* United Coconut Planters Bank,
703 Phil. 76, 90 (2013) 607
Guy *vs.* Guy, 694 Phil. 354, 373 (2012) 602
Guzman *vs.* CA, 258 Phil. 410 (1989) 203
Ha Yuan Restaurant *vs.* NLRC, 516 Phil. 124 (2006) 703
Hanjin Engineering and Construction Co.
Ltd./Nam Hyum Kim *vs.* CA,
521 Phil. 224, 244-245 (2006) 434
HDI Holdings Philippines, Inc. *vs.* Cruz,
A.C. No. 11724, July 31, 2018 .... 346-347, 351
Heirs of Bajenting *vs.* Bañez, G.R. No. 166190,
Sept. 20, 2006, 502 SCRA 531 941
Heirs of Dinglasan *vs.* Ayala Corp., G.R. No. 204378,
Aug. 5, 2019 686
Heirs of Arturo Garcia I *vs.* Municipality of Iba,
Zambales, 764 Phil. 408, 416 (2015) 469
Heirs of Pidacan *vs.* ATO, 552 Phil. 48 (2007) 202
Heirs of Spouses Reterta *vs.* Spouses Mores
and Lopez, 671 Phil. 346, 360 (2011) 433
Heirs of Yaptingchay *vs.* Del Rosario,
363 Phil. 393, 398 (1999) 445
Heirs of Alfonso Yusingco *vs.* Busilak,
G.R. No. 210504, Jan. 24, 2018,
852 SCRA 631, 640 639
Heirs of Zaulda *vs.* Zaulda,
729 Phil. 639, 651 (2014) 1010
Henson, Jr. *vs.* UCPB General Insurance Co., Inc.,
G.R. No. 223134, Aug. 14, 2019 738
Herma Shipyard, Inc. *vs.* Oliveros,
808 Phil. 668, 679 (2017) 72
Hernandez *vs.* National Labor Relations
Commission, G.R. No. 34302, Aug. 10, 2019 587
Hernandez *vs.* Padilla, 688 Phil. 329, 336 (2012) 472
Hi-Precision Steel Center, Inc. *vs.* Lim Kin Steel
Builders, Inc., 298-A Phil. 361, 372 (1993) 218, 221

Page

Hi-Tone Marketing Corp. *vs.* Baikal Realty
Corp., 480 Phil. 545 (2004) 896
HPS Software and Communication Corp. *vs.*
Philippine Long Distance Telephone Company
(PLDT), 700 Phil. 534, 571 (2012) 532
Hubilla *vs*. Hay Marketing Ltd., Co.,
823 PHil. 358-386 (2018) 586
Huyssen *vs*. Gutierrez, 520 Phil. 117, 127 (2006) 476
Igoy *vs*. Soriano, 419 Phil. 346, 359 (2001) 476
Ilocos Norte Electric Co. *vs*. CA,
258-A Phil. 565, 576-577 (1989) 562
Ilusorio *vs*. Baguio Country Club Corporation,
738 Phil. 135 (2014) 56
Imasen Philippine Manufacturing Corporation *vs*.
Alcon and Papa, 746 Phil. 172, 181 (2014) 703
In Re: G.R. No. 157659 "Eligio P. Mallari *vs*.
Government Service Insurance System, et al.,"
823 Phil. 164, 176 (2018) 469
In Re: Partial Report on the Results of the Judicial
Audit Conducted in the MTCC, Branch I,
Cebu City, 567 Phil. 103, 123 (2008) 431
Indophil Textile Mills, Inc. *vs.* Adviento,
740 Phil. 336, 348 (2014) 261
Inocente *vs.* St. Vincent Foundation for Children
and Aging, Inc., 788 Phil. 62 (2016) 427
Inocentes *vs.* R. Syjuco Construction, Inc.,
G.R. No. 237020, July 29, 2019 74-75
Insular Life Assurance Co., Ltd. Employees'
Association *vs*. Insular Life Assurance Co.,
Ltd., 166 Phil. 505, 518-519 (1977) 896
International School Manila *vs.* International
School Alliance of Educators, 726 Phil. 147 (2014) 666
Jacinto *vs*. Gumaru, Jr., 734 Phil. 685, 696 (2014) 376
Javelosa *vs*. Tapus, G.R. No. 204361, July 4, 2018,
870 SCRA 496, 509-510 .... 639-641, 646
Jehan Shipping Corporation *vs*. National Food
Authority, 514 Phil. 166, 167 (2005) 462
Jimenez *vs.* Francisco, 749 Phil. 551, 565 (2014) 475
Jocson *vs.* Soriano, 45 Phil. 375, 378-79 (1923) 936

Page

Jose *vs*. Alfuerto, 699 Phil. 307, 318 (2012) 645-646
Josue *y* Gonzales *vs*. People, 700 Phil. 782 (2012) 122
Ko *vs*. Uy-Lampasa, A.C. No. 11584,
Mar. 6, 2019 968
La Consolacion College of Manila *vs*. Pascua,
828 Phil. 182, 191-192 (2018) 483, 495-496, 501, 505
Labayo-Rowe *vs*. Republic, 250 Phil. 300 (1988) 778
Lai *vs*. People, 762 Phil. 434, 442 (2015)................................. 431
Lam *vs*. Chua, 469 Phil. 852, 863-864 (2004) 896
Landbank of the Philippines *vs*. Imperial,
544 Phil. 378 (2007) 109
Kumassie Plantation Co., Inc., 608 Phil. 523 (2009)......... 102
Natividad, 497 Phil. 738, 746-747 (2005)............................ 103
Orilla, 578 Phil. 663, 676 (2008) 100
Heirs of Puyat, 689 Phil. 505, 514-517 (2012).......... 103, 108
Heirs of Tapulado, 807 Phil. 74, 84 (2017) 103, 105
Lantaco, Sr. *vs*. Llamas, 195 Phil. 325, 341 (1981)................ 419
Lee Tek Sheng *vs*. CA, 354 Phil. 556, 561 (1998) 464
Ligtas *vs*. People, 766 Phil. 750, 772 (2015) 458
Lihaylihay *vs*. People, 715 Phil. 722-729 (2013)..................... 136
Llanes *vs*. Republic, G.R. No. 177947,
Nov. 27, 2008, 572 SCRA 258 518
Lopez *vs*. Irvine Construction Corp.,
741 Phil. 728, 737, 739 (2014) 72, 75
Lopez Sugar Corporation *vs*. Federation
of Free Workers, 267 Phil. 212 (1990) 497
Lorenzo Shipping Corporation *vs*.
Distribution Management Association
of the Philippines, 672 Phil. 1, 10 (2011)............................ 475
Lozano *vs*. Fernandez, G.R. No. 212979,
Feb. 18, 2019 644
Lumayna *vs*. Commission on Audit,
616 Phil. 929, 940 (2009) 378
Macabingkil *vs*. People's Homesite &
Housing Corporation, 164 Phil. 328, 345 (1976) 439
Mactan-Cebu International Airport
Authority *vs*. Heirs of Estanislao
Miñoza, 656 Phil. 537, 549 (2011) 463
Madali *vs*. People, 612 Phil. 582, 595 (2009) 293, 295

Page

Madrigal Transport, Inc. *vs.* Lapanday Holdings
Corporation, 479 Phil. 768, 779 (2004) 433
Maersk-Filipinas Crewing, Inc. *vs.* Avestruz,
754 Phil. 307-322 (2015) 275
Magat *vs.* Inter Orient Maritime Enterprises,
Inc., G.R. No. 232892, April 4, 2018 275
Magestrado *vs.* People, 554 Phil. 25, 40 (2007) 437
Maligaya *vs.* Doronilla, Jr., 533 Phil. 303 (2006) 14, 18
Mallion *vs.* Alcantara, 536 Phil. 1049, 1054 (2006) 457
Malvar *vs.* Baleros, 807 Phil. 16 (2017) 968
MAM Realty Development Corporation *vs.*
National Labor Relations Commission,
314 Phil. 838 (1995) 509
Mamaril *vs.* The Red System Company, Inc.,
G.R. No. 229920, July 4, 2018 663
Manatad *vs.* Philippine Telegraph and
Telephone Corporation, 571 Phil. 494 (2008) 499
Mandaue Dinghow Dimsum House, Co., Inc. *vs.*
National Labor Relations Commission,
571 Phil. 108 (2008) 508
Mangahas *vs.* CA, 588 Phil. 61, 77 (2008) 425
Manila Broadcasting Co. *vs.* National Labor
Relations Commission, 355 Phil. 910, 922 (1998) 707
Manila Electric Company *vs.* Nordec
Philippines, G.R. No. 196020, April 18, 2018,
861 SCRA 515, 534 607
Manila Mining Corporation *vs.* Amor,
758 Phil. 268 (2015) 1009
Manila Railroad Company *vs.* Moya,
121 Phil. 1122, 1127 (1965) 422
Marasigan *vs.* Fuentes, 776 Phil. 574, 581 (2016) 425
Marawi Marantao General Hospital, Inc. *vs.*
CA, 402 Phil. 356, 370-371 (2001) 419
Marcelo *vs.* CA, 401 Phil. 976, 988 (2000) 574
Maritime Co. of the Philippines *vs.* CA,
253 Phil. 50 (1989) 567
Maritime Industry Authority *vs.* Commission
on Audit, 750 Phil. 288 (2015) 378

Page

Marlow Navigation Philippines, Inc., et al. *vs.* Heirs of Ricardo S. Ganal, et al., 810 Phil. 956, 961 (2017) 993
Meco Manning & Crewing Services, Inc. *vs.* Cuyos, G.R. No. 222939, July 3, 2019 .... 276-278, 701
Medical Plaza Makati Condominium Corporation *vs.* Cullen, 720 Phil. 732 (2013) 604
Melchor *vs.* Commission on Audit, 277 Phil. 801 (1991) 372
Meralco *vs.* Barlis, 477 Phil. 12, 37 (2004) 955
Meralco Industrial Engineering Services *vs.* National Labor Relations Commission, 572 Phil. 94 (2008) 161
Mercury Drug Corporation *vs.* Spouses Huang, 817 Phil. 434, 445 (2017) 439
Me-Shurn Corporation *vs.* Me-Shurn Workers Union-FSM, 489 Phil. 37, 45-47 (2005) 496, 501
Millare *vs.* Montero, 316 Phil. 29, 34 (1995) 470
Mindanao Terminal and Brokerage Services, Inc. *vs.* CA, 693 Phil. 25, 37 (2012) 684
Ministerio *vs.* CFI of Cebu, 148-B Phil. 474 (1971) 202
Minsola *vs.* New City Builders, Inc., 824 Phil. 866, 879 (2018) 588
Miraflor *vs.* Carpio Morales, 250 Phil. 487, 492 (1988) 419
Miro *vs.* *Vda. De* Erederos, 721 Phil. 787 (2013) 230
Molave Tours Corporation *vs.* National Labor Relations Commission, 320 Phil. 398 (1995) 507
Molina *vs.* Magat, 687 Phil. 1 (2012) 13
Montañer *vs.* Shari'a District Court, 4th Shari'a Judicial District, Marawi City, 596 Phil. 815, 826 (2009) 446
Montoya *vs.* Transmed, 613 Phil. 696 (2009) 161
Muller *vs.* Philippine National Bank, G.R. No. 215922, Oct. 1, 2018 901
Multi-Realty Development Corp. *vs.* Makati Tuscany Condominium Corp., 524 Phil. 318, 335-336 (2006) 896

Page

Muñoz *vs*. CA, 214 Phil. 216 (1992) 640
Muñoz *vs*. Yabut, Jr., 665 Phil. 488, 514 (2011) 470
Nacar *vs.* Gallery Frames,
716 Phil. 267 (2013) 98, 184, 204, 688
Nahas *vs*. Olarte, 734 Phil. 569, 579 (2014) 262
National Development Company *vs*. CA, et al.,
247 Phil. 560 (1988) 569
National Power Corp. *vs.* Manubay Agro-Industrial
Development Corp., 480 Phil. 470 (2004) 100
National Power Corporation *vs*. National Labor
Relations Commission, et al.,
339 Phil. 89, 101 (1997) 435, 474
Province of Quezon, et al., 610 Phil. 456 (2009) 955
Province of Quezon, et al., 624 Phil. 738 (2010) 956
Heirs of Macabangkit Sangkay,
671 Phil. 569, 597 (2011) 102
Nava *vs.* Prosecutor Artuz,
817 Phil. 242, 255 (2017) 360
Navaja *vs*. De Castro, et al.,
761 Phil. 142, 150-151, 153 (2015) 83, 444
Navy Officer's Village Association, Inc. *vs.*
Republic, 765 Phil. 429 (2015) 198
Nissan Motors Phils., Inc. *vs.* Angelo,
637 Phil. 150 (2011) 667
Novateknika Land Corporation *vs.* Philippine
National Bank, 706 Phil. 414, 423 (2013) 425
Nuez *vs.* National Labor Relations Commission,
309 Phil. 476 (1994) 668
Oca *vs.* Custodio, 814 Phil. 641, 675 (2017) 437
Ocampo *vs*. Heirs of Bernardino Dionisio,
744 Phil. 716, 724 (2014) 645
Domalanta, 127 Phil. 566, 571 (1967) 459
Vda. de Fernandez, 552 Phil. 166, 189-190 (2007) 686
Ocampo-Ingcoco *vs*. Yrreverre, Jr.,
458 Phil. 803 (2003) 968
Office of the Court Administrator *vs.*
Necessario, 707 Phil. 328, 333 (2013) 472
Office of the Court Administrator *vs*. Reyes,
566 Phil. 325, 334 (2008) 472

Page

Office of the Ombudsman *vs.* Castro,
510 Phil. 380 (2005) 618
Fetalvero, Jr., G.R. No. 211450, July 23, 2018 359
Torres, 567 Phil. 46, 57 (2008) 358, 360
Olanolan *vs.* Commission on Elections,
494 Phil. 749, 756-757 (2005) 426
Olazo *vs.* Justice Tinga (Ret.),
651 Phil. 290, 299 (2010) 476
Olongapo City *vs.* Subic Water and Sewerage
Co., Inc., 740 Phil. 502, 519 (2014) 681
Onde *vs.* The Office of the Local Civil Registrar
of Las Piñas City, 742 Phil. 691, 696 (2014) 777
Ong *vs.* Delos Santos, 728 Phil. 332, 337 (2014) 350
Ong *vs.* Grijaldo, 450 Phil. 1, 5 (2003) 466
Ongco *vs.* Dalisay, 691 Phil. 462, 468 (2012) 463
Opriasa *vs.* The City Government of Quezon City,
540 Phil. 256, 266 (2006) 449
Orquiola *vs.* CA, 435 Phil. 323, 332 (2002) 442
Osmeña III *vs.* Social Security System,
559 Phil. 723 (2007) 57
Our Haus Realty Development Corporation *vs.*
Parian, 740 Phil. 699, 709 (2014) 427
Pacaña-Contreras, et al. *vs.* Rovila Water
Supply, Inc., et al., 722 Phil. 460, 483 (2013) 685-686
Padre *vs.* Badillo, 655 Phil. 52, 54 (2011) 444
Pagoda Philippines, Inc. *vs.* Universal Canning,
Inc., 509 Phil. 339, 345 (2005) 429
Pahila-Garrido *vs.* Tortogo,
671 Phil. 320, 338 (2011) 433
Palomares *vs.* National Labor Relations
Commission, 343 Phil. 213, 223 (1997) 72
Paper Industries Corp. of the Phils. *vs.*
Asuncion, 366 Phil. 717, 737-738 (1999) 533, 536
Paras, Sr. *vs.* CA, G.R. No. L-4091,
May 28, 1952, 91 SCRA 389 944
Paris *vs.* Alfeche, 416 Phil. 473, 488 (2001) 103
Pascual *vs.* Burgos, G.R. No. 171722,
Jan. 11, 2016, 778 SCRA 189, 205-206,
776 Phil. 167, 169, 182 (2016) 561, 663

Page

Paz *vs.* Sanchez, 533 Phil. 503, 510 (2006) 469
Peckson *vs.* Robinsons Supermarket Corp., et al.,
713 Phil. 471, 486 (2013) 993
Pelagio *vs*. Philippine Transmarine Carriers,
Inc., G.R. No. 231773, Mar. 11, 2019 259
Peña *vs.* Spouses Tolentino, 700 Phil. 78, 88 (2012) 232
Peñafrancia Sugar Mill, Inc. *vs.*
Sugar Regulatory Administration,
728 Phil. 525, 535, 540 (2014) 53
Pendoy *vs.* CA, G.R. No. 228223, June 10, 2019 757
People *vs.* Abulon, 557 Phil. 428, 454 (2007) 752
Addin, G.R. No. 223682, Oct. 9, 2019 874
Amaro *y* Catubay, 786 Phil. 139, 147 (2016) 292
Angeles, G.R. No. 229099, Feb. 27, 2019 727
Angngao, 755 Phil. 597, 604 (2015) 299
Año, 828 Phil. 439, 447-448 (2018) 320
Arbuis, G.R. No. 234154, July 23, 2018,
873 SCRA 543, 549 299
Asislo, 778 Phil. 509 (2016) 316
Asislo, G.R. No. 206224, Jan. 18, 2016,
781 SCRA 131, 146 720
Bandojo, Jr., G.R. No. 234161,
Oct. 17, 2018, 884 SCRA 84, 103-104 798
Baniega, 427 Phil. 405, 418 (2002) 798
Baradi, G.R. No. 238522, Oct. 1, 2018 727
Bartolome, 703 Phil. 148, 161 (2013) 859
BBB, G.R. No. 232071, July 10, 2019 .... 756, 762
Biala, 773 Phil. 464, 482 (2015) 757
Cabalquinto, 533 Phil. 703, 709 (2006) 742, 823, 852
Cabezudo, G.R. No. 232357, Nov. 28, 2018 876
Calvelo *y* Consada, G.R. No. 223526,
Dec. 6, 2017 .... 294, 296
Camiñas, G.R. No. 241017, Jan. 7, 2019 727
Caoili, 815 Phil. 839, 896-897 (2017) 763
Cardenas, G.R. No. 190342, Mar. 21, 2012,
668 SCRA 827, 834 724
Casio, 749 Phil. 458, 472-476, 484 (2014) 793, 846, 862
CCC, G.R. No. 228822, June 19, 2019 753
Crispo, 828 Phil. 416, 429 (2018) 319

Page

Cudal, 536 Phil. 1164 (2006) 563
Dagdag, G.R. No. 225503, June 26, 2019 .... 869, 875
De Dios, G.R. No. 243664, Jan. 22, 2020 727
De Guzman *y* Miranda, 564 Phil. 282, 293 (2007) 293
De Leon, G.R. No. 227867, June 26, 2019 296
Dela Rosa, 655 Phil. 630 (2011) 316
Dela Rosa, G.R. No. 227880, Nov. 6, 2019 862
Dimaano, 506 Phil. 630, 649-650 (2005) 88
Dimapilit, 816 Phil. 523, 540-541 (2017) 862
Diu, 708 Phil. 218, 232 (2013) 862
Escote, 475 Phil. 268, 274-275 (2004) 798
Estibal *y* Calungsag, 748 Phil. 850, 868 (2014) 562
Estrada, 357 Phil. 377, 394-395 (1998) 536
Fayo, G.R. No. 239887, Oct. 2, 2019 .... 725, 879
Feliciano, Jr., 734 Phil. 499, 527-528 (2014) 561-563
Francisco, 436 Phil 383, 393 (2002) 532
Fulinara, G.R. No. 237975, June 19, 2019 876
Gacott, Jr., 312 Phil. 603, 612 (1995) 471
Galagati, 788 Phil. 670, 684-685 (2016) 756
Gamboa, G.R. No. 233702, June 20, 2018,
867 SCRA 548, 563 320
Garcia, 599 Phil. 416 (2009) 324
Gutierrez, G.R. No. 236304, Nov. 5, 2018 727
Guzon, 719 Phil. 441, 451 (2013) 249
Hirang, 803 Phil. 277, 289, 291 (2017) 793, 859
Holgado, G.R. No. 207992,
Aug. 11, 2014, 732 SCRA 554, 569,
741 Phil. 78, 93-95 (2014) 250, 301, 325, 724
Ismael *y* Radang, 806 Phil. 21, 29 (2017) 292, 295
Jugueta, G.R. No. 202124, April 5, 2016,
783 Phil. 806, 848, 854 (2016) 123758-759, 847
Lababo, G.R. No. 234651, June 6, 2018,
865 SCRA 609 844
Lim, G.R. No. 231989, Sept. 4, 2018 875
Luna, 828 Phil. 671, 688 (2018) 325
Macaspac, G.R. No. 246165, Nov. 28, 2019 727
Magalong, G.R. No. 231838, Mar. 4, 2019 874
Mamaril, 646 Phil. 660, 671 (2010) 532
Manansala, 826 Phil. 578, 586 (2018) 319

Page

Manlangit, 654 Phil. 427 (2011) 318
Mantalaba, 669 Phil. 461, 471 (2011) 249
Mariano, 163 Phil. 625, 629 (1976) 443
Maylon *y* Alvero, G.R. No. 240664, Mar. 11, 2019 727
Mora, G.R. No. 242682, July 1, 2019 862
Moya, G.R. No. 228260, June 10, 2019 .... 751, 757-759
Nandi, 639 Phil. 134, 144-145 (2010) 250, 300
Nartea, 74 Phil. 8 (1942) 564
Ner, 139 Phil. 390 (1969) 562
Noah, G.R. No. 228880, Mar.6, 2019 727
Noque *y* Gomez, 624 Phil. 187, 198 (2010) 297, 298
Obias, Jr. *y* Arroyo, G.R. No. 222187,
Mar. 25, 2019 248
Odilao, Jr., 471 Phil. 623 (2004) 620
Odtuhan, 714 Phil. 349, 356 (2013) 87
Ong, 523 Phil. 347, 356 (2006) 428
Pacayra, 810 Phil. 275, 288 (2017) 753
Pagaduan, 641 Phil. 432 (2010) 299
Palanay, 805 Phil. 116, 123 (2017) 753
Peralta, 435 Phil. 743, 764 (2002) 845
Ramirez, G.R. No. 217978, Jan. 30, 2019 833
Rasos, Jr., G.R. No. 243639, Sept. 18, 2019 877
Retada, G.R. No. 239331, July 10, 2019 876
Reyes, 797 Phil. 671 (2016) 316
Rivera, 90 Phil. 770, 778 (2016) 245
Rodriguez, 818 Phil. 625, 638 (2017) 862
Rojo, 256 Phil. 571 (1989) 317, 319
Salafranca *y* Bello, 682 Phil. 470 (2012) 562
Sanchez, G.R. No. 231383, Mar. 7, 2018,
858 SCRA 94, 104 319
Santos, Jr., 562 Phil. 458, 471 (2007) 251
Soria, 698 Phil. 676, 687, 689 (2012) 751-752
Soriano, 600 Phil. 668, 676 (2009) 798
Tan, 401 Phil. 259, 273 (2000) 251
Tomawis, G.R. No. 228890, April 18, 2018 878
Tuan, 642 Phil. 379, 406 (2010) 533-534
Tuballas, 811 Phil. 201, 217 (2017) 758
Tulagan, G.R. No. 277363, Mar. 12, 2019 762
Tumangong, G.R. No. 227015, Nov. 26, 2018 873

Page

Ubungen *y* Pulido, G.R. No. 225497,
July 23, 2018, 873 SCRA 172, 182 300
Umapas *y* Crisostomo,
807 Phil. 975, 989-990 (2017) 294
Umipang, 686 Phil. 1024 (2012) 325
Vañas, G.R. No. 225511, Mar. 20, 2019 .... 752, 758
Villanueva, 795 Phil. 349 (2016) 797
Villarta, 740 Phil. 279 (2014) 315
Vistro, G.R. No. 225744, Mar. 6, 2019 873
Viterbo, 739 Phil. 593, 601 (2014) 320
XXX, G.R. No. 235662, July 24, 2019 759
XXX, G.R. No. 242207, July 3, 2019 763
People's General Insurance Corporation *vs.*
Guansing, G.R. No. 204759, Nov. 14, 2018 444
Peralta *vs*. Omelio,
720 Phil. 60, 72, 88 (2013) 408, 450, 471
Perez *vs*. Hagonoy Rural Bank, Inc.,
384 Phil. 322 (2000) 621
Phil. Communications Satellite Corp. *vs*.
Sandiganbayan 5th Division,
760 Phil. 893, 905 (2015) 604
Philex Mining Corporation *vs*. Reyes,
204 Phil. 241 (1982) 604
Philippine Long Distance Company *vs.*
Alvarez, 728 Phil. 391, 419 (2014) 539
Philippine Long Distance Company *vs.*
Teves, 649 Phil. 39 (2010) 707
Philippine National Bank *vs.*
De Los Reyes, G.R. Nos. L-46898-99,
Nov. 28, 1989, 179 SCRA 619 944
Paneda, 544 Phil. 565, 579 (2007) 463
Papa, 823 Phil. 725, 736 (2018) 436
Philippine Savings Bank *vs.* Papa,
823 Phil. 725, 736 (2018) 436
Philippine Textile Research Institute *vs*.
CA, G.R. Nos. 223319, 247736, Oct. 9, 2019 202
Philippine Village Hotel *vs*. National Labor
Relations Commission, 300 Phil. 445,
447-448, 452 (1994) 38, 40-41

Page

Philippines First Insurance Co., Inc. *vs*.
Wallem Phils. Shipping, Inc.,
601 Phil. 454, 463 (2009) 566
Philux *vs*. NLRC, 586 Phil. 19, 26 (2008) 1009
Phoenix Construction, Inc. *vs*. Intermediate
Appellate Court, 232 Phil. 327 (1987) 553
Pilipinas Shell Petroleum Corporation *vs*.
CIR, 565 Phil. 613 (2007) 920
Pilipinas Total Gas, Inc. *vs*.
Commissioner of Internal Revenue,
774 Phil. 473 (2015) 810, 812-813, 912, 914
Planteras, Jr. *vs*. People, G.R. No. 238889,
Oct. 3, 2018 837
PLDT *vs*. NLRC, G.R. No. 80609, Aug. 23, 1988 661
Procter and Gamble Asia Pte. Ltd. *vs*.
Commissioner of Internal Revenue,
785 Phil. 817 (2016) 810
Prudente *vs*. Dayrit, 259 Phil. 541, 553 (1989) 537
Prudential Bank (now Bank of the Philippine Islands)
vs. Magdamit, Jr., 746 Phil. 649, 666 (2014) 444
Publico *vs*. Hospital Managers, Inc.,
797 Phil. 356, 367 (2016) 702
Punzalan *vs*. Plata, 423 Phil. 819, 833 (2001) 469
Quasha Ancheta Pena & Nolasco Law Office *vs*.
The Special Sixth Division of the
Court of Appeals, 622 Phil. 738, 749 (2009) 419
Quebral *vs*. Angbus Construction, Inc.,
798 Phil. 179, 191 (2016) 72-74
Quijano *vs*. Amante, 745 Phil. 40 (2014) 640, 645
Quinicot *vs*. People, 608 Phil. 259 (2009) 318, 324
Quinsay *vs*. Avellaneda, 507 Phil. 417 (2005) 361
Quinto *vs*. COMELEC, 627 Phil. 193, 219 (2010) 464
Radiowealth, Inc. *vs*. Agregado,
86 Phil. 429, 439 (1950) 472
Ramiscal, Jr. *vs*. Hon. Justice Hernandez,
645 Phil. 550, 557 (2010) 429

Page

Re: An Undated Letter with the Heading "Expose" of a Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities Branch I, Naga City and Clerk of Court Renato C. San Juan, MTCC Naga City, 411 Phil. 504, 519 (2001) 431
Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac, Adm. Matter No. 06-7-414-RTC, Oct. 19, 2007 780
Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar, 549 Phil. 539, 542 (2007) 475
Realty Sales Enterprises, Inc. *vs.* Intermediate Appellate Court, 254 Phil. 719, 723 (1989)........................ 436
Redeña *vs.* CA, 543 Phil. 358, 368 (2007) 442
Regional Container Lines of Singapore *vs.* The Netherlands Insurance Co., 614 Phil. 485 (2009) 566
Regulus Development, Inc. *vs.* Dela Cruz, 779 Phil. 75, 86 (2016)... 441
Remoticado *vs.* Typical Construction Trading Corp., G.R. No. 206529, April 23, 2018 662
Republic *vs.* Asia Pacific Integrated Steel Corp., 729 Phil. 402 (2014) 100
CA, 368 Phil. 412, 424 (1999) 449
CA, 317 Phil. 653, 660 (1995) 460
CA, G.R. No. 84966, Nov. 21, 1991, 204 SCRA 160, 168 650
Camacho, 711 Phil. 80, 93 (2013) 448
Castro, 594 Phil. 124, 132 (2008) 460
Coseteng-Magpayo, 656 Phil. 550 (2011)............................ 780
De Asis, Jr., 715 Phil. 245, 255 (2013)............................... 447
Estipular, 391 Phil. 211, 221 (2000).................................... 449
Gallo, 823 Phil. 1090, 1108, 1111 (2018)............ 774, 780-781
Heirs of Julio Ramos, 627 Phil. 123, 134-136 (2010).. 415
Hidalgo, 561 Phil. 22 (2007) 203
Lugsanay Uy, 716 Phil. 254, 266 (2013)............................. 779

Page

Mancao, 764 Phil. 523, 524-525 (2015) 448
Mangotara, 638 Phil. 353, 469 (2010) 447
Marasigan, et al., 275 Phil. 243 (1991) 467
Mendoza, 210 Phil. 445, 448 (1983) 418
Mercadera, 652 Phil. 195 (2010) 775
Moldex Realty, Inc., 780 Phil. 553,
560-561 (2016) 54-55, 58
Mupas, 769 Phil. 21 (2015) 101
Mupas, 785 Phil. 40, 64 (2016) 100
Planes, 430 Phil. 848, 863-864 (2002) 474
Sali, 808 Phil. 343 (2017) 780
Sandiganbayan, 461 Phil. 598, 609 (2008) 995
Sandiganbayan, 678 Phil. 358, 397-398 (2011) 425
Santua, 586 Phil. 291, 300 (2008) 448
Southside Homeowners Association, Inc.,
534 Phil. 8 (2006) 195
Spouses Sanchez, 527 Phil. 571,
585-599 (2006) 415, 419
Susi, 803 Phil. 348, 358 (2017) 449
Team (Phils.) Energy Corp.,
750 Phil. 700, 717 (2015) 817
Tipay, 826 Phil. 88, 96-97 (2018) 774
Viaje, 779 Phil. 405, 415 (2016) 435
Villasor, 153 Phil. 356, 360 (1973) 202
Retired Employee *vs*. Manubag, 591 Phil. 21 (2008) 361
Reyes *vs*. CA, 148 Phil. 135, 146 (1971) 898
Lim, 456 Phil. 1, 10 (2003) 441
RTC of Makati, Br. 142,
583 Phil. 591, 606 (2008) 602
Rivera *vs*. Genesis Transport Services, Inc.,
765 Phil. 544, 561 (2015) 589
Rivera *vs*. People, G.R. No. 228154, Oct. 16, 2019 136
Riviera Golf Club, Inc. *vs*. CCA Holdings, B.V.,
760 Phil. 655, 671 (2015) 437
Roberts, Jr. *vs*. CA, 324 Phil. 568 (1996) 627
Rodica *vs*. Lazaro, et al., 693 Phil. 174, 183 (2012) 18
Roy III *vs*. Herbosa, 800 Phil. 459, 527 (2016) 380
Rural Bank of Davao City, Inc. *vs*.
CA, G.R. No. 83992, Jan. 27, 1993,

Page

217 SCRA 554, 565, 217 Phil. 554,
564-565 (1993) 936, 944
Rutaquio *vs*. National Labor Relations Commission,
375 Phil. 405, 418 (1999) 184
Sabellina *vs.* Buray, et al., 768 Phil. 224 (2015) 648
Saladaga *vs.* Astorga, 748 Phil. 1, 5 (2014) 342
Sameer Overseas Placement Agency, Inc. *vs.*
Cabiles, 740 Phil. 403 (2014) 667
Samonte *vs.* Abellana, 736 Phil. 718, 729 (2014) 12
San Miguel Corporation *vs.* NLRC,
247 Phil. 338, 348 (1988) 261
Sanchez *vs.* CA, 452 Phil. 665, 674 (2003) 434
Santiago *vs*. Fojas, 318 Phil. 79, 87 (1995) 466
Santiago, Jr. *vs*. People, G.R. No. 213760,
July 1, 2019 862
Sara Lee Philippines, Inc. *vs.* Macatlang,
750 Phil. 646, 654 (2015) 438
Sarona, et al. *vs*. Villegas, et al., G.R. No. L-22984,
Mar. 27, 1968, 131 SCRA 363 643
Sea-Land Service, Inc. *vs*. CA,
409 Phil. 508, 514 (2001) 817
Sebastian *vs.* Bajar, 559 Phil. 211, 224 (2007) 475
Sebastian *vs.* Spouses Cruz,
807 Phil. 738, 743 (2017) 900
Secretary of the Department of Public Works
and Highways *vs*. Spouses Tecson,
713 Phil. 55 (2013) 102
Security Bank Corp. *vs.* CA, G.R. No. 170149,
Aug. 17, 2016 344
Security Bank Savings Corporation *vs.* Singson,
780 Phil. 860 (2016) 668
Sempio *vs.* CA, 348 Phil. 627, 636 (1998) 420
Shinryo (Phils.) Company, Inc. *vs*. RRN, Inc.,
648 Phil. 342, 350 (2010) 220, 222
Shoemart, Inc. *vs*. NLRC, 257 Phil. 396, 402 (1989) 995
Silicon Phils. *vs*. Commissioner of Internal
Revenue, 654 Phil. 492, 504 (2011) 815
Simeon *vs.* Peña, G.R. No. L-29049,
Dec. 29, 1970, 36 SCRA 610 943

Page

Sipin-Nabor *vs.* Baterina, 412 Phil. 419, 424 (2001) 465
Sitel Philippines Corp. *vs.* Commissioner of Internal Revenue, 805 Phil. 464, 482-483 (2017) 816, 818
Skippers United Pacific, Inc. *vs.* Maguad, 530 Phil. 367, 387 (2006) 994
Solar Team Entertainment, Inc. *vs.* How, 393 Phil. 172 (2000) 621
Somerville Stainless Steel Corp. *vs.* National Labor Relations Commission, 350 Phil. 859, 871-872 (1998) 497
Sonza *vs.* ABS-CBN, 475 Phil. 539 (2004) 168
Speed Distributing Corp. *vs.* CA, 469 Phil. 739, 758 (2004) 601
Spouses Alcuitas *vs.* Villanueva, G.R. No. 207964, Sept. 16, 2015, 771 SCRA 1, 10-11 944
Spouses Antonio *vs.* *Vda. De* Monje, 646 Phil. 90, 98-100 (2010) 459
Spouses Bergonia *vs.* CA, 680 Phil. 334, 341 (2012) 425
Spouses Dipad *vs.* Spouses Olivan, 691 Phil. 680, 686 (2012) 427
Spouses Marcelo *vs.* LBC Bank, 663 Phil. 67 (2011) 493
Spouses Topacio *vs.* Banco Filipino Savings and Mortgage Bank, 649 Phil. 331, 342 (2010) 458
Spouses Valdez, Jr. *vs.* CA, 523 Phil. 39 (2006) 639
Spouses Williams *vs.* Enriquez, 518 Phil. 372, 376 (2006) 471
St. Martin Funeral Homes *vs.* National Labor Relations Commission, 356 Phil. 811 (1998) 25-26
Sta. Catalina College *vs.* National Labor Relations Commission, 461 Phil. 720, 725-726 (2003) 38-39
Sta. Lucia Realty and Development, Inc. *vs.* Cabrigas, 411 Phil. 369, 387-388 (2001) 447
Steamship Mutual Underwriting Association (Bermuda) Limited *vs.* Sulpicio Lines, Inc., 818 Phil. 464-524 (2017) 274
Suarez *vs.* Spouses Emboy, Jr., 729 Phil. 315, 329-330 (2014) 639, 642

Page

Supra Multi-Services, Inc. *vs.* Labitigan,
792 Phil. 336 (2016) 664
Sy Tiong Shiou, et al. *vs.* Sy Chim, et al.,
601 Phil. 510, 525 (2009) 88
Tagle *vs.* Equitable PCI Bank,
575 Phil. 384, 396 (2008) 426
Tahanan Development Corporation *vs.*
CA, 203 Phil. 652, 681 (1982) 447
Talidano *vs.* Falcon Maritime & Allied
Services, Inc., 580 Phil. 256, 270-271 (2008) 562-563
Tan *vs.* Lagrama, 436 Phil. 190 (2002) 166
Office of the Local Civil Registrar
of the City of Manila, G.R. No. 211435,
April 10, 2019 779
Spouses Antazo, 659 Phil. 400, 404 (2011) 426
Tangga-an *vs.* Philippine Transmarine Carriers,
Inc., et al., G.R. No. 180636, Mar. 13, 2013,
706 Phil. 339, 352 (2013) 277, 708
Testate Estate of Concordia T. Lim *vs.*
City of Manila, 261 Phil. 602, 607 (1990) 955-956
The Barco *vs.* CA, 465 Phil. 39, 57 (2004) 460
The Director of Lands *vs.* CA,
190 Phil. 311, 372 (1981) 422
The Director of Lands *vs.* CA,
342 Phil. 239, 248 (1997) 460
The Government of the Philippines *vs.* Aballe,
520 Phil. 181, 191-192 (2006) 446
The New Testament Church of God *vs.*
CA, 316 Phil. 330, 333 (1995) 650
Tiña *vs.* People, G.R. No. 231437 (Notice),
Sept. 6, 2017 123
Tionco *y* Ortega *vs.* People,
755 Phil. 646, 653 (2015) 294
Tolosa *vs.* NLRC, 449 Phil. 271, 284 (2003) 261
Torralba *vs.* Sandiganbayan,
300 Phil. 25, 35 (1994) 618
Toyota Motor Phils. Corp. *vs.* Toyota
Motor Phils. Corp. Workers Assoc.,
G.R. Nos. 158798-99, Oct. 19, 2007 661

Page

Triol *vs*. Agcaoili, A.C. No. 12011,
June 26, 2018 .... 966, 968
Tumbokon *vs*. Pefianco, 692 Phil. 202, 207 (2012) 343, 350
Ty *vs*. Banco Filipino Savings and Mortgage Bank,
467 Phil. 290, 306 (2004) 430
Unciano *vs*. Gorospe, G.R. No. 221869,
Aug. 14, 2019 945
United Coconut Planters Bank *vs*. Looyuko,
560 Phil. 581, 592 (2007) 426
United States *vs*. Jayme, 24 Phil. 90, 92 (1913) 444
United States of America *vs*. Guinto,
261 Phil. 777, 791 (1990) 202
Universal Robina Sugar Milling Corp. *vs*.
Ablay, 783 Phil. 512, 523 (2016) 707
University of Manila *vs*. Pinera, G.R. No. 227550,
Aug. 14, 2019 994
Uniwide Sales Realty and Resources Corporation
vs. Titan-Ikeda Construction and Development
Corporation, 540 Phil. 350, 360-361 (2006) 220
Uy *vs*. Bureau of Internal Revenue,
397 Phil. 892, 906 (2000) 532
Vallacar Transit, Inc. *vs*. Catubig,
664 Phil. 529, 540-541 (2011) 375
Valleno *vs*. People, 701 Phil. 313, 321 (2013) 245
Vda. de Miller *vs*. Miranda,
772 Phil. 449, 455 (2015) 966
Vector Shipping Corp., et al. *vs*. American Home
Assurance Company, et al., 713 Phil. 198 (2013) 736
Venzon, et al. *vs*. Zameco II Electric Cooperative,
Inc., et al., 799 Phil. 342, 364 (2016) 994
Victoria *vs*. Republic, G.R. No. 179673,
June 8, 2011, 651 SCRA 523 518
Victoriano *vs*. Dominguez, G.R. No. 214794,
July 23, 2018 274
Vigilar *vs*. Aquino, 654 Phil. 755 (2011) 202
Villa *vs*. Government Service Insurance System,
619 Phil. 740, 750 (2009) 439
Villordon *vs*. Avila, 692 Phil. 388 (2012) 361

Page

Virra Mall Tenants Association, Inc. *vs.* Virra Mall Greenhills Association, Inc., 674 Phil. 517, 525-526 (2011) 464
Vitriolo *vs.* Dasig, 448 Phil. 198, 207 (2003) 476
Viva Shipping Lines, Inc. *vs.* Keppel Philippines Marine, Inc., 781 Phil. 95, 122 (2016) 441
Wallem Philippines Services, Inc. *vs.* Heirs of the Late Peter Padrones, 756 Phil. 14 (2015) 233
Webb *vs.* People, 342 Phil. 206, 215 (1997) 428
Whitson *vs.* Atienza, 457 Phil. 11 (2003) 18
Wildvalley Shipping Co., Ltd. *vs.* CA, 396 Phil. 383, 397 (2000) 571
William Uy Construction Corp. *vs.* Trinidad, 629 Phil. 185, 190 (2010) 72
Winebrenner & Iñigo Insurance Brokers, Inc. *vs.* Commissioner of Internal Revenue, 752 Phil. 375, 397 (2015) 817
Yao, Sr. *vs.* People, 552 Phil. 195, 221 (2007) 533
Young *vs.* Batuegas, 451 Phil. 155, 161-162 (2003) 13
Ysidoro *vs.* Leonardo-De Castro, 681 Phil. 1, 14-15 (2012) 427
Yuki, Jr. *vs.* Co, 621 Phil. 194, 210 (2009) 687
Zacarias *vs.* Anacay, 744 Phil. 201 (2014) 645
Zaragoza *vs.* Iloilo Santos Truckers, Inc., 811 Phil. 834, 841 (2017) 688
Zosima, Incorporated *vs.* Salimbagat, 694 Phil. 636 (2012) 650

II. FOREIGN CASES

Oliver Wendell Holmes in Kawananakoa *vs.* Polyblank, 205 U.S. 349, 353 (1907) 202
Maryland *vs.* Garrison, 480 U.S. 79 (1987) 538
R.M.S. Titanic, Inc. *vs.* Haver, 171 F.3d 943 (1999) 461
United States *vs.* Parmenter, 7th Cir. 1982, 531 F. Supp. 975 .... 533, 538
United States *vs.* Hinton, 7 Cir. 1955,

Page

219 F.2d 324 533

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. III, Sec. 2 531
Art. VIII, Sec. 1 54
Sec. 5, par. 5 441
Art. XI, Sec. 1 977
Art. XVI, Sec. 3 202

B. STATUTES

Act
Act No. 2031, Secs. 30-31 14
Act No. 4103 847
Act No. 4180 758
Administrative Code
Book IV, Title III, Chapter 12, Sec. 35 (1) 435
A.M. No. 03-8-02-SC
Chapter V, Sec. 8 (a) 430
A.M. No. 04-10-11-SC
Sec. 40 .... 742, 823
A.M. No. 15-08-02-SC
Sec. II 847
Batas Pambansa
B.P. Blg. 129, Sec. 9 492
Sec. 14 (1) 430
Civil Code, New
Art. 22 901
Art. 160 345
Art. 428 638
Art. 1144 681
Art. 1144 (2) 735
Art. 1144 (3) 678

Page

Art. 1146 .... 734, 741
Art. 1155 741
Art. 1173 570
Art. 1670 687
Art. 1687 687
Art. 1733 552
Art. 1734 568
Art. 1759 565
Art. 1766 569
Art. 2207 .... 735, 737-738
Art. 2208 (8) 1001
Art. 2209 97
Code of Conduct for Court Personnel
Canon IV, Sec. 1 472
Code of Professional Responsibility
Canon 1 474
Rule 1.01 .... 345-346, 350, 967-968
Canon 5 471
Canon 7 348
Rule 7.03 .... 345-346, 350
Canon 10, Rule 10.01 .... 13, 18, 21
Rule 10.02 466
Canon 15 345
Rule 15.06 .... 348, 350
Canon 16, Rule 16.02 349-350
Rule 16.03 .... 345-346, 351
Canon 17 .... 346, 350
Canon 18 .... 345, 350
Canon 20 9
Rule 20.1 19
Commonwealth Act
C.A. No. 141 .... 192, 198, 941, 945-946
Sec. 88 195
Sec. 118 940
Sec. 119 938-939
Corporation Code
Sec. 74 .... 80, 83, 87
Sec. 144 .... 80, 84, 87

Page

Executive Order
E.O. No. 228 .... 95, 105-107, 110-111
Interim Rules
Rule 1, Sec. 1 (a) 602
Sec. 1 (a)(1) 603
Rule 3, Sec. 1 606
Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC)
Rule 13, Sec. 6 (c) 462
Labor Code
Art. 111 589
Art. 113 582
Arts. 174, 178-200 260
Art. 279 (now Art. 294) 40, 42, 587
Art. 279 (a) 182
Art. 282 .... 664-665, 666, 699-700
Art. 282 (a) 660
Art. 282 (b) 667
Art. 283 (now Art. 298) 35, 664
Art. 284 (now Art. 299) 35-36, 664
Art. 294 .... 172, 994
Art. 295(formerly 280) 70, 156, 171, 173
Art. 295, par. 2 173
Art. 297 .... 182, 269-270, 664, 701
Art. 298 .... 182, 495
Art. 299 .... 182, 270
National Internal Revenue Code (Tax Code)
Sec. 108 (B) (2) 815
Sec. 110 (A) (3), (B) 815
Sec. 112 813
Sec. 112 (C) 809, 910, 913
Sec. 246 813
Penal Code, Revised
Art. 6 721
Art. 248 122
Art. 266-A 615, 746, 764
Art. 266-A, par. 1 .... 751, 753
Art. 266-A (d) 616
Art. 266-B 746, 752, 764

Page

Presidential Decree
P.D. No. 27 .... 94-95, 98, 105-107
P.D. No. 442 994
P.D. No. 902-A, Sec. 5 601-602
Sec. 5 (a) 599-600, 602
P.D. No. 1445 371
P.D. No. 1529, Sec. 14 (1)-(2) 522
Proclamation
Proc. Nos. 172, 192, 208, 347, 376 197
Proc. No. 423 192
Proc. No. 461 .... 196-197, 202
Public Land Act
Sec. 119 .... 933-934, 936
Republic Act
R.A. No. 26 .... 415, 421, 446, 450, 464
Secs. 9-10 .... 420, 447
Sec. 11 447
Sec. 12 .... 419, 421-422, 449
Sec. 13 .... 419, 422, 447, 449, 468
Sec. 22 447
R.A. Nos. 274, 730 .... 192, 196
R.A. No. 3019, Sec. 3 (e) 127, 135-136, 139
R.A. No. 6657, as amended 104-105, 111, 929
Sec. 7 104
Sec. 17 .... 95, 104-105
R.A. No. 7160, Sec. 270 .... 954, 959
R.A. No. 7227 197
R.A. No. 7610 .... 614, 742, 823
Sec. 5 (b) 746, 759, 763
Sec. 31 (f) 763
Sec. 32 759
R.A. No. 7902 492
R.A. No. 7916, Sec. 24 .... 952-953, 957
Sec. 35 .... 954, 957
R.A. No. 8042, Sec. 10 278
R.A. No. 8369, Sec. 5 (a) 615
R.A. No. 8424, as amended 913
R.A. No. 8493 623
Secs. 10 (a) (3), (6), (11) 622

Page

R.A. No. 8505 615
R.A. No. 8748 .... 952, 957
R.A. No. 8756 803
R.A. No. 8799 595
Sec. 5.2 601
Sec. 9.1 (8.1) 596
R.A. No. 9048, as amended 773, 776, 780
Sec. 1 774
Sec. 2 (3) 775
R.A. No. 9165 .... 251, 295
Sec. 3 (f) (i) 329
Sec. 3 (ii) 316
Sec. 3 (hh) 329
Sec. 3 (pp) 329
Sec. 5 .... 284, 292, 299, 309, 314
Sec. 11 .... 240, 249, 528-529
Sec. 11, par. 2 (2) 247
Sec. 13 248
Sec. 15 .... 309, 314, 326, 330
Sec. 21 .... 249, 299, 301, 320-321
Sec. 21 (1) 299-300, 722, 873
Sec. 21 (2), (3) 321, 722
Sec. 26 .... 711, 719-721
Sec. 26, par. (b) 284, 297
Sec. 38 .... 327, 330
R.A. No. 9182 950
R.A. No. 9208 .... 615, 793, 828, 832
Sec. 3 (a) 791, 797, 860
Sec. 3 (b) 792, 843
Sec. 4 858
Sec. 4 (a) 822, 847, 858, 860, 863
Sec. 4 (e) 784, 792, 799, 851, 860
Sec. 6 843
Sec. 6 (a) 784, 792, 799, 822, 847
Sec. 6 (c) 822, 847
Sec. 10 (a), (c) 822-823, 847
R.A. No. 9262 .... 615, 742, 823, 852
R.A. No. 9337 913
R.A. No. 9344 615

Page

R.A. No. 9346 ... 758
Sec. 3 ... 832, 847
R.A. No. 9700 ... 105
Sec. 5 ... 104
R.A. No. 10172 ... 774
R.A. No. 10364 ... 851
R.A. No. 10640 ... 320, 724, 876
R.A. No. 11231 ... 940, 946
Sec. 3 ... 939
Sec. 4 ... 939, 946
Revised Rules of Criminal Procedure (2000)
Rule 116, Sec. 11 ... 621-623
Sec. 11 (c) ... 624
Rules of Court, Revised
Rule 2, Sec. 1 ... 607
Sec. 2 ... 606
Secs. 3-4 ... 600
Rule 3, Sec. 3 ... 677, 679
Rule 10, Sec. 5 ... 685
Rule 37, Sec. 1 ... 682
Rule 38, Sec. 2 ... 442
Sec. 6 ... 431, 432
Rule 39, Sec. 6 ... 678, 680
Sec. 47 ... 458
Rule 41, Sec. 1 (f) ... 440
Sec. 1 (g) ... 680
Rule 42 ... 635
Sec. 1 ... 682
Rule 43 ... 48, 215
Rule 44, Sec. 15 ... 232
Rule 45 ... 64, 70, 152, 216-217
Sec. 1 ... 218
Rule 47, Sec. 2 ... 899
Rule 50, Sec. 1 ... 1008
Rule 51, Sec. 8 ... 896
Rule 64 ... 369, 375
Sec. 3 ... 374
Sec. 5 ... 375, 379

Page

Rule 65 .... 369, 582, 600, 990
Sec. 1 .... 440, 607
Rule 70 679
Sec. 1 677
Sec. 17 .... 895, 897
Rule 74, Secs. 1-2 446
Rule 76, Sec. 3 447
Rule 86, Secs. 2-4 446
Rule 89, Secs. 8-7 447
Rule 91, Secs. 2-3 447
Rule 93, Sec. 6 447
Rule 99, Secs. 4-5 447
Rule 103, Sec. 3, 5 447
Rule 104, Secs. 2, 4 447
Rule 105, Secs. 3-4 447
Rule 106, Secs. 3-4 447
Rule 107, Secs. 4, 6 447
Rule 108 771
Sec. 3 777
Secs. 4-5 .... 447, 777
Rule 110, Sec. 6 86
Rule 120, Secs. 4-5 298
Rule 124, Sec. 3 1010
Sec. 8 .... 1006, 1008
Rule 126, Sec. 4 531-532
Rule 130, Sec. 9 .... 30, 37
Sec. 36 561
Sec. 42 562
Sec. 48 557
Rule 133 650
Sec. 5 358
Rule 138, Sec. 27 .... 349, 475
Rule 139-B, Sec. 13 1011
Rules on Civil Procedure, 1997
Rule 65 157
Rules on Notarial Practice, 2004
Rule II, Sec. 12 966
Rule IV, Sec. 2 (b) 966

Page

C. OTHERS

Code of Commerce
Art. 612 (7) 572
Art. 826 570
Art. 827 .... 557, 569-570
Implementing Rules and Regulations of R.A. No. 7916
Rule XVI, Sec. 2 958
Revised Rules of Procedure of the Commission on Audit (2009)
Rule V, Sec. 4 376
Rule VII, Sec. 3 376
Rule X, Sec. 3 378
Rules on Administrative Cases in the Civil Service (2017)
Rule 10, Sec. 50 (B) (5) 979
Sec. 50 (D) (2) 980
Sec. 50 (F) 979
Sec. 50 (F) (4) 980
Uniform Rules in Administrative Cases in the Civil Service
Rule IV, Sec. 52 (A) (1) 361
Sec. 58 (a) 361

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(Local)

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2001 Ed., p. 306 587
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II. FOREIGN AUTHORITIES

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